

**MONEY-LENDERS AND INFANTS LOANS
(AMENDMENT) ACT.**

Act No. 50, 1961.

An Act to make further provisions relating to money-lending transactions; to amend the Money-lenders and Infants Loans Act, 1941, as amended by subsequent Acts; and for purposes connected therewith. Elizabeth II,
No. 50, 1961
[Assented to, 7th December, 1961.]

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:—

1. (1) This Act may be cited as the "Money-lenders and Infants Loans (Amendment) Act, 1961". Short title
and
citation.

(2)

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(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, 1941-1961.

Amendment
of Act
No. 67,
1941.

2. (1) The Money-lenders and Infants Loans Act, 1941-1948, is amended—

Sec. 3.
(Interpreta-
tion.)

(a) (i) by inserting in the definition of “Loan” in subsection one of section three after the words “any such loan,” the words “but shall not include any bona fide transaction entered into by a vendor (not being a money-lender licensed under this Act) of goods for the sale of goods by him where time for payment for such goods has been postponed,”;

(ii) by inserting in the same subsection next after paragraph (e) of the definition of “Money-lender” the following new paragraph:—

(ei) as from the commencement of the Money-lenders and Infants Loans (Amendment) Act, 1961, any person who before such commencement lent or who after such commencement lends money to a company, where in respect of such loan debentures were or are issued in pursuance of an application for such debentures made in a form issued with a prospectus as required by any law relating to companies; or;

(iii) by omitting from subsection three of the same section the word “Schedule” and by inserting in lieu thereof the words “First Schedule”;

(b)

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(b) by inserting next after section three the following new sections :—

No. 50, 1961
New secs.
3A, 3B.
Hire-
Purchase and
Credit-sale
Agreements
Acts.

3A. Nothing in this Act shall apply or be deemed ever to have applied to—

- (a) the letting of goods on hire under hire-purchase agreements within the meaning of and in compliance with the provisions of the Hire-Purchase Act, 1960, or any Act replaced by that Act;
- (b) any agreement referred to in paragraph (a) or (b) of the definition of "Hire-purchase agreement" in subsection one of section two of the Hire-Purchase Act, 1960;
- (c) a credit-sale agreement within the meaning of the Credit-sale Agreements Act, 1957, whether or not entered into before or after the commencement of that Act;
- (d) any agreement referred to in paragraph (i), (ii) or (iii) of the definition of "Credit-sale agreement" in subsection one of section two of that Act;

whether or not the party to any such agreement being the owner, vendor or seller is a money-lender licensed under this Act.

3B. (1) The provisions of Part III of this Act, sections twenty-one, thirty and 30A excepted, shall not apply to or in respect of any loan of the following classes nor any contract, security or guarantee made or given in relation thereto :—

Application
of Part III
excluded in
certain
circum-
stances.

- (a) a loan made to any company;
- (b) a loan to any person if the loan is for an amount in excess of five thousand pounds, or where a greater amount is prescribed, such greater amount;

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- (c) a loan to any person pursuant to an agreement to finance the erection of buildings to an amount in excess of five thousand pounds, or where a greater amount is prescribed, such greater amount, by a series of advances made during the erection of the buildings and secured upon the land on which the buildings are being erected;
- (d) a loan where the rate per centum per annum represented by any interest charged as calculated in accordance with the provisions of the First Schedule does not exceed the rate of interest per centum per annum charged at the date of the making of the loan upon overdrafts by the Commonwealth Trading Bank of Australia.

(2) The Governor may by order published in the Gazette declare that loans of any one or more of the classes referred to in subsection one of this section made by a person specified in the order subsequent to the date specified in the order and any contracts, securities or guarantees made or given in relation thereto shall be subject to the provisions of Part III of this Act, and notwithstanding the provisions of the said subsection the provisions of Part III of this Act shall apply to and in respect of such loans, contracts, securities or guarantees.

Sec. 4.
(Licences to
be taken out
by money-
lenders.)

- (c) by inserting next after subsection one of section four the following new subsection :—

(1A) Any money-lender who fails to take out a licence as required by this Part of this Act shall be guilty of an offence against this Act and liable—

- (a) if a company—to a penalty not exceeding two hundred pounds;

(b)

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- (b) if any other person—to a penalty not exceeding one hundred pounds or to imprisonment for a term not exceeding six months or to both such penalty and imprisonment. No. 50, 1961
- (d) by omitting from subsection six of section five the words “shall not refuse to order the issue of a licence except on” and by inserting in lieu thereof the words “shall refuse to order the issue of a licence upon the establishment of”; Sec. 5. (Applications for licences.)
- (e) by omitting from paragraph (c) of subsection one of section eight the words “an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898” and by inserting in lieu thereof the words “a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958”; Sec. 8. (Transfer, etc., of licence.)
- (f) (i) by omitting from paragraph (b) of subsection one of section nine the words “an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898” and by inserting in lieu thereof the words “a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958”; Sec. 9. (Power to executors, trustees, etc., to carry on business in case of death, etc., of licensee.)
- (ii) by omitting from subsections four and five of the same section the words “an insane person or patient” and by inserting in lieu thereof the words “a mentally ill person or protected person”;
- (g) by omitting from section ten the words “an insane person or patient” and by inserting in lieu thereof the words “a mentally ill person, a protected person”; Sec. 10. (Notice of applications to be given by clerk of court.)
- (h) by omitting from subsection one of section eleven the words “an insane person or patient” and by inserting in lieu thereof the words “a mentally ill person, a protected person”; Sec. 11. (Objections to applications.)

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Sec. 20.

(Jurisdiction of court of petty sessions in money-lending transactions.)

(i) (i) by omitting from subsection two of section twenty the words "or police magistrate";

(ii) by omitting from the same subsection the words "two hundred and fifty" and by inserting in lieu thereof the words "five hundred";

Sec. 22.

(Form of money-lenders' contracts.)

(j) (i) by inserting in paragraph (a) of subsection one of section twenty-two immediately before the words "a note" the words "where no security has been given as aforesaid, or where security has been so given and there is no document relating to such security containing all the terms of the contract and setting out in writing as prescribed the particulars referred to in paragraphs (a), (b), (c), (d), (e) and (f) of subsection two of this section,";

(ii) by omitting paragraph (b) of the same subsection and by inserting in lieu thereof the following paragraph:—

(b) a copy—

(i) of such note or memorandum;
or

(ii) where security has been so given and there is a document relating to such security containing all the terms of the contract and setting out in writing as prescribed the particulars referred to in paragraphs (a), (b), (c), (d), (e) and (f) of subsection two of this section, of such document,

is delivered to or sent by prepaid registered letter through the post addressed to the borrower within seven days of the making of the contract; and;

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- (iii) by inserting in the same subsection after the words "that the note or memorandum" the words "or the document";
- (iv) by inserting at the end of the same subsection the following new paragraph :—
For the purposes of this subsection writing as prescribed shall be, where the particulars are set out in handwriting, clear and legible handwriting, and where the particulars are set out in print, in type of a size no smaller than the type known as ten point Times.
- (v) by inserting in subparagraph (ii) of paragraph (c) of subsection two of the same section immediately before the words "the rate" the words "a rate per centum per annum not less than";
- (vi) by omitting from the same subparagraph the word "Schedule" and by inserting in lieu thereof the words "First Schedule";
- (vii) by inserting in paragraph (d) of the same subsection after the word "paid" the words "on the amount of the principal of the loan for the full term of repayment of the loan not taking into account rebates and penalties";
- (viii) (a) by inserting in subsection four of the same section after the words "note or memorandum" the words "or document";
(b) by inserting in the same subsection after the words "note, memorandum" wherever occurring the word ", document";
- (k) (i) by inserting in paragraph (a) of subsection one of section twenty-three after the word "Act" the words "or the document referred to in that section relating to the security";
(ii) by inserting in paragraph (a) of subsection two of section twenty-three after the word "Act" the words "or the document referred to in that section relating to the security";

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Sec. 23.
(Regulation of loans to and guarantees by married persons.)

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(ii) by inserting next after the same paragraph the following new paragraph :—

(aa) the note or memorandum of such contract required to be made in pursuance of section twenty-two of this Act, or the document referred to in that section relating to the security, is signed in his or her own handwriting by the spouse of the borrower jointly with the borrower; or;

(iii) by inserting next after paragraph (a) of subsection two of the same section the following new paragraph :—

(aa) such guarantee or any document relating to any security given in respect of such guarantee is signed in his or her own handwriting by the spouse of the guarantor jointly with the guarantor; or;

(iv) (a) by omitting from subsection five of the same section the word “ten” and by inserting in lieu thereof the word “fifty”;

(b) by omitting from the same subsection the words “In this subsection ‘money-lending transaction’ does not include a cash order within the meaning of Part V of this Act.”;

Sec. 26.
(Restrictions
on money-
lending
advertisements.)

(1) (i) by omitting from subsection two of section twenty-six the words “of the following particulars” and by inserting in lieu thereof the words “one or more of the particulars specified in the following paragraphs”;

(ii) by omitting from the same section the word “Schedule” wherever occurring and by inserting in lieu thereof the words “First Schedule”;

(iii) by inserting in paragraph (b) of subsection four of the same section after the word “shows” the words “a rate per centum per annum not less than”;

(m)

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(m) by inserting next after section thirty the following **No. 50, 1961** new section :—

New sec.
30A.

30A. (1) The provisions of this section shall apply to any loan and any transaction which, whatever its form may be, is substantially one of money-lending by a money-lender including any loan referred to in section 3B of this Act whether made before or after the commencement of the Money-lenders and Infants Loans (Amendment) Act, 1961, but does not apply to any such loan or transaction in respect of which proceedings in any court for the enforcement thereof have been taken or commenced before such commencement nor to any contract of guarantee executed before such commencement.

Certain
illegal or
unenforce-
able money-
lending
transactions
to be legal
and
enforceable.

(2) In any proceedings relating to any loan or transaction to which this section applies taken in any court wherein it is established that the money-lender has in relation to that loan or transaction neglected or failed to comply with or observe or perform any of the requirements and provisions of this Act, the court, if satisfied that the money-lender in the circumstances at the time of the making of the loan or entering into the transaction or the taking or giving of the security or guarantee in respect of the loan or transaction was acting honestly and ought fairly to be excused, may in giving judgment or making any decree or order pertaining to such proceedings impose such conditions and give such directions as it may consider just and equitable.

(3) Without limiting the generality of its powers under subsection two of this section, the court shall have power to—

(a) exercise in relation to any loan or transaction to which this section applies the like powers as it may exercise under subsection one of section thirty of this Act in relation to loans to which that section applies;

(b)

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- (b) confirm or declare to be valid and enforceable in whole or in part as from the date specified in the judgment, decree or order any contract for repayment of money lent or any security given in respect of any such contract or guarantee given with respect thereto and vary, alter or amend any covenant, condition or agreement contained in such contract, security or guarantee;
- (c) relieve the borrower or guarantor from or impose on the borrower or guarantor the obligation to repay the whole or part of the amount of the principal of the loan with interest at the rate specified in the judgment, decree or order or without interest and make such orders relating to the other obligations of the guarantor as the court deems fit;
- (d) postpone for such period as it thinks fit the time for the repayment of such loan and the time before which such security or guarantee shall not be enforced and order any such repayment to be made with interest at the rate specified in the judgment, decree or order or without interest by such instalments, at such intervals or in such amounts as the court may direct;
- (e) make any further order incidental or ancillary to any judgment, decree or order of the court, or any conditions or directions it may impose or give in relation thereto.

(4) In any proceedings referred to in subsection two of this section, the court may order that any guarantor or other person liable be joined as a party to such proceedings in such manner and upon such terms as the court shall direct.

(5)

(5) Any court in which proceedings might be taken for the recovery of money lent shall have and may, on the application of the money-lender (or where such money-lender is bankrupt, on the application of the Official Receiver or Trustee in bankruptcy) exercise the like powers as may be exercised in any proceedings referred to in subsection two of this section, and the court shall have power, notwithstanding any provision or contract to the contrary, to entertain any such application, notwithstanding that the time for repayment of the loan or any instalment thereof has not arrived.

Any application under this subsection may be made to any court in which proceedings might be taken for the recovery of money lent: Provided that where the amount originally lent under the money-lending transaction or contract does not exceed five hundred pounds such application may be made only to a court of petty sessions holden before a stipendiary magistrate sitting alone.

(n) by inserting at the end of subsection one of section thirty-nine the following new proviso:—

Provided that in the case of a bill of sale, other than a trader's bill of sale, leave shall not be granted by the court in respect of any breach of the terms of the bill of sale relating to the payment of instalments where the loan in respect of which such bill of sale was given does not exceed five hundred pounds unless the grantee or holder of such bill of sale has, except where there are reasonable grounds (proof whereof shall lie upon him) to believe that the goods comprised in the bill of sale will be removed or concealed by the grantor contrary to the provisions of the bill of sale, served on the grantor a notice in writing in or to the effect of the form of the Second Schedule and

Sec. 39.

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

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and the period fixed by the notice (being not less than twenty-one days after the service of the notice), has expired.

Subst.
sec. 40A.

(o) by omitting section 40A and by inserting in lieu thereof the following section :—

Power of
court to
order
delivery of
goods
unlawfully
detained.

40A. (1) This section applies only to any bill of sale, other than a trader's bill of sale, the grantee or holder of which is a money-lender.

(2) Upon complaint made by the grantee or holder of a bill of sale to which this section applies who is entitled to take possession of any goods comprised in the bill of sale, or by any person acting on behalf of the grantee or holder, that the grantor of the bill of sale or any person acting on behalf of the grantor has refused or failed to deliver up possession of the goods on the service of a notice of demand made by the grantee or holder or by an agent of the grantee or holder authorised in that behalf, any justice of the peace may summon the person complained of to appear before a court of petty sessions holden before a stipendiary magistrate sitting alone 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 grantee or holder at or before a time, and at a place, to be specified in the order.

(3) Any person who neglects or refuses to comply with any order made under this section is guilty of an offence against this Act and liable to a penalty not exceeding two hundred pounds.

Sec. 55.
(Cash
orders in
excess of £50
not to be
issued.)

(p) by omitting from section fifty-five wherever occurring the word "twenty" and by inserting in lieu thereof the word "fifty";

(q)

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- (q) by inserting next after section fifty-five the following new section :—

New sec.
55A.

55A. (1) (a) In this section "cash order" includes a cash order which has been varied for the purpose of enabling further goods or services or other valuable consideration to be received by the person to whom the cash order was issued.

Special
provision
for add-on
cash orders.

Nothing in this paragraph shall be construed as limiting the generality of the definition of "cash order" in subsection one of section fifty-two of this Act.

(b) This section applies to and in respect of cash orders issued before the commencement of the Money-lenders and Infants Loans (Amendment) Act, 1961, as well as to cash orders issued after that commencement.

(2) A cash order transaction within the meaning of section twenty-two of this Act may be varied for the purpose of enabling further goods or services or other valuable consideration to be received by the person to whom the cash order was issued, provided—

- (a) the cash order immediately before it is so varied is not unenforceable by the cash order trader, illegal or void;
- (b) subject to subsection three of this section, the provisions of this Act are complied with or observed as though the additional amount for which the cash order was so varied was the amount for which the cash order was issued;
- (c) the cash order when so varied also specifies the balance payable immediately before it was so varied;
- (d) the sum of the balance payable immediately before the cash order was so varied and the additional amount for which the cash order was so varied, does not exceed the amount specified in section fifty-five of this Act; and
- (e)

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(e) a note or memorandum in writing of the cash order transaction as so varied is made and signed personally by the applicant for the cash order before the cash order is varied.

(3) The provisions of sections twenty-two and fifty-three of this Act shall not apply to a cash order varied in accordance with the provisions of subsection two of this section.

Schedule.

(r) (i) by omitting from the Schedule the word "SCHEDULE" and by inserting in lieu thereof the words "FIRST SCHEDULE";

(ii) by inserting next after the First Schedule the following new Schedule :—

Sec. 39.

SECOND SCHEDULE.

Money-lenders and Infants Loans Act, 1941, as amended by subsequent Acts.

NOTICE OF INTENTION TO REPOSSESS.

TAKE NOTICE THAT.....
intends to take possession of the following goods comprised in a bill of sale executed by you dated the.....day of.....
19....:—

(insert description of 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....

Amount paid or provided by the borrower to.....
19....—£.....

* Insert number of days, not being less than twenty-one.

Agricultural Seeds (Amendment) Act.

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(2) The amendment made by subparagraph (i) of No. 50, 1961 paragraph (a) of subsection one of this section shall be deemed to have commenced upon the first day of January, one thousand nine hundred and forty-two.

3. (1) The Police Offences Act, 1901, as amended by subsequent Acts, is amended by omitting subsection seven of section thirty-two.

Amendment
of Act No.
5, 1901.

Sec. 32.

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

(2) The Police Offences Act, 1901, as amended by subsequent Acts and by this Act, may be cited as the Police Offences Act, 1901-1961.
