

AUSTRALIAN CAPITAL TERRITORY

No. 55 of 1981

AN ORDINANCE

To amend the *Hire-purchase Ordinance 1961*

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 21 December 1981.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

MICHAEL HODGMAN
Minister of State for the Capital Territory

HIRE-PURCHASE (AMENDMENT) ORDINANCE 1981

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|------------------------|---|
| Short title | 1. This Ordinance may be cited as the <i>Hire-purchase (Amendment) Ordinance 1981</i> .* |
| Commence-
ment | 2. This Ordinance shall come into operation on such date as is fixed by the Minister of State for the Capital Territory by notice in the <i>Gazette</i> . |
| Principal
Ordinance | 3. In this Ordinance, "Principal Ordinance" means the <i>Hire-purchase Ordinance 1961</i> .† |
| Interpret-
ation | <p>4. Section 6 of the Principal Ordinance is amended—</p> <p>(a) by inserting in sub-section (1), after the definition of "period of the agreement", the following definition:</p> <p style="padding-left: 40px;">"regular instalments hire-purchase agreement" means a hire-purchase agreement under which the instalments—</p> <p style="padding-left: 80px;">(a) are to be paid by the hirer at regular weekly, fortnightly or monthly intervals and at no other intervals; and</p> <p style="padding-left: 80px;">(b) are of equal amounts or of amounts none of which differs from another by more than \$2;"</p> |

* Notified in the *Commonwealth of Australia Gazette* on 31 December 1981.

† Ordinance No. 9, 1961 as amended by No. 5, 1964; No. 19, 1966; No. 14, 1969; No. 65, 1977; and No. 46, 1978.

- (b) by omitting from sub-section (1) the definition of “the Court of Petty Sessions” or “the Court” and substituting the following definition:

“‘the Court’ means the Court of Petty Sessions;”
and

- (c) by omitting sub-section (4).

5. Section 7 of the Principal Ordinance is amended—

- (a) by inserting, after sub-section (1B), the following sub-section:

“(1C) For the purposes of this Ordinance, a statement referred to in sub-section (1), (1A) or (1B) shall be deemed not to have been given to a person unless a copy of that statement is signed by him or on his behalf in acknowledgment of receipt of that statement.”;

Summary of
proposed
transaction,
and form
and contents
of hire-
purchase
agreement

- (b) by omitting from sub-paragraph (2) (c) (iv) “and”;
- (c) by adding at the end of paragraph (2)(c) the following sub-paragraphs:

“(vi) specify the rate of interest ascertained in accordance with whichever of sub-sections (2A) or (2B) is applicable to the agreement (in this Ordinance called, and in the agreement to be described as, ‘the annual interest rate’); and

(vii) contain, in the case of an agreement other than a regular instalments hire-purchase agreement, a statement that the annual interest rate has been calculated as if the agreement required the instalments to be paid at regular monthly intervals during the term of the agreement and to be of equal amounts;”;

- (d) by omitting sub-paragraphs (2) (e) (vii), (viiA), (viii), (ix) and (x) and substituting the following sub-paragraphs:

“(vii) where the owner, in pursuance of section 34 or 38 of the *Australian Capital Territory Taxation (Administration) Act* 1969, adds an amount equal to the amount of stamp duty or tax within the meaning of that Act payable in respect of the agreement to the total amount otherwise payable—the amount of that stamp duty or tax;

(viii) the total of the amounts referred to in sub-paragraphs (i), (iii), (iv), (v), (vi) and (vii) less the deposit;

(ix) the amount of any other charges included in the total amount payable (in this Ordinance called, and in the agreement to be described, as “terms charges”);

(x) the total of the amounts referred to in subparagraphs (i), (iii), (iv), (v), (vi), (vii) and (ix) less the deposit (in this Ordinance called "the balance originally payable under the agreement"); and

(xi) the total amount payable.":

(e) by inserting, after sub-section (2), the following sub-sections:

"(2A) For the purposes of sub-section (2), the rate of interest to be specified in a regular instalments hire-purchase agreement shall be ascertained in accordance with the formula—

$$\frac{a(ny - p)}{p(n + 1)} \% \text{ per year,}$$

calculated to 2 decimal places, where—

a is—

(a) in the case of an agreement providing for the payment of instalments at regular weekly intervals—10,400;

(b) in the case of an agreement providing for the payment of instalments at regular fortnightly intervals—5,200; and

(c) in the case of an agreement providing for the payment of instalments at regular monthly intervals—2,400;

p is a number equal to one per cent of the number of cents in the amount specified in the agreement in accordance with sub-paragraph (2) (e) (viii);

n is the number of instalments payable under the agreement; and

y is a number equal to one per cent of the number of cents in the amount of each instalment payable under the agreement or, where the instalments are not of equal amounts, in the amount of the larger or largest instalment payable under the agreement.

"(2B) For the purposes of sub-section (2), the rate of interest to be specified in a hire-purchase agreement, other than a regular instalments hire-purchase agreement, shall be ascertained in accordance with the formula—

$$\frac{2,400}{p(n + 1)} \% \text{ per year,}$$

calculated to 2 decimal places, where—

p is a number equal to one per cent of the number of cents in the amount specified in the agreement in accordance with sub-paragraph (2) (e) (viii);

t is a number equal to one per cent of the number of cents in the amount specified in the agreement in accordance with sub-paragraph (2) (e) (ix); and

n is a number equal to the number of months in the period commencing on the date specified in the agreement in accordance with sub-paragraph (2)(c)(i) and ending on the date immediately preceding the date on which the final instalment is payable under the agreement.

“(2c) For the purposes of sub-section (2B), any period in excess of the number of whole months in the period commencing on the date specified in a hire-purchase agreement in accordance with sub-paragraph (2)(c)(i) and ending on the date immediately preceding the date on which the final instalment is payable under the agreement shall be deemed to be a whole month.”; and

(f) by omitting from sub-section 7 (3) “the last preceding sub-section” and substituting “sub-section (2)”.

6. Section 17 of the Principal Ordinance is amended—

(a) by omitting from sub-section (3) “(b) of the last preceding sub-section” and substituting “(2)(b)”;

(b) by omitting from sub-section (3A) “the last preceding sub-section” (wherever occurring) and substituting “sub-section (3)”;

(c) by omitting sub-section (6) and substituting the following sub-sections:

“(6) Within 21 days after a hire-purchase agreement is determined pursuant to this section, the owner shall serve on the hirer and on every guarantor of the hirer a notice in writing in accordance with the Fifth Schedule.

“(7) Where a hire-purchase agreement is determined pursuant to this section, the hirer may recover from the owner—

(a) if the value of the goods comprised in the agreement at the time the agreement is so determined is less than the net amount payable but the total of that value and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement exceeds the net amount payable—the difference between that total and the net amount payable; or

(b) if the value of the goods comprised in the agreement at the time the agreement is so determined is equal to or greater than the net amount payable—the total of that value and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, less the net amount payable.

Power of
hirer to
determine
hiring

“(8) Where a hire-purchase agreement is determined pursuant to this section, the owner is not entitled to recover any sum (whether under a judgment or order or otherwise) that would, together with—

- (a) the value of the goods comprised in the agreement at the time the agreement was so determined; and
- (b) the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement,

amount to more than the net amount payable in respect of the goods.

“(9) Where the owner of goods comprised in a hire-purchase agreement determined pursuant to this section has sold those goods, the onus of proving that the price obtained by him for the goods was the best price that could be reasonably obtained by him at the time when the agreement was so determined lies upon the owner.

“(10) Except where a notice as required by subsection (6) has not been served on the hirer of goods comprised in a hire-purchase agreement determined pursuant to this section, no amount is recoverable by the hirer under this section unless—

- (a) the hirer, within 21 days after the owner has served such a notice on him, gives to the owner notice in writing—
 - (i) setting out the amount claimed under the provisions of this section and the amount that is claimed by the hirer to be the value of the goods at the time the agreement was so determined; and
 - (ii) signed by the hirer or his agent; and
- (b) proceedings for the recovery of the amount so claimed under the provisions of this section are commenced not earlier than 7 days and not later than 3 months after the giving by the hirer to the owner of notice in accordance with paragraph (a).

“(11) If, before the proceedings referred to in subsection (10) are commenced by the hirer of goods comprised in a hire-purchase agreement determined pursuant to this section, the owner serves an offer in writing on the hirer to pay an amount in satisfaction of the claim by the hirer under this section, the owner, in the proceedings, is entitled to pay into court the amount so offered and, upon so doing, is entitled to the same rights as he would have had if that amount had been tendered to the hirer before the proceedings were commenced, but such a right is not available to the owner in any proceedings by the hirer to recover the amount so offered or any lesser amount

if the hirer, before commencing the proceedings, notifies the owner in writing of the acceptance by the hirer of the amount so offered.

“ (12) For the purposes of this section—

- (a) ‘ net amount payable ’, in relation to a hire-purchase agreement, means the total amount payable less the statutory rebates for terms charges, insurance and maintenance as at the time the agreement is determined pursuant to this section; and
- (b) the value of goods comprised in a hire-purchase agreement determined pursuant to this section at the time the agreement is so determined shall be deemed to be the best price that could be reasonably obtained by the owner at that time less—
 - (i) any amount properly expended by the owner on the storage, repair or maintenance of the goods; and
 - (ii) whether or not the goods have subsequently been sold or disposed of by the owner, the reasonable expenses of selling or otherwise disposing of the goods.”.

7. Section 18 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:

“ (6) A notice referred to in sub-section (1) or (3) may be served on a hirer or a guarantor, as the case requires, by—

- (a) delivering it to him personally;
- (b) leaving it at his place of abode or business with some other person apparently an inmate of, or employed at, that place and apparently of or over the age of 16 years; or
- (c) sending it by registered or certified pre-paid post addressed to him at his last known place of abode or business.”.

Notice to be given to hirer when goods repossessed

8. Section 19 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (a) “ twenty-one ” and substituting “ 21 ”;
- (b) by omitting from paragraph (a) “ (3) of the last preceding section ” and substituting “ 18 (3) ”;
- (c) by omitting from paragraph (b) “ (i) of paragraph (a) of sub-section (1) of the next succeeding section ” and substituting “ 20(1)(a)(i) ”: and
- (d) by omitting from paragraph (b) “ fourteen ” and substituting “ 14 ”.

Owner to retain possession of re-possessed goods for 21 days

Hirer's
rights and
immunities
when goods
re-possessed

9. Section 20 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1)(a) “twenty-one” and substituting “21”;
- (b) by omitting from paragraph (1)(a) “(3) of section eighteen of this Ordinance” (wherever occurring) and substituting “18 (3) ”;
- (c) by omitting from sub-paragraph (1)(a)(i) “the next succeeding section” and substituting “section 21 ”;
- (d) by omitting from sub-section (3) “(3) of section 18 of this Ordinance” and substituting “18 (3) ”;
- (e) by omitting from paragraph (3)(a) “twenty-one” and substituting “21”;
- (f) by omitting from paragraph (3)(b) “seven” and substituting “7 ”;
- (g) by omitting from paragraph (3) (b) “three” and substituting “3 ”;
- (h) by omitting from paragraph (3) (b) “the notice referred to in the last preceding paragraph” and substituting “notice in accordance with paragraph (a) ”; and
- (i) by omitting from sub-section (4) “the last preceding sub-section” and substituting “sub-section (3) ”.

Service of
notices

10. Section 42 of the Principal Ordinance is amended by omitting from sub-section (1) “A notice” and substituting “Subject to sub-section 18 (6), a notice”.

Size, &c., of
type, &c.,
required in
certain
documents

11. Section 43 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1)(b) “ten- ” and substituting “10 ”; and
- (b) by omitting sub-section (2) and substituting the following sub-section:

“(2) In sub-section (1), ‘prescribed document’ means—

- (a) a hire-purchase agreement;
- (b) a written statement given under sub-section 7 (1) or 7 (1A);
- (c) a copy in writing of an agreement, a notice in writing, a copy of a policy of insurance or a statement in writing required by section 9 to be served on a hirer;

- (d) a statement in writing required by sub-section 12 (1) to be sent to a hirer;
- (e) a notice in writing served under sub-section 17 (6); and
- (f) a notice in writing under sub-section 18 (1) or 18 (3)."

12. The First Schedule to the Principal Ordinance is repealed and the following Schedule substituted:

First
Schedule

FIRST SCHEDULE

Section 7

AUSTRALIAN CAPITAL TERRITORY

Hire-purchase Ordinance 1961

SUMMARY OF YOUR FINANCIAL OBLIGATIONS UNDER PROPOSED HIRE-PURCHASE AGREEMENT RELATING TO

*

The cash price of the goods is	\$.....
The terms charges are	\$.....
Other charges are—	
For insurance for.....years	\$.....
For maintenance	\$.....
For any stamp duty or tax on the agreement added by the owner	\$.....
For freight, vehicle registration, &c.	\$.....
The total amount you will have to pay (including deposit of \$.....) is	\$.....
The difference between the cash price of goods and the total amount you will have to pay is therefore \$.....	
Your instalments under the proposed agreement will be.....	
The annual interest rate you will be paying is.....	

* Insert short description of goods.

† Insert number, amount and intervals of instalments.

‡ Insert annual interest rate.

13. The Fourth Schedule to the Principal Ordinance is amended—

Fourth
Schedule

- (a) by inserting the following paragraphs after "† Insert owner's estimate of value"—

"To recover any amount to which you are entitled after repossession you must, within 21 days after service of this notice, give to the owner notice in writing of the amount claimed and the amount you consider to have been the value of the goods at the time of repossession.

"Any proceedings instituted by you for the recovery of an amount to which you are entitled after repossession must be commenced not earlier than 7 days and, except where the goods have been sold by the owner at your

request to a person introduced by you, not later than 3 months after you give the owner the notice referred to in the immediately preceding paragraph.”; and

- (b) by omitting all words from and including “Action to enforce your rights” to and including “*Hire-purchase Ordinance*, you should seek advice at once.” and substituting—

“If you think you have any rights under the Hire-purchase Ordinance or are unsure about the action you should take, consult a solicitor or contact the Consumer Affairs Bureau. You will lose your rights 21 days after service of this notice if you do not take action.”.

Fifth
Schedule

14. After the Fourth Schedule to the Principal Ordinance the following Schedule is added:

FIFTH SCHEDULE

Section 17

AUSTRALIAN CAPITAL TERRITORY

Hire-purchase Ordinance 1961

ADVICE TO HIRERS

Now that you have voluntarily returned the goods you hired you will be liable for the owner's loss unless the value of the goods is sufficient to cover your liability. If the value of the goods is more than sufficient to cover your liability, you will be entitled to a refund.

The owner's estimate of the amount required to finalize the agreement is:—

Total amount payable under the agreement	..	..	..	\$.....
Less deposit and instalments paid	..	..	..	\$.....
Balance due under agreement	..	..	..	\$.....
Less statutory rebates	..	..	..	\$.....
Add costs of storage, repair or maintenance	..	..	..	\$.....
TOTAL	..	..	..	\$.....

The owner's estimate of the value of the goods you have returned is .. \$.....

*entitled to a refund of \$.....

On the basis of those estimates you are ..

*liable to pay the owner \$.....

NOTE—To recover any amount to which you are entitled as a refund you must, within 21 days after service of this notice, give to the owner notice in writing of the amount claimed and the amount you consider to have been the value of the goods at the time the hire-purchase agreement was determined.

Any proceedings instituted by you for the recovery of an amount to which you are entitled as a refund must be commenced not earlier than 7 days and not later than 3 months after you give the owner the notice referred to in the immediately preceding paragraph.

DO NOT DELAY

If you think you have any rights under the Hire-purchase Ordinance or are unsure about the action you should take, consult a solicitor or contact the Consumer Affairs Bureau. You will lose your rights 21 days after service of this notice if you do not take action.

NOTE—Where this notice is sent to a guarantor it shall be endorsed as follows:—

This notice is sent to you as guarantor of.....

As guarantor you have certain rights under the *Hire-purchase Ordinance 1961*, and you should seek advice at once.

* Strike out whichever is inapplicable.