

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 7 April, 1960.*

New South Wales



ANNO NONO

ELIZABETHÆ II REGINÆ

Act No. , 1960.

An Act relating to the form and content of hire-purchase agreements; to regulate the rights and duties of parties to hire-purchase agreements; to repeal the Hire-purchase Agreements Act, 1941, and certain other enactments; to amend the Credit-sale Agreements Act, 1957, the Police Offences Act, 1901, and certain other Acts; and for purposes connected therewith.

Hire-Purchase.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Hire-Purchase Act, Short title. 1960."

10 (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. Commence-
ment.

(3) This Act is divided into Parts as follows :— Division
into Parts.

PART I.—PRELIMINARY—*ss.* 1, 2.

15 PART II.—FORMATION AND CONTENTS OF HIRE-PURCHASE AGREEMENTS—*ss.* 3, 4.

PART III.—PROTECTION OF HIRERS—*ss.* 5–17.

Division 1.—Warranties and conditions—ss. 5, 6.

Division 2.—Statutory rights of hirers—ss. 7–10.

20 *Division 3.—Early completion of agreements—s.* 11.

Division 4.—Voluntary return of goods—s. 12.

Division 5.—Repossessions—ss. 13–17.

PART IV.—GUARANTEES—*ss.* 18, 19.

PART V.—INSURANCE—*ss.* 20–24.

25 PART VI.—LIMITATION ON TERMS CHARGES—*ss.* 25, 26.

PART VII.—MINIMUM DEPOSITS—*ss.* 27–31.

PART VIII.—MISCELLANEOUS—*ss.* 32–54.

(4) (a) The Hire-purchase Agreements Act, 1941, the Hire-purchase Agreements (Amendment) Act, 1955, the Hire-purchase Agreements (Amendment) Act, 1957, sections thirteen and fourteen of the Economic Stability and War-time Provisions Continuance Act, 1946, and section three of the Banking (Interpretation of References) Act, 1959, are repealed.

(b)

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(b) Notwithstanding the repeal of the enactments mentioned in subsection one of this section but subject to paragraph (c) of this subsection, those enactments continue to apply to and in relation to—

- 5 (i) hire-purchase agreements entered into before the commencement of this Act; and
- (ii) agreements entered into before or after that commencement in relation to hire-purchase agreements entered into before that commencement.

10 (c) Section twenty of the Hire-purchase Agreements Act, 1941-1959, continues so to apply for the following purposes only, namely, for the purposes of—

- 15 (a) proceedings under that section that were commenced before the commencement of this Act and in which an order had been made under subsection two of that section before that commencement; and
- (b) proceedings under that section in relation to an order so made.

(5) (a) This Act applies to and in relation to—

- 20 (i) hire-purchase agreements entered into after the commencement of this Act; and
- (ii) agreements entered into before or after that commencement in relation to hire-purchase agreements to be entered into, or entered into, after that commencement.
- 25

Application of Act.

(b) Section forty-seven of this Act applies to and in relation to hire-purchase agreements entered into before the commencement of this Act as well as to and in relation to hire-purchase agreements entered into after that commencement.

30

2. (1) In this Act, unless inconsistent with the context or subject-matter—

Interpretation.

35 “Banker” means a body corporate for the time being authorised to carry on banking business under a law of this or another State or of the Commonwealth of Australia.

“Cash”

Hire-Purchase.

- “Cash” includes a cheque drawn on a banker.
- “Court of petty sessions” means a court of petty sessions held before a stipendiary magistrate sitting alone.
- 5 “Dealer” means a person, not being the hirer or the owner or a servant of the owner, by whom or on whose behalf negotiations leading to the making of a hire-purchase agreement with the owner were carried out or by whom or on whose behalf the transaction leading to a hire-purchase agreement with the owner was arranged.
- 10 “Goods” includes all chattels personal other than money or things in action.
- “Guarantor” means a person who has guaranteed the performance by a hirer of all or any of his obligations under a hire-purchase agreement but does not include the dealer or 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.
- 15 “Hire-purchase agreement” includes a letting of goods with an option to purchase and 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 any agreement—
- 20 (a) whereby the property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods; or
- 25 (b) under which the person by whom the goods are being hired or purchased 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.
- 30 “Hirer” means the person to whom goods are let, hired, or agreed to be sold under a hire-purchase agreement and includes a person to whom the hirer’s rights or liabilities under the agreement have passed by assignment or by operation of law.
- 35

“Owner”

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5 “Owner” means the person letting, hiring, or agreeing to sell goods under a hire-purchase agreement and includes a person to whom the owner’s property in the goods or any of the owner’s rights or liabilities under the agreement have passed by assignment or by operation of law.

10 “Period of the agreement”, in relation to a hire-purchase agreement, means the period between the commencement of the hiring under the agreement and the time provided by the agreement for the payment of the last instalment.

 “Prescribed” means prescribed by this Act or by the regulations.

 “Regulations” means regulations made under this Act.

15 “Schedule” means Schedule to this Act.

 “Statutory rebate”—

 (a) in relation to terms charges—

20 (i) means the amount derived by multiplying the terms charges by the sum of all the whole numbers from one to the number which is the number of complete months in the period of the agreement still to go (both inclusive) and by dividing the product so

25 obtained by the sum of all the whole numbers from one to the number which is the total number of complete months in the period of the agreement (both inclusive); or

30 (ii) where it is agreed in a hire-purchase agreement that the terms charges have been calculated on a simple interest basis at a rate specified in the agreement on the amount outstanding from month to month means the amount of interest attributable to the period of complete months still to go under the agreement; and

35

(b)

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(b) in relation to insurance, means the sum of—

(i) the total amount of premium paid in respect of any annual period not yet commenced; and

5 (ii) ninety per centum of the proportion of the amount of the premium for insurance in respect of the current annual period attributable to the unexpired portion of that period consisting of whole months.

10

“Third party insurance” means any insurance in relation to liability in respect of death or bodily injury caused by or arising out of the use of a motor vehicle being insurance required by the law of the place where the vehicle is registered or is being registered, as the case requires.

15

“Total amount payable” means the total amount to be paid or provided whether by way of cash or other consideration by or on behalf of the hirer under a hire-purchase agreement.

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“Vehicle registration fees” means any amount to be provided under a hire-purchase agreement by the owner for payment by or on behalf of the hirer under the law of this State or of any other State or Territory of the Commonwealth of Australia in connection with the registration and use of a motor vehicle, including any amount payable for third party insurance.

25

(2) (a) Subject to paragraph (b) of this subsection, 30 in this Act “cash price”, “freight”, “terms charges”, and “the balance originally payable under the agreement” have the meanings assigned to them in subsection two of section three of this Act.

(b) In this Act “terms charges” and “the balance 35 originally payable under the agreement” have, in relation to a hire-purchase agreement of the kind referred to in subsection six of section three of this Act, the meanings assigned to them in subsection two, as modified by subsection six, of that section. (d) (3)

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(3) In this Act, other than sections twenty and twenty-three, "insurance" has the meaning assigned to it in subsection two of section three of this Act.

(4) Any reference in this Act to taking possession by
5 the owner of goods comprised in a hire-purchase agreement includes—

- (a) the taking of possession of goods by the owner pursuant to an order of any court; and
- 10 (b) the return of goods to the owner after notice has been served on the hirer pursuant to the provisions of subsection one of section thirteen of this Act,

but does not include a reference to taking possession by the owner as a result of the voluntary return of the goods by the hirer.

15 (5) 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 Act, be treated
20 as a single hire-purchase agreement made at the time when the last agreement was made.

PART II.

FORMATION AND CONTENTS OF HIRE-PURCHASE
AGREEMENTS.

25 3. (1) Before any hire-purchase agreement is entered into in respect of any goods the owner or, if there is a dealer, the dealer shall give or cause to be given to the prospective hirer a statement in writing duly completed in accordance with the form in the First Schedule :

Summary of proposed hire-purchase transaction to be given to prospective hirer.

30 Provided that where the agreement is entered into by way of acceptance by the owner of a written offer signed by or on behalf of the hirer, the provisions of this subsection shall be deemed

Hire-Purchase.

deemed not to have been complied with unless the written statement was given to the prospective hirer before the written offer was so signed.

- (2) Every hire-purchase agreement—
- 5 (a) shall be in writing;
- (b) shall be signed by or on behalf of the hirer and all other parties to the agreement;
- (c) shall—
- 10 (i) specify a date on which the hiring shall be deemed to have commenced;
- (ii) specify the number of instalments to be paid under the agreement by the hirer;
- 15 (iii) specify the amounts of each of those instalments and the person to whom and the place at which the payments of those instalments are to be made;
- (iv) specify the time for the payment of each of those instalments; and
- 20 (v) contain a description of the goods sufficient to identify them;
- (d) where any part of the consideration is or is to be provided otherwise than in cash, shall contain a description of that part of the consideration; and
- (e) shall set out in a tabular form—
- 25 (i) the price at which at the time of signing the agreement the hirer might have purchased the goods for cash (in this Act called and in the agreement to be described as “cash price”);
- (ii)

Form and contents of hire-purchase agreements.

Hire-Purchase.

- 5 (ii) the amount paid or provided by way of deposit (in this Act called and in the agreement to be described as "deposit") showing separately the amount paid in cash and the amount provided by a consideration other than cash;
- 10 (iii) any amount included in the total amount payable to cover the expenses of delivering the goods or any of them to or to the order of the hirer (in this Act called and in the agreement to be described as "freight");
- 15 (iv) any amount included in the total amount payable to cover vehicle registration fees in respect of the goods (in the agreement to be called "vehicle registration fees");
- 20 (v) any amount included in the total amount payable for insurance (other than third party insurance) in respect of the goods that are goods of any one or more of the following descriptions, namely, industrial machinery, farm equipment or motor vehicle, or a television set or prescribed goods (in this Act called and in the agreement to be described as "insurance");
- 25 (vi) the total of the amounts referred to in subparagraphs (i), (iii), (iv) and (v) of this paragraph less the deposit;
- 30 (vii) the amount of any other charges included in the total amount payable (in this Act called and in the agreement to be described as "terms charges");
- 35 (viii) the total of the amounts referred to in subparagraphs (vi) and (vii) of this paragraph (in this Act called "the balance originally payable under the agreement"); and
- (ix) the total amount payable.

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(3) An owner who enters into a hire-purchase agreement that does not comply with subsection two of this section is guilty of an offence against this Act.

(4) Where a provision of this section has not been
5 complied with in relation to a hire-purchase agreement (not being a failure to comply with paragraph (a) of subsection two of this section), the liability of the hirer shall be reduced by the amount included in the agreement for terms charges. That amount may be set off by the hirer against the amount
10 that would otherwise be due or become due to the owner under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer from the owner as a debt in any court of competent jurisdiction.

Nothing in this subsection affects the liability of any person
15 to be convicted of an offence against this section.

(5) A hire-purchase agreement that is not in writing is not enforceable by the owner.

(6) Where—

(a) the owner under a hire-purchase agreement is not
20 bound by the provisions of the Stamp Duties Act, 1920, as amended by subsequent Acts; and

(b) the total amount payable includes an amount (in
25 this subsection referred to as stamp duty) representing the whole or any part of the stamp duty chargeable on the agreement under that Act,

then in relation to such an agreement subparagraphs (vii) and (viii) of paragraph (e) of subsection two of this section are deemed to be omitted and the following subparagraphs inserted in lieu thereof:—

30 (vii) the amount of any other charges (other than stamp duty) included in the total amount payable (in this Act called and in the agreement to be described as “terms charges”);

35 (viii) the total of the amounts referred to in subparagraphs (vi) and (vii) of this paragraph together with stamp duty (in this Act called “the balance originally payable under the agreement”); and.

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4. The owner shall serve or cause to be served on the hirer within twenty-one days after the making of a hire-purchase agreement— Certain copy documents to be served on hirer.

- (a) a copy in writing of the agreement;
 - 5 (b) a notice in writing in or to the effect of the Second Schedule, which notice may be endorsed on the copy of the agreement; and
 - (c) where any part of the total amount payable consists of an amount paid or to be paid under a policy of insurance (not being a policy of third party insurance) in respect of goods that are goods of any one or more of the following descriptions, namely, industrial machinery, farm equipment or motor vehicle, or a television set or prescribed goods, a copy of the policy or a statement in writing setting out the terms, conditions, and exclusions of the policy that affect or concern the rights of the hirer, 01
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- but failure to comply with the provisions of this section does not avoid the agreement. 21

PART III.

PROTECTION OF HIRERS.

Division 1.—Warranties and conditions.

- 5. (1) In every hire-purchase agreement there shall be— Conditions and warranties to be implied in every hire-purchase agreement.
- 25 (a) an implied warranty that the hirer shall have and enjoy quiet possession of the goods;
- (b) an implied condition on the part of the owner that he will have a right to sell the goods at the time when the property is to pass;
- 30 (c) an implied warranty that the goods will be free from any charge or encumbrance in favour of any third party (other than a charge or encumbrance created by or with the consent of the hirer) at the time when the property is to pass.

(2)

Hire-Purchase.

(2) In every hire-purchase agreement there shall be an implied condition that the goods shall be of merchantable quality but such a condition shall not be implied—

5 (a) as regards defects of which the owner could not reasonably have been aware, or, if there is a dealer, neither the owner nor the dealer could reasonably have been aware, at the time the agreement was made; or

10 (b) where the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed; or

(c) if the goods are second-hand goods and the agreement contains a statement to the effect that—

- 15 (i) the goods are second-hand; and
(ii) all conditions and warranties as to quality are expressly negated,

and the owner proves that the hirer has acknowledged in writing that that statement was brought to his notice.

20 (3) Where the hirer expressly or by implication makes known to the owner or to the dealer or to any servant or agent of the owner or the dealer the particular purpose for which the goods are required, there shall be implied in the hire-purchase agreement a condition that the goods shall be
25 reasonably fit for that purpose but such a condition shall not be implied if the goods are second-hand goods and the agreement contains a statement to the effect—

(a) that the goods are second-hand; and

30 (b) that all conditions and warranties of fitness and suitability are expressly negated,

and the owner proves that the hirer has acknowledged in writing that that statement was brought to his notice.

(4)

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(4) Without prejudice to any other rights or remedies to which an owner may be entitled, where the hirer has made known expressly or by implication to the dealer or to any servant or agent of the dealer the particular purpose for which the goods are required, an owner is entitled to be indemnified by the dealer against any damage suffered by the owner through the operation of the provisions of subsection three of this section.

(5) Nothing in this section prejudices in any way any other enactment or rule of law whereby any condition of warranty is to be implied in any hire-purchase agreement.

6. (1) Every representation, warranty, or statement made to the hirer or prospective hirer, whether orally or in writing, by the owner or dealer or any person acting on behalf of the owner or dealer in connection with or in the course of negotiations leading to the entering into of a hire-purchase agreement shall confer on the hirer—

As to the liability of the owner and the dealer for misrepresentation.

(a) as against the owner—the same right to rescind the agreement as the hirer would have had if the representation, warranty, or statement had been made by an agent of the owner; and

(b) as against the person who made the representation, warranty, or statement, and any person on whose behalf the person who made the representation, warranty, or statement was acting in making it—the same right of action in damages as the hirer would have had against them or either of them if the hirer had purchased the goods from the person who made the representation, warranty, or statement or the person on whose behalf the person who made the representation, warranty, or statement was acting (as the case requires) as a result of the negotiations.

(2) Every covenant, condition, or term in any hire-purchase agreement or other document purporting to exclude, limit, or modify the operation of this section or to preclude any right of action or any defence based on or arising out of any such representation, warranty, or statement is void.

(3)

Hire-Purchase.

(3) Without prejudice to any other rights or remedies to which an owner may be entitled, an owner is entitled to be indemnified by the person who made the representation, warranty, or statement, and by any person on whose behalf
5 the representation, warranty, or statement was made against any damage suffered by the owner through the operation of the foregoing provisions of this section.

Division 2.—Statutory rights of hirers.

7. (1) At any time before the final payment has been
10 made under a hire-purchase agreement the owner shall, within fourteen days after he has received a request in writing from the hirer, send to the hirer a copy of the agreement, together with a statement in writing signed by the owner or his agent
showing—
Hirer to be entitled to copy of agreement and statement of his present position.

- 15 (a) the amount paid to the owner by or on behalf of the hirer ;
- (b) the amount that has become due under the agreement but remains unpaid ; and
- 20 (c) the amount that is to become payable under the agreement,

but an owner need not comply with such a request if he has sent the hirer a copy of the agreement and a statement under this subsection within the period of three months immediately preceding the receipt of the request.

25 (2) If an owner contravenes subsection one of this section by failing to comply with a request made pursuant to that subsection he is guilty of an offence against this Act and liable to a penalty not exceeding fifty pounds and, until the default is remedied—

- 30 (a) the owner is not entitled to enforce—
 - (i) the agreement against the hirer ;
 - (ii) any right to recover the goods from the hirer ; or
 - 35 (iii) any contract of guarantee relating to the agreement ; and

(b)

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(b) any security given by the hirer in respect of money payable under the agreement or given by a guarantor is not enforceable against the hirer or the guarantor by any holder thereof.

5 8. A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner is entitled, on making any payment in respect of the agreements that is not sufficient to discharge the total amount then due under all the agreements, to require the owner to appropriate 10 the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and, if he fails to make such an appropriation, the payment shall by 15 virtue of this section be appropriated in or towards the satisfaction of the sums due under the respective agreements in the order in which the agreements were entered into.

As to appropriation of payments when more than one agreement.

9. (1) The right, title, and interest of a hirer under a hire-purchase agreement may be assigned with the consent of the 20 owner or, if his consent is unreasonably withheld, without his consent.

As to assignments of rights under hire-purchase agreements.

(2) Except as otherwise provided in this section, no payment or other consideration shall be required by an owner for his consent to such an assignment as is mentioned in sub- 25 section one of this section, and where an owner requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld.

(3) Where, at the request of a hirer under a hire-purchase agreement, the owner fails or refuses to give his 30 consent to an assignment by the hirer of his right, title, and interest under the agreement, the hirer may apply to a court of petty sessions for an order declaring that the consent of the owner to that assignment has unreasonably been withheld, and where such an order is made that consent shall be deemed 35 to be unreasonably withheld.

(4)

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(4) As a condition of granting consent to an assignment of the right, title, and interest of the hirer under a hire-purchase agreement, the owner may stipulate that all defaults under the agreement shall be made good and may require the hirer and assignee—

(a) to execute and deliver to the owner an assignment agreement in a form approved by the owner whereby without prejudicing or affecting the continuing personal liability of the hirer in those respects the assignee agrees with the owner to be personally liable to pay the instalments remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the assignee indemnifies the hirer in respect of those liabilities; and

(b) to pay the reasonable costs (if any) incurred by the owner in stamping or registering the assignment agreement or counterparts.

(5) The right, title, and interest of a hirer under a hire-purchase agreement is capable of passing by operation of law to the personal representative of the hirer and if the hirer is a company the liquidator may exercise the same rights under the agreement as the company, but nothing in this subsection relieves a personal representative or liquidator from compliance with the provisions of the agreement.

10. Where, by virtue of a hire-purchase agreement, it is the duty of a hirer to keep the goods comprised in the agreement in his possession or control at a particular place or not to remove the goods from a particular place, a court of petty sessions may, on the application of the hirer, make an order approving the removal of the goods to some other place, which place shall thereafter, for the purposes of the agreement, be substituted for the first-mentioned place.

Power to court to allow goods to be removed.

Division

Hire-Purchase.

Division 3.—Early completion of agreements.

11. (1) The hirer under a hire-purchase agreement may, if he has given notice in writing to the owner of his intention to do so, on or before the day specified for that purpose in the notice, complete the purchase of the goods by paying or tendering to the owner the net balance due to the owner under the agreement.

Hirer
entitled to
finalise
agreement
at any
time.

(2) For the purposes of this section the net balance due is the balance originally payable under the agreement less any amounts (other than the deposit) paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, and less—

- (a) the statutory rebate for terms charges; and
- (b) if the hirer requires any contract for insurance to be cancelled, the statutory rebate for insurance.

(3) The rights conferred on the hirer by this section may be exercised by him—

- (a) at any time during the continuance of the agreement; or
- (b) where the owner has taken possession of the goods, on paying or tendering to the owner (before or within twenty-one days after the owner has served a notice in the form of the Fourth Schedule on the hirer) in addition to the net balance due—
 - (i) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods; and
 - (ii) any amount properly expended by the owner on the storage, repair, or maintenance of the goods.

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Division 4.—Voluntary return of goods.

12. (1) The hirer of any goods comprised in a hire-
purchase agreement may terminate the hiring by returning
the goods to the owner during ordinary business hours at a
5 place at which the owner ordinarily carries on business or
to the place specified for that purpose in the agreement and
such a return of the goods terminates the hiring.

Power to
hirer to
determine
hiring.

(2) Where the nature of the goods comprised in a hire-
purchase agreement is, or the facilities available at the place
10 or places of business of the owner or at the place specified in
the agreement are, such that it would be impracticable to
return the goods to such a place, the hirer may terminate the
hiring by returning the goods—

15 (a) to any place agreed to by the parties to the
agreement; or

(b) if the parties fail to agree, to a place that is reason-
able, having regard to all the circumstances
surrounding the transaction.

(3) A hirer who proposes to return goods to the
20 owner under this section may apply to a court of petty sessions
for an order fixing the place to which the goods may be
returned under paragraph (b) of subsection two of this
section.

(4) The court may, in any order made pursuant to
25 this section, order that, subject to the goods being returned to
the owner, the hiring shall be determined on such date as is
specified in the order, not being a date before the hirer
required the owner to nominate a reasonable place for the
return of the goods.

30 (5) Notice of any application under this section shall
be given to the owner by the hirer.

(6)

Hire-Purchase.

(6) Where a hire-purchase agreement is determined pursuant to this section the owner is entitled to recover from the hirer—

- 5 (a) the amount (if any) required to be paid in those circumstances under the agreement; or
- (b) the amount (if any) that the owner would have been entitled to recover if he had taken possession of the goods at the date of termination of the hiring, whichever is the less.

Division 5.—Repossessions.

10 **13.** (1) Subject to this section, an owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments until he has served
 15 on the hirer a notice, in writing, in the form of the Third Schedule and the period fixed by the notice (being not less than twenty-one days after the service of the notice) has expired.

Notices to be given to hirer when goods re-possessed.

20 (2) An owner need not comply with subsection one of this section if there are reasonable grounds for believing that the goods comprised in the hire-purchase agreement will be removed or concealed by the hirer contrary to the provisions of the agreement, but the onus of proving the existence of those grounds lies upon the owner.

25 (3) Within twenty-one days after the owner has taken possession of goods that were comprised in a hire-purchase agreement he shall serve on the hirer and every guarantor of the hirer a notice, in writing, in the form of the Fourth Schedule.

30 (4) Where the owner takes possession of goods that were comprised in a hire-purchase agreement he shall—

- 35 (a) if the hirer is present at the time when the owner takes possession of the goods, at that time deliver or cause to be delivered to the hirer personally a document acknowledging receipt of the goods;
- (b)

Hire-Purchase.

(b) if the hirer is not present at the time when the owner takes possession of the goods, forthwith after taking possession of the goods send to the hirer a document acknowledging receipt of the goods.

5 The document acknowledging receipt of the goods shall set out a short description of the goods and the date on which, the time at which, and the place where, the owner took possession of the goods.

(5) If the notice required by subsection three of this section is not served, the rights of the owner under the hire-purchase agreement thereupon cease and determine, but, if the hirer exercises his rights under this Act to recover the goods so taken possession of, the agreement has the same force and effect in relation to the rights and liabilities of the owner and the hirer as it would have had if the notices had been duly given.

14. Where an owner has taken possession of any goods he shall not, without the consent of the hirer (which consent shall be in writing and shall be witnessed by some person other than the owner or the solicitor for or agent or employee of the owner), sell or dispose of the goods or part with possession thereof until after the expiration of twenty-one days after the date of the service on the hirer of the notice referred to in subsection three of section thirteen of this Act or, if notice under subparagraph (i) of paragraph (a) of subsection one of section fifteen of this Act has been given, until the time for payment or tender pursuant to that notice has expired (whichever is the later).

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

15. (1) Where the owner takes possession of any goods comprised in a hire-purchase agreement—

As to hirer's rights and immunities when goods re-possessed.

(a) the hirer may, before or within twenty-one days after the service on him of the notice referred to in subsection three of section thirteen of this Act, by giving to the owner a notice in writing signed by the hirer or his agent—

(i) require the owner to re-deliver to or to the order of the hirer (subject to compliance by the hirer with the provisions of section sixteen of this Act) the goods that have been re-possessed; or (ii)

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- 5 (ii) require the owner to sell the goods to any person introduced by the hirer who is prepared to buy the goods for cash at a price not less than the estimated value of the goods set out in the first-mentioned notice;
- (b) the hirer may recover from the owner—
- 10 (i) if the value of the goods at the time of the owner so taking possession thereof 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
- 15 (ii) if the value of the goods at the time of the owner so taking possession thereof 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;
- 20 (c) the owner is not entitled to recover any sum (whether under a judgment or order or otherwise) that would together with—
- 25 (i) the value of the goods at the time of the owner so taking possession thereof; and
- (ii) the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement,
- 30 amount to more than the net amount payable in respect of the goods.
- (2) For the purposes of this section—
- 35 (a) the net amount payable is the total amount payable less the statutory rebates for terms charges and insurance as at the time of the owner taking possession of the goods; and

(b)

Hire-Purchase.

- (b) the value of any goods at the time of the owner taking possession thereof is—
- (i) the best price that could be reasonably obtained by the owner at that time; or
 - 5 (ii) if the hirer has introduced a person who has bought the goods for cash, the amount paid by that person,
- less—
- 10 (iii) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods;
 - (iv) any amount properly expended by the owner on the storage, repair, or maintenance of the goods; and
 - 15 (v) (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.
- 20 (3) Where the owner has sold goods of which he has taken possession, 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 he took possession of the goods lies upon the owner.
- 25 (4) Except where the owner has failed to serve on the hirer a notice as required by subsection three of section thirteen of this Act, no amount is recoverable by the hirer under this section unless—
- (a) the hirer, within twenty-one days after the owner has served such a notice, gives to the owner notice in writing—
- 30 (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 of the owner taking possession thereof; and
 - 35 (ii) signed by the hirer or his solicitor or agent; and
- (b)

Hire-Purchase.

(b) proceedings for the recovery of the amount so claimed under the provisions of this section are commenced not earlier than seven days and, except where the goods have been sold at the request of the hirer to a person introduced by the hirer, not later than three months after the giving by the hirer to the owner of the notice referred to in paragraph (a) of this subsection.

(5) If, before the proceedings referred to in subsection four of this section are commenced by the hirer, the owner serves an offer in writing on the hirer to pay any 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 :

Provided that no such right shall be 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.

16. (1) If, within fourteen days after giving notice to the owner pursuant to the provisions of subparagraph (i) of paragraph (a) of subsection one of section fifteen of this Act, the hirer—

Power to hirer to regain possession of goods in certain circumstances.

(a) pays or tenders to the owner any amount due by the hirer under the hire-purchase agreement in respect of the period of hiring up to the date of the payment or tender (and for the purposes of this paragraph the hiring shall be deemed to have continued up to that date) ;

(b) remedies any breach of the agreement or (where he is unable to remedy the breach by reason of the fact that the owner has taken possession of the goods) pays or tenders to the owner the costs and expenses reasonably and actually incurred by the owner in doing any act, matter, or thing necessary to remedy the breach ; and (c)

Hire-Purchase.

- (c) pays or tenders to the owner the reasonable costs and expenses of the owner of and incidental to his taking possession of the goods and of his returning them to or to the order of the hirer,
- 5 the owner shall forthwith return the goods to the hirer and the goods shall be received and held by the hirer pursuant to the terms of the hire-purchase agreement as if the breach had not occurred and the owner had not taken possession thereof.
- (2) Where goods are returned to the hirer pursuant to
10 subsection one of this section and any breach of the hire-purchase agreement has not been remedied, the owner has no right arising out of the breach to take possession of the goods unless—
- (a) by notice in writing given to the hirer at the time
15 of the return of the goods he specifies the breach and requires it to be remedied; and
- (b) the hirer fails within fourteen days or within the time specified in the notice (whichever is the longer) after receiving the notice to remedy the breach.
- 20 **17.** In any legal proceedings in relation to a hire-purchase agreement, after the owner has taken possession of the goods, the court before which the proceedings are brought may vary or discharge any judgment or order of any court against the hirer for the recovery of money so far as is necessary to give
25 effect to the provisions of section fifteen of this Act.
- Power to court to vary existing judgments or orders when goods are re-possessed.

PART IV.

GUARANTEES.

- 18.** (1) Save as provided in this Act a guarantor is not, by reason of the operation of this Act, discharged from
30 liability under his guarantee.
- Provisions as to guarantors.

(2)

Hire-Purchase.

(2) The liability of a guarantor continues notwithstanding that the owner has, pursuant to the provisions of a hire-purchase agreement, taken possession of the goods comprised therein (and whether or not the goods have been re-delivered to or to the order of the hirer pursuant to this Act); but nothing in this subsection operates to preserve the liability of a guarantor where the owner and the hirer have entered into a new agreement in respect of the goods comprised in any hire-purchase agreement.

(3) No guarantor is liable to any further or other extent than the hirer, the performance of whose obligations he has guaranteed; but, subject to section nineteen of this Act, nothing in this Act affects any agreement by the guarantor binding him to the performance of any obligation that is not one of the obligations imposed on the hirer under the hire-purchase agreement in respect of which the guarantee is given.

(4) Where goods have been delivered to or to the order of the hirer pursuant to a hire-purchase agreement and the owner subsequently takes possession thereof, any guarantor who has paid any moneys to the owner in accordance with his guarantee has the like right in like manner to recover those moneys as he would have had if he had been the hirer of the goods, but for the purpose of calculating the amount received by the owner all moneys paid and the value of any other consideration provided by or on behalf of the hirer shall be deemed to have been paid or provided by the guarantor, but no moneys shall be recovered by the guarantor in excess of the moneys actually paid by him.

19. (1) Where a guarantor of the performance by a hirer of all or any of the hirer's obligations under a hire-purchase agreement enters into an agreement binding the guarantor—

(a) to pay to the owner under the hire-purchase agreement an aggregate sum that is larger than the balance originally payable under the hire-purchase agreement;

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

(c)

Guarantor not to be bound in certain cases unless independently advised.

Hire-Purchase.

5 (c) to permit the owner under the hire-purchase agreement or any person acting on behalf of the owner to enter upon any premises for the purpose of taking possession of or inspecting goods subject to the hire-purchase agreement; or

(d) to relieve the owner under the hire-purchase agreement or any person acting on behalf of the owner from liability for any such entry,

10 the agreement so entered into by the guarantor is void (and the owner under the hire-purchase agreement concerned is guilty of an offence against this Act) unless the agreement is executed by the guarantor in the presence of a chamber magistrate, a clerk of petty sessions or a solicitor instructed and employed independently of the owner and the magistrate,
15 clerk or solicitor, as the case may be, certifies in writing upon the agreement—

(e) that he is satisfied that the guarantor understands the true purport and effect of the agreement; and

20 (f) that the guarantor has executed the agreement in his presence.

(2) A chamber magistrate, a clerk of petty sessions or a solicitor shall not give a certificate in respect of an agreement under subsection one of this section unless—

25 (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;

30 (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.

35 (3) Failure by a chamber magistrate, a clerk of petty sessions or a solicitor to comply with subsection two of this section in respect of a certificate does not invalidate the certificate.

PART

Hire-Purchase.

PART V.

INSURANCE.

20. (1) An owner may require any goods comprised in a hire-purchase agreement to be insured in the names of the owner and the hirer against any risk that he thinks fit for the period of the agreement at the expense of the hirer.

As to insurance of goods comprised in hire-purchase agreements.

(2) An owner shall not require a hirer to insure any such risk with any particular insurer.

(3) An owner shall not refuse to enter into a hire-purchase agreement with a person who effects insurance of the goods for the period of the agreement against such risks and subject to such terms, conditions, and exceptions as are required by the owner in the names of the owner and the hirer with a reputable insurer if the owner has no other grounds upon which the owner could reasonably refuse to enter into the agreement.

(4) An owner shall not require a hirer to obtain insurance against risks or subject to terms, conditions, and exceptions that the owner does not require if he arranges the insurance.

(5) 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 hirer under the agreement is entitled to the benefit of the rebate and any person who knowingly pays or allows any such rebate to an owner is guilty of an offence against this Act.

Hirer to be entitled to insurance rebates.

21. (1) In any proceedings taken in any court in respect of any difference or dispute arising out of a contract of insurance if it appears to the court that a failure by the insured or the hirer under the hire-purchase agreement concerned to observe or perform a term or condition of the contract of insurance may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may, unless an order excusing the failure has already been made under subsection two of this section, order that the failure be excused.

Powers of court in relation to insurance contracts associated with hire-purchase agreements.

(2)

Hire-Purchase.

(2) Where a difference or dispute has arisen out of a contract of insurance, the insured or the hirer under the hire-purchase agreement concerned or any guarantor in respect of that agreement may, unless an order excusing the failure
5 concerned has already been made under subsection one of this section, apply to the court for an order that the failure to observe or perform a term or condition of the contract of insurance be excused; and if it appears to the court that the failure may reasonably be excused on the ground that the
10 insurer was not prejudiced by the failure, the court may order that the failure be excused.

(3) Where an order of the nature referred to in subsections one and two of this section has been made under either of those subsections, the rights and liabilities of all
15 persons in respect of the contract of insurance concerned shall be determined as if the failure the subject of the order had not occurred.

(4) The provisions of this section apply only to or in respect of a contract of insurance of goods (whether or
20 not the contract includes any other class of insurance) where the premium or other sum payable for the cover given by the contract of insurance, or any part of that premium or sum, was included as part of the total amount payable for the goods comprised in a hire-purchase agreement.

25 **22.** (1) Every copy of a policy of insurance (not being a policy of third party insurance), and every statement, served upon a hirer pursuant to section four of this Act shall— As to contents of contracts of insurance.

- (a) identify the goods or the part of the goods to be insured; and
- 30 (b) contain a statement of the amount and period for which the goods are insured or are to be insured; and
- (c) if the amount for which the goods are or are to be insured will vary during the period of the agreement, contain a statement showing the varying
35 amounts.

(2)

Hire-Purchase.

(2) Subject to subsection three of this section, any provision in any agreement or other document—

- (a) requiring differences or disputes arising out of a contract of insurance to be referred to arbitration;
- 5 (b) providing that no action or suit shall be maintainable upon such a contract or against the insurer in respect of any claim under, or difference or dispute arising out of, such a contract unless the claim, difference, or dispute has been referred to arbitration or an award pursuant to arbitration proceedings has
10 been first obtained;
- (c) providing that arbitration or an award pursuant to arbitration proceedings is a condition precedent to any right of action or suit upon such a contract; or
- 15 (d) otherwise imposing by reference to arbitration or to an award made in arbitration proceedings any limitation on the right of any person to bring or maintain any action or suit upon such a contract,

does not bind the hirer.

20 (3) An agreement made by the parties to a contract of insurance after a difference or dispute has arisen out of the contract of insurance to submit that difference or dispute to arbitration has effect as if subsection two of this section had not been enacted.

25 (4) The provisions of this section apply only to or in respect of a contract of insurance of goods (whether or not the contract includes any other class of insurance) where the premium or other sum payable for the cover given by the contract of insurance, or any part of that premium or sum,
30 was included as part of the total amount payable for the goods comprised in a hire-purchase agreement.

Hire-Purchase.

23. (1) The Governor may, for the purposes of subsection ^{Rates of} three of this section, make regulations prescribing rates for ^{insurance.} insurance in respect of any class or classes of goods.

In the exercise of the power conferred by the foregoing 5 provisions of this subsection, but without limiting the generality of that power, the regulations may provide—

- (a) different rates for insurance in respect of different classes of goods;
- 10 (b) different rates in respect of different parts of the State;
- (c) rates on a sliding scale;
- (d) rates according to or upon any specified principle or criterion.

15 (2) The power conferred by subsection one of this section shall be deemed to be validly exercised by a regulation that prescribes any such rates as are referred to in that subsection by reference to a list, scale or table of insurance rates referred to in the regulations and issued by a body or association that the Governor considers to be representative 20 of insurance companies carrying on business of the class to which the list, scale or table relates.

(3) Where the total amount payable for goods the subject of a hire-purchase agreement includes an amount for insurance in respect of goods comprised in the hire-purchase 25 agreement that are goods of a class in respect of which rates of insurance are, at the time when the agreement is entered into, prescribed under this section and that amount exceeds the amount that would have been payable for insurance in respect of the goods so comprised had those goods been 30 insured in accordance with those rates—

- (a) the agreement is void; and
- (b) the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of 35 competent jurisdiction as a debt due to him by the owner.

24. The provisions of this Part have effect notwithstanding ^{Application} anything contained in any other Act. ^{of this} ^{Part.}

PART

Hire-Purchase.

PART VI.

LIMITATION ON TERMS CHARGES.

25. (1) This section applies to every hire-purchase agreement other than a hire-purchase agreement that—
- 5 (a) provides that the instalments necessary to pay the difference between the total amount payable and the deposit are to be made over a period exceeding one year and also provides that those instalments are to be made less than nine times in any period of
10 twelve months that forms part of the period first-mentioned in this paragraph; or
- (b) provides that the instalments necessary to pay the difference between the total amount payable and the
15 deposit are to be made only over a period of one year or less and also provides that those instalments are to be made less than nine times during that period.
- (2) A hire-purchase agreement to which this section applies shall provide that the instalments necessary under the
20 agreement to pay the difference between the total amount payable and the deposit shall—
- (a) be made at regular weekly, fortnightly or monthly intervals and at no other intervals; and
- (b) be of equal or approximately equal amounts.
- 25 Where an instalment differs from any other instalment by a sum in excess of one pound, the instalments shall, for the purposes of this subsection, be taken to be not of approximately equal amounts.
- (3) Where a hire-purchase agreement to which this
30 section applies is entered into in contravention of subsection two of this section, the liability of the hirer shall be reduced by the amount included in the agreement for terms charges. That amount may be set off by the hirer against the amount that would otherwise be due or become due under the agreement
35 and, to the extent to which it is not so set off, may be recovered by the hirer from the owner as a debt in any court of competent jurisdiction.

Certain hire-purchase agreements to have regular payments of equal amount.

Hire-Purchase.

26. (1) The terms charges in relation to a hire-purchase agreement to which section twenty-five of this Act applies shall not, when calculated as a rate per centum per annum in accordance with the formula set out in this subsection, exceed 5 a rate per annum of—

Limitation
on terms
charges.

- 10 (a) where the goods comprised in the agreement, not being second-hand goods at the time when the agreement is entered into, are any one or more of the following only, namely, industrial machinery, farm equipment or a motor vehicle (other than a motor cycle)—seven per centum;
- 15 (b) where the goods comprised in the agreement, being second-hand goods at the time when the agreement is entered into, are any one or more of the following only, namely, industrial machinery, farm equipment or a motor vehicle (other than a motor cycle)—nine per centum;
- (c) where the goods comprised in the agreement are a motor cycle—nine per centum;
- 20 (d) where the goods comprised in the agreement are goods that are not of any of the descriptions in respect of which a rate is fixed by or under paragraph (a) or (b) or (c) of this subsection—ten per centum;
- 25 (e) where the goods comprised in the agreement include goods of the description or of any one or more of the descriptions referred to in one of the above paragraphs of this subsection and also goods of the description or of any one or more of the descriptions referred to in one or more of the other such paragraphs—the lower or lowest, as the case may be, of the amounts per centum prescribed by the above paragraphs in respect of a description of goods so comprised.
- 30

The

Hire-Purchase.

The rate referred to in the foregoing provisions of this subsection shall be calculated in accordance with the following formula :—

$$R = \frac{100 \times C}{T \times P}$$

where

- R represents the terms charges calculated as a rate per centum per annum.
- C represents the amount of terms charges expressed in pounds and fractions of pounds.
- T represents the time that elapses between the time fixed by or under the agreement for the making of the first instalment and the time so fixed for the making of the last instalment, together with—
- (i) one week where the instalments are payable under the agreement at regular weekly intervals;
 - (ii) two weeks where the instalments are payable under the agreement at regular fortnightly intervals;
 - (iii) one month where the instalments are payable under the agreement at regular monthly intervals,
- expressed in years and fractions of years.
- P represents the difference between the cash price of the goods comprised in the agreement and the amount of the deposit, together with—
- (i) freight, if any; and
 - (ii) vehicle registration fees, if any; and
 - (iii) where the owner is not bound by the provisions of the Stamp Duties Act, 1920, as amended by subsequent Acts, and the total amount payable includes an amount representing the whole or any part of the stamp duty chargeable on the agreement under that Act, the last-mentioned amount; and
 - (iv) insurance, if any,
- expressed in pounds and fractions of pounds.

Hire-Purchase.

(2) (a) A hire-purchase agreement to which section twenty-five of this Act does not apply shall contain, immediately above the place provided for the signature of the hirer or his agent or the place at which the hirer or his agent signs the agreement, a statement in writing as follows :—

The terms charges under this agreement are not controlled by the Hire-Purchase Act, 1960.

(b) Without prejudice to the generality of section forty-nine of this Act, "writing" in this subsection includes such printing only as is in capital letters.

(3) (a) Where a hire-purchase agreement to which section twenty-five of this Act applies is entered into in contravention of subsection one of this section, the hirer may, by notice in writing to the owner signed by the hirer or the hirer's agent, elect either to treat the agreement as void or to have his liability reduced by the amount included in the agreement for terms charges.

Such an election is final and irrevocable.

(b) Where the hirer so elects to treat the hire-purchase agreement as void, the agreement shall be void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

(c) Where the hirer so elects to have his liability reduced by the amount included in the agreement for terms charges, his liability shall be reduced by that amount and that amount may be set off by the hirer against the amount that would otherwise be due under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer as a debt in any court of competent jurisdiction.

(4) A hire-purchase agreement to which section twenty-five of this Act does not apply and that is entered into in contravention of subsection two of this section, is void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

(5)

Hire-Purchase.

(5) The expression "matter" in paragraph (o) of subsection one of section thirty-five of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, includes the question whether there should be an alteration of the rates per centum per annum prescribed by subsection one of this section.

PART VII.

MINIMUM DEPOSITS.

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

(2) In this Part, "loan" includes advance, discount, money paid for or on account of or on behalf of or at the request of any person, and includes every contract (whatever its terms or form may be) that is in substance or effect a loan of money, and "lend" and "lending" have corresponding interpretations.

28. An owner who enters into a hire-purchase agreement without having first obtained from the proposed hirer thereunder a deposit in cash or in goods, or partly in cash and partly in goods, to a value equal to at least—

(a) where the minimum amount of the deposit is not prescribed under paragraph (b) of this section—one-tenth of the cash price of the goods comprised in the agreement; or

(b) where the minimum amount of the deposit is prescribed under this paragraph—such amount as may for the time being be prescribed,

is guilty of an offence against this Act.

29.

Hire-Purchase.

29. (1) No deposit—

(a) to the extent that it is in cash and that it is made out of moneys borrowed directly or indirectly—

- 5 (i) from or through the owner (if the owner is not a banker);
- (ii) from or through the dealer; or
- 10 (iii) from or through any person whose business or part of whose business it is, by agreement with the owner or dealer or any person acting on behalf of the owner or dealer, to advance money to enable deposits to be paid in respect of hire-purchase agreements with the owner;

Certain payments, &c., not to be treated as deposits for the purposes of this Part.

15 (b) to the extent that, where the deposit is in goods or partly in goods and the amount allowed in respect of the goods is substantially greater than the value of the goods, that amount exceeds that value;

20 (c) to the extent that it is made out of an amount allowed or credited in respect of, or by reference to, amounts paid by the hirer as rent or hire under a bailment of the goods before the making of a hire-purchase agreement in respect of the goods; or

25 (d) to the extent that it is provided by goods that were, to the knowledge of the owner or dealer, acquired by the hirer for the purpose of being used by the hirer to provide the deposit under the agreement,

shall be taken into account for the purpose of determining whether the provisions of section twenty-eight of this Act have been complied with.

30 (2) The provisions of this Part shall be deemed to have been complied with by the owner if a deposit in accordance with the provisions of this Part has been obtained by the dealer.

(3)

Hire-Purchase.

(3) Where a dealer buys goods from a proposed hirer and the price, or part of the price, of the goods is applied as or towards a deposit under a hire-purchase agreement, then in relation to the agreement—

- 5 (a) the goods shall, for the purposes of this Act, be deemed to have been obtained by the dealer as a deposit; and
- (b) the price, or the part of the price, as the case may be, so applied shall, for the purposes of this Act, be
- 10 deemed to be the amount allowed by the dealer in respect of the goods.

(4) The dealer shall, in relation to the deposit obtained by him under a proposed hire-purchase agreement, certify in writing—

- 15 (a) where the deposit was paid or provided solely in cash, that the deposit was paid or provided solely in cash;
- (b) where the deposit was provided solely in goods—
- 20 the nature and description of, and the amount allowed by the dealer in respect of, the goods;
- (c) where the deposit was paid or provided partly in cash and partly in goods—the amount of the deposit that was paid or provided in cash and the nature and description of, and the amount allowed by
- 25 the dealer in respect of, the goods.

(5) A dealer who under subsection four of this section certifies as the amount allowed by him in respect of goods an amount that is not a reasonable estimate of the value of the goods or gives a certificate that is false in any

30 other material particular shall be guilty of an offence against this Act.

(6) Notwithstanding anything contained in this Part, where an owner in entering into a hire-purchase agreement acts on the faith of a certificate given under subsection four

35 of this section by the dealer and the amount certified in the certificate

Hire-Purchase.

certificate as being the amount allowed in respect of the goods whose nature and description are certified therein is substantially greater than the value of those goods the agreement has the same effect as if the amount so certified were the value
5 of those goods.

Nothing in this subsection affects the liability of any person to be convicted of an offence against this section.

(7) Any person who knowingly enters into, or procures, arranges, or otherwise assists or participates in, a
10 transaction contravening this section is guilty of an offence against this Act.

30. (1) Where a hire-purchase agreement is entered into in contravention of section twenty-eight of this Act, the hirer may, by notice in writing to the owner signed by the hirer or
15 the hirer's agent, elect either to treat the agreement as void or to have his liability reduced by the amount included in the agreement for terms charges.

Effect of non-compliance with s. 28.

Such an election is final and irrevocable.

(2) Where the hirer so elects to treat the hire-
20 purchase agreement as void, the agreement shall be void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

(3) Where the hirer so elects to have his liability
25 reduced by the amount included in the agreement for terms charges, his liability shall be reduced by that amount and that amount may be set off by the hirer against the amount that would otherwise be due under the agreement and, to the
30 extent to which it is not so set off, may be recovered by the hirer as a debt in any court of competent jurisdiction.

(4) Nothing in this section affects the liability of any person to be convicted of an offence against section twenty-eight of this Act.

Hire-Purchase.

31. (1) Any person, other than a banker, who (whether
 or not he carries on any other business) carries on the business
 of lending or making loans to other persons for the purposes
 of enabling those other persons to pay the deposits required
 5 by or under section twenty-eight of this Act is guilty of an
 offence against this Act.

Offences.
 Offence to
 carry on
 business of
 lending
 deposits.

(2) Any person who accepts as a deposit under a
 hire-purchase agreement any money or other consideration
 that he has reasonable cause to believe or suspect was lent
 10 to the hirer by any person, other than a banker, who carries
 on the business referred to in subsection one of this section
 is guilty of an offence against this Act.

Deposits
 not to be
 by way of
 loan.

PART VIII.

MISCELLANEOUS.

15 32. (1) In any proceedings under this Act, or arising
 out of a hire-purchase agreement, or instituted pursuant to
 subsection four of this section, where it appears to the court
 that the transaction is harsh and unconscionable or is other-
 wise such that a court of equity would give relief the court
 20 may re-open the transaction and take an account between the
 parties thereto.

Power to
 court to
 re-open
 certain
 hire-
 purchase
 transactions.

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

- (a) re-open any account already taken between the
 parties;
- (b) relieve the hirer and any guarantor from payment
 of any sum in excess of such sum in respect of the
 cash price, terms charges, and other charges as the
 30 court adjudges to be fairly and reasonably payable;
- (c)

Hire-Purchase.

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

(3) Where it appears to the court that any person other than the owner has shared in the profits of or has any beneficial interest prospectively or otherwise in the transaction that the court holds to be harsh and unconscionable the
15 court may add that person as a party to the case and may give judgment against that person for such amount as it thinks fit or for the delivery of the goods if they are in his possession and the court may make such other order in respect of that person as it thinks fit.

20 (4) Proceedings may be instituted in any court by the hirer or any guarantor under a hire-purchase agreement for the purpose of obtaining relief under this section.

(5) In any proceedings under this section the court has and may exercise all or any of the powers conferred
25 by subsections one, two and three of this section notwithstanding that the time for the payment of any of the amounts payable under the agreement may not have arrived.

(6) A hirer or guarantor under a hire-purchase agreement is not entitled to institute proceedings under this
30 section—

- (a) in a case where the owner has taken possession of the goods comprised in the agreement—after the expiration of a period of four months after the date on which the owner serves on the hirer the notice required by subsection three of section thirteen of
35 this Act to be served on him; or

(b)

Hire-Purchase.

(b) in any other case—after the expiration of a period of four months from the time when the transaction is closed.

33. (1) Where—

5 (a) goods consisting of a harvester, binder, tractor, plough or other agricultural implement or a motor truck are comprised in a hire-purchase agreement; and

Power of court to restrain re-possession of certain goods from farmer.

(b) the hirer is a farmer,

10 the period fixed by any notice of intention to take possession of the goods served under subsection one of section thirteen of this Act shall, notwithstanding the period specified in that subsection, be a period of not less than thirty days after the service of the notice.

15 (2) The farmer may, within the period fixed by the notice, apply to a court of petty sessions for an order restraining the owner from taking possession of the goods.

20 (3) If the court is satisfied that, within twelve months from the date of the application, the farmer will have a reasonable prospect of being able to pay all instalments due and owing on that date, the court may make an order restraining the owner from taking possession of the goods for such period not exceeding twelve months as the court fixes.

25 (4) An order under subsection three of this section may include such terms and conditions, including conditions as to payment of instalments, as the court thinks fit.

30 (5) In this section, "farmer" means any person engaged in agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, or any other business consisting of the cultivation of soil, the gathering in of crops or the rearing of livestock.

34. (1) Subject to subsection two of this 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 hirer, 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 hirer. (2)

Liens.

Hire-Purchase.

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

5 **35.** (1) Goods comprised in a hire-purchase agreement Fixtures. that, at the time of the making of the agreement, were not fixtures to land shall not, in respect of the period during which the agreement remains in force, be treated as fixtures to land.

10 (2) Notwithstanding anything contained in subsection one of this section, the owner is not entitled to re-possess goods that have been affixed to a dwelling-house or residence if, after the goods have become so affixed, any person other than the hirer has bona fide acquired for valuable considera-
15 tion an interest in the land without notice of the rights of the owner of the goods.

36. (1) Any provision in any agreement or other Avoidance of certain provisions. document whereby—

20 (a) any right conferred on the hirer by this Act to determine a hire-purchase agreement is excluded or restricted;

(b) any liability beyond the liability imposed by this Act is imposed on the hirer under a hire-purchase agreement by reason of the determination of the hire-
25 purchase agreement in accordance with this Act;

(c) the hirer under a hire-purchase agreement is subject to any greater liability on the determination, in any manner whatsoever, of the hire-purchase agreement or of the bailment thereunder, than the liability to which he would be subject if the hire-purchase
30 agreement were determined in accordance with this Act;

(d) the hirer under a hire-purchase agreement is required to pay any sum (whether or not it is described in the agreement as interest) in respect of any amount
35 due under the hire-purchase agreement but not paid exceeding

Hire-Purchase.

exceeding a sum equal to the simple interest on that amount calculated at the rate of eight per centum per annum on a daily basis for the period for which it is due and not paid;

- 5 (e) any person acting on behalf of the owner under a hire-purchase agreement in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement is to be treated as, or declared to be, the agent of the hirer;
- 10 (f) the owner under a hire-purchase agreement is relieved from liability for the acts or defaults of any person acting in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement;
- 15 (g) the owner under a hire-purchase agreement or any person acting on his behalf is authorised to enter upon any premises for the purpose of taking possession of goods comprised in the hire-purchase agreement or is relieved from liability for any such
- 20 entry;
- (h) the operation of a hire-purchase agreement is determined or modified or any person is authorised to re-possess any goods comprised in a hire-purchase agreement if the hirer becomes bankrupt or commits
- 25 an act of bankruptcy or executes a deed of assignment or a deed of arrangement (whether all or any of those events are named); or
- (i) except as expressly provided by this Act the operation of any provision of this Act is excluded,
- 30 modified, or restricted,

is void.

(2) Where any agreement or other document contains a provision that is void under subsection one of this section, the owner under the hire-purchase agreement concerned is

35 guilty of an offence against this Act. **37.**

Hire-Purchase.

37. If in connection with any goods any person (in this section referred to as the "dealer") arranges that some other person (in this section referred to as the "financier") shall—

Restrictions on payments to owners of goods by financiers.

- 5 (a) enter into a hire-purchase agreement in relation to those goods with a hirer;
- (b) accept any assignment of the dealer's property in those goods comprised in a hire-purchase agreement, or of the dealer's rights under a hire-purchase agreement in relation to those goods; or
- 10 (c) advance or pay money to the dealer or to some person on his behalf in respect of a hire-purchase agreement in relation to those goods,

the dealer shall not seek, accept, demand, or receive from the financier and the financier shall not pay, offer, or grant
 15 to the dealer, directly or indirectly, any money or other valuable consideration that, together with the money (if any) paid or payable by or on behalf of the hirer to the dealer and the value of any other consideration (if any) furnished or to be furnished by or on behalf of the hirer
 20 to the dealer would exceed the cash price of the goods: Provided that where the dealer has entered into a contract guaranteeing the performance of the hire-purchase agreement by the hirer, a commission not exceeding one-tenth of the total terms charges payable under the hire-purchase agreement
 25 may be paid by the financier to the dealer.

38. Any person (in this section referred to as the "owner") who knowingly—

Certain transactions prohibited.

- 30 (a) enters into an agreement for the bailment of goods to any person (in this section referred to as the "hirer"), which agreement does not by itself constitute a hire-purchase agreement; or
- (b) takes from any person (in this section referred to as the "hirer") an offer in writing that, if accepted, will constitute an agreement for the bailment of
 35 goods but will not by itself constitute a hire-purchase agreement,

in

Hire-Purchase.

in association, directly or indirectly, with the making, by the hirer to the owner or to any person associated, directly or indirectly, in business with the owner, of an offer in writing to purchase the goods the subject of the agreement referred to in paragraph (a) or of the offer referred to in paragraph (b) of this section on terms and conditions that, if the offer in writing to purchase the goods is accepted, will constitute a hire-purchase agreement is guilty of an offence against this Act.

10 **39.** Where—

Provisions relating to securities collateral to hire-purchase agreements.

(a) a bill of exchange or promissory note has been given by a hirer or guarantor under a hire-purchase agreement to the owner in respect of an amount payable under the agreement; and

15 (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 Act or otherwise, result in payment of an amount in excess of the liability of the hirer under the agreement,

20 the owner is liable to indemnify the hirer or guarantor, as the case may be, in respect of the amount of the excess.

40. Where—

False statement by dealers, &c., in proposals.

25 (a) a dealer or a person acting on behalf of a dealer prepares or causes to be prepared a hire-purchase agreement or offer in writing that, if accepted, will constitute a hire-purchase agreement with the intention of bringing about a contractual relationship between an owner and a hirer; and

30 (b) the agreement or offer contains to the knowledge of the dealer or the person acting on behalf of a dealer, as the case may be, a false statement or representation that is false in any material particular,

the dealer or the person acting on behalf of a dealer is guilty of an offence against this Act and liable to a penalty not exceeding two hundred pounds or to imprisonment for a term not exceeding three months.

41.

Hire-Purchase.

41. The owner of any goods comprised in a hire-purchase agreement may, at any time by notice in writing served on the hirer thereof, require him to state in writing where the goods are, or, if the goods are not in his possession, to whom he delivered the goods or the circumstances under which he lost possession of them, and any hirer who does not within fourteen days after the receipt of such a notice give to the owner such a statement or who gives a statement containing any information that is to the knowledge of the hirer false is guilty of an offence against this Act.

Hirer may be required to state where goods are.

42. Every person who, by the disposal or sale of any goods comprised in a hire-purchase agreement, or by the removal of the goods, or by any other means defrauds or attempts to defraud the owner is guilty of an offence against this Act and liable to a penalty not exceeding two hundred pounds or to imprisonment for a period not exceeding three months.

Fraudulent sale or disposal of goods by hirer.

43. Where a hire-purchase agreement is in writing signed by or on behalf of the hirer, any alteration of, or matter added to, the written document that contains the terms and conditions of the agreement after the document was so signed, if the alteration is an alteration of any of the matters required to be specified, contained, or set out in the agreement by paragraphs (c), (d) and (e) of subsection two of section three of this Act or the additional matter is a matter required to be so specified, contained, or set out or affects any matter required to be so specified, contained, or set out, has no force or effect unless the hirer or the agent (not being a person in the employ of the owner or acting on behalf of the owner in connection with the formation or conclusion of the agreement) of the hirer has consented to the alteration or additional matter by signing or initialling the agreement in the margin thereof opposite the alteration or additional matter.

Certain alterations, &c., of hire-purchase agreements to be of no effect.

Hire-Purchase.

44. Where goods comprised in a hire-purchase agreement are, at the time when the agreement is entered into, second-hand goods, then unless—

- 5 (a) the goods are described in the agreement as second-hand goods; or
- (b) in any proceedings taken by the owner to enforce the agreement, the court is satisfied that—
- 10 (i) the hirer was aware at the time when he or his agent signed the agreement that goods comprised or to be comprised therein were second-hand goods; or
- (ii) the owner was not aware at the time when the agreement was entered into that goods comprised therein were second-hand goods,

15 the liability of the hirer thereunder shall be reduced by the amount included in the agreement for terms charges. That amount may be set off by the hirer against the amount that would otherwise be due or become due to the owner under the agreement and, to the extent to which it is not so set off,

20 may be recovered by the hirer from the owner as a debt in any court of competent jurisdiction.

45. (1) A hire-purchase agreement that relates to household furniture or effects used or intended to be used by the hirer in his home and that is made with a hirer who is married is not enforceable unless—

- 25 (a) (i) the agreement contains a statement in writing signed by the spouse of the hirer signifying the consent of the spouse to the agreement; and
- 30 (ii) the statement is so signed by the spouse at or before the time when the agreement was entered into; or
- (b) the hirer, at or before the time when the agreement was entered into, produced and delivered to the owner an authority, signed by the spouse of the hirer, to pledge the credit of the hirer and the spouse
- 35 or of either of them up to a limit, not exceeding thirty pounds, specified in the authority, and the total amount payable for the goods comprised in the agreement,

Regulation of hire-purchase agreements with married persons.

Hire-Purchase.

- agreement, together with all other moneys owing or payable by the hirer and the spouse or either of them to the owner, does not exceed the limit so specified; or
- 5 (c) the hirer, at or before the time when the agreement was entered into, produced and delivered to the owner a statutory declaration made by the hirer to the effect that the spouse of the hirer was under such a legal incapacity as to render the spouse unable to
- 10 sign a statement as required by paragraph (a) of this subsection.
- (2) Subsection one of this section does not apply if—
- (a) the owner had reasonable grounds for believing and did in fact believe, at the time the hire-purchase
- 15 agreement was entered into, that—
- (i) the hirer was living separate and apart from the spouse of the hirer; or
- (ii) the spouse of the hirer was outside New South Wales; or
- 20 (b) at or before the time when the hire-purchase agreement was entered into, the hirer produced and delivered to the owner—
- (i) where the residence of the hirer is situated
- 25 more than five miles from the nearest telegraph office and the agreement was made at the residence, an instrument in writing signed by the hirer; or
- (ii) in any other case, a statutory declaration
- 30 stating that he was not married at the time of the delivery of the instrument or statutory declaration, as the case may be, to the owner, unless the owner had reasonable grounds for believing that the statement was false.
- 35 A hirer who makes a false statement in such an instrument is guilty of an offence against this Act and liable to a penalty not exceeding fifty pounds. (3)

Hire-Purchase.

(3) (a) This subsection applies to and in respect of a hire-purchase agreement of the nature referred to in subsection one of this section where the total amount payable for the goods comprised in the agreement does not exceed 5 ten pounds.

(b) Where the owner, under a hire-purchase agreement to which this subsection applies, serves (by personal delivery) on the spouse of the hirer, within seven days after the making of the agreement, a notice in writing 10 that the agreement has been made, and the spouse of the hirer does not, within seven days after service of the notice, serve on the owner a notice in writing that he objects to the making of the agreement, the agreement is not, by reason only of subsection one of this section, unenforceable.

15 (c) Where the spouse of the hirer serves such a notice of objection the hire-purchase agreement ceases to be binding on the parties thereto; and thereupon the owner shall refund all moneys paid and the value of any consideration provided by the hirer and shall be entitled to recover posses- 20 sion of the goods comprised in the agreement.

(4) If an owner to whom such an authority or statutory declaration or instrument as is referred to in this section has been delivered fails to preserve it until the expiration of twelve months after the transaction in respect of which 25 it was given is finally closed, he is guilty of an offence against this Act.

46. Any time prescribed by this Act for the service or giving of any notice or other document or for the commencement of proceedings may, on an application made to a court 30 of petty sessions (either before or after the expiration of that time but after notice to the other party to the hire-purchase agreement) be extended by that court for such further period, and upon such conditions, as the court thinks fit.

Power to
court to
extend
times.

Hire-Purchase.

47. (1) Upon complaint made by an owner who is entitled to take possession of any goods comprised in a hire-purchase agreement or by any person acting on behalf of an owner that the hirer or any person acting on behalf of the
 5 hirer has refused or failed to deliver up possession of the goods on the service of a notice of demand made by the owner or by an agent of the owner authorised in that behalf, any justice of the peace may summon the person complained of to appear before a court of petty sessions and if it appears to
 10 the court hearing the case that the goods are being detained without just cause, the court may order the goods to be delivered up to the owner at or before a time, and at a place, to be specified in the order.

Power to
 court to
 order
 delivery of
 goods
 unlawfully
 detained.

(2) Any person who neglects or refuses to comply
 15 with any order made under this section is guilty of an offence against this Act.

48. (1) Any notice or document required or authorised to be served on or given or sent to an owner or hirer under this Act may be so served or given or sent—
 20 (a) by delivering it to him personally ;
 (b) by leaving it at his place of abode or business with some other person apparently an inmate thereof or employed thereat and apparently of or over the age of sixteen years ; or
 25 (c) by posting it, by registered post or by certified mail service, addressed to him at his last known place of abode or business.

Service
 of notices.

(2) Any notice or document required to be served on a hirer under section four of this Act may also be served by
 30 posting it by ordinary post addressed to him at his last known place of abode or business.

(3) Where by any provision of this Act the doing of any act or thing by a person is prohibited unless a notice or document has first been served on or given to another person
 35 or unless a specified time has elapsed since the service or giving of a notice or document on or to another person, a court of petty sessions may in its discretion, upon application made to it by or on behalf of the first-mentioned person, if it
 is

Hire-Purchase.

is satisfied that that other person is evading the service or giving of the notice or document or that, for any other reason, the service or giving of the notice or document has not been and cannot promptly be effected, order that the service or giving of the notice or document be dispensed with (whether or not the time for the service or giving of the notice or document has expired) and, thereupon, the first-mentioned person may, notwithstanding anything elsewhere contained in this Act but subject to the observance of the terms and conditions, if any, included in the order, do that act or thing without serving or giving the notice or document in question or, as the case may be, although the notice or document in question has not been served or given and the specified time has not elapsed.

15 An order under this subsection may include such terms and conditions as the court thinks fit.

(4) The affidavit or oral evidence of an owner or his servant or agent as to the delivery, leaving, or posting of any notice or document required or authorised to be served, given, or sent by this Act is admissible as prima facie evidence of the due service, giving, or sending of the notice or document if the deponent swears to the facts necessary to prove due service, giving, or sending either from his own knowledge or to his information and belief based on and verified by the records of the owner.

49. (1) Any prescribed document or part thereof—

- (a) not being the signature or initials of any person, that is in handwriting that is not clear and legible; or
- (b) that is printed in type of a size smaller than the type known as ten-point Times,

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

shall, for the purposes of this Act, be deemed not to be in writing.

(2) In this section, "prescribed document" means—

- (a) any hire-purchase agreement;
- (b) any statement under subsection one of section three of this Act;

(c)

Hire-Purchase.

- (c) any copy of an agreement, notice, or statement required by section four of this Act to be served on a hirer ;
- 5 (d) any statement required by subsection one of section seven of this Act to be sent to a hirer ;
- (e) any notice under subsection one or subsection three of section thirteen of this Act ; and
- 10 (f) any statement required by subsection two of section twenty-six of this Act to be contained in a hire-purchase agreement.

(3) Where, by virtue of this section, a prescribed document or part of a prescribed document is, for the purposes of this Act, deemed not to be in writing, then, except as is otherwise in this Act expressly provided, the validity or effect
15 of the prescribed document is not affected.

Nothing in this subsection affects the liability of any person to be convicted of an offence against this Act.

50. (1) Any person who contravenes or fails to comply with any provision of this Act is guilty of an offence against
20 this Act. Penalty.

(2) Any person who is guilty of an offence against this Act for which no other penalty is expressly provided by this Act is liable to a penalty not exceeding two hundred pounds.

25 51. Proceedings for offences against this Act shall be disposed of summarily before a court of petty sessions. Proceedings for offences.

52. Any prosecution for an offence against this Act may be commenced at any time within one year after the com-
mission of the offence. Time for commencement of prosecution.

30 53. (1) The Credit-sale Agreements Act, 1957-1959, is amended by inserting in the definition of "Credit-sale agree-
ment" in subsection one of section two after the word "Acts" the words " , where the agreement was entered into before the
commencement of the Hire-Purchase Act, 1960, or is a hire-
35 purchase agreement as defined in section two of the Hire-
Purchase Act, 1960, where the agreement is entered into after
that commencement". Amendment of Act No. 29, 1957. Sec. 2. (Interpretation.)

(2)

Hire-Purchase.

(2) The Police Offences Act, 1901, as amended by subsequent Acts, is amended by omitting subsection six of section thirty-two and by inserting in lieu thereof the following subsection :—

Amendment
of Act No.
5, 1901.
Sec. 32.

5 (6) This section does not extend to proceedings by the owner under a hire-purchase agreement, or any person acting on his behalf, for the recovery of possession of goods comprised in the agreement.

(Order for
the delivery
to the owner
of goods
unlawfully
detained.)

10 (3) (a) The Credit-sale Agreements Act, 1957, as amended by the Banking (Interpretation of References) Act, 1959, and by this Act, may be cited as the Credit-sale Agreements Act, 1957-1960.

15 (b) The Police Offences Act, 1901, as amended by subsequent Acts and by this Act, may be cited as the Police Offences Act, 1901-1960.

20 **54.** (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act. Regulations.

25 (2) The amount referred to in paragraph (b) of section twenty-eight of this Act may be at such rate or rates or calculated on such basis or bases (whether by reference to the cash price of the goods comprised in the hire-purchase agreement concerned or otherwise) as may be specified in the regulations, and the rates or bases so specified may vary according to different amounts of cash price, different durations of hire-purchase agreements, different classes of goods or otherwise.

30 (3) The regulations shall—
 (a) be published in the Gazette;
 (b) take effect from the date of publication or from a later date to be specified in the regulations; and
 35 (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session. If

Hire-Purchase.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before the House disallowing any regulation or part thereof, the regulation or part thereupon ceases to have effect.

FIRST SCHEDULE.

Sec. 3 (1).

Hire-Purchase Act, 1960.

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

- 10 *
- The cash price of goods is £.....
- (a) The terms charges are £.....
and represent a rate per centum per annum not exceeding †
- (a) Other charges are—
- 15 (a) For insurance for years .. £.....
(a) For freight, vehicle registration, &c. .. £..... £.....
- The total amount you will have to pay (including deposit
of £.....) is £.....
- 20 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 law to be applicable to the proposed agreement will be the law of
§

NOTE.—The sequence of any item or items in the group of items marked
25 “(a)” may be altered in relation to any other item or items in that group,
but the sequence of that group must not be altered in relation to the items
not marked “(a)”.

* Insert short description of goods.

30 † Insert, where the proposed agreement is an agreement to which
s. 25 of the Act applies, a rate per centum per annum not less than
the rate per centum per annum obtained by calculating the terms
charges in accordance with the formula set out in s. 26 (1).

‡ Insert number, amount, and intervals of instalments.

35 § Insert the name of the State, Territory or country the law
of which is to be applicable to the proposed agreement.

SECOND SCHEDULE.

Sec. 4.

Hire-Purchase Act, 1960.

ADVICE TO HIRERS.

- Under the provisions of the Hire-Purchase Act, 1960—
- 40 (a) you are entitled to a copy of the agreement and a statement of
the amount that you owe if you make a written request to the
owner for them. You may not request a copy or a statement
more than once in three months;
- (b)

Hire-Purchase.

- (b) with the written consent of the owner you can assign your rights under the hire-purchase agreement and he may not unreasonably refuse his consent. For details of the procedure of assignment see Hire-Purchase Act, 1960, section 9;
- 5 (c) you have the right to complete the agreement at any time and if you do you will be entitled to a rebate of some of the charges payable under the agreement. For details see Hire-Purchase Act, 1960, section 11;
- 10 (d) if you are unable to pay your instalments you are entitled to return the goods to the owner at your own expense, but if you do you will be liable to pay an amount sufficient to cover the loss suffered by the owner. For details of the amount that you will have to pay see Hire-Purchase Act, 1960, section 12.

THIRD SCHEDULE.

Sec. 13 (1).

15 Hire-Purchase Act, 1960.

NOTICE OF INTENTION TO RE-POSSESS.

TAKE NOTICE THAT
 the owner of *
 hired by you under an agreement dated the day
 20 of 19 intends to retake possession of the
 goods after the expiration of † days from the service of this
 notice unless the arrears of instalments which now amount to £
 are paid to at on or
 before 19.....

25	Total amount payable	£.....
	Amount paid or provided by hirer to / / 19.....	£.....
	Arrears under agreement to / / 19.....	£.....

* Insert description of goods.

30 † Insert number of days, not being less than twenty-one, or, where the hirer is a farmer and s. 33 of the Act applies, not being less than thirty.

FOURTH SCHEDULE.

Secs. 11 (3),
13 (3), 14,
15.

Hire-Purchase Act, 1960.

ADVICE TO HIRERS.

35 Now that the goods you hired have been re-possessed you will be entitled to get them back—

- (a) if, within twenty-one days, you require the owner, by notice in writing signed by you or your agent, to re-deliver the goods to you and if, within fourteen days after giving the notice, you reinstate

Hire-Purchase.

reinstatement the agreement by paying the arrears and remedy the following breaches of the agreement (or pay the owner's expenses in remedying them):

5 The owner's estimate of the amount you must pay to reinstate the agreement is:—

	Arrears of instalments	£.....
	Cost of storage, repair or maintenance	£.....
	Cost of re-possession	£.....
	Cost of re-delivery	£.....
10	Total	£.....

or

(b) if, within twenty-one days, you give notice of your intention to finalise the agreement and pay the balance due under the agreement and costs of the re-possession:

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

	Total amount payable under the agreement	£.....
	Less deposit and instalments paid	£.....
	Balance due under agreement	£.....
20	Less statutory rebates	£.....
	Add costs of re-possession	£.....
	Storage, repair or maintenance	£.....
	Total	£.....

25 *If you don't reinstate or finalise the agreement you will be liable for the owner's loss unless the value of the goods re-possessed 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 value of the goods re-possessed is £ ..

30 * On the basis of that estimate you are entitled to a refund of £ ..
liable to pay the owner £ ..

NOTE.—You may give a written notice to the owner requiring the owner to sell the goods to any cash buyer you can introduce who is willing to pay the owner's estimate of the value, i.e.†

35 * Strike out whichever inapplicable.

† Insert owner's estimate of value.

DO NOT DELAY.

40 Action to enforce your rights should be taken at once. You will lose your rights *twenty-one days* after the service or posting of this notice if you do not take action.

If you think you have any rights under the Hire-Purchase Act, 1960, you should seek advice at once.

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

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

As guarantor you have certain rights under the Hire-Purchase Act, 1960, and you should seek advice at once.

No. , 1960.

A BILL

Relating to the form and content of hire-purchase agreements; to regulate the rights and duties of parties to hire-purchase agreements; to repeal the Hire-purchase Agreements Act, 1941, and certain other enactments; to amend the Credit-sale Agreements Act, 1957, the Police Offences Act, 1901, and certain other Acts; and for purposes connected therewith.

[MR. MANNIX;—29 March, 1960.]

Hire-Purchase.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Hire-Purchase Act, Short title. 1960."

10 (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. Commence-
ment.

(3) This Act is divided into Parts as follows :— Division
into Parts.

PART I.—PRELIMINARY—ss. 1, 2.

15 PART II.—FORMATION AND CONTENTS OF HIRE-PURCHASE AGREEMENTS—ss. 3, 4.

PART III.—PROTECTION OF HIRERS—ss. 5–17.

Division 1.—Warranties and conditions—ss. 5, 6.

Division 2.—Statutory rights of hirers—ss. 7–10.

20 *Division 3.—Early completion of agreements—s. 11.*

Division 4.—Voluntary return of goods—s. 12.

Division 5.—Repossessions—ss. 13–17.

PART IV.—GUARANTEES—ss. 18, 19.

PART V.—INSURANCE—ss. 20–24.

25 PART VI.—LIMITATION ON TERMS CHARGES—ss. 25, 26.

PART VII.—MINIMUM DEPOSITS—ss. 27–31.

PART VIII.—MISCELLANEOUS—ss. 32–54.

(4) (a) The Hire-purchase Agreements Act, 1941, the Hire-purchase Agreements (Amendment) Act, 1955, the Hire-purchase Agreements (Amendment) Act, 1957, sections thirteen and fourteen of the Economic Stability and War-time Provisions Continuance Act, 1946, and section three of the Banking (Interpretation of References) Act, 1959, are repealed.

(b)

Hire-Purchase.

(b) Notwithstanding the repeal of the enactments mentioned in subsection one of this section but subject to paragraph (c) of this subsection, those enactments continue to apply to and in relation to—

- 5 (i) hire-purchase agreements entered into before the commencement of this Act; and
- (ii) agreements entered into before or after that commencement in relation to hire-purchase agreements entered into before that commencement.

10 (c) Section twenty of the Hire-purchase Agreements Act, 1941-1959, continues so to apply for the following purposes only, namely, for the purposes of—

- 15 (a) proceedings under that section that were commenced before the commencement of this Act and in which an order had been made under subsection two of that section before that commencement; and
- (b) proceedings under that section in relation to an order so made.

(5) (a) This Act applies to and in relation to—

- 20 (i) hire-purchase agreements entered into after the commencement of this Act; and
- (ii) agreements entered into before or after that commencement in relation to hire-purchase agreements to be entered into, or entered into, after that commencement.

Application of Act.

25 (b) Section forty-seven of this Act applies to and in relation to hire-purchase agreements entered into before the commencement of this Act as well as to and in relation to hire-purchase agreements entered into after that commencement.

30 2. (1) In this Act, unless inconsistent with the context or subject-matter—

Interpretation.

35 “Banker” means a body corporate for the time being authorised to carry on banking business under a law of this or another State or of the Commonwealth of Australia.
“Cash”

Hire-Purchase.

“Cash” includes a cheque drawn on a banker.

“Court of petty sessions” means a court of petty sessions held before a stipendiary magistrate sitting alone.

5 “Dealer” means a person, not being the hirer or the owner or a servant of the owner, by whom or on whose behalf negotiations leading to the making of a hire-purchase agreement with the owner were carried out or by whom or on whose behalf the transaction leading to a hire-purchase agreement
10 with the owner was arranged.

“Goods” includes all chattels personal other than money or things in action.

15 “Guarantor” means a person who has guaranteed the performance by a hirer of all or any of his obligations under a hire-purchase agreement but does not include the dealer or 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.

20 “Hire-purchase agreement” includes a letting of goods with an option to purchase and 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 any agreement—

25 (a) whereby the property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods; or

30 (b) under which the person by whom the goods are being hired or purchased 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.

35 “Hirer” means the person to whom goods are let, hired, or agreed to be sold under a hire-purchase agreement and includes a person to whom the hirer’s rights or liabilities under the agreement have passed by assignment or by operation of law.

“Owner”

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5 “Owner” means the person letting, hiring, or agreeing to sell goods under a hire-purchase agreement and includes a person to whom the owner’s property in the goods or any of the owner’s rights or liabilities under the agreement have passed by assignment or by operation of law.

10 “Period of the agreement”, in relation to a hire-purchase agreement, means the period between the commencement of the hiring under the agreement and the time provided by the agreement for the payment of the last instalment.

“Prescribed” means prescribed by this Act or by the regulations.

“Regulations” means regulations made under this Act.

15 “Schedule” means Schedule to this Act.

“Statutory rebate”—

(a) in relation to terms charges—

20 (i) means the amount derived by multiplying the terms charges by the sum of all the whole numbers from one to the number which is the number of complete months in the period of the agreement still to go (both inclusive) and by dividing the product so
25 obtained by the sum of all the whole numbers from one to the number which is the total number of complete months in the period of the agreement (both inclusive); or

30 (ii) where it is agreed in a hire-purchase agreement that the terms charges have been calculated on a simple interest basis at a rate specified in the agreement on the amount outstanding from month to month means the amount of
35 interest attributable to the period of complete months still to go under the agreement; and

(b)

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(b) in relation to insurance, means the sum of—

- (i) the total amount of premium paid in respect of any annual period not yet commenced; and
- 5 (ii) ninety per centum of the proportion of the amount of the premium for insurance in respect of the current annual period attributable to the unexpired portion of that period consisting of whole months.

10
“Third party insurance” means any insurance in relation to liability in respect of death or bodily injury caused by or arising out of the use of a motor vehicle being insurance required by the law of the place where the vehicle is registered or is being registered, as the case requires.

15
“Total amount payable” means the total amount to be paid or provided whether by way of cash or other consideration by or on behalf of the hirer under a hire-purchase agreement.

20
“Vehicle registration fees” means any amount to be provided under a hire-purchase agreement by the owner for payment by or on behalf of the hirer under the law of this State or of any other State or Territory of the Commonwealth of Australia in connection with the registration and use of a motor vehicle, including any amount payable for third party insurance.

25
(2) (a) Subject to paragraph (b) of this subsection, in this Act “cash price”, “freight”, “terms charges”, and “the balance originally payable under the agreement” have the meanings assigned to them in subsection two of section three of this Act.

35 (b) In this Act “terms charges” and “the balance originally payable under the agreement” have, in relation to a hire-purchase agreement of the kind referred to in subsection six of section three of this Act, the meanings assigned to them in subsection two, as modified by subsection six, of that section. (3)

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(3) In this Act, other than sections twenty and twenty-three, "insurance" has the meaning assigned to it in subsection two of section three of this Act.

(4) Any reference in this Act to taking possession by
5 the owner of goods comprised in a hire-purchase agreement includes—

(a) the taking of possession of goods by the owner pursuant to an order of any court; and

10 (b) the return of goods to the owner after notice has been served on the hirer pursuant to the provisions of subsection one of section thirteen of this Act,

but does not include a reference to taking possession by the owner as a result of the voluntary return of the goods by the hirer.

15 (5) 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 Act, be treated
20 as a single hire-purchase agreement made at the time when the last agreement was made.

PART II.

FORMATION AND CONTENTS OF HIRE-PURCHASE AGREEMENTS.

25 3. (1) Before any hire-purchase agreement is entered into in respect of any goods the owner or, if there is a dealer, the dealer shall give or cause to be given to the prospective hirer a statement in writing duly completed in accordance with the form in the First Schedule :

Summary of proposed hire-purchase transaction to be given to prospective hirer.

30 Provided that where the agreement is entered into by way of acceptance by the owner of a written offer signed by or on behalf of the hirer, the provisions of this subsection shall be deemed

Hire-Purchase.

deemed not to have been complied with unless the written statement was given to the prospective hirer before the written offer was so signed.

- (2) Every hire-purchase agreement—
- 5 (a) shall be in writing;
- (b) shall be signed by or on behalf of the hirer and all other parties to the agreement;
- (c) shall—
- 10 (i) specify a date on which the hiring shall be deemed to have commenced;
- (ii) specify the number of instalments to be paid under the agreement by the hirer;
- 15 (iii) specify the amounts of each of those instalments and the person to whom and the place at which the payments of those instalments are to be made;
- (iv) specify the time for the payment of each of those instalments; and
- 20 (v) contain a description of the goods sufficient to identify them;
- (d) where any part of the consideration is or is to be provided otherwise than in cash, shall contain a description of that part of the consideration; and
- (e) shall set out in a tabular form—
- 25 (i) the price at which at the time of signing the agreement the hirer might have purchased the goods for cash (in this Act called and in the agreement to be described as “cash price”);
- (ii)

Form and contents of hire-purchase agreements.

Hire-Purchase.

- 5 (ii) the amount paid or provided by way of deposit (in this Act called and in the agreement to be described as "deposit") showing separately the amount paid in cash and the amount provided by a consideration other than cash;
- 10 (iii) any amount included in the total amount payable to cover the expenses of delivering the goods or any of them to or to the order of the hirer (in this Act called and in the agreement to be described as "freight");
- 15 (iv) any amount included in the total amount payable to cover vehicle registration fees in respect of the goods (in the agreement to be called "vehicle registration fees");
- 20 (v) any amount included in the total amount payable for insurance (other than third party insurance) in respect of the goods that are goods of any one or more of the following descriptions, namely, industrial machinery, farm equipment or motor vehicle, or a television set or prescribed goods (in this Act called and in the agreement to be described as "insurance");
- 25 (vi) the total of the amounts referred to in subparagraphs (i), (iii), (iv) and (v) of this paragraph less the deposit;
- 30 (vii) the amount of any other charges included in the total amount payable (in this Act called and in the agreement to be described as "terms charges");
- 35 (viii) the total of the amounts referred to in subparagraphs (vi) and (vii) of this paragraph (in this Act called "the balance originally payable under the agreement"); and
- (ix) the total amount payable.

Hire-Purchase.

(3) An owner who enters into a hire-purchase agreement that does not comply with subsection two of this section is guilty of an offence against this Act.

(4) Where a provision of this section has not been
5 complied with in relation to a hire-purchase agreement (not being a failure to comply with paragraph (a) of subsection two of this section), the liability of the hirer shall be reduced by the amount included in the agreement for terms charges. That amount may be set off by the hirer against the amount
10 that would otherwise be due or become due to the owner under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer from the owner as a debt in any court of competent jurisdiction.

Nothing in this subsection affects the liability of any person
15 to be convicted of an offence against this section.

(5) A hire-purchase agreement that is not in writing is not enforceable by the owner.

(6) Where—

(a) the owner under a hire-purchase agreement is not
20 bound by the provisions of the Stamp Duties Act, 1920, as amended by subsequent Acts; and

(b) the total amount payable includes an amount (in
25 this subsection referred to as stamp duty) representing the whole or any part of the stamp duty chargeable on the agreement under that Act,

then in relation to such an agreement subparagraphs (vii) and (viii) of paragraph (e) of subsection two of this section are deemed to be omitted and the following subparagraphs inserted in lieu thereof:—

30 (vii) the amount of any other charges (other than stamp duty) included in the total amount payable (in this Act called and in the agreement to be described as “terms charges”);

35 (viii) the total of the amounts referred to in subparagraphs (vi) and (vii) of this paragraph together with stamp duty (in this Act called “the balance originally payable under the agreement”); and.

Hire-Purchase.

4. The owner shall serve or cause to be served on the hirer within twenty-one days after the making of a hire-purchase agreement—

Certain copy documents to be served on hirer.

- (a) a copy in writing of the agreement;
- 5 (b) a notice in writing in or to the effect of the Second Schedule, which notice may be endorsed on the copy of the agreement; and
- 10 (c) where any part of the total amount payable consists of an amount paid or to be paid under a policy of insurance (not being a policy of third party insurance) in respect of goods that are goods of any one or more of the following descriptions, namely, industrial machinery, farm equipment or motor vehicle, or a television set or prescribed goods, a
- 15 copy of the policy or a statement in writing setting out the terms, conditions, and exclusions of the policy that affect or concern the rights of the hirer,

but failure to comply with the provisions of this section does not avoid the agreement.

20 PART III.

PROTECTION OF HIRERS.

Division 1.—Warranties and conditions.

5. (1) In every hire-purchase agreement there shall be—
- 25 (a) an implied warranty that the hirer shall have and enjoy quiet possession of the goods;
- (b) an implied condition on the part of the owner that he will have a right to sell the goods at the time when the property is to pass;
- 30 (c) an implied warranty that the goods will be free from any charge or encumbrance in favour of any third party (other than a charge or encumbrance created by or with the consent of the hirer) at the time when the property is to pass.

Conditions and warranties to be implied in every hire-purchase agreement.

(2)

Hire-Purchase.

(2) In every hire-purchase agreement there shall be an implied condition that the goods shall be of merchantable quality but such a condition shall not be implied—

- 5 (a) as regards defects of which the owner could not reasonably have been aware, or, if there is a dealer, neither the owner nor the dealer could reasonably have been aware, at the time the agreement was made; or
- 10 (b) where the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed; or
- (c) if the goods are second-hand goods and the agreement contains a statement to the effect that—
 - 15 (i) the goods are second-hand; and
 - (ii) all conditions and warranties as to quality are expressly negated,

and the owner proves that the hirer has acknowledged in writing that that statement was brought to his notice.

20 (3) Where the hirer expressly or by implication makes known to the owner or to the dealer or to any servant or agent of the owner or the dealer the particular purpose for which the goods are required, there shall be implied in the hire-purchase agreement a condition that the goods shall be
25 reasonably fit for that purpose but such a condition shall not be implied if the goods are second-hand goods and the agreement contains a statement to the effect—

- (a) that the goods are second-hand; and
- 30 (b) that all conditions and warranties of fitness and suitability are expressly negated,

and the owner proves that the hirer has acknowledged in writing that that statement was brought to his notice.

(4)

Hire-Purchase.

(4) Without prejudice to any other rights or remedies to which an owner may be entitled, where the hirer has made known expressly or by implication to the dealer or to any servant or agent of the dealer the particular purpose for which the goods are required, an owner is entitled to be indemnified by the dealer against any damage suffered by the owner through the operation of the provisions of subsection three of this section.

(5) Nothing in this section prejudices in any way any other enactment or rule of law whereby any condition of warranty is to be implied in any hire-purchase agreement.

6. (1) Every representation, warranty, or statement made to the hirer or prospective hirer, whether orally or in writing, by the owner or dealer or any person acting on behalf of the owner or dealer in connection with or in the course of negotiations leading to the entering into of a hire-purchase agreement shall confer on the hirer—

As to the liability of the owner and the dealer for misrepresentation.

(a) as against the owner—the same right to rescind the agreement as the hirer would have had if the representation, warranty, or statement had been made by an agent of the owner; and

(b) as against the person who made the representation, warranty, or statement, and any person on whose behalf the person who made the representation, warranty, or statement was acting in making it—the same right of action in damages as the hirer would have had against them or either of them if the hirer had purchased the goods from the person who made the representation, warranty, or statement or the person on whose behalf the person who made the representation, warranty, or statement was acting (as the case requires) as a result of the negotiations.

(2) Every covenant, condition, or term in any hire-purchase agreement or other document purporting to exclude, limit, or modify the operation of this section or to preclude any right of action or any defence based on or arising out of any such representation, warranty, or statement is void.

(3)

Hire-Purchase.

(3) Without prejudice to any other rights or remedies to which an owner may be entitled, an owner is entitled to be indemnified by the person who made the representation, warranty, or statement, and by any person on whose behalf the representation, warranty, or statement was made against any damage suffered by the owner through the operation of the foregoing provisions of this section.

Division 2.—Statutory rights of hirers.

7. (1) At any time before the final payment has been made under a hire-purchase agreement the owner shall, within fourteen days after he has received a request in writing from the hirer, send to the hirer a copy of the agreement, together with a statement in writing signed by the owner or his agent showing—

Hirer to be entitled to copy of agreement and statement of his present position.

- 15 (a) the amount paid to the owner by or on behalf of the hirer ;
- (b) the amount that has become due under the agreement but remains unpaid; and
- 20 (c) the amount that is to become payable under the agreement,

but an owner need not comply with such a request if he has sent the hirer a copy of the agreement and a statement under this subsection within the period of three months immediately preceding the receipt of the request.

25 (2) If an owner contravenes subsection one of this section by failing to comply with a request made pursuant to that subsection he is guilty of an offence against this Act and liable to a penalty not exceeding fifty pounds and, until the default is remedied—

- 30 (a) the owner is not entitled to enforce—
- (i) the agreement against the hirer ;
- (ii) any right to recover the goods from the hirer ; or
- 35 (iii) any contract of guarantee relating to the agreement; and

(b)

Hire-Purchase.

(b) any security given by the hirer in respect of money payable under the agreement or given by a guarantor is not enforceable against the hirer or the guarantor by any holder thereof.

5 8. A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner is entitled, on making any payment in respect of the agreements that is not sufficient to discharge the total amount then due under all the agreements, to require the owner to appropriate
10 the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and, if he fails to make such an appropriation, the payment shall by
15 virtue of this section be appropriated in or towards the satisfaction of the sums due under the respective agreements in the order in which the agreements were entered into.

As to appropriation of payments when more than one agreement.

9. (1) The right, title, and interest of a hirer under a hire-purchase agreement may be assigned with the consent of the
20 owner or, if his consent is unreasonably withheld, without his consent.

As to assignments of rights under hire-purchase agreements.

(2) Except as otherwise provided in this section, no payment or other consideration shall be required by an owner for his consent to such an assignment as is mentioned in sub-
25 section one of this section, and where an owner requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld.

(3) Where, at the request of a hirer under a hire-purchase agreement, the owner fails or refuses to give his
30 consent to an assignment by the hirer of his right, title, and interest under the agreement, the hirer may apply to a court of petty sessions for an order declaring that the consent of the owner to that assignment has unreasonably been withheld, and where such an order is made that consent shall be deemed
35 to be unreasonably withheld.

(4)

Hire-Purchase.

(4) As a condition of granting consent to an assignment of the right, title, and interest of the hirer under a hire-purchase agreement, the owner may stipulate that all defaults under the agreement shall be made good and may require the hirer and
5 assignee—

(a) to execute and deliver to the owner an assignment agreement in a form approved by the owner whereby without prejudicing or affecting the continuing personal liability of the hirer in those respects the
10 assignee agrees with the owner to be personally liable to pay the instalments remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the
15 assignee indemnifies the hirer in respect of those liabilities; and

(b) to pay the reasonable costs (if any) incurred by the owner in stamping or registering the assignment agreement or counterparts.

20 (5) The right, title, and interest of a hirer under a hire-purchase agreement is capable of passing by operation of law to the personal representative of the hirer and if the hirer is a company the liquidator may exercise the same rights under the agreement as the company, but nothing in this subsection
25 relieves a personal representative or liquidator from compliance with the provisions of the agreement.

30 **10.** Where, by virtue of a hire-purchase agreement, it is the duty of a hirer to keep the goods comprised in the agreement in his possession or control at a particular place or not to remove the goods from a particular place, a court of petty sessions may, on the application of the hirer, make an order approving the removal of the goods to some other place, which place shall thereafter, for the purposes of the agreement, be substituted for the first-mentioned place.

Power to court to allow goods to be removed.

Division

Hire-Purchase.

Division 3.—Early completion of agreements.

11. (1) The hirer under a hire-purchase agreement may, if he has given notice in writing to the owner of his intention to do so, on or before the day specified for that purpose in the notice, complete the purchase of the goods by paying or tendering to the owner the net balance due to the owner under the agreement.

Hirer
entitled to
finalise
agreement
at any
time.

(2) For the purposes of this section the net balance due is the balance originally payable under the agreement less any amounts (other than the deposit) paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, and less—

- (a) the statutory rebate for terms charges; and
- (b) if the hirer requires any contract for insurance to be cancelled, the statutory rebate for insurance.

(3) The rights conferred on the hirer by this section may be exercised by him—

- (a) at any time during the continuance of the agreement; or
- (b) where the owner has taken possession of the goods, on paying or tendering to the owner (before or within twenty-one days after the owner has served a notice in the form of the Fourth Schedule on the hirer) in addition to the net balance due—
 - (i) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods; and
 - (ii) any amount properly expended by the owner on the storage, repair, or maintenance of the goods.

Hire-Purchase.

Division 4.—Voluntary return of goods.

12. (1) The hirer of any goods comprised in a hire-
purchase agreement may terminate the hiring by returning
the goods to the owner during ordinary business hours at a
5 place at which the owner ordinarily carries on business or
to the place specified for that purpose in the agreement and
such a return of the goods terminates the hiring.

Power to
hirer to
determine
hiring.

(2) Where the nature of the goods comprised in a hire-
purchase agreement is, or the facilities available at the place
10 or places of business of the owner or at the place specified in
the agreement are, such that it would be impracticable to
return the goods to such a place, the hirer may terminate the
hiring by returning the goods—

15 (a) to any place agreed to by the parties to the
agreement; or

(b) if the parties fail to agree, to a place that is reason-
able, having regard to all the circumstances
surrounding the transaction.

(3) A hirer who proposes to return goods to the
20 owner under this section may apply to a court of petty sessions
for an order fixing the place to which the goods may be
returned under paragraph (b) of subsection two of this
section.

(4) The court may, in any order made pursuant to
25 this section, order that, subject to the goods being returned to
the owner, the hiring shall be determined on such date as is
specified in the order, not being a date before the hirer
required the owner to nominate a reasonable place for the
return of the goods.

30 (5) Notice of any application under this section shall
be given to the owner by the hirer.

(6)

Hire-Purchase.

(6) Where a hire-purchase agreement is determined pursuant to this section the owner is entitled to recover from the hirer—

- 5 (a) the amount (if any) required to be paid in those circumstances under the agreement; or
- (b) the amount (if any) that the owner would have been entitled to recover if he had taken possession of the goods at the date of termination of the hiring, whichever is the less.

10 *Division 5.—Repossessions.*

13. (1) Subject to this section, an owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments until he has served
15 on the hirer a notice, in writing, in the form of the Third Schedule and the period fixed by the notice (being not less than twenty-one days after the service of the notice) has expired.

Notices to be given to hirer when goods re-possessed.

20 (2) An owner need not comply with subsection one of this section if there are reasonable grounds for believing that the goods comprised in the hire-purchase agreement will be removed or concealed by the hirer contrary to the provisions of the agreement, but the onus of proving the existence of those grounds lies upon the owner.

25 (3) Within twenty-one days after the owner has taken possession of goods that were comprised in a hire-purchase agreement he shall serve on the hirer and every guarantor of the hirer a notice, in writing, in the form of the Fourth Schedule.

30 (4) Where the owner takes possession of goods that were comprised in a hire-purchase agreement he shall—

- 35 (a) if the hirer is present at the time when the owner takes possession of the goods, at that time deliver or cause to be delivered to the hirer personally a document acknowledging receipt of the goods;
- (b)

Hire-Purchase.

(b) if the hirer is not present at the time when the owner takes possession of the goods, forthwith after taking possession of the goods send to the hirer a document acknowledging receipt of the goods.

5 The document acknowledging receipt of the goods shall set out a short description of the goods and the date on which, the time at which, and the place where, the owner took possession of the goods.

10 (5) If the notice required by subsection three of this section is not served, the rights of the owner under the hire-purchase agreement thereupon cease and determine, but, if the hirer exercises his rights under this Act to recover the goods so taken possession of, the agreement has the same force and effect in relation to the rights and liabilities of the
15 owner and the hirer as it would have had if the notices had been duly given.

20 **14.** Where an owner has taken possession of any goods he shall not, without the consent of the hirer (which consent shall be in writing and shall be witnessed by some person other than the owner or the solicitor for or agent or employee of the owner), sell or dispose of the goods or part with possession thereof until after the expiration of twenty-one days after the date of the service on the hirer of the notice referred to in subsection three of section thirteen of this Act or, if notice
25 under subparagraph (i) of paragraph (a) of subsection one of section fifteen of this Act has been given, until the time for payment or tender pursuant to that notice has expired (which-ever is the later).

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

30 **15.** (1) Where the owner takes possession of any goods comprised in a hire-purchase agreement—

As to hirer's rights and immunities when goods re-possessed.

(a) the hirer may, before or within twenty-one days after the service on him of the notice referred to in subsection three of section thirteen of this Act, by giving to the owner a notice in writing signed by the hirer or his agent—

35 (i) require the owner to re-deliver to or to the order of the hirer (subject to compliance by the hirer with the provisions of section sixteen of this Act) the goods that have been
40 re-possessed; or (ii)

Hire-Purchase.

- 5 (ii) require the owner to sell the goods to any person introduced by the hirer who is prepared to buy the goods for cash at a price not less than the estimated value of the goods set out in the first-mentioned notice;
- (b) the hirer may recover from the owner—
- 10 (i) if the value of the goods at the time of the owner so taking possession thereof 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
- 15 amount payable; or
- (ii) if the value of the goods at the time of the owner so taking possession thereof is equal to or greater than the net amount payable—the total of that value and the amount paid or
- 20 provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, less the net amount payable;
- (c) the owner is not entitled to recover any sum (whether under a judgment or order or otherwise)
- 25 that would together with—
- (i) the value of the goods at the time of the owner so taking possession thereof; and
- (ii) the amount paid or provided, whether by cash or other consideration, by or on behalf
- 30 of the hirer under the agreement,
- amount to more than the net amount payable in respect of the goods.
- (2) For the purposes of this section—
- (a) the net amount payable is the total amount payable less the statutory rebates for terms charges and
- 35 insurance as at the time of the owner taking possession of the goods; and

(b)

Hire-Purchase.

- (b) the value of any goods at the time of the owner taking possession thereof is—
- (i) the best price that could be reasonably obtained by the owner at that time; or
 - 5 (ii) if the hirer has introduced a person who has bought the goods for cash, the amount paid by that person,
- less—
- 10 (iii) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods;
 - (iv) any amount properly expended by the owner on the storage, repair, or maintenance of the goods; and
 - 15 (v) (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.
- 20 (3) Where the owner has sold goods of which he has taken possession, 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 he took possession of the goods lies upon the owner.
- 25 (4) Except where the owner has failed to serve on the hirer a notice as required by subsection three of section thirteen of this Act, no amount is recoverable by the hirer under this section unless—
- (a) the hirer, within twenty-one days after the owner has served such a notice, gives to the owner notice in writing—
- 30 (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 of the owner taking possession thereof; and
 - 35 (ii) signed by the hirer or his solicitor or agent; and
- (b)

Hire-Purchase.

(b) proceedings for the recovery of the amount so claimed under the provisions of this section are commenced not earlier than seven days and, except where the goods have been sold at the request of the hirer to a person introduced by the hirer, not later than three months after the giving by the hirer to the owner of the notice referred to in paragraph (a) of this subsection.

(5) If, before the proceedings referred to in subsection four of this section are commenced by the hirer, the owner serves an offer in writing on the hirer to pay any 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 :

Provided that no such right shall be 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.

16. (1) If, within fourteen days after giving notice to the owner pursuant to the provisions of subparagraph (i) of paragraph (a) of subsection one of section fifteen of this Act, the hirer—

(a) pays or tenders to the owner any amount due by the hirer under the hire-purchase agreement in respect of the period of hiring up to the date of the payment or tender (and for the purposes of this paragraph the hiring shall be deemed to have continued up to that date) ;

(b) remedies any breach of the agreement or (where he is unable to remedy the breach by reason of the fact that the owner has taken possession of the goods) pays or tenders to the owner the costs and expenses reasonably and actually incurred by the owner in doing any act, matter, or thing necessary to remedy the breach ; and

Power to
hirer to
regain
possession
of goods
in certain
circum-
stances.

(c)

Hire-Purchase.

(c) pays or tenders to the owner the reasonable costs and expenses of the owner of and incidental to his taking possession of the goods and of his returning them to or to the order of the hirer,

5 the owner shall forthwith return the goods to the hirer and the goods shall be received and held by the hirer pursuant to the terms of the hire-purchase agreement as if the breach had not occurred and the owner had not taken possession thereof.

10 (2) Where goods are returned to the hirer pursuant to subsection one of this section and any breach of the hire-purchase agreement has not been remedied, the owner has no right arising out of the breach to take possession of the goods unless—

15 (a) by notice in writing given to the hirer at the time of the return of the goods he specifies the breach and requires it to be remedied; and

(b) the hirer fails within fourteen days or within the time specified in the notice (whichever is the longer) after receiving the notice to remedy the breach.

20 **17.** In any legal proceedings in relation to a hire-purchase agreement, after the owner has taken possession of the goods, the court before which the proceedings are brought may vary or discharge any judgment or order of any court against the hirer for the recovery of money so far as is necessary to give 25 effect to the provisions of section fifteen of this Act. Power to court to vary existing judgments or orders when goods are re-possessed.

PART IV.

GUARANTEES.

18. (1) Save as provided in this Act a guarantor is not, by reason of the operation of this Act, discharged from 30 liability under his guarantee. Provisions as to guarantors.

(2)

Hire-Purchase.

(2) The liability of a guarantor continues notwithstanding that the owner has, pursuant to the provisions of a hire-purchase agreement, taken possession of the goods comprised therein (and whether or not the goods have been re-delivered to or to the order of the hirer pursuant to this Act); but nothing in this subsection operates to preserve the liability of a guarantor where the owner and the hirer have entered into a new agreement in respect of the goods comprised in any hire-purchase agreement.

(3) No guarantor is liable to any further or other extent than the hirer, the performance of whose obligations he has guaranteed; but, subject to section nineteen of this Act, nothing in this Act affects any agreement by the guarantor binding him to the performance of any obligation that is not one of the obligations imposed on the hirer under the hire-purchase agreement in respect of which the guarantee is given.

(4) Where goods have been delivered to or to the order of the hirer pursuant to a hire-purchase agreement and the owner subsequently takes possession thereof, any guarantor who has paid any moneys to the owner in accordance with his guarantee has the like right in like manner to recover those moneys as he would have had if he had been the hirer of the goods, but for the purpose of calculating the amount received by the owner all moneys paid and the value of any other consideration provided by or on behalf of the hirer shall be deemed to have been paid or provided by the guarantor, but no moneys shall be recovered by the guarantor in excess of the moneys actually paid by him.

19. (1) Where a guarantor of the performance by a hirer of all or any of the hirer's obligations under a hire-purchase agreement enters into an agreement binding the guarantor—

(a) to pay to the owner under the hire-purchase agreement an aggregate sum that is larger than the balance originally payable under the hire-purchase agreement;

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

(c)

Guarantor not to be bound in certain cases unless independently advised.

Hire-Purchase.

- (c) to permit the owner under the hire-purchase agreement or any person acting on behalf of the owner to enter upon any premises for the purpose of taking possession of or inspecting goods subject to the hire-purchase agreement; or
- 5 (d) to relieve the owner under the hire-purchase agreement or any person acting on behalf of the owner from liability for any such entry,

the agreement so entered into by the guarantor is void
10 (and the owner under the hire-purchase agreement concerned is guilty of an offence against this Act) unless the agreement is executed by the guarantor in the presence of a chamber magistrate, a clerk of petty sessions or a solicitor instructed and employed independently of the owner and the magistrate,
15 clerk or solicitor, as the case may be, certifies in writing upon the agreement—

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

(2) A chamber magistrate, a clerk of petty sessions or a solicitor shall not give a certificate in respect of an agreement under subsection one of this section unless—

- (a) he has read over and explained the agreement to
25 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;
- 30 (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 a chamber magistrate, a clerk of petty
35 sessions or a solicitor to comply with subsection two of this section in respect of a certificate does not invalidate the certificate.

PART

Hire-Purchase.

PART V.

INSURANCE.

20. (1) An owner may require any goods comprised in a hire-purchase agreement to be insured in the names of the owner and the hirer against any risk that he thinks fit for the period of the agreement at the expense of the hirer.

As to insurance of goods comprised in hire-purchase agreements.

(2) An owner shall not require a hirer to insure any such risk with any particular insurer.

(3) An owner shall not refuse to enter into a hire-purchase agreement with a person who effects insurance of the goods for the period of the agreement against such risks and subject to such terms, conditions, and exceptions as are required by the owner in the names of the owner and the hirer with a reputable insurer if the owner has no other grounds upon which the owner could reasonably refuse to enter into the agreement.

(4) An owner shall not require a hirer to obtain insurance against risks or subject to terms, conditions, and exceptions that the owner does not require if he arranges the insurance.

(5) 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 hirer under the agreement is entitled to the benefit of the rebate and any person who knowingly pays or allows any such rebate to an owner is guilty of an offence against this Act.

Hirer to be entitled to insurance rebates.

21. (1) In any proceedings taken in any court in respect of any difference or dispute arising out of a contract of insurance if it appears to the court that a failure by the insured or the hirer under the hire-purchase agreement concerned to observe or perform a term or condition of the contract of insurance may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may, unless an order excusing the failure has already been made under subsection two of this section, order that the failure be excused.

Powers of court in relation to insurance contracts associated with hire-purchase agreements.

(2)

Hire-Purchase.

(2) Where a difference or dispute has arisen out of a contract of insurance, the insured or the hirer under the hire-purchase agreement concerned or any guarantor in respect of that agreement may, unless an order excusing the failure
5 concerned has already been made under subsection one of this section, apply to the court for an order that the failure to observe or perform a term or condition of the contract of insurance be excused; and if it appears to the court that the failure may reasonably be excused on the ground that the
10 insurer was not prejudiced by the failure, the court may order that the failure be excused.

(3) Where an order of the nature referred to in subsections one and two of this section has been made under either of those subsections, the rights and liabilities of all
15 persons in respect of the contract of insurance concerned shall be determined as if the failure the subject of the order had not occurred.

(4) The provisions of this section apply only to or in respect of a contract of insurance of goods (whether or
20 not the contract includes any other class of insurance) where the premium or other sum payable for the cover given by the contract of insurance, or any part of that premium or sum, was included as part of the total amount payable for the goods comprised in a hire-purchase agreement.

25 **22.** (1) Every copy of a policy of insurance (not being a policy of third party insurance), and every statement, served upon a hirer pursuant to section four of this Act shall— As to contents of contracts of insurance.

- (a) identify the goods or the part of the goods to be insured; and
- 30 (b) contain a statement of the amount and period for which the goods are insured or are to be insured; and
- (c) if the amount for which the goods are or are to be insured will vary during the period of the agreement, contain a statement showing the varying
35 amounts.

(2)

Hire-Purchase.

(2) Subject to subsection three of this section, any provision in any agreement or other document—

- (a) requiring differences or disputes arising out of a contract of insurance to be referred to arbitration;
- 5 (b) providing that no action or suit shall be maintainable upon such a contract or against the insurer in respect of any claim under, or difference or dispute arising out of, such a contract unless the claim, difference, or dispute has been referred to arbitration or an award pursuant to arbitration proceedings has
10 been first obtained;
- (c) providing that arbitration or an award pursuant to arbitration proceedings is a condition precedent to any right of action or suit upon such a contract; or
- 15 (d) otherwise imposing by reference to arbitration or to an award made in arbitration proceedings any limitation on the right of any person to bring or maintain any action or suit upon such a contract,

does not bind the hirer.

20 (3) An agreement made by the parties to a contract of insurance after a difference or dispute has arisen out of the contract of insurance to submit that difference or dispute to arbitration has effect as if subsection two of this section had not been enacted.

25 (4) The provisions of this section apply only to or in respect of a contract of insurance of goods (whether or not the contract includes any other class of insurance) where the premium or other sum payable for the cover given by the contract of insurance, or any part of that premium or sum,
30 was included as part of the total amount payable for the goods comprised in a hire-purchase agreement.

Hire-Purchase.

23. (1) The Governor may, for the purposes of subsection ^{Rates of} three of this section, make regulations prescribing rates for ^{insurance.} insurance in respect of any class or classes of goods.

In the exercise of the power conferred by the foregoing
5 provisions of this subsection, but without limiting the
generality of that power, the regulations may provide—

- (a) different rates for insurance in respect of different
classes of goods;
- 10 (b) different rates in respect of different parts of the
State;
- (c) rates on a sliding scale;
- (d) rates according to or upon any specified principle
or criterion.

(2) The power conferred by subsection one of this
15 section shall be deemed to be validly exercised by a regulation
that prescribes any such rates as are referred to in that
subsection by reference to a list, scale or table of insurance
rates referred to in the regulations and issued by a body or
association that the Governor considers to be representative
20 of insurance companies carrying on business of the class to
which the list, scale or table relates.

(3) Where the total amount payable for goods the
subject of a hire-purchase agreement includes an amount for
insurance in respect of goods comprised in the hire-purchase
25 agreement that are goods of a class in respect of which rates
of insurance are, at the time when the agreement is entered
into, prescribed under this section and that amount exceeds
the amount that would have been payable for insurance in
respect of the goods so comprised had those goods been
30 insured in accordance with those rates—

- (a) the agreement is void; and
- (b) the amount paid or provided, whether by cash or
other consideration, by or on behalf of the hirer
under the agreement is recoverable in any court of
35 competent jurisdiction as a debt due to him by the
owner.

24. The provisions of this Part have effect notwithstanding ^{Application} anything contained in any other Act. ^{of this}
^{Part.}

PART

Hire-Purchase.

PART VI.

LIMITATION ON TERMS CHARGES.

25. (1) This section applies to every hire-purchase agreement other than a hire-purchase agreement that—

Certain hire-purchase agreements to have regular payments of equal amount.

5 (a) provides that the instalments necessary to pay the difference between the total amount payable and the deposit are to be made over a period exceeding one year and also provides that those instalments are to be made less than nine times in any period of
10 twelve months that forms part of the period first-mentioned in this paragraph; or

(b) provides that the instalments necessary to pay the difference between the total amount payable and the deposit are to be made only over a period of one
15 year or less and also provides that those instalments are to be made less than nine times during that period.

(2) A hire-purchase agreement to which this section applies shall provide that the instalments necessary under the
20 agreement to pay the difference between the total amount payable and the deposit shall—

(a) be made at regular weekly, fortnightly or monthly intervals and at no other intervals; and

(b) be of equal or approximately equal amounts.

25 Where an instalment differs from any other instalment by a sum in excess of one pound, the instalments shall, for the purposes of this subsection, be taken to be not of approxi-
30 mately equal amounts.

(3) Where a hire-purchase agreement to which this
30 section applies is entered into in contravention of subsection two of this section, the liability of the hirer shall be reduced by the amount included in the agreement for terms charges. That amount may be set off by the hirer against the amount that would otherwise be due or become due under the agreement
35 and, to the extent to which it is not so set off, may be recovered by the hirer from the owner as a debt in any court of competent jurisdiction.

26.

Hire-Purchase.

26. (1) The terms charges in relation to a hire-purchase agreement to which section twenty-five of this Act applies shall not, when calculated as a rate per centum per annum in accordance with the formula set out in this subsection, exceed 5 a rate per annum of—

Limitation
on terms
charges.

- 10 (a) where the goods comprised in the agreement, not being second-hand goods at the time when the agreement is entered into, are any one or more of the following only, namely, industrial machinery, farm equipment or a motor vehicle (other than a motor cycle)—seven per centum;
- 15 (b) where the goods comprised in the agreement, being second-hand goods at the time when the agreement is entered into, are any one or more of the following only, namely, industrial machinery, farm equipment or a motor vehicle (other than a motor cycle)—nine per centum;
- 20 (c) where the goods comprised in the agreement are a motor cycle—nine per centum;
- 25 (d) where the goods comprised in the agreement are goods that are not of any of the descriptions in respect of which a rate is fixed by or under paragraph (a) or (b) or (c) of this subsection—ten per centum;
- 30 (e) where the goods comprised in the agreement include goods of the description or of any one or more of the descriptions referred to in one of the above paragraphs of this subsection and also goods of the description or of any one or more of the descriptions referred to in one or more of the other such paragraphs—the lower or lowest, as the case may be, of the amounts per centum prescribed by the above paragraphs in respect of a description of goods so comprised.

The

Hire-Purchase.

The rate referred to in the foregoing provisions of this subsection shall be calculated in accordance with the following formula :—

$$R = \frac{100 \times C}{T \times P}$$

where

R represents the terms charges calculated as a rate per centum per annum.

C represents the amount of terms charges expressed in pounds and fractions of pounds.

T represents the time that elapses between the time fixed by or under the agreement for the making of the first instalment and the time so fixed for the making of the last instalment, together with—

- (i) one week where the instalments are payable under the agreement at regular weekly intervals;
- (ii) two weeks where the instalments are payable under the agreement at regular fortnightly intervals;
- (iii) one month where the instalments are payable under the agreement at regular monthly intervals,

expressed in years and fractions of years.

P represents the difference between the cash price of the goods comprised in the agreement and the amount of the deposit, together with—

- (i) freight, if any; and
 - (ii) vehicle registration fees, if any; and
 - (iii) where the owner is not bound by the provisions of the Stamp Duties Act, 1920, as amended by subsequent Acts, and the total amount payable includes an amount representing the whole or any part of the stamp duty chargeable on the agreement under that Act, the last-mentioned amount; and
 - (iv) insurance, if any,
- expressed in pounds and fractions of pounds.

Hire-Purchase.

(2) (a) A hire-purchase agreement to which section twenty-five of this Act does not apply shall contain, immediately above the place provided for the signature of the hirer or his agent or the place at which the hirer or his agent signs
5 the agreement, a statement in writing as follows:—

The terms charges under this agreement are not controlled by the Hire-Purchase Act, 1960.

(b) Without prejudice to the generality of section forty-nine of this Act, "writing" in this subsection includes
10 such printing only as is in capital letters.

(3) (a) Where a hire-purchase agreement to which section twenty-five of this Act applies is entered into in contravention of subsection one of this section, the hirer may, by notice in writing to the owner signed by the hirer or the hirer's
15 agent, elect either to treat the agreement as void or to have his liability reduced by the amount included in the agreement for terms charges.

Such an election is final and irrevocable.

(b) Where the hirer so elects to treat the hire-
20 purchase agreement as void, the agreement shall be void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

(c) Where the hirer so elects to have his liability
25 reduced by the amount included in the agreement for terms charges, his liability shall be reduced by that amount and that amount may be set off by the hirer against the amount that would otherwise be due under the agreement and, to the
30 extent to which it is not so set off, may be recovered by the hirer as a debt in any court of competent jurisdiction.

(4) A hire-purchase agreement to which section twenty-five of this Act does not apply and that is entered into in contravention of subsection two of this section, is
35 void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

(5)

Hire-Purchase.

(5) The expression "matter" in paragraph (o) of subsection one of section thirty-five of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, includes the question whether there should be an alteration of the rates per centum per annum prescribed by subsection one of this section.

PART VII.**MINIMUM DEPOSITS.**

27. (1) In this Part "hire-purchase agreement" does not include any agreement or arrangement that is entered into solely for the purpose of giving effect to an assignment or transfer of the rights and liabilities under an existing hire-purchase agreement from the hirer to another person. <sup>Interpreta-
tion.</sup>

(2) In this Part, "loan" includes advance, discount, money paid for or on account of or on behalf of or at the request of any person, and includes every contract (whatever its terms or form may be) that is in substance or effect a loan of money, and "lend" and "lending" have corresponding interpretations.

28. An owner who enters into a hire-purchase agreement without having first obtained from the proposed hirer thereunder a deposit in cash or in goods, or partly in cash and partly in goods, to a value equal to at least— <sup>Minimum
deposits.</sup>

(a) where the minimum amount of the deposit is not prescribed under paragraph (b) of this section—one-tenth of the cash price of the goods comprised in the agreement; or

(b) where the minimum amount of the deposit is prescribed under this paragraph—such amount as may for the time being be prescribed,

is guilty of an offence against this Act.

29.

Hire-Purchase.

29. (1) No deposit—

- (a) to the extent that it is in cash and that it is made out of moneys borrowed directly or indirectly—
- 5 (i) from or through the owner (if the owner is not a banker);
- (ii) from or through the dealer; or
- 10 (iii) from or through any person whose business or part of whose business it is, by agreement with the owner or dealer or any person acting on behalf of the owner or dealer, to advance money to enable deposits to be paid in respect of hire-purchase agreements with the owner;
- 15 (b) to the extent that, where the deposit is in goods or partly in goods and the amount allowed in respect of the goods is substantially greater than the value of the goods, that amount exceeds that value;
- 20 (c) to the extent that it is made out of an amount allowed or credited in respect of, or by reference to, amounts paid by the hirer as rent or hire under a bailment of the goods before the making of a hire-purchase agreement in respect of the goods; or
- 25 (d) to the extent that it is provided by goods that were, to the knowledge of the owner or dealer, acquired by the hirer for the purpose of being used by the hirer to provide the deposit under the agreement,

Certain payments, &c., not to be treated as deposits for the purposes of this Part.

shall be taken into account for the purpose of determining whether the provisions of section twenty-eight of this Act have been complied with.

- 30 (2) The provisions of this Part shall be deemed to have been complied with by the owner if a deposit in accordance with the provisions of this Part has been obtained by the dealer.

(3)

Hire-Purchase.

(3) Where a dealer buys goods from a proposed hirer and the price, or part of the price, of the goods is applied as or towards a deposit under a hire-purchase agreement, then in relation to the agreement—

- 5 (a) the goods shall, for the purposes of this Act, be deemed to have been obtained by the dealer as a deposit; and
- (b) the price, or the part of the price, as the case may be, so applied shall, for the purposes of this Act, be
10 deemed to be the amount allowed by the dealer in respect of the goods.

(4) The dealer shall, in relation to the deposit obtained by him under a proposed hire-purchase agreement, certify in writing—

- 15 (a) where the deposit was paid or provided solely in cash, that the deposit was paid or provided solely in cash;
- (b) where the deposit was provided solely in goods—the nature and description of, and the amount
20 allowed by the dealer in respect of, the goods;
- (c) where the deposit was paid or provided partly in cash and partly in goods—the amount of the deposit that was paid or provided in cash and the nature and description of, and the amount allowed by
25 the dealer in respect of, the goods.

(5) A dealer who under subsection four of this section certifies as the amount allowed by him in respect of goods an amount that is not a reasonable estimate of the value of the goods or gives a certificate that is false in any
30 other material particular shall be guilty of an offence against this Act.

(6) Notwithstanding anything contained in this Part, where an owner in entering into a hire-purchase agreement acts on the faith of a certificate given under subsection four
35 of this section by the dealer and the amount certified in the certificate

Hire-Purchase.

certificate as being the amount allowed in respect of the goods whose nature and description are certified therein is substantially greater than the value of those goods the agreement has the same effect as if the amount so certified were the value
5 of those goods.

Nothing in this subsection affects the liability of any person to be convicted of an offence against this section.

(7) Any person who knowingly enters into, or procures, arranges, or otherwise assists or participates in, a
10 transaction contravening this section is guilty of an offence against this Act.

30. (1) Where a hire-purchase agreement is entered into in contravention of section twenty-eight of this Act, the hirer may, by notice in writing to the owner signed by the hirer or
15 the hirer's agent, elect either to treat the agreement as void or to have his liability reduced by the amount included in the agreement for terms charges.

Effect of non-compliance with s. 28.

Such an election is final and irrevocable.

(2) Where the hirer so elects to treat the hire-
20 purchase agreement as void, the agreement shall be void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

(3) Where the hirer so elects to have his liability
25 reduced by the amount included in the agreement for terms charges, his liability shall be reduced by that amount and that amount may be set off by the hirer against the amount that would otherwise be due under the agreement and, to the
30 extent to which it is not so set off, may be recovered by the hirer as a debt in any court of competent jurisdiction.

(4) Nothing in this section affects the liability of any person to be convicted of an offence against section twenty-eight of this Act.

31.

Hire-Purchase.

5 **31.** (1) Any person, other than a banker, who (whether or not he carries on any other business) carries on the business of lending or making loans to other persons for the purposes of enabling those other persons to pay the deposits required by or under section twenty-eight of this Act is guilty of an offence against this Act.

Offences.
Offence to
carry on
business of
lending
deposits.

10 (2) Any person who accepts as a deposit under a hire-purchase agreement any money or other consideration that he has reasonable cause to believe or suspect was lent to the hirer by any person, other than a banker, who carries on the business referred to in subsection one of this section is guilty of an offence against this Act.

Deposits
not to be
by way of
loan.

PART VIII.

MISCELLANEOUS.

15 **32.** (1) In any proceedings under this Act, or arising out of a hire-purchase agreement, or instituted pursuant to subsection four of this section, where it appears to the court that the transaction is harsh and unconscionable or is otherwise such that a court of equity would give relief the court may re-open the transaction and take an account between the parties thereto.

Power to
court to
re-open
certain
hire-
purchase
transactions.

25 (2) The court re-opening any transaction under this section 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 hirer and any guarantor from payment of any sum in excess of such sum in respect of the cash price, terms charges, and other charges as the court adjudges to be fairly and reasonably payable;
- 30 (c)

Hire-Purchase.

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

(3) Where it appears to the court that any person other than the owner has shared in the profits of or has any beneficial interest prospectively or otherwise in the transaction that the court holds to be harsh and unconscionable the
15 court may add that person as a party to the case and may give judgment against that person for such amount as it thinks fit or for the delivery of the goods if they are in his possession and the court may make such other order in respect of that person as it thinks fit.

20 (4) Proceedings may be instituted in any court by the hirer or any guarantor under a hire-purchase agreement for the purpose of obtaining relief under this section.

(5) In any proceedings under this section the court has and may exercise all or any of the powers conferred
25 by subsections one, two and three of this section notwithstanding that the time for the payment of any of the amounts payable under the agreement may not have arrived.

(6) A hirer or guarantor under a hire-purchase agreement is not entitled to institute proceedings under this
30 section—

- (a) in a case where the owner has taken possession of the goods comprised in the agreement—after the expiration of a period of four months after the date on which the owner serves on the hirer the notice required by subsection three of section thirteen of
35 this Act to be served on him; or

(b)

Hire-Purchase.

(b) in any other case—after the expiration of a period of four months from the time when the transaction is closed.

33. (1) Where—

5 (a) goods consisting of a harvester, binder, tractor, plough or other agricultural implement or a motor truck are comprised in a hire-purchase agreement; and

Power of court to restrain re-possession of certain goods from farmer.

(b) the hirer is a farmer,

10 the period fixed by any notice of intention to take possession of the goods served under subsection one of section thirteen of this Act shall, notwithstanding the period specified in that subsection, be a period of not less than thirty days after the service of the notice.

15 (2) The farmer may, within the period fixed by the notice, apply to a court of petty sessions for an order restraining the owner from taking possession of the goods.

(3) If the court is satisfied that, within twelve months from the date of the application, the farmer will have a 20 reasonable prospect of being able to pay all instalments due and owing on that date, the court may make an order restraining the owner from taking possession of the goods for such period not exceeding twelve months as the court fixes.

(4) An order under subsection three of this section 25 may include such terms and conditions, including conditions as to payment of instalments, as the court thinks fit.

(5) In this section, "farmer" means any person 30 engaged in agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, or any other business consisting of the cultivation of soil, the gathering in of crops or the rearing of livestock.

34. (1) Subject to subsection two of this section, where Liens. a worker does work upon goods comprised in a hire-purchase agreement in such circumstances that, if the goods were the 35 property of the hirer, 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 hirer. (2)

Hire-Purchase.

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

5 **35.** (1) Goods comprised in a hire-purchase agreement Fixtures. that, at the time of the making of the agreement, were not fixtures to land shall not, in respect of the period during which the agreement remains in force, be treated as fixtures to land.

10 (2) Notwithstanding anything contained in subsection one of this section, the owner is not entitled to re-possess goods that have been affixed to a dwelling-house or residence if, after the goods have become so affixed, any person other than the hirer has bona fide acquired for valuable considera-
15 tion an interest in the land without notice of the rights of the owner of the goods.

36. (1) Any provision in any agreement or other Avoidance of certain provisions. document whereby—

20 (a) any right conferred on the hirer by this Act to determine a hire-purchase agreement is excluded or restricted;

(b) any liability beyond the liability imposed by this Act is imposed on the hirer under a hire-purchase agreement by reason of the determination of the hire-purchase agreement in accordance with this Act;

25 (c) the hirer under a hire-purchase agreement is subject to any greater liability on the determination, in any manner whatsoever, of the hire-purchase agreement or of the bailment thereunder, than the liability to which he would be subject if the hire-purchase agreement were determined in accordance with this Act;

30 (d) the hirer under a hire-purchase agreement is required to pay any sum (whether or not it is described in the agreement as interest) in respect of any amount
35 due under the hire-purchase agreement but not paid exceeding

Hire-Purchase.

exceeding a sum equal to the simple interest on that amount calculated at the rate of eight per centum per annum on a daily basis for the period for which it is due and not paid;

- 5 (e) any person acting on behalf of the owner under a hire-purchase agreement in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement is to be treated as, or declared to be, the agent of the hirer ;
- 10 (f) the owner under a hire-purchase agreement is relieved from liability for the acts or defaults of any person acting in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement ;
- 15 (g) the owner under a hire-purchase agreement or any person acting on his behalf is authorised to enter upon any premises for the purpose of taking possession of goods comprised in the hire-purchase agreement or is relieved from liability for any such entry ;
- 20
- (h) the operation of a hire-purchase agreement is determined or modified or any person is authorised to re-possess any goods comprised in a hire-purchase agreement if the hirer becomes bankrupt or commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement (whether all or any of those events are named) ; or
- 25
- (i) except as expressly provided by this Act the operation of any provision of this Act is excluded, modified, or restricted,
- 30

is void.

(2) Where any agreement or other document contains a provision that is void under subsection one of this section, the owner under the hire-purchase agreement concerned is guilty of an offence against this Act. **37.**

Hire-Purchase.

37. If in connection with any goods any person (in this section referred to as the "dealer") arranges that some other person (in this section referred to as the "financier") shall—

Restrictions on payments to owners of goods by financiers.

- 5 (a) enter into a hire-purchase agreement in relation to those goods with a hirer;
- (b) accept any assignment of the dealer's property in those goods comprised in a hire-purchase agreement, or of the dealer's rights under a hire-purchase agreement in relation to those goods; or
- 10 (c) advance or pay money to the dealer or to some person on his behalf in respect of a hire-purchase agreement in relation to those goods,

the dealer shall not seek, accept, demand, or receive from the financier and the financier shall not pay, offer, or grant

15 to the dealer, directly or indirectly, any money or other valuable consideration that, together with the money (if any) paid or payable by or on behalf of the hirer to the dealer and the value of any other consideration (if any) furnished or to be furnished by or on behalf of the hirer

20 to the dealer would exceed the cash price of the goods: Provided that where the dealer has entered into a contract guaranteeing the performance of the hire-purchase agreement by the hirer, a commission not exceeding one-tenth of the total terms charges payable under the hire-purchase agreement

25 may be paid by the financier to the dealer.

38. Any person (in this section referred to as the "owner") who knowingly—

Certain transactions prohibited.

- 30 (a) enters into an agreement for the bailment of goods to any person (in this section referred to as the "hirer"), which agreement does not by itself constitute a hire-purchase agreement; or
- (b) takes from any person (in this section referred to as the "hirer") an offer in writing that, if accepted, will constitute an agreement for the bailment of
- 35 goods but will not by itself constitute a hire-purchase agreement,

in

Hire-Purchase.

in association, directly or indirectly, with the making, by the hirer to the owner or to any person associated, directly or indirectly, in business with the owner, of an offer in writing to purchase the goods the subject of the agreement referred to in paragraph (a) or of the offer referred to in paragraph (b) of this section on terms and conditions that, if the offer in writing to purchase the goods is accepted, will constitute a hire-purchase agreement is guilty of an offence against this Act.

10 **39.** Where—

(a) a bill of exchange or promissory note has been given by a hirer or guarantor under a hire-purchase agreement to the owner in respect of an amount payable under the agreement; and

Provisions relating to securities collateral to hire-purchase agreements.

15 (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 Act or otherwise, result in payment of an amount in excess of the liability of the hirer under the agreement,

20 the owner is liable to indemnify the hirer or guarantor, as the case may be, in respect of the amount of the excess.

40. Where—

25 (a) a dealer or a person acting on behalf of a dealer prepares or causes to be prepared a hire-purchase agreement or offer in writing that, if accepted, will constitute a hire-purchase agreement with the intention of bringing about a contractual relationship between an owner and a hirer; and

False statement by dealers, &c., in proposals.

30 (b) the agreement or offer contains to the knowledge of the dealer or the person acting on behalf of a dealer, as the case may be, a false statement or representation that is false in any material particular,

the dealer or the person acting on behalf of a dealer is guilty of an offence against this Act and liable to a penalty not exceeding two hundred pounds or to imprisonment for a term not exceeding three months.

41.

Hire-Purchase.

41. The owner of any goods comprised in a hire-purchase agreement may, at any time by notice in writing served on the hirer thereof, require him to state in writing where the goods are, or, if the goods are not in his possession, to whom he delivered the goods or the circumstances under which he lost possession of them, and any hirer who does not within fourteen days after the receipt of such a notice give to the owner such a statement or who gives a statement containing any information that is to the knowledge of the hirer false is guilty of an offence against this Act.

Hirer may be required to state where goods are.

42. Every person who, by the disposal or sale of any goods comprised in a hire-purchase agreement, or by the removal of the goods, or by any other means defrauds or attempts to defraud the owner is guilty of an offence against this Act and liable to a penalty not exceeding two hundred pounds or to imprisonment for a period not exceeding three months.

Fraudulent sale or disposal of goods by hirer.

43. Where a hire-purchase agreement is in writing signed by or on behalf of the hirer, any alteration of, or matter added to, the written document that contains the terms and conditions of the agreement after the document was so signed, if the alteration is an alteration of any of the matters required to be specified, contained, or set out in the agreement by paragraphs (c), (d) and (e) of subsection two of section three of this Act or the additional matter is a matter required to be so specified, contained, or set out or affects any matter required to be so specified, contained, or set out, has no force or effect unless the hirer or the agent (not being a person in the employ of the owner or acting on behalf of the owner in connection with the formation or conclusion of the agreement) of the hirer has consented to the alteration or additional matter by signing or initialling the agreement in the margin thereof opposite the alteration or additional matter.

Certain alterations, &c., of hire-purchase agreements to be of no effect.

44.

Hire-Purchase.

44. Where goods comprised in a hire-purchase agreement are, at the time when the agreement is entered into, second-hand goods, then unless—

- 5 (a) the goods are described in the agreement as second-hand goods; or
- (b) in any proceedings taken by the owner to enforce the agreement, the court is satisfied that—
- 10 (i) the hirer was aware at the time when he or his agent signed the agreement that goods comprised or to be comprised therein were second-hand goods; or
- (ii) the owner was not aware at the time when the agreement was entered into that goods

15 the liability of the hirer thereunder shall be reduced by the amount included in the agreement for terms charges. That amount may be set off by the hirer against the amount that would otherwise be due or become due to the owner under the agreement and, to the extent to which it is not so set off,

20 may be recovered by the hirer from the owner as a debt in any court of competent jurisdiction.

45. (1) A hire-purchase agreement that relates to household furniture or effects used or intended to be used by the hirer in his home and that is made with a hirer who is married is not enforceable unless—

- 25 (a) (i) the agreement contains a statement in writing signed by the spouse of the hirer signifying the consent of the spouse to the agreement; and
- 30 (ii) the statement is so signed by the spouse at or before the time when the agreement was entered into; or
- (b) the hirer, at or before the time when the agreement was entered into, produced and delivered to the owner an authority, signed by the spouse of the hirer, to pledge the credit of the hirer and the spouse or of either of them up to a limit, not exceeding
- 35 thirty pounds, specified in the authority, and the total amount payable for the goods comprised in the agreement.

Regulation of hire-purchase agreements with married persons.

Hire-Purchase.

agreement, together with all other moneys owing or payable by the hirer and the spouse or either of them to the owner, does not exceed the limit so specified; or

- 5 (c) the hirer, at or before the time when the agreement was entered into, produced and delivered to the owner a statutory declaration made by the hirer to the effect that the spouse of the hirer was under such a legal incapacity as to render the spouse unable to
10 sign a statement as required by paragraph (a) of this subsection.

(2) Subsection one of this section does not apply if—

- (a) the owner had reasonable grounds for believing and did in fact believe, at the time the hire-purchase
15 agreement was entered into, that—

(i) the hirer was living separate and apart from the spouse of the hirer; or

(ii) the spouse of the hirer was outside New South Wales; or

- 20 (b) at or before the time when the hire-purchase agreement was entered into, the hirer produced and delivered to the owner—

(i) where the residence of the hirer is situated more than five miles from the nearest
25 telegraph office and the agreement was made at the residence, an instrument in writing signed by the hirer; or

(ii) in any other case, a statutory declaration made by the hirer,

- 30 stating that he was not married at the time of the delivery of the instrument or statutory declaration, as the case may be, to the owner, unless the owner had reasonable grounds for believing that the statement was false.

- 35 A hirer who makes a false statement in such an instrument is guilty of an offence against this Act and liable to a penalty not exceeding fifty pounds. (3)

Hire-Purchase.

(3) (a) This subsection applies to and in respect of a hire-purchase agreement of the nature referred to in subsection one of this section where the total amount payable for the goods comprised in the agreement does not exceed 5 ten pounds.

(b) Where the owner, under a hire-purchase agreement to which this subsection applies, serves (by personal delivery) on the spouse of the hirer, within seven days after the making of the agreement, a notice in writing 10 that the agreement has been made, and the spouse of the hirer does not, within seven days after service of the notice, serve on the owner a notice in writing that he objects to the making of the agreement, the agreement is not, by reason only of subsection one of this section, unenforceable.

15 (c) Where the spouse of the hirer serves such a notice of objection the hire-purchase agreement ceases to be binding on the parties thereto; and thereupon the owner shall refund all moneys paid and the value of any consideration provided by the hirer and shall be entitled to recover posses- 20 sion of the goods comprised in the agreement.

(4) If an owner to whom such an authority or statutory declaration or instrument as is referred to in this section has been delivered fails to preserve it until the expiration of twelve months after the transaction in respect of which 25 it was given is finally closed, he is guilty of an offence against this Act.

46. Any time prescribed by this Act for the service or giving of any notice or other document or for the commencement of proceedings may, on an application made to a court 30 of petty sessions (either before or after the expiration of that time but after notice to the other party to the hire-purchase agreement) be extended by that court for such further period, and upon such conditions, as the court thinks fit.

Power to
court to
extend
times.

Hire-Purchase.

47. (1) Upon complaint made by an owner who is entitled to take possession of any goods comprised in a hire-purchase agreement or by any person acting on behalf of an owner that the hirer or any person acting on behalf of the
 5 hirer has refused or failed to deliver up possession of the goods on the service of a notice of demand made by the owner or by an agent of the owner authorised in that behalf, any justice of the peace may summon the person complained of to appear before a court of petty sessions and if it appears to
 10 the court hearing the case that the goods are being detained without just cause, the court may order the goods to be delivered up to the owner at or before a time, and at a place, to be specified in the order.

Power to court to order delivery of goods unlawfully detained.

(2) Any person who neglects or refuses to comply
 15 with any order made under this section is guilty of an offence against this Act.

48. (1) Any notice or document required or authorised to be served on or given or sent to an owner or hirer under this Act may be so served or given or sent—
 20 (a) by delivering it to him personally;
 (b) by leaving it at his place of abode or business with some other person apparently an inmate thereof or employed thereat and apparently of or over the age of sixteen years; or
 25 (c) by posting it, by registered post or by certified mail service, addressed to him at his last known place of abode or business.

Service of notices.

(2) Where by any provision of this Act the doing of any act or thing by a person is prohibited unless a notice or
 30 document has first been served on or given to another person or unless a specified time has elapsed since the service or giving of a notice or document on or to another person, a court of petty sessions may in its discretion, upon application made to it by or on behalf of the first-mentioned person, if it
 35 is satisfied that that other person is evading the service or giving of the notice or document or that, for any other reason, the service or giving of the notice or document has not been and cannot promptly be effected, order that the service or giving

Hire-Purchase.

giving of the notice or document be dispensed with (whether or not the time for the service or giving of the notice or document has expired) and, thereupon, the first-mentioned person may, notwithstanding anything elsewhere contained in 5 this Act but subject to the observance of the terms and conditions, if any, included in the order, do that act or thing without serving or giving the notice or document in question or, as the case may be, although the notice or document in question has not been served or given and the specified time 10 has not elapsed.

An order under this subsection may include such terms and conditions as the court thinks fit.

(3) The affidavit or oral evidence of an owner or his servant or agent as to the delivery, leaving, or posting of any 15 notice or document required or authorised to be served, given, or sent by this Act is admissible as prima facie evidence of the due service, giving, or sending of the notice or document if the deponent swears to the facts necessary to prove due service, giving, or sending either from his own knowledge or 20 to his information and belief based on and verified by the records of the owner.

49. (1) Any prescribed document or part thereof—

- (a) not being the signature or initials of any person, that 25 is in handwriting that is not clear and legible; or
 (b) that is printed in type of a size smaller than the type known as ten-point Times,

shall, for the purposes of this Act, be deemed not to be in writing.

(2) In this section, "prescribed document" means—

- 30 (a) any hire-purchase agreement;
 (b) any statement under subsection one of section three of this Act;
 (c) any copy of an agreement, notice, or statement 35 required by section four of this Act to be served on a hirer;
 (d) any statement required by subsection one of section seven of this Act to be sent to a hirer; (e)

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

05

Hire-Purchase.

(e) any notice under subsection one or subsection three of section thirteen of this Act; and

5 (f) any statement required by subsection two of section twenty-six of this Act to be contained in a hire-purchase agreement.

(3) Where, by virtue of this section, a prescribed document or part of a prescribed document is, for the purposes of this Act, deemed not to be in writing, then, except as is otherwise in this Act expressly provided, the validity or effect 10 of the prescribed document is not affected.

Nothing in this subsection affects the liability of any person to be convicted of an offence against this Act.

15 **50.** (1) Any person who contravenes or fails to comply with any provision of this Act is guilty of an offence against this Act. Penalty.

(2) Any person who is guilty of an offence against this Act for which no other penalty is expressly provided by this Act is liable to a penalty not exceeding two hundred pounds.

20 **51.** Proceedings for offences against this Act shall be disposed of summarily before a court of petty sessions. Proceedings for offences.

52. Any prosecution for an offence against this Act may be commenced at any time within one year after the commission of the offence. Time for commencement of prosecution.

25 **53.** (1) The Credit-sale Agreements Act, 1957-1959, is amended by inserting in the definition of "Credit-sale agreement" in subsection one of section two after the word "Acts" the words ", where the agreement was entered into before the commencement of the Hire-Purchase Act, 1960, or is a hire- 30 purchase agreement as defined in section two of the Hire-Purchase Act, 1960, where the agreement is entered into after that commencement". Amendment of Act No. 29, 1957. Sec. 2. (Interpretation.) (2)

Hire-Purchase.

(2) The Police Offences Act, 1901, as amended by subsequent Acts, is amended by omitting subsection six of section thirty-two and by inserting in lieu thereof the following subsection :—

5 (6) This section does not extend to proceedings by the owner under a hire-purchase agreement, or any person acting on his behalf, for the recovery of possession of goods comprised in the agreement.

(3) (a) The Credit-sale Agreements Act, 1957, as amended by the Banking (Interpretation of References) Act, 1959, and by this Act, may be cited as the Credit-sale Agreements Act, 1957-1960.

(b) The Police Offences Act, 1901, as amended by subsequent Acts and by this Act, may be cited as the 15 Police Offences Act, 1901-1960.

54. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to 20 the provisions of this Act.

(2) The amount referred to in paragraph (b) of section twenty-eight of this Act may be at such rate or rates or calculated on such basis or bases (whether by reference to the cash price of the goods comprised in the hire-purchase 25 agreement concerned or otherwise) as may be specified in the regulations, and the rates or bases so specified may vary according to different amounts of cash price, different durations of hire-purchase agreements, different classes of goods or otherwise.

30 (3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within 35 fourteen sitting days after publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If

Amendment
of Act No.
5, 1901.
Sec. 32.

(Order for
the delivery
to the owner
of goods
unlawfully
detained.)

Regulations.

Hire-Purchase.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before the House disallowing any regulation or part thereof, the regulation or part thereupon ceases to have effect.

FIRST SCHEDULE.

Sec. 3 (1).

Hire-Purchase Act, 1960.

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

- 10 *
- The cash price of goods is £.....
- (a) The terms charges are £.....
and represent a rate per centum per annum not exceeding †
- (a) Other charges are—
- 15 (a) For insurance for years .. £.....
- (a) For freight, vehicle registration, &c. .. £..... £.....
- The total amount you will have to pay (including deposit of £.....) is £.....
- 20 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 law to be applicable to the proposed agreement will be the law of §

NOTE.—The sequence of any item or items in the group of items marked 25 “(a)” may be altered in relation to any other item or items in that group, but the sequence of that group must not be altered in relation to the items not marked “(a)”.

- * Insert short description of goods.
- 30 † Insert, where the proposed agreement is an agreement to which s. 25 of the Act applies, a rate per centum per annum not less than the rate per centum per annum obtained by calculating the terms charges in accordance with the formula set out in s. 26 (1).
- ‡ Insert number, amount, and intervals of instalments.
- 35 § Insert the name of the State, Territory or country the law of which is to be applicable to the proposed agreement.

SECOND SCHEDULE.

Sec. 4.

Hire-Purchase Act, 1960.

ADVICE TO HIRERS.

Under the provisions of the Hire-Purchase Act, 1960—

- 40 (a) you are entitled to a copy of the agreement and a statement of the amount that you owe if you make a written request to the owner for them. You may not request a copy or a statement more than once in three months;
- (b)

Hire-Purchase.

- (b) with the written consent of the owner you can assign your rights under the hire-purchase agreement and he may not unreasonably refuse his consent. For details of the procedure of assignment see Hire-Purchase Act, 1960, section 9;
- 5 (c) you have the right to complete the agreement at any time and if you do you will be entitled to a rebate of some of the charges payable under the agreement. For details see Hire-Purchase Act, 1960, section 11;
- 10 (d) if you are unable to pay your instalments you are entitled to return the goods to the owner at your own expense, but if you do you will be liable to pay an amount sufficient to cover the loss suffered by the owner. For details of the amount that you will have to pay see Hire-Purchase Act, 1960, section 12.

THIRD SCHEDULE.

Sec. 13 (1).

15

Hire-Purchase Act, 1960.

NOTICE OF INTENTION TO RE-POSSESS.

TAKE NOTICE THAT
 the owner of *.....
 hired by you under an agreement dated the day
 20 of 19 intends to retake possession of the
 goods after the expiration of †..... days from the service of this
 notice unless the arrears of instalments which now amount to £.....
 are paid to at on or
 before 19.....

25	Total amount payable	£.....
	Amount paid or provided by hirer to .../.../19....	£.....
	Arrears under agreement to .../.../19....	£.....

* Insert description of goods.

30 † Insert number of days, not being less than twenty-one, or, where the hirer is a farmer and s. 33 of the Act applies, not being less than thirty.

FOURTH SCHEDULE.

Secs. 11 (3),
13 (3), 14,
15.

Hire-Purchase Act, 1960.

ADVICE TO HIRERS.

35 Now that the goods you hired have been re-possessed you will be entitled to get them back—

- (a) if, within twenty-one days, you require the owner, by notice in writing signed by you or your agent, to re-deliver the goods to you and if, within fourteen days after giving the notice, you
reinststate

Hire-Purchase.

reinstate the agreement by paying the arrears and remedy the following breaches of the agreement (or pay the owner's expenses in remedying them):

5 The owner's estimate of the amount you must pay to reinstate the agreement is:—

	Arrears of instalments	£.....
	Cost of storage, repair or maintenance	£.....
	Cost of re-possession	£.....
	Cost of re-delivery	£.....
10	Total	£.....

or

(b) if, within twenty-one days, you give notice of your intention to finalise the agreement and pay the balance due under the agreement and costs of the re-possession:

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

	Total amount payable under the agreement	£.....
	Less deposit and instalments paid	£.....
	Balance due under agreement	£.....
20	Less statutory rebates	£.....
	Add costs of re-possession	£.....
	Storage, repair or maintenance	£.....
	Total	£.....

25 *If you don't reinstate or finalise the agreement* you will be liable for the owner's loss unless the value of the goods re-possessed 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 value of the goods re-possessed is £ .

30 * On the basis of that estimate you are entitled to a refund of £ .
liable to pay the owner £ .

NOTE.—You may give a written notice to the owner requiring the owner to sell the goods to any cash buyer you can introduce who is willing to pay the owner's estimate of the value, i.e.†

35 * Strike out whichever inapplicable.

† Insert owner's estimate of value.

DO NOT DELAY.

40 Action to enforce your rights should be taken at once. You will lose your rights *twenty-one days* after the service or posting of this notice if you do not take action.

If you think you have any rights under the Hire-Purchase Act, 1960, you should seek advice at once.

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

45 This notice is sent to you as guarantor of
As guarantor you have certain rights under the Hire-Purchase Act, 1960, and you should seek advice at once.

HIRE-PURCHASE BILL, 1960.

EXPLANATORY NOTE.

Clause 1.—This clause sets out the short title and makes provision for a date of commencement.

This clause also repeals, with exceptions, the earlier legislation relating to hire-purchase. The exceptions relate to hire-purchase agreements entered into before the date of commencement and to certain other agreements.

This clause also deals with the application of the proposed legislation.

Clause 2.—This is an interpretation clause. The definitions are substantially the same as in earlier legislation relating to hire-purchase, but some new ones have been included. The more important of the latter are the definitions of "Dealer" and "Statutory rebate". Subclause (4) makes it clear that an owner who re-takes possession of goods pursuant to an order of a court has re-possessed the goods within the meaning of the legislation.

Clause 3.—Subclause (1) requires a preliminary notice in the form in the First Schedule to be given to the hirer. The form is designed to bring clearly to the hirer's notice his liabilities under the proposed agreement. Subclause (2) provides that a hire-purchase agreement must be in writing signed by all parties and specify the matters set out in the subclause. Failure to comply with subclause (1) or (2) will not invalidate the contract but will make the owner guilty of an offence and also, except where the failure relates to requirement about writing, prevent the owner from recovering his terms charges. A hire-purchase agreement that is not in writing will be unenforceable by the owner.

Clause 4.—This clause requires the owner to send the hirer, within 21 days after the making of the agreement,

- (a) a copy of the agreement ;
- (b) a notice setting out shortly in simple language the rights of the hirer under the legislation ; and
- (c) a copy of any associated insurance policies or a statement of the terms &c. of such a contract which affect the hirer.

Clause 5.—This clause deals with the circumstances in which there will be implied into a hire-purchase agreement warranties and conditions as to title and conditions that the goods are of merchantable quality and, if the purpose for which they are required is made known, that they are reasonably fit for that purpose.

The owner is given a statutory right of indemnity against any dealer who causes the owner to be held liable under the provisions of this clause.

Clause 6.—This clause will give to a hirer in relation to representations made to him by or on behalf of the owner or dealer—

- (a) as against the owner—the same right of rescinding the hire-purchase agreement as if the representations had been made by an agent of the owner ; and
- (b) against the person by whom or on whose behalf the representations were made—the same right of action in damages as the hirer would have had if he had purchased the goods from the person by whom or on whose behalf the representations were made.

An owner is given a statutory right of indemnity against the dealer for any damage that he suffers from the operation of this clause.

Clause 7.—This clause entitles a hirer, on making a request in writing, to obtain from an owner once in every three months a copy of the agreement and a statement showing the amount that he has paid, the amount that is due but unpaid, and the amount that is yet to become payable.

If the owner fails to comply with the request, he cannot enforce his rights in respect of the agreement so long as he is in default and he will also be guilty of an offence.

Clause 8.—This clause provides that where a hirer has two or more agreements with an owner and he pays to the owner an amount not sufficient to cover his liabilities under all the agreements, the owner is required, in the absence of a specific direction from the hirer, to apply the amount in or towards satisfaction of the sums due under the respective agreements in the order in which they were entered into.

Clause 9.—This clause makes a hirer's right under an agreement assignable with the consent of the owner, but the owner is not permitted to unreasonably withhold his consent or to charge any fee for giving his consent. The clause also provides that a hirer's rights are capable of passing by operation of law to his personal representative and deals with the position of the liquidator of a company that is a hirer under a hire-purchase agreement.

Clause 10.—This clause empowers a court to permit a hirer to remove goods to a new place even though the agreement prevents the goods from being moved.

Clause 11.—This clause gives a hirer a right to pay off his agreement at any time. If he pays off early he will be entitled to a rebate of hiring charges. The hirer will also be entitled to a rebate of amount charged for insurance if he chooses to cancel any contract of insurance. The right to pay off under this section may be exercised after the goods have been repossessed.

Clause 12.—This clause allows a hirer to determine the hiring at any time by voluntarily returning the goods. If he returns the goods he will at the most be liable to the amount that he would have had to pay if the goods had been repossessed. The hirer is permitted to return the goods to any place which is reasonable in all the circumstances if the owner's place of business or the place specified in the agreement is unsuitable. If in doubt, the hirer can have the place fixed by the court.

Clause 13.—This clause prevents an owner from repossessing goods if the hirer is in arrears until at least twenty-one days after notice of intention to repossess the goods has been given, but the owner may repossess goods without notice if he has reason to believe that the hirer is about to remove or conceal the goods.

An owner is required, within 21 days of exercising his right to repossess the goods, to serve on the hirer a notice in the form of the Fourth Schedule. This Schedule attempts to set out as simply as possible the rights that the hirer may have under the Act in these circumstances. If the notice is not served the owner loses his rights under the agreement.

Clause 14.—This clause requires the owner to retain the goods for 21 days after the repossession or for a longer period in certain circumstances.

Clause 15.—This clause empowers a hirer—

- (a) to regain the goods after they have been repossessed; or
- (b) to require the owner to sell the goods to any cash purchaser introduced by the hirer who is willing to pay the estimated value of the goods.

It also entitles a hirer to recover from an owner the amount, if any, by which the aggregate of the value of the goods recovered and what has been paid or provided by or on behalf of the hirer exceeds the net amount payable.

The clause prevents an owner from recovering from the hirer an amount which, together with the value of the goods recovered and what has been paid or provided by or on behalf of the hirer, would be greater than the net amount payable and the costs of the repossession.

The net amount payable means the total amount that was to be paid or provided by the hirer less a rebate of terms charges and insurance attributable to the period of the agreement still to go.

Clause 16.—This clause sets out what a hirer must do to recover the goods after they have been repossessed. Shortly, he must pay the arrears, the cost of repossession and remedy other breaches.

Clause 17.—This clause empowers a court to vary earlier orders of any court so as to give effect to the provisions of this Act.

Clause 18.—This provision covers the rights of guarantors and is in the same form as the existing provision.

Clause 19.—This clause avoids certain undesirable provisions sometimes found in guarantees and renders the owner under the hire-purchase agreement concerned guilty of an offence, unless the guarantor has had independent advice.

Clause 20.—This clause authorises an owner to require the hirer to keep the goods insured. It prohibits an owner from requiring a hirer to insure with any particular insurer and it prohibits an owner from refusing to enter into a hire-purchase agreement with a person who has arranged satisfactory insurance with a reputable insurer. It also gives the hirer the right to receive any no-claim rebates that may be allowed.

Clause 21.—This clause authorises a court to excuse a person insured under a contract of insurance associated with a hire-purchase transaction for failure to comply with the contract if the insurer was not prejudiced by the failure.

Clause 22.—This clause requires associated insurance contracts to contain certain information and provides that certain types of arbitration clauses will not bind a hirer.

Clause 23.—This clause enables maximum rates of insurance to be prescribed.

Clause 24.—This clause deals with the application of clauses 20 to 23.

Clause 25.—This clause requires certain hire-purchase agreements to have regular payments of equal amount.

Clause 26.—This clause imposes limitations on terms charges.

Clauses 27 to 31.—These clauses require the owner to obtain a minimum deposit before entering into a hire-purchase agreement and contain provisions for rendering that requirement effective and workable.

Clause 32.—This clause confers a wide jurisdiction on a court to relieve a hirer from obligations under a contract which the court holds to be harsh and unconscionable.

Clause 33.—This clause enables a court to order re-delivery of goods repossessed from a farmer. It is designed to prevent goods being repossessed when it is likely that the farmer will be able to meet his obligations within one year.

Clause 34.—This clause provides that a repairer will be entitled to a lien if he does work on the goods comprised in a hire-purchase agreement unless the creation of a lien is prohibited by the agreement and the repairer had notice of the prohibition.

Clause 35.—This clause prevents goods comprised in a hire-purchase agreement from becoming fixtures to land, but protects the rights of third parties who bona fide for value and without notice acquire an interest in land to which goods comprised in a hire-purchase agreement have been affixed.

Clause 36.—This clause makes void any provision in an agreement or other document that—

- (a) excludes the right of the hirer to determine a hire-purchase agreement ;
- (b) imposes on the hirer a liability beyond the liability imposed by this Act by reason of the determination of a hire-purchase agreement under this Act ;
- (c) imposes on the hirer on the determination in any manner of a hire-purchase agreement a greater liability than he would be subject to if the agreement were determined under the Act ;

- (d) requires the hirer to pay interest on overdue instalments at a rate exceeding 8 per cent. simple interest calculated on a daily basis ;
- (e) makes any person who acts on behalf of the owner in preliminary matters an agent of the hirer ;
- (f) relieves the owner from liability for defaults of a dealer ;
- (g) authorises the owner or his agents to enter on any premises for the purpose of repossessing goods ;
- (h) determines or modifies any agreement, or authorises the repossession of the goods, because of any act of bankruptcy by the hirer ; or
- (i) otherwise affects or limits the operation of the Act.

If an agreement or document contains such a void provision the owner under the hire-purchase agreement concerned is guilty of an offence.

Clause 37.—This clause prohibits commission from financiers to dealers. An exemption is allowed in respect of one-tenth of the terms charges to a dealer who guarantees the due performance of the hirer's contract.

Clause 38.—This clause prohibits attempts to evade requirements as to minimum deposits by entering into a contract of bailment or obtaining from a proposed hirer a written offer to take the goods on a bailment and at the same time taking from the proposed hirer a written offer to take the goods on hire-purchase terms and conditions. (The latter offer was not accepted until the payments under, e.g., the contract of bailment, equalled the deposit.)

Clause 39.—This clause provides that a hirer or guarantor will be entitled to be indemnified by the owner if any bill of exchange or promissory note given in connection with the agreement if paid would result in the hirer's liability being greater than provided by the Bill.

Clause 40.—This clause makes it an offence for any dealer to make false statements in any proposal submitted to an owner.

Clause 41.—This clause requires a hirer to tell an owner where the goods are, or, if he no longer has possession of the goods, what he has done with them.

Clause 42.—This clause makes it a summary offence for any person to defraud or attempt to defraud the owner by the disposal or sale of goods comprised in a hire-purchase agreement.

Clause 43.—This clause provides that certain alterations and additions to hire-purchase agreements are of no effect.

Clause 44.—This clause makes special provision relating to second-hand goods.

Clause 45.—This clause requires the consent of the spouse of the proposed hirer of certain classes of goods.

Clause 46.—This clause gives a general power to the court to extend the time fixed by the Bill for the doing of any act or the giving of any notice.

Clause 47.—This clause provides a summary procedure for enforcing the return of goods when the owner is entitled to repossess them. It is made necessary by the provision in the Bill preventing forcible repossessions.

Clause 48.—This clause specifies the methods by which notices or documents may be served or given, and also deals with proof of service.

Clause 49.—This clause requires hire-purchase agreements and other specified documents, if in print, to be in type of a size not smaller than 10 point Times, and, if in handwriting, to be clear and legible.

Clause 50.—This is a general offence provision that provides a maximum penalty of £200.

Clause 51.—This clause provides that proceedings for offences are to be disposed of summarily.

Clause 52.—This clause allows a prosecution for an offence against the Act to be taken within a year after the commission of the offence.

Clause 53.—This clause effects consequential amendments to certain Acts.

Clause 54.—This clause confers power to make regulations.

hire-purchase.

Enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Hire-Purchase Act, 1960."

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) This Act is divided into Parts as follows:—

Part I—Preliminary.

No. , 1960.

A BILL

Relating to the form and content of hire-purchase agreements; to regulate the rights and duties of parties to hire-purchase agreements; to repeal the Hire-purchase Agreements Act, 1941, and certain other enactments; to amend the Credit-sale Agreements Act, 1957, the Police Offences Act, 1901, and certain other Acts; and for purposes connected therewith.

[Mr. MANNIX;—29 March, 1960.]

Hire-Purchase.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Hire-Purchase Act, Short title. 1960."

10 (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. Commencement.

(3) This Act is divided into Parts as follows :— Division into Parts.

PART I.—PRELIMINARY—ss. 1, 2.

15 PART II.—FORMATION AND CONTENTS OF HIRE-PURCHASE AGREEMENTS—ss. 3, 4.

PART III.—PROTECTION OF HIRERS—ss. 5–17.

Division 1.—Warranties and conditions—ss. 5, 6.

Division 2.—Statutory rights of hirers—ss. 7–10.

20 *Division 3.—Early completion of agreements—s. 11.*

Division 4.—Voluntary return of goods—s. 12.

Division 5.—Repossessions—ss. 13–17.

PART IV.—GUARANTEES—ss. 18, 19.

PART V.—INSURANCE—ss. 20–24.

25 PART VI.—LIMITATION ON TERMS CHARGES—ss. 25, 26.

PART VII.—MINIMUM DEPOSITS—ss. 27–31.

PART VIII.—MISCELLANEOUS—ss. 32–54.

(4) (a) The Hire-purchase Agreements Act, 1941, the Hire-purchase Agreements (Amendment) Act, 1955, the Hire-purchase Agreements (Amendment) Act, 1957, sections thirteen and fourteen of the Economic Stability and War-time Provisions Continuance Act, 1946, and section three of the Banking (Interpretation of References) Act, 1959, are repealed. Repeal.

(b)

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(b) Notwithstanding the repeal of the enactments mentioned in subsection one of this section but subject to paragraph (c) of this subsection, those enactments continue to apply to and in relation to—

- 5 (i) hire-purchase agreements entered into before the commencement of this Act; and
- (ii) agreements entered into before or after that commencement in relation to hire-purchase agreements entered into before that commencement.

10 (c) Section twenty of the Hire-purchase Agreements Act, 1941-1959, continues so to apply for the following purposes only, namely, for the purposes of—

- 15 (a) proceedings under that section that were commenced before the commencement of this Act and in which an order had been made under subsection two of that section before that commencement; and
- (b) proceedings under that section in relation to an order so made.

(5) (a) This Act applies to and in relation to—

Application of Act.

- 20 (i) hire-purchase agreements entered into after the commencement of this Act; and
- (ii) agreements entered into before or after that commencement in relation to hire-purchase agreements to be entered into, or entered into, after that commencement.

25 (b) Section forty-seven of this Act applies to and in relation to hire-purchase agreements entered into before the commencement of this Act as well as to and in relation to hire-purchase agreements entered into after that commencement.

30 2. (1) In this Act, unless inconsistent with the context or subject-matter— Interpretation.

- 35 "Banker" means a body corporate for the time being authorised to carry on banking business under a law of this or another State or of the Commonwealth of Australia.
- "Cash"

Hire-Purchase.

“Cash” includes a cheque drawn on a banker.

“Court of petty sessions” means a court of petty sessions held before a stipendiary magistrate sitting alone.

5 “Dealer” means a person, not being the hirer or the owner or a servant of the owner, by whom or on whose behalf negotiations leading to the making of a hire-purchase agreement with the owner were carried out or by whom or on whose behalf the transaction leading to a hire-purchase agreement with the owner was arranged.

10 “Goods” includes all chattels personal other than money or things in action.

15 “Guarantor” means a person who has guaranteed the performance by a hirer of all or any of his obligations under a hire-purchase agreement but does not include the dealer or 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.

20 “Hire-purchase agreement” includes a letting of goods with an option to purchase and 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 any agreement—

25 (a) whereby the property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods; or

30 (b) under which the person by whom the goods are being hired or purchased 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.

35 “Hirer” means the person to whom goods are let, hired, or agreed to be sold under a hire-purchase agreement and includes a person to whom the hirer’s rights or liabilities under the agreement have passed by assignment or by operation of law.

“Owner”

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- 5 “Owner” means the person letting, hiring, or agreeing to sell goods under a hire-purchase agreement and includes a person to whom the owner’s property in the goods or any of the owner’s rights or liabilities under the agreement have passed by assignment or by operation of law.
- 10 “Period of the agreement”, in relation to a hire-purchase agreement, means the period between the commencement of the hiring under the agreement and the time provided by the agreement for the payment of the last instalment.
- “Prescribed” means prescribed by this Act or by the regulations.
- “Regulations” means regulations made under this Act.
- 15 “Schedule” means Schedule to this Act.
- “Statutory rebate”—
- (a) in relation to terms charges—
- 20 (i) means the amount derived by multiplying the terms charges by the sum of all the whole numbers from one to the number which is the number of complete months in the period of the agreement still to go (both inclusive) and by dividing the product so
- 25 obtained by the sum of all the whole numbers from one to the number which is the total number of complete months in the period of the agreement (both inclusive); or
- 30 (ii) where it is agreed in a hire-purchase agreement that the terms charges have been calculated on a simple interest basis at a rate specified in the agreement on the amount outstanding from month to month means the amount of interest attributable to the period of
- 35 complete months still to go under the agreement; and
- (b)

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(b) in relation to insurance, means the sum of—

- (i) the total amount of premium paid in respect of any annual period not yet commenced; and
- 5 (ii) ninety per centum of the proportion of the amount of the premium for insurance in respect of the current annual period attributable to the unexpired portion of that period consisting of whole months.

10
15 “Third party insurance” means any insurance in relation to liability in respect of death or bodily injury caused by or arising out of the use of a motor vehicle being insurance required by the law of the place where the vehicle is registered or is being registered, as the case requires.

20 “Total amount payable” means the total amount to be paid or provided whether by way of cash or other consideration by or on behalf of the hirer under a hire-purchase agreement.

25 “Vehicle registration fees” means any amount to be provided under a hire-purchase agreement by the owner for payment by or on behalf of the hirer under the law of this State or of any other State or Territory of the Commonwealth of Australia in connection with the registration and use of a motor vehicle, including any amount payable for third party insurance.

30 (2) (a) Subject to paragraph (b) of this subsection, in this Act “cash price”, “freight”, “terms charges”, and “the balance originally payable under the agreement” have the meanings assigned to them in subsection two of section three of this Act.

35 (b) In this Act “terms charges” and “the balance originally payable under the agreement” have, in relation to a hire-purchase agreement of the kind referred to in subsection six of section three of this Act, the meanings assigned to them in subsection two, as modified by subsection six, of that section. (d) (3)

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(3) In this Act, other than sections twenty and twenty-three, "insurance" has the meaning assigned to it in subsection two of section three of this Act.

(4) Any reference in this Act to taking possession by
5 the owner of goods comprised in a hire-purchase agreement includes—

(a) the taking of possession of goods by the owner pursuant to an order of any court; and

10 (b) the return of goods to the owner after notice has been served on the hirer pursuant to the provisions of subsection one of section thirteen of this Act,

but does not include a reference to taking possession by the owner as a result of the voluntary return of the goods by the hirer.

15 (5) 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 Act, be treated
20 as a single hire-purchase agreement made at the time when the last agreement was made.

PART II.

FORMATION AND CONTENTS OF HIRE-PURCHASE AGREEMENTS.

25 3. (1) Before any hire-purchase agreement is entered into in respect of any goods the owner or, if there is a dealer, the dealer shall give or cause to be given to the prospective hirer a statement in writing duly completed in accordance with the form in the First Schedule :

30 Provided that where the agreement is entered into by way of acceptance by the owner of a written offer signed by or on behalf of the hirer, the provisions of this subsection shall be deemed

Summary of proposed hire-purchase transaction to be given to prospective hirer.

Hire-Purchase.

deemed not to have been complied with unless the written statement was given to the prospective hirer before the written offer was so signed.

- (2) Every hire-purchase agreement—
- 5 (a) shall be in writing;
- (b) shall be signed by or on behalf of the hirer and all other parties to the agreement;
- (c) shall—
- 10 (i) specify a date on which the hiring shall be deemed to have commenced;
- (ii) specify the number of instalments to be paid under the agreement by the hirer;
- 15 (iii) specify the amounts of each of those instalments and the person to whom and the place at which the payments of those instalments are to be made;
- (iv) specify the time for the payment of each of those instalments; and
- 20 (v) contain a description of the goods sufficient to identify them;
- (d) where any part of the consideration is or is to be provided otherwise than in cash, shall contain a description of that part of the consideration; and
- (e) shall set out in a tabular form—
- 25 (i) the price at which at the time of signing the agreement the hirer might have purchased the goods for cash (in this Act called and in the agreement to be described as “cash price”);
- (ii)

Form and contents of hire-purchase agreements.

Hire-Purchase.

- 5 (ii) the amount paid or provided by way of deposit (in this Act called and in the agreement to be described as "deposit") showing separately the amount paid in cash and the amount provided by a consideration other than cash;
- 10 (iii) any amount included in the total amount payable to cover the expenses of delivering the goods or any of them to or to the order of the hirer (in this Act called and in the agreement to be described as "freight");
- 15 (iv) any amount included in the total amount payable to cover vehicle registration fees in respect of the goods (in the agreement to be called "vehicle registration fees");
- 20 (v) any amount included in the total amount payable for insurance (other than third party insurance) in respect of the goods that are goods of any one or more of the following descriptions, namely, industrial machinery, farm equipment or motor vehicle, or a television set or prescribed goods (in this Act called and in the agreement to be described as "insurance");
- 25 (vi) the total of the amounts referred to in subparagraphs (i), (iii), (iv) and (v) of this paragraph less the deposit;
- 30 (vii) the amount of any other charges included in the total amount payable (in this Act called and in the agreement to be described as "terms charges");
- 35 (viii) the total of the amounts referred to in subparagraphs (vi) and (vii) of this paragraph (in this Act called "the balance originally payable under the agreement"); and
- (ix) the total amount payable.

(3)

Hire-Purchase.

(3) An owner who enters into a hire-purchase agreement that does not comply with subsection two of this section is guilty of an offence against this Act.

(4) Where a provision of this section has not been
5 complied with in relation to a hire-purchase agreement (not being a failure to comply with paragraph (a) of subsection two of this section), the liability of the hirer shall be reduced by the amount included in the agreement for terms charges. That amount may be set off by the hirer against the amount
10 that would otherwise be due or become due to the owner under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer from the owner as a debt in any court of competent jurisdiction.

Nothing in this subsection affects the liability of any person
15 to be convicted of an offence against this section.

(5) A hire-purchase agreement that is not in writing is not enforceable by the owner.

(6) Where—

(a) the owner under a hire-purchase agreement is not
20 bound by the provisions of the Stamp Duties Act, 1920, as amended by subsequent Acts; and

(b) the total amount payable includes an amount (in this subsection referred to as stamp duty) representing the whole or any part of the stamp duty
25 chargeable on the agreement under that Act,

then in relation to such an agreement subparagraphs (vii) and (viii) of paragraph (e) of subsection two of this section are deemed to be omitted and the following subparagraphs inserted in lieu thereof:—

30 (vii) the amount of any other charges (other than stamp duty) included in the total amount payable (in this Act called and in the agreement to be described as “terms charges”);

(viii) the total of the amounts referred to in subparagraphs
35 (vi) and (vii) of this paragraph together with stamp duty (in this Act called “the balance originally payable under the agreement”); and.

Hire-Purchase.

4. The owner shall serve or cause to be served on the hirer within twenty-one days after the making of a hire-purchase agreement— Certain copy documents to be served on hirer.

- (a) a copy in writing of the agreement;
 - 5 (b) a notice in writing in or to the effect of the Second Schedule, which notice may be endorsed on the copy of the agreement; and
 - 10 (c) where any part of the total amount payable consists of an amount paid or to be paid under a policy of insurance (not being a policy of third party insurance) in respect of goods that are goods of any one or more of the following descriptions, namely, industrial machinery, farm equipment or motor vehicle, or a television set or prescribed goods, a copy of the policy or a statement in writing setting out the terms, conditions, and exclusions of the policy that affect or concern the rights of the hirer, 21
- but failure to comply with the provisions of this section does not avoid the agreement.

PART III.

PROTECTION OF HIRERS.

Division 1.—Warranties and conditions.

- 5. (1) In every hire-purchase agreement there shall be— Conditions and warranties to be implied in every hire-purchase agreement.
- 25 (a) an implied warranty that the hirer shall have and enjoy quiet possession of the goods;
- (b) an implied condition on the part of the owner that he will have a right to sell the goods at the time when the property is to pass;
- 30 (c) an implied warranty that the goods will be free from any charge or encumbrance in favour of any third party (other than a charge or encumbrance created by or with the consent of the hirer) at the time when the property is to pass.

(2)

Hire-Purchase.

(2) In every hire-purchase agreement there shall be an implied condition that the goods shall be of merchantable quality but such a condition shall not be implied—

5 (a) as regards defects of which the owner could not reasonably have been aware, or, if there is a dealer, neither the owner nor the dealer could reasonably have been aware, at the time the agreement was made; or

10 (b) where the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed; or

(c) if the goods are second-hand goods and the agreement contains a statement to the effect that—

15 (i) the goods are second-hand; and
(ii) all conditions and warranties as to quality are expressly negatived,

and the owner proves that the hirer has acknowledged in writing that that statement was brought to his notice.

20 (3) Where the hirer expressly or by implication makes known to the owner or to the dealer or to any servant or agent of the owner or the dealer the particular purpose for which the goods are required, there shall be implied in the hire-purchase agreement a condition that the goods shall be
25 reasonably fit for that purpose but such a condition shall not be implied if the goods are second-hand goods and the agreement contains a statement to the effect—

(a) that the goods are second-hand; and
(b) that all conditions and warranties of fitness and
30 suitability are expressly negatived,

and the owner proves that the hirer has acknowledged in writing that that statement was brought to his notice.

(4)

Hire-Purchase.

(4) Without prejudice to any other rights or remedies to which an owner may be entitled, where the hirer has made known expressly or by implication to the dealer or to any servant or agent of the dealer the particular purpose for which the goods are required, an owner is entitled to be indemnified by the dealer against any damage suffered by the owner through the operation of the provisions of subsection three of this section.

(5) Nothing in this section prejudices in any way any other enactment or rule of law whereby any condition of warranty is to be implied in any hire-purchase agreement.

6. (1) Every representation, warranty, or statement made to the hirer or prospective hirer, whether orally or in writing, by the owner or dealer or any person acting on behalf of the owner or dealer in connection with or in the course of negotiations leading to the entering into of a hire-purchase agreement shall confer on the hirer—

As to the liability of the owner and the dealer for misrepresentation.

(a) as against the owner—the same right to rescind the agreement as the hirer would have had if the representation, warranty, or statement had been made by an agent of the owner; and

(b) as against the person who made the representation, warranty, or statement, and any person on whose behalf the person who made the representation, warranty, or statement was acting in making it—the same right of action in damages as the hirer would have had against them or either of them if the hirer had purchased the goods from the person who made the representation, warranty, or statement or the person on whose behalf the person who made the representation, warranty, or statement was acting (as the case requires) as a result of the negotiations.

(2) Every covenant, condition, or term in any hire-purchase agreement or other document purporting to exclude, limit, or modify the operation of this section or to preclude any right of action or any defence based on or arising out of any such representation, warranty, or statement is void.

(3)

Hire-Purchase.

(3) Without prejudice to any other rights or remedies to which an owner may be entitled, an owner is entitled to be indemnified by the person who made the representation, warranty, or statement, and by any person on whose behalf
 5 the representation, warranty, or statement was made against any damage suffered by the owner through the operation of the foregoing provisions of this section.

Division 2.—Statutory rights of hirers.

7. (1) At any time before the final payment has been
 10 made under a hire-purchase agreement the owner shall, within fourteen days after he has received a request in writing from the hirer, send to the hirer a copy of the agreement, together with a statement in writing signed by the owner or his agent
 showing—
 Hirer to be entitled to copy of agreement and statement of his present position.

- 15 (a) the amount paid to the owner by or on behalf of the hirer;
 (b) the amount that has become due under the agreement but remains unpaid; and
 20 (c) the amount that is to become payable under the agreement,

but an owner need not comply with such a request if he has sent the hirer a copy of the agreement and a statement under this subsection within the period of three months immediately preceding the receipt of the request.

25 (2) If an owner contravenes subsection one of this section by failing to comply with a request made pursuant to that subsection he is guilty of an offence against this Act and liable to a penalty not exceeding fifty pounds and, until the default is remedied—

- 30 (a) the owner is not entitled to enforce—
 (i) the agreement against the hirer;
 (ii) any right to recover the goods from the hirer; or
 35 (iii) any contract of guarantee relating to the agreement; and

(b)

Hire-Purchase.

(b) any security given by the hirer in respect of money payable under the agreement or given by a guarantor is not enforceable against the hirer or the guarantor by any holder thereof.

5 8. A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner is entitled, on making any payment in respect of the agreements that is not sufficient to discharge the total amount then due under all the agreements, to require the owner to appropriate
10 the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and, if he fails to make such an appropriation, the payment shall by
15 virtue of this section be appropriated in or towards the satisfaction of the sums due under the respective agreements in the order in which the agreements were entered into.

As to appropriation of payments when more than one agreement.

9. (1) The right, title, and interest of a hirer under a hire-purchase agreement may be assigned with the consent of the
20 owner or, if his consent is unreasonably withheld, without his consent.

As to assignments of rights under hire-purchase agreements.

(2) Except as otherwise provided in this section, no payment or other consideration shall be required by an owner for his consent to such an assignment as is mentioned in sub-
25 section one of this section, and where an owner requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld.

(3) Where, at the request of a hirer under a hire-purchase agreement, the owner fails or refuses to give his
30 consent to an assignment by the hirer of his right, title, and interest under the agreement, the hirer may apply to a court of petty sessions for an order declaring that the consent of the owner to that assignment has unreasonably been withheld, and where such an order is made that consent shall be deemed
35 to be unreasonably withheld.

(4)

Hire-Purchase.

(4) As a condition of granting consent to an assignment of the right, title, and interest of the hirer under a hire-purchase agreement, the owner may stipulate that all defaults under the agreement shall be made good and may require the hirer and assignee—

- (a) to execute and deliver to the owner an assignment agreement in a form approved by the owner whereby without prejudicing or affecting the continuing personal liability of the hirer in those respects the assignee agrees with the owner to be personally liable to pay the instalments remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the assignee indemnifies the hirer in respect of those liabilities; and
- (b) to pay the reasonable costs (if any) incurred by the owner in stamping or registering the assignment agreement or counterparts.

(5) The right, title, and interest of a hirer under a hire-purchase agreement is capable of passing by operation of law to the personal representative of the hirer and if the hirer is a company the liquidator may exercise the same rights under the agreement as the company, but nothing in this subsection relieves a personal representative or liquidator from compliance with the provisions of the agreement.

10. Where, by virtue of a hire-purchase agreement, it is the duty of a hirer to keep the goods comprised in the agreement in his possession or control at a particular place or not to remove the goods from a particular place, a court of petty sessions may, on the application of the hirer, make an order approving the removal of the goods to some other place, which place shall thereafter, for the purposes of the agreement, be substituted for the first-mentioned place.

Power to court to allow goods to be removed.

Division

Hire-Purchase.

Division 3.—Early completion of agreements.

11. (1) The hirer under a hire-purchase agreement may, if he has given notice in writing to the owner of his intention to do so, on or before the day specified for that purpose in the notice, complete the purchase of the goods by paying or tendering to the owner the net balance due to the owner under the agreement.

Hirer
entitled to
finalise
agreement
at any
time.

(2) For the purposes of this section the net balance due is the balance originally payable under the agreement less any amounts (other than the deposit) paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, and less—

- (a) the statutory rebate for terms charges; and
- (b) if the hirer requires any contract for insurance to be cancelled, the statutory rebate for insurance.

(3) The rights conferred on the hirer by this section may be exercised by him—

- (a) at any time during the continuance of the agreement; or
- (b) where the owner has taken possession of the goods, on paying or tendering to the owner (before or within twenty-one days after the owner has served a notice in the form of the Fourth Schedule on the hirer) in addition to the net balance due—
 - (i) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods; and
 - (ii) any amount properly expended by the owner on the storage, repair, or maintenance of the goods.

Hire-Purchase.

Division 4.—Voluntary return of goods.

12. (1) The hirer of any goods comprised in a hire-
purchase agreement may terminate the hiring by returning
the goods to the owner during ordinary business hours at a
5 place at which the owner ordinarily carries on business or
to the place specified for that purpose in the agreement and
such a return of the goods terminates the hiring.

Power to
hirer to
determine
hiring.

(2) Where the nature of the goods comprised in a hire-
purchase agreement is, or the facilities available at the place
10 or places of business of the owner or at the place specified in
the agreement are, such that it would be impracticable to
return the goods to such a place, the hirer may terminate the
hiring by returning the goods—

(a) to any place agreed to by the parties to the
15 agreement; or

(b) if the parties fail to agree, to a place that is reason-
able, having regard to all the circumstances
surrounding the transaction.

(3) A hirer who proposes to return goods to the
20 owner under this section may apply to a court of petty sessions
for an order fixing the place to which the goods may be
returned under paragraph (b) of subsection two of this
section.

(4) The court may, in any order made pursuant to
25 this section, order that, subject to the goods being returned to
the owner, the hiring shall be determined on such date as is
specified in the order, not being a date before the hirer
required the owner to nominate a reasonable place for the
return of the goods.

(5) Notice of any application under this section shall
30 be given to the owner by the hirer.

(6)

Hire-Purchase.

(6) Where a hire-purchase agreement is determined pursuant to this section the owner is entitled to recover from the hirer—

- 5 (a) the amount (if any) required to be paid in those circumstances under the agreement; or
- (b) the amount (if any) that the owner would have been entitled to recover if he had taken possession of the goods at the date of termination of the hiring, whichever is the less.

10 *Division 5.—Repossessions.*

13. (1) Subject to this section, an owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments until he has served
15 on the hirer a notice, in writing, in the form of the Third Schedule and the period fixed by the notice (being not less than twenty-one days after the service of the notice) has expired.

Notices to be given to hirer when goods re-possessed.

20 (2) An owner need not comply with subsection one of this section if there are reasonable grounds for believing that the goods comprised in the hire-purchase agreement will be removed or concealed by the hirer contrary to the provisions of the agreement, but the onus of proving the existence of those grounds lies upon the owner.

25 (3) Within twenty-one days after the owner has taken possession of goods that were comprised in a hire-purchase agreement he shall serve on the hirer and every guarantor of the hirer a notice, in writing, in the form of the Fourth Schedule.

30 (4) Where the owner takes possession of goods that were comprised in a hire-purchase agreement he shall—

- 35 (a) if the hirer is present at the time when the owner takes possession of the goods, at that time deliver or cause to be delivered to the hirer personally a document acknowledging receipt of the goods;
- (b)

Hire-Purchase.

(b) if the hirer is not present at the time when the owner takes possession of the goods, forthwith after taking possession of the goods send to the hirer a document acknowledging receipt of the goods.

5 The document acknowledging receipt of the goods shall set out a short description of the goods and the date on which, the time at which, and the place where, the owner took possession of the goods.

(5) If the notice required by subsection three of this
10 section is not served, the rights of the owner under the hire-purchase agreement thereupon cease and determine, but, if the hirer exercises his rights under this Act to recover the goods so taken possession of, the agreement has the same force and effect in relation to the rights and liabilities of the
15 owner and the hirer as it would have had if the notices had been duly given.

14. Where an owner has taken possession of any goods he shall not, without the consent of the hirer (which consent shall be in writing and shall be witnessed by some person other
20 than the owner or the solicitor for or agent or employee of the owner), sell or dispose of the goods or part with possession thereof until after the expiration of twenty-one days after the date of the service on the hirer of the notice referred to in subsection three of section thirteen of this Act or, if notice
25 under subparagraph (i) of paragraph (a) of subsection one of section fifteen of this Act has been given, until the time for payment or tender pursuant to that notice has expired (which-ever is the later).

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

15. (1) Where the owner takes possession of any goods
30 comprised in a hire-purchase agreement—

As to hirer's rights and immunities when goods re-possessed.

(a) the hirer may, before or within twenty-one days after the service on him of the notice referred to in subsection three of section thirteen of this Act, by giving to the owner a notice in writing signed by the hirer
35 or his agent—

(i) require the owner to re-deliver to or to the order of the hirer (subject to compliance by the hirer with the provisions of section sixteen of this Act) the goods that have been
40 re-possessed; or (ii)

Hire-Purchase.

- 5 (ii) require the owner to sell the goods to any person introduced by the hirer who is prepared to buy the goods for cash at a price not less than the estimated value of the goods set out in the first-mentioned notice;
- (b) the hirer may recover from the owner—
- 10 (i) if the value of the goods at the time of the owner so taking possession thereof 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
- 15 amount payable; or
- (ii) if the value of the goods at the time of the owner so taking possession thereof is equal to or greater than the net amount payable—the total of that value and the amount paid or
- 20 provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, less the net amount payable;
- (c) the owner is not entitled to recover any sum (whether under a judgment or order or otherwise) that would together with—
- 25 (i) the value of the goods at the time of the owner so taking possession thereof; and
- (ii) the amount paid or provided, whether by cash or other consideration, by or on behalf
- 30 of the hirer under the agreement,
- amount to more than the net amount payable in respect of the goods.
- (2) For the purposes of this section—
- (a) the net amount payable is the total amount payable less the statutory rebates for terms charges and
- 35 insurance as at the time of the owner taking possession of the goods; and

(b)

Hire-Purchase.

- (b) the value of any goods at the time of the owner taking possession thereof is—
- (i) the best price that could be reasonably obtained by the owner at that time; or
 - 5 (ii) if the hirer has introduced a person who has bought the goods for cash, the amount paid by that person,
- less—
- 10 (iii) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods;
 - (iv) any amount properly expended by the owner on the storage, repair, or maintenance of the goods; and
 - 15 (v) (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.
- 20 (3) Where the owner has sold goods of which he has taken possession, 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 he took possession of the goods lies upon the owner.
- 25 (4) Except where the owner has failed to serve on the hirer a notice as required by subsection three of section thirteen of this Act, no amount is recoverable by the hirer under this section unless—
- (a) the hirer, within twenty-one days after the owner has served such a notice, gives to the owner notice in writing—
- 30 (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 of the owner taking possession thereof; and
 - 35 (ii) signed by the hirer or his solicitor or agent; and
- (b)

Hire-Purchase.

5 (b) proceedings for the recovery of the amount so claimed under the provisions of this section are commenced not earlier than seven days and, except where the goods have been sold at the request of the hirer to a person introduced by the hirer, not later than three months after the giving by the hirer to the owner of the notice referred to in paragraph (a) of this subsection.

10 (5) If, before the proceedings referred to in subsection four of this section are commenced by the hirer, the owner serves an offer in writing on the hirer to pay any 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
15 rights as he would have had if that amount had been tendered to the hirer before the proceedings were commenced :

20 Provided that no such right shall be 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.

25 **16.** (1) If, within fourteen days after giving notice to the owner pursuant to the provisions of subparagraph (i) of paragraph (a) of subsection one of section fifteen of this Act, the hirer—

Power to
hirer to
regain
possession
of goods
in certain
circum-
stances.

30 (a) pays or tenders to the owner any amount due by the hirer under the hire-purchase agreement in respect of the period of hiring up to the date of the payment or tender (and for the purposes of this paragraph the hiring shall be deemed to have continued up to that date) ;

35 (b) remedies any breach of the agreement or (where he is unable to remedy the breach by reason of the fact that the owner has taken possession of the goods) pays or tenders to the owner the costs and expenses reasonably and actually incurred by the owner in doing any act, matter, or thing necessary to remedy the breach ; and (c)

Hire-Purchase.

(c) pays or tenders to the owner the reasonable costs and expenses of the owner of and incidental to his taking possession of the goods and of his returning them to or to the order of the hirer,

5 the owner shall forthwith return the goods to the hirer and the goods shall be received and held by the hirer pursuant to the terms of the hire-purchase agreement as if the breach had not occurred and the owner had not taken possession thereof.

(2) Where goods are returned to the hirer pursuant to
10 subsection one of this section and any breach of the hire-purchase agreement has not been remedied, the owner has no right arising out of the breach to take possession of the goods unless—

15 (a) by notice in writing given to the hirer at the time of the return of the goods he specifies the breach and requires it to be remedied; and

(b) the hirer fails within fourteen days or within the time specified in the notice (whichever is the longer) after receiving the notice to remedy the breach.

20 **17.** In any legal proceedings in relation to a hire-purchase agreement, after the owner has taken possession of the goods, the court before which the proceedings are brought may vary or discharge any judgment or order of any court against the hirer for the recovery of money so far as is necessary to give
25 effect to the provisions of section fifteen of this Act. Power to court to vary existing judgments or orders when goods are re-possessed.

PART IV.

GUARANTEES.

18. (1) Save as provided in this Act a guarantor is not, by reason of the operation of this Act, discharged from
30 liability under his guarantee. Provisions as to guarantors.

(2)

Hire-Purchase.

5 (2) The liability of a guarantor continues notwithstanding that the owner has, pursuant to the provisions of a hire-purchase agreement, taken possession of the goods comprised therein (and whether or not the goods have been re-delivered to or to the order of the hirer pursuant to this Act); but nothing in this subsection operates to preserve the liability of a guarantor where the owner and the hirer have entered into a new agreement in respect of the goods comprised in any hire-purchase agreement.

10 (3) No guarantor is liable to any further or other extent than the hirer, the performance of whose obligations he has guaranteed; but, subject to section nineteen of this Act, nothing in this Act affects any agreement by the guarantor binding him to the performance of any obligation
15 that is not one of the obligations imposed on the hirer under the hire-purchase agreement in respect of which the guarantee is given.

20 (4) Where goods have been delivered to or to the order of the hirer pursuant to a hire-purchase agreement and the owner subsequently takes possession thereof, any guarantor who has paid any moneys to the owner in accordance with his guarantee has the like right in like manner to recover those moneys as he would have had if he had been the hirer of the goods, but for the purpose of
25 calculating the amount received by the owner all moneys paid and the value of any other consideration provided by or on behalf of the hirer shall be deemed to have been paid or provided by the guarantor, but no moneys shall be recovered by the guarantor in excess of the moneys actually paid by him.

30 19. (1) Where a guarantor of the performance by a hirer of all or any of the hirer's obligations under a hire-purchase agreement enters into an agreement binding the guarantor—

Guarantor not to be bound in certain cases unless independently advised.

35 (a) to pay to the owner under the hire-purchase agreement an aggregate sum that is larger than the balance originally payable under the hire-purchase agreement;

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

(c)

Hire-Purchase.

- (c) to permit the owner under the hire-purchase agreement or any person acting on behalf of the owner to enter upon any premises for the purpose of taking possession of or inspecting goods subject to the hire-purchase agreement; or
- 5 (d) to relieve the owner under the hire-purchase agreement or any person acting on behalf of the owner from liability for any such entry,
- the agreement so entered into by the guarantor is void
- 10 (and the owner under the hire-purchase agreement concerned is guilty of an offence against this Act) unless the agreement is executed by the guarantor in the presence of a chamber magistrate, a clerk of petty sessions or a solicitor instructed and employed independently of the owner and the magistrate,
- 15 clerk or solicitor, as the case may be, certifies in writing upon the agreement—
- (e) that he is satisfied that the guarantor understands the true purport and effect of the agreement; and
- (f) that the guarantor has executed the agreement in
- 20 his presence.
- (2) A chamber magistrate, a clerk of petty sessions or a solicitor shall not give a certificate in respect of an agreement under subsection one of this section unless—
- (a) he has read over and explained the agreement to
- 25 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;
- 30 (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 a chamber magistrate, a clerk of petty
- 35 sessions or a solicitor to comply with subsection two of this section in respect of a certificate does not invalidate the certificate.

PART

Hire-Purchase.

PART V.

INSURANCE.

20. (1) An owner may require any goods comprised in a hire-purchase agreement to be insured in the names of the owner and the hirer against any risk that he thinks fit for the period of the agreement at the expense of the hirer.

As to insurance of goods comprised in hire-purchase agreements.

(2) An owner shall not require a hirer to insure any such risk with any particular insurer.

(3) An owner shall not refuse to enter into a hire-purchase agreement with a person who effects insurance of the goods for the period of the agreement against such risks and subject to such terms, conditions, and exceptions as are required by the owner in the names of the owner and the hirer with a reputable insurer if the owner has no other grounds upon which the owner could reasonably refuse to enter into the agreement.

(4) An owner shall not require a hirer to obtain insurance against risks or subject to terms, conditions, and exceptions that the owner does not require if he arranges the insurance.

(5) 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 hirer under the agreement is entitled to the benefit of the rebate and any person who knowingly pays or allows any such rebate to an owner is guilty of an offence against this Act.

Hirer to be entitled to insurance rebates.

21. (1) In any proceedings taken in any court in respect of any difference or dispute arising out of a contract of insurance if it appears to the court that a failure by the insured or the hirer under the hire-purchase agreement concerned to observe or perform a term or condition of the contract of insurance may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may, unless an order excusing the failure has already been made under subsection two of this section, order that the failure be excused.

Powers of court in relation to insurance contracts associated with hire-purchase agreements.

(2)

Hire-Purchase.

(2) Where a difference or dispute has arisen out of a contract of insurance, the insured or the hirer under the hire-purchase agreement concerned or any guarantor in respect of that agreement may, unless an order excusing the failure
5 concerned has already been made under subsection one of this section, apply to the court for an order that the failure to observe or perform a term or condition of the contract of insurance be excused; and if it appears to the court that the failure may reasonably be excused on the ground that the
10 insurer was not prejudiced by the failure, the court may order that the failure be excused.

(3) Where an order of the nature referred to in subsections one and two of this section has been made under either of those subsections, the rights and liabilities of all
15 persons in respect of the contract of insurance concerned shall be determined as if the failure the subject of the order had not occurred.

(4) The provisions of this section apply only to or in respect of a contract of insurance of goods (whether or
20 not the contract includes any other class of insurance) where the premium or other sum payable for the cover given by the contract of insurance, or any part of that premium or sum, was included as part of the total amount payable for the goods comprised in a hire-purchase agreement.

25 **22.** (1) Every copy of a policy of insurance (not being a policy of third party insurance), and every statement, served upon a hirer pursuant to section four of this Act shall—

As to contents of contracts of insurance.

- (a) identify the goods or the part of the goods to be insured; and
- 30 (b) contain a statement of the amount and period for which the goods are insured or are to be insured; and
- (c) if the amount for which the goods are or are to be insured will vary during the period of the agreement, contain a statement showing the varying
35 amounts.

(2)

Hire-Purchase.

(2) Subject to subsection three of this section, any provision in any agreement or other document—

- (a) requiring differences or disputes arising out of a contract of insurance to be referred to arbitration;
- 5 (b) providing that no action or suit shall be maintainable upon such a contract or against the insurer in respect of any claim under, or difference or dispute arising out of, such a contract unless the claim, difference, or dispute has been referred to arbitration
- 10 or an award pursuant to arbitration proceedings has been first obtained;
- (c) providing that arbitration or an award pursuant to arbitration proceedings is a condition precedent to any right of action or suit upon such a contract; or
- 15 (d) otherwise imposing by reference to arbitration or to an award made in arbitration proceedings any limitation on the right of any person to bring or maintain any action or suit upon such a contract,

does not bind the hirer.

20 (3) An agreement made by the parties to a contract of insurance after a difference or dispute has arisen out of the contract of insurance to submit that difference or dispute to arbitration has effect as if subsection two of this section had not been enacted.

25 (4) The provisions of this section apply only to or in respect of a contract of insurance of goods (whether or not the contract includes any other class of insurance) where the premium or other sum payable for the cover given by the contract of insurance, or any part of that premium or sum,

30 was included as part of the total amount payable for the goods comprised in a hire-purchase agreement.

Hire-Purchase.

23. (1) The Governor may, for the purposes of subsection three of this section, make regulations prescribing rates for insurance in respect of any class or classes of goods. Rates of insurance.

In the exercise of the power conferred by the foregoing provisions of this subsection, but without limiting the generality of that power, the regulations may provide—

- (a) different rates for insurance in respect of different classes of goods;
- (b) different rates in respect of different parts of the State;
- (c) rates on a sliding scale;
- (d) rates according to or upon any specified principle or criterion.

(2) The power conferred by subsection one of this section shall be deemed to be validly exercised by a regulation that prescribes any such rates as are referred to in that subsection by reference to a list, scale or table of insurance rates referred to in the regulations and issued by a body or association that the Governor considers to be representative of insurance companies carrying on business of the class to which the list, scale or table relates.

(3) Where the total amount payable for goods the subject of a hire-purchase agreement includes an amount for insurance in respect of goods comprised in the hire-purchase agreement that are goods of a class in respect of which rates of insurance are, at the time when the agreement is entered into, prescribed under this section and that amount exceeds the amount that would have been payable for insurance in respect of the goods so comprised had those goods been insured in accordance with those rates—

- (a) the agreement is void; and
- (b) the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

24. The provisions of this Part have effect notwithstanding anything contained in any other Act. Application of this Part.

PART

Hire-Purchase.

PART VI.

LIMITATION ON TERMS CHARGES.

25. (1) This section applies to every hire-purchase agreement other than a hire-purchase agreement that—

Certain hire-purchase agreements to have regular payments of equal amount.

- 5 (a) provides that the instalments necessary to pay the difference between the total amount payable and the deposit are to be made over a period exceeding one year and also provides that those instalments are to be made less than nine times in any period of
10 twelve months that forms part of the period first-mentioned in this paragraph; or
- (b) provides that the instalments necessary to pay the difference between the total amount payable and the deposit are to be made only over a period of one
15 year or less and also provides that those instalments are to be made less than nine times during that period.

(2) A hire-purchase agreement to which this section applies shall provide that the instalments necessary under the
20 agreement to pay the difference between the total amount payable and the deposit shall—

- (a) be made at regular weekly, fortnightly or monthly intervals and at no other intervals; and
- (b) be of equal or approximately equal amounts.

25 Where an instalment differs from any other instalment by a sum in excess of one pound, the instalments shall, for the purposes of this subsection, be taken to be not of approximately equal amounts.

(3) Where a hire-purchase agreement to which this
30 section applies is entered into in contravention of subsection two of this section, the liability of the hirer shall be reduced by the amount included in the agreement for terms charges. That amount may be set off by the hirer against the amount that would otherwise be due or become due under the agreement
35 and, to the extent to which it is not so set off, may be recovered by the hirer from the owner as a debt in any court of competent jurisdiction.

Hire-Purchase.

26. (1) The terms charges in relation to a hire-purchase agreement to which section twenty-five of this Act applies shall not, when calculated as a rate per centum per annum in accordance with the formula set out in this subsection, exceed 5 a rate per annum of—

Limitation
on terms
charges.

- 10 (a) where the goods comprised in the agreement, not being second-hand goods at the time when the agreement is entered into, are any one or more of the following only, namely, industrial machinery, farm equipment or a motor vehicle (other than a motor cycle)—seven per centum;
- 15 (b) where the goods comprised in the agreement, being second-hand goods at the time when the agreement is entered into, are any one or more of the following only, namely, industrial machinery, farm equipment or a motor vehicle (other than a motor cycle)—nine per centum;
- 20 (c) where the goods comprised in the agreement are a motor cycle—nine per centum;
- 25 (d) where the goods comprised in the agreement are goods that are not of any of the descriptions in respect of which a rate is fixed by or under paragraph (a) or (b) or (c) of this subsection—ten per centum;
- 30 (e) where the goods comprised in the agreement include goods of the description or of any one or more of the descriptions referred to in one of the above paragraphs of this subsection and also goods of the description or of any one or more of the descriptions referred to in one or more of the other such paragraphs—the lower or lowest, as the case may be, of the amounts per centum prescribed by the above paragraphs in respect of a description of goods so comprised.

The

Hire-Purchase.

The rate referred to in the foregoing provisions of this subsection shall be calculated in accordance with the following formula :—

$$5 \quad R = \frac{100 \times C}{T \times P}$$

where

R represents the terms charges calculated as a rate per centum per annum.

10 C represents the amount of terms charges expressed in pounds and fractions of pounds.

T represents the time that elapses between the time fixed by or under the agreement for the making of the first instalment and the time so fixed for the making

15 of the last instalment, together with—

(i) one week where the instalments are payable under the agreement at regular weekly intervals;

20 (ii) two weeks where the instalments are payable under the agreement at regular fortnightly intervals;

(iii) one month where the instalments are payable under the agreement at regular monthly intervals,

25 expressed in years and fractions of years.

P represents the difference between the cash price of the goods comprised in the agreement and the amount of the deposit, together with—

(i) freight, if any; and

30 (ii) vehicle registration fees, if any; and

(iii) where the owner is not bound by the provisions of the Stamp Duties Act, 1920, as amended by subsequent Acts, and the total amount payable includes an amount representing the whole or any part of the stamp duty chargeable on the agreement under that Act, the last-mentioned amount; and

35 (iv) insurance, if any,

expressed in pounds and fractions of pounds.

Hire-Purchase.

(2) (a) A hire-purchase agreement to which section twenty-five of this Act does not apply shall contain, immediately above the place provided for the signature of the hirer or his agent or the place at which the hirer or his agent signs the agreement, a statement in writing as follows :—

The terms charges under this agreement are not controlled by the Hire-Purchase Act, 1960.

(b) Without prejudice to the generality of section forty-nine of this Act, "writing" in this subsection includes such printing only as is in capital letters.

(3) (a) Where a hire-purchase agreement to which section twenty-five of this Act applies is entered into in contravention of subsection one of this section, the hirer may, by notice in writing to the owner signed by the hirer or the hirer's agent, elect either to treat the agreement as void or to have his liability reduced by the amount included in the agreement for terms charges.

Such an election is final and irrevocable.

(b) Where the hirer so elects to treat the hire-purchase agreement as void, the agreement shall be void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

(c) Where the hirer so elects to have his liability reduced by the amount included in the agreement for terms charges, his liability shall be reduced by that amount and that amount may be set off by the hirer against the amount that would otherwise be due under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer as a debt in any court of competent jurisdiction.

(4) A hire-purchase agreement to which section twenty-five of this Act does not apply and that is entered into in contravention of subsection two of this section, is void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

(5)

Hire-Purchase.

(5) The expression "matter" in paragraph (o) of subsection one of section thirty-five of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, includes the question whether there should be an alteration of the rates per centum per annum prescribed by subsection one of this section.

PART VII.

MINIMUM DEPOSITS.

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

Interpretation.

(2) In this Part, "loan" includes advance, discount, money paid for or on account of or on behalf of or at the request of any person, and includes every contract (whatever its terms or form may be) that is in substance or effect a loan of money, and "lend" and "lending" have corresponding interpretations.

28. An owner who enters into a hire-purchase agreement without having first obtained from the proposed hirer thereunder a deposit in cash or in goods, or partly in cash and partly in goods, to a value equal to at least—

Minimum deposits.

(a) where the minimum amount of the deposit is not prescribed under paragraph (b) of this section—one-tenth of the cash price of the goods comprised in the agreement; or

(b) where the minimum amount of the deposit is prescribed under this paragraph—such amount as may for the time being be prescribed,

is guilty of an offence against this Act.

29.

Hire-Purchase.

29. (1) No deposit—

(a) to the extent that it is in cash and that it is made out of moneys borrowed directly or indirectly—

Certain payments, &c., not to be treated as deposits for the purposes of this Part.

5

(i) from or through the owner (if the owner is not a banker);

(ii) from or through the dealer; or

10

(iii) from or through any person whose business or part of whose business it is, by agreement with the owner or dealer or any person acting on behalf of the owner or dealer, to advance money to enable deposits to be paid in respect of hire-purchase agreements with the owner;

15

(b) to the extent that, where the deposit is in goods or partly in goods and the amount allowed in respect of the goods is substantially greater than the value of the goods, that amount exceeds that value;

20

(c) to the extent that it is made out of an amount allowed or credited in respect of, or by reference to, amounts paid by the hirer as rent or hire under a bailment of the goods before the making of a hire-purchase agreement in respect of the goods; or

25

(d) to the extent that it is provided by goods that were, to the knowledge of the owner or dealer, acquired by the hirer for the purpose of being used by the hirer to provide the deposit under the agreement,

shall be taken into account for the purpose of determining whether the provisions of section twenty-eight of this Act have been complied with.

30

(2) The provisions of this Part shall be deemed to have been complied with by the owner if a deposit in accordance with the provisions of this Part has been obtained by the dealer.

(3)

Hire-Purchase.

(3) Where a dealer buys goods from a proposed hirer and the price, or part of the price, of the goods is applied as or towards a deposit under a hire-purchase agreement, then in relation to the agreement—

- 5 (a) the goods shall, for the purposes of this Act, be deemed to have been obtained by the dealer as a deposit; and
- (b) the price, or the part of the price, as the case may be, so applied shall, for the purposes of this Act, be
- 10 deemed to be the amount allowed by the dealer in respect of the goods.

(4) The dealer shall, in relation to the deposit obtained by him under a proposed hire-purchase agreement, certify in writing—

- 15 (a) where the deposit was paid or provided solely in cash, that the deposit was paid or provided solely in cash;
- (b) where the deposit was provided solely in goods—the nature and description of, and the amount
- 20 allowed by the dealer in respect of, the goods;
- (c) where the deposit was paid or provided partly in cash and partly in goods—the amount of the deposit that was paid or provided in cash and the nature and description of, and the amount allowed by the
- 25 the dealer in respect of, the goods.

(5) A dealer who under subsection four of this section certifies as the amount allowed by him in respect of goods an amount that is not a reasonable estimate of the value of the goods or gives a certificate that is false in any

30 other material particular shall be guilty of an offence against this Act.

(6) Notwithstanding anything contained in this Part, where an owner in entering into a hire-purchase agreement acts on the faith of a certificate given under subsection four

35 of this section by the dealer and the amount certified in the certificate

Hire-Purchase.

certificate as being the amount allowed in respect of the goods whose nature and description are certified therein is substantially greater than the value of those goods the agreement has the same effect as if the amount so certified were the value
5 of those goods.

Nothing in this subsection affects the liability of any person to be convicted of an offence against this section.

(7) Any person who knowingly enters into, or procures, arranges, or otherwise assists or participates in, a
10 transaction contravening this section is guilty of an offence against this Act.

30. (1) Where a hire-purchase agreement is entered into in contravention of section twenty-eight of this Act, the hirer may, by notice in writing to the owner signed by the hirer or
15 the hirer's agent, elect either to treat the agreement as void or to have his liability reduced by the amount included in the agreement for terms charges.

Effect of non-compliance with s. 28.

Such an election is final and irrevocable.

(2) Where the hirer so elects to treat the hire-
20 purchase agreement as void, the agreement shall be void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

(3) Where the hirer so elects to have his liability
25 reduced by the amount included in the agreement for terms charges, his liability shall be reduced by that amount and that amount may be set off by the hirer against the amount that would otherwise be due under the agreement and, to the
30 extent to which it is not so set off, may be recovered by the hirer as a debt in any court of competent jurisdiction.

(4) Nothing in this section affects the liability of any person to be convicted of an offence against section twenty-eight of this Act.

Hire-Purchase.

31. (1) Any person, other than a banker, who (whether or not he carries on any other business) carries on the business of lending or making loans to other persons for the purposes of enabling those other persons to pay the deposits required by or under section twenty-eight of this Act is guilty of an offence against this Act.

Offences.
Offence to carry on business of lending deposits.

(2) Any person who accepts as a deposit under a hire-purchase agreement any money or other consideration that he has reasonable cause to believe or suspect was lent to the hirer by any person, other than a banker, who carries on the business referred to in subsection one of this section is guilty of an offence against this Act.

Deposits not to be by way of loan.

PART VIII.

MISCELLANEOUS.

32. (1) In any proceedings under this Act, or arising out of a hire-purchase agreement, or instituted pursuant to subsection four of this section, where it appears to the court that the transaction is harsh and unconscionable or is otherwise such that a court of equity would give relief the court may re-open the transaction and take an account between the parties thereto.

Power to court to re-open certain hire-purchase transactions.

(2) The court re-opening any transaction under this section 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 hirer and any guarantor from payment of any sum in excess of such sum in respect of the cash price, terms charges, and other charges as the court adjudges to be fairly and reasonably payable;
- (c)

Hire-Purchase.

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

(3) Where it appears to the court that any person other than the owner has shared in the profits of or has any beneficial interest prospectively or otherwise in the transaction that the court holds to be harsh and unconscionable the
15 court may add that person as a party to the case and may give judgment against that person for such amount as it thinks fit or for the delivery of the goods if they are in his possession and the court may make such other order in respect of that person as it thinks fit.

20 (4) Proceedings may be instituted in any court by the hirer or any guarantor under a hire-purchase agreement for the purpose of obtaining relief under this section.

(5) In any proceedings under this section the court has and may exercise all or any of the powers conferred
25 by subsections one, two and three of this section notwithstanding that the time for the payment of any of the amounts payable under the agreement may not have arrived.

(6) A hirer or guarantor under a hire-purchase agreement is not entitled to institute proceedings under this
30 section—

- (a) in a case where the owner has taken possession of the goods comprised in the agreement—after the expiration of a period of four months after the date on which the owner serves on the hirer the notice required by subsection three of section thirteen of
35 this Act to be served on him; or

(b)

Hire-Purchase.

(b) in any other case—after the expiration of a period of four months from the time when the transaction is closed.

33. (1) Where—

5 (a) goods consisting of a harvester, binder, tractor, plough or other agricultural implement or a motor truck are comprised in a hire-purchase agreement; and

Power of court to restrain re-possession of certain goods from farmer.

(b) the hirer is a farmer,

10 the period fixed by any notice of intention to take possession of the goods served under subsection one of section thirteen of this Act shall, notwithstanding the period specified in that subsection, be a period of not less than thirty days after the service of the notice.

15 (2) The farmer may, within the period fixed by the notice, apply to a court of petty sessions for an order restraining the owner from taking possession of the goods.

(3) If the court is satisfied that, within twelve months from the date of the application, the farmer will have a 20 reasonable prospect of being able to pay all instalments due and owing on that date, the court may make an order restraining the owner from taking possession of the goods for such period not exceeding twelve months as the court fixes.

(4) An order under subsection three of this section 25 may include such terms and conditions, including conditions as to payment of instalments, as the court thinks fit.

(5) In this section, "farmer" means any person 30 engaged in agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, or any other business consisting of the cultivation of soil, the gathering in of crops or the rearing of livestock.

34. (1) Subject to subsection two of this section, where Liens. a worker does work upon goods comprised in a hire-purchase agreement in such circumstances that, if the goods were the 35 property of the hirer, 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 hirer. (2)

Hire-Purchase.

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

5 **35.** (1) Goods comprised in a hire-purchase agreement Fixtures. that, at the time of the making of the agreement, were not fixtures to land shall not, in respect of the period during which the agreement remains in force, be treated as fixtures to land.

10 (2) Notwithstanding anything contained in subsection one of this section, the owner is not entitled to re-possess goods that have been affixed to a dwelling-house or residence if, after the goods have become so affixed, any person other than the hirer has bona fide acquired for valuable considera-
15 tion an interest in the land without notice of the rights of the owner of the goods.

36. (1) Any provision in any agreement or other Avoidance of certain provisions. document whereby—

20 (a) any right conferred on the hirer by this Act to determine a hire-purchase agreement is excluded or restricted;

(b) any liability beyond the liability imposed by this Act is imposed on the hirer under a hire-purchase agreement by reason of the determination of the hire-
25 purchase agreement in accordance with this Act;

(c) the hirer under a hire-purchase agreement is subject to any greater liability on the determination, in any manner whatsoever, of the hire-purchase agreement or of the bailment thereunder, than the liability to
30 which he would be subject if the hire-purchase agreement were determined in accordance with this Act;

(d) the hirer under a hire-purchase agreement is required to pay any sum (whether or not it is described in
35 the agreement as interest) in respect of any amount due under the hire-purchase agreement but not paid exceeding

Hire-Purchase.

- exceeding a sum equal to the simple interest on that amount calculated at the rate of eight per centum per annum on a daily basis for the period for which it is due and not paid;
- 5 (e) any person acting on behalf of the owner under a hire-purchase agreement in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement is to be treated as, or declared to be, the agent of the hirer;
- 10 (f) the owner under a hire-purchase agreement is relieved from liability for the acts or defaults of any person acting in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement;
- 15 (g) the owner under a hire-purchase agreement or any person acting on his behalf is authorised to enter upon any premises for the purpose of taking possession of goods comprised in the hire-purchase agreement or is relieved from liability for any such
- 20 entry;
- (h) the operation of a hire-purchase agreement is determined or modified or any person is authorised to re-possess any goods comprised in a hire-purchase agreement if the hirer becomes bankrupt or commits
- 25 an act of bankruptcy or executes a deed of assignment or a deed of arrangement (whether all or any of those events are named); or
- (i) except as expressly provided by this Act the operation of any provision of this Act is excluded,
- 30 modified, or restricted,
- is void.
- (2) Where any agreement or other document contains a provision that is void under subsection one of this section, the owner under the hire-purchase agreement concerned is
- 35 guilty of an offence against this Act. **37.**

Hire-Purchase.

37. If in connection with any goods any person (in this section referred to as the "dealer") arranges that some other person (in this section referred to as the "financier") shall—

Restrictions on payments to owners of goods by financiers.

- 5 (a) enter into a hire-purchase agreement in relation to those goods with a hirer;
- (b) accept any assignment of the dealer's property in those goods comprised in a hire-purchase agreement, or of the dealer's rights under a hire-purchase agreement in relation to those goods; or
- 10 (c) advance or pay money to the dealer or to some person on his behalf in respect of a hire-purchase agreement in relation to those goods,

the dealer shall not seek, accept, demand, or receive from the financier and the financier shall not pay, offer, or grant

15 to the dealer, directly or indirectly, any money or other valuable consideration that, together with the money (if any) paid or payable by or on behalf of the hirer to the dealer and the value of any other consideration (if any) furnished or to be furnished by or on behalf of the hirer

20 to the dealer would exceed the cash price of the goods: Provided that where the dealer has entered into a contract guaranteeing the performance of the hire-purchase agreement by the hirer, a commission not exceeding one-tenth of the total terms charges payable under the hire-purchase agreement

25 may be paid by the financier to the dealer.

38. Any person (in this section referred to as the "owner") who knowingly—

Certain transactions prohibited.

- 30 (a) enters into an agreement for the bailment of goods to any person (in this section referred to as the "hirer"), which agreement does not by itself constitute a hire-purchase agreement; or
- (b) takes from any person (in this section referred to as the "hirer") an offer in writing that, if accepted, will constitute an agreement for the bailment of goods but will not by itself constitute a hire-purchase agreement,
- 35

in

Hire-Purchase.

in association, directly or indirectly, with the making, by the hirer to the owner or to any person associated, directly or indirectly, in business with the owner, of an offer in writing to purchase the goods the subject of the agreement referred to in paragraph (a) or of the offer referred to in paragraph (b) of this section on terms and conditions that, if the offer in writing to purchase the goods is accepted, will constitute a hire-purchase agreement is guilty of an offence against this Act.

10 **39.** Where—

(a) a bill of exchange or promissory note has been given by a hirer or guarantor under a hire-purchase agreement to the owner in respect of an amount payable under the agreement; and

Provisions relating to securities collateral to hire-purchase agreements.

15 (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 Act or otherwise, result in payment of an amount in excess of the liability of the hirer under the agreement,

20 the owner is liable to indemnify the hirer or guarantor, as the case may be, in respect of the amount of the excess.

40. Where—

(a) a dealer or a person acting on behalf of a dealer prepares or causes to be prepared a hire-purchase agreement or offer in writing that, if accepted, will constitute a hire-purchase agreement with the intention of bringing about a contractual relationship between an owner and a hirer; and

False statement by dealers, &c., in proposals.

25 (b) the agreement or offer contains to the knowledge of the dealer or the person acting on behalf of a dealer, as the case may be, a false statement or representation that is false in any material particular,

30

the dealer or the person acting on behalf of a dealer is guilty of an offence against this Act and liable to a penalty not exceeding two hundred pounds or to imprisonment for a term not exceeding three months.

35

41.

Hire-Purchase.

41. The owner of any goods comprised in a hire-purchase agreement may, at any time by notice in writing served on the hirer thereof, require him to state in writing where the goods are, or, if the goods are not in his possession, to whom he delivered the goods or the circumstances under which he lost possession of them, and any hirer who does not within fourteen days after the receipt of such a notice give to the owner such a statement or who gives a statement containing any information that is to the knowledge of the hirer false is guilty of an offence against this Act.

Hirer may be required to state where goods are.

42. Every person who, by the disposal or sale of any goods comprised in a hire-purchase agreement, or by the removal of the goods, or by any other means defrauds or attempts to defraud the owner is guilty of an offence against this Act and liable to a penalty not exceeding two hundred pounds or to imprisonment for a period not exceeding three months.

Fraudulent sale or disposal of goods by hirer.

43. Where a hire-purchase agreement is in writing signed by or on behalf of the hirer, any alteration of, or matter added to, the written document that contains the terms and conditions of the agreement after the document was so signed, if the alteration is an alteration of any of the matters required to be specified, contained, or set out in the agreement by paragraphs (c), (d) and (e) of subsection two of section three of this Act or the additional matter is a matter required to be so specified, contained, or set out or affects any matter required to be so specified, contained, or set out, has no force or effect unless the hirer or the agent (not being a person in the employ of the owner or acting on behalf of the owner in connection with the formation or conclusion of the agreement) of the hirer has consented to the alteration or additional matter by signing or initialling the agreement in the margin thereof opposite the alteration or additional matter.

Certain alterations, &c., of hire-purchase agreements to be of no effect.

Hire-Purchase.

44. Where goods comprised in a hire-purchase agreement are, at the time when the agreement is entered into, second-hand goods, then unless—

- 5 (a) the goods are described in the agreement as second-hand goods; or
- (b) in any proceedings taken by the owner to enforce the agreement, the court is satisfied that—
 - 10 (i) the hirer was aware at the time when he or his agent signed the agreement that goods comprised or to be comprised therein were second-hand goods; or
 - (ii) the owner was not aware at the time when the agreement was entered into that goods comprised therein were second-hand goods,

15 the liability of the hirer thereunder shall be reduced by the amount included in the agreement for terms charges. That amount may be set off by the hirer against the amount that would otherwise be due or become due to the owner under the agreement and, to the extent to which it is not so set off,
20 may be recovered by the hirer from the owner as a debt in any court of competent jurisdiction.

45. (1) A hire-purchase agreement that relates to household furniture or effects used or intended to be used by the hirer in his home and that is made with a hirer who is married is not enforceable unless—

- 25 (a) (i) the agreement contains a statement in writing signed by the spouse of the hirer signifying the consent of the spouse to the agreement; and
- 30 (ii) the statement is so signed by the spouse at or before the time when the agreement was entered into; or
- (b) the hirer, at or before the time when the agreement was entered into, produced and delivered to the owner an authority, signed by the spouse of the hirer, to pledge the credit of the hirer and the spouse
35 or of either of them up to a limit, not exceeding thirty pounds, specified in the authority, and the total amount payable for the goods comprised in the agreement,

Second-hand goods.

Regulation of hire-purchase agreements with married persons.

Hire-Purchase.

agreement, together with all other moneys owing or payable by the hirer and the spouse or either of them to the owner, does not exceed the limit so specified; or

- 5 (c) the hirer, at or before the time when the agreement was entered into, produced and delivered to the owner a statutory declaration made by the hirer to the effect that the spouse of the hirer was under such a legal incapacity as to render the spouse unable to
10 sign a statement as required by paragraph (a) of this subsection.

(2) Subsection one of this section does not apply if—

- 15 (a) the owner had reasonable grounds for believing and did in fact believe, at the time the hire-purchase agreement was entered into, that—

(i) the hirer was living separate and apart from the spouse of the hirer; or

(ii) the spouse of the hirer was outside New South Wales; or

- 20 (b) at or before the time when the hire-purchase agreement was entered into, the hirer produced and delivered to the owner—

(i) where the residence of the hirer is situated more than five miles from the nearest
25 telegraph office and the agreement was made at the residence, an instrument in writing signed by the hirer; or

(ii) in any other case, a statutory declaration made by the hirer,

- 30 stating that he was not married at the time of the delivery of the instrument or statutory declaration, as the case may be, to the owner, unless the owner had reasonable grounds for believing that the statement was false.

- 35 A hirer who makes a false statement in such an instrument is guilty of an offence against this Act and liable to a penalty not exceeding fifty pounds. (3)

Hire-Purchase.

(3) (a) This subsection applies to and in respect of a hire-purchase agreement of the nature referred to in subsection one of this section where the total amount payable for the goods comprised in the agreement does not exceed 5 ten pounds.

(b) Where the owner, under a hire-purchase agreement to which this subsection applies, serves (by personal delivery) on the spouse of the hirer, within seven days after the making of the agreement, a notice in writing 10 that the agreement has been made, and the spouse of the hirer does not, within seven days after service of the notice, serve on the owner a notice in writing that he objects to the making of the agreement, the agreement is not, by reason only of subsection one of this section, unenforceable.

15 (c) Where the spouse of the hirer serves such a notice of objection the hire-purchase agreement ceases to be binding on the parties thereto; and thereupon the owner shall refund all moneys paid and the value of any consideration provided by the hirer and shall be entitled to recover posses- 20 sion of the goods comprised in the agreement.

(4) If an owner to whom such an authority or statutory declaration or instrument as is referred to in this section has been delivered fails to preserve it until the expiration of twelve months after the transaction in respect of which 25 it was given is finally closed, he is guilty of an offence against this Act.

46. Any time prescribed by this Act for the service or giving of any notice or other document or for the commencement of proceedings may, on an application made to a court 30 of petty sessions (either before or after the expiration of that time but after notice to the other party to the hire-purchase agreement) be extended by that court for such further period, and upon such conditions, as the court thinks fit.

Power to
court to
extend
times.

Hire-Purchase.

47. (1) Upon complaint made by an owner who is entitled to take possession of any goods comprised in a hire-purchase agreement or by any person acting on behalf of an owner that the hirer or any person acting on behalf of the
 5 hirer has refused or failed to deliver up possession of the goods on the service of a notice of demand made by the owner or by an agent of the owner authorised in that behalf, any justice of the peace may summon the person complained of to appear before a court of petty sessions and if it appears to
 10 the court hearing the case that the goods are being detained without just cause, the court may order the goods to be delivered up to the owner at or before a time, and at a place, to be specified in the order.

Power to court to order delivery of goods unlawfully detained.

(2) Any person who neglects or refuses to comply
 15 with any order made under this section is guilty of an offence against this Act.

48. (1) Any notice or document required or authorised to be served on or given or sent to an owner or hirer under this Act may be so served or given or sent—
 20 (a) by delivering it to him personally;
 (b) by leaving it at his place of abode or business with some other person apparently an inmate thereof or employed thereat and apparently of or over the age of sixteen years; or
 25 (c) by posting it, by registered post or by certified mail service, addressed to him at his last known place of abode or business.

Service of notices.

(2) Where by any provision of this Act the doing of any act or thing by a person is prohibited unless a notice or
 30 document has first been served on or given to another person or unless a specified time has elapsed since the service or giving of a notice or document on or to another person, a court of petty sessions may in its discretion, upon application made to it by or on behalf of the first-mentioned person, if
 35 is satisfied that that other person is evading the service or giving of the notice or document or that, for any other reason, the service or giving of the notice or document has not been and cannot promptly be effected, order that the service or giving

Hire-Purchase.

giving of the notice or document be dispensed with (whether or not the time for the service or giving of the notice or document has expired) and, thereupon, the first-mentioned person may, notwithstanding anything elsewhere contained in 5 this Act but subject to the observance of the terms and conditions, if any, included in the order, do that act or thing without serving or giving the notice or document in question or, as the case may be, although the notice or document in question has not been served or given and the specified time 10 has not elapsed.

An order under this subsection may include such terms and conditions as the court thinks fit.

(3) The affidavit or oral evidence of an owner or his servant or agent as to the delivery, leaving, or posting of any 15 notice or document required or authorised to be served, given, or sent by this Act is admissible as prima facie evidence of the due service, giving, or sending of the notice or document if the deponent swears to the facts necessary to prove due service, giving, or sending either from his own knowledge or 20 to his information and belief based on and verified by the records of the owner.

49. (1) Any prescribed document or part thereof—

- (a) not being the signature or initials of any person, that is in handwriting that is not clear and legible; or
25 (b) that is printed in type of a size smaller than the type known as ten-point Times,

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

shall, for the purposes of this Act, be deemed not to be in writing.

(2) In this section, "prescribed document" means—

- 30 (a) any hire-purchase agreement;
(b) any statement under subsection one of section three of this Act;
(c) any copy of an agreement, notice, or statement required by section four of this Act to be served on a hirer;
35 (d) any statement required by subsection one of section seven of this Act to be sent to a hirer; (e)

Hire-Purchase.

(e) any notice under subsection one or subsection three of section thirteen of this Act; and

5 (f) any statement required by subsection two of section twenty-six of this Act to be contained in a hire-purchase agreement.

(3) Where, by virtue of this section, a prescribed document or part of a prescribed document is, for the purposes of this Act, deemed not to be in writing, then, except as is otherwise in this Act expressly provided, the validity or effect 10 of the prescribed document is not affected.

Nothing in this subsection affects the liability of any person to be convicted of an offence against this Act.

15 **50.** (1) Any person who contravenes or fails to comply with any provision of this Act is guilty of an offence against this Act. Penalty.

(2) Any person who is guilty of an offence against this Act for which no other penalty is expressly provided by this Act is liable to a penalty not exceeding two hundred pounds.

20 **51.** Proceedings for offences against this Act shall be disposed of summarily before a court of petty sessions. Proceedings for offences.

52. Any prosecution for an offence against this Act may be commenced at any time within one year after the commission of the offence. Time for commencement of prosecution.

25 **53.** (1) The Credit-sale Agreements Act, 1957-1959, is amended by inserting in the definition of "Credit-sale agreement" in subsection one of section two after the word "Acts" the words " , where the agreement was entered into before the commencement of the Hire-Purchase Act, 1960, or is a hire- Amendment of Act No. 29, 1957. Sec. 2. (Interpretation.)
30 purchase agreement as defined in section two of the Hire-Purchase Act, 1960, where the agreement is entered into after that commencement". (2)

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(2) The Police Offences Act, 1901, as amended by subsequent Acts, is amended by omitting subsection six of section thirty-two and by inserting in lieu thereof the following subsection :—

Amendment
of Act No.
5, 1901.
Sec. 32.

5 (6) This section does not extend to proceedings by the owner under a hire-purchase agreement, or any person acting on his behalf, for the recovery of possession of goods comprised in the agreement.

(Order for
the delivery
to the owner
of goods
unlawfully
detained.)

10 (3) (a) The Credit-sale Agreements Act, 1957, as amended by the Banking (Interpretation of References) Act, 1959, and by this Act, may be cited as the Credit-sale Agreements Act, 1957-1960.

15 (b) The Police Offences Act, 1901, as amended by subsequent Acts and by this Act, may be cited as the Police Offences Act, 1901-1960.

20 **54.** (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

Regulations.

25 (2) The amount referred to in paragraph (b) of section twenty-eight of this Act may be at such rate or rates or calculated on such basis or bases (whether by reference to the cash price of the goods comprised in the hire-purchase agreement concerned or otherwise) as may be specified in the regulations, and the rates or bases so specified may vary according to different amounts of cash price, different durations of hire-purchase agreements, different classes of goods or otherwise.

30 (3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- 35 (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If

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If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before the House disallowing any regulation or part thereof, the regulation or part thereupon ceases to have effect.

FIRST SCHEDULE.

Sec. 3 (1).

Hire-Purchase Act, 1960.

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

- 10 *.....
- The cash price of goods is £.....
- (a) The terms charges are £.....
and represent a rate per centum per annum not exceeding †
- (a) Other charges are—
- 15 (a) For insurance for years .. £.....
(a) For freight, vehicle registration, &c. .. £..... £.....
- The total amount you will have to pay (including deposit of £.....) is £.....
- 20 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 law to be applicable to the proposed agreement will be the law of §

NOTE.—The sequence of any item or items in the group of items marked 25 “(a)” may be altered in relation to any other item or items in that group, but the sequence of that group must not be altered in relation to the items not marked “(a)”.

- * Insert short description of goods.
- 30 † Insert, where the proposed agreement is an agreement to which s. 25 of the Act applies, a rate per centum per annum not less than the rate per centum per annum obtained by calculating the terms charges in accordance with the formula set out in s. 26 (1).
- ‡ Insert number, amount, and intervals of instalments.
- 35 § Insert the name of the State, Territory or country the law of which is to be applicable to the proposed agreement.

SECOND SCHEDULE.

Sec. 4.

Hire-Purchase Act, 1960.

ADVICE TO HIRERS.

Under the provisions of the Hire-Purchase Act, 1960—

- 40 (a) you are entitled to a copy of the agreement and a statement of the amount that you owe if you make a written request to the owner for them. You may not request a copy or a statement more than once in three months;
- (b)

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- (b) with the written consent of the owner you can assign your rights under the hire-purchase agreement and he may not unreasonably refuse his consent. For details of the procedure of assignment see Hire-Purchase Act, 1960, section 9;
- 5 (c) you have the right to complete the agreement at any time and if you do you will be entitled to a rebate of some of the charges payable under the agreement. For details see Hire-Purchase Act, 1960, section 11;
- 10 (d) if you are unable to pay your instalments you are entitled to return the goods to the owner at your own expense, but if you do you will be liable to pay an amount sufficient to cover the loss suffered by the owner. For details of the amount that you will have to pay see Hire-Purchase Act, 1960, section 12.

THIRD SCHEDULE.

Sec. 13 (1).

15

Hire-Purchase Act, 1960.

NOTICE OF INTENTION TO RE-POSSESS.

TAKE NOTICE THAT
 the owner of *.....
 hired by you under an agreement dated the day
 20 of 19 intends to retake possession of the
 goods after the expiration of †..... days from the service of this
 notice unless the arrears of instalments which now amount to £.....
 are paid to at on or
 before 19.....
 25 Total amount payable £.....
 Amount paid or provided by hirer to / / 19.... £.....
 Arrears under agreement to / / 19.... .. £.....

* Insert description of goods.

30 † Insert number of days, not being less than twenty-one, or, where the hirer is a farmer and s. 33 of the Act applies, not being less than thirty.

FOURTH SCHEDULE.

Secs. 11 (3),
13 (3), 14,
15.

Hire-Purchase Act, 1960.

ADVICE TO HIRERS.

35 Now that the goods you hired have been re-possessed you will be entitled to get them back—

- (a) if, within twenty-one days, you require the owner, by notice in writing signed by you or your agent, to re-deliver the goods to you and if, within fourteen days after giving the notice, you
reinstated

Hire-Purchase.

reinstatement the agreement by paying the arrears and remedy the following breaches of the agreement (or pay the owner's expenses in remedying them):

5 The owner's estimate of the amount you must pay to reinstate the agreement is:—

	Arrears of instalments	£.....
	Cost of storage, repair or maintenance	£.....
	Cost of re-possession	£.....
	Cost of re-delivery	£.....
10	Total	£.....

or

(b) if, within twenty-one days, you give notice of your intention to finalise the agreement and pay the balance due under the agreement and costs of the re-possession:

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

	Total amount payable under the agreement	£.....
	Less deposit and instalments paid	£.....
	Balance due under agreement	£.....
20	Less statutory rebates	£.....
	Add costs of re-possession	£.....
	Storage, repair or maintenance	£.....
	Total	£.....

25 *If you don't reinstate or finalise the agreement you will be liable for the owner's loss unless the value of the goods re-possessed 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 value of the goods re-possessed is £ .

30 * On the basis of that estimate you are entitled to a refund of £ .
liable to pay the owner £ .

NOTE.—You may give a written notice to the owner requiring the owner to sell the goods to any cash buyer you can introduce who is willing to pay the owner's estimate of the value, i.e.†

35 * Strike out whichever inapplicable.

† Insert owner's estimate of value.

DO NOT DELAY.

40 Action to enforce your rights should be taken at once. You will lose your rights *twenty-one days* after the service or posting of this notice if you do not take action.

If you think you have any rights under the Hire-Purchase Act, 1960, you should seek advice at once.

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

45 This notice is sent to you as guarantor of

As guarantor you have certain rights under the Hire-Purchase Act, 1960, and you should seek advice at once.

New South Wales



ANNO NONO

ELIZABETHÆ II REGINÆ

Act No. 33, 1960.

An Act relating to the form and content of hire-purchase agreements; to regulate the rights and duties of parties to hire-purchase agreements; to repeal the Hire-purchase Agreements Act, 1941, and certain other enactments; to amend the Credit-sale Agreements Act, 1957, the Police Offences Act, 1901, and certain other Acts; and for purposes connected therewith. [Assented to, 28th April, 1960.]

BE

Hire-Purchase.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title. 1. (1) This Act may be cited as the "Hire-Purchase Act, 1960."

Commence-ment. (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division into Parts. (3) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY—*ss.* 1, 2.

PART II.—FORMATION AND CONTENTS OF HIRE-PURCHASE AGREEMENTS—*ss.* 3, 4.

PART III.—PROTECTION OF HIRERS—*ss.* 5–17.

Division 1.—Warranties and conditions—ss. 5, 6.

Division 2.—Statutory rights of hirers—ss. 7–10.

Division 3.—Early completion of agreements—s. 11.

Division 4.—Voluntary return of goods—s. 12.

Division 5.—Repossessions—ss. 13–17.

PART IV.—GUARANTEES—*ss.* 18, 19.

PART V.—INSURANCE—*ss.* 20–24.

PART VI.—LIMITATION ON TERMS CHARGES—*ss.* 25, 26.

PART VII.—MINIMUM DEPOSITS—*ss.* 27–31.

PART VIII.—MISCELLANEOUS—*ss.* 32–54.

Repeal. (4) (a) The Hire-purchase Agreements Act, 1941, the Hire-purchase Agreements (Amendment) Act, 1955, the Hire-purchase Agreements (Amendment) Act, 1957, sections thirteen and fourteen of the Economic Stability and War-time Provisions Continuance Act, 1946, and section three of the Banking (Interpretation of References) Act, 1959, are repealed.

(b)

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(b) Notwithstanding the repeal of the enactments mentioned in subsection one of this section but subject to paragraph (c) of this subsection, those enactments continue to apply to and in relation to—

- (i) hire-purchase agreements entered into before the commencement of this Act; and
- (ii) agreements entered into before or after that commencement in relation to hire-purchase agreements entered into before that commencement.

(c) Section twenty of the Hire-purchase Agreements Act, 1941-1959, continues so to apply for the following purposes only, namely, for the purposes of—

- (a) proceedings under that section that were commenced before the commencement of this Act and in which an order had been made under subsection two of that section before that commencement; and
- (b) proceedings under that section in relation to an order so made.

(5) (a) This Act applies to and in relation to— Application
of Act.

- (i) hire-purchase agreements entered into after the commencement of this Act; and
- (ii) agreements entered into before or after that commencement in relation to hire-purchase agreements to be entered into, or entered into, after that commencement.

(b) Section forty-seven of this Act applies to and in relation to hire-purchase agreements entered into before the commencement of this Act as well as to and in relation to hire-purchase agreements entered into after that commencement.

2. (1) In this Act, unless inconsistent with the context or subject-matter— Interpreta-
tion.

“Banker” means a body corporate for the time being authorised to carry on banking business under a law of this or another State or of the Commonwealth of Australia.

“Cash” includes a cheque drawn on a banker.

“Court

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“Court of petty sessions” means a court of petty sessions held before a stipendiary magistrate sitting alone.

“Dealer” means a person, not being the hirer or the owner or a servant of the owner, by whom or on whose behalf negotiations leading to the making of a hire-purchase agreement with the owner were carried out or by whom or on whose behalf the transaction leading to a hire-purchase agreement with the owner was arranged.

“Goods” includes all chattels personal other than money or things in action.

“Guarantor” means a person who has guaranteed the performance by a hirer of all or any of his obligations under a hire-purchase agreement but does not include the dealer or 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.

“Hire-purchase agreement” includes a letting of goods with an option to purchase and 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 any agreement—

(a) whereby the property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods; or

(b) under which the person by whom the goods are being hired or purchased 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.

“Hirer” means the person to whom goods are let, hired, or agreed to be sold under a hire-purchase agreement and includes a person to whom the hirer’s rights or liabilities under the agreement have passed by assignment or by operation of law.

“Owner”

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“Owner” means the person letting, hiring, or agreeing to sell goods under a hire-purchase agreement and includes a person to whom the owner’s property in the goods or any of the owner’s rights or liabilities under the agreement have passed by assignment or by operation of law.

“Period of the agreement”, in relation to a hire-purchase agreement, means the period between the commencement of the hiring under the agreement and the time provided by the agreement for the payment of the last instalment.

“Prescribed” means prescribed by this Act or by the regulations.

“Regulations” means regulations made under this Act.

“Schedule” means Schedule to this Act.

“Statutory rebate”—

(a) in relation to terms charges—

(i) means the amount derived by multiplying the terms charges by the sum of all the whole numbers from one to the number which is the number of complete months in the period of the agreement still to go (both inclusive) and by dividing the product so obtained by the sum of all the whole numbers from one to the number which is the total number of complete months in the period of the agreement (both inclusive); or

(ii) where it is agreed in a hire-purchase agreement that the terms charges have been calculated on a simple interest basis at a rate specified in the agreement on the amount outstanding from month to month means the amount of interest attributable to the period of complete months still to go under the agreement; and (b)

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(b) in relation to insurance, means the sum of—

- (i) the total amount of premium paid in respect of any annual period not yet commenced; and
- (ii) ninety per centum of the proportion of the amount of the premium for insurance in respect of the current annual period attributable to the unexpired portion of that period consisting of whole months.

“Third party insurance” means any insurance in relation to liability in respect of death or bodily injury caused by or arising out of the use of a motor vehicle being insurance required by the law of the place where the vehicle is registered or is being registered, as the case requires.

“Total amount payable” means the total amount to be paid or provided whether by way of cash or other consideration by or on behalf of the hirer under a hire-purchase agreement.

“Vehicle registration fees” means any amount to be provided under a hire-purchase agreement by the owner for payment by or on behalf of the hirer under the law of this State or of any other State or Territory of the Commonwealth of Australia in connection with the registration and use of a motor vehicle, including any amount payable for third party insurance.

(2) (a) Subject to paragraph (b) of this subsection, in this Act “cash price”, “freight”, “terms charges”, and “the balance originally payable under the agreement” have the meanings assigned to them in subsection two of section three of this Act.

(b) In this Act “terms charges” and “the balance originally payable under the agreement” have, in relation to a hire-purchase agreement of the kind referred to in subsection six of section three of this Act, the meanings assigned to them in subsection two, as modified by subsection six, of that section.

(3)

Hire-Purchase.

(3) In this Act, other than sections twenty and twenty-three, "insurance" has the meaning assigned to it in subsection two of section three of this Act.

(4) Any reference in this Act to taking possession by the owner of goods comprised in a hire-purchase agreement includes—

- (a) the taking of possession of goods by the owner pursuant to an order of a court; and
- (b) the return of goods to the owner after notice has been served on the hirer pursuant to the provisions of subsection one of section thirteen of this Act,

but does not include a reference to taking possession by the owner as a result of the voluntary return of the goods by the hirer.

(5) 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 Act, be treated as a single hire-purchase agreement made at the time when the last agreement was made.

PART II.

FORMATION AND CONTENTS OF HIRE-PURCHASE AGREEMENTS.

3. (1) Before any hire-purchase agreement is entered into in respect of any goods the owner or, if there is a dealer, the dealer shall give or cause to be given to the prospective hirer a statement in writing duly completed in accordance with the form in the First Schedule :

Summary of proposed hire-purchase transaction to be given to prospective hirer.

Provided that where the agreement is entered into by way of acceptance by the owner of a written offer signed by or on behalf of the hirer, the provisions of this subsection shall be deemed

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deemed not to have been complied with unless the written statement was given to the prospective hirer before the written offer was so signed.

Form and contents of hire-purchase agreements.

- (2) Every hire-purchase agreement—
- (a) shall be in writing;
 - (b) shall be signed by or on behalf of the hirer and all other parties to the agreement;
 - (c) shall—
 - (i) specify a date on which the hiring shall be deemed to have commenced;
 - (ii) specify the number of instalments to be paid under the agreement by the hirer;
 - (iii) specify the amounts of each of those instalments and the person to whom and the place at which the payments of those instalments are to be made;
 - (iv) specify the time for the payment of each of those instalments; and
 - (v) contain a description of the goods sufficient to identify them;
 - (d) where any part of the consideration is or is to be provided otherwise than in cash, shall contain a description of that part of the consideration; and
 - (e) shall set out in a tabular form—
 - (i) the price at which at the time of signing the agreement the hirer might have purchased the goods for cash (in this Act called and in the agreement to be described as “cash price”);
 - (ii) the amount paid or provided by way of deposit (in this Act called and in the agreement to be described as “deposit”) showing separately the amount paid in cash and the amount provided by a consideration other than cash;
 - (iii)

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- (iii) any amount included in the total amount payable to cover the expenses of delivering the goods or any of them to or to the order of the hirer (in this Act called and in the agreement to be described as "freight");
- (iv) any amount included in the total amount payable to cover vehicle registration fees in respect of the goods (in the agreement to be called "vehicle registration fees");
- (v) any amount included in the total amount payable for insurance (other than third party insurance) in respect of the goods that are goods of any one or more of the following descriptions, namely, industrial machinery, farm equipment or motor vehicle, or a television set or prescribed goods (in this Act called and in the agreement to be described as "insurance");
- (vi) the total of the amounts referred to in subparagraphs (i), (iii), (iv) and (v) of this paragraph less the deposit;
- (vii) the amount of any other charges included in the total amount payable (in this Act called and in the agreement to be described as "terms charges");
- (viii) the total of the amounts referred to in subparagraphs (vi) and (vii) of this paragraph (in this Act called "the balance originally payable under the agreement"); and
- (ix) the total amount payable.

(3) An owner who enters into a hire-purchase agreement that does not comply with subsection two of this section is guilty of an offence against this Act.

(4)

Hire-Purchase.

(4) Where a provision of this section has not been complied with in relation to a hire-purchase agreement (not being a failure to comply with paragraph (a) of subsection two of this section), the liability of the hirer shall be reduced by the amount included in the agreement for terms charges. That amount may be set off by the hirer against the amount that would otherwise be due or become due to the owner under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer from the owner as a debt in any court of competent jurisdiction.

Nothing in this subsection affects the liability of any person to be convicted of an offence against this section.

(5) A hire-purchase agreement that is not in writing is not enforceable by the owner.

(6) Where—

- (a) the owner under a hire-purchase agreement is not bound by the provisions of the Stamp Duties Act, 1920, as amended by subsequent Acts; and
- (b) the total amount payable includes an amount (in this subsection referred to as stamp duty) representing the whole or any part of the stamp duty chargeable on the agreement under that Act,

then in relation to such an agreement subparagraphs (vii) and (viii) of paragraph (e) of subsection two of this section are deemed to be omitted and the following subparagraphs inserted in lieu thereof :—

- (vii) the amount of any other charges (other than stamp duty) included in the total amount payable (in this Act called and in the agreement to be described as “terms charges”);
- (viii) the total of the amounts referred to in subparagraphs (vi) and (vii) of this paragraph together with stamp duty (in this Act called “the balance originally payable under the agreement”); and.

Hire-Purchase.

4. The owner shall serve or cause to be served on the hirer within twenty-one days after the making of a hire-purchase agreement—

Certain copy documents to be served on hirer.

- (a) a copy in writing of the agreement;
- (b) a notice in writing in or to the effect of the Second Schedule, which notice may be endorsed on the copy of the agreement; and
- (c) where any part of the total amount payable consists of an amount paid or to be paid under a policy of insurance (not being a policy of third party insurance) in respect of goods that are goods of any one or more of the following descriptions, namely, industrial machinery, farm equipment or motor vehicle, or a television set or prescribed goods, a copy of the policy or a statement in writing setting out the terms, conditions, and exclusions of the policy that affect or concern the rights of the hirer,

but failure to comply with the provisions of this section does not avoid the agreement.

 PART III.

PROTECTION OF HIRERS.

Division 1.—Warranties and conditions.

5. (1) In every hire-purchase agreement there shall be—
- (a) an implied warranty that the hirer shall have and enjoy quiet possession of the goods;
 - (b) an implied condition on the part of the owner that he will have a right to sell the goods at the time when the property is to pass;
 - (c) an implied warranty that the goods will be free from any charge or encumbrance in favour of any third party (other than a charge or encumbrance created by or with the consent of the hirer) at the time when the property is to pass.

Conditions and warranties to be implied in every hire-purchase agreement.

Hire-Purchase.

(2) In every hire-purchase agreement there shall be an implied condition that the goods shall be of merchantable quality but such a condition shall not be implied—

- (a) as regards defects of which the owner could not reasonably have been aware, or, if there is a dealer, neither the owner nor the dealer could reasonably have been aware, at the time the agreement was made; or
- (b) where the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed; or
- (c) if the goods are second-hand goods and the agreement contains a statement to the effect that—
 - (i) the goods are second-hand; and
 - (ii) all conditions and warranties as to quality are expressly negatived,

and the owner proves that the hirer has acknowledged in writing that that statement was brought to his notice.

(3) Where the hirer expressly or by implication makes known to the owner or to the dealer or to any servant or agent of the owner or the dealer the particular purpose for which the goods are required, there shall be implied in the hire-purchase agreement a condition that the goods shall be reasonably fit for that purpose but such a condition shall not be implied if the goods are second-hand goods and the agreement contains a statement to the effect—

- (a) that the goods are second-hand; and
- (b) that all conditions and warranties of fitness and suitability are expressly negatived,

and the owner proves that the hirer has acknowledged in writing that that statement was brought to his notice.

(4)

Hire-Purchase.

(4) Without prejudice to any other rights or remedies to which an owner may be entitled, where the hirer has made known expressly or by implication to the dealer or to any servant or agent of the dealer the particular purpose for which the goods are required, an owner is entitled to be indemnified by the dealer against any damage suffered by the owner through the operation of the provisions of subsection three of this section.

(5) Nothing in this section prejudices in any way any other enactment or rule of law whereby any condition of warranty is to be implied in any hire-purchase agreement.

6. (1) Every representation, warranty, or statement made to the hirer or prospective hirer, whether orally or in writing, by the owner or dealer or any person acting on behalf of the owner or dealer in connection with or in the course of negotiations leading to the entering into of a hire-purchase agreement shall confer on the hirer—

As to the liability of the owner and the dealer for misrepresentation.

- (a) as against the owner—the same right to rescind the agreement as the hirer would have had if the representation, warranty, or statement had been made by an agent of the owner; and
- (b) as against the person who made the representation, warranty, or statement, and any person on whose behalf the person who made the representation, warranty, or statement was acting in making it—the same right of action in damages as the hirer would have had against them or either of them if the hirer had purchased the goods from the person who made the representation, warranty, or statement or the person on whose behalf the person who made the representation, warranty, or statement was acting (as the case requires) as a result of the negotiations.

(2) Every covenant, condition, or term in any hire-purchase agreement or other document purporting to exclude, limit, or modify the operation of this section or to preclude any right of action or any defence based on or arising out of any such representation, warranty, or statement is void.

(3)

Hire-Purchase.

(3) Without prejudice to any other rights or remedies to which an owner may be entitled, an owner is entitled to be indemnified by the person who made the representation, warranty, or statement, and by any person on whose behalf the representation, warranty, or statement was made against any damage suffered by the owner through the operation of the foregoing provisions of this section.

Division 2.—Statutory rights of hirers.

Hirer to be entitled to copy of agreement and statement of his present position.

7. (1) At any time before the final payment has been made under a hire-purchase agreement the owner shall, within fourteen days after he has received a request in writing from the hirer, send to the hirer a copy of the agreement, together with a statement in writing signed by the owner or his agent showing—

- (a) the amount paid to the owner by or on behalf of the hirer;
- (b) the amount that has become due under the agreement but remains unpaid; and
- (c) the amount that is to become payable under the agreement,

but an owner need not comply with such a request if he has sent the hirer a copy of the agreement and a statement under this subsection within the period of three months immediately preceding the receipt of the request.

(2) If an owner contravenes subsection one of this section by failing to comply with a request made pursuant to that subsection he is guilty of an offence against this Act and liable to a penalty not exceeding fifty pounds and, until the default is remedied—

- (a) the owner is not entitled to enforce—
 - (i) the agreement against the hirer;
 - (ii) any right to recover the goods from the hirer; or
 - (iii) any contract of guarantee relating to the agreement; and

(b)

Hire-Purchase.

- (b) any security given by the hirer in respect of money payable under the agreement or given by a guarantor is not enforceable against the hirer or the guarantor by any holder thereof.

8. A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner is entitled, on making any payment in respect of the agreements that is not sufficient to discharge the total amount then due under all the agreements, to require the owner to appropriate the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and, if he fails to make such an appropriation, the payment shall by virtue of this section be appropriated in or towards the satisfaction of the sums due under the respective agreements in the order in which the agreements were entered into.

As to appropriation of payments when more than one agreement.

9. (1) The right, title, and interest of a hirer under a hire-purchase agreement may be assigned with the consent of the owner or, if his consent is unreasonably withheld, without his consent.

As to assignments of rights under hire-purchase agreements.

(2) Except as otherwise provided in this section, no payment or other consideration shall be required by an owner for his consent to such an assignment as is mentioned in subsection one of this section, and where an owner requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld.

(3) Where, at the request of a hirer under a hire-purchase agreement, the owner fails or refuses to give his consent to an assignment by the hirer of his right, title, and interest under the agreement, the hirer may apply to a court of petty sessions for an order declaring that the consent of the owner to that assignment has unreasonably been withheld, and where such an order is made that consent shall be deemed to be unreasonably withheld.

(4)

Hire-Purchase.

(4) As a condition of granting consent to an assignment of the right, title, and interest of the hirer under a hire-purchase agreement, the owner may stipulate that all defaults under the agreement shall be made good and may require the hirer and assignee—

- (a) to execute and deliver to the owner an assignment agreement in a form approved by the owner whereby without prejudicing or affecting the continuing personal liability of the hirer in those respects the assignee agrees with the owner to be personally liable to pay the instalments remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the assignee indemnifies the hirer in respect of those liabilities; and
- (b) to pay the reasonable costs (if any) incurred by the owner in stamping or registering the assignment agreement or counterparts.

(5) The right, title, and interest of a hirer under a hire-purchase agreement is capable of passing by operation of law to the personal representative of the hirer and if the hirer is a company the liquidator may exercise the same rights under the agreement as the company, but nothing in this subsection relieves a personal representative or liquidator from compliance with the provisions of the agreement.

Power to
court to
allow goods
to be
removed.

10. Where, by virtue of a hire-purchase agreement, it is the duty of a hirer to keep the goods comprised in the agreement in his possession or control at a particular place or not to remove the goods from a particular place, a court of petty sessions may, on the application of the hirer, make an order approving the removal of the goods to some other place, which place shall thereafter, for the purposes of the agreement, be substituted for the first-mentioned place.

Division

Hire-Purchase.

Division 3.—Early completion of agreements.

11. (1) The hirer under a hire-purchase agreement may, if he has given notice in writing to the owner of his intention to do so, on or before the day specified for that purpose in the notice, complete the purchase of the goods by paying or tendering to the owner the net balance due to the owner under the agreement.

Hirer
entitled to
finalise
agreement
at any
time.

(2) For the purposes of this section the net balance due is the balance originally payable under the agreement less any amounts (other than the deposit) paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, and less—

- (a) the statutory rebate for terms charges; and
- (b) if the hirer requires any contract for insurance to be cancelled, the statutory rebate for insurance.

(3) The rights conferred on the hirer by this section may be exercised by him—

- (a) at any time during the continuance of the agreement; or
- (b) where the owner has taken possession of the goods, on paying or tendering to the owner (before or within twenty-one days after the owner has served a notice in the form of the Fourth Schedule on the hirer) in addition to the net balance due—
 - (i) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods; and
 - (ii) any amount properly expended by the owner on the storage, repair, or maintenance of the goods.

Division

Hire-Purchase.

Division 4.—Voluntary return of goods.

Power to
hirer to
determine
hiring.

12. (1) The hirer of any goods comprised in a hire-purchase agreement may terminate the hiring by returning the goods to the owner during ordinary business hours at a place at which the owner ordinarily carries on business or to the place specified for that purpose in the agreement and such a return of the goods terminates the hiring.

(2) Where the nature of the goods comprised in a hire-purchase agreement is, or the facilities available at the place or places of business of the owner or at the place specified in the agreement are, such that it would be impracticable to return the goods to such a place, the hirer may terminate the hiring by returning the goods—

- (a) to any place agreed to by the parties to the agreement; or
- (b) if the parties fail to agree, to a place that is reasonable, having regard to all the circumstances surrounding the transaction.

(3) A hirer who proposes to return goods to the owner under this section may apply to a court of petty sessions for an order fixing the place to which the goods may be returned under paragraph (b) of subsection two of this section.

(4) The court may, in any order made pursuant to this section, order that, subject to the goods being returned to the owner, the hiring shall be determined on such date as is specified in the order, not being the date before the hirer required the owner to nominate a reasonable place for the return of the goods.

(5) Notice of any application under this section shall be given to the owner by the hirer.

(6)

Hire-Purchase.

(6) Where a hire-purchase agreement is determined pursuant to this section the owner is entitled to recover from the hirer—

- (a) the amount (if any) required to be paid in those circumstances under the agreement; or
- (b) the amount (if any) that the owner would have been entitled to recover if he had taken possession of the goods at the date of termination of the hiring,

whichever is the less.

Division 5.—Repossessions.

13. (1) Subject to this section, an owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments until he has served on the hirer a notice, in writing, in the form of the Third Schedule and the period fixed by the notice (being not less than twenty-one days after the service of the notice) has expired.

Notices to
be given to
hirer when
goods
re-possessed.

(2) An owner need not comply with subsection one of this section if there are reasonable grounds for believing that the goods comprised in the hire-purchase agreement will be removed or concealed by the hirer contrary to the provisions of the agreement, but the onus of proving the existence of those grounds lies upon the owner.

(3) Within twenty-one days after the owner has taken possession of goods that were comprised in a hire-purchase agreement he shall serve on the hirer and every guarantor of the hirer a notice, in writing, in the form of the Fourth Schedule.

(4) Where the owner takes possession of goods that were comprised in a hire-purchase agreement he shall—

- (a) if the hirer is present at the time when the owner takes possession of the goods, at that time deliver or cause to be delivered to the hirer personally a document acknowledging receipt of the goods;
- (b)

Hire-Purchase.

- (b) if the hirer is not present at the time when the owner takes possession of the goods, forthwith after taking possession of the goods send to the hirer a document acknowledging receipt of the goods.

The document acknowledging receipt of the goods shall set out a short description of the goods and the date on which, the time at which, and the place where, the owner took possession of the goods.

(5) If the notice required by subsection three of this section is not served, the rights of the owner under the hire-purchase agreement thereupon cease and determine, but, if the hirer exercises his rights under this Act to recover the goods so taken possession of, the agreement has the same force and effect in relation to the rights and liabilities of the owner and the hirer as it would have had if the notices had been duly given.

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

14. Where an owner has taken possession of any goods he shall not, without the consent of the hirer (which consent shall be in writing and shall be witnessed by some person other than the owner or the solicitor for or agent or employee of the owner), sell or dispose of the goods or part with possession thereof until after the expiration of twenty-one days after the date of the service on the hirer of the notice referred to in subsection three of section thirteen of this Act or, if notice under subparagraph (i) of paragraph (a) of subsection one of section fifteen of this Act has been given, until the time for payment or tender pursuant to that notice has expired (whichever is the later).

As to hirer's rights and immunities when goods re-possessed.

15. (1) Where the owner takes possession of any goods comprised in a hire-purchase agreement—

- (a) the hirer may, before or within twenty-one days after the service on him of the notice referred to in subsection three of section thirteen of this Act, by giving to the owner a notice in writing signed by the hirer or his agent—

- (i) require the owner to re-deliver to or to the order of the hirer (subject to compliance by the hirer with the provisions of section sixteen of this Act) the goods that have been re-possessed; or (ii)

Hire-Purchase.

- (ii) require the owner to sell the goods to any person introduced by the hirer who is prepared to buy the goods for cash at a price not less than the estimated value of the goods set out in the first-mentioned notice ;
- (b) the hirer may recover from the owner—
 - (i) if the value of the goods at the time of the owner so taking possession thereof 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
 - (ii) if the value of the goods at the time of the owner so taking possession thereof 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 ;
- (c) the owner is not entitled to recover any sum (whether under a judgment or order or otherwise) that would together with—
 - (i) the value of the goods at the time of the owner so taking possession thereof ; and
 - (ii) 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.
- (2) For the purposes of this section—
 - (a) the net amount payable is the total amount payable less the statutory rebates for terms charges and insurance as at the time of the owner taking possession of the goods ; and
 - (b)

Hire-Purchase.

(b) the value of any goods at the time of the owner taking possession thereof is—

- (i) the best price that could be reasonably obtained by the owner at that time; or
- (ii) if the hirer has introduced a person who has bought the goods for cash, the amount paid by that person,

less—

- (iii) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods;
- (iv) any amount properly expended by the owner on the storage, repair, or maintenance of the goods; and
- (v) (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.

(3) Where the owner has sold goods of which he has taken possession, 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 he took possession of the goods lies upon the owner.

(4) Except where the owner has failed to serve on the hirer a notice as required by subsection three of section thirteen of this Act, no amount is recoverable by the hirer under this section unless—

(a) the hirer, within twenty-one days after the owner has served such a notice, 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 of the owner taking possession thereof; and
- (ii) signed by the hirer or his solicitor or agent; and

(b)

Hire-Purchase.

- (b) proceedings for the recovery of the amount so claimed under the provisions of this section are commenced not earlier than seven days and, except where the goods have been sold at the request of the hirer to a person introduced by the hirer, not later than three months after the giving by the hirer to the owner of the notice referred to in paragraph (a) of this subsection.

(5) If, before the proceedings referred to in subsection four of this section are commenced by the hirer, the owner serves an offer in writing on the hirer to pay any 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 :

Provided that no such right shall be 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.

16. (1) If, within fourteen days after giving notice to the owner pursuant to the provisions of subparagraph (i) of paragraph (a) of subsection one of section fifteen of this Act, the hirer—

Power to
hirer to
regain
possession
of goods
in certain
circum-
stances.

- (a) pays or tenders to the owner any amount due by the hirer under the hire-purchase agreement in respect of the period of hiring up to the date of the payment or tender (and for the purposes of this paragraph the hiring shall be deemed to have continued up to that date) ;
- (b) remedies any breach of the agreement or (where he is unable to remedy the breach by reason of the fact that the owner has taken possession of the goods) pays or tenders to the owner the costs and expenses reasonably and actually incurred by the owner in doing any act, matter, or thing necessary to remedy the breach; and

(c)

Hire-Purchase.

- (c) pays or tenders to the owner the reasonable costs and expenses of the owner of and incidental to his taking possession of the goods and of his returning them to or to the order of the hirer,

the owner shall forthwith return the goods to the hirer and the goods shall be received and held by the hirer pursuant to the terms of the hire-purchase agreement as if the breach had not occurred and the owner had not taken possession thereof.

(2) Where goods are returned to the hirer pursuant to subsection one of this section and any breach of the hire-purchase agreement has not been remedied, the owner has no right arising out of the breach to take possession of the goods unless—

- (a) by notice in writing given to the hirer at the time of the return of the goods he specifies the breach and requires it to be remedied; and
- (b) the hirer fails within fourteen days or within the time specified in the notice (whichever is the longer) after receiving the notice to remedy the breach.

Power to court to vary existing judgments or orders when goods are re-possessed.

17. In any legal proceedings in relation to a hire-purchase agreement, after the owner has taken possession of the goods, the court before which the proceedings are brought may vary or discharge any judgment or order of any court against the hirer for the recovery of money so far as is necessary to give effect to the provisions of section fifteen of this Act.

 PART IV.

GUARANTEES.

Provisions as to guarantors.

18. (1) Save as provided in this Act a guarantor is not, by reason of the operation of this Act, discharged from liability under his guarantee.

(2)

Hire-Purchase.

(2) The liability of a guarantor continues notwithstanding that the owner has, pursuant to the provisions of a hire-purchase agreement, taken possession of the goods comprised therein (and whether or not the goods have been re-delivered to or to the order of the hirer pursuant to this Act); but nothing in this subsection operates to preserve the liability of a guarantor where the owner and the hirer have entered into a new agreement in respect of the goods comprised in any hire-purchase agreement.

(3) No guarantor is liable to any further or other extent than the hirer, the performance of whose obligations he has guaranteed; but, subject to section nineteen of this Act, nothing in this Act affects any agreement by the guarantor binding him to the performance of any obligation that is not one of the obligations imposed on the hirer under the hire-purchase agreement in respect of which the guarantee is given.

(4) Where goods have been delivered to or to the order of the hirer pursuant to a hire-purchase agreement and the owner subsequently takes possession thereof, any guarantor who has paid any moneys to the owner in accordance with his guarantee has the like right in like manner to recover those moneys as he would have had if he had been the hirer of the goods, but for the purpose of calculating the amount received by the owner all moneys paid and the value of any other consideration provided by or on behalf of the hirer shall be deemed to have been paid or provided by the guarantor, but no moneys shall be recovered by the guarantor in excess of the moneys actually paid by him.

19. (1) Where a guarantor of the performance by a hirer of all or any of the hirer's obligations under a hire-purchase agreement enters into an agreement binding the guarantor—

- (a) to pay to the owner under the hire-purchase agreement an aggregate sum that is larger than the balance originally payable under the hire-purchase agreement;
- (b) to perform an obligation in respect of goods other than the goods comprised in the hire-purchase agreement;
- (c)

Guarantor not to be bound in certain cases unless independently advised.

Hire-Purchase.

- (c) to permit the owner under the hire-purchase agreement or any person acting on behalf of the owner to enter upon any premises for the purpose of taking possession of or inspecting goods subject to the hire-purchase agreement; or
- (d) to relieve the owner under the hire-purchase agreement or any person acting on behalf of the owner from liability for any such entry,

the agreement so entered into by the guarantor is void (and the owner under the hire-purchase agreement concerned is guilty of an offence against this Act) unless the agreement is executed by the guarantor in the presence of a chamber magistrate, a clerk of petty sessions or a solicitor instructed and employed independently of the owner and the magistrate, clerk or solicitor, as the case may be, certifies in writing upon the agreement—

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

(2) A chamber magistrate, a clerk of petty sessions or a solicitor shall not give a certificate in respect of an agreement under subsection one of this 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 a chamber magistrate, a clerk of petty sessions or a solicitor to comply with subsection two of this section in respect of a certificate does not invalidate the certificate.

Hire-Purchase.

PART V.

INSURANCE.

20. (1) An owner may require any goods comprised in a hire-purchase agreement to be insured in the names of the owner and the hirer against any risk that he thinks fit for the period of the agreement at the expense of the hirer.

As to insurance of goods comprised in hire-purchase agreements.

(2) An owner shall not require a hirer to insure any such risk with any particular insurer.

(3) An owner shall not refuse to enter into a hire-purchase agreement with a person who effects insurance of the goods for the period of the agreement against such risks and subject to such terms, conditions, and exceptions as are required by the owner in the names of the owner and the hirer with a reputable insurer if the owner has no other grounds upon which the owner could reasonably refuse to enter into the agreement.

(4) An owner shall not require a hirer to obtain insurance against risks or subject to terms, conditions, and exceptions that the owner does not require if he arranges the insurance.

(5) 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 hirer under the agreement is entitled to the benefit of the rebate and any person who knowingly pays or allows any such rebate to an owner is guilty of an offence against this Act.

Hirer to be entitled to insurance rebates.

21. (1) In any proceedings taken in any court in respect of any difference or dispute arising out of a contract of insurance if it appears to the court that a failure by the insured or the hirer under the hire-purchase agreement concerned to observe or perform a term or condition of the contract of insurance may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may, unless an order excusing the failure has already been made under subsection two of this section, order that the failure be excused.

Powers of court in relation to insurance contracts associated with hire-purchase agreements.

(2)

Hire-Purchase.

(2) Where a difference or dispute has arisen out of a contract of insurance, the insured or the hirer under the hire-purchase agreement concerned or any guarantor in respect of that agreement may, unless an order excusing the failure concerned has already been made under subsection one of this section, apply to the court for an order that the failure to observe or perform a term or condition of the contract of insurance be excused; and if it appears to the court that the failure may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may order that the failure be excused.

(3) Where an order of the nature referred to in subsections one and two of this section has been made under either of those subsections, the rights and liabilities of all persons in respect of the contract of insurance concerned shall be determined as if the failure the subject of the order had not occurred.

(4) The provisions of this section apply only to or in respect of a contract of insurance of goods (whether or not the contract includes any other class of insurance) where the premium or other sum payable for the cover given by the contract of insurance, or any part of that premium or sum, was included as part of the total amount payable for the goods comprised in a hire-purchase agreement.

As to
contents of
contracts of
insurance.

22. (1) Every copy of a policy of insurance (not being a policy of third party insurance), and every statement, served upon a hirer pursuant to section four of this Act shall—

- (a) identify the goods or the part of the goods to be insured; and
- (b) contain a statement of the amount and period for which the goods are insured or are to be insured; and
- (c) if the amount for which the goods are or are to be insured will vary during the period of the agreement, contain a statement showing the varying amounts.

(2)

Hire-Purchase.

(2) Subject to subsection three of this section, any provision in any agreement or other document—

- (a) requiring differences or disputes arising out of a contract of insurance to be referred to arbitration;
- (b) providing that no action or suit shall be maintainable upon such a contract or against the insurer in respect of any claim under, or difference or dispute arising out of, such a contract unless the claim, difference, or dispute has been referred to arbitration or an award pursuant to arbitration proceedings has been first obtained;
- (c) providing that arbitration or an award pursuant to arbitration proceedings is a condition precedent to any right of action or suit upon such a contract; or
- (d) otherwise imposing by reference to arbitration or to an award made in arbitration proceedings any limitation on the right of any person to bring or maintain any action or suit upon such a contract,

does not bind the hirer.

(3) An agreement made by the parties to a contract of insurance after a difference or dispute has arisen out of the contract of insurance to submit that difference or dispute to arbitration has effect as if subsection two of this section had not been enacted.

(4) The provisions of this section apply only to or in respect of a contract of insurance of goods (whether or not the contract includes any other class of insurance) where the premium or other sum payable for the cover given by the contract of insurance, or any part of that premium or sum, was included as part of the total amount payable for the goods comprised in a hire-purchase agreement.

Hire-Purchase.

Rates of
insurance.

23. (1) The Governor may, for the purposes of subsection three of this section, make regulations prescribing rates for insurance in respect of any class or classes of goods.

In the exercise of the power conferred by the foregoing provisions of this subsection, but without limiting the generality of that power, the regulations may provide—

- (a) different rates for insurance in respect of different classes of goods;
- (b) different rates in respect of different parts of the State;
- (c) rates on a sliding scale;
- (d) rates according to or upon any specified principle or criterion.

(2) The power conferred by subsection one of this section shall be deemed to be validly exercised by a regulation that prescribes any such rates as are referred to in that subsection by reference to a list, scale or table of insurance rates referred to in the regulations and issued by a body or association that the Governor considers to be representative of insurance companies carrying on business of the class to which the list, scale or table relates.

(3) Where the total amount payable for goods the subject of a hire-purchase agreement includes an amount for insurance in respect of goods comprised in the hire-purchase agreement that are goods of a class in respect of which rates of insurance are, at the time when the agreement is entered into, prescribed under this section and that amount exceeds the amount that would have been payable for insurance in respect of the goods so comprised had those goods been insured in accordance with those rates—

- (a) the agreement is void; and
- (b) the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

Application
of this
Part.

24. The provisions of this Part have effect notwithstanding anything contained in any other Act.

PART

Hire-Purchase.

PART VI.

LIMITATION ON TERMS CHARGES.

25. (1) This section applies to every hire-purchase agreement other than a hire-purchase agreement that—
- (a) provides that the instalments necessary to pay the difference between the total amount payable and the deposit are to be made over a period exceeding one year and also provides that those instalments are to be made less than nine times in any period of twelve months that forms part of the period first-mentioned in this paragraph; or
- (b) provides that the instalments necessary to pay the difference between the total amount payable and the deposit are to be made only over a period of one year or less and also provides that those instalments are to be made less than nine times during that period.

Certain hire-purchase agreements to have regular payments of equal amount.

(2) A hire-purchase agreement to which this section applies shall provide that the instalments necessary under the agreement to pay the difference between the total amount payable and the deposit shall—

- (a) be made at regular weekly, fortnightly or monthly intervals and at no other intervals; and
- (b) be of equal or approximately equal amounts.

Where an instalment differs from any other instalment by a sum in excess of one pound, the instalments shall, for the purposes of this subsection, be taken to be not of approximately equal amounts.

(3) Where a hire-purchase agreement to which this section applies is entered into in contravention of subsection two of this section, the liability of the hirer shall be reduced by the amount included in the agreement for terms charges. That amount may be set off by the hirer against the amount that would otherwise be due or become due under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer from the owner as a debt in any court of competent jurisdiction.

Hire-Purchase.

Limitation
on terms
charges.

26. (1) The terms charges in relation to a hire-purchase agreement to which section twenty-five of this Act applies shall not, when calculated as a rate per centum per annum in accordance with the formula set out in this subsection, exceed a rate per annum of—

- (a) where the goods comprised in the agreement, not being second-hand goods at the time when the agreement is entered into, are any one or more of the following only, namely, industrial machinery, farm equipment or a motor vehicle (other than a motor cycle)—seven per centum;
- (b) where the goods comprised in the agreement, being second-hand goods at the time when the agreement is entered into, are any one or more of the following only, namely, industrial machinery, farm equipment or a motor vehicle (other than a motor cycle)—nine per centum;
- (c) where the goods comprised in the agreement are a motor cycle—nine per centum;
- (d) where the goods comprised in the agreement are goods that are not of any of the descriptions in respect of which a rate is fixed by or under paragraph (a) or (b) or (c) of this subsection—ten per centum;
- (e) where the goods comprised in the agreement include goods of the description or of any one or more of the descriptions referred to in one of the above paragraphs of this subsection and also goods of the description or of any one or more of the descriptions referred to in one or more of the other such paragraphs—the lower or lowest, as the case may be, of the amounts per centum prescribed by the above paragraphs in respect of a description of goods so comprised.

The

Hire-Purchase.

The rate referred to in the foregoing provisions of this subsection shall be calculated in accordance with the following formula :—

$$R = \frac{100 \times C}{T \times P}$$

where

R represents the terms charges calculated as a rate per centum per annum.

C represents the amount of terms charges expressed in pounds and fractions of pounds.

T represents the time that elapses between the time fixed by or under the agreement for the making of the first instalment and the time so fixed for the making of the last instalment, together with—

- (i) one week where the instalments are payable under the agreement at regular weekly intervals;
- (ii) two weeks where the instalments are payable under the agreement at regular fortnightly intervals;
- (iii) one month where the instalments are payable under the agreement at regular monthly intervals,

expressed in years and fractions of years.

P represents the difference between the cash price of the goods comprised in the agreement and the amount of the deposit, together with—

- (i) freight, if any; and
- (ii) vehicle registration fees, if any; and
- (iii) where the owner is not bound by the provisions of the Stamp Duties Act, 1920, as amended by subsequent Acts, and the total amount payable includes an amount representing the whole or any part of the stamp duty chargeable on the agreement under that Act, the last-mentioned amount; and

(iv) insurance, if any,
expressed in pounds and fractions of pounds.

B

(2)

Hire-Purchase.

(2) (a) A hire-purchase agreement to which section twenty-five of this Act does not apply shall contain, immediately above the place provided for the signature of the hirer or his agent or the place at which the hirer or his agent signs the agreement, a statement in writing as follows :—

The terms charges under this agreement are not controlled by the Hire-Purchase Act, 1960.

(b) Without prejudice to the generality of section forty-nine of this Act, "writing" in this subsection includes such printing only as is in capital letters.

(3) (a) Where a hire-purchase agreement to which section twenty-five of this Act applies is entered into in contravention of subsection one of this section, the hirer may, by notice in writing to the owner signed by the hirer or the hirer's agent, elect either to treat the agreement as void or to have his liability reduced by the amount included in the agreement for terms charges.

Such an election is final and irrevocable.

(b) Where the hirer so elects to treat the hire-purchase agreement as void, the agreement shall be void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

(c) Where the hirer so elects to have his liability reduced by the amount included in the agreement for terms charges, his liability shall be reduced by that amount and that amount may be set off by the hirer against the amount that would otherwise be due under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer as a debt in any court of competent jurisdiction.

(4) A hire-purchase agreement to which section twenty-five of this Act does not apply and that is entered into in contravention of subsection two of this section, is void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

(5)

Hire-Purchase.

(5) The expression "matter" in paragraph (o) of subsection one of section thirty-five of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, includes the question whether there should be an alteration of the rates per centum per annum prescribed by subsection one of this section.

PART VII.

MINIMUM DEPOSITS.

27. (1) In this Part "hire-purchase agreement" does not include any agreement or arrangement that is entered into solely for the purpose of giving effect to an assignment or transfer of the rights and liabilities under an existing hire-purchase agreement from the hirer to another person. ^{Interpretation.}

(2) In this Part, "loan" includes advance, discount, money paid for or on account of or on behalf of or at the request of any person, and includes every contract (whatever its terms or form may be) that is in substance or effect a loan of money, and "lend" and "lending" have corresponding interpretations.

28. An owner who enters into a hire-purchase agreement without having first obtained from the proposed hirer thereunder a deposit in cash or in goods, or partly in cash and partly in goods, to a value equal to at least— ^{Minimum deposits.}

(a) where the minimum amount of the deposit is not prescribed under paragraph (b) of this section— one-tenth of the cash price of the goods comprised in the agreement; or

(b) where the minimum amount of the deposit is prescribed under this paragraph—such amount as may for the time being be prescribed,

is guilty of an offence against this Act.

Hire-Purchase.

Certain payments, &c., not to be treated as deposits for the purposes of this Part.

29. (1) No deposit—

- (a) to the extent that it is in cash and that it is made out of moneys borrowed directly or indirectly—
 - (i) from or through the owner (if the owner is not a banker);
 - (ii) from or through the dealer; or
 - (iii) from or through any person whose business or part of whose business it is, by agreement with the owner or dealer or any person acting on behalf of the owner or dealer, to advance money to enable deposits to be paid in respect of hire-purchase agreements with the owner;
- (b) to the extent that, where the deposit is in goods or partly in goods and the amount allowed in respect of the goods is substantially greater than the value of the goods, that amount exceeds that value;
- (c) to the extent that it is made out of an amount allowed or credited in respect of, or by reference to, amounts paid by the hirer as rent or hire under a bailment of the goods before the making of a hire-purchase agreement in respect of the goods; or
- (d) to the extent that it is provided by goods that were, to the knowledge of the owner or dealer, acquired by the hirer for the purpose of being used by the hirer to provide the deposit under the agreement,

shall be taken into account for the purpose of determining whether the provisions of section twenty-eight of this Act have been complied with.

(2) The provisions of this Part shall be deemed to have been complied with by the owner if a deposit in accordance with the provisions of this Part has been obtained by the dealer.

(3)

Hire-Purchase.

(3) Where a dealer buys goods from a proposed hirer and the price, or part of the price, of the goods is applied as or towards a deposit under a hire-purchase agreement, then in relation to the agreement—

- (a) the goods shall, for the purposes of this Act, be deemed to have been obtained by the dealer as a deposit; and
- (b) the price, or the part of the price, as the case may be, so applied shall, for the purposes of this Act, be deemed to be the amount allowed by the dealer in respect of the goods.

(4) The dealer shall, in relation to the deposit obtained by him under a proposed hire-purchase agreement certify in writing—

- (a) where the deposit was paid or provided solely in cash, that the deposit was paid or provided solely in cash;
- (b) where the deposit was provided solely in goods—the nature and description of, and the amount allowed by the dealer in respect of, the goods;
- (c) where the deposit was paid or provided partly in cash and partly in goods—the amount of the deposit that was paid or provided in cash and the nature and description of, and the amount allowed by the dealer in respect of, the goods.

(5) A dealer who under subsection four of this section certifies as the amount allowed by him in respect of goods an amount that is not a reasonable estimate of the value of the goods or gives a certificate that is false in any other material particular shall be guilty of an offence against this Act.

(6) Notwithstanding anything contained in this Part, where an owner in entering into a hire-purchase agreement acts on the faith of a certificate given under subsection four of this section by the dealer and the amount certified in the
certificate

Hire-Purchase.

certificate as being the amount allowed in respect of the goods whose nature and description are certified therein is substantially greater than the value of those goods the agreement has the same effect as if the amount so certified were the value of those goods.

Nothing in this subsection affects the liability of any person to be convicted of an offence against this section.

(7) Any person who knowingly enters into, or procures, arranges, or otherwise assists or participates in, a transaction contravening this section is guilty of an offence against this Act.

Effect of
non-
compliance
with s. 28.

30. (1) Where a hire-purchase agreement is entered into in contravention of section twenty-eight of this Act, the hirer may, by notice in writing to the owner signed by the hirer or the hirer's agent, elect either to treat the agreement as void or to have his liability reduced by the amount included in the agreement for terms charges.

Such an election is final and irrevocable.

(2) Where the hirer so elects to treat the hire-purchase agreement as void, the agreement shall be void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

(3) Where the hirer so elects to have his liability reduced by the amount included in the agreement for terms charges, his liability shall be reduced by that amount and that amount may be set off by the hirer against the amount that would otherwise be due under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer as a debt in any court of competent jurisdiction.

(4) Nothing in this section affects the liability of any person to be convicted of an offence against section twenty-eight of this Act.

Hire-Purchase.

31. (1) Any person, other than a banker, who (whether or not he carries on any other business) carries on the business of lending or making loans to other persons for the purposes of enabling those other persons to pay the deposits required by or under section twenty-eight of this Act is guilty of an offence against this Act.

Offences.
Offence to carry on business of lending deposits.

(2) Any person who accepts as a deposit under a hire-purchase agreement any money or other consideration that he has reasonable cause to believe or suspect was lent to the hirer by any person, other than a banker, who carries on the business referred to in subsection one of this section is guilty of an offence against this Act.

Deposits not to be by way of loan.

PART VIII.

MISCELLANEOUS.

32. (1) In any proceedings under this Act, or arising out of a hire-purchase agreement, or instituted pursuant to subsection four of this section, where it appears to the court that the transaction is harsh and unconscionable or is otherwise such that a court of equity would give relief the court may re-open the transaction and take an account between the parties thereto.

Power to court to re-open certain hire-purchase transactions.

(2) The court re-opening any transaction under this section 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 hirer and any guarantor from payment of any sum in excess of such sum in respect of the cash price, terms charges, and other charges as the court adjudges to be fairly and reasonably payable;
- (c)

Hire-Purchase.

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

(3) Where it appears to the court that any person other than the owner has shared in the profits of or has any beneficial interest prospectively or otherwise in the transaction that the court holds to be harsh and unconscionable the court may add that person as a party to the case and may give judgment against that person for such amount as it thinks fit or for the delivery of the goods if they are in his possession and the court may make such other order in respect of that person as it thinks fit.

(4) Proceedings may be instituted in any court by the hirer or any guarantor under a hire-purchase agreement for the purpose of obtaining relief under this section.

(5) In any proceedings under this section the court has and may exercise all or any of the powers conferred by subsections one, two and three of this section notwithstanding that the time for the payment of any of the amounts payable under the agreement may not have arrived.

(6) A hirer or guarantor under a hire-purchase agreement is not entitled to institute proceedings under this section—

- (a) in a case where the owner has taken possession of the goods comprised in the agreement—after the expiration of a period of four months after the date on which the owner serves on the hirer the notice required by subsection three of section thirteen of this Act to be served on him; or
- (b) in any other case—after the expiration of a period of four months from the time when the transaction is closed.

*Hire-Purchase.***33.** (1) Where—

- (a) goods consisting of a harvester, binder, tractor, plough or other agricultural implement or a motor truck are comprised in a hire-purchase agreement; and

Power of court to restrain re-possession of certain goods from farmer.

- (b) the hirer is a farmer,

the period fixed by any notice of intention to take possession of the goods served under subsection one of section thirteen of this Act shall, notwithstanding the period specified in that subsection, be a period of not less than thirty days after the service of the notice.

(2) The farmer may, within the period fixed by the notice, apply to a court of petty sessions for an order restraining the owner from taking possession of the goods.

(3) If the court is satisfied that, within twelve months from the date of the application, the farmer will have a reasonable prospect of being able to pay all instalments due and owing on that date, the court may make an order restraining the owner from taking possession of the goods for such period not exceeding twelve months as the court fixes.

(4) An order under subsection three of this section may include such terms and conditions, including conditions as to payment of instalments, as the court thinks fit.

(5) In this section, "farmer" means any person engaged in agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, or any other business consisting of the cultivation of soil, the gathering in of crops or the rearing of livestock.

34. (1) Subject to subsection two of this 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 hirer, 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 hirer. (2)

Liens.

Hire-Purchase.

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

Fixtures.

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

(2) Notwithstanding anything contained in subsection one of this section, the owner is not entitled to re-possess goods that have been affixed to a dwelling-house or residence if, after the goods have become so affixed, any person other than the hirer has bona fide acquired for valuable consideration an interest in the land without notice of the rights of the owner of the goods.

Avoidance
of certain
provisions.

36. (1) Any provision in any agreement or other document whereby—

- (a) any right conferred on the hirer by this Act to determine a hire-purchase agreement is excluded or restricted;
- (b) any liability beyond the liability imposed by this Act is imposed on the hirer under a hire-purchase agreement by reason of the determination of the hire-purchase agreement in accordance with this Act;
- (c) the hirer under a hire-purchase agreement is subject to any greater liability on the determination, in any manner whatsoever, of the hire-purchase agreement or of the bailment thereunder, than the liability to which he would be subject if the hire-purchase agreement were determined in accordance with this Act;
- (d) the hirer under a hire-purchase agreement is required to pay any sum (whether or not it is described in the agreement as interest) in respect of any amount due under the hire-purchase agreement but not paid exceeding

Hire-Purchase.

- exceeding a sum equal to the simple interest on that amount calculated at the rate of eight per centum per annum on a daily basis for the period for which it is due and not paid ;
- (e) any person acting on behalf of the owner under a hire-purchase agreement in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement is to be treated as, or declared to be, the agent of the hirer ;
 - (f) the owner under a hire-purchase agreement is relieved from liability for the acts or defaults of any person acting in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement ;
 - (g) the owner under a hire-purchase agreement or any person acting on his behalf is authorised to enter upon any premises for the purpose of taking possession of goods comprised in the hire-purchase agreement or is relieved from liability for any such entry ;
 - (h) the operation of a hire-purchase agreement is determined or modified or any person is authorised to re-possess any goods comprised in a hire-purchase agreement if the hirer becomes bankrupt or commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement (whether all or any of those events are named) ; or
 - (i) except as expressly provided by this Act the operation of any provision of this Act is excluded, modified, or restricted,

is void.

(2) Where any agreement or other document contains a provision that is void under subsection one of this section, the owner under the hire-purchase agreement concerned is guilty of an offence against this Act.

Hire-Purchase.

Restrictions
on payments
to owners
of goods by
financiers.

37. If in connection with any goods any person (in this section referred to as the "dealer") arranges that some other person (in this section referred to as the "financier") shall—

- (a) enter into a hire-purchase agreement in relation to those goods with a hirer;
- (b) accept any assignment of the dealer's property in those goods comprised in a hire-purchase agreement, or of the dealer's rights under a hire-purchase agreement in relation to those goods; or
- (c) advance or pay money to the dealer or to some person on his behalf in respect of a hire-purchase agreement in relation to those goods,

the dealer shall not seek, accept, demand, or receive from the financier and the financier shall not pay, offer, or grant to the dealer, directly or indirectly, any money or other valuable consideration that, together with the money (if any) paid or payable by or on behalf of the hirer to the dealer and the value of any other consideration (if any) furnished or to be furnished by or on behalf of the hirer to the dealer would exceed the cash price of the goods: Provided that where the dealer has entered into a contract guaranteeing the performance of the hire-purchase agreement by the hirer, a commission not exceeding one-tenth of the total terms charges payable under the hire-purchase agreement may be paid by the financier to the dealer.

Certain
transactions
prohibited.

38. Any person (in this section referred to as the "owner") who knowingly—

- (a) enters into an agreement for the bailment of goods to any person (in this section referred to as the "hirer"), which agreement does not by itself constitute a hire-purchase agreement; or
- (b) takes from any person (in this section referred to as the "hirer") an offer in writing that, if accepted, will constitute an agreement for the bailment of goods but will not by itself constitute a hire-purchase agreement,

in

Hire-Purchase.

in association, directly or indirectly, with the making, by the hirer to the owner or to any person associated, directly or indirectly, in business with the owner, of an offer in writing to purchase the goods the subject of the agreement referred to in paragraph (a) or of the offer referred to in paragraph (b) of this section on terms and conditions that, if the offer in writing to purchase the goods is accepted, will constitute a hire-purchase agreement is guilty of an offence against this Act.

39. Where—

- (a) a bill of exchange or promissory note has been given by a hirer or guarantor under a hire-purchase agreement to the owner 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 Act or otherwise, result in payment of an amount in excess of the liability of the hirer under the agreement,

Provisions relating to securities collateral to hire-purchase agreements.

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

40. Where—

- (a) a dealer or a person acting on behalf of a dealer prepares or causes to be prepared a hire-purchase agreement or offer in writing that, if accepted, will constitute a hire-purchase agreement with the intention of bringing about a contractual relationship between an owner and a hirer; and
- (b) the agreement or offer contains to the knowledge of the dealer or the person acting on behalf of a dealer, as the case may be, a false statement or representation that is false in any material particular,

False statement by dealers, &c., in proposals.

the dealer or the person acting on behalf of a dealer is guilty of an offence against this Act and liable to a penalty not exceeding two hundred pounds or to imprisonment for a term not exceeding three months.

Hire-Purchase.

Hirer may be required to state where goods are.

41. The owner of any goods comprised in a hire-purchase agreement may, at any time by notice in writing served on the hirer thereof, require him to state in writing where the goods are, or, if the goods are not in his possession, to whom he delivered the goods or the circumstances under which he lost possession of them, and any hirer who does not within fourteen days after the receipt of such a notice give to the owner such a statement or who gives a statement containing any information that is to the knowledge of the hirer false is guilty of an offence against this Act.

Fraudulent sale or disposal of goods by hirer.

42. Every person who, by the disposal or sale of any goods comprised in a hire-purchase agreement, or by the removal of the goods, or by any other means defrauds or attempts to defraud the owner is guilty of an offence against this Act and liable to a penalty not exceeding two hundred pounds or to imprisonment for a period not exceeding three months.

Certain alterations, &c., of hire-purchase agreements to be of no effect.

43. Where a hire-purchase agreement is in writing signed by or on behalf of the hirer, any alteration of, or matter added to, the written document that contains the terms and conditions of the agreement after the document was so signed, if the alteration is an alteration of any of the matters required to be specified, contained, or set out in the agreement by paragraphs (c), (d) and (e) of subsection two of section three of this Act or the additional matter is a matter required to be so specified, contained, or set out or affects any matter required to be so specified, contained, or set out, has no force or effect unless the hirer or the agent (not being a person in the employ of the owner or acting on behalf of the owner in connection with the formation or conclusion of the agreement) of the hirer has consented to the alteration or additional matter by signing or initialling the agreement in the margin thereof opposite the alteration or additional matter.

Hire-Purchase.

44. Where goods comprised in a hire-purchase agreement are, at the time when the agreement is entered into, second-hand goods, then unless—

- (a) the goods are described in the agreement as second-hand goods; or
- (b) in any proceedings taken by the owner to enforce the agreement, the court is satisfied that—
 - (i) the hirer was aware at the time when he or his agent signed the agreement that goods comprised or to be comprised therein were second-hand goods; or
 - (ii) the owner was not aware at the time when the agreement was entered into that goods comprised therein were second-hand goods,

the liability of the hirer thereunder shall be reduced by the amount included in the agreement for terms charges. That amount may be set off by the hirer against the amount that would otherwise be due or become due to the owner under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer from the owner as a debt in any court of competent jurisdiction.

45. (1) A hire-purchase agreement that relates to household furniture or effects used or intended to be used by the hirer in his home and that is made with a hirer who is married is not enforceable unless—

- (a) (i) the agreement contains a statement in writing signed by the spouse of the hirer signifying the consent of the spouse to the agreement; and
- (ii) the statement is so signed by the spouse at or before the time when the agreement was entered into; or
- (b) the hirer, at or before the time when the agreement was entered into, produced and delivered to the owner an authority, signed by the spouse of the hirer, to pledge the credit of the hirer and the spouse or of either of them up to a limit, not exceeding thirty pounds, specified in the authority, and

Regulation of hire-purchase agreements with married persons.

Hire-Purchase.

and the total amount payable for the goods comprised in the agreement, together with all other moneys owing or payable by the hirer and the spouse or either of them to the owner, does not exceed the limit so specified; or

- (c) the hirer, at or before the time when the agreement was entered into, produced and delivered to the owner a statutory declaration made by the hirer to the effect that the spouse of the hirer was under such a legal incapacity as to render the spouse unable to sign a statement as required by paragraph (a) of this subsection.

(2) Subsection one of this section does not apply if—

- (a) the owner had reasonable grounds for believing and did in fact believe, at the time the hire-purchase agreement was entered into, that—
- (i) the hirer was living separate and apart from the spouse of the hirer; or
 - (ii) the spouse of the hirer was outside New South Wales; or
- (b) at or before the time when the hire-purchase agreement was entered into, the hirer produced and delivered to the owner—
- (i) where the residence of the hirer is situated more than five miles from the nearest telegraph office and the agreement was made at the residence, an instrument in writing signed by the hirer; or
 - (ii) in any other case, a statutory declaration made by the hirer,

stating that he was not married at the time of the delivery of the instrument or statutory declaration, as the case may be, to the owner, unless the owner had reasonable grounds for believing that the statement was false.

A hirer who makes a false statement in such an instrument is guilty of an offence against this Act and liable to a penalty not exceeding fifty pounds.

Hire-Purchase.

(3) (a) This subsection applies to and in respect of a hire-purchase agreement of the nature referred to in subsection one of this section where the total amount payable for the goods comprised in the agreement does not exceed ten pounds.

(b) Where the owner, under a hire-purchase agreement to which this subsection applies, serves (by personal delivery) on the spouse of the hirer, within seven days after the making of the agreement, a notice in writing that the agreement has been made, and the spouse of the hirer does not, within seven days after service of the notice, serve on the owner a notice in writing that he objects to the making of the agreement, the agreement is not, by reason only of subsection one of this section, unenforceable.

(c) Where the spouse of the hirer serves such a notice of objection the hire-purchase agreement ceases to be binding on the parties thereto; and thereupon the owner shall refund all moneys paid and the value of any consideration provided by the hirer and shall be entitled to recover possession of the goods comprised in the agreement.

(4) If an owner to whom such an authority or statutory declaration or instrument as is referred to in this section has been delivered fails to preserve it until the expiration of twelve months after the transaction in respect of which it was given is finally closed, he is guilty of an offence against this Act.

46. Any time prescribed by this Act for the service or giving of any notice or other document or for the commencement of proceedings may, on an application made to a court of petty sessions (either before or after the expiration of that time but after notice to the other party to the hire-purchase agreement) be extended by that court for such further period, and upon such conditions, as the court thinks fit.

Power to
court to
extend
times.

Hire-Purchase.

Power to
court to
order
delivery of
goods
unlawfully
detained.

47. (1) Upon complaint made by an owner who is entitled to take possession of any goods comprised in a hire-purchase agreement or by any person acting on behalf of an owner that the hirer or any person acting on behalf of the hirer has refused or failed to deliver up possession of the goods on the service of a notice of demand made by the owner or by an agent of the owner authorised in that behalf, any justice of the peace may summon the person complained of to appear before a court of petty sessions and if it appears to the court hearing the case that the goods are being detained without just cause, the court may order the goods to be delivered up to the owner at or before a time, and at a place, to be specified in the order.

(2) Any person who neglects or refuses to comply with any order made under this section is guilty of an offence against this Act.

Service
of notices.

48. (1) Any notice or document required or authorised to be served on or given or sent to an owner or hirer under this Act may be so served or given or sent—

- (a) by delivering it to him personally;
- (b) by leaving it at his place of abode or business with some other person apparently an inmate thereof or employed thereat and apparently of or over the age of sixteen years; or
- (c) by posting it, by registered post or by certified mail service, addressed to him at his last known place of abode or business.

(2) Any notice or document required to be served on a hirer under section four of this Act may also be served by posting it by ordinary post addressed to him at his last known place of abode or business.

(3) Where by any provision of this Act the doing of any act or thing by a person is prohibited unless a notice or document has first been served on or given to another person or unless a specified time has elapsed since the service or giving of a notice or document on or to another person, a court of petty sessions may in its discretion, upon application made to it by or on behalf of the first-mentioned person, if it is

Hire-Purchase.

is satisfied that that other person is evading the service or giving of the notice or document or that, for any other reason, the service or giving of the notice or document has not been and cannot promptly be effected, order that the service or giving of the notice or document be dispensed with (whether or not the time for the service or giving of the notice or document has expired) and, thereupon, the first-mentioned person may, notwithstanding anything elsewhere contained in this Act but subject to the observance of the terms and conditions, if any, included in the order, do that act or thing without serving or giving the notice or document in question or, as the case may be, although the notice or document in question has not been served or given and the specified time has not elapsed.

An order under this subsection may include such terms and conditions as the court thinks fit.

(4) The affidavit or oral evidence of an owner or his servant or agent as to the delivery, leaving, or posting of any notice or document required or authorised to be served, given, or sent by this Act is admissible as prima facie evidence of the due service, giving, or sending of the notice or document if the deponent swears to the facts necessary to prove due service, giving, or sending either from his own knowledge or to his information and belief based on and verified by the records of the owner.

49. (1) Any prescribed document or part thereof—
- (a) not being the signature or initials of any person, that is in handwriting that is not clear and legible; or
 - (b) that is printed in type of a size smaller than the type known as ten-point Times,

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

shall, for the purposes of this Act, be deemed not to be in writing.

- (2) In this section, "prescribed document" means—
- (a) any hire-purchase agreement;
 - (b) any statement under subsection one of section three of this Act;

(c)

Hire-Purchase.

- (c) any copy of an agreement, notice, or statement required by section four of this Act to be served on a hirer;
- (d) any statement required by subsection one of section seven of this Act to be sent to a hirer;
- (e) any notice under subsection one or subsection three of section thirteen of this Act; and
- (f) any statement required by subsection two of section twenty-six of this Act to be contained in a hire-purchase agreement.

(3) Where, by virtue of this section, a prescribed document or part of a prescribed document is, for the purposes of this Act, deemed not to be in writing, then, except as is otherwise in this Act expressly provided, the validity or effect of the prescribed document is not affected.

Nothing in this subsection affects the liability of any person to be convicted of an offence against this Act.

Penalty.

50. (1) Any person who contravenes or fails to comply with any provision of this Act is guilty of an offence against this Act.

(2) Any person who is guilty of an offence against this Act for which no other penalty is expressly provided by this Act is liable to a penalty not exceeding two hundred pounds.

Proceedings for offences.

51. Proceedings for offences against this Act shall be disposed of summarily before a court of petty sessions.

Time for commencement of prosecution.

52. Any prosecution for an offence against this Act may be commenced at any time within one year after the commission of the offence.

Amendment of Act No. 29, 1957. Sec. 2. (Interpretation.)

53. (1) The Credit-sale Agreements Act, 1957-1959, is amended by inserting in the definition of "Credit-sale agreement" in subsection one of section two after the word "Acts" the words " , where the agreement was entered into before the commencement of the Hire-Purchase Act, 1960, or is a hire-purchase agreement as defined in section two of the Hire-Purchase Act, 1960, where the agreement is entered into after that commencement".

(2)

Hire-Purchase.

(2) The Police Offences Act, 1901, as amended by subsequent Acts, is amended by omitting subsection six of section thirty-two and by inserting in lieu thereof the following subsection :—

Amendment
of Act No.
5, 1901.
Sec. 32.

(Order for
the delivery
to the owner
of goods
unlawfully
detained.)

(6) This section does not extend to proceedings by the owner under a hire-purchase agreement, or any person acting on his behalf, for the recovery of possession of goods comprised in the agreement.

(3) (a) The Credit-sale Agreements Act, 1957, as amended by the Banking (Interpretation of References) Act, 1959, and by this Act, may be cited as the Credit-sale Agreements Act, 1957-1960.

(b) The Police Offences Act, 1901, as amended by subsequent Acts and by this Act, may be cited as the Police Offences Act, 1901-1960.

54. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act. **Regulations.**

(2) The amount referred to in paragraph (b) of section twenty-eight of this Act may be at such rate or rates or calculated on such basis or bases (whether by reference to the cash price of the goods comprised in the hire-purchase agreement concerned or otherwise) as may be specified in the regulations, and the rates or bases so specified may vary according to different amounts of cash price, different durations of hire-purchase agreements, different classes of goods or otherwise.

(3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If

Hire-Purchase.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before the House disallowing any regulation or part thereof, the regulation or part thereupon ceases to have effect.

Sec. 3 (1).

FIRST SCHEDULE.

Hire-Purchase Act, 1960.

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

*

The cash price of goods is £.....

(a) The terms charges are £.....
and represent a rate per centum per annum not exceeding †

(a) Other charges are—

(a) For insurance for years .. £.....

(a) 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 law to be applicable to the proposed agreement will be the law of
§

NOTE.—The sequence of any item or items in the group of items marked “(a)” may be altered in relation to any other item or items in that group, but the sequence of that group must not be altered in relation to the items not marked “(a)”.

* Insert short description of goods.

† Insert, where the proposed agreement is an agreement to which s. 25 of the Act applies, a rate per centum per annum not less than the rate per centum per annum obtained by calculating the terms charges in accordance with the formula set out in s. 26 (1).

‡ Insert number, amount, and intervals of instalments.

§ Insert the name of the State, Territory or country the law of which is to be applicable to the proposed agreement.

Sec. 4.

SECOND SCHEDULE.

Hire-Purchase Act, 1960.

ADVICE TO HIRERS.

Under the provisions of the Hire-Purchase Act, 1960—

- (a) you are entitled to a copy of the agreement and a statement of the amount that you owe if you make a written request to the owner for them. You may not request a copy or a statement more than once in three months;

(b)

Hire-Purchase.

- (b) with the written consent of the owner you can assign your rights under the hire-purchase agreement and he may not unreasonably refuse his consent. For details of the procedure of assignment see Hire-Purchase Act, 1960, section 9;
- (c) you have the right to complete the agreement at any time and if you do you will be entitled to a rebate of some of the charges payable under the agreement. For details see Hire-Purchase Act, 1960, section 11;
- (d) if you are unable to pay your instalments you are entitled to return the goods to the owner at your own expense, but if you do you will be liable to pay an amount sufficient to cover the loss suffered by the owner. For details of the amount that you will have to pay see Hire-Purchase Act, 1960, section 12.

THIRD SCHEDULE.

Sec. 13 (1).

Hire-Purchase Act, 1960.

NOTICE OF INTENTION TO RE-POSSESS.

TAKE NOTICE THAT
 the owner of *.....
 hired by you under an agreement dated the day
 of 19 intends to retake possession of the
 goods after the expiration of †..... days from the service of this
 notice unless the arrears of instalments which now amount to £.....
 are paid to at on or
 before 19

Total amount payable	£.....
Amount paid or provided by hirer to / / 19....	£.....
Arrears under agreement to / / 19.. .. .	£.....

* Insert description of goods.

† Insert number of days, not being less than twenty-one, or, where the hirer is a farmer and s. 33 of the Act applies, not being less than thirty.

FOURTH SCHEDULE.

Secs. 11 (3),
 13 (3), 14,
 15.

Hire-Purchase Act, 1960.

ADVICE TO HIRERS.

Now that the goods you hired have been re-possessed you will be entitled to get them back—

- (a) if, within twenty-one days, you require the owner, by notice in writing signed by you or your agent, to re-deliver the goods to you and if, within fourteen days after giving the notice, you
 reinstate

Hire-Purchase.

reinstates the agreement by paying the arrears and remedy the following breaches of the agreement (or pay the owner's expenses in remedying them):

The owner's estimate of the amount you must pay to reinstate the agreement is:—

Arrears of instalments	£.....
Cost of storage, repair or maintenance	£.....
Cost of re-possession	£.....
Cost of re-delivery	£.....
Total	£.....

or

- (b) if, within twenty-one days, you give notice of your intention to finalise the agreement and pay the balance due under the agreement and costs of the re-possession:

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

Total amount payable under the agreement	£.....
Less deposit and instalments paid	£.....
Balance due under agreement	£.....
Less statutory rebates	£.....
Add costs of re-possession	£.....
Storage, repair or maintenance	£.....
Total	£.....

If you don't reinstate or finalise the agreement you will be liable for the owner's loss unless the value of the goods re-possessed 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 value of the goods re-possessed is £ .. .

* On the basis of that estimate you are entitled to a refund of £ .. .
liable to pay the owner £ .. .

NOTE.—You may give a written notice to the owner requiring the owner to sell the goods to any cash buyer you can introduce who is willing to pay the owner's estimate of the value, i.e.†

* Strike out whichever inapplicable.

† Insert owner's estimate of value.

DO NOT DELAY.

Action to enforce your rights should be taken at once. You will lose your rights *twenty-one days* after the service or posting of this notice if you do not take action.

If you think you have any rights under the Hire-Purchase Act, 1960, you should seek advice at once.

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 Act, 1960, and you should seek advice at once.

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BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1965

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 13 April, 1960, A.M.*

New South Wales



ANNO NONO

ELIZABETHÆ II REGINÆ

Act No. 33, 1960.

An Act relating to the form and content of hire-purchase agreements; to regulate the rights and duties of parties to hire-purchase agreements; to repeal the Hire-purchase Agreements Act, 1941, and certain other enactments; to amend the Credit-sale Agreements Act, 1957, the Police Offences Act, 1901, and certain other Acts; and for purposes connected therewith. [Assented to, 28th April, 1960.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

HOWARD T. FOWLES,
Chairman of Committees of the Legislative Assembly.

Hire-Purchase.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

- Short title. **1.** (1) This Act may be cited as the "Hire-Purchase Act, 1960."
- Commence-
ment. (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.
- Division
into Parts. (3) This Act is divided into Parts as follows:—
- PART I.—PRELIMINARY—ss. 1, 2.
- PART II.—FORMATION AND CONTENTS OF HIRE-PURCHASE AGREEMENTS—ss. 3, 4.
- PART III.—PROTECTION OF HIRERS—ss. 5–17.
- Division 1.—Warranties and conditions—ss. 5, 6.*
- Division 2.—Statutory rights of hirers—ss. 7–10.*
- Division 3.—Early completion of agreements—s. 11.*
- Division 4.—Voluntary return of goods—s. 12.*
- Division 5.—Repossessions—ss. 13–17.*
- PART IV.—GUARANTEES—ss. 18, 19.
- PART V.—INSURANCE—ss. 20–24.
- PART VI.—LIMITATION ON TERMS CHARGES—ss. 25, 26.
- PART VII.—MINIMUM DEPOSITS—ss. 27–31.
- PART VIII.—MISCELLANEOUS—ss. 32–54.
- Repeal. (4) (a) The Hire-purchase Agreements Act, 1941, the Hire-purchase Agreements (Amendment) Act, 1955, the Hire-purchase Agreements (Amendment) Act, 1957, sections thirteen and fourteen of the Economic Stability and War-time Provisions Continuance Act, 1946, and section three of the Banking (Interpretation of References) Act, 1959, are repealed.
- (b)

Hire-Purchase.

(b) Notwithstanding the repeal of the enactments mentioned in subsection one of this section but subject to paragraph (c) of this subsection, those enactments continue to apply to and in relation to—

- (i) hire-purchase agreements entered into before the commencement of this Act; and
- (ii) agreements entered into before or after that commencement in relation to hire-purchase agreements entered into before that commencement.

(c) Section twenty of the Hire-purchase Agreements Act, 1941-1959, continues so to apply for the following purposes only, namely, for the purposes of—

- (a) proceedings under that section that were commenced before the commencement of this Act and in which an order had been made under subsection two of that section before that commencement; and
- (b) proceedings under that section in relation to an order so made.

(5) (a) This Act applies to and in relation to—

Application
of Act.

- (i) hire-purchase agreements entered into after the commencement of this Act; and
- (ii) agreements entered into before or after that commencement in relation to hire-purchase agreements to be entered into, or entered into, after that commencement.

(b) Section forty-seven of this Act applies to and in relation to hire-purchase agreements entered into before the commencement of this Act as well as to and in relation to hire-purchase agreements entered into after that commencement.

2. (1) In this Act, unless inconsistent with the context or subject-matter—

Interpreta-
tion.

“Banker” means a body corporate for the time being authorised to carry on banking business under a law of this or another State or of the Commonwealth of Australia.

“Cash”

Hire-Purchase.

“Cash” includes a cheque drawn on a banker.

“Court of petty sessions” means a court of petty sessions held before a stipendiary magistrate sitting alone.

“Dealer” means a person, not being the hirer or the owner or a servant of the owner, by whom or on whose behalf negotiations leading to the making of a hire-purchase agreement with the owner were carried out or by whom or on whose behalf the transaction leading to a hire-purchase agreement with the owner was arranged.

“Goods” includes all chattels personal other than money or things in action.

“Guarantor” means a person who has guaranteed the performance by a hirer of all or any of his obligations under a hire-purchase agreement but does not include the dealer or 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.

“Hire-purchase agreement” includes a letting of goods with an option to purchase and 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 any agreement—

- (a) whereby the property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods; or
- (b) under which the person by whom the goods are being hired or purchased 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.

“Hirer” means the person to whom goods are let, hired, or agreed to be sold under a hire-purchase agreement and includes a person to whom the hirer’s rights or liabilities under the agreement have passed by assignment or by operation of law.

“Owner”

Hire-Purchase.

“Owner” means the person letting, hiring, or agreeing to sell goods under a hire-purchase agreement and includes a person to whom the owner’s property in the goods or any of the owner’s rights or liabilities under the agreement have passed by assignment or by operation of law.

“Period of the agreement”, in relation to a hire-purchase agreement, means the period between the commencement of the hiring under the agreement and the time provided by the agreement for the payment of the last instalment.

“Prescribed” means prescribed by this Act or by the regulations.

“Regulations” means regulations made under this Act.

“Schedule” means Schedule to this Act.

“Statutory rebate”—

(a) in relation to terms charges—

(i) means the amount derived by multiplying the terms charges by the sum of all the whole numbers from one to the number which is the number of complete months in the period of the agreement still to go (both inclusive) and by dividing the product so obtained by the sum of all the whole numbers from one to the number which is the total number of complete months in the period of the agreement (both inclusive); or

(ii) where it is agreed in a hire-purchase agreement that the terms charges have been calculated on a simple interest basis at a rate specified in the agreement on the amount outstanding from month to month means the amount of interest attributable to the period of complete months still to go under the agreement; and

(b)

Hire-Purchase.

(b) in relation to insurance, means the sum of—

- (i) the total amount of premium paid in respect of any annual period not yet commenced; and
- (ii) ninety per centum of the proportion of the amount of the premium for insurance in respect of the current annual period attributable to the unexpired portion of that period consisting of whole months.

“Third party insurance” means any insurance in relation to liability in respect of death or bodily injury caused by or arising out of the use of a motor vehicle being insurance required by the law of the place where the vehicle is registered or is being registered, as the case requires.

“Total amount payable” means the total amount to be paid or provided whether by way of cash or other consideration by or on behalf of the hirer under a hire-purchase agreement.

“Vehicle registration fees” means any amount to be provided under a hire-purchase agreement by the owner for payment by or on behalf of the hirer under the law of this State or of any other State or Territory of the Commonwealth of Australia in connection with the registration and use of a motor vehicle, including any amount payable for third party insurance.

(2) (a) Subject to paragraph (b) of this subsection, in this Act “cash price”, “freight”, “terms charges”, and “the balance originally payable under the agreement” have the meanings assigned to them in subsection two of section three of this Act.

(b) In this Act “terms charges” and “the balance originally payable under the agreement” have, in relation to a hire-purchase agreement of the kind referred to in subsection six of section three of this Act, the meanings assigned to them in subsection two, as modified by subsection six, of that section.

(3)

Hire-Purchase.

(3) In this Act, other than sections twenty and twenty-three, "insurance" has the meaning assigned to it in subsection two of section three of this Act.

(4) Any reference in this Act to taking possession by the owner of goods comprised in a hire-purchase agreement includes—

- (a) the taking of possession of goods by the owner pursuant to an order of any court; and
- (b) the return of goods to the owner after notice has been served on the hirer pursuant to the provisions of subsection one of section thirteen of this Act,

but does not include a reference to taking possession by the owner as a result of the voluntary return of the goods by the hirer.

(5) 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 Act, be treated as a single hire-purchase agreement made at the time when the last agreement was made.

PART II.

FORMATION AND CONTENTS OF HIRE-PURCHASE AGREEMENTS.

3. (1) Before any hire-purchase agreement is entered into in respect of any goods the owner or, if there is a dealer, the dealer shall give or cause to be given to the prospective hirer a statement in writing duly completed in accordance with the form in the First Schedule :

Summary of proposed hire-purchase transaction to be given to prospective hirer.

Provided that where the agreement is entered into by way of acceptance by the owner of a written offer signed by or on behalf of the hirer, the provisions of this subsection shall be deemed

Hire-Purchase.

deemed not to have been complied with unless the written statement was given to the prospective hirer before the written offer was so signed.

Form and
contents of
hire-
purchase
agreements.

(2) Every hire-purchase agreement—

- (a) shall be in writing;
- (b) shall be signed by or on behalf of the hirer and all other parties to the agreement;
- (c) shall—
 - (i) specify a date on which the hiring shall be deemed to have commenced;
 - (ii) specify the number of instalments to be paid under the agreement by the hirer;
 - (iii) specify the amounts of each of those instalments and the person to whom and the place at which the payments of those instalments are to be made;
 - (iv) specify the time for the payment of each of those instalments; and
 - (v) contain a description of the goods sufficient to identify them;
- (d) where any part of the consideration is or is to be provided otherwise than in cash, shall contain a description of that part of the consideration; and
- (e) shall set out in a tabular form—
 - (i) the price at which at the time of signing the agreement the hirer might have purchased the goods for cash (in this Act called and in the agreement to be described as “cash price”);
 - (ii)

Hire-Purchase.

- (ii) the amount paid or provided by way of deposit (in this Act called and in the agreement to be described as "deposit") showing separately the amount paid in cash and the amount provided by a consideration other than cash;
- (iii) any amount included in the total amount payable to cover the expenses of delivering the goods or any of them to or to the order of the hirer (in this Act called and in the agreement to be described as "freight");
- (iv) any amount included in the total amount payable to cover vehicle registration fees in respect of the goods (in the agreement to be called "vehicle registration fees");
- (v) any amount included in the total amount payable for insurance (other than third party insurance) in respect of the goods that are goods of any one or more of the following descriptions, namely, industrial machinery, farm equipment or motor vehicle, or a television set or prescribed goods (in this Act called and in the agreement to be described as "insurance");
- (vi) the total of the amounts referred to in subparagraphs (i), (iii), (iv) and (v) of this paragraph less the deposit;
- (vii) the amount of any other charges included in the total amount payable (in this Act called and in the agreement to be described as "terms charges");
- (viii) the total of the amounts referred to in subparagraphs (vi) and (vii) of this paragraph (in this Act called "the balance originally payable under the agreement"); and
- (ix) the total amount payable.

Hire-Purchase.

(3) An owner who enters into a hire-purchase agreement that does not comply with subsection two of this section is guilty of an offence against this Act.

(4) Where a provision of this section has not been complied with in relation to a hire-purchase agreement (not being a failure to comply with paragraph (a) of subsection two of this section), the liability of the hirer shall be reduced by the amount included in the agreement for terms charges. That amount may be set off by the hirer against the amount that would otherwise be due or become due to the owner under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer from the owner as a debt in any court of competent jurisdiction.

Nothing in this subsection affects the liability of any person to be convicted of an offence against this section.

(5) A hire-purchase agreement that is not in writing is not enforceable by the owner.

(6) Where—

- (a) the owner under a hire-purchase agreement is not bound by the provisions of the Stamp Duties Act, 1920, as amended by subsequent Acts; and
- (b) the total amount payable includes an amount (in this subsection referred to as stamp duty) representing the whole or any part of the stamp duty chargeable on the agreement under that Act,

then in relation to such an agreement subparagraphs (vii) and (viii) of paragraph (e) of subsection two of this section are deemed to be omitted and the following subparagraphs inserted in lieu thereof:—

- (vii) the amount of any other charges (other than stamp duty) included in the total amount payable (in this Act called and in the agreement to be described as “terms charges”);
- (viii) the total of the amounts referred to in subparagraphs (vi) and (vii) of this paragraph together with stamp duty (in this Act called “the balance originally payable under the agreement”); and.

Hire-Purchase.

4. The owner shall serve or cause to be served on the hirer within twenty-one days after the making of a hire-purchase agreement—

Certain copy documents to be served on hirer.

- (a) a copy in writing of the agreement;
- (b) a notice in writing in or to the effect of the Second Schedule, which notice may be endorsed on the copy of the agreement; and
- (c) where any part of the total amount payable consists of an amount paid or to be paid under a policy of insurance (not being a policy of third party insurance) in respect of goods that are goods of any one or more of the following descriptions, namely, industrial machinery, farm equipment or motor vehicle, or a television set or prescribed goods, a copy of the policy or a statement in writing setting out the terms, conditions, and exclusions of the policy that affect or concern the rights of the hirer, but failure to comply with the provisions of this section does not avoid the agreement.

PART III.
PROTECTION OF HIRERS.
Division 1.—Warranties and conditions.

5. (1) In every hire-purchase agreement there shall be—
- (a) an implied warranty that the hirer shall have and enjoy quiet possession of the goods;
 - (b) an implied condition on the part of the owner that he will have a right to sell the goods at the time when the property is to pass;
 - (c) an implied warranty that the goods will be free from any charge or encumbrance in favour of any third party (other than a charge or encumbrance created by or with the consent of the hirer) at the time when the property is to pass.

Conditions and warranties to be implied in every hire-purchase agreement

(2)

Hire-Purchase.

(2) In every hire-purchase agreement there shall be an implied condition that the goods shall be of merchantable quality but such a condition shall not be implied—

- (a) as regards defects of which the owner could not reasonably have been aware, or, if there is a dealer, neither the owner nor the dealer could reasonably have been aware, at the time the agreement was made; or
- (b) where the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed; or
- (c) if the goods are second-hand goods and the agreement contains a statement to the effect that—
 - (i) the goods are second-hand; and
 - (ii) all conditions and warranties as to quality are expressly negated,

and the owner proves that the hirer has acknowledged in writing that that statement was brought to his notice.

(3) Where the hirer expressly or by implication makes known to the owner or to the dealer or to any servant or agent of the owner or the dealer the particular purpose for which the goods are required, there shall be implied in the hire-purchase agreement a condition that the goods shall be reasonably fit for that purpose but such a condition shall not be implied if the goods are second-hand goods and the agreement contains a statement to the effect—

- (a) that the goods are second-hand; and
- (b) that all conditions and warranties of fitness and suitability are expressly negated,

and the owner proves that the hirer has acknowledged in writing that that statement was brought to his notice.

(4)

Hire-Purchase.

(4) Without prejudice to any other rights or remedies to which an owner may be entitled, where the hirer has made known expressly or by implication to the dealer or to any servant or agent of the dealer the particular purpose for which the goods are required, an owner is entitled to be indemnified by the dealer against any damage suffered by the owner through the operation of the provisions of subsection three of this section.

(5) Nothing in this section prejudices in any way any other enactment or rule of law whereby any condition of warranty is to be implied in any hire-purchase agreement.

6. (1) Every representation, warranty, or statement made to the hirer or prospective hirer, whether orally or in writing, by the owner or dealer or any person acting on behalf of the owner or dealer in connection with or in the course of negotiations leading to the entering into of a hire-purchase agreement shall confer on the hirer—

As to the liability of the owner and the dealer for misrepresentation.

- (a) as against the owner—the same right to rescind the agreement as the hirer would have had if the representation, warranty, or statement had been made by an agent of the owner; and
- (b) as against the person who made the representation, warranty, or statement, and any person on whose behalf the person who made the representation, warranty, or statement was acting in making it—the same right of action in damages as the hirer would have had against them or either of them if the hirer had purchased the goods from the person who made the representation, warranty, or statement or the person on whose behalf the person who made the representation, warranty, or statement was acting (as the case requires) as a result of the negotiations.

(2) Every covenant, condition, or term in any hire-purchase agreement or other document purporting to exclude, limit, or modify the operation of this section or to preclude any right of action or any defence based on or arising out of any such representation, warranty, or statement is void.

(3)

Hire-Purchase.

(3) Without prejudice to any other rights or remedies to which an owner may be entitled, an owner is entitled to be indemnified by the person who made the representation, warranty, or statement, and by any person on whose behalf the representation, warranty, or statement was made against any damage suffered by the owner through the operation of the foregoing provisions of this section.

Division 2.—Statutory rights of hirers.

Hirer to be entitled to copy of agreement and statement of his present position.

7. (1) At any time before the final payment has been made under a hire-purchase agreement the owner shall, within fourteen days after he has received a request in writing from the hirer, send to the hirer a copy of the agreement, together with a statement in writing signed by the owner or his agent showing—

- (a) the amount paid to the owner by or on behalf of the hirer;
- (b) the amount that has become due under the agreement but remains unpaid; and
- (c) the amount that is to become payable under the agreement,

but an owner need not comply with such a request if he has sent the hirer a copy of the agreement and a statement under this subsection within the period of three months immediately preceding the receipt of the request.

(2) If an owner contravenes subsection one of this section by failing to comply with a request made pursuant to that subsection he is guilty of an offence against this Act and liable to a penalty not exceeding fifty pounds and, until the default is remedied—

- (a) the owner is not entitled to enforce—
 - (i) the agreement against the hirer;
 - (ii) any right to recover the goods from the hirer; or
 - (iii) any contract of guarantee relating to the agreement; and

(b)

Hire-Purchase.

(b) any security given by the hirer in respect of money payable under the agreement or given by a guarantor is not enforceable against the hirer or the guarantor by any holder thereof.

8. A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner is entitled, on making any payment in respect of the agreements that is not sufficient to discharge the total amount then due under all the agreements, to require the owner to appropriate the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and, if he fails to make such an appropriation, the payment shall by virtue of this section be appropriated in or towards the satisfaction of the sums due under the respective agreements in the order in which the agreements were entered into.

As to appropriation of payments when more than one agreement.

9. (1) The right, title, and interest of a hirer under a hire-purchase agreement may be assigned with the consent of the owner or, if his consent is unreasonably withheld, without his consent.

As to assignments of rights under hire-purchase agreements.

(2) Except as otherwise provided in this section, no payment or other consideration shall be required by an owner for his consent to such an assignment as is mentioned in subsection one of this section, and where an owner requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld.

(3) Where, at the request of a hirer under a hire-purchase agreement, the owner fails or refuses to give his consent to an assignment by the hirer of his right, title, and interest under the agreement, the hirer may apply to a court of petty sessions for an order declaring that the consent of the owner to that assignment has unreasonably been withheld, and where such an order is made that consent shall be deemed to be unreasonably withheld.

(4)

Hire-Purchase.

(4) As a condition of granting consent to an assignment of the right, title, and interest of the hirer under a hire-purchase agreement, the owner may stipulate that all defaults under the agreement shall be made good and may require the hirer and assignee—

(a) to execute and deliver to the owner an assignment agreement in a form approved by the owner whereby without prejudicing or affecting the continuing personal liability of the hirer in those respects the assignee agrees with the owner to be personally liable to pay the instalments remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the assignee indemnifies the hirer in respect of those liabilities; and

(b) to pay the reasonable costs (if any) incurred by the owner in stamping or registering the assignment agreement or counterparts.

(5) The right, title, and interest of a hirer under a hire-purchase agreement is capable of passing by operation of law to the personal representative of the hirer and if the hirer is a company the liquidator may exercise the same rights under the agreement as the company, but nothing in this subsection relieves a personal representative or liquidator from compliance with the provisions of the agreement.

Power to
court to
allow goods
to be
removed.

10. Where, by virtue of a hire-purchase agreement, it is the duty of a hirer to keep the goods comprised in the agreement in his possession or control at a particular place or not to remove the goods from a particular place, a court of petty sessions may, on the application of the hirer, make an order approving the removal of the goods to some other place, which place shall thereafter, for the purposes of the agreement, be substituted for the first-mentioned place.

Division

Hire-Purchase.

Division 3.—Early completion of agreements.

11. (1) The hirer under a hire-purchase agreement may, if he has given notice in writing to the owner of his intention to do so, on or before the day specified for that purpose in the notice, complete the purchase of the goods by paying or tendering to the owner the net balance due to the owner under the agreement.

Hirer
entitled to
finalise
agreement
at any
time.

(2) For the purposes of this section the net balance due is the balance originally payable under the agreement less any amounts (other than the deposit) paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, and less—

- (a) the statutory rebate for terms charges; and
- (b) if the hirer requires any contract for insurance to be cancelled, the statutory rebate for insurance.

(3) The rights conferred on the hirer by this section may be exercised by him—

- (a) at any time during the continuance of the agreement; or
- (b) where the owner has taken possession of the goods, on paying or tendering to the owner (before or within twenty-one days after the owner has served a notice in the form of the Fourth Schedule on the hirer) in addition to the net balance due—
 - (i) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods; and
 - (ii) any amount properly expended by the owner on the storage, repair, or maintenance of the goods.

Division

Hire-Purchase.

Division 4.—Voluntary return of goods.

Power to
hirer to
determine
hiring.

12. (1) The hirer of any goods comprised in a hire-purchase agreement may terminate the hiring by returning the goods to the owner during ordinary business hours at a place at which the owner ordinarily carries on business or to the place specified for that purpose in the agreement and such a return of the goods terminates the hiring.

(2) Where the nature of the goods comprised in a hire-purchase agreement is, or the facilities available at the place or places of business of the owner or at the place specified in the agreement are, such that it would be impracticable to return the goods to such a place, the hirer may terminate the hiring by returning the goods—

- (a) to any place agreed to by the parties to the agreement; or
- (b) if the parties fail to agree, to a place that is reasonable, having regard to all the circumstances surrounding the transaction.

(3) A hirer who proposes to return goods to the owner under this section may apply to a court of petty sessions for an order fixing the place to which the goods may be returned under paragraph (b) of subsection two of this section.

(4) The court may, in any order made pursuant to this section, order that, subject to the goods being returned to the owner, the hiring shall be determined on such date as is specified in the order, not being a date before the hirer required the owner to nominate a reasonable place for the return of the goods.

(5) Notice of any application under this section shall be given to the owner by the hirer.

(6)

Hire-Purchase.

(6) Where a hire-purchase agreement is determined pursuant to this section the owner is entitled to recover from the hirer—

- (a) the amount (if any) required to be paid in those circumstances under the agreement; or
- (b) the amount (if any) that the owner would have been entitled to recover if he had taken possession of the goods at the date of termination of the hiring, whichever is the less.

Division 5.—Repossessions.

13. (1) Subject to this section, an owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments until he has served on the hirer a notice, in writing, in the form of the Third Schedule and the period fixed by the notice (being not less than twenty-one days after the service of the notice) has expired.

Notices to be given to hirer when goods re-possessed.

(2) An owner need not comply with subsection one of this section if there are reasonable grounds for believing that the goods comprised in the hire-purchase agreement will be removed or concealed by the hirer contrary to the provisions of the agreement, but the onus of proving the existence of those grounds lies upon the owner.

(3) Within twenty-one days after the owner has taken possession of goods that were comprised in a hire-purchase agreement he shall serve on the hirer and every guarantor of the hirer a notice, in writing, in the form of the Fourth Schedule.

(4) Where the owner takes possession of goods that were comprised in a hire-purchase agreement he shall—

- (a) if the hirer is present at the time when the owner takes possession of the goods, at that time deliver or cause to be delivered to the hirer personally a document acknowledging receipt of the goods;
- (b)

Hire-Purchase.

- (b) if the hirer is not present at the time when the owner takes possession of the goods, forthwith after taking possession of the goods send to the hirer a document acknowledging receipt of the goods.

The document acknowledging receipt of the goods shall set out a short description of the goods and the date on which, the time at which, and the place where, the owner took possession of the goods.

(5) If the notice required by subsection three of this section is not served, the rights of the owner under the hire-purchase agreement thereupon cease and determine, but, if the hirer exercises his rights under this Act to recover the goods so taken possession of, the agreement has the same force and effect in relation to the rights and liabilities of the owner and the hirer as it would have had if the notices had been duly given.

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

14. Where an owner has taken possession of any goods he shall not, without the consent of the hirer (which consent shall be in writing and shall be witnessed by some person other than the owner or the solicitor for or agent or employee of the owner), sell or dispose of the goods or part with possession thereof until after the expiration of twenty-one days after the date of the service on the hirer of the notice referred to in subsection three of section thirteen of this Act or, if notice under subparagraph (i) of paragraph (a) of subsection one of section fifteen of this Act has been given, until the time for payment or tender pursuant to that notice has expired (whichever is the later).

As to hirer's rights and immunities when goods re-possessed.

15. (1) Where the owner takes possession of any goods comprised in a hire-purchase agreement—

- (a) the hirer may, before or within twenty-one days after the service on him of the notice referred to in subsection three of section thirteen of this Act, by giving to the owner a notice in writing signed by the hirer or his agent—

- (i) require the owner to re-deliver to or to the order of the hirer (subject to compliance by the hirer with the provisions of section sixteen of this Act) the goods that have been re-possessed; or (ii)

Hire-Purchase.

(ii) require the owner to sell the goods to any person introduced by the hirer who is prepared to buy the goods for cash at a price not less than the estimated value of the goods set out in the first-mentioned notice;

(b) the hirer may recover from the owner—

(i) if the value of the goods at the time of the owner so taking possession thereof 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

(ii) if the value of the goods at the time of the owner so taking possession thereof 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;

(c) the owner is not entitled to recover any sum (whether under a judgment or order or otherwise) that would together with—

(i) the value of the goods at the time of the owner so taking possession thereof; and

(ii) 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.

(2) For the purposes of this section—

(a) the net amount payable is the total amount payable less the statutory rebates for terms charges and insurance as at the time of the owner taking possession of the goods; and

(d)

(b)

Hire-Purchase.

(b) the value of any goods at the time of the owner taking possession thereof is—

- (i) the best price that could be reasonably obtained by the owner at that time; or
- (ii) if the hirer has introduced a person who has bought the goods for cash, the amount paid by that person,

less—

- (iii) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods;
- (iv) any amount properly expended by the owner on the storage, repair, or maintenance of the goods; and
- (v) (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.

(3) Where the owner has sold goods of which he has taken possession, 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 he took possession of the goods lies upon the owner.

(4) Except where the owner has failed to serve on the hirer a notice as required by subsection three of section thirteen of this Act, no amount is recoverable by the hirer under this section unless—

- (a) the hirer, within twenty-one days after the owner has served such a notice, 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 of the owner taking possession thereof; and
 - (ii) signed by the hirer or his solicitor or agent; and

(d)

(b)

Hire-Purchase.

(b) proceedings for the recovery of the amount so claimed under the provisions of this section are commenced not earlier than seven days and, except where the goods have been sold at the request of the hirer to a person introduced by the hirer, not later than three months after the giving by the hirer to the owner of the notice referred to in paragraph (a) of this subsection.

(5) If, before the proceedings referred to in subsection four of this section are commenced by the hirer, the owner serves an offer in writing on the hirer to pay any 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 :

Provided that no such right shall be 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.

16. (1) If, within fourteen days after giving notice to the owner pursuant to the provisions of subparagraph (i) of paragraph (a) of subsection one of section fifteen of this Act, the hirer—

Power to
hirer to
regain
possession
of goods
in certain
circum-
stances.

(a) pays or tenders to the owner any amount due by the hirer under the hire-purchase agreement in respect of the period of hiring up to the date of the payment or tender (and for the purposes of this paragraph the hiring shall be deemed to have continued up to that date) ;

(b) remedies any breach of the agreement or (where he is unable to remedy the breach by reason of the fact that the owner has taken possession of the goods) pays or tenders to the owner the costs and expenses reasonably and actually incurred by the owner in doing any act, matter, or thing necessary to remedy the breach ; and

(c)

Hire-Purchase.

- (c) pays or tenders to the owner the reasonable costs and expenses of the owner of and incidental to his taking possession of the goods and of his returning them to or to the order of the hirer,

the owner shall forthwith return the goods to the hirer and the goods shall be received and held by the hirer pursuant to the terms of the hire-purchase agreement as if the breach had not occurred and the owner had not taken possession thereof.

(2) Where goods are returned to the hirer pursuant to subsection one of this section and any breach of the hire-purchase agreement has not been remedied, the owner has no right arising out of the breach to take possession of the goods unless—

- (a) by notice in writing given to the hirer at the time of the return of the goods he specifies the breach and requires it to be remedied; and
- (b) the hirer fails within fourteen days or within the time specified in the notice (whichever is the longer) after receiving the notice to remedy the breach.

Power to court to vary existing judgments or orders when goods are re-possessed

17. In any legal proceedings in relation to a hire-purchase agreement, after the owner has taken possession of the goods, the court before which the proceedings are brought may vary or discharge any judgment or order of any court against the hirer for the recovery of money so far as is necessary to give effect to the provisions of section fifteen of this Act.

PART IV.

GUARANTEES.

Provisions as to guarantors.

18. (1) Save as provided in this Act a guarantor is not, by reason of the operation of this Act, discharged from liability under his guarantee.

(2)

Hire-Purchase.

(2) The liability of a guarantor continues notwithstanding that the owner has, pursuant to the provisions of a hire-purchase agreement, taken possession of the goods comprised therein (and whether or not the goods have been re-delivered to or to the order of the hirer pursuant to this Act); but nothing in this subsection operates to preserve the liability of a guarantor where the owner and the hirer have entered into a new agreement in respect of the goods comprised in any hire-purchase agreement.

(3) No guarantor is liable to any further or other extent than the hirer, the performance of whose obligations he has guaranteed; but, subject to section nineteen of this Act, nothing in this Act affects any agreement by the guarantor binding him to the performance of any obligation that is not one of the obligations imposed on the hirer under the hire-purchase agreement in respect of which the guarantee is given.

(4) Where goods have been delivered to or to the order of the hirer pursuant to a hire-purchase agreement and the owner subsequently takes possession thereof, any guarantor who has paid any moneys to the owner in accordance with his guarantee has the like right in like manner to recover those moneys as he would have had if he had been the hirer of the goods, but for the purpose of calculating the amount received by the owner all moneys paid and the value of any other consideration provided by or on behalf of the hirer shall be deemed to have been paid or provided by the guarantor, but no moneys shall be recovered by the guarantor in excess of the moneys actually paid by him.

19. (1) Where a guarantor of the performance by a hirer of all or any of the hirer's obligations under a hire-purchase agreement enters into an agreement binding the guarantor—

(a) to pay to the owner under the hire-purchase agreement an aggregate sum that is larger than the balance originally payable under the hire-purchase agreement;

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

(c)

Guarantor not to be bound in certain cases unless independently advised.

Hire-Purchase.

- (c) to permit the owner under the hire-purchase agreement or any person acting on behalf of the owner to enter upon any premises for the purpose of taking possession of or inspecting goods subject to the hire-purchase agreement; or
- (d) to relieve the owner under the hire-purchase agreement or any person acting on behalf of the owner from liability for any such entry,

the agreement so entered into by the guarantor is void (and the owner under the hire-purchase agreement concerned is guilty of an offence against this Act) unless the agreement is executed by the guarantor in the presence of a chamber magistrate, a clerk of petty sessions or a solicitor instructed and employed independently of the owner and the magistrate, clerk or solicitor, as the case may be, certifies in writing upon the agreement—

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

(2) A chamber magistrate, a clerk of petty sessions or a solicitor shall not give a certificate in respect of an agreement under subsection one of this 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 a chamber magistrate, a clerk of petty sessions or a solicitor to comply with subsection two of this section in respect of a certificate does not invalidate the certificate.

PART

Hire-Purchase.

PART V.

INSURANCE.

20. (1) An owner may require any goods comprised in a hire-purchase agreement to be insured in the names of the owner and the hirer against any risk that he thinks fit for the period of the agreement at the expense of the hirer.

As to insurance of goods comprised in hire-purchase agreements.

(2) An owner shall not require a hirer to insure any such risk with any particular insurer.

(3) An owner shall not refuse to enter into a hire-purchase agreement with a person who effects insurance of the goods for the period of the agreement against such risks and subject to such terms, conditions, and exceptions as are required by the owner in the names of the owner and the hirer with a reputable insurer if the owner has no other grounds upon which the owner could reasonably refuse to enter into the agreement.

(4) An owner shall not require a hirer to obtain insurance against risks or subject to terms, conditions, and exceptions that the owner does not require if he arranges the insurance.

(5) 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 hirer under the agreement is entitled to the benefit of the rebate and any person who knowingly pays or allows any such rebate to an owner is guilty of an offence against this Act.

Hirer to be entitled to insurance rebates.

21. (1) In any proceedings taken in any court in respect of any difference or dispute arising out of a contract of insurance if it appears to the court that a failure by the insured or the hirer under the hire-purchase agreement concerned to observe or perform a term or condition of the contract of insurance may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may, unless an order excusing the failure has already been made under subsection two of this section, order that the failure be excused.

Powers of court in relation to insurance contracts associated with hire-purchase agreements.

(2)

Hire-Purchase.

(2) Where a difference or dispute has arisen out of a contract of insurance, the insured or the hirer under the hire-purchase agreement concerned or any guarantor in respect of that agreement may, unless an order excusing the failure concerned has already been made under subsection one of this section, apply to the court for an order that the failure to observe or perform a term or condition of the contract of insurance be excused; and if it appears to the court that the failure may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may order that the failure be excused.

(3) Where an order of the nature referred to in subsections one and two of this section has been made under either of those subsections, the rights and liabilities of all persons in respect of the contract of insurance concerned shall be determined as if the failure the subject of the order had not occurred.

(4) The provisions of this section apply only to or in respect of a contract of insurance of goods (whether or not the contract includes any other class of insurance) where the premium or other sum payable for the cover given by the contract of insurance, or any part of that premium or sum, was included as part of the total amount payable for the goods comprised in a hire-purchase agreement.

As to
contents of
contracts of
insurance.

22. (1) Every copy of a policy of insurance (not being a policy of third party insurance), and every statement, served upon a hirer pursuant to section four of this Act shall—

- (a) identify the goods or the part of the goods to be insured; and
- (b) contain a statement of the amount and period for which the goods are insured or are to be insured; and
- (c) if the amount for which the goods are or are to be insured will vary during the period of the agreement, contain a statement showing the varying amounts.

(2)

Hire-Purchase.

(2) Subject to subsection three of this section, any provision in any agreement or other document—

- (a) requiring differences or disputes arising out of a contract of insurance to be referred to arbitration;
- (b) providing that no action or suit shall be maintainable upon such a contract or against the insurer in respect of any claim under, or difference or dispute arising out of, such a contract unless the claim, difference, or dispute has been referred to arbitration or an award pursuant to arbitration proceedings has been first obtained;
- (c) providing that arbitration or an award pursuant to arbitration proceedings is a condition precedent to any right of action or suit upon such a contract; or
- (d) otherwise imposing by reference to arbitration or to an award made in arbitration proceedings any limitation on the right of any person to bring or maintain any action or suit upon such a contract,

does not bind the hirer.

(3) An agreement made by the parties to a contract of insurance after a difference or dispute has arisen out of the contract of insurance to submit that difference or dispute to arbitration has effect as if subsection two of this section had not been enacted.

(4) The provisions of this section apply only to or in respect of a contract of insurance of goods (whether or not the contract includes any other class of insurance) where the premium or other sum payable for the cover given by the contract of insurance, or any part of that premium or sum, was included as part of the total amount payable for the goods comprised in a hire-purchase agreement.

Hire-Purchase.

Rates of
insurance.

23. (1) The Governor may, for the purposes of subsection three of this section, make regulations prescribing rates for insurance in respect of any class or classes of goods.

In the exercise of the power conferred by the foregoing provisions of this subsection, but without limiting the generality of that power, the regulations may provide—

- (a) different rates for insurance in respect of different classes of goods;
- (b) different rates in respect of different parts of the State;
- (c) rates on a sliding scale;
- (d) rates according to or upon any specified principle or criterion.

(2) The power conferred by subsection one of this section shall be deemed to be validly exercised by a regulation that prescribes any such rates as are referred to in that subsection by reference to a list, scale or table of insurance rates referred to in the regulations and issued by a body or association that the Governor considers to be representative of insurance companies carrying on business of the class to which the list, scale or table relates.

(3) Where the total amount payable for goods the subject of a hire-purchase agreement includes an amount for insurance in respect of goods comprised in the hire-purchase agreement that are goods of a class in respect of which rates of insurance are, at the time when the agreement is entered into, prescribed under this section and that amount exceeds the amount that would have been payable for insurance in respect of the goods so comprised had those goods been insured in accordance with those rates—

- (a) the agreement is void; and
- (b) the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

Application
of this
Part.

24. The provisions of this Part have effect notwithstanding anything contained in any other Act.

PART

Hire-Purchase.

PART VI.

LIMITATION ON TERMS CHARGES.

25. (1) This section applies to every hire-purchase agreement other than a hire-purchase agreement that—

Certain hire-purchase agreements to have regular payments of equal amount.

(a) provides that the instalments necessary to pay the difference between the total amount payable and the deposit are to be made over a period exceeding one year and also provides that those instalments are to be made less than nine times in any period of twelve months that forms part of the period first-mentioned in this paragraph; or

(b) provides that the instalments necessary to pay the difference between the total amount payable and the deposit are to be made only over a period of one year or less and also provides that those instalments are to be made less than nine times during that period.

(2) A hire-purchase agreement to which this section applies shall provide that the instalments necessary under the agreement to pay the difference between the total amount payable and the deposit shall—

(a) be made at regular weekly, fortnightly or monthly intervals and at no other intervals; and

(b) be of equal or approximately equal amounts.

Where an instalment differs from any other instalment by a sum in excess of one pound, the instalments shall, for the purposes of this subsection, be taken to be not of approximately equal amounts.

(3) Where a hire-purchase agreement to which this section applies is entered into in contravention of subsection two of this section, the liability of the hirer shall be reduced by the amount included in the agreement for terms charges. That amount may be set off by the hirer against the amount that would otherwise be due or become due under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer from the owner as a debt in any court of competent jurisdiction.

26.

Hire-Purchase.

Limitation
on terms
charges.

26. (1) The terms charges in relation to a hire-purchase agreement to which section twenty-five of this Act applies shall not, when calculated as a rate per centum per annum in accordance with the formula set out in this subsection, exceed a rate per annum of—

- (a) where the goods comprised in the agreement, not being second-hand goods at the time when the agreement is entered into, are any one or more of the following only, namely, industrial machinery, farm equipment or a motor vehicle (other than a motor cycle)—seven per centum;
- (b) where the goods comprised in the agreement, being second-hand goods at the time when the agreement is entered into, are any one or more of the following only, namely, industrial machinery, farm equipment or a motor vehicle (other than a motor cycle)—nine per centum;
- (c) where the goods comprised in the agreement are a motor cycle—nine per centum;
- (d) where the goods comprised in the agreement are goods that are not of any of the descriptions in respect of which a rate is fixed by or under paragraph (a) or (b) or (c) of this subsection—ten per centum;
- (e) where the goods comprised in the agreement include goods of the description or of any one or more of the descriptions referred to in one of the above paragraphs of this subsection and also goods of the description or of any one or more of the descriptions referred to in one or more of the other such paragraphs—the lower or lowest, as the case may be, of the amounts per centum prescribed by the above paragraphs in respect of a description of goods so comprised.

The

Hire-Purchase.

The rate referred to in the foregoing provisions of this subsection shall be calculated in accordance with the following formula :—

$$R = \frac{100 \times C}{T \times P}$$

where

R represents the terms charges calculated as a rate per centum per annum.

C represents the amount of terms charges expressed in pounds and fractions of pounds.

T represents the time that elapses between the time fixed by or under the agreement for the making of the first instalment and the time so fixed for the making of the last instalment, together with—

- (i) one week where the instalments are payable under the agreement at regular weekly intervals;
- (ii) two weeks where the instalments are payable under the agreement at regular fortnightly intervals;
- (iii) one month where the instalments are payable under the agreement at regular monthly intervals,

expressed in years and fractions of years.

P represents the difference between the cash price of the goods comprised in the agreement and the amount of the deposit, together with—

- (i) freight, if any; and
- (ii) vehicle registration fees, if any; and
- (iii) where the owner is not bound by the provisions of the Stamp Duties Act, 1920, as amended by subsequent Acts, and the total amount payable includes an amount representing the whole or any part of the stamp duty chargeable on the agreement under that Act, the last-mentioned amount; and
- (iv) insurance, if any,

expressed in pounds and fractions of pounds.

(2)

Hire-Purchase.

(2) (a) A hire-purchase agreement to which section twenty-five of this Act does not apply shall contain, immediately above the place provided for the signature of the hirer or his agent or the place at which the hirer or his agent signs the agreement, a statement in writing as follows:—

The terms charges under this agreement are not controlled by the Hire-Purchase Act, 1960.

(b) Without prejudice to the generality of section forty-nine of this Act, "writing" in this subsection includes such printing only as is in capital letters.

(3) (a) Where a hire-purchase agreement to which section twenty-five of this Act applies is entered into in contravention of subsection one of this section, the hirer may, by notice in writing to the owner signed by the hirer or the hirer's agent, elect either to treat the agreement as void or to have his liability reduced by the amount included in the agreement for terms charges.

Such an election is final and irrevocable.

(b) Where the hirer so elects to treat the hire-purchase agreement as void, the agreement shall be void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

(c) Where the hirer so elects to have his liability reduced by the amount included in the agreement for terms charges, his liability shall be reduced by that amount and that amount may be set off by the hirer against the amount that would otherwise be due under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer as a debt in any court of competent jurisdiction.

(4) A hire-purchase agreement to which section twenty-five of this Act does not apply and that is entered into in contravention of subsection two of this section, is void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

(5)

Hire-Purchase.

(5) The expression "matter" in paragraph (o) of subsection one of section thirty-five of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, includes the question whether there should be an alteration of the rates per centum per annum prescribed by subsection one of this section.

PART VII.**MINIMUM DEPOSITS.**

27. (1) In this Part "hire-purchase agreement" does not include any agreement or arrangement that is entered into solely for the purpose of giving effect to an assignment or transfer of the rights and liabilities under an existing hire-purchase agreement from the hirer to another person. ^{Interpretation.}

(2) In this Part, "loan" includes advance, discount, money paid for or on account of or on behalf of or at the request of any person, and includes every contract (whatever its terms or form may be) that is in substance or effect a loan of money, and "lend" and "lending" have corresponding interpretations.

28. An owner who enters into a hire-purchase agreement without having first obtained from the proposed hirer thereunder a deposit in cash or in goods, or partly in cash and partly in goods, to a value equal to at least— ^{Minimum deposits.}

(a) where the minimum amount of the deposit is not prescribed under paragraph (b) of this section—one-tenth of the cash price of the goods comprised in the agreement; or

(b) where the minimum amount of the deposit is prescribed under this paragraph—such amount as may for the time being be prescribed,

is guilty of an offence against this Act.

29.

Hire-Purchase.

Certain payments, &c., not to be treated as deposits for the purposes of this Part.

29. (1) No deposit—

- (a) to the extent that it is in cash and that it is made out of moneys borrowed directly or indirectly—
- (i) from or through the owner (if the owner is not a banker);
 - (ii) from or through the dealer; or
 - (iii) from or through any person whose business or part of whose business it is, by agreement with the owner or dealer or any person acting on behalf of the owner or dealer, to advance money to enable deposits to be paid in respect of hire-purchase agreements with the owner;
- (b) to the extent that, where the deposit is in goods or partly in goods and the amount allowed in respect of the goods is substantially greater than the value of the goods, that amount exceeds that value;
- (c) to the extent that it is made out of an amount allowed or credited in respect of, or by reference to, amounts paid by the hirer as rent or hire under a bailment of the goods before the making of a hire-purchase agreement in respect of the goods; or
- (d) to the extent that it is provided by goods that were, to the knowledge of the owner or dealer, acquired by the hirer for the purpose of being used by the hirer to provide the deposit under the agreement,

shall be taken into account for the purpose of determining whether the provisions of section twenty-eight of this Act have been complied with.

(2) The provisions of this Part shall be deemed to have been complied with by the owner if a deposit in accordance with the provisions of this Part has been obtained by the dealer.

(3)

Hire-Purchase.

(3) Where a dealer buys goods from a proposed hirer and the price, or part of the price, of the goods is applied as or towards a deposit under a hire-purchase agreement, then in relation to the agreement—

- (a) the goods shall, for the purposes of this Act, be deemed to have been obtained by the dealer as a deposit; and
- (b) the price, or the part of the price, as the case may be, so applied shall, for the purposes of this Act, be deemed to be the amount allowed by the dealer in respect of the goods.

(4) The dealer shall, in relation to the deposit obtained by him under a proposed hire-purchase agreement, certify in writing—

- (a) where the deposit was paid or provided solely in cash, that the deposit was paid or provided solely in cash;
- (b) where the deposit was provided solely in goods—the nature and description of, and the amount allowed by the dealer in respect of, the goods;
- (c) where the deposit was paid or provided partly in cash and partly in goods—the amount of the deposit that was paid or provided in cash and the nature and description of, and the amount allowed by the dealer in respect of, the goods.

(5) A dealer who under subsection four of this section certifies as the amount allowed by him in respect of goods an amount that is not a reasonable estimate of the value of the goods or gives a certificate that is false in any other material particular shall be guilty of an offence against this Act.

(6) Notwithstanding anything contained in this Part, where an owner in entering into a hire-purchase agreement acts on the faith of a certificate given under subsection four of this section by the dealer and the amount certified in the
certificate

Hire-Purchase.

certificate as being the amount allowed in respect of the goods whose nature and description are certified therein is substantially greater than the value of those goods the agreement has the same effect as if the amount so certified were the value of those goods.

Nothing in this subsection affects the liability of any person to be convicted of an offence against this section.

(7) Any person who knowingly enters into, or procures, arranges, or otherwise assists or participates in, a transaction contravening this section is guilty of an offence against this Act.

Effect of
non-
compliance
with s. 28.

30. (1) Where a hire-purchase agreement is entered into in contravention of section twenty-eight of this Act, the hirer may, by notice in writing to the owner signed by the hirer or the hirer's agent, elect either to treat the agreement as void or to have his liability reduced by the amount included in the agreement for terms charges.

Such an election is final and irrevocable.

(2) Where the hirer so elects to treat the hire-purchase agreement as void, the agreement shall be void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement is recoverable in any court of competent jurisdiction as a debt due to him by the owner.

(3) Where the hirer so elects to have his liability reduced by the amount included in the agreement for terms charges, his liability shall be reduced by that amount and that amount may be set off by the hirer against the amount that would otherwise be due under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer as a debt in any court of competent jurisdiction.

(4) Nothing in this section affects the liability of any person to be convicted of an offence against section twenty-eight of this Act.

31.

Hire-Purchase.

31. (1) Any person, other than a banker, who (whether or not he carries on any other business) carries on the business of lending or making loans to other persons for the purposes of enabling those other persons to pay the deposits required by or under section twenty-eight of this Act is guilty of an offence against this Act.

Offences.
Offence to carry on business of lending deposits.

(2) Any person who accepts as a deposit under a hire-purchase agreement any money or other consideration that he has reasonable cause to believe or suspect was lent to the hirer by any person, other than a banker, who carries on the business referred to in subsection one of this section is guilty of an offence against this Act.

Deposits not to be by way of loan.

PART VIII.

MISCELLANEOUS.

32. (1) In any proceedings under this Act, or arising out of a hire-purchase agreement, or instituted pursuant to subsection four of this section, where it appears to the court that the transaction is harsh and unconscionable or is otherwise such that a court of equity would give relief the court may re-open the transaction and take an account between the parties thereto.

Power to court to re-open certain hire-purchase transactions.

(2) The court re-opening any transaction under this section 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 hirer and any guarantor from payment of any sum in excess of such sum in respect of the cash price, terms charges, and other charges as the court adjudges to be fairly and reasonably payable;
- (c)

Hire-Purchase.

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

(3) Where it appears to the court that any person other than the owner has shared in the profits of or has any beneficial interest prospectively or otherwise in the transaction that the court holds to be harsh and unconscionable the court may add that person as a party to the case and may give judgment against that person for such amount as it thinks fit or for the delivery of the goods if they are in his possession and the court may make such other order in respect of that person as it thinks fit.

(4) Proceedings may be instituted in any court by the hirer or any guarantor under a hire-purchase agreement for the purpose of obtaining relief under this section.

(5) In any proceedings under this section the court has and may exercise all or any of the powers conferred by subsections one, two and three of this section notwithstanding that the time for the payment of any of the amounts payable under the agreement may not have arrived.

(6) A hirer or guarantor under a hire-purchase agreement is not entitled to institute proceedings under this section—

- (a) in a case where the owner has taken possession of the goods comprised in the agreement—after the expiration of a period of four months after the date on which the owner serves on the hirer the notice required by subsection three of section thirteen of this Act to be served on him; or

(b)

Hire-Purchase.

(b) in any other case—after the expiration of a period of four months from the time when the transaction is closed.

33. (1) Where—

(a) goods consisting of a harvester, binder, tractor, plough or other agricultural implement or a motor truck are comprised in a hire-purchase agreement; and

Power of court to restrain re-possession of certain goods from farmer.

(b) the hirer is a farmer,

the period fixed by any notice of intention to take possession of the goods served under subsection one of section thirteen of this Act shall, notwithstanding the period specified in that subsection, be a period of not less than thirty days after the service of the notice.

(2) The farmer may, within the period fixed by the notice, apply to a court of petty sessions for an order restraining the owner from taking possession of the goods.

(3) If the court is satisfied that, within twelve months from the date of the application, the farmer will have a reasonable prospect of being able to pay all instalments due and owing on that date, the court may make an order restraining the owner from taking possession of the goods for such period not exceeding twelve months as the court fixes.

(4) An order under subsection three of this section may include such terms and conditions, including conditions as to payment of instalments, as the court thinks fit.

(5) In this section, "farmer" means any person engaged in agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, or any other business consisting of the cultivation of soil, the gathering in of crops or the rearing of livestock.

34. (1) Subject to subsection two of this 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 hirer, 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 hirer. Liens.

(2)

Hire-Purchase.

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

Fixtures.

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

(2) Notwithstanding anything contained in subsection one of this section, the owner is not entitled to re-possess goods that have been affixed to a dwelling-house or residence if, after the goods have become so affixed, any person other than the hirer has bona fide acquired for valuable consideration an interest in the land without notice of the rights of the owner of the goods.

Avoidance of certain provisions.

36. (1) Any provision in any agreement or other document whereby—

- (a) any right conferred on the hirer by this Act to determine a hire-purchase agreement is excluded or restricted;
- (b) any liability beyond the liability imposed by this Act is imposed on the hirer under a hire-purchase agreement by reason of the determination of the hire-purchase agreement in accordance with this Act;
- (c) the hirer under a hire-purchase agreement is subject to any greater liability on the determination, in any manner whatsoever, of the hire-purchase agreement or of the bailment thereunder, than the liability to which he would be subject if the hire-purchase agreement were determined in accordance with this Act;
- (d) the hirer under a hire-purchase agreement is required to pay any sum (whether or not it is described in the agreement as interest) in respect of any amount due under the hire-purchase agreement but not paid exceeding

Hire-Purchase.

exceeding a sum equal to the simple interest on that amount calculated at the rate of eight per centum per annum on a daily basis for the period for which it is due and not paid ;

- (e) any person acting on behalf of the owner under a hire-purchase agreement in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement is to be treated as, or declared to be, the agent of the hirer ;
- (f) the owner under a hire-purchase agreement is relieved from liability for the acts or defaults of any person acting in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement ;
- (g) the owner under a hire-purchase agreement or any person acting on his behalf is authorised to enter upon any premises for the purpose of taking possession of goods comprised in the hire-purchase agreement or is relieved from liability for any such entry ;
- (h) the operation of a hire-purchase agreement is determined or modified or any person is authorised to re-possess any goods comprised in a hire-purchase agreement if the hirer becomes bankrupt or commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement (whether all or any of those events are named) ; or
- (i) except as expressly provided by this Act the operation of any provision of this Act is excluded, modified, or restricted,

is void.

(2) Where any agreement or other document contains a provision that is void under subsection one of this section, the owner under the hire-purchase agreement concerned is guilty of an offence against this Act. **37.**

Hire-Purchase.

Restrictions
on payments
to owners
of goods by
financiers.

37. If in connection with any goods any person (in this section referred to as the "dealer") arranges that some other person (in this section referred to as the "financier") shall—

- (a) enter into a hire-purchase agreement in relation to those goods with a hirer;
- (b) accept any assignment of the dealer's property in those goods comprised in a hire-purchase agreement, or of the dealer's rights under a hire-purchase agreement in relation to those goods; or
- (c) advance or pay money to the dealer or to some person on his behalf in respect of a hire-purchase agreement in relation to those goods,

the dealer shall not seek, accept, demand, or receive from the financier and the financier shall not pay, offer, or grant to the dealer, directly or indirectly, any money or other valuable consideration that, together with the money (if any) paid or payable by or on behalf of the hirer to the dealer and the value of any other consideration (if any) furnished or to be furnished by or on behalf of the hirer to the dealer would exceed the cash price of the goods: Provided that where the dealer has entered into a contract guaranteeing the performance of the hire-purchase agreement by the hirer, a commission not exceeding one-tenth of the total terms charges payable under the hire-purchase agreement may be paid by the financier to the dealer.

Certain
transactions
prohibited.

38. Any person (in this section referred to as the "owner") who knowingly—

- (a) enters into an agreement for the bailment of goods to any person (in this section referred to as the "hirer"), which agreement does not by itself constitute a hire-purchase agreement; or
- (b) takes from any person (in this section referred to as the "hirer") an offer in writing that, if accepted, will constitute an agreement for the bailment of goods but will not by itself constitute a hire-purchase agreement,

in

Hire-Purchase.

in association, directly or indirectly, with the making, by the hirer to the owner or to any person associated, directly or indirectly, in business with the owner, of an offer in writing to purchase the goods the subject of the agreement referred to in paragraph (a) or of the offer referred to in paragraph (b) of this section on terms and conditions that, if the offer in writing to purchase the goods is accepted, will constitute a hire-purchase agreement is guilty of an offence against this Act.

39. Where—

- (a) a bill of exchange or promissory note has been given by a hirer or guarantor under a hire-purchase agreement to the owner 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 Act or otherwise, result in payment of an amount in excess of the liability of the hirer under the agreement,

Provisions relating to securities collateral to hire-purchase agreements.

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

40. Where—

- (a) a dealer or a person acting on behalf of a dealer prepares or causes to be prepared a hire-purchase agreement or offer in writing that, if accepted, will constitute a hire-purchase agreement with the intention of bringing about a contractual relationship between an owner and a hirer; and
- (b) the agreement or offer contains to the knowledge of the dealer or the person acting on behalf of a dealer, as the case may be, a false statement or representation that is false in any material particular,

False statement by dealers, &c., in proposals.

the dealer or the person acting on behalf of a dealer is guilty of an offence against this Act and liable to a penalty not exceeding two hundred pounds or to imprisonment for a term not exceeding three months.

41.

Hire-Purchase.

Hirer may be required to state where goods are.

41. The owner of any goods comprised in a hire-purchase agreement may, at any time by notice in writing served on the hirer thereof, require him to state in writing where the goods are, or, if the goods are not in his possession, to whom he delivered the goods or the circumstances under which he lost possession of them, and any hirer who does not within fourteen days after the receipt of such a notice give to the owner such a statement or who gives a statement containing any information that is to the knowledge of the hirer false is guilty of an offence against this Act.

Fraudulent sale or disposal of goods by hirer.

42. Every person who, by the disposal or sale of any goods comprised in a hire-purchase agreement, or by the removal of the goods, or by any other means defrauds or attempts to defraud the owner is guilty of an offence against this Act and liable to a penalty not exceeding two hundred pounds or to imprisonment for a period not exceeding three months.

Certain alterations, &c., of hire-purchase agreements to be of no effect.

43. Where a hire-purchase agreement is in writing signed by or on behalf of the hirer, any alteration of, or matter added to, the written document that contains the terms and conditions of the agreement after the document was so signed, if the alteration is an alteration of any of the matters required to be specified, contained, or set out in the agreement by paragraphs (c), (d) and (e) of subsection two of section three of this Act or the additional matter is a matter required to be so specified, contained, or set out or affects any matter required to be so specified, contained, or set out, has no force or effect unless the hirer or the agent (not being a person in the employ of the owner or acting on behalf of the owner in connection with the formation or conclusion of the agreement) of the hirer has consented to the alteration or additional matter by signing or initialling the agreement in the margin thereof opposite the alteration or additional matter.

44.

Hire-Purchase.

44. Where goods comprised in a hire-purchase agreement are, at the time when the agreement is entered into, second-hand goods, then unless—

- (a) the goods are described in the agreement as second-hand goods; or
- (b) in any proceedings taken by the owner to enforce the agreement, the court is satisfied that—
 - (i) the hirer was aware at the time when he or his agent signed the agreement that goods comprised or to be comprised therein were second-hand goods; or
 - (ii) the owner was not aware at the time when the agreement was entered into that goods comprised therein were second-hand goods,

the liability of the hirer thereunder shall be reduced by the amount included in the agreement for terms charges. That amount may be set off by the hirer against the amount that would otherwise be due or become due to the owner under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer from the owner as a debt in any court of competent jurisdiction.

45. (1) A hire-purchase agreement that relates to household furniture or effects used or intended to be used by the hirer in his home and that is made with a hirer who is married is not enforceable unless—

- (a) (i) the agreement contains a statement in writing signed by the spouse of the hirer signifying the consent of the spouse to the agreement; and
- (ii) the statement is so signed by the spouse at or before the time when the agreement was entered into; or
- (b) the hirer, at or before the time when the agreement was entered into, produced and delivered to the owner an authority, signed by the spouse of the hirer, to pledge the credit of the hirer and the spouse or of either of them up to a limit, not exceeding thirty pounds, specified in the authority, and the total amount payable for the goods comprised in the agreement,

Regulation
of hire-
purchase
agreements
with married
persons.

Hire-Purchase.

agreement, together with all other moneys owing or payable by the hirer and the spouse or either of them to the owner, does not exceed the limit so specified; or

- (c) the hirer, at or before the time when the agreement was entered into, produced and delivered to the owner a statutory declaration made by the hirer to the effect that the spouse of the hirer was under such a legal incapacity as to render the spouse unable to sign a statement as required by paragraph (a) of this subsection.

(2) Subsection one of this section does not apply if—

- (a) the owner had reasonable grounds for believing and did in fact believe, at the time the hire-purchase agreement was entered into, that—

- (i) the hirer was living separate and apart from the spouse of the hirer; or
 (ii) the spouse of the hirer was outside New South Wales; or

- (b) at or before the time when the hire-purchase agreement was entered into, the hirer produced and delivered to the owner—

- (i) where the residence of the hirer is situated more than five miles from the nearest telegraph office and the agreement was made at the residence, an instrument in writing signed by the hirer; or
 (ii) in any other case, a statutory declaration made by the hirer,

stating that he was not married at the time of the delivery of the instrument or statutory declaration, as the case may be, to the owner, unless the owner had reasonable grounds for believing that the statement was false.

A hirer who makes a false statement in such an instrument is guilty of an offence against this Act and liable to a penalty not exceeding fifty pounds. (3)

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(3) (a) This subsection applies to and in respect of a hire-purchase agreement of the nature referred to in subsection one of this section where the total amount payable for the goods comprised in the agreement does not exceed ten pounds.

(b) Where the owner, under a hire-purchase agreement to which this subsection applies, serves (by personal delivery) on the spouse of the hirer, within seven days after the making of the agreement, a notice in writing that the agreement has been made, and the spouse of the hirer does not, within seven days after service of the notice, serve on the owner a notice in writing that he objects to the making of the agreement, the agreement is not, by reason only of subsection one of this section, unenforceable.

(c) Where the spouse of the hirer serves such a notice of objection the hire-purchase agreement ceases to be binding on the parties thereto; and thereupon the owner shall refund all moneys paid and the value of any consideration provided by the hirer and shall be entitled to recover possession of the goods comprised in the agreement.

(4) If an owner to whom such an authority or statutory declaration or instrument as is referred to in this section has been delivered fails to preserve it until the expiration of twelve months after the transaction in respect of which it was given is finally closed, he is guilty of an offence against this Act.

46. Any time prescribed by this Act for the service or giving of any notice or other document or for the commencement of proceedings may, on an application made to a court of petty sessions (either before or after the expiration of that time but after notice to the other party to the hire-purchase agreement) be extended by that court for such further period, and upon such conditions, as the court thinks fit.

Power to
court to
extend
times.

Hire-Purchase.

Power to
court to
order
delivery of
goods
unlawfully
detained.

47. (1) Upon complaint made by an owner who is entitled to take possession of any goods comprised in a hire-purchase agreement or by any person acting on behalf of an owner that the hirer or any person acting on behalf of the hirer has refused or failed to deliver up possession of the goods on the service of a notice of demand made by the owner or by an agent of the owner authorised in that behalf, any justice of the peace may summon the person complained of to appear before a court of petty sessions and if it appears to the court hearing the case that the goods are being detained without just cause, the court may order the goods to be delivered up to the owner at or before a time, and at a place, to be specified in the order.

(2) Any person who neglects or refuses to comply with any order made under this section is guilty of an offence against this Act.

Service
of notices.

48. (1) Any notice or document required or authorised to be served on or given or sent to an owner or hirer under this Act may be so served or given or sent—

- (a) by delivering it to him personally;
- (b) by leaving it at his place of abode or business with some other person apparently an inmate thereof or employed thereat and apparently of or over the age of sixteen years; or
- (c) by posting it, by registered post or by certified mail service, addressed to him at his last known place of abode or business.

(2) Any notice or document required to be served on a hirer under section four of this Act may also be served by posting it by ordinary post addressed to him at his last known place of abode or business.

(3) Where by any provision of this Act the doing of any act or thing by a person is prohibited unless a notice or document has first been served on or given to another person or unless a specified time has elapsed since the service or giving of a notice or document on or to another person, a court of petty sessions may in its discretion, upon application made to it by or on behalf of the first-mentioned person, if it

is

Hire-Purchase.

is satisfied that that other person is evading the service or giving of the notice or document or that, for any other reason, the service or giving of the notice or document has not been and cannot promptly be effected, order that the service or giving of the notice or document be dispensed with (whether or not the time for the service or giving of the notice or document has expired) and, thereupon, the first-mentioned person may, notwithstanding anything elsewhere contained in this Act but subject to the observance of the terms and conditions, if any, included in the order, do that act or thing without serving or giving the notice or document in question or, as the case may be, although the notice or document in question has not been served or given and the specified time has not elapsed.

An order under this subsection may include such terms and conditions as the court thinks fit.

(4) The affidavit or oral evidence of an owner or his servant or agent as to the delivery, leaving, or posting of any notice or document required or authorised to be served, given, or sent by this Act is admissible as prima facie evidence of the due service, giving, or sending of the notice or document if the deponent swears to the facts necessary to prove due service, giving, or sending either from his own knowledge or to his information and belief based on and verified by the records of the owner.

49. (1) Any prescribed document or part thereof—

- (a) not being the signature or initials of any person, that is in handwriting that is not clear and legible; or
- (b) that is printed in type of a size smaller than the type known as ten-point Times,

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

shall, for the purposes of this Act, be deemed not to be in writing.

(2) In this section, "prescribed document" means—

- (a) any hire-purchase agreement;
- (b) any statement under subsection one of section three of this Act;

(c)

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- (c) any copy of an agreement, notice, or statement required by section four of this Act to be served on a hirer;
- (d) any statement required by subsection one of section seven of this Act to be sent to a hirer;
- (e) any notice under subsection one or subsection three of section thirteen of this Act; and
- (f) any statement required by subsection two of section twenty-six of this Act to be contained in a hire-purchase agreement.

(3) Where, by virtue of this section, a prescribed document or part of a prescribed document is, for the purposes of this Act, deemed not to be in writing, then, except as is otherwise in this Act expressly provided, the validity or effect of the prescribed document is not affected.

Nothing in this subsection affects the liability of any person to be convicted of an offence against this Act.

Penalty. **50.** (1) Any person who contravenes or fails to comply with any provision of this Act is guilty of an offence against this Act.

(2) Any person who is guilty of an offence against this Act for which no other penalty is expressly provided by this Act is liable to a penalty not exceeding two hundred pounds.

Proceedings for offences. **51.** Proceedings for offences against this Act shall be disposed of summarily before a court of petty sessions.

Time for commencement of prosecution. **52.** Any prosecution for an offence against this Act may be commenced at any time within one year after the commission of the offence.

Amendment of Act No. 29, 1957. Sec. 2. (Interpretation.) **53.** (1) The Credit-sale Agreements Act, 1957-1959, is amended by inserting in the definition of "Credit-sale agreement" in subsection one of section two after the word "Acts" the words " , where the agreement was entered into before the commencement of the Hire-Purchase Act, 1960, or is a hire-purchase agreement as defined in section two of the Hire-Purchase Act, 1960, where the agreement is entered into after that commencement".

(2)

Hire-Purchase.

(2) The Police Offences Act, 1901, as amended by subsequent Acts, is amended by omitting subsection six of section thirty-two and by inserting in lieu thereof the following subsection :—

Amendment
of Act No.
5, 1901.
Sec. 32.

(6) This section does not extend to proceedings by the owner under a hire-purchase agreement, or any person acting on his behalf, for the recovery of possession of goods comprised in the agreement.

(Order for
the delivery
to the owner
of goods
unlawfully
detained.)

(3) (a) The Credit-sale Agreements Act, 1957, as amended by the Banking (Interpretation of References) Act, 1959, and by this Act, may be cited as the Credit-sale Agreements Act, 1957-1960.

(b) The Police Offences Act, 1901, as amended by subsequent Acts and by this Act, may be cited as the Police Offences Act, 1901-1960.

54. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

Regulations.

(2) The amount referred to in paragraph (b) of section twenty-eight of this Act may be at such rate or rates or calculated on such basis or bases (whether by reference to the cash price of the goods comprised in the hire-purchase agreement concerned or otherwise) as may be specified in the regulations, and the rates or bases so specified may vary according to different amounts of cash price, different durations of hire-purchase agreements, different classes of goods or otherwise.

(3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If

Hire-Purchase.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before the House disallowing any regulation or part thereof, the regulation or part thereupon ceases to have effect.

Sec. 3 (1).

FIRST SCHEDULE.

Hire-Purchase Act, 1960.

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

*

The cash price of goods is £.....

(a) The terms charges are £.....
and represent a rate per centum per annum not exceeding †

(a) Other charges are—

(a) For insurance for years .. £.....

(a) 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 law to be applicable to the proposed agreement will be the law of §

NOTE.—The sequence of any item or items in the group of items marked “(a)” may be altered in relation to any other item or items in that group, but the sequence of that group must not be altered in relation to the items not marked “(a)”.

* Insert short description of goods.

† Insert, where the proposed agreement is an agreement to which s. 25 of the Act applies, a rate per centum per annum not less than the rate per centum per annum obtained by calculating the terms charges in accordance with the formula set out in s. 26 (1).

‡ Insert number, amount, and intervals of instalments.

§ Insert the name of the State, Territory or country the law of which is to be applicable to the proposed agreement.

Sec. 4

SECOND SCHEDULE.

Hire-Purchase Act, 1960.

ADVICE TO HIRERS.

Under the provisions of the Hire-Purchase Act, 1960—

- (a) you are entitled to a copy of the agreement and a statement of the amount that you owe if you make a written request to the owner for them. You may not request a copy or a statement more than once in three months;

(b)

Hire-Purchase.

- (b) with the written consent of the owner you can assign your rights under the hire-purchase agreement and he may not unreasonably refuse his consent. For details of the procedure of assignment see Hire-Purchase Act, 1960, section 9;
- (c) you have the right to complete the agreement at any time and if you do you will be entitled to a rebate of some of the charges payable under the agreement. For details see Hire-Purchase Act, 1960, section 11;
- (d) if you are unable to pay your instalments you are entitled to return the goods to the owner at your own expense, but if you do you will be liable to pay an amount sufficient to cover the loss suffered by the owner. For details of the amount that you will have to pay see Hire-Purchase Act, 1960, section 12.

THIRD SCHEDULE.

Sec. 13 (1).

Hire-Purchase Act, 1960.

NOTICE OF INTENTION TO RE-POSSESS.

TAKE NOTICE THAT
 the owner of *
 hired by you under an agreement dated the day
 of 19 intends to retake possession of the
 goods after the expiration of † days from the service of this
 notice unless the arrears of instalments which now amount to £
 are paid to at on or
 before 19.....

Total amount payable	£.....
Amount paid or provided by hirer to / / 19....	£.....
Arrears under agreement to / / 19....	£.....

* Insert description of goods.

† Insert number of days, not being less than twenty-one, or, where the hirer is a farmer and s. 33 of the Act applies, not being less than thirty.

FOURTH SCHEDULE.

Secs. 11 (3),
 13 (3), 14,
 15.

Hire-Purchase Act, 1960.

ADVICE TO HIRERS.

Now that the goods you hired have been re-possessed you will be entitled to get them back—

- (a) if, within twenty-one days, you require the owner, by notice in writing signed by you or your agent, to re-deliver the goods to you and if, within fourteen days after giving the notice, you
reinstate

Hire-Purchase.

reinstatement the agreement by paying the arrears and remedy the following breaches of the agreement (or pay the owner's expenses in remedying them):

The owner's estimate of the amount you must pay to reinstate the agreement is:—

Arrears of instalments	£.....
Cost of storage, repair or maintenance	£.....
Cost of re-possession	£.....
Cost of re-delivery	£.....
Total	£.....

or

(b) if, within twenty-one days, you give notice of your intention to finalise the agreement and pay the balance due under the agreement and costs of the re-possession:

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

Total amount payable under the agreement	£.....
Less deposit and instalments paid	£.....
Balance due under agreement	£.....
Less statutory rebates	£.....
Add costs of re-possession	£.....
Storage, repair or maintenance	£.....
Total	£.....

If you don't reinstate or finalise the agreement you will be liable for the owner's loss unless the value of the goods re-possessed 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 value of the goods re-possessed is £ .

* On the basis of that estimate you are entitled to a refund of £ .
liable to pay the owner £ .

NOTE.—You may give a written notice to the owner requiring the owner to sell the goods to any cash buyer you can introduce who is willing to pay the owner's estimate of the value, i.e.†

* Strike out whichever inapplicable.

† Insert owner's estimate of value.

DO NOT DELAY.

Action to enforce your rights should be taken at once. You will lose your rights *twenty-one days* after the service or posting of this notice if you do not take action.

If you think you have any rights under the Hire-Purchase Act, 1960, you should seek advice at once.

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 Act, 1960, and you should seek advice at once.

In the name and on behalf of Her Majesty I assent to this Act.

E. W. WOODWARD,
Governor.

Government House,
Sydney, 28th April, 1960.