

AUSTRALIAN CAPITAL TERRITORY.

No. 6 of 1955.

AN ORDINANCE

Relating to Hire-purchase Agreements.

BE it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government (Administration) Act 1910-1947*, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Hire-purchase Agreements Ordinance 1955*.^{*} Short title.
2. This Ordinance shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*. Commencement.
3. This Ordinance is divided into Parts, as follows:— Parts.
 - Part I.—Preliminary (Sections 1-6).
 - Part II.—Hire-purchase Agreements.
 - Division 1.—Provisions Applicable Generally (Sections 7-27).
 - Division 2.—Provisions Applicable to Agreements made after the Commencement of this Ordinance (Sections 28-36).
 - Part III.—Miscellaneous (Sections 37-40).

4.—(1) In this Ordinance, unless the contrary intention appears—

“goods” includes—

- (a) chattels personal, other than money or things in action; and
- (b) fixtures to land which are comprised in a hire-purchase agreement, being fixtures which a party to the agreement has authority to sever from the land;

“guarantor”, in relation to a hire-purchase agreement, means a person who guarantees the performance of all or any of the obligations of a purchaser under the agreement, but does not include a person engaged, at the time of the giving of the guarantee, in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement;

^{*} Notified in the *Commonwealth Gazette* on 25th August, 1955.

“hire-purchase agreement” means an agreement for the bailment of goods under which—

- (a) the bailee may buy the goods; or
- (b) the property in the goods will or may pass to the bailee,

and includes an agreement for the purchase of goods by instalments, whether the agreement describes the instalments as rent or hire or otherwise, but does not include an agreement for the purchase of goods under which—

- (c) the property in the goods passes absolutely at the time of the agreement to the person who agrees to purchase them; or
- (d) the purchaser is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement;

“purchaser”, in relation to a hire-purchase agreement, means a person who takes or has taken goods from a vendor under the agreement, and includes a person to whom the purchaser’s rights or liabilities under the agreement have passed by assignment or operation of law;

“the Court of Petty Sessions” means the Court of Petty Sessions established under the *Court of Petty Sessions Ordinance 1930-1953*;

“vendor”, in relation to a hire-purchase agreement, means a person who lets or has let, or sells or has sold, goods to a purchaser under the agreement, and includes a person to whom the vendor’s property in the goods or any of the vendor’s rights or liabilities under the agreement have passed by assignment or operation of law.

(2.) A reference in this Ordinance to the taking of possession by a vendor of goods comprised in a hire-purchase agreement does not include a reference to the taking of possession of goods by a vendor as a result of the voluntary return of the goods by the purchaser.

(3.) Where, by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods, or the property in the goods will or may pass to the bailee, the agreements shall, for the purposes of this Ordinance, be treated as a single agreement made at the time when the last agreement was made.

Ascertainment
of purchase
price.

5.—(1.) Subject to the next succeeding sub-section and sub-section (4.) of this section, the purchase price of goods under a hire-purchase agreement shall, for the purposes of this Ordinance, be deemed to be the total amount of the moneys paid or payable

by the purchaser and the value of any other consideration provided or to be provided by the purchaser to complete the purchase of the goods pursuant to the agreement.

(2.) Where—

(a) possession of goods comprised in a hire-purchase agreement has been taken by the vendor, a hire-purchase agreement is determined by the purchaser under section thirty-one of this Ordinance or the purchaser under a hire-purchase agreement appoints a day for the completion of the purchase of the goods comprised in the agreement under section thirty-two of this Ordinance; and

(b) the purchase price of the goods comprised in the agreement as determined under the last preceding sub-section includes an amount which, whether expressed to be added or not, is added in respect of hiring charges,

there shall, for the purpose of determining the purchase price of the goods in relation to the taking of possession of the goods, the determination of the agreement or the completion of the purchase, as the case may be, be deducted from the purchase price as determined under the last preceding sub-section a sum equivalent to that part of the amount of the hiring charges which is applicable in respect of any period subsequent to the date on which the vendor took possession of the goods, the agreement was determined or the purchase was completed, as the case may be.

(3.) In the last preceding sub-section, “hiring charges”, in relation to a hire-purchase agreement, means the amount by which the purchase price of the goods comprised in the agreement as determined under sub-section (1.) of this section, after excluding from that purchase price any insurance premium included in the purchase price in respect of the goods, exceeds the price at which the goods comprised in the agreement might be purchased for cash.

(4.) Where an insurance premium in respect of goods comprised in a hire-purchase agreement is included in the purchase price of the goods as determined under sub-section (1.) of this section, there shall, for the purposes of that sub-section, be deducted from the purchase price as so determined the amount of any refund made in consequence of the termination of the agreement.

6.—(1.) For the purposes of this Ordinance, unless the contrary Ascertainment of value of goods. intention appears, the value of any goods comprised in a hire-purchase agreement shall, at the time when the vendor takes possession of the goods or at the time when the agreement is determined by the purchaser under section thirty-one of this Ordinance, be deemed to be the actual value of the goods at that time less—

(a) the reasonable costs, charges and expenses of the vendor in respect of the taking of possession of the goods; and

- (b) whether or not the goods are subsequently sold or disposed of by the vendor—the reasonable expenses of selling or otherwise disposing of the goods.

(2.) Evidence as to the price realized upon the sale of goods of which a vendor has taken possession, or of goods similar in quality and other respects to goods of which a vendor has taken possession, is not relevant to the question of the actual value of the goods of which possession has been taken unless the court determining the question is satisfied that the value reflected by the sale is fair and reasonable.

PART II.—HIRE-PURCHASE AGREEMENTS.

Division 1.—Provisions Applicable Generally.

Application of
Division 1.

7. Notwithstanding any provision to the contrary in a hire-purchase agreement, this Division applies to and in relation to all hire-purchase agreements whether entered into before or after the commencement of this Ordinance and whether or not, in the case of a hire-purchase agreement entered into before the commencement of this Ordinance, an option of purchase or right to have property vested in the purchaser which is expressed in the agreement is still subsisting at the time of the commencement of this Ordinance.

Right of
purchaser
where vendor
re-possesses
goods.

8.—(1.) Subject to this section, where a vendor under a hire-purchase agreement takes possession of goods comprised in the agreement, the purchaser under the agreement is entitled to recover from the vendor as a debt due and payable by the vendor to the purchaser the total amount of the moneys paid, and the value of any other consideration provided, by the purchaser under the agreement in respect of those goods less the difference between the purchase price of the goods and the value of the goods at the time when the vendor took possession of them.

(2.) Subject to the next succeeding sub-section, a purchaser is not entitled to recover an amount from a vendor under the last preceding sub-section unless—

- (a) the purchaser, after the vendor has taken possession of the goods but not later than twenty-eight days after service of the statement and notice referred to in section ten of this Ordinance, serves on the vendor a notice in writing, signed by the purchaser or by his solicitor or agent, setting out the amount claimed by the purchaser under this section and the amount which the purchaser estimates to be the actual value of the goods at the time when the vendor took possession of them; and
- (b) proceedings for the recovery of the amount claimed are commenced not earlier than seven days, and not later than three months, after the service of the notice under the last preceding paragraph.

(3.) The time prescribed by the last preceding sub-section for the service of the notice by the purchaser or for the commencement of proceedings may, on an application made, either before or after the expiration of that time, to the court in which it is proposed to take the proceedings, be extended by the court for such further period, and upon such conditions, as the court thinks fit.

(4.) If, before the proceedings are commenced by the purchaser, the vendor serves on the purchaser an offer in writing to pay an amount to the purchaser in satisfaction of his claim under this section, the vendor is entitled to pay into court the amount so offered unless the purchaser, before commencing the proceedings, notifies the vendor in writing of the acceptance of the amount so offered.

(5.) If the vendor pays an amount into court under the last preceding sub-section, he is entitled to the same rights as if the amount had been tendered to the purchaser before the proceedings were commenced.

9. A vendor who takes possession of goods comprised in a hire-purchase agreement is not entitled to recover under the agreement any sum which, together with the value of the goods at the time when the vendor took possession of them and the moneys paid and any other consideration provided under the agreement by or on behalf of the purchaser, would amount to more than the purchase price of the goods.

Restriction of amount recoverable by vendor.

10. A vendor who takes possession of goods comprised in a hire-purchase agreement shall, within twenty-eight days after taking possession of the goods, serve on the purchaser and every guarantor of the purchaser—

Vendor to deliver statement and notice.

(a) a statement showing—

- (i) the name of the vendor and an address at which notices under this Ordinance may be served on the vendor;
- (ii) the purchase price of the goods;
- (iii) the total amount of the moneys paid and the value of any other consideration provided by or on behalf of the purchaser under the agreement;
- (iv) the amount which the vendor estimates to be the value of the goods at the time when he took possession of them, with the actual value of the goods, and the costs, charges and expenses referred to in paragraphs (a) and (b) of sub-section (1.) of section six of this Ordinance, shown separately;
- (v) the balance estimated to be due to the vendor or to the purchaser and any guarantor of the purchaser, as the case may be;

- (vi) the amount, or the method of ascertaining the amount, of the moneys, if any, which, for the purposes of paragraph (a) of sub-section (2.) of section twelve of this Ordinance, will be payable by the purchaser as a condition of the redelivery of the goods to the purchaser;
- (vii) the breach or breaches of the agreement which the vendor alleges have been committed by the purchaser;
- (viii) the amount, if any, of the costs and expenses incurred by the vendor in remedying that breach or those breaches;
- (ix) the costs and expenses incurred by the vendor in taking possession of the goods; and
- (x) the amount of the estimated costs and expenses of redelivering the goods to the purchaser; and
- (b) a notice, in the prescribed form, or in a form to the same effect as the prescribed form, and printed in type not smaller than the prescribed size of type, containing a summary of the rights and privileges of a purchaser under this Ordinance.

Penalty: Fifty pounds or imprisonment for three months.

Vendor to retain possession of re-possessed goods for twenty-one days.

11.—(1.) A vendor who takes possession of goods comprised in a hire-purchase agreement shall not, without the consent of the purchaser, sell, dispose of or part with possession of the goods until the expiration of—

- (a) a period of twenty-one days after the date of service by him of the statement and notice referred to in the last preceding section; and
- (b) if the purchaser serves on the vendor a notice under sub-section (1.) of the next succeeding section—a period of seven days after the date of the service of that notice.

Penalty: Fifty pounds or imprisonment for three months.

(2.) The consent of the purchaser referred to in the last preceding sub-section shall be in writing and shall be witnessed by some person other than the vendor or his solicitor, agent or employee.

Purchaser's right to re-delivery of goods.

12.—(1.) A purchaser may, within a period of twenty-one days after the date of service of a statement and notice on him under section ten of this Ordinance, serve on the vendor a notice in writing signed by the purchaser, or by his solicitor or agent, requiring the vendor to redeliver to the purchaser the goods to which the notice relates.

(2.) If the purchaser, within a period of seven days after the service by him on the vendor of a notice under the last preceding sub-section—

- (a) pays or tenders to the vendor such moneys, if any, as are due by the purchaser under the hire-purchase agreement up to the date of payment or tender;
- (b) remedies any breach of the agreement by the purchaser or, where the purchaser is unable to remedy the breach by reason of the fact that the vendor has possession of the goods, pays or tenders to the vendor the costs and expenses reasonably incurred by the vendor in the doing of any act, matter or thing necessary to remedy the breach; and
- (c) pays or tenders to the vendor—
 - (i) in a case where the purchase price of the goods is Three hundred pounds or less—an amount of Ten pounds or an amount equal to the costs and expenses reasonably incurred by the vendor in respect of his taking possession of the goods and the reasonable costs and expenses of redelivering them to the purchaser; or
 - (ii) in any other case—an amount equal to the costs and expenses reasonably incurred by the vendor in respect of his taking possession of the goods and the reasonable costs and expenses of redelivering them to the purchaser,

the purchaser is entitled to have the goods redelivered to him by the vendor and thereupon the goods shall be received and held by the purchaser pursuant to the terms of the hire-purchase agreement as if a breach of the agreement had not occurred and the vendor had not taken possession of the goods.

(3.) For the purposes of paragraph (a) of the last preceding sub-section, a hire-purchase agreement shall be deemed to have continued in full force and effect up to the date of the payment or tender referred to in that paragraph and a stipulation in a hire-purchase agreement accelerating the due date of moneys payable under the agreement in the event of a breach of the agreement is of no effect.

(4.) Where a vendor redelivers goods comprised in a hire-purchase agreement to a purchaser under this section and a breach of the agreement has not been remedied, the vendor is not entitled to take possession of the goods by virtue of that breach unless—

- (a) at the time of the redelivery of the goods the vendor serves a notice in writing on the purchaser specifying the breach and requiring it to be remedied; and
- (b) the purchaser fails to remedy the breach within fourteen days after the service of the notice.

Provisions as
to guarantors.

13.—(1.) Except as provided in this Ordinance, a guarantor is not discharged from liability under his guarantee by reason of the operation of this Ordinance.

(2.) Subject to the next succeeding sub-section, the liability of a guarantor under a guarantee given in respect of a hire-purchase agreement continues notwithstanding that the vendor, in pursuance of the agreement, takes possession of the goods comprised in the agreement and whether or not the goods are redelivered to the purchaser pursuant to this Ordinance.

(3.) The last preceding sub-section does not preserve the liability of a guarantor where the vendor and the purchaser enter into a new agreement in respect of the goods comprised in the hire-purchase agreement.

(4.) A guarantor of the performance of the obligations of a purchaser under a hire-purchase agreement is not liable to any further or other extent than the purchaser, but, subject to the next succeeding section, nothing in this Ordinance affects an agreement by a guarantor binding him to the performance of an obligation which is not one of the obligations imposed on the purchaser under the hire-purchase agreement in respect of which the guarantee is given.

(5.) Where a vendor takes possession of goods comprised in a hire-purchase agreement, a guarantor who has paid any moneys to the vendor in accordance with his guarantee is entitled to recover those moneys in the same manner as he would have been entitled to recover them if he had been the purchaser of the goods and, for the purpose of calculating the amount received by the vendor, all moneys paid and the value of any other consideration provided by or on behalf of the purchaser shall be deemed to have been paid by the guarantor.

(6.) Nothing in the last preceding sub-section entitles a guarantor to recover from a vendor a sum in excess of the moneys actually paid by the guarantor to the vendor.

(7.) For the purpose of calculating the aggregate of the amounts which two or more guarantors are entitled to recover under the provisions of sub-section (5.) of this section, the moneys paid to the vendor by the guarantors shall be deemed to have been paid by one guarantor.

Protection of
guarantors
against certain
liability.

14.—(1.) Where, after the commencement of this Ordinance, a guarantor of the performance of the obligations of the purchaser under a hire-purchase agreement enters into an agreement binding the guarantor—

(a) to pay to the vendor an aggregate sum which is larger than that which the purchaser is liable to pay under the hire-purchase agreement; or

(b) to perform an obligation in respect of goods other than the goods comprised in the hire-purchase agreement,

the agreement so entered into by the guarantor is void unless the agreement is executed by the guarantor in the presence of the Clerk of the Court of Petty Sessions or a solicitor instructed and employed independently of the vendor and the Clerk or the solicitor, as the case may be, certifies in writing upon the agreement—

- (c) that he is satisfied that the guarantor understands the true purport and effect of the agreement; and
- (d) that the guarantor has executed the agreement in his presence.

(2.) The Clerk of the Court of Petty Sessions or a solicitor shall not give a certificate in respect of an agreement under the last preceding sub-section unless—

- (a) he has read over and explained the agreement to the guarantor or has caused the agreement to be read over and explained to the guarantor in his presence;
- (b) he has examined the guarantor touching his knowledge of the agreement;
- (c) he is satisfied that the guarantor understands the true purport and effect of the agreement; and
- (d) the guarantor has freely and voluntarily executed the agreement in his presence.

(3.) Failure by the Clerk of the Court of Petty Sessions or by a solicitor to comply with the last preceding sub-section in respect of a certificate does not invalidate the certificate.

15.—(1.) Where, in any proceedings in a court in respect of a matter arising out of a hire-purchase agreement, it appears to the court that—

Re-opening of
hire-purchase
transactions.

- (a) the interest directly or indirectly charged or included in the amounts payable under the agreement is excessive;
- (b) the amounts charged for expenses, inquiries, fines, bonuses, premiums or renewals, or any other charges, are excessive; or
- (c) the transaction is harsh and unconscionable or is otherwise such that the Supreme Court of the Territory would give relief on an equitable ground,

the court may re-open the transaction and take an account between the parties to the transaction.

(2.) Where a court re-opens a transaction under this section, the court may, notwithstanding any statement or settlement of accounts or any agreement purporting to close previous dealings and create a new obligation—

- (a) re-open any account already taken between the parties;
- (b) relieve the purchaser and any guarantor from payment of any sum in excess of such sum as the court, having regard to the risk involved and all other circumstances, considers to be reasonably payable in respect of purchase-money, interest and charges;

- (c) set aside, either wholly or in part, revise or alter any agreement made or security given in connexion with the transaction;
- (d) give judgment for a party for such amount as, having regard to the relief, if any, which the court thinks fit to grant, is justly due to that party under the agreement; and
- (e) give judgment against a person for delivery of goods comprised in the agreement which are in the possession of that person.

(3.) Where it appears to the court that a person other than a vendor has shared in the profits of, or has any beneficial interest, prospectively or otherwise, in, a transaction which the court holds to be harsh and unconscionable, the court may add that person as a party to the proceedings and may make such order in respect of that person as it thinks fit.

(4.) Subject to the next succeeding sub-section, a purchaser or guarantor under a hire-purchase agreement may institute proceedings in a court for the purpose of obtaining relief under this section and the preceding provisions of this section apply to and in relation to proceedings so instituted notwithstanding that the time for the payment of any of the amounts payable under the agreement has not arrived.

(5.) A purchaser or guarantor under a hire-purchase agreement is not entitled to institute proceedings under the last preceding sub-section—

- (a) in a case where the vendor has taken possession of the goods comprised in the agreement—after the expiration of a period of four months from the time when the vendor serves the statement and notice referred to in section ten of this Ordinance; or
- (b) in any other case—after the expiration of a period of four months from the time when the transaction is closed.

16. Where—

- (a) a bill of exchange or promissory note has been given, whether before or after the commencement of this Ordinance, by a purchaser or guarantor under a hire-purchase agreement to the vendor in respect of an amount payable under the agreement; and
- (b) the payment in due course of the bill of exchange or promissory note would, by virtue of the operation of any provision of this Ordinance or otherwise, result in payment of an amount in excess of the liability of the purchaser under the agreement,

the vendor is liable to indemnify the purchaser or guarantor, as the case may be, in respect of the amount of the excess.

Vendor to
indemnify
purchaser in
certain events.

17.—(1.) At any time before the final payment has been made under a hire-purchase agreement, the purchaser may serve on a person entitled to enforce the agreement against the purchaser a request in writing that that person supply to the purchaser a copy of the agreement, or of any memorandum or note of the agreement, together with a statement signed by that person or his agent showing—

Duty of vendors to supply documents and information.

- (a) the amount paid by or on behalf of the purchaser under the agreement;
- (b) the amount which has become due under the agreement but remains unpaid, the date upon which each unpaid instalment became due and the amount of each unpaid instalment; and
- (c) the amount which is to become payable under the agreement, the date or the mode of determining the date upon which each future instalment is to become payable and the amount of each future instalment.

(2.) A request under the last preceding sub-section is of no effect unless, at the time it is served, the purchaser pays or tenders to the person on whom it is served the sum of Two shillings and sixpence for expenses.

(3.) A person who receives a request from a purchaser under sub-section (1.) of this section shall, unless he has reasonable excuse for not so doing, comply with the request within a period of one month after receiving the request.

Penalty: Fifty pounds or imprisonment for three months.

(4.) Where a person receives a request from a purchaser under sub-section (1.) of this section and there is no reasonable excuse for that person failing to comply with the request, then, until the request is complied with—

- (a) no person is entitled to enforce the agreement against the purchaser or to enforce a contract of guarantee relating to the agreement;
- (b) the vendor is not entitled to recover the goods comprised in the agreement from the purchaser; and
- (c) the holder of a security given by the purchaser in respect of moneys payable under the agreement, or given by a guarantor in respect of moneys payable under a contract of guarantee relating to the agreement, is not entitled to enforce the security against the purchaser or guarantor.

18.—(1.) Where a purchaser is liable to make payments in respect of two or more hire-purchase agreements to the same vendor and he pays to the vendor in respect of the agreements a sum which is not sufficient to discharge the total amount due under

Appropriation of payments in respect of hire-purchase agreements.

all the agreements, the purchaser may, notwithstanding any agreement to the contrary, direct the vendor to appropriate the sum paid by him—

(a) in or towards the satisfaction of the sum due under any one of the agreements; or

(b) in or towards the satisfaction of the sums due under two or more of the agreements in proportions specified by the purchaser,

and, if the vendor fails to comply with the direction, the sum shall notwithstanding the failure, be deemed to have been appropriated by the vendor accordingly.

(2.) If the purchaser does not give a direction under the last preceding sub-section, the sum paid by him shall be appropriated by the vendor towards the satisfaction of the sums due under the respective hire-purchase agreements in the proportions which those sums bear to one another and, if the vendor fails to so appropriate the sum, it shall, notwithstanding the failure, be deemed to have been so appropriated.

Lien for work done on goods under hire-purchase agreement.

19.—(1.) Subject to the next succeeding sub-section, where a worker does work upon goods comprised in a hire-purchase agreement in such circumstances that, if the goods were the property of the purchaser, the worker would be entitled to a lien on the goods for the value of his work, he is entitled to a lien notwithstanding that the goods are not the property of the purchaser.

(2.) The lien is not enforceable against the vendor if the hire-purchase agreement contains a provision prohibiting the creation of a lien by the purchaser and the worker had notice of that provision before doing the work upon the goods.

Attempt to defraud.

20. A person shall not, by the disposal, removal or sale of goods comprised in a hire-purchase agreement, or by any other means, defraud the vendor.

Penalty: Fifty pounds or imprisonment for three months.

Information as to whereabouts of goods.

21.—(1.) Where, by virtue of a hire-purchase agreement, it is the duty of the purchaser to keep the goods comprised in the agreement in his possession or control, the vendor may serve on the purchaser a request in writing that the purchaser inform the vendor of the location of the goods.

(2.) Unless a purchaser upon whom a request is served under the last preceding sub-section has reasonable grounds for not complying with the request, he shall, within a period of fourteen days after receiving the request, inform the vendor of the location of the goods referred to in the request at the time when the information is given or, if the information is sent by post, at the time of the posting of the information.

(3.) Where a vendor under a hire-purchase agreement has reasonable grounds for believing that goods comprised in the agreement are in the possession or control of some person other than the purchaser, he may serve upon that person a request in writing that that person inform the vendor whether or not the goods are in the possession or control of the person and, if they are, of the location of the goods.

(4.) Unless a person upon whom a request is served under the last preceding sub-section has reasonable grounds for not complying with the request, he shall, within a period of fourteen days after receiving the request, inform the vendor whether or not the goods referred to in the request are in his possession or control and, if they are, of the location of the goods at the time when the information is given or, if the information is given by post, at the time of the posting of the information.

Penalty: Fifty pounds or imprisonment for three months.

22.—(1.) Where, by virtue of a hire-purchase agreement, it is the duty of a purchaser to keep the goods comprised in the agreement in his possession or control at a particular address, or not to remove the goods from a particular address, the Court of Petty Sessions may, on the application of the purchaser, make such order as it thinks fit for the removal of the goods by the purchaser from that address. Removal of goods.

(2.) The removal of goods comprised in a hire-purchase agreement in accordance with an order made under the last preceding sub-section shall be deemed not to be a breach of any covenant or condition in the agreement.

23. Notwithstanding any provision in a hire-purchase agreement to the contrary, the purchaser under the agreement may claim and be awarded damages or other relief for fraud or misrepresentation by the vendor or a person acting or purporting to act on behalf of the vendor. Liability for fraud.

24. Notwithstanding any provision in a hire-purchase agreement to the contrary, a vendor is not entitled to enter upon premises without the consent of the purchaser for the purpose of taking possession of goods comprised in the agreement. Vendor not entitled to enter premises.

25.—(1.) Where, in connexion with a sale of goods, the seller of the goods arranges for another person to enter into a hire-purchase agreement in relation to the goods with the purchaser of the goods, that other person is in the same position with respect to the agreement as if— Provisions as to financiers entering into agreements as owners.

(a) it had been made between the seller as vendor and the purchaser; and

(b) it had been duly assigned to that other person by the seller.

(2.) The last preceding sub-section does not affect any right which the purchaser of the goods may otherwise have against the seller or the other person.

Financiers
entering into
agreements.

26.—(1.) Where, in connexion with a sale of goods—

- (a) the seller of the goods arranges for another person to enter into a hire-purchase agreement in relation to the goods with the purchaser of the goods; or
- (b) the goods are, or are intended to be, comprised in a hire-purchase agreement and the seller of the goods arranges for another person—
 - (i) to accept an assignment of the seller's property in the goods or of the seller's rights under the hire-purchase agreement; or
 - (ii) to advance or pay money to the seller, or to a person on behalf of the seller, in respect of the hire-purchase agreement,

the seller shall not seek, demand or receive from that person, and that person shall not pay, offer or grant to the seller, any money or other valuable consideration which, together with the money, if any, paid or payable by or on behalf of the purchaser to the seller and the value of any other consideration furnished or to be furnished by or on behalf of the purchaser to the seller, would exceed the price at which the goods might have been purchased from the seller by the purchaser for cash.

Penalty: One hundred pounds or imprisonment for six months.

(2.) In the absence of proof as to the price at which goods referred to in the last preceding sub-section might have been purchased from a seller by a purchaser for cash, that price shall, if a hire-purchase agreement has been entered into in respect of the goods, be deemed to be the price specified in the agreement in pursuance of paragraph (a) of sub-section (1.) of section twenty-nine of this Ordinance.

Purchaser
entitled to
no-claim rebate.

27. Where, in respect of the insurance of goods comprised in a hire-purchase agreement, the insurer allows a no-claim rebate or a rebate of a similar nature, the purchaser under the agreement is entitled to the benefit of the rebate.

Division 2.—Provisions Applicable to Agreements made after the Commencement of this Ordinance.

Application of
Division 2.

28. Notwithstanding any provision to the contrary in a hire-purchase agreement, this Division applies to all hire-purchase agreements entered into after the commencement of this Ordinance.

Hire-purchase
agreements to
contain certain
information.

29.—(1.) There shall be specified in each hire-purchase agreement—

- (a) the price at which the goods comprised in the agreement might be purchased for cash; and

- (b) the difference between the purchase price of the goods and the price referred to in the last preceding paragraph.

(2.) If a hire-purchase agreement does not comply with the last preceding sub-section, the vendor under the agreement is guilty of an offence against this Ordinance punishable upon conviction by a fine not exceeding Fifty pounds or imprisonment for a period not exceeding three months, but the failure of the agreement to so comply does not invalidate the agreement.

30.—(1.) The vendor under a hire-purchase agreement shall, not later than twenty-eight days after the agreement was entered into, serve upon the purchaser—

Vendor to serve copy of agreement and notice on purchaser.

- (a) a copy of the agreement, being a copy any printed portion of which shall be in type not smaller than the prescribed size of type; and
- (b) a notice, in the prescribed form, or in a form to the same effect as the prescribed form, and printed in type not smaller than the prescribed size of type, containing a summary of the rights and privileges of a purchaser under this Ordinance.

Penalty: Fifty pounds or imprisonment for three months.

(2.) Failure by a vendor under a hire-purchase agreement to comply with the last preceding sub-section does not invalidate the agreement.

31.—(1.) Notwithstanding any provision to the contrary in a hire-purchase agreement, a purchaser under the agreement may, at any time before the final payment under the agreement falls due, determine the agreement by giving notice of termination, in writing, to any person entitled or authorized to receive the amounts payable under the agreement.

Right of purchaser to determine hire-purchase agreement.

(2.) Where a purchaser determines a hire-purchase agreement under the last preceding sub-section and the total amount of the moneys paid, and the value of any other consideration provided, by the purchaser under the agreement in respect of the goods comprised in the agreement together with the value of the goods at the time when the agreement is determined exceeds the purchase price of the goods together with the amount of any damages for which the purchaser may be liable under sub-section (4.) of this section, the purchaser may recover the amount of the excess from the vendor as a debt due and payable by him to the purchaser.

(3.) Where a purchaser determines a hire-purchase agreement under sub-section (1.) of this section and the purchase price of the goods together with the amount of any damages for which the purchaser may be liable under the next succeeding sub-section exceeds the total amount of the moneys paid, and the value of any

other consideration provided, by the purchaser under the agreement in respect of the goods comprised in the agreement together with the value of the goods at the time when the agreement is determined, the vendor may recover the amount of the excess from the purchaser as a debt due and payable by him to the vendor, but is not entitled to recover any additional sum, whether as penalty, compensation or otherwise, in consequence of the determination of the agreement.

(4.) A purchaser under a hire-purchase agreement who fails to take reasonable care of goods comprised in the agreement is, on the determination of the agreement under sub-section (1.) of this section, liable to pay damages to the vendor in respect of the failure.

(5.) A purchaser who determines a hire-purchase agreement under sub-section (1.) of this section is not entitled, without the consent of the vendor, to retain possession of the goods.

(6.) Nothing in this section shall be deemed to prevent a purchaser under a hire-purchase agreement from determining the agreement in pursuance of a right existing otherwise than under this section.

(7.) A provision in a hire-purchase agreement—

- (a) which, in the event of the termination by the purchaser of the agreement under this Ordinance, imposes on the purchaser a liability in addition to the liability imposed by this Ordinance; or
- (b) which, in the event of the termination by the purchaser of the agreement otherwise than under this Ordinance or of the bailment under the agreement, imposes on the purchaser a liability which exceeds the liability which would have been imposed on the purchaser if the agreement were terminated under this Ordinance,

is void.

Right to
complete at
any time.

32.—(1.) Notwithstanding any provision to the contrary in a hire-purchase agreement, a purchaser under the agreement may, at any time before the time when, under the agreement, the property in the goods comprised in the agreement may or will pass, give notice in writing to the person entitled or authorized to receive the amounts payable under the agreement that he desires to complete the purchase of the goods before that time.

(2.) A purchaser under a hire-purchase agreement who gives notice in accordance with the last preceding sub-section may, in that notice or in a subsequent notice in writing given to the person to whom the first notice was given, appoint a day for the completion of the purchase and, after so doing, may complete the purchase on that day by payment of that part of the purchase price which is then outstanding.

33.—(1.) In every hire-purchase agreement, notwithstanding any agreement to the contrary, there shall be deemed to be—

Conditions and warranties to be implied in hire-purchase agreements.

- (a) an implied warranty that the purchaser shall have and enjoy quiet possession of the goods comprised in the agreement;
- (b) an implied condition that the vendor will have a right to sell the goods at the time when the property in the goods is to pass under the agreement;
- (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of a third party at the time when the property in the goods is to pass under the agreement; and
- (d) subject to the next succeeding sub-section, an implied condition that the goods are of merchantable quality.

(2.) Paragraph (d) of the last preceding sub-section does not apply—

- (a) in a case where the goods are let or sold as second-hand goods and the hire-purchase agreement contains a statement to that effect;
- (b) in respect of a defect of which the vendor could not reasonably have been aware at the time when the agreement was made; or
- (c) if the purchaser has examined the goods or a sample of the goods—in respect of a defect which the examination ought to have revealed.

(3.) If a purchaser under a hire-purchase agreement expressly or by implication makes known the particular purpose for which the goods comprised in the agreement are required by him, there shall be deemed to be an implied condition in the agreement that the goods shall be reasonably fit for that purpose and the vendor is not entitled to rely on any provision in the agreement to the contrary unless, before the agreement was made, the provision was brought to the notice of the purchaser and its effect made clear to him.

(4.) The warranties and conditions referred to in this section are in addition to, and not in derogation of, any other warranty or condition implied by law in a hire-purchase agreement.

34. A provision in a hire-purchase agreement—

Certain provisions as to agents are void.

- (a) by which a person acting on behalf of the vendor in connexion with the agreement is, or is deemed to be, the agent of the purchaser; or
- (b) by which a vendor is relieved from liability for the acts or defaults of a person acting on his behalf in connexion with the agreement,

is void.

Goods
comprised
in hire-purchase
agreement not
to become
fixtures.

35. Goods comprised in a hire-purchase agreement which, at the time of the making of the agreement, were not fixtures to land shall not for any purpose in respect of the period during which the agreement remains in force be treated as fixtures to land.

Minimum
deposits.

36.—(1.) Where the goods comprised in a hire-purchase agreement consist in whole or in part of—

- (a) an agricultural implement;
- (b) machinery to be used for manufacturing or industrial purposes;
- (c) a motor tractor;
- (d) electrical appliances, machinery or equipment for use wholly or partly in or for the purposes of primary production;
- (e) an appliance operated by gas or electricity; or
- (f) an appliance for household use operated by oil, coal, coke or other fuel,

the agreement shall provide for payment by the purchaser of a deposit of not less than one-tenth of the purchase price.

(2.) Where none of the goods comprised in a hire-purchase agreement consist of goods of a kind referred to in the last preceding sub-section, the agreement shall provide for payment by the purchaser of a deposit of not less than one-fifth of the purchase price.

(3.) The deposit required by this section in respect of a hire-purchase agreement may include the value of any goods provided or required to be provided by the purchaser to purchase the goods under the agreement.

(4.) A hire-purchase agreement which does not comply with this section is void except in respect of the rights of the purchaser under or arising out of the agreement.

(5.) In this section, "hire-purchase agreement" does not include an agreement or arrangement that is entered into solely for the purpose of giving effect to an assignment or transfer of rights and liabilities under an existing hire-purchase agreement from the purchaser under the agreement to another person.

PART III.—MISCELLANEOUS.

Service of
notices.

37. A notice or other document which, by this Ordinance, is required or permitted to be served on a person may be served personally or by post or by leaving it, with a person apparently at least sixteen years of age, at the usual or last known place of abode or business, whether in the Territory or not, of the person to be served or at an address specified for the purpose of service of notices on that person in any hire-purchase agreement or a statement furnished under section ten of this Ordinance.

38. The jurisdiction and powers of the Court of Petty Sessions under paragraph (b) of sub-section (1.) of section twenty of the *Court of Petty Sessions Ordinance 1930-1953* extend to and in relation to goods comprised in a hire-purchase agreement notwithstanding that the value of the goods is greater than Two hundred pounds and the power of the Court under sub-paragraph (ii) of that paragraph to order that a person shall pay to the party aggrieved the full value of the goods may, in relation to goods comprised in a hire purchase agreement, be exercised as if the words "not greater than the sum of Two hundred pounds" did not appear in that sub-paragraph.

Jurisdiction of
the Court of
Petty Sessions.

39. The Usury, Bills of Lading and Written Memoranda Act, 1902, of the State of New South Wales, in its application in the Territory, is amended by omitting section thirteen.

Amendment of
Usury, Bills of
Lading and
Written
Memoranda
Act.

40. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

Regulations.

Dated this tenth day of August, 1955.

W. J. SLIM

Governor-General.

By His Excellency's Command,

W. S. KENT HUGHES

Minister of State for the Interior.