

Supplementary Order Paper

HOUSE OF REPRESENTATIVES

Friday, the 19th Day of November 1971

HIRE PURCHASE BILL

Proposed Amendments

Hon. Mr RIDDIFORD, in Committee, to move the following amendments:

Clause 1: To omit from line 9 on page 2 the word "July", and substitute the word "August".

Clause 4: To omit this clause, and substitute the following clause:

4. Enforcement—(1) Where the requirements of section 5 of this Act are not complied with in relation to any hire purchase agreement, then the agreement, any contract of guarantee relating to the agreement, and any security given by the purchaser or the guarantor in respect of money payable under the agreement, shall not be enforceable by the vendor.

(2) Subject to subsection (3) of this section, where the requirements of sections 5A and 5B of this Act are not complied with in relation to any hire purchase agreement, then—

(a) The liability of the purchaser for the cost of credit shall be extinguished; and

(b) The vendor shall repay any money already paid to him by any person on account of or in satisfaction of the cost of credit.

(3) Subsection (2) of this section shall not apply if the vendor shows—

(a) That the non-compliance was not of such a nature as to mislead or deceive the purchaser to his prejudice; or

(b) In any other case, that the vendor has promptly remedied the non-compliance (in so far as it is capable of being remedied) on its being discovered or brought to his notice and has, where appropriate, compensated or offered to compensate the purchaser for the prejudice caused to him.

Clause 5B:

- (a) To insert in paragraph (a), before the words "A copy" in line 35 on page 9, the words "Except as provided in paragraph (d) of this section,".
- (b) To insert in paragraph (b), after the word "agreement" in line 1 on page 10, the words "given under paragraph (a) of this section".
- (c) To insert, after subparagraph (ii) of paragraph (b), the following subparagraph:
 - (iiA) Additional particulars of the goods sufficient to enable them to be identified may be inserted; and
- (d) To omit from paragraph (c) the words "a copy of the agreement" in line 15 on page 10, and substitute the words "the copy of the agreement required by paragraph (a) of this section".
- (e) To add the following paragraph:
 - (d) If the agreement is executed by the purchaser on a day later than the day on which it is executed by or on behalf of all the other parties to it, a copy of the agreement, marked in conspicuous letters with the words "PURCHASER TO KEEP THIS COPY", shall be given to the purchaser when the original is given to him for execution.
- (f) To add, as subclause (2), the following subclause:
 - (2) The Governor-General may from time to time, by Order in Council, amend Schedule 1A of this Act or revoke that Schedule and substitute a new Schedule.

Clause 7: To omit subclause (2), and substitute the following subclause:

- (2) Where any hire purchase agreement does not meet the requirements of subsection (1) of this section the vendor under the agreement commits an offence against this Act.

Clause 8:

- (a) To omit subclause (1), and substitute the following subclause:
 - (1) The parties to any hire purchase agreement may agree from time to time to vary that agreement but, subject to subsections (2) and (3) of this section, no such variation shall be enforceable by the vendor without the leave of the Court and subject to such conditions (if any) as the Court may impose unless—
 - (a) A note or memorandum in writing of the variation is executed by the purchaser in accordance with section 5 of this Act; and
 - (b) A copy thereof is given to the purchaser immediately after he executes it.

- (b) To omit from line 33 on page 12 the words "valid and enforceable", and substitute the words "enforceable by the vendor without the leave of the Court".

Clause 15A: To insert, after subclause (3), the following subclause:

(3A) Where the assignee is entitled to be indemnified by the vendor in accordance with subsection (3) of this section then the assignee shall also be entitled to exercise, in the name of the vendor, any rights that the vendor has in respect of the goods comprised in the hire purchase agreement against the person who supplied those goods to the vendor.

Clause 19: To omit from lines 14 and 15 on page 22 the words "subject to subsection (2) of section 7 of this Act".

Clause 20: To omit from line 9 on page 26 the word "legal" where it first appears.

Clause 29: To insert, after the word "In" in line 25 on page 39, the words "subsections (1) and (2) of".

Clause 30: To omit subclause (6).

Clause 32:

- (a) To omit subclause (1A), and substitute the following subclauses:

(1A) A vendor may require any risk, required to be insured against pursuant to subsection (1) of this section, to be insured with any independent insurer nominated or specified by the vendor.

(1B) In the absence of any requirement under subsection (1A) of this section any risk, required to be insured against pursuant to subsection (1) of this section, may be insured with any reputable insurer carrying on business in New Zealand (whether an independent insurer or not), and the purchaser may at any time and from time to time, after giving the vendor particulars in writing of his intention to change insurers, change the insurer with whom the risk is insured.

- (b) To add the following subclause:

(5) For the purposes of this section "independent insurer" means any reputable insurer carrying on business in New Zealand except an insurer which is owned or controlled by the vendor or the dealer or which is a subsidiary or the holding company or a subsidiary of the holding company of the vendor or the dealer.

Clause 44A: To insert, before paragraph (a), the following paragraph:

(aa) Subsection (2) of section 5B.

Clause 45: To omit all the words in lines 29 to 40 on page 49 and in lines 1 to 20 on page 50 (subsections (2) and (3) of the new section 91 of the Insolvency Act 1967), and substitute the following subsections:

“(2) Where the purchaser of any goods comprised in a hire purchase agreement is adjudged bankrupt, the vendor, if he has taken possession of the goods within 21 days before the adjudication and he has not before the adjudication sold or disposed of the goods or if he takes possession of the goods after the adjudication, shall not, without the consent in writing of the Assignee, sell or dispose of the goods or part with possession of the goods (except for the purposes of storage or repair) until after the expiration of 1 month from the date on which the vendor serves on the Assignee the notice required to be served on purchasers under subsection (1) of section 24 of the Hire Purchase Act 1971.

“(3) Notwithstanding anything in the Hire Purchase Act 1971, the Assignee may—

“(a) At any time within 1 month from the date of the service on him of the notice mentioned in subsection (2) of this section, exercise the right to introduce a buyer conferred by paragraph (b) of subsection (1) of section 25 of that Act; or

“(b) At any time before the vendor sells or agrees to sell the goods pursuant to subsection (5) of section 24 of that Act, settle the obligations of the purchaser in accordance with section 26 of that Act.

First Schedule, Part II: To omit paragraph (2) of the Note (at the bottom of page 54), and substitute the following paragraph:

(2) If you think that the vendor is being unreasonable or harsh in any way, you should see a solicitor immediately.

Schedule 1A: To insert in the Note on page 55, after the word “delivery”, the word “installation”.

EXPLANATORY NOTE

Clause 1: The date of the commencement of the Bill is changed from 1 July 1972 to 1 August 1972.

Clause 4: Under the present clause where goods are disposed of under a hire purchase agreement and the requirements of *clauses 5 to 5B* are not complied with the vendor may not enforce the agreement, or enforce any right to recover the goods from the purchaser, unless the Court dispenses with the requirements or authorises the recovery of the goods.

The new clause incorporates a different approach.

If the agreement is not in writing or is not executed as required by *clause 5* the agreement is not enforceable by the vendor.

If the requirements of *clause 5A* (which relates to contents of agreements) or of *clause 5B* (which relates to copies of agreements) are not complied with, the purchaser's liability for the cost of credit will be extinguished unless the vendor shows—

(a) That the non-compliance was not of such a nature as to mislead or deceive the purchaser to his prejudice; or

- (b) In any other case, that the vendor has promptly remedied the non-compliance (in so far as it is capable of being remedied) on its being discovered or brought to his notice and has, where appropriate, compensated or offered to compensate the purchaser for the prejudice caused to him.

Clause 5B: The amendments set out in paragraphs (a), (b), (d), and (e) provide for the situation where the agreement is sent to the purchaser for execution on a day later than the day on which it is executed by the other parties to the agreement. In this case the purchaser's copy of the agreement is to be given to him at the time at which the original is given to him for execution.

The amendment set out in paragraph (c) relates to the copy of the agreement given to the purchaser. Except in the case set out in the new paragraph (d) of *clause 5B*, it must be in the form in which it was executed by the purchaser except in certain respects. The agreement must contain a description of the goods but the amendment now proposed will enable additional particulars sufficient to identify the goods to be inserted in the agreement following its execution by the purchaser.

The amendment set out in paragraph (f) relates to the sales docket. The information to be set out in that docket is specified in Schedule 1A. Provision is now made for that Schedule to be amended or replaced by Order in Council.

Clause 7: Subclause (1) of this clause requires every hire purchase agreement to contain a statement relating to rebates for early completion. Subclause (2) provides that if subclause (1) is not complied with the purchaser will be entitled to double the statutory rebates calculated in accordance with clause 20. The amendment now proposed substitutes a new subclause (2). The new subclause provides that where a hire purchase agreement does not meet the requirements of subclause (1) the vendor under the agreement commits an offence against the Act.

Clause 8: Under this clause variations of hire purchase agreements must comply with certain requirements. If a variation does not do so neither the variation nor the original hire purchase agreement may be enforced unless the Court dispenses with the requirements. The amendment now proposed incorporates a different approach. It provides that if the requirements are not observed the variation alone shall not be enforceable by the vendor without the leave of the Court and subject to such conditions (if any) as the Court may impose.

Clause 15A: Under this clause the assignee of the vendor's interest under a hire purchase agreement may become liable in damages to the purchaser. In that event he is entitled to be indemnified by the vendor. The amendment now proposed will, in addition, subrogate the assignee to the rights of the vendor and enable him if necessary to take action against the person who supplied the goods to the vendor.

Clause 19: The proposed amendment is consequential on the amendment made to *clause 7*.

Clause 20: The proposed amendment omits an unnecessary word.

Clause 29: The amendment limits the application of the extended definition of the term "guarantor" to subclauses (1) and (2) of clause 29.

Clause 30: This amendment deletes the extended definition of the term "guarantor" for the purposes of this clause.

Clause 32: The amendments are designed to clarify the meaning of the clause without change in its material effect.

Clause 44A: The amendment is consequential on the amendment to *clause 5B*.

Clause 45: The clause amends the Insolvency Act 1967. It relates to the case where the purchaser of the goods on hire purchase is adjudged bankrupt. At present the vendor may not repossess the goods after adjudication unless he gives the Official Assignee at least 1 month's notice of intention to do so. Under the proposed amendment the right to repossess the goods is no longer restricted but after the vendor has taken possession of the goods he may not, without the consent in writing of the Official Assignee, sell or dispose of them until after the expiration of 1 month from the date on which the vendor serves on the Assignee the notice required by *clause 24 (1)*.

First Schedule, Part II: One of the notes on the form of Advice to Purchaser is redrafted.

Schedule 1A: The amendment enables particulars relating to the installation of the goods to be inserted on the sales docket.
