

Queensland



**TOURISM, RACING AND FAIR
TRADING (NATIONAL
COMPETITION POLICY)
AMENDMENT ACT 2002**

Act No. 52 of 2002

Queensland



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(NATIONAL COMPETITION POLICY)
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Queensland



**Tourism, Racing and Fair Trading (National
Competition Policy) Amendment Act 2002**

Act No. 52 of 2002

**An Act to amend Acts administered by the Minister for Tourism and
Racing and Minister for Fair Trading to facilitate the implementation
of certain national competition policy measures, and for related and
other purposes**

[Assented to 24 September 2002]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Tourism, Racing and Fair Trading (National Competition Policy) Amendment Act 2002*.

2 Commencement

(1) The following provisions commence on assent—

- (a) sections 18 and 19;
- (b) the schedule, but only to the extent that it amends the *Fair Trading Act 1989*.

(2) The remaining provisions commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF BUSINESS NAMES ACT 1962

3 Act amended in pt 2

This part amends the *Business Names Act 1962*.

4 Omission of s 8 (Resident agent)

Section 8—

omit.

5 Amendment of s 12 (Notification of changes in particulars relating to registered business names, cessation of business etc.)

(1) Section 12(1)—

omit, insert—

‘(1) Subsection (1A) applies if—

- (a) a person has a business name registered under this Act; and
- (b) a place where business is carried on under that name (a “**place of business**”), or the address of a place of business, changes.

‘(1A) The person must, within 1 month after the change, lodge with the registrar a statement in the approved form—

- (a) signed by the person or another person in whose name the business name was registered at the time of the change; and
- (b) stating when the change occurred and particulars of the new place of business or address.’.

(2) Section 12(4), from paragraph (b)—

omit, insert—

- ‘(b) who is a corporation—the corporation name and the place of the registered office of the corporation.’.

(3) Section 12(5) to 12(7)—

omit.

(4) Section 12(8), (9) and (10)—

renumber as section 12(5), (6) and (7) respectively.

6 Amendment of s 31 (As to service of notices and lodging of statements)

Section 31(1)(c)—

omit.

PART 3—AMENDMENT OF CREDIT (RURAL FINANCE) ACT 1996

7 Act amended in pt 3

This part amends the *Credit (Rural Finance) Act 1996*.

8 Amendment of s 7 (Mortgagee must give default notice)

Section 7(2)(b), ‘a notice’—

omit, insert—

‘written notice’.

9 Amendment of s 8 (Requirements for default notice)

(1) Section 8(1)—

omit.

(2) Section 8(2), (3) and (4)—

renumber as section 8(1), (2) and (3) respectively.

10 Insertion of new pt 3A

After section 17—

insert—

‘PART 3A—PARTICULAR PROVISIONS FOR HIRE-PURCHASE AGREEMENTS WHERE FARM EQUIPMENT IS REPOSSESSED

‘17A Application of pt 3A

‘This part applies if—

- (a) the mortgagor under a mortgage that is a hire-purchase agreement has defaulted under the mortgage; and
- (b) the mortgagee has exercised, or purported to exercise, a right under the mortgage to take possession of the farm equipment.

‘17B Meaning of “hire-purchase agreement”

‘(1) A **“hire-purchase agreement”** is an agreement entered into after the commencement of this section, under which—

- (a) farm equipment is let or hired to a farmer and the farmer has an option to purchase the farm equipment; or
- (b) a farmer agrees to purchase farm equipment by instalments, whether the instalments are described as rent, hire or something else.

‘(2) Two or more agreements, which individually are not hire-purchase agreements, are also a **“hire-purchase agreement”**, from the time the last agreement is entered into, if under the agreements—

- (a) there is a bailment of farm equipment to a farmer; and
- (b) the farmer may purchase the farm equipment or the property in the farm equipment may pass to the farmer.

‘(3) However, a **“hire-purchase agreement”** does not include an agreement mentioned in subsection (1) or (2) if—

- (a) the property in the farm equipment passes to the farmer—
 - (i) at the time the agreement is entered into; or
 - (ii) at any time before delivery of the farm equipment; or
- (b) the total market value of the farm equipment at the time the agreement is entered into is more than \$40 000 000.

‘(4) In this section—

“farmer”, for a hire-purchase agreement, does not include a farmer engaged in the business of selling farm equipment of the same nature or description as the farm equipment being let, hired, purchased or bailed under the agreement.

‘17C Mortgagee must give notice of best price estimate and expenses

‘The mortgagee must, within 30 days after the mortgagee takes possession of the farm equipment, give the mortgagor a written notice stating—

- (a) a best price estimate for the farm equipment; and

- (b) the mortgagee's estimate of the mortgagee's enforcement expenses; and
- (c) the mortgagee's estimate of any expense the mortgagee must reasonably incur to return the farm equipment to the mortgagor.

Maximum penalty—500 penalty units.

'17D Action after notice given to mortgagee

'The mortgagor may, within 21 days after the mortgagee gives the mortgagor notice under section 17C, give the mortgagee written notice requiring the mortgagee to—

- (a) sell the farm equipment to a person nominated by the mortgagor at a price not less than the best price estimate for the farm equipment stated in the notice given under section 17C; or
- (b) return the farm equipment to the mortgagor under section 17E.

'17E Return of farm equipment when breach remedied

'The mortgagee must return the farm equipment to the mortgagor if, within 14 days after the mortgagee receives a notice under section 17D(b), the mortgagor—

- (a) pays or tenders to the mortgagee the amount owing under the mortgage for the period ending on the day the mortgagor pays or tenders the amount; and
- (b) pays or tenders to the mortgagee—
 - (i) the mortgagee's enforcement expenses; and
 - (ii) any expense the mortgagee must reasonably incur to return the farm equipment to the mortgagor; and
- (c) remedies any other breach of the mortgage, or if the mortgagor can not remedy the breach, pays or tenders to the mortgagee any expense the mortgagee must reasonably incur to remedy the breach.

Maximum penalty—500 penalty units.

‘17F Return of farm equipment when breach not remedied

‘(1) This section applies if the mortgagee returns the farm equipment to the mortgagor and the mortgagor has not remedied a breach of the mortgage.

‘(2) The mortgagee may again take possession of the farm equipment if—

- (a) the mortgagee gives the mortgagor, when the farm equipment is returned, written notice—
 - (i) stating the breach and how the mortgagor may remedy the breach; and
 - (ii) requiring the mortgagor to remedy the breach within 14 days, or a longer period stated in the notice, after the notice is given; and
- (b) the mortgagor does not remedy the breach within 14 days, or the longer period stated in the notice, after the notice is given.

‘17G Effect of breaches being remedied

‘(1) This section applies if—

- (a) the farm equipment is returned under section 17E; or
- (b) section 17F applies and the mortgagor remedies the breach mentioned in a notice given under section 17F(2)(a) within 14 days, or the longer period stated in the notice, after the notice is given.

‘(2) The mortgage operates as if a breach had not occurred and the mortgagee had not taken possession of the farm equipment.

‘17H Amount mortgagor may recover if farm equipment is not returned

‘(1) This section applies—

- (a) if—
 - (i) the mortgagee does not return the farm equipment to the mortgagor; and
 - (ii) the repossession value of the farm equipment is—

-
- (A) at least equal to the net amount payable under the mortgage; or
 - (B) less than the net amount payable under the mortgage, but the total of the repossession value and the actual payments is more than the net amount payable; and
- (b) whether or not the mortgagor gives the mortgagee notice under section 17D.

‘(2) The mortgagor may recover from the mortgagee an amount equal to the total of the repossession value and the actual payments, less the net amount payable.

‘17I Maximum amount mortgagee may recover

‘(1) This section applies—

- (a) if the mortgagee does not return the farm equipment to the mortgagor; and
- (b) whether or not the mortgagor gives the mortgagee notice under section 17D.

‘(2) The mortgagee may not recover an amount under the mortgage, by judgment, order or otherwise, that is more than the net amount payable less the total of the repossession value and the actual payments.

‘17J Mortgagee to obtain best price

‘(1) This section applies if the mortgagee sells the farm equipment to a person other than a person nominated by the mortgagor in a notice under section 17D(a).

‘(2) The onus of proving the mortgagee obtained the best price the mortgagee could reasonably have obtained for the farm equipment when the mortgagee took possession of the farm equipment is on the mortgagee.’.

11 Amendment of s 18 (Compensation for noncompliance by mortgagee)

Section 18(1), from ‘or’—

omit, insert—

‘, 17, 17C or 17E.’¹.

12 Omission of s 22 (Approval of forms)

Section 22—

omit.

13 Amendment of schedule (Dictionary)

(1) Schedule, definitions “**approved form**”, “**mortgagee**” and “**mortgagor**”—

omit.

(2) Schedule—

insert—

‘ “**actual payments**”, for a mortgage that is a hire-purchase agreement, means the amount already paid or provided by the mortgagor under the mortgage.

“**best price estimate**”, for farm equipment under a mortgage that is a hire-purchase agreement, means an estimate of the best price that could reasonably be obtained for the farm equipment if the farm equipment was sold when the mortgagee took possession of it.

“**hire-purchase agreement**” see section 17B.

“**insurance rebate**”, for a mortgage that is a hire-purchase agreement, means an amount calculated using the formula—

$$\frac{3 \times C \times R}{40} + U$$

where —

¹ Section 7 (Mortgagee must give default notice), 15 (Effect of serving notice of application), 17 (Compliance with relieving order), 17C (Mortgagee must give notice of best price estimate and expenses) or 17E (Return of farm equipment when breach remedied)

“**C**” means the amount payable to the mortgagee under the mortgage for insurance, other than third-party insurance, for an annual period that has commenced.

“**R**” means the number of complete months remaining in the annual period that has commenced.

“**U**” means the amount payable to the mortgagee under the mortgage for insurance, other than third-party insurance, for an annual period that has not commenced.

“**maintenance rebate**”, for a mortgage that is a hire-purchase agreement, means an amount calculated using the formula—

$$\frac{M \times R}{T}$$

where—

“**M**” means the amount payable to the mortgagee under the mortgage for the maintenance of the farm equipment.

“**R**” means the number of complete months in the remaining period of the mortgage.

“**T**” means the number of complete months in the total period of the mortgage.

“**mortgage**” includes hire-purchase agreement.

“**mortgagee**” means—

- (a) for a mortgage that is a hire-purchase agreement—
 - (i) the person letting, hiring, agreeing to sell or bailing farm equipment under the mortgage (the “**owner**”); or
 - (ii) an assignee of the owner’s rights and obligations under the mortgage; or
- (b) otherwise—
 - (i) the person to whom the mortgage is given (the “**original mortgagee**”); or
 - (ii) an assignee of the original mortgagee’s rights and obligations under the mortgage.

“**mortgagee’s enforcement expenses**”, for repossession of farm equipment under a mortgage that is a hire-purchase agreement, means

the total amount of the mortgagee's reasonable expenses in relation to—

- (a) taking possession of the farm equipment; and
- (b) storing, repairing and maintaining the farm equipment while in the mortgagee's possession; and
- (c) selling or disposing of the farm equipment (whether or not the farm equipment is sold or disposed of).

“mortgagor” means—

- (a) for a mortgage that is a hire-purchase agreement—
 - (i) the person to whom the farm equipment is let, hired, agreed to be sold or bailed under the mortgage (the **“hirer”**); or
 - (i) an assignee of the hirer's rights and obligations under the mortgage; or
- (b) otherwise—
 - (i) the person by whom the mortgage is given (the **“original mortgagor”**); or
 - (ii) an assignee of the original mortgagor's rights and obligations under the mortgage.

“net amount payable”, for a mortgage that is a hire-purchase agreement, means the total amount payable less the total of the following amounts—

- (a) the insurance rebate;
- (b) the maintenance rebate;
- (c) the terms charges rebate.

“repossession value” of farm equipment under a mortgage that is a hire-purchase agreement, means—

- (a) if the farm equipment is sold to a person nominated by the mortgagor in a notice under section 17D(a)—the sale price less the mortgagee's enforcement expenses; or
- (b) otherwise—the best price that could reasonably be obtained for the farm equipment if the farm equipment was sold when the mortgagee took possession of it, less the mortgagee's enforcement expenses.

“terms charges”, for a mortgage that is a hire-purchase agreement, means the amount of the charges payable under the mortgage, other than a charge for—

- (a) insurance, maintenance or delivery of the farm equipment; or
- (b) vehicle registration fees; or
- (c) stamp duty.

“terms charges rebate”, for a mortgage that is a hire-purchase agreement, means—

- (a) if the terms charges are calculated on a simple interest basis at a rate stated in the mortgage on the amount, not including the terms charges, owing from month to month—the amount of interest attributable to the remaining period of complete months of the mortgage; or
- (b) otherwise—an amount calculated using the formula—

$$\frac{P \times R}{T}$$

where—

“P” means the total amount of terms charges payable under the mortgage.

“R” means the total of all the whole numbers from 1 to the number of complete months in the remaining period of the mortgage.

“T” means the total of all the whole numbers from 1 to the number of complete months in the total period of the mortgage.

“total amount payable”, for a mortgage that is a hire-purchase agreement, means the total amount to be paid or provided, under the mortgage by the mortgagor.

“vehicle registration fees” means an amount to be paid or provided by the mortgagee under a mortgage for registration of a motor vehicle, including any amount payable for third-party insurance.’.

PART 4—AMENDMENT OF HIRE-PURCHASE ACT 1959

14 Act amended in pt 4

This part amends the *Hire-purchase Act 1959*.

15 Amendment of s 1 (Short title)

(1) Heading preceding section 1(4)—

omit.

(2) Section 1(4)—

omit.

16 Insertion of new s 1A

After section 1—

insert—

‘1A Application of Act

‘This Act does not apply to a hire-purchase agreement entered into after the commencement of this section.’.

17 Insertion of new s 47

After section 46—

insert—

‘47 Expiry

‘This Act expires on 30 June 2010.’.

PART 5—REPEAL AND MINOR AMENDMENTS

18 Repeal

The *Profiteering Prevention Act 1948* is repealed.

19 Acts amended in schedule

The schedule amends the Acts it mentions.

SCHEDULE

CONSEQUENTIAL AMENDMENTS

section 19

BILLS OF SALE AND OTHER INSTRUMENTS ACT 1955

- 1 Section 6D(2), definition “hire-purchase agreement”, after ‘1959’—**

insert—

‘or the *Credit (Rural Finance) Act 1996*’.

DISPOSAL OF UNCOLLECTED GOODS ACT 1967

- 1 Section 3, definition “hire-purchase agreement”, after ‘1959’—**

insert—

‘or the *Credit (Rural Finance) Act 1996*’.

FAIR TRADING ACT 1989

- 1 Section 5, definition “inspector”—**

omit, insert—

‘**“inspector”** means—

- (a) the commissioner; or
- (b) an inspector appointed for the purposes of this Act; or

SCHEDULE (continued)

- (c) an inspector as defined by the *Trade Measurement Administration Act 1990*, section 3.’.

MOTOR VEHICLES SECURITIES ACT 1986

- 1 Section 5, definition “hire-purchase agreement”, after ‘1959’—**
insert—
‘or the *Credit (Rural Finance) Act 1996*’.