

AUSTRALIAN CAPITAL TERRITORY

HIRE PURCHASE ORDINANCE 1961

EXPLANATORY MEMORANDUM

No. 9 of 1961

Following conferences between Ministers from the Commonwealth and each of the States with a view to securing as much uniformity as possible in legislation throughout Australia relating to hire purchase, a model Bill relating to hire purchase agreements was drafted and submitted for consideration in each of the States and the Australian Capital Territory and Northern Territory. All States have since passed legislation which, for the most part, incorporates the provisions of the model Bill. This Ordinance also follows substantially that Bill.

This new Ordinance will apply to hire purchase agreements entered into after its commencement (clause 5). The old law will continue to apply to agreements entered into before the commencement of the Ordinance (clause 4).

A new provision is introduced (clause 7(1) requiring an owner or dealer, before an agreement is entered into to give to a prospective hirer a statement in writing in the form in the First Schedule. This will give the prospective hirer full information on the financial obligations which he will be undertaking and will enable him, if he so desires, to make enquiries in other places to compare the terms he can get.

By clause 7(2) a hire purchase agreement must –

- (a) be in writing;
- (b) be signed by all parties to the agreement;
- (c) contain a description of the goods sufficient to identify them;
- (d) contain a description of goods traded in;
- (e) specify the date on which the hiring commences, the number of instalments, the amount of each instalment, the person to whom and the place at which payments are to be made and the time for payment of each instalment.

Paragraph (e) of clause 7(2) sets out the figures which must be shown in the hire purchase agreement. Most of these are already required by the present law but additional information required to be shown is:

- (a) separate details of cash and trade-in as well as the total amount of the deposit; and
- (b) the amount (if any) payable for maintenance.

The owner commits an offence if the hire purchase agreement does not contain all the information required by section 7(2); in addition, and if the preliminary notice is not given, the hirer is not liable to pay the terms charges (clauses 7(3) and (4)).

The conference of Ministers did not reach agreement on the need to provide for minimum deposits or maximum terms charges. These matters were left to the individual States and Territories. The Ordinance makes no specific provision for either but by clause 8 the Minister is given power to fix them by regulation if circumstances appear to warrant that action.

By clause 9 the owner is required to serve on the hirer, within 21 days after making the agreement, a copy of the agreement, a notice in writing in a specified form and a copy of any associated insurance policy or a statement of the terms of such policy which affect the hirer. The old law requires a notice to be sent to the hirer but the notice under the new Ordinance is shorter, simpler and much more readily understood. The requirement with regard to insurance policies is new.

The provisions in clause 10 with regard to warranties and conditions are substantially the same as formerly. If the goods are second hand such warranties or conditions may be negated but only if the owner can prove that the hirer has acknowledged in writing that a statement to this effect was brought to his notice.

Clause 11 is a new provision which attempts to deal with the difficulties which arise because representations may be made by a dealer but the goods are nominally purchased from a finance company. The hirer is given rights against the owner as though the dealer were the owner's agent and against the dealer as though he had purchased the goods from the dealer.

While the agreement is in force the hirer may require the owner to give him a statement of his position under the agreement, but not more often than once in three months (clause 12). A charge of 2/- for this statement provided by the old law has been dispensed with.

Under the present Ordinance, if a hirer is liable to make payments to the same owner in respect of more than one agreement and he makes a payment without specifying how it is to be appropriated, the payment is appropriated to the agreements in proportion to the sums due under them. Under this Ordinance (clause 13) such a payment is appropriated to the agreements in the order in which the agreements are entered into.

It is provided (clause 14) that an owner may not unreasonably withhold his consent to an assignment or charge a fee for such consent and provision is made for obtaining an order of the Court of Petty Sessions that consent has been unreasonably withheld. The right title and interest of a hirer under an agreement may pass to his personal representative or, in the case of a company, to the liquidator.

If a hirer wishes to complete the purchase of the goods before the expiry of the period of the agreement he is entitled to be credited with part of the terms charges, insurance premiums or maintenance charges. The amount to be credited has been in

the past a source of dispute between the hirer and the finance company. So that the amount may be quite clear the method of calculating the credit, not to be known as the “statutory rebate”, is set out in the definition of that term in clause 6.

By clause 17 the hirer may determine the hiring by returning the goods to the place of business of the owner or to another place which is reasonable.

Under clause 18 an owner is required to give 7 days’ notice of his intention to repossess goods unless he has reason to believe that the goods are likely to be removed or concealed.

A frequent complaint in connection with hire purchase agreements has been that repossessed goods are sold at less than their true value. The new legislation attempts to remedy this (clause 20) by providing:

- (a) that a hirer may introduce to the owner a person willing to purchase the repossessed goods; and
- (b) that the owner must sell the goods at the best price that could reasonably be obtained and it is for him to prove that he obtained this best price.

Clause 25 introduces a new principle in that the hirer may, within certain limits, choose his own insurance company. If the hirer effects insurance of the goods for the period of the agreement and against such risks and subject to such terms conditions and exceptions as are required by the owner, (provided that those risks, terms, conditions and exceptions are not more than those which the owner himself requires if he arranges the insurance) the owner must accept that insurance.

Clause 26 empowers the Court to excuse breaches under insurance contracts where it thinks the parties ought reasonably to be excused.

Under clause 27 the hirer is not bound by a provision in an insurance contract under which disputes are required to be referred to arbitration.

Under clause 30 a former purchasing agricultural machinery or a motor truck may obtain an order of the Court of Petty Sessions restraining repossession for a period not exceeding 12 months if the Court is satisfied that the farmer will have a reasonable prospect of being able to pay all instalments in that time.

The old law provided that goods comprised in a hire purchase agreement could not be treated as fixtures to land. A provision has been added that the owner may not repossess goods that have been affixed to a dwelling house if the house has been sold and the purchaser had no notice of the rights of the owner.

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