

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

No. 13 of 1936.

AN ORDINANCE

**Relating to the Business of Money Lending and for
other purposes.**

BE it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act 1909* and the *Seat of Government (Administration) Act 1910-1933*, as follows:—

1. This Ordinance may be cited as the *Money Lenders Ordinance 1936*. Short title.
2. This Ordinance shall commence on a date to be fixed by the Attorney-General by notice in the *Gazette*. Commencement.
3. The *Money-lenders and Infants Loans Act, 1905*, of the State of New South Wales shall cease to apply to the Territory. State Act to cease to apply.
4. In this Ordinance, unless the contrary intention appears— Definitions.
 - “Court” means any court of competent jurisdiction;
 - “interest” includes discount, premiums, bonus, commission, deduction, fine, penalty, renewal charge, fees, costs, charges and expenses, whether preliminary or otherwise, or any money or money’s worth or any other consideration whatever, and whether the same is charged, paid, given or allowed directly or indirectly for or in connexion with the loan itself or any application valuation or security therefor, but does not include any commission paid by the borrower to any third person, or any costs or fees paid either by the lender or the borrower to any solicitor or valuator, or any fees paid out of pocket by the lender where no solicitor acts for him, provided that the lender does not participate or have any interest in any such commission costs or fees;
 - “loan” includes advance, discount, money paid for or on account or on behalf or at the request of any person, or the forbearance to require payment of money owing on

any account whatsoever, and includes every contract (whatever its terms or form may be) which is in substance or effect a loan of money, and also a contract to secure the repayment of such loan, but does not include interest, and the expressions "lend" and "lender" shall be construed accordingly;

"money lender" means every person whose business is that of money lending, or, who advertises or announces himself or holds himself out in any way as carrying on that business or who lends money at a rate of interest exceeding twelve per centum per annum; but does not include—

- (a) any person or body corporate *bona fide* carrying on the business of banking or insurance or *bona fide* carrying on any business not having for any of its objects the lending of money in the course of which and for the purposes whereof he or it lends money at a rate of interest not exceeding twelve per centum per annum; or
- (b) any body corporate for the time being exempted from registration under this Ordinance by order of the Attorney-General published in the *Gazette*; and
- (c) any pawnbroker in respect of the business carried on by him in accordance with the law for the time being in force in the Territory relating to pawnbrokers.

Jurisdiction of Court of Petty Sessions.

5.—(1.) Section twenty of the *Court of Petty Sessions Ordinance 1930-1934* is amended by omitting from sub-paragraph (iii) of paragraph (c) of sub-section (1.) the words "where the interest claimed does not exceed Eight pounds per centum per annum".

(2.) The Court of Petty Sessions shall have power to hear and determine any action or proceeding arising under this Ordinance in respect of any loan not exceeding Two hundred pounds.

Re-opening of transactions of money-lenders.

6.—(1.) Where proceedings are taken in any court by a money lender or the assignee or transferee or holder of a debt or security in respect of a loan by a money lender for the recovery of any money lent before or after the commencement of this Ordinance, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals or any other charges are excessive or that the transaction is harsh and unconscionable or is such that a court of equity would give relief, the court may re-open the transaction and take an account between the money lender or the assignee or transferee or holder of a debt or security in respect of a loan by a money lender and the person sued and may, notwithstanding any statement or settlement of account or any

agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between them and relieve the person sued from payment of any sum in excess of such sum as the court, having regard to the risk, the value of the security, the time of repayment and all the other circumstances, may adjudge to be reasonable in respect of such principal, interest and charges; and, if any such excess has been paid or allowed in account by the debtor, may order the creditor or the money lender to repay it, and may set aside, either wholly or in part, or revise or alter any security given or agreement made in respect of a loan by the money lender and if the money lender has parted with the security or assigned the debt may order him to indemnify the borrower or other person sued.

(2.) The court in which proceedings might be taken for the recovery of money lent by a money lender or the assignee or transferee or holder of a debt or security in respect of a loan by a money lender shall have and may, at the instance of the borrower or surety or other person liable, exercise the like powers as may be exercised under this section where proceedings are taken for the recovery of a loan and the court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Ordinance by the borrower or surety or other person liable notwithstanding that the time for repayment of the loan or any instalment thereof has not arrived.

(3.) No proceeding to re-open a transaction or to recover back interest or to obtain any relief under the provisions of this section shall be taken after twelve months from the time when the transaction in respect of or in connexion with which such proceeding is taken was finally closed, but the legal personal representative of any deceased person who had entered into such contract may take such proceeding at any time within two years thereafter.

(4.) The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of money lending by a money lender, but shall not apply to any *bona fide* assignee, transferee or holder for value without notice in respect of a loan by a money lender.

(5.) Any proceeding under this section shall be taken *in camera* unless in any particular case the court decides, in its discretion, that the matter should be heard in open court.

7.—(1.) For the purposes of this Ordinance, a money lender shall calculate and charge the interest on the loan to the borrower on the monthly balance of the loan after crediting the borrower with any instalment or instalments of the loan paid by him during the month.

Calculation of interest on loan.

(2.) Any money lender who fails to comply with the provisions of the last preceding sub-section shall be guilty of an offence.

Penalty: One hundred pounds.

Rebate of
interest.

8.—(1.) In any case where any person pays off any loan before the time actually fixed in the instrument for the repayment of the loan the money lender shall allow a rebate of the interest to the borrower calculated on the period of time from the actual paying-off of the loan to the time fixed in the instrument for the repayment of the loan.

(2.) Any money lender who fails to comply with the provisions of the last preceding sub-section shall be guilty of an offence.

Penalty: One hundred pounds and, in addition, the Court may order that any excess interest so charged and retained by the money lender shall be paid over to the borrower.

Money lenders
to be registered.

9.—(1.) A person shall not carry on the business of a money lender unless he is registered as a money lender under this Ordinance.

Penalty: Two hundred pounds.

(2.) An application to be so registered shall be made to the Registrar of Firms appointed under the *Business Names Ordinance 1933-1935* and shall be accompanied by a certificate signed by the Chief Officer of Police that the applicant is of good character and is a fit and proper person to be so registered and by a fee of One pound. The application shall state the name of the applicant, his usual trade name (if any), together with the address or all the addresses, if more than one, at which he carries on or proposes to carry on business as money lender.

(3.) The Registrar of Firms may, upon any application made in pursuance of this section, register or refuse to register any applicant. Registration shall be effected by the Registrar of Firms entering the name of the person and such other particulars as the Attorney-General directs in a Register to be called "The Register of Money Lenders". The Register shall be open for inspection by any person on payment of a fee of One shilling.

(4.) The registration of a money lender shall cease to have effect at the expiration of one year from the date of registration, but may be renewed from time to time, and if renewed shall have effect for one year from the date of renewal.

(5.) Where a money lender was, at the commencement of this Ordinance, registered under the *Money-lenders and Infants Loans Act, 1905*, of the State of New South Wales, in its application to the Territory, he shall, on registration under this Ordinance, be given credit, as prescribed, in respect of the fee paid by him for registration under that Act.

Duties of
Money lenders,
&c.

10.—(1.) A money lender—

(a) may carry on the money lending business in his registered name and in no other name and under no other description and at his registered address or addresses and at no other address;

- (b) shall not enter into any agreement in the course of his business as a money lender with respect to the advance and repayment of money, or take any security for money in the course of his business as a money lender otherwise than in his registered name;
- (c) shall, on reasonable request and on tender of a reasonable sum for expenses, furnish the borrower with a copy of any document relating to the loan or any security therefor; and
- (d) shall, when selling, assigning, transferring or assuring any debt, promissory note, bill of exchange, chose in action or security, taken or received by him in his business as a money lender, give to the purchaser, assignee or transferee full particulars in writing of the transaction in connexion with the same.

(2.) Every money lender who carries on business otherwise than in his registered name, or in more than one name, or elsewhere than at his registered address, or who fails to comply with any other requirement of this section, shall be guilty of an offence.

Penalty: One hundred pounds; and in the case of a second or subsequent conviction to imprisonment with or without hard labour for a term of not more than three months or to a penalty of not more than One hundred pounds or to both:

Provided that if the offender is a body corporate that body corporate shall be liable on a second or subsequent conviction to a penalty of not more than Five hundred pounds.

(3.) No contract or agreement or transaction entered into by a money lender with any person or body corporate shall be void or voidable by reason only that the money lender has, whether in connexion with such contract or agreement or transaction or not, been at any time guilty of a contravention of any of the provisions of this section, whether convicted thereof or not.

(4.) If any money lender or any manager, agent or clerk of a money lender, or if any person being a director, manager or any other officer of any corporation carrying on the business of a money lender, by any false misleading or deceptive statement, representation or promise, or by any wilful concealment of material facts, induces or attempts to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed he shall be guilty of an offence.

Penalty: Five hundred pounds or imprisonment for two years or both.

11.—(1.) Whenever by the terms of any written or printed contract entered into after the commencement of this Ordinance (whether under seal or not) any interest is made payable at a rate or percentage per day, week or month or at any rate or percentage for any period less than a year, no interest exceeding the rate or percentage of Twelve pounds

When rate of interest more than twelve per centum per annum not to be recoverable unless contract states the total amount of interest payable or the equivalent rate per annum.

per centum per annum shall be chargeable, payable, recoverable or enforceable on any part of the principal money unless the contract contains an express statement of the total amount of interest paid or to be paid or of the yearly rate or percentage of interest to which such other rate or percentage is equivalent.

(2.) If any sum is paid on account of any interest not chargeable, payable, recoverable or enforceable by reason of the provisions of the last preceding sub-section, such sum may be recovered back or deducted from any principal or interest payable under such contract, notwithstanding any contract to the contrary.

In certain cases duplicates of contract or memorandum of particulars to be supplied to borrower.

12.—(1.) Where money is or has been lent at a rate of interest exceeding Twelve pounds per centum per annum, every document executed after the commencement of this Ordinance by the borrower or a surety to evidence the contract of loan or suretyship shall be or shall have been executed in duplicate and one of such duplicates shall at the time of execution be or have been delivered by the lender to the borrower or surety or there shall be or shall have been delivered to the borrower or surety a memorandum setting out particulars of all the essential parts of the transaction.

(2.) If a lender does not comply or has not complied with the last preceding sub-section, the contract, if made for the payment of a higher rate of interest than Twelve pounds per centum per annum, shall, to the extent of the excess, be absolutely null and void:

Provided that nothing in this sub-section contained 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 knowledge or notice of any contravention of the provisions of this section, but the lender shall indemnify the borrower or surety against the payment of any higher rate of interest than Twelve per centum per annum in respect of the contract.

(3.) Nothing in this section shall apply to negotiable instruments.

Avoiding contract for payment of loan advanced during infancy.

13. If any infant, who has contracted a loan which is void or voidable in law, agrees after he comes of age to pay any money which, in whole or in part represents, or is agreed to be paid in respect of, any such loan, and is not a new advance; such agreement and any instrument, negotiable or other, given in pursuance of or for carrying into effect such agreement or otherwise in relation to the payment of money representing or in respect of such loan shall, so far as it relates to money which represents or is payable in respect of such loan, and is not a new advance, be void absolutely as against all persons whomsoever.

14. Any person who is guilty of any offence or of any contra-^{General penalty.}vention of, or of neglecting or failing or refusing to observe any of, the provisions of this Ordinance shall, where no specific penalty is provided therefor, be liable to a penalty not exceeding Fifty pounds.

15. No contract or agreement made or entered into either^{Contracting out prohibited.} before or after the commencement of this Ordinance shall operate to annul or vary or exclude any of the provisions of this Ordinance or to prevent the Court from making any order under this Ordinance.

16. The Attorney-General may make regulations, not incon-^{Regulations.}sistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance.

Dated this ninth day of April, 1936.

GOWRIE

Governor-General.

By His Excellency's Command,

THOS. C. BRENNAN

for Minister of State for the Interior.

By Authority: L. F. JOHNSTON, Commonwealth Government Printer, Canberra.