

AUSTRALIAN CAPITAL TERRITORY.

HIRE-PURCHASE ORDINANCE 1964.

EXPLANATORY MEMORANDUM.

No. 5 of 1964

At a series of conferences between Commonwealth and State Ministers it has been agreed that the uniform hire-purchase legislation should be amended throughout the Commonwealth to make special provision in the hire-purchase laws in relation to agreements involving elements extending beyond one State or Territory.

Draft clauses 2, and 3, of the Ordinance provide for the Ordinance to apply to any hire-purchase agreement entered into a State or Territory declared by the Minister by notice in the Gazette, unless a contrary intention appears in the Ordinance.

The draft provides that where an agreement has application in two States or a State and a Territory certain acts and forms completed in accordance with the law of one State or Territory will be recognised in the other State or Territory as if the act had been done or the form completed pursuant to the hire-purchase law of that State or Territory. This principle is introduced into the Ordinance in relation to the following provisions :—

- (i) The written statement required to be given to the proposed hirer by the proposed owner or the dealer in accordance with First Schedule. (Clause 4 of the Draft Ordinance);
- (ii) Failure of the owner to transmit to the hirer a statement of his position in accordance with the law of a State or other Territory (Clause 6);
- (iii) The notice to be given where goods are repossessed (Clause 10); and
- (iv) The provisions in relation to guarantors (Clause 13).

Clause 4 of the draft also provides that the owner is not to be liable for failure to give the required statement pursuant to section 7 if he has reasonable grounds for believing that the statement had already been given to the proposed hirer.

The draft gives the hirer the right to go to a Court in the Australian Capital Territory for various forms of relief provided in the Hire-purchase Ordinance 1961 if he is, and was at the time the agreement was entered into, a resident of the Territory and some negotiation or transaction relating to, or preliminary to, the agreement took place in the Territory notwithstanding that the agreement was entered into outside the Territory. The remedies to be affected by the amendments include :—

- (i) the right to go to a Court for an order declaring that the consent of the owner to an assignment of the agreement has been unreasonably withheld (Clause 7);
- (ii) the right to seek a Court Order approving the removal of goods to a specified place where the owner has unreasonably refused approval (Clause 8);
- (iii) the right to apply to a Court for an order fixing the place to which goods may be returned on termination of the agreement by the hirer (Clause 9);
- (iv) the right to have the Court re-open and enquire into an agreement (Clause 14); and
- (v) the right to apply to the Court for an order restraining repossession of certain goods from a farmer (Clause 15).

Section 33 of the Principal Ordinance is amended by Clause 16 of the draft by including in that section a provision whereby any clause or statement in an agreement providing for the owner to recover from the hirer the costs incurred by the owner in recovering moneys under the agreement is void and of no effect. The provision will apply only in relation to hire-purchase agreements entered into fourteen days after the commencement of the Ordinance in order to allow time for hire-purchase companies to amend their forms of agreement.

As section 44 of the Principal Ordinance permits the posting of notices required under the Ordinance the operative words “served or given” have been extended by adding the word “sent”. This amendment is contained in Clause 18.

Following the substantive amendments above certain consequential amendments have been effected to the Principal Ordinance by Clauses 5, 11, 12, 17 and 19.

J. D. ANTHONY