

MONEY-LENDERS AND INFANTS LOANS (AMENDMENT) ACT.

Act No. 3, 1948.

An Act to amend the Money-lenders and Infants Loans Act, 1941-1946, in certain respects; and for purposes connected therewith. [Assented to, 22nd April, 1948.]

George VI.
No. 3, 1948.

BE it enacted by the King'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 :—

1. (1) This Act may be cited as the "Money-lenders and Infants Loans (Amendment) Act, 1948." Short title and citation.

(2) The Money-lenders and Infants Loans Act, 1941, as amended by subsequent Acts and by this Act, may be cited as the Money-lenders and Infants Loans Act, 1941-1948.

2.

Money-lenders and Infant Loans (Amendment) Act.**No. 3, 1948.**Amendment
of Act No.
67, 1941.Sec. 3.
(Interpre-
tation.)Sec. 5.
(Applica-
tions for
licences.)Sec. 8.
(Transfer,
etc., of
licence.)Sec. 10.
(Notice of
applications
to be given
by clerk of
court.)**2.** The Money-lenders and Infants Loans Act, 1941-1946, is amended—

- (a) by omitting from the definition of “Court of petty sessions” in subsection one of section three the words “or police magistrate”;
- (b) by omitting from subsection one of section five the words “court of petty sessions holden at the Central Police Office in Sydney” and by inserting in lieu thereof the words “Central Court of Petty Sessions, Sydney”;
- (c) (i) by inserting at the end of subsection one of section eight the following new paragraphs:
- (c) for the substitution of any other person to hold the licence on behalf of a company for a person licensed on behalf of the company who has died or become an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898, as amended by subsequent Acts—order the substitution of such other person accordingly and the endorsement of the substitution on the licence;
- (d) for the substitution of the new name of a company where the name of such company has been lawfully changed for the name shown in the licence issued to any person on behalf of such company—order the substitution of such new name for the name shown in the licence as aforesaid and the endorsement of the substitution on the licence;
- (ii) by inserting in subsection three of the same section after the word “address” the words “any person or a new name of a company”;
- (d) by inserting in section ten after the words “in a licence” the words “or for any substitution in accordance with paragraph (c) or paragraph (d) of subsection one of section eight of this Act”;
- (e)

- (e) by inserting in subsection one of section eleven after the words "in a licence" the words "or for any substitution in accordance with paragraph (c) or paragraph (d) of subsection one of section eight of this Act"; **No. 3, 1948.**
Sec. 11.
 (Objections to applications.)
- (f) by inserting in section seventeen after the word "addresses" wherever occurring the words "persons and new names pursuant to paragraphs (b) (c) and (d) of subsection one of section eight of this Act"; **Sec. 17.**
(Record of licences, etc.)
- (g) by inserting in subsection one of section eighteen after the word "addresses" the words "persons and new names pursuant to paragraphs (b) (c) and (d) of subsection one of section eight of this Act"; **Sec. 18.**
(Transmission of records to Commissioner of Police.)
- (h) (i) by inserting in paragraph (f) of subsection one of section nineteen after the word "licence" the words "or of any person or new name pursuant to paragraph (c) or paragraph (d) of subsection one of section eight of this Act"; **Sec. 19.**
(Fees.)
- (ii) by omitting from subsection two of the same section the word "subsection" where secondly occurring and by inserting in lieu thereof the word "section";
- (iii) by inserting at the end of the same subsection the following new paragraph:—
- Where a licence referred to in paragraph (a) and paragraph (b) of subsection one of this section is not renewed in accordance with the provisions of this Act and within three months of the expiry of such licence a licence is issued to the person who would have been entitled to a renewed licence if application therefor had been duly made, the fee for the licence so issued shall, notwithstanding anything contained in subsection one of this section, be ten pounds.
- (i) by omitting from subsection one of section twenty the words "or police magistrate"; **Sec. 20.**
(Jurisdiction of court of petty sessions.)
- (j)

Money-lenders and Infant Loans (Amendment) Act.**No. 3, 1948.****Sec. 23.****(Regulation of loans to and guarantees by married persons.)**

- (j) by inserting at the end of subsection one of section twenty-three the following new proviso:

Provided further that this subsection shall not apply where the security given by the borrower is over plant, fixtures, or fittings or goods, wares or merchandise which are owned or used or intended to be used or which are to be acquired and when so acquired will be owned and used or intended to be used by the borrower in or in connection with the business in which he is engaged.

New sec. 23A.

Provisions as to guarantees.

cf. Act. No. 56, 1941, s. 8 (3).

- (k) by inserting next after section twenty-three the following new section:—

23A. (1) Any contract of guarantee executed after the commencement of the Money-lenders and Infants Loans (Amendment) Act, 1948, whereby a person guarantees the repayment to any money-lender of any money lent by him shall, if such contract binds the guarantor—

- (a) to pay to the money-lender a larger sum than that which the borrower is liable to pay under the contract in respect of which the guarantee is given; or

- (b) to perform any obligation in respect of any loan of money by the money-lender other than the loan the subject of the contract in respect of which the guarantee is given;

be null and void unless such contract of guarantee is executed by the guarantor in the presence of a chamber magistrate, clerk of petty sessions, or a solicitor instructed and employed independently of the money-lender and is certified by such magistrate, clerk of petty sessions or solicitor as hereinafter provided.

The magistrate, clerk of petty sessions or solicitor—

- (i) shall read over and explain, or cause to be read over and explained in his presence, to the guarantor the contract of guarantee; and (ii)

- (ii) shall examine the guarantor touching his knowledge of such contract; and
- (iii) if he thinks fit may so examine him separately and apart from any other person; and
- (iv) if he is satisfied that the guarantor understands the true purport and effect thereof and freely and voluntarily executes the same, shall certify in writing upon the contract of guarantee that the contract has been so read over and explained, and that he has examined the guarantor and is satisfied as hereinbefore required, and that the guarantor has executed the contract in his presence.

No. 3, 1948

(2) Any contract of guarantee executed before the commencement of the Money-lenders and Infants Loans (Amendment) Act, 1948, whereby a person guaranteed the repayment to any money-lender of any money lent by him, shall if such contract binds the guarantor as provided in paragraph (a) or paragraph (b) of subsection one of this section be null and void to the extent to which it relates to moneys lent after such commencement, unless the guarantor has in the manner prescribed by subsection one of this section for the execution of a contract of guarantee to which such subsection relates, confirmed such contract.

- (1) by inserting next after subsection two of section twenty-six the following new subsection:—

Sec. 26.

(2A) Where any person publishes or causes to be published as aforesaid any advertisement which contains particulars as to the amount of interest payable upon any loan by a money-lender, the number of instalments by which any such loan and interest is repayable, or the intervals between successive repayments of instalments in respect of any such loan, such advertisement shall, notwithstanding anything contained in subsection two of this section, show

(Restrictions on money-lending advertisements.)

or

Money-lenders and Infant Loans (Amendment) Act.**No. 3, 1948.**

or express the rate per centum per annum represented by the interest proposed to be charged as calculated in accordance with the provisions of the Schedule.

Sec. 39.

(Limitation on right of money-lender to seize and sell certain chattels under a bill of sale.)

(m) by inserting next after subsection two of section thirty-nine the following new subsection:—

(2A) Notwithstanding anything contained in subsection two of this section the court may under such circumstances as it deems proper order substituted service of the summons on such persons affected by the application as it thinks fit.

New sec. 40A.

Proceedings for seizing or taking possession of goods comprised in bill of sale.

(n) by inserting next after section forty the following new section:—

40A. (1) Proceedings by a money-lender or any person acting on his behalf, for the seizing or taking possession of goods the subject of a bill of sale may, subject to this Act, be taken under section thirty-two of the Police Offences Act, 1901-1947, as amended by subsection two of this section.

This subsection shall apply only to the seizing or taking possession of goods the subject of a bill of sale where the value of the goods comprised in such bill of sale does not exceed two hundred and fifty pounds.

(2) The Police Offences Act, 1901-1947, is amended by inserting at the end of section thirty-two the following new subsection:—

(7) (a) Subject to the provisions of the Money-lenders and Infants Loans Act, 1941-1948, this section shall extend to proceedings for the seizing or taking possession of goods the subject of a bill of sale of which a money-lender is grantee and of which the value does not exceed two hundred and fifty pounds.

(b) For the purpose only of the application of this section to proceedings as aforesaid—

(i) subsection one of this section shall have effect as if the words “the value of which

which is not greater than twenty pounds, and not being deeds, muniments, or papers relating to any property of greater value than fifty pounds” were omitted and the words “the value of which is not greater than two hundred and fifty pounds” were inserted in lieu thereof; No. 3, 1946.

(ii) subsection three of this section shall have effect as if the words “twenty pounds” were omitted and the words “two hundred and fifty pounds” were inserted in lieu thereof.

(c) In any proceedings under this section for the seizing or taking possession of goods the subject of a bill of sale of which a money-lender is grantee, the complaint may be made to and the summons may be issued by any Justice, but, subject to this exception, the jurisdiction in respect of such proceedings conferred on a Justice by this section shall be exercisable only by a stipendiary magistrate sitting alone.

(o) by inserting at the end of section forty-one the following new subsections:— Sec. 41.
(Attempt to
defraud.)

(2) Where under the terms of any bill of sale given to a money-lender by way of security for the repayment of money lent by him or for the payment of interest on money so lent the borrower is under a duty to keep the goods the subject of the bill of sale in his possession or control, the borrower shall, on service upon him of a request in writing from the money-lender, inform the money-lender where the goods are at the time when the information is given, or, if it is sent by post, at the time of posting. cf. Act
No. 56, 1941,
s. 14 (2).

(3) Where a money-lender has reasonable grounds for believing that goods the subject of a bill of sale given to him by way of security for the repayment of money lent by him or for the payment of interest on money so lent are, contrary to the terms of such bill of sale, in the possession cf. *Ibid.*
s. 14 (3).

No. 3, 1948.

possession or control of some person other than the borrower, he may serve upon such person a request in writing that such person shall give information as to whether or not the goods are in his possession or control, and if they are, then as to where the goods are at the time when the information is given, or, if sent by post, at the time of posting.

cf. Act No.
58, 1941,
s. 14 (4).

(4) If a borrower, or a person upon whom a request has been served under subsection three of this section, fails without reasonable cause to give the said information within fourteen days of the service of the request upon him, he shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding ten pounds.

Sec. 51.
(Regulations.)

(p) by inserting in subsection one of section fifty-one after the word "addresses" wherever occurring the words "persons and new names of companies."
