

**MONEY LENDERS.**

1° AND 2° GEO. VI., No. XXXI.

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**No. 31 of 1937.****AN ACT to amend the Money Lenders Act, 1912, and for other purposes connected therewith.**

[Assented to 18th January, 1938.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the *Money Lenders Act Amendment Act, 1937*, and shall be read as one with the Money Lenders Act, 1912, as amended by Act No. 19 of 1913, hereinafter called the principal Act.

Amendment  
s. 4 of  
Principal Act.

2. Section four of the principal Act is amended—

(a) by substituting the words "or that" for the words "and that" in line ten of subsection (1);

(b) by striking out the words "holds to be harsh and unconscionable" in line four of subsection (3) and substituting the words "is empowered under this section to re-open."

## 3. Section five of the principal Act is amended—

Amendment  
s. 5 of  
principal Act.

- (a) by adding a subsection at the beginning of the section, as follows:—

(1) No person shall carry on the business of a money lender or do anything which constitutes him a money lender for the purpose of section three of this Act unless he is granted registration under this Act and is the holder of a current license issued to him thereunder;

No money  
lender to carry  
on business,  
etc., unless  
registered.

(2) No money lender shall be registered, except under his own or usual trade name (if any), and with the address or all the addresses, if more than one, at which he carries on his business of money lending;

Money lender  
to be regis-  
tered in his  
own name or  
trade name.

- (b) by striking out paragraphs (a) and (d) of subsection (1);

- (c) by striking out all words at the beginning of subsection (2) down to and including the word "section" in line five and substituting the following:—

If any person commits a breach of any of the provisions of this section or shall continue to carry on business during any period when his registration is suspended or cancelled under this Act;

- (d) by renumbering the subsections of the section as amended in arithmetical order, and relettering paragraphs (b) and (c) of subsection (1) as paragraphs (a) and (b) respectively.

## 4. Section six of the principal Act is repealed and the following new section enacted in its stead:—

Repeal of  
s. 6, principal  
Act; new pro-  
visions  
enacted; com-  
pare N.Z. 21  
of 1933, ss. 2,  
3 and 4.

6. (1.) The registration of every money lender shall expire on the thirtieth day of June next following the date when such registration is effected. The provisions of this subsection shall apply to the registration of every money lender registered under the Money Lenders Act, 1912, whose registration is current at the commencement of the Money Lenders Act Amendment Act, 1937, and to every registration granted after the commencement of the last-mentioned Act.

Duration of  
registration,  
method of  
applying.

Application to be made to magistrate.

(2.) Application for registration shall be made in the prescribed manner to any police, resident, or stipendiary magistrate sitting in petty sessions at the court of petty sessions held nearest to the place of business of the applicant or nearest to the principal place of business of the applicant, where the applicant has more than one place of business.

Fee on application £5 for each place of business.

(3.) Every application shall be lodged with the clerk of the court of petty sessions where the application is to be heard, and shall be accompanied by a fee of Five pounds in respect of each place of business for which the money lender desires to be registered. If the application is refused the fee or fees shall be refunded.

Payment of fee does not authorise money lender to carry on business when license suspended or cancelled.

(4.) The payment of such fee and the granting of registration shall not authorise the person affected to carry on business or to do any act which would otherwise necessitate his registration under this Act at any time when his registration under this Act is suspended or cancelled or otherwise not in force.

Certificate of registration.

(5.) On the granting of registration a license shall be issued in the prescribed form to the money lender and shall, subject to this Act, remain in force during the period of registration. Where the registration is in respect of any place or places of business other than the principal place of business of the money lender, a certified copy or copies of the license shall also be issued to him, and one of such certified copies shall be kept and exhibited by him at such first-mentioned place or places.

Clerk of petty sessions to keep register of money lenders.

(6.) The clerk of the court of petty sessions at which registration is granted shall keep a register in the prescribed form, and enter therein the names and such particulars as may be prescribed concerning money lenders to whom registration is from time to time granted at such court.

Regulations.

(7.) The Governor may from time to time make regulations not inconsistent with this Act concerning the manner of applying for registration and renewal of registration and the court fees to be taken in respect of application for registration or renewal; the form of register of money lenders to be kept by clerks of petty sessions; the compilation and keeping of a general register of money

lenders, and the returns to be made by clerks of petty sessions in respect of registrations for the purpose of compiling the general register.

(8.) On payment of a fee of one shilling any person may search the register of money lenders kept by a clerk of petty sessions or any general register compiled under the regulations.

Register may be searched.

(9.) Subject to this Act every registration and license may from time to time be renewed, and if renewed shall have effect until the close of the thirtieth day of June next following the date when it is renewed, and, save as provided in the next succeeding subsection, shall then cease to have effect: provided that, where the application for the renewal of the registration of a money lender is made before such registration ceases to have effect, such registration and license shall where necessary continue in force until the application for renewal is disposed of, unless the magistrate otherwise directs.

Renewal of registration.

(10.) The magistrate shall direct such registration not to be made or renewed if—

(a) evidence to the satisfaction of the magistrate has not been produced of the good character of the applicant, and, in the case of a firm, of every partner, and, in the case of a society or corporate body, of the persons responsible for the management thereof;

Magistrate not to grant registration unless satisfied as to character of applicant, etc.

(b) evidence to the satisfaction of the magistrate has been produced that the applicant or any person proposed to be made responsible for the management of his business as a money lender is not a fit and proper person to be registered;

(c) the applicant and any person responsible or proposed to be made responsible for the management of his business as a money lender is then disqualified from being registered or has within any period of twelve months been convicted on two several occasions for offences against this Act;

(d) the applicant has not complied with the provisions of any regulations relating to registration or has not paid the appropriate license fee or license fees under this section.

No right of appeal from magistrate's decision.

(11.) No appeal shall lie to any court against a decision of a magistrate under this section.

Repeal of ss. 9 and 10, principal Act, and new provisions enacted.

5. Sections nine and ten of the principal Act are repealed and the following sections are enacted to follow section eight of the principal Act:—

Form of contracts; compare Imp. Act 17 & 18 Geo. V., c. 21, s. 6; N.Z. 21 of 1933, s. 8.

9. (1.) No contract for the repayment by a borrower of money lent to him or to any agent on his behalf by a money lender after the commencement of the Money Lenders Act Amendment Act, 1937, or for the payment by him of interest on money so lent, and no security given by the borrower or by any such agent as aforesaid in respect of any such contract shall be enforceable unless a note or memorandum in writing of the contract is signed personally by the borrower and unless a copy thereof is delivered or sent to the borrower within seven days of the making of the contract, and no such contract or security shall be enforceable if it is proved that the note or memorandum aforesaid was not signed by the borrower before the money was lent or before the security was given, as the case may be.

(2.) The note or memorandum referred to shall contain all the terms of the contract and, in particular, shall show the date on which the loan is made, the amount of the principal of the loan, and either the interest charged on the loan expressed in terms of a rate per centum per annum or the rate per centum per annum represented by the interest charged as calculated in accordance with the provisions of the Schedule to this Act:

Provided that, when the loan is for a term of less than twelve months, it shall not be necessary to state any rate of interest if the total amount charged by way of interest is stated.

(3.) On delivery of the note or memorandum to the borrower the money lender shall obtain a receipt or acknowledgment by the borrower that he has received from the money lender the note or memorandum as required by this section. Every such receipt shall be given on paper separate and apart from the documents evidencing or containing such contract.

(4.) The provisions of this section shall apply *mutatis mutandis* to a contract of suretyship.

(5.) Nothing in this section shall prejudice or affect the right which any person would otherwise have as assignee or transferee of any contract, if he proves that he became such assignee or transferee in good faith and for valuable consideration and without notice or knowledge of any contravention of the provisions of this section, but the lender shall indemnify the borrower or surety against any liability under or in respect of such contract.

10. Any contract made after the commencement of the Money Lenders Act Amendment Act, 1937, for the loan of money by a money lender shall be illegal, in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of any default in the payment of sums due under the contract: provided that provision may be made by any such contract that if default is made in the payment upon the due date of any sum payable to the money lender under the contract, whether in respect of principal or interest, the money lender shall be entitled to charge simple interest on that sum from the date of the default until the sum is paid, at a rate not exceeding the rate payable in respect of the principal, apart from any default, and any interest so charged shall not be reckoned for the purpose of this Act as part of the interest charged in respect of the loan.

10A. Where by a contract for the loan of money by a money lender the interest charged on the loan is not expressed in terms of a rate any amount paid or payable to the money lender under the contract (other than simple interest charged in accordance with the proviso to section ten hereof) shall be apportioned to principal and interest in the proportion that the principal bears to the total amount of the interest, and the rate per centum per annum represented by the interest charged as calculated in accordance with the provisions of the Schedule to this Act shall be deemed to be the rate of interest charged on the loan.

Saving rights of *bona fide* transferees. See 65 of 1912, s. 10 (2), proviso.

Prohibition of compound interest; compare 17 and 18 Geo. V., c. 21, s. 7 (Imp.); N.Z. 1933, No. 21, s. 9.

Appropriation between principal and interest in certain cases of moneys payable to money lender; compare 17 & 18 Geo. V., c. 21, s. 15 (2), Imp.; N.Z. 1933, No. 21, s. 10.

Money lender must supply account and copies of documents relating to loan; compare 17 & 18 Geo. V., c. 21, s. 8 (Imp.); N.Z. 1933, No. 21, s. 11.

10B. (1.) In respect of any contract for the repayment of money lent by a money lender whether made before or after the commencement of the Money Lenders Act Amendment Act, 1937, the money lender shall on any reasonable demand in writing being made by the borrower or by any surety to the contract at any time during the continuance of the contract and on tender by the borrower or surety of one shilling for expenses, supply to the borrower or surety, or if the borrower or surety so requires to any person specified in that behalf in the demand, a statement signed by the money lender or his agent showing—

- (a) the date on which the loan was made, the amount of the principal of the loan, and the rate per centum per annum of interest charged, or where the loan is for a term of less than twelve months, the total amount charged by way of interest; and
- (b) the amount of any payment already received by the money lender in respect of the loan and the date on which it was made; and
- (c) the amount of every sum due to the money lender but unpaid and the date upon which it became due, and the amount of interest accrued due and unpaid in respect of every such sum; and
- (d) the amount of every sum not yet due which remains outstanding and the date upon which it will become due; and
- (e) particulars of all amounts by way of expenses, inquiries, and other matters charged in connection with the loan.

(2.) A money lender shall on reasonable demand in writing by the borrower or any surety to the contract, and on tender of a reasonable sum for expenses, supply to the borrower or to the surety for the borrower, as the case may be, a copy of every document relating to a loan made by him to the borrower or any security therefor, or, if the borrower or surety so requires, to any person specified in that behalf in the demand.

(3.) If a money lender to whom a demand has been made under the provisions of this section fails to comply therewith within one month after the demand has been made, he shall not, so long as the default continues be entitled to sue for or recover any sum due under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of default.

10C. Notwithstanding any contract or agreement to the contrary, where any loan is repaid before the date stipulated in the contract or agreement relating to the loan then—

Where loan repaid before due date, rebate of interest to be made.

(a) where interest is payable under the terms of the loan at an expressed rate, any interest which but for such repayment would otherwise have been chargeable for the balance of the period of the loan shall not be chargeable;

(b) where the interest payable is not expressed in terms of a rate, the money lender shall allow a rebate of such part of the loan or instalments of the loan so repaid before due date as represents interest included therein calculated in accordance with section ten A,

and it shall be unlawful for any money lender to ask, demand, or receive any such interest declared not to be chargeable or to be rebated under this section.

10D. (1.) Notwithstanding anything contained in the Bills of Sale Act, 1899, and its amendments, any contract or transaction entered into for the purpose of securing payment of any loan to a money lender and which would be voidable under the provisions of those Acts, unless duly registered as a bill of sale by way of security, shall be absolutely void unless duly registered after due notice as prescribed by the said Acts.

Unregistered bills of sale to money lender absolutely void.

(2.) Without in any way limiting the general effect of the preceding subsection, no money lender shall as security or part of the security for any loan made by the money lender enter into or purport as the owner of any chattels to enter into any hiring agreement or hire purchase agreement with the borrower in respect of the chattels, unless the same is duly



registered as a bill of sale by way of security after due notice as prescribed by the said Acts.

Where loan made no fee for investigation to be charged.

10E. It shall be unlawful for a money lender to make any charge in connection with the valuation of any security proposed to be given to him for a loan or in connection with inquiries incidental to the investigation of any application to him for a loan, except in cases where the loan is not proceeded with after valuation or inquiry has been made, in which event the money lender shall be entitled to make a charge not exceeding ten shillings for valuing the security and investigating the application.

6. The following new sections and Schedule are added after section thirteen of the principal Act:—

Suspension or cancellation of registration of money lender; compare 17 & 18 Geo. V., c. 21, s. 3 (Imp.); N.Z. 1933, No. 21, s. 5.

14. (1.) Where any person registered as a money lender under this Act is convicted of any offence under this Act the court—

(a) may order that such registration and the money lender's license shall either be suspended for such time as the court thinks fit or shall be cancelled, and may also, if the court thinks fit, declare any such person or any person responsible for the management of the money lending business carried on by the person convicted to be disqualified from being registered under this Act for such time as the court thinks fit; and

(b) shall cause particulars of the conviction and of any order made by the court under this subsection to be indorsed on the money lender's license and on every certified copy thereof, and shall cause copies of those particulars to be sent to the clerk of the petty sessional court at which the money lender was registered, and the clerk shall on receipt of such particulars note the same in the register kept by him under this Act.

(2.) Any license or certified copy thereof required by a court for indorsement in accordance with the foregoing provisions of this section shall be produced in such manner and within such time as may be directed by the court by the person by whom it is

held, and any person who makes default in producing any license or certified copy so required shall in respect of each offence be liable on summary conviction to a fine of five pounds for each day during which the default continues.

15. (1.) No person shall knowingly send or deliver or cause to be sent or delivered to any person, except in response to his written request, any circular or any other document advertising the name, address, or telephone number of a money lender, or containing an invitation—

Restriction on money lending advertisements; compare 17 & 18 Geo. V., c. 21, s. 5 (Imp.); N.Z. 1933, No. 21, s. 7.

- (a) to borrow from a money lender; or
- (b) to enter into any transaction involving the borrowing of money from a money lender;
- or
- (c) to apply to any place with a view to obtaining information or advice as to borrowing any money from a money lender.

(2.) Save as hereinafter provided no person shall publish or cause to be published in any newspaper or other printed paper issued periodically for public circulation, or by means of any poster or placard, or by means of radio broadcasting, any advertisement or announcement advertising or announcing any such particulars or containing any such invitation as aforesaid.

(3.) Nothing in the foregoing provisions of this section shall prohibit the publication by or on behalf of any money lender of any advertisement or other periodical publication as aforesaid, or the exhibition of a poster or placard at any registered address of the money lender containing only the following particulars or any of them, namely:—

- (a) his registered name and his registered address or registered addresses, and the telegraphic address or addresses and telephone number or numbers thereof;
- (b) a statement that he lends money with or without security, a statement as to the class or classes of security he will accept and particulars of the highest and lowest sums that he is prepared to lend;

(c) a statement of the date on which the business carried on by him was first established.

(4.) No money lender or any person on his behalf shall employ any agent or canvasser for the purpose of inviting any person to borrow money, or to enter into any transaction involving the borrowing of money from a money lender, and no person shall act as such agent or canvasser, or demand or receive directly or indirectly any sum or other valuable consideration by way of commission or otherwise for introducing or undertaking to introduce to a money lender any person desiring to borrow money.

(5.) Where any document issued or published by or on behalf of a money lender purports to indicate the terms of interest upon which he is willing to make loans or any particular loan, the document shall either express the interest proposed to be charged in terms of a rate per centum per annum or show the rate per centum per annum represented by the interest proposed to be charged as calculated in accordance with the provisions of the Schedule to this Act.

(6.) Any person acting in contravention of any of the provisions of this section commits an offence and is liable on summary conviction to imprisonment for a period of three months or a fine of one hundred pounds or both.

(7.) Where it is shown that a money lending transaction was brought about by a contravention of any of the provisions of this section, the transaction shall be illegal and void unless the money lender proves that the contravention occurred without his consent or connivance.

General  
penalty for  
breach of the  
Act.

16. Every money lender who fails to comply with any of the provisions of this Act, or commits a breach of any of the provisions of this Act for which no penalty is specifically provided, shall be guilty of an offence and shall be liable to a penalty not exceeding fifty pounds.

Citation of  
principal Act  
as amended.

7. (1.) The principal Act as amended by this Act—  
(a) may be cited as the Money Lenders Act, 1912-1937;

(b) shall be reprinted with amendments by the Government Printer under the supervision of the Clerk of Parliaments.

(2.) In the reprint the sections shall be renumbered in arithmetical order, the cross references adjusted, and suitable reference shall be made in the margins, and the short title amended in accordance with subsection (1) of this section.

#### THE SCHEDULE.

*Calculation of Interest where the Interest charged on a Loan is not expressed in terms of a Rate.*

Ss. 9 (2),  
10A, 15 (5).

1. The several sums deemed to be payable in respect of principal and the several sums deemed to be payable in respect of interest shall be first ascertained in accordance with section 10A of the Act.

Compare 17  
& 18 Geo. V.  
c. 21; N.Z.  
1933, No. 21.

2. The following formula will give the rate of interest where principal and interest are repayable by monthly instalments:—

$$\frac{\text{Total Interest}}{\text{aggregate principal}} \times 100\%$$

12

In the above formula :

“total interest” = the difference between the principal sum advanced and the total sum repayable under the contract.

“aggregate principal” = the total sum obtained by multiplying each of the several sums outstanding from time to time on account of principal as ascertained in accordance with section 10A of the Act by the number of months it is outstanding under the contract and adding the several sums so produced.

3. Where a loan is repayable by weekly instalments, or it is more convenient to work by reference to weeks instead of months, then the above formula will be adjusted by altering the term “months” in the definition of “aggregate principal” to “weeks” and the divisor “12” to “52.”

Where it is more convenient to work in days instead of months, then the definition of “aggregate principal” shall be altered by substituting the word “days” for the word “months” and the divisor “365” for the divisor “12”.