

MONEY-LENDERS AND INFANTS LOANS (AMENDMENT) BILL.

*Schedule of the Amendment referred to in Legislative Council's
Message of 29th November, 1961.*

Page 9, clause 2, line 33. *Omit "one", insert in lieu thereof "two".*

SECRET
CONFIDENTIAL

MEMORANDUM FOR THE SECRETARY OF DEFENSE

Subject: [Illegible]

Reference is made to [Illegible]

1. [Illegible]

2. [Illegible]

[Illegible text block]

[Illegible text block]

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 24 November, 1961.*

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with
an Amendment.*

J. R. STEVENSON,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 29 November, 1961.*

New South Wales



ANNO DECIMO

ELIZABETHÆ II REGINÆ

Act No. , 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.

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)

Money-lenders and Infants Loans (Amendment).

(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.

2. (1) The Money-lenders and Infants Loans Act, 1941-
5 1948, is amended— Amendment
of Act
No. 67,
1941.

(a) (i) by inserting in the definition of "Loan" in Sec. 3.
(Interpreta-
tion.)
subsection one of section three after the words
"any such loan," the words "but shall not
10 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
15 paragraph (e) of the definition of "Money-
lender" the following new paragraph :—

(ei) as from the commencement of the
20 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
25 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
30 section the word "Schedule" and by inserting
in lieu thereof the words "First Schedule";

(b)

Money-lenders and Infants Loans (Amendment).

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

New secs. 3A, 3B.

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

Hire-Purchase and Credit-sale Agreements Acts.

5 (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;

10 (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;

15 (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;

20 (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.

25 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 circumstances.

30 (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;

(c)

Money-lenders and Infants Loans (Amendment).

- 5 (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;
- 10 (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
- 15 of the loan upon overdrafts by the Commonwealth Trading Bank of Australia.

20 (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

25 and in respect of such loans, contracts, securities or guarantees.

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

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

(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—

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

(b)

Money-lenders and Infants Loans (Amendment).

- 5 (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.
- 10 (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.)
- 15 (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.)
- 20 (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.)
- 25 (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”;
- 30 (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.)
- 35 (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.)

(i)

Money-lenders and Infants Loans (Amendment).

- (i) (i) by omitting from subsection two of section twenty the words "or police magistrate"; Sec. 20.
(Jurisdiction of court of petty sessions in money-lending transactions.)
- (ii) by omitting from the same subsection the words "two hundred and fifty" and by inserting in lieu thereof the words "five hundred";
- (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,"; Sec. 22.
(Form of money-lenders' contracts.)
- (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;
 - (iii)

Money-lenders and Infants Loans (Amendment).

- (iii) by inserting in the same subsection after the words "that the note or memorandum" the words "or the document";
- 5 (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.
- 10 (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";
- 15 (vi) by omitting from the same subparagraph the word "Schedule" and by inserting in lieu thereof the words "First Schedule";
- 20 (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";
- 25 (viii) (a) by inserting in subsection four of the same section after the words "note or memorandum" the words "or document";
- 30 (b) by inserting in the same subsection after the words "note, memorandum" wherever occurring the word "document";
- 35 (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 one of section twenty-three after the word "Act" the words "or the document referred to in that section relating to the security";

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

Money-lenders and Infants Loans (Amendment).

- (ii) by inserting next after the same paragraph the following new paragraph :—
- 5 (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
- 10 the borrower; or;
- (iii) by inserting next after paragraph (a) of subsection two of the same section the following new paragraph :—
- 15 (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;
- 20 (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.”;
- 25
- (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”;
- 30 Sec. 26.
(Restrictions on money-lending advertisements.)
- (ii) by omitting from the same section the word “Schedule” wherever occurring and by inserting in lieu thereof the words “First Schedule”;
- 35 (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)

Money-lenders and Infants Loans (Amendment).

(m) by inserting next after section thirty the following new section :— New sec. 30A.

5 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.

10

15

 (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.

20

25

30

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

35

- (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)

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

01

01

02

02

02

02

Money-lenders and Infants Loans (Amendment).

- 5 (b) confirm or declare to be valid and enforce-
able 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;
- 10 (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
15 judgment, decree or order or without
interest and make such orders relating to
the other obligations of the guarantor as the
court deems fit;
- 20 (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
25 interest at the rate specified in the judg-
ment, decree or order or without interest
by such instalments, at such intervals or
in such amounts as the court may direct;
- 30 (e) make any further order incidental or ancil-
lary to any judgment, decree or order of
the court, or any conditions or directions
it may impose or give in relation thereto.
- 35 (4) In any proceedings referred to in sub-
section 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)

Money-lenders and Infants Loans (Amendment).

(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.)

Money-lenders and Infants Loans (Amendment).

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

- 5 (o) by omitting section 40A and by inserting in lieu thereof the following section :— Subst.
sec. 40A.

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. Power of
court to
order
delivery of
goods
unlawfully
detained.

- 10 (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, 15
20
25 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.

- 30 (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.

- (p) by omitting from section fifty-five wherever occurring the word "twenty" and by inserting in lieu thereof the word "fifty"; Sec. 55.
(Cash
orders in
excess of £50
not to be
issued.)
- (q)

Money-lenders and Infants Loans (Amendment).

(q) by inserting next after section fifty-five the following new section :— New sec. 55A.

5 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.

10 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.

15 (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.

20 (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—

25 (a) the cash order immediately before it is so varied is not unenforceable by the cash order trader, illegal or void;

30 (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;

35 (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
40 (e)

Money-lenders and Infants Loans (Amendment).

5 (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.

10 (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 :—

15

SECOND SCHEDULE.

Sec. 39.

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

NOTICE OF INTENTION TO REPOSSESS.

20

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)

25

after the expiration of*.....days from the service of this notice unless the arrears of instalments which now amount to £..... are paid to..... at.....

30

on or before.....19....

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

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

Money-lenders and Infants Loans (Amendment).

(2) The amendment made by subparagraph (i) of 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.

5 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 10 Offences Act, 1901-1961.

Sydney: V. C. N. Blight, Government Printer—1961

[1s. 6d.]

THE BOARD OF DIRECTORS OF THE

AMERICAN ASSOCIATION OF UNIVERSITY TEACHERS

RESOLUTION NO. 1001

ADOPTED AT THE ANNUAL MEETING HELD AT THE UNIVERSITY OF CALIFORNIA, BERKELEY, CALIFORNIA, ON MAY 15, 1951

WHEREAS the Board of Directors of the American Association of University Teachers has considered the report of the Committee on the Proposed Amendment to the Constitution of the Association;

AMENDMENT

Article I

Section 1

Section 2

Approved by the Board of Directors on May 15, 1951

AMERICAN ASSOCIATION OF UNIVERSITY TEACHERS

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 24 November, 1961.*

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with
an Amendment.*

Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, November, 1961.*

New South Wales



ANNO DECIMO

ELIZABETHÆ II REGINÆ

Act No. , 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.

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)

Money-lenders and Infants Loans (Amendment).

(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.

2. (1) The Money-lenders and Infants Loans Act, 1941-
5 1948, is amended— Amendment of Act No. 67, 1941.

- (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,"; Sec. 3. (Interpretation.)
- 10
- (ii) by inserting in the same subsection next after paragraph (e) of the definition of "Money-lender" the following new paragraph :—
- 15
- (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;
- 20
- 25
- (iii) by omitting from subsection three of the same section the word "Schedule" and by inserting in lieu thereof the words "First Schedule";
- 30

(b)

Money-lenders and Infants Loans (Amendment).

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

New secs.
3A, 3B.

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

Hire-
Purchase and
Credit-sale
Agreements
Acts.

5

(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;

10

(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;

15

(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;

20

(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.

25

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.

30

(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;

(c)

Money-lenders and Infants Loans (Amendment).

- 5 (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;
- 10 (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.
- 15

20 (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.

25

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

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

(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—

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

(b)

Money-lenders and Infants Loans (Amendment).

- 5 (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.
- 10 (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.)
- 15 (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.)
- 20 (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.)
- 25 (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”; Sec. 10. (Notice of applications to be given by clerk of court.)
- 30 (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. 11. (Objections to applications.)
- 35 (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.)

(i)

Money-lenders and Infants Loans (Amendment).

- (i) (i) by omitting from subsection two of section twenty the words "or police magistrate"; (i) (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 from the same subsection the words "two hundred and fifty" and by inserting in lieu thereof the words "five hundred";
- (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;
- (iii)

Money-lenders and Infants Loans (Amendment).

- (iii) by inserting in the same subsection after the words "that the note or memorandum" the words "or the document";
- 5 (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.
- 10 (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";
- 15 (vi) by omitting from the same subparagraph the word "Schedule" and by inserting in lieu thereof the words "First Schedule";
- 20 (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";
- 25 (viii) (a) by inserting in subsection four of the same section after the words "note or memorandum" the words "or document";
- 30 (b) by inserting in the same subsection after the words "note, memorandum" wherever occurring the word ", document";
- 35 (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) (Regulation of loans to and guarantees by married persons.)

Money-lenders and Infants Loans (Amendment).

- (ii) by inserting next after the same paragraph the following new paragraph :—
- 5 (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;
- 10 (iii) by inserting next after paragraph (a) of subsection two of the same section the following new paragraph :—
- 15 (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;
- 20 (iv) (a) by omitting from subsection five of the same section the word “ten” and by inserting in lieu thereof the word “fifty”;
- 25 (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.”;
- 30 (l) (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”;
- 35 (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)

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

Money-lenders and Infants Loans (Amendment).

(m) by inserting next after section thirty the following new section :—

New sec. 30A.

5 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 unenforceable money-lending transactions to be legal and enforceable.

10 (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.

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

20 (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)

Money-lenders and Infants Loans (Amendment).

- 5 (b) confirm or declare to be valid and enforce-
able 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;
- 10 (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
15 judgment, decree or order or without
interest and make such orders relating to
the other obligations of the guarantor as the
court deems fit;
- 20 (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
25 interest at the rate specified in the judg-
ment, decree or order or without interest
by such instalments, at such intervals or
in such amounts as the court may direct;
- 30 (e) make any further order incidental or ancil-
lary to any judgment, decree or order of
the court, or any conditions or directions
it may impose or give in relation thereto.

35 (4) In any proceedings referred to in sub-
section 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)

Money-lenders and Infants Loans (Amendment).

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
 10 bankruptcy) exercise the like powers as may be
 exercised in any proceedings referred to in sub-
 section two of this section, and the court shall
 have power, notwithstanding any provision or con-
 15 tract to the contrary, to entertain any such applica-
 tion, notwithstanding that the time for repayment
 of the loan or any instalment thereof has not
 arrived.

15 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
 20 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:—

Sec. 39.
 (Limitation
 on right of
 money-
 lender to
 seize and sell
 certain
 chattels
 under a bill
 of sale.)

25 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
 30 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
 35 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

Money-lenders and Infants Loans (Amendment).

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

- 5 (o) by omitting section 40A and by inserting in lieu thereof the following section : — Subst.
sec. 40A.

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. Power of
court to
order
delivery of
goods
unlawfully
detained.

- 10 (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.
- 15
- 20
- 25

- 30 (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.

- (p) by omitting from section fifty-five wherever occurring the word "twenty" and by inserting in lieu thereof the word "fifty"; Sec. 55.
(Cash
orders in
excess of £50
not to be
issued.)
- (q)

Money-lenders and Infants Loans (Amendment).

(q) by inserting next after section fifty-five the following new section :— New sec.
55A.

5 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.

10 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.

15 (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.

20 (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—

25 (a) the cash order immediately before it is so varied is not unenforceable by the cash order trader, illegal or void;

30 (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;

35 (c) the cash order when so varied also specifies the balance payable immediately before it was so varied;

40 (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)

Money-lenders and Infants Loans (Amendment).

5 (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.

10 (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 :—

15 SECOND SCHEDULE. Sec. 39.

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

NOTICE OF INTENTION TO REPOSSESS.

20 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)

25 after the expiration of*.....days from the service of this notice unless the arrears of instalments which now amount to £..... are paid to.....

30 at..... on or before.....19....

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

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

Money-lenders and Infants Loans (Amendment).

(2) The amendment made by subparagraph (i) of 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.

5 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
10 Offences Act, 1901-1961.

Money-lenders and Pawnshops (Amendment)

(2) The amendment made by subparagraph (1) of paragraph (a) of subsection one of the section shall be deemed to have commenced upon the first day of January, one thousand nine hundred and forty-two.

1. (1) The Police Officers Act, 1901, as amended by subsection one of section thirty-two of the Police Officers Act, 1901, as amended by subsection seven of Act No. 1901.

Order in
the
to the
of such
registered
detained

(2) The Police Officers Act, 1901, as amended by subsection one of the Act, may be cited as the Police Officers Act, 1901-1901.

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 24 November, 1961.*

New South Wales



ANNO DECIMO

ELIZABETHÆ II REGINÆ

Act No. , 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.

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)

Money-lenders and Infants Loans (Amendment).

(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.

2. (1) The Money-lenders and Infants Loans Act, 1941-
5 1948, is amended— Amendment
of Act
No. 67,
1941.

(a) (i) by inserting in the definition of "Loan" in Sec. 3.
(Interpreta-
tion.)
subsection one of section three after the words
"any such loan," the words "but shall not
include any bona fide transaction entered into
10 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,";

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

20 (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
25 for such debentures made in a form
issued with a prospectus as required
by any law relating to companies; or;

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

(b)

Money-lenders and Infants Loans (Amendment).

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

New secs. 3A, 3B.

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

Hire-Purchase and Credit-sale Agreements Acts.

5

(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;

10

(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;

15

(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;

20

(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.

25

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 circumstances.

30

(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;

(c)

Money-lenders and Infants Loans (Amendment).

5 (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;

10 (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
15 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
20 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
25 and in respect of such loans, contracts, securities or guarantees.

30 (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—

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

(b)

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

Money-lenders and Infants Loans (Amendment).

- 5 (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.
- 10 (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.)
- 15 (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.)
- 20 (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.)
- 25 (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”;
- 30 (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.)
- 35 (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.)

(i)

Money-lenders and Infants Loans (Amendment).

- (i) (i) by omitting from subsection two of section twenty the words "or police magistrate"; Sec. 20. (Jurisdiction of court of
 - (ii) by omitting from the same subsection the words "two hundred and fifty" and by inserting in lieu thereof the words "five hundred"; petty sessions in money-lending transactions.)
 - (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,"; Sec. 22. (Form of money-lenders' contracts.)
 - (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;
- (iii)

Money-lenders and Infants Loans (Amendment).

- (iii) by inserting in the same subsection after the words "that the note or memorandum" the words "or the document";
- 5 (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
 10 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
 15 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";
- 20 (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";
- 25 (viii) (a) by inserting in subsection four of the same section after the words "note or memorandum" the words "or document";
- 30 (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
 35 "Act" the words "or the document referred to in that section relating to the security";
 (ii) Sec. 23.
 (Regulation of loans to and guarantees by married persons.)

Money-lenders and Infants Loans (Amendment).

- (ii) by inserting next after the same paragraph the following new paragraph :—
- 5 (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;
- 10 (iii) by inserting next after paragraph (a) of subsection two of the same section the following new paragraph :—
- 15 (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;
- 20 (iv) (a) by omitting from subsection five of the same section the word “ten” and by inserting in lieu thereof the word “fifty”;
- 25 (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.”;
- 30 (l) (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”;
- 35 (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)
- Sec. 26. (Restrictions on money-lending advertisements.)

Money-lenders and Infants Loans (Amendment).

(m) by inserting next after section thirty the following new section :—

New sec. 30A.

5 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 unenforceable money-lending transactions to be legal and enforceable.

10 (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.

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

20 (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)

Money-lenders and Infants Loans (Amendment).

- 5 (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;
- 10 (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;
- 15 (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;
- 20 (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.
- 25
- 30
- 35 (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)

Money-lenders and Infants Loans (Amendment).

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 sub-
 section two of this section, and the court shall
 10 have power, notwithstanding any provision or con-
 tract to the contrary, to entertain any such applica-
 tion, notwithstanding that the time for repayment
 of the loan or any instalment thereof has not
 arrived.

15 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
 20 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:—

Sec. 39.
 (Limitation
 on right of
 money-
 lender to
 seize and sell
 certain
 chattels
 under a bill
 of sale.)

25 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
 30 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
 35 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

Money-lenders and Infants Loans (Amendment).

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

- 5 (o) by omitting section 40A and by inserting in lieu thereof the following section :— Subst. sec. 40A.

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. Power of court to order delivery of goods unlawfully detained.

- 10 (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, 15 the court may order the goods to be delivered up to the grantee or holder at or before a time, 20 and at a place, to be specified in the order.

- 25 (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 30 to a penalty not exceeding two hundred pounds.

- (p) by omitting from section fifty-five wherever occurring the word "twenty" and by inserting in lieu thereof the word "fifty"; Sec. 55. (Cash orders in excess of £50 not to be issued.)
- (q)

Money-lenders and Infants Loans (Amendment).

(q) by inserting next after section fifty-five the following new section :— New sec.
55A.

5 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.

10 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.

15 (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.

20 (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—

25 (a) the cash order immediately before it is so varied is not unenforceable by the cash order trader, illegal or void;

30 (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;

35 (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
40 (e)

Money-lenders and Infants Loans (Amendment).

5 (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.

10 (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 :—

15 SECOND SCHEDULE. Sec. 39.

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

NOTICE OF INTENTION TO REPOSSESS.

20 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)

25 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....

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

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

Money-lenders and Infants Loans (Amendment).

(2) The amendment made by subparagraph (i) of 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.

5 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
10 Offences Act, 1901-1961.

Transfer of certain lands to the State

(1) The lands described in paragraph (1) of section 1901 shall be transferred to the State of Tennessee in the year 1901.

(2) The lands described in paragraph (2) of section 1901 shall be transferred to the State of Tennessee in the year 1901.

Approved by the Senate
this 12th day of
March 1901.

Approved by the House of Representatives
this 12th day of March 1901.

No. , 1961.

A BILL

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.

[MR. MANNIX;—22 November, 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)

Money-lenders and Infants Loans (Amendment).

(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.

2. (1) The Money-lenders and Infants Loans Act, 1941-
5 1948, is amended— Amendment
of Act
No. 67,
1941.

(a) (i) by inserting in the definition of "Loan" in Sec. 3.
(Interpreta-
tion.)
subsection one of section three after the words
"any such loan," the words "but shall not
10 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
15 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
20 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
25 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
30 section the word "Schedule" and by inserting
in lieu thereof the words "First Schedule";

(b)

Money-lenders and Infants Loans (Amendment).

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

New secs. 3A, 3B.

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

Hire-Purchase and Credit-sale Agreements Acts.

- 5 (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;
- 10 (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;
- 15 (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;
- 20 (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.

25 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 circumstances.

- 30 (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;

(c)

Money-lenders and Infants Loans (Amendment).

5 (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;

10 (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.

20 (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.

30 (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—

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

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

(b)

Money-lenders and Infants Loans (Amendment).

- 5 (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.
- 10 (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.)
- 15 (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.)
- 20 (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.)
- 25 (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”; Sec. 9.
- 30 (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.)
- 35 (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.)

(i)

Money-lenders and Infants Loans (Amendment).

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

Sec. 20.
(Jurisdiction of court of petty sessions in money-lending transactions.)
- 5 (ii) by omitting from the same subsection the words "two hundred and fifty" and by inserting in lieu thereof the words "five hundred";
- 10 (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,";

Sec. 22.
(Form of money-lenders' contracts.)
- 15 (ii) by omitting paragraph (b) of the same subsection and by inserting in lieu thereof the following paragraph :—

 - 20 (b) a copy—

 - (i) of such note or memorandum;
or
 - 25 (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;

35 (iii)

Money-lenders and Infants Loans (Amendment).

- (iii) by inserting in the same subsection after the words "that the note or memorandum" the words "or the document";
- 5 (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.
- 10 (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";
- 15 (vi) by omitting from the same subparagraph the word "Schedule" and by inserting in lieu thereof the words "First Schedule";
- 20 (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";
- 25 (viii) (a) by inserting in subsection four of the same section after the words "note or memorandum" the words "or document";
- 30 (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";
- 35 (ii) Sec. 23. (Regulation of loans to and guarantees by married persons.)

Money-lenders and Infants Loans (Amendment).

- (ii) by inserting next after the same paragraph the following new paragraph :—
- 5 (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;
- 10 (iii) by inserting next after paragraph (a) of subsection two of the same section the following new paragraph :—
- 15 (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;
- 20 (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.”;
- 25 (l) (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”;
- 30 (ii) by omitting from the same section the word “Schedule” wherever occurring and by inserting in lieu thereof the words “First Schedule”;
- 35 (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)

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

Money-lenders and Infants Loans (Amendment).

(m) by inserting next after section thirty the following new section :— New sec. 30A.

5 30A. (1) The provisions of this section shall apply to any loan and any transaction which, what-
ever 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
10 the Money-lenders and Infants Loans (Amend-
ment) 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
15 executed before such commencement.

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

20 (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
25 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
30 conditions and give such directions as it may
consider just and equitable.

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

(a) exercise in relation to any loan or trans-
action 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)

Money-lenders and Infants Loans (Amendment).

- 5 (b) confirm or declare to be valid and enforce-
able 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;
- 10 (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
15 judgment, decree or order or without
interest and make such orders relating to
the other obligations of the guarantor as the
court deems fit;
- 20 (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 judg-
25 ment, decree or order or without interest
by such instalments, at such intervals or
in such amounts as the court may direct;
- 30 (e) make any further order incidental or ancil-
lary to any judgment, decree or order of
the court, or any conditions or directions
it may impose or give in relation thereto.

35 (4) In any proceedings referred to in sub-
section 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)

Money-lenders and Infants Loans (Amendment).

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 sub-
 section two of this section, and the court shall
 10 have power, notwithstanding any provision or con-
 tract to the contrary, to entertain any such applica-
 tion, notwithstanding that the time for repayment
 of the loan or any instalment thereof has not
 arrived.

15 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
 20 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 : —

Sec. 39.
 (Limitation
 on right of
 money-
 lender to
 seize and sell
 certain
 chattels
 under a bill
 of sale.)

25 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
 30 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
 35 sale, served on the grantor a notice in writing in
 or to the effect of the form of the Second Schedule
 and

Money-lenders and Infants Loans (Amendment).

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

- 5 (o) by omitting section 40A and by inserting in lieu thereof the following section :— Subst.
sec. 40A.
- 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. Power of
court to
order
delivery of
goods
unlawfully
detained.
- 10 (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,
- 15 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
- 20 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,
- 25 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
- 30 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.
- (p) by omitting from section fifty-five wherever occurring the word "twenty" and by inserting in lieu thereof the word "fifty"; Sec. 55.
(Cash
orders in
excess of £50
not to be
issued.)
- (q)

Money-lenders and Infants Loans (Amendment).

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

New sec.
55A.

5 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.

10 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.

15 (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.

20 (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—

25 (a) the cash order immediately before it is so varied is not unenforceable by the cash order trader, illegal or void;

30 (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;

35 (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

40 (e)

Money-lenders and Infants Loans (Amendment).

5 (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.

10 (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 :—

15

SECOND SCHEDULE.

Sec. 39.

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

NOTICE OF INTENTION TO REPOSSESS.

20

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)

25

after the expiration of*.....days from the service of this notice unless the arrears of instalments which now amount to £..... are paid to..... at.....

30

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

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

Money-lenders and Infants Loans (Amendment).

(2) The amendment made by subparagraph (i) of 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.

5 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.)

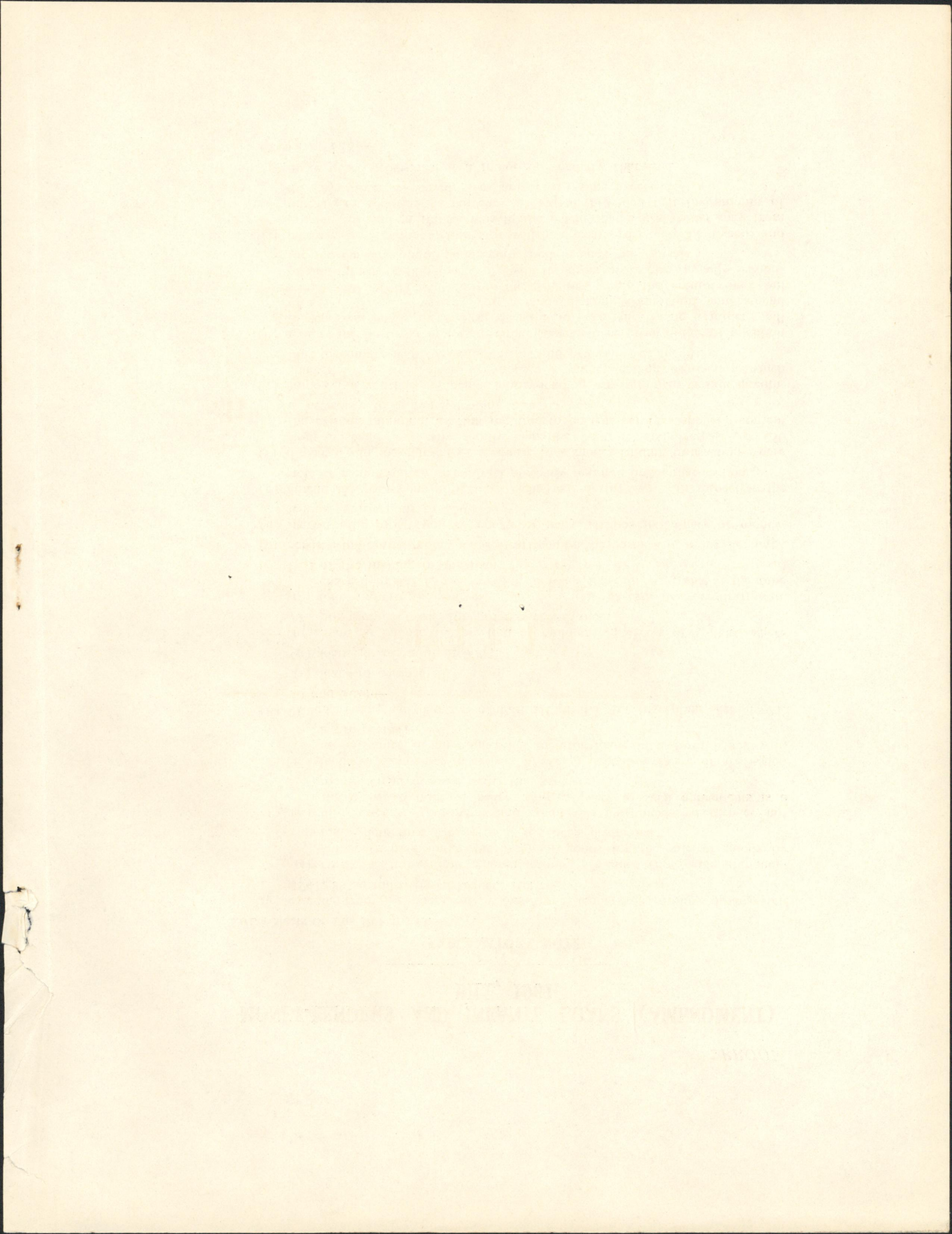
(2) The Police Offences Act, 1901, as amended by subsequent Acts and by this Act, may be cited as the Police
10 Offences Act, 1901-1961.

**MONEY-LENDERS AND INFANTS LOANS (AMENDMENT)
BILL, 1961.**

EXPLANATORY NOTE.

THE objects of this Bill are to:—

- (a) exclude from the operation of the Money-lenders and Infants Loans Act, 1941, as amended by subsequent Acts:—
 - (i) bona fide transactions entered into by a vendor (not being a money-lender licensed under the Act) of goods for the sale of goods by him where time for payment has been postponed;
 - (ii) hire purchase agreements and credit sale agreements whether or not the owner, vendor or seller being a party to such agreements is a money-lender licensed under the Act;
 - (iii) loans to companies in respect of which debentures were or are issued in pursuance of an application therefor made in a form issued with a prospectus;
- (b) exclude from the operation of Part III of the Act (excepting sections 21, 30 and 30A)—
 - (i) loans to companies;
 - (ii) loans in excess of £5,000;
 - (iii) loans to finance the erection of buildings in excess of £5,000, where provision is made for progressive advances;
 - (iv) loans where the interest rate does not exceed the overdraft rate charged by the Commonwealth Trading Bank of Australia at the time of the making of the loan;
- (c) penalise unlicensed money-lenders carrying on the business of money-lending;
- (d) increase the jurisdiction of courts of petty sessions in respect of money-lending transactions to £500;
- (e) amend the provisions of section twenty-two of the Act with respect to the note or memorandum of contract presently required under that section;
- (f) dispense with the consent of a spouse to a money-lending transaction where both husband and wife jointly sign the contract and increase to £50 the existing minimum amount required to be lent before a spouse's consent is necessary to a money-lending transaction;
- (g) empower a court to re-open a money-lending transaction in certain circumstances so as to confirm or validate a money-lending transaction which fails to comply with the requirements and provisions of the Act;
- (h) require the borrower in certain circumstances to be given notice of intention to repossess goods the subject of a bill of sale (not being a trader's bill of sale) given as security for a money-lending transaction, and amend section 40A of the Act to provide penalties where the grantor of a bill of sale refuses or fails to comply with the order of a court of petty sessions for the delivery up of goods comprised in such bill of sale;
- (i) increase to £50 the amount for which a cash order may be issued, and provide for add-on transactions to the extent that a cash order may from time to time during its currency be varied, provided that the amount of the cash order as varied, does not at any time exceed £50;
- (j) make other provisions of a minor or ancillary character.



PROOF

No. , 1961.

A BILL

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.

[Mr. MANNIX;—22 November, 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)

Money-lenders and Infants Loans (Amendment).

(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.

2. (1) The Money-lenders and Infants Loans Act, 1941-
5 1948, is amended— Amendment
of Act
No. 67,
1941.

(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,"; Sec. 3
(Interpretation.)

(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)

Money-lenders and Infants Loans (Amendment).

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

New secs.
3A, 3B.

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

Hire-
Purchase and
Credit-sale
Agreements
Acts.

5 (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;

10 (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;

15 (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;

20 (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.

25 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.

30 (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;

(c)

Money-lenders and Infants Loans (Amendment).

5 (c) a loan to any person pursuant to an agree-
ment to finance the erection of buildings
to an amount in excess of five thousand
pounds, or where a greater amount is pre-
scribed, 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;

10 (d) a loan where the rate per centum per
annum represented by any interest charged
as calculated in accordance with the pro-
visions of the First Schedule does not
exceed the rate of interest per centum per
annum charged at the date of the making
15 of the loan upon overdrafts by the
Commonwealth Trading Bank of Australia.

20 (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 notwith-
25 standing 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.

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

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

(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—

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

(b)

Money-lenders and Infants Loans (Amendment).

- 5 (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.
- 10 (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 license upon the establishment of”;
Sec. 5. (Applications for licences.)
- 15 (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.)
- 20 (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.)
- 25 (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”;
- 30 (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.)
- 35 (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.)

(i)

Money-lenders and Infants Loans (Amendment).

- (i) (i) by omitting from subsection two of section twenty the words "or police magistrate"; Sec. 20. (Jurisdiction of court of petty sessions in money-lending transactions.)
- 5 (ii) by omitting from the same subsection the words "two hundred and fifty" and by inserting in lieu thereof the words "five hundred";
- (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,"; Sec. 22. (Form of money-lenders' contracts.)
- 10 (ii) by omitting paragraph (b) of the same subsection and by inserting in lieu thereof the following paragraph : —
- 15 (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,
- 20 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;
- 25 (iii)
- 30
- 35

Money-lenders and Infants Loans (Amendment).

- (iii) by inserting in the same subsection after the words "that the note or memorandum" the words "or the document";
- 5 (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.
- 10 (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";
- 15 (vi) by omitting from the same subparagraph the word "Schedule" and by inserting in lieu thereof the words "First Schedule";
- 20 (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";
- 25 (viii) (a) by inserting in subsection four of the same section after the words "note or memorandum" the words "or document";
- 30 (b) by inserting in the same subsection after the words "note, memorandum" wherever occurring the word "document";
- 35 (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";
- Sec. 23.
(Regulation of loans to and guarantees by married persons.)

Money-lenders and Infants Loans (Amendment).

- (ii) by inserting next after the same paragraph the following new paragraph :—
- 5 (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;
- 10 (iii) by inserting next after paragraph (a) of subsection two of the same section the following new paragraph :—
- 15 (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;
- 20 (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.”;
- 25 (l) (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”;
- 30 (Restrictions on money-lending advertisements.)
- (ii) by omitting from the same section the word “Schedule” wherever occurring and by inserting in lieu thereof the words “First Schedule”;
- 35 (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)

Money-lenders and Infants Loans (Amendment).

(m) by inserting next after section thirty the following new section :— New sec.
30A.

5 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.

10 (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.

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

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

(b)

Money-lenders and Infants Loans (Amendment).

- 5 (b) confirm or declare to be valid and enforce-
able 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;
- 10 (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
15 judgment, decree or order or without
interest and make such orders relating to
the other obligations of the guarantor as the
court deems fit;
- 20 (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
25 interest at the rate specified in the judg-
ment, decree or order or without interest
by such instalments, at such intervals or
in such amounts as the court may direct;
- 30 (e) make any further order incidental or ancil-
lary to any judgment, decree or order of
the court, or any conditions or directions
it may impose or give in relation thereto.
- 35 (4) In any proceedings referred to in sub-
section 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)

Money-lenders and Infants Loans (Amendment).

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 sub-
 section two of this section, and the court shall
 10 have power, notwithstanding any provision or con-
 tract to the contrary, to entertain any such applica-
 tion, notwithstanding that the time for repayment
 of the loan or any instalment thereof has not
 arrived.

15 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
 20 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:—

Sec. 39.
 (Limitation
 on right of
 money-
 lender to
 seize and sell
 certain
 chattels
 under a bill
 of sale.)

25 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
 30 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
 35 sale, served on the grantor a notice in writing in
 or to the effect of the form of the Second Schedule
 and

Money-lenders and Infants Loans (Amendment).

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

- 5 (o) by omitting section 40A and by inserting in lieu thereof the following section : — Subst.
sec. 40A.

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. Power of
court to
order
delivery of
goods
unlawfully
detained.

- 10 (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.
- 15
- 20
- 25

- 30 (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.

- (p) by omitting from section fifty-five wherever occurring the word "twenty" and by inserting in lieu thereof the word "fifty"; Sec. 55.
(Cash
orders in
excess of £50
not to be
issued.)
- (q)

Money-lenders and Infants Loans (Amendment).

(q) by inserting next after section fifty-five the following new section :— New sec.
55A.

5 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.

10 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.

15 (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.

20 (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—

25 (a) the cash order immediately before it is so varied is not unenforceable by the cash order trader, illegal or void;

30 (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;

35 (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
40 (e)

Money-lenders and Infants Loans (Amendment).

5 (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.

- 10 (r) (i) by omitting from the Schedule the word Schedule. "SCHEDULE" and by inserting in lieu thereof the words "FIRST SCHEDULE";
(ii) by inserting next after the First Schedule the following new Schedule :—

15 SECOND SCHEDULE. Sec. 39.

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

NOTICE OF INTENTION TO REPOSSESS.

20 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)

25 after the expiration of*.....days from the service of this notice unless the arrears of instalments which now amount to £..... are paid to.....
at.....

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

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

Money-lenders and Infants Loans (Amendment).

(2) The amendment made by subparagraph (i) of 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.

5 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
10 Offences Act, 1901-1961.

1. The Government will be authorized to...
 2. The Government will be authorized to...
 3. The Government will be authorized to...

4. The Government will be authorized to...
 5. The Government will be authorized to...

Approved by
 Secretary of War
 1931

6. The Government will be authorized to...
 7. The Government will be authorized to...

New South Wales



ANNO DECIMO

ELIZABETHÆ II REGINÆ

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. [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)

Money-lenders and Infants Loans (Amendment).

(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)

Money-lenders and Infants Loans (Amendment).

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

New secs.
3A, 3B.

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

Hire-Purchase and
Credit-sale
Agreements
Acts.

(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;

(c)

Money-lenders and Infants Loans (Amendment).

- (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.

- (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)

Sec. 4.

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

Money-lenders and Infants Loans (Amendment).

- (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.
- (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.)

(i)

Money-lenders and Infants Loans (Amendment).

Sec. 20.
(Jurisdiction
of court of
petty
sessions in
money-
lending
transac-
tions.)

- (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;

(iii)

Money-lenders and Infants Loans (Amendment).

(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)

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

Money-lenders and Infants Loans (Amendment).

(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.”;

(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)

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

Money-lenders and Infants Loans (Amendment).

(m) by inserting next after section thirty the following 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)

Money-lenders and Infants Loans (Amendment).

- (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.

(d)

(5)

Money-lenders and Infants Loans (Amendment).

(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.)

Money-lenders and Infants Loans (Amendment).

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)

Money-lenders and Infants Loans (Amendment).

(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)

Money-lenders and Infants Loans (Amendment).

(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.

Money-lenders and Infants Loans (Amendment).

(2) The amendment made by subparagraph (i) of 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.

By Authority:

V. C. N. BLIGHT, Government Printer, Sydney, 1962

Monetary and Finance (continued)

(i) of the amendment made by paragraph (i) of section 10 of the Act shall be deemed to have commenced on the first day of January, 1901.

(ii) The Act No. 501, 1901, as amended by section 10 of the Act No. 501, 1901, shall be deemed to have commenced on the first day of January, 1901.

(iii) The Act No. 501, 1901, as amended by section 10 of the Act No. 501, 1901, shall be deemed to have commenced on the first day of January, 1901.

(iv) The Act No. 501, 1901, as amended by section 10 of the Act No. 501, 1901, shall be deemed to have commenced on the first day of January, 1901.

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 29 November, 1961.*

New South Wales



ANNO DECIMO

ELIZABETHÆ II REGINÆ

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. [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)

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

HOWARD T. FOWLES,
Chairman of Committees of the Legislative Assembly.

Money-lenders and Infants Loans (Amendment).

(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.
(Interpretation.)

(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)

Money-lenders and Infants Loans (Amendment).

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

New secs.
3A, 3B.

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

Hire-
Purchase and
Credit-sale
Agreements
Acts.

- (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;

(c)

Money-lenders and Infants Loans (Amendment).

- (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)

Money-lenders and Infants Loans (Amendment).

- (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.
- (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.)

(i)

Money-lenders and Infants Loans (Amendment).

Sec. 20.
(Jurisdiction
of court of
petty
sessions in
money-
lending
transac-
tions.)

- (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;

(iii)

Money-lenders and Infants Loans (Amendment).

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

Money-lenders and Infants Loans (Amendment).

(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.)

(l) (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)

Money-lenders and Infants Loans (Amendment).

- (m) by inserting next after section thirty the following 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)

Money-lenders and Infants Loans (Amendment).

- (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)

Money-lenders and Infants Loans (Amendment).

(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:—

Sec. 39.
(Limitation
on right of
money-
lender to
seize and sell
certain
chattels
under a bill
of sale.)

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

Money-lenders and Infants Loans (Amendment).

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

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

(q)

Money-lenders and Infants Loans (Amendment).

- (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)

Money-lenders and Infants Loans (Amendment).

(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.

Money-lenders and Infants Loans (Amendment).

(2) The amendment made by subparagraph (i) of 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.

*In the name and on behalf of Her Majesty I assent to
this Act.*

E. W. WOODWARD,
Governor.

*Government House,
Sydney, 7th December, 1961.*

1901

...

...

...

...

E. W. WOODWARD

...

...