

QUEENSLAND

A REPORT OF THE LAW REFORM COMMISSION

ON A BILL TO CONSOLIDATE AND AMEND  
THE LAW RELATING TO  
MONEY LENDING

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Q.L.R.C. 13



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Money Lending

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To the Honourable W. E. Knox, M. L. A.,  
Minister for Justice and Attorney-General,  
BRISBANE.

Item 3 in Part A of the approved programme of the Law  
Reform Commission requires the Commission:-

"To examine the law relating to money lending with  
a view to preparing an improved and modern Money  
Lenders Act."

The enclosed draft Bill and Commentary represent the  
recommendations of the Law Reform Commission on this subject.

A working paper on this matter has been circulated to  
persons and bodies believed to be interested from whom comment  
was invited. A number of suggestions and recommendations  
received in answer thereto have been embodied in the draft Bill.

W. B. Campbell (Chairman)

J. H. McKersso (Member)

[Signature] (Member)

24 APR 1972  
BRISBANE.

## COMMENTARY

The business of money lending and the status of the money lender have not always been regarded in the eyes of the law and of the community in the same benign light as they are today.

As Dr. Clifford L. Pannam of the University of Melbourne Law School in a memorandum to the Attorney-General of Victoria in 1966 expressively commented: "the Money Lenders legislation of today throughout Australia bears the scars of a long and often painful history. Furthermore it is very important to remind ourselves of this history in considering any major revision of such legislation."

In England under the early medieval common law it was unlawful for any Christian to charge interest on a loan of money. Not only was it unlawful but it was sinful in the eyes of the Church and punishable also by that then very powerful authority. Any person who charged interest on a loan of money was classed a usurer and his trade considered utterly disreputable. Only the Jews, under Royal protection, were permitted to charge interest on a loan of money, and by the end of the thirteenth century even they were forbidden to do this and expelled from the Kingdom.

However, notwithstanding the severe penalties imposed, both legal and spiritual, throughout the Middle Ages various ways were found to circumvent the law, and eventually in the sixteenth century, inability to enforce the prohibition against money lending was tacitly admitted when it was enacted that interest up to 10% could be charged on a loan of money.

From time to time, throughout the following centuries, various laws were passed in an endeavour to control the rates of interest a money lender was permitted to charge; and, as well might be expected, numerous ingenious devices were employed by those engaged in the practice to escape the consequences of the law.

Ultimately, by the Usury Laws Repeal Act 1854, all existing laws against usury were repealed and from then until the passing of the English Money-Lenders Act 1900, there were no controls in England on interest rates or on the lending of money generally. The only protection that remained was that provided by the Court of Chancery.

In 1897 a Select Committee of the House of Commons was appointed to inquire into "the alleged evils attendant upon the system of money-lending by professional money-lenders, at high rates of interest, or under oppressive conditions as to repayment."

The immediate consequence of the report of this Committee was the passing of the Money-Lenders Act 1900, in which the legislature not only recognised money lending as an important factor in the commercial life of the community, but also, by inter alia fixing the maximum rate of interest which could be charged in relation to any money lending transaction, attempted to regulate such business within certain definite confines.

It was the English Money-Lenders Act 1900, together with the amending Act of 1927, which forms the basis of all existing legislation in Australia and New Zealand. As Dr. Pannam remarks in The Law of Money Lenders in Australia and New Zealand, each jurisdiction took as much or as little as it wanted from the English models and from time

to time introduced amendments as particular problems arose. The result is that the various statutes are now very dissimilar both in form and operation.

Dr. Pannam's book is an analysis of these differences and, because of this, it is also an argument for a uniform Money Lenders Act. As he says:-

"An analysis of the present differences leads inevitably to the question of why they should exist. This is a subject that could well be taken up by the Standing Committee of the Commonwealth and State Attorneys-General which seems to have become the focal point of the uniform law movement in Australia".

With the passage of time and the evolution of business methods as we know them today, it has become increasingly apparent that the existing legislation is in urgent need of extensive overhaul to enable it to cope adequately with the present day attitude towards the lending of money and with business procedures generally. Whether it be for the purchase of a matrimonial home, the family car, or consumer credit for the purchase of goods, modern society regards the lending and borrowing of money as part of the normal way of life. The outlook of the whole community on the question of money lending and the borrowing of money has changed completely even in our own lifetime. Our parents prided themselves on owning their own home. Today in many parts of the western world a credit rating is one of an individual's most cherished assets.

Likewise, the bodies involved in the business of lending money have completely changed character. In Australia the trading banks now control most of the finance corporations, whilst in the field of consumer credit many of the large department stores finance their own terms sales, or instalment credit sales, as they have come to be called, by way of a modified form of hire purchase. As regards the latter, the Commission can see no good reason why such devices (which in reality are only a variation of the old lay-by system) should be brought within the scope of the proposed legislation.

Prior to formulating the accompanying recommendations, the Commission first had to determine whether the present basis on which money lending was controlled is the appropriate one, and if not whether any and what new approach should be adopted. Should the proposed legislation be restricted to money lending in the "traditional" sense, or should the ambit of the Act be extended to give a measure of protection to a wider range of persons than those at the present time sheltered by the umbrella of the existing statutes? Bearing in mind the recent changes in social conditions, should all the existing restraints be retained; if not, to what extent?

In addition to deriving considerable assistance from Dr. Pannam's The Law of Money Lenders in Australia and New Zealand and also his 1966 Memorandum of Advice to the Victorian Attorney-General, consideration has been given to the Rogerson Report and to a number of representations and suggestions made from time to time by interested bodies, e. g. The Australian Finance Conference. Some of the latter were made directly to the Attorney-General for Queensland, others to the Chairman of this Commission. In addition the existing United Kingdom and all Australian legislation were considered, together with the New Zealand Act.

A feature of the various representations was the wide divergence in the points of view advanced. Whilst there was agreement that the existing legislation was out of step with modern conditions and was urgently in need of reform, there was considerable lack of unanimity as to the nature and extent of the reforms required.

The entry of banking and financial institutions into the money lending field in recent years has raised its own problems, particularly whether such institutions are subject to the existing legislation, and if so, to what extent.

Although the Commission does not agree with the suggestion that loans made by banks or insurance companies should be the subject of control by means of money lending legislation, it supports the view that any such further legislation, particularly if it is to be uniform throughout Australia, should have a purpose and a coherent policy.

In Dr. Pannam's opinion that policy should be as follows -

"The Act should be designed to protect persons who borrow money. It should also protect them against misleading advertisements and being given a false impression of the agreements they enter into. It should protect them against harsh conduct on the part of the money lender if they fall into default. It should also give the Courts a general jurisdiction to re-open agreements where the interest is excessive or there has been any unfair advantage taken by the money lender.

On the other hand the Act should recognise that money lending is a legitimate and necessary business and that it is wrong to treat it as some sort of sordid trade. Technical breaches of the Act should not be treated as automatically invalidating the whole or part of the loan agreement. Furthermore, the business should not be unduly hampered by controls that are just not appropriate in the modern business community."

Money lending today affects all sections of the community and not an isolated segment as was the case in earlier times. Consequently, whilst conceding that the existing laws should in certain respects be relaxed, the Commission believes that some restraints are still necessary, both to regulate the lending of money by defining the rights and obligations of lender and borrower, and also to ensure that the unwary or perhaps even foolhardy borrower is safeguarded from the unscrupulous or rapacious money lender.

The Uniform Draft Bill prepared following the meeting of the Standing Committee of Attorneys-General in 1962 has been adopted by the Commission as a basis for the enclosed draft, particularly in regard to the licensing of money lenders, the regulation of money lending transactions, the documentation of transactions and the amount of penalties. However, the present draft departs in a number of other respects from the Uniform Bill.

The Commission has endeavoured to confine the restrictions upon money lending business within narrower limits than those which exist under present legislation. Nevertheless, the Bill does propose the imposition, upon the activities of those who engage in money lending, of some fairly stringent restrictions which, in the opinion of the Commission, are made necessary by the very nature of the business of money lending.

## SPECIFIC CLAUSES OF THE BILL

No maximum rate of interest has been fixed in the Bill itself and provision is made for this to be prescribed by regulation. Although this may result in different rates of interest applying from time to time in various States, the Commission considers this reasonable in view of the varying economic conditions which might prevail.

1. Short title, commencement and division into Parts.
2. Repeal and savings. There are normal introductory clauses.
3. Interpretation. Compared with existing legislation the two most important changes are in the definitions of (a) "interest rate" and (b) "money lender".

(a) Many of the problems and misunderstandings associated with money lending transactions have been caused by the inability of borrowers to comprehend fully, or sometimes even to ascertain, what is the true and effective rate of interest applicable to a particular loan. Furthermore, disclosure of the true and effective rate of interest will enable a prospective borrower to compare the credit costs implicit in the various forms of credit which may be available to him. As the United States Consumer Credit Protection Act 1968 states "the informed use of credit results from an awareness of the cost thereof by consumers".

Interest should be calculated only on the unpaid balance of principal. Obviously a statutory rate of interest per centum per annum is exceeded when interest at that rate is calculated on the original principal of a loan for its full duration and the total of the two amounts divided up into periodical repayments of both principal and interest - cf. the remarks of Dr. Pannam in "The Calculation of Interest at a Rate 'per cent per annum'", vol. 40 (1966-67) Australian Law Journal at pp. 376-384.

A really "true" or "actual" rate of interest would be that calculated and charged on the daily principal balance. The further one moves from that basis the less does it become a true rate.

In the Queensland Money Lenders Act (s. 4A), the lender is obliged to calculate and charge interest on the monthly balance of the loan. Western Australia and the Australian Capital Territory have similar provisions. Whilst we concede that a daily rate would be impracticable of application, the Queensland requirement has proved salutary, and we have accordingly adopted it rather than an actuarially calculated "true effective rate" in a Schedule to the Bill or a "flat rate" which is not a rate per centum per annum.

The Crowther Committee recommended that the rate per cent should be calculated actuarially on the basis of annual compounding, the rate being given to an accuracy of within one quarter of one per cent. The reason for this and the principles involved in expressing the effective annual rate are set out in Appendix IV to their Report. The Adelaide Law School Committee likewise preferred a statement of the effective rate per annum compounded annually.

Messrs. McGarvie and Begg, in their recent paper "The Implementation of Fair Consumer Credit Laws" (1971) (45 A. L. J. 708), consider the decisive practical objection to the disclosure of the effective rate is that it cannot be applied to the principal actually outstanding over a given period, multiplied by the period in years and divided by 100 to give the amount of interest. In their view the disclosure of the effective rate would involve unnecessary complexity and departure from the common concept of simple

interest. They recommended that the principles in the United States Uniform Consumer Credit Code be adopted (see the definition "Credit Service Charge - section 2.109). This would include all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller.

In our opinion this would unnecessarily complicate the question.

A borrower should also derive assistance from cl. 23 of the Bill which provides that in the statement furnished to him, in addition to the interest rate charged, the total amount of interest payable under the contract shall be stated. The United States Consumer Credit Protection Act likewise requires both a rate disclosure and a dollars and cents disclosure.

Inevitably such figures will not take into account any rebate that might subsequently have to be made, but it will at least ensure that a borrower will know his maximum liability in that respect.

(b) The Queensland Money Lenders Act defines "money lender" as including -

"Every person whose business is that of money lending, or who advertises or announces himself or holds himself out in any way as carrying on that business."

Considerable difficulty has always been experienced in defining precisely what is meant by the terms "whose business is....." and "carrying on that business". As McCardie J. said in Edgelow v. MacElwee [1918] 1 K. B. 205 at p. 206 -

"A man does not become a money lender by reason of occasional loans to relations, friends or acquaintances, whether interest be charged or not.....nor does a man become a money lender merely because he may upon one or several isolated occasions lend money to a stranger. There must be more than occasional and disconnected loans. There must be a business of money lending, and the word "business" imports the notion of system, repetition and continuity....."

In Chow Yoong Hong v. Choong Fay Rubber Manufactory [1962] A.C. p. 209, it was said by the Privy Council at p. 218 -

"To lend money is not the same thing as to carry on the business of money lending. In order to prove that a man is a money lender.....it is necessary to show some degree of system and continuity in his money lending transactions."

In consequence we consider that the definition "money lender" should be couched in terms referable not only to the "business" of lending money but also to the regular lending of such commodity.

There are a number of exemptions to the definition, some of which are similar to those already contained in existing legislation. It will be noted that paragraphs (d) and (e) of the definition exempt banks and insurance companies as therein defined from the definition of "money lender". We do not consider this will result in merchant banks likewise being exempted from the legislation. Neither do we consider it desirable to do so.



"Credit Unions" have become a significant factor in the lending of money in Australia in recent years and we understand they have already made representations to the Government to ensure they are excluded. Under exemption (g) of the definition "money lender" the Governor in Council may from time to time exempt any such body from registration.

We also gave consideration as to whether the term "borrower" should be defined as including "guarantor" and "surety". We decided that where it was desirable to give a guarantor the protection of the Act it should be expressly so stated and this has been done, for example, in cl. 33.

In the Bill accompanying the earlier working paper, loans to a body corporate and loans above a specific amount were not exempted from the legislation, although reference was made as to the advisability of so doing. Since then a considerable number of representations have been received supporting such a course, and after considering these, including in particular one from the Australian Finance Conference, it was decided to redraft the legislation to exclude any loans to a body corporate and any loans in excess of \$20,000.00. Somewhat similar exemptions already exist in New South Wales (s. 3B) and in Victoria (s. 3(4)).

In regard to the first of these exemptions we are fortified by the view of the United States Uniform Consumer Credit Code and that of the Crowther Committee, neither of whom would give legislative protection to a credit sale where the buyer is a body corporate. We consider, however, that it is essential that the legislation retain control of any guarantee given to secure any loan to a body corporate, unless of course such guarantee were itself given by a corporation.

In relation to loans in excess of \$20,000.00 we are not as sanguine of the outcome, and the amendment has been made with some misgivings. As was previously mentioned in the working paper, there remains the danger of a prospective borrower being encouraged to increase his loan to escape the legislation. Should changed economic conditions so require, the suggested figure of \$20,000.00 can be varied by regulation. We do not subscribe to the view of the Australian Finance Conference that all business loans should be exempted, neither do we consider that \$3,000.00 is a reasonable minimum amount above which individuals (including firms) would not need the protection of the legislation.

4. Appropriation of amount paid. This is in somewhat similar terms to cl. 4 of the Uniform Draft Bill which follows the relevant sections in the New South Wales and Victorian Acts, both of which are modelled on s. 15(2) of the U.K. Act.

5. Licences to be taken out by money lenders. This clause is on similar lines to that of New South Wales (s. 4) and Victoria (s. 4). Sub-clause (3) permits a licence issued under the repealed Act to remain in force notwithstanding such repeal. A slight variation has been made to sub-cl. (4) in the case of a corporation.

6. Appointment of officers. This clause did not appear in the draft Bill in the working paper and has been included as a result of our decision to adopt the Queensland practice in relation to registration rather than that of New South Wales and Victoria.

7. Applications for licences or renewal of licences. In the draft Bill to the working paper the procedure presently existing in New South Wales and Victoria was adopted. Application for a licence or for renewal of a licence had to be made to the court (in Queensland the Magistrates Court).

Additional research has disclosed, however, that such a procedure has proved somewhat cumbersome and frequently has resulted in considerable delay and expense. This has been found particularly so when application is made for registration or the issue of a licence in relation to a single isolated transaction.

In Queensland, on the other hand, where application for registration or renewal is made to the Registrar of Money Lenders, and is effected as an administrative act (s.17D), registration is obtained speedily and inexpensively and the procedure has proved quite satisfactory and we have accordingly adopted the Queensland practice.

Messrs. McGarvie & Begg in their paper referred to earlier envisage the creation of a Consumer Credit Tribunal in whom would vest the authority to grant and renew licences with a judge as chairman. They disagree with the Crowther Committee whose view is that the Consumer Credit Commissioner should be the licensing authority, subject to appeal. In our opinion there is no need for yet another tribunal. If it is not considered desirable to entrust the matter to the Registrar of Money Lenders, we would prefer to see it left in the hands of the court as was provided in the earlier working paper.

8. Registration. This clause empowers the Registrar of Money Lenders to deal with the application for registration or renewal.

9. Refusal to issue licence. This provision appeared in the working paper and has been retained in a somewhat abbreviated form. It defines the grounds upon which the Registrar is required to refuse to grant or renew a licence and has been adopted from the Victorian and New South Wales legislation (cf. s.5 and s.5(5) respectively thereof) and is new to Queensland.

10. Appeal against refusal to issue licence. This clause has no counterpart in Queensland or Tasmania but is found in Victoria (s.16), New South Wales (s.5(7)) and Western Australia (s.6(11)). It is considered desirable in the interests of justice. A slight variation has been made from the earlier Bill annexed to the working paper in that such appeal is now to the Magistrates Court in the District where the applicant resides or carries on business and not to the District Court. The appeal is by way of a hearing de novo rather than by way of an appeal on the record.

11. Form and duration of licences. This provision, although not contained in the Queensland Act, is found in similar terms in New South Wales (s.7) and Victoria (s.7). It makes it mandatory for a licence to be renewed each year, and prescribes an annual expiry date which should simplify administration.

Sub-clause (2) provides, inter alia, that a licence shall not authorise a money lender to carry on business under any name other than his true name. This clause is found in most existing legislation (e.g. Queensland, s.6(1)(b)). We preferred the provisions of s.7(2) of the Victorian Act which sets out the statutory prohibitions in more detail.

12. Notice of ceasing business as money lender. This clause did not appear in the earlier draft Bill but should be of considerable assistance to the Registrar in administering the Act.

13. Offences relating to licences. This clause provides certain penalties if the money lender fails to comply with the requirements of the Bill to the carrying on of his business and the obtaining of a licence. The form differs from present legislation but in essence embodies the provisions of cl.12 of the 1962 Draft Bill, subject to minor amendments intended to

incorporate certain provisions from other States. For example: cl.11(1)(b) contains similar provisions to Victoria - s.7(3)(a), New South Wales - s.7(4)(a) and 1962 Draft Bill - cl.12(1)(a); cl.11(1)(c) contains similar provisions to Victoria - s.7(3)(b), New South Wales - s.7(4)(b) and 1962 Draft Bill - cl.12(1)(b) and South Australia - s.7(1)(b). However, we have also included cl.12(1)(c) of the 1962 Draft Bill in cl.13(1)(d) which makes it an offence for a money lender to advertise if he is not licensed. Clause 13(1)(a), although present in a somewhat different form in other State statutes, is new in that it places the onus on a money lender to make application for the issue of a licence. The provision as a whole makes it mandatory to apply for and receive a licence and gives effect to a view of Farwell L.J. in Staffordshire Financial Co. Ltd. v. Valentine [1910] 2 K.B.233, at p.243 that ".....money lenders must in future be careful to see that their registration under the Act is complete before they run the risk of attempting to trade."

Sub-clause (2) of cl.13 has been drawn from cl.12(2) of the 1962 Draft Bill and should relieve a money lender from the obligation of carrying out the entire transaction at his authorised address where in commercial practice it would be unpracticable to do so. It has been amended slightly from that which appeared in the working paper.

As Lord Loreburn said in Kirkwood v. Gadd [1910] A.C.422 at p.424 -

".....I do think that if a money lender really deals with a borrower at his registered address, whether by interview or correspondence, he may, without infringing the Act, transact negotiations, or conclude the actual contract elsewhere".

14. Effect on transactions of offences under s.13 of this Act. Clause 12(1) is based on cl.13(1) of the 1962 Draft Bill and has no equivalent in existing legislation. In the event of noncompliance with the requirements of the sub-clause, the agreement in so far as it relates to the payment of interest only, is unenforceable and any interest paid by a borrower or guarantor is recoverable.

Clause 14(2) follows fairly closely s.7(5) of the Victorian Act and cl.13(2) of the 1962 Draft Bill. However it does not appear in any other existing State legislation. A distinction has been drawn in cl.14(1) and 14(2) in regard to penalty. In existing legislation the Western Australian Act is unique in that it specifically provides that no transaction shall be void or voidable by reason only of the fact that a money lender does not have a licence (s.5(6)).

Under the English Acts a money lender frequently can lose both principal and interest. However, in Australia and New Zealand there has been a tendency to mitigate the severity of the operation of such penalties and thus in some States a breach of the name and address provisions does not involve the invalidity of a loan transaction (Victoria s.7(5), South Australia s.9(5), A.C.T. s.10(3) and Western Australia s.5(6)).

In 1961 the New South Wales Act was amended by the insertion of a new section (s.30A) which enables a court to validate money lending transactions which violate any of the provisions of the Act. This represents a radically different approach to the control of money lending from the provisions of the U.K. Act.

As to the rights of the parties see Mayfair Trading Co. Pty.Ltd. v. Dreyer (1958) 101 C.L.R.428. This amendment was also introduced in Queensland in 1962 (s.4C) and in Tasmania in 1963 (s.13A). As Sugerman J. said in Jacques v. Pacific Acceptance Corp.Ltd. (1963) 80 W.N. (N.S.W.) 1308, at p.1318, it -

"involves in effect, a recognition of the difficulties and possible sources of error which may be found to exist under the provisions of the Act --- a recognition that some safeguard was necessary against the Acts being availed of to bring about situations which were unjust and inequitable and the adoption of a safeguard sufficiently flexible in its operation to allow the remedy to be adapted to the circumstances of each particular case";

and as Jacobs J. said in Re Voets Investments Pty. Ltd. (1962) 79 W. N. (N. S. W. ) 670 at p. 675 -

"Once it is found that the lender was acting honestly and that the borrower was not oppressed, then it seems to me that the applicant has gone a long way towards establishing that it would be fair to excuse him for his failure to comply with.....the provisions of the Act, rather than to leave him without any way of recovering the moneys lent by him".

See also Pannam "The Law of Money Lenders in Australia and New Zealand" at pp. 201 et. seq.

In our opinion the distinction drawn in regard to penalty between sub-cll. (1) and (2) is justifiable and that in matters other than those specifically referred to in sub-cl. (1) the penal provisions are adequate, particularly as an additional penalty is provided for in a second and subsequent offence.

15. Transfer etc. of licence. Clause 15 provides for the transfer of a licence and for the substitution of a new authorised address on a licence and the machinery for carrying this into effect. The provisions are not found in the Queensland Act but appear in different form in the Victorian Act (s. 8), the New South Wales Act (s. 8) and the 1962 Draft Bill (cl. 14). Such matters are now to be administered by the Registrar of Money Lenders.

Clause 15(2) regulates the manner in which such applications are to be made. Somewhat similar provisions are to be found in New South Wales (s. 8(3) ) and Victoria (s. 8(2) ). We consider the wording of cl. 14(3) of the 1962 Draft Bill more succinct and have adopted it subject to a minor alteration in respect to "clear" days.

Clause 15(3) is not to be found in any of the State legislation and was adapted from cl. 14(4) of the 1962 Draft Bill.

16. Power to executors, trustees, etc. to carry on business in case of death, etc. of licensee. Clause 16 is similar to the provisions found in New South Wales (s. 9), Victoria (s. 9) and cl. 15 of the Draft Bill. Here again the authority has become the Registrar.

In regard to cl. 16(1)(a) we are of opinion that the executor of the Will should have a prior right. Clause 16(7) is found only in s. 9(6) of the Victorian Act.

17. Cancellation of licences. This now provides that a money lender may be summoned by the Registrar to show cause why his licence should not be cancelled, or suspended, or why the money lender should not be disqualified from holding a licence, or from conducting a money lending business. Under the Victorian Act (s. 12(1) ) both the court and any member of the police force may call upon the money lender to show cause, but other legislation (e. g. New South Wales s. 12(1) and 1962 Draft Bill cl. 18(1) ) provides only for "any member of the police force".

Clause 17(1)(a) and (b) is in similar terms to cl.18(1)(a) and (b) of the 1962 Draft Bill, s.12(2) of the Victorian Act and s.12(1)(a) and (b) of the New South Wales Act. However, we have added a new subclause 17(1)(c) providing that the holder of a licence may also be disqualified either permanently or for such period as the Registrar may direct from conducting or managing a money lender's business.

Clause 17(2) is in similar terms to existing legislation, e.g. New South Wales s.12(2), Victoria s.12(1) and 1962 Draft Bill cl.18(2). However, there are slight differences in and additions to subcl. (a), (e) and (f). In cl.17(2)(a) we have deleted the word "improperly" from the Uniform Draft Bill (s.18(2)(a)) as it is superfluous. We have included in cl.17(2)(e) the words "or caused to be published either directly or indirectly". This has a parallel in s.6(4)(d) of the Queensland Act which uses the phrase "caused to be published.....". This wording, together with the additional "either directly or indirectly....." will, we believe, assist in implementing the provisions of cl.41.

Clause 17(5) is only to be found in s.12(6) of the New South Wales Act and cl.18(6) of the 1962 Draft Bill, and enables the appropriate court, on its own motion, to regulate the business of money lending.

It will be noted that cl.45 of the Bill provides that proceedings under cl.17 shall be heard under "The Justices Acts 1886 to 1968" and under these Acts both parties have the right to representation by solicitor or counsel. It will be noted that an appeal lies from the decision of the Registrar to the appropriate Magistrates Court.

18. Effect of convictions on licences. This provision corresponds broadly to s.17(j) of the Queensland Act, and follows the provisions of cl.19 of the 1962 Draft Bill.

19. Disqualified money lender becoming director etc. This clause prohibits a money lender who is under suspension by order of the court from becoming or continuing as a director or member of a corporation licensed under the Act. Although not found in the Queensland Act, it appears in legislation in other States, e.g. New South Wales and Victoria (ss.14), and also in cl.20 of the 1962 Draft Bill. Without such power the effect of a suspension order may well be abortive.

20. Production of licence for endorsement etc. This is a machinery clause and is self-explanatory. Similar provisions are contained in the Victorian Act (s.15), the New South Wales Act (s.15) and cl.21 of the 1962 Draft Bill.

21. Fee for licence. There is a case for providing for fees to be included in the Regulations rather than in the Bill itself.

22. Application of Division 1. Clause 22 is procedural only.

23. Requirements relating to money lenders' loans. This clause is in somewhat similar terms to cl.27 of the 1962 Draft Bill and takes the place of s.22 of the New South Wales Act, s.23 of the Victorian Act and s.13(1) of the Queensland legislation. In our opinion the introduction of "guarantor" imposes no real burden on a money lender.

In the words of Sugarman J. in Jacques v. Pacific Acceptance Corp. Ltd. (1963) 80 W.N. (N.S.W.) 1308, at pp.1312-1313 -

"the apparent purpose of these provisions is a twofold one - first, as to the initial signature of the note or memorandum, that the borrower may be in a position to inform himself as to the terms of the contract and as to certain material matters in relation thereto before he binds himself by acceptance of the

loan or execution of the security; and secondly, as to the delivery of a copy, in order that the borrower may have by him a complete and accurate record to which he may refer in order to ascertain the nature and extent of his liabilities. A third possible purpose has also been suggested, namely, to provide a binding record of the transaction for the purpose of its re-opening...."

The requirements of the clause bring the Bill more into line with other Acts relating to finance, particularly The Hire Purchase Act of 1959 which requires certain notices in writing to be forwarded to the borrower.

The Proviso to sub-cl. (3) has been added at the instance of country practitioners. In cl. 23(5) the period of time has been extended to thirty days.

24. Application of Division 2. Clause 24 is procedural.

25. Re-opening of transactions of money lender. This clause confers upon the court wide powers to re-open any money lending transaction. The necessity of the borrower, his pecuniary position, the presence or absence of security, the relation in which the money lender stood to the borrower and the total remuneration derived by the money lender from the whole transaction, are all factors to be taken into consideration: Poncione v. Higgins (1904) 21 T.L.R. 11.

The court's powers are exercisable wherever it is shown that a money lender has demanded either an excessive return on the loan or has been guilty of harsh, oppressive and unconscionable conduct in connection with the transaction: see Ex parte Harrison; Re Gremlin Holdings Pty. Ltd. (1960-61) 30 A.L.J. 366.

Any money lending transaction which is such that a court of equity would give relief may be re-opened under these provisions. Relief was first given in equity to protect expectant heirs against unconscionable bargains made on the security of their expectant or reversionary interests in property. These cases sometimes showed actual fraud; but without this, they contained various elements which afforded a recognised ground for relief, e.g. the inequality of the parties, the intrinsic unconscionability of the transaction and the defeating of the ancestors' intentions: Earl of Aylesford v. Morris (1873) 8 Ch.App. 484.

Upon the same principle equity interfered generally to set aside a transaction where on account of poverty, ignorance, under-value or lack of independent advice, the transaction was unconscionable.

Much of the equity upon which the Court of Chancery formerly relied to assist borrowers has now become merged in the legislation which controls money lenders. Under the English Act of 1927 when a money lender takes proceedings for the recovery of a loan, the court may, if it thinks the rate of interest excessive, and the whole transaction harsh and unconscionable, or such as would prompt equity to give relief, re-open the transaction and take an account between the money lender and borrower. The two conjunctions are important: see Samuel v. Newbold [1906] A.C. 461, where it was held that the Act has enlarged the jurisdiction of the court: a transaction may be re-opened if the court thinks it unconscionable in the ordinary non-technical sense, even if equity would not have given relief before the Act. In the same case it was expressly laid down by Lord Loreburn that the fact that the rate of interest was excessive is in itself evidence that the transaction was unconscionable.

Under existing legislation in Australia and New Zealand, any one of the following alternative conditions, if present, is sufficient to bring the transaction within the relevant section:-

- (i) the interest charged in respect of the sum actually lent is excessive; or, except in Victoria,
- (ii) the amounts charged for expenses, inquiries, fines, bonus, premiums, renewals, or any charges are excessive; or
- (iii) the transaction is harsh and unconscionable; or
- (iv) the transaction is such that a court of equity would give relief.

The position in England is somewhat different. Under the English Act whilst (i) and (ii) are alternatives, if either of them is satisfied, it must be further shown that the transaction comes within (iii) or (iv): Samuel v. Newbold (supra). In consequence care must be exercised in the use of English authorities in connection with the relevant section.

Existing legislation is framed in very general language and has been widely criticised as being vague: see the remarks of Channel J. in Carringtons Ltd. v. Smith (1906) 1 K.B. 79, at p.84. The provisions are somewhat unique in legal jurisprudence. As Lord Atkinson said in Samuel v. Newbold (supra):

"The Money Lenders Act of 1900 in my opinion confers upon the courts of this country a new jurisdiction and gives a form of relief different in kind and range from that thereto-before granted to any class of tribunal in this country. The relief given is.....not theretofore administered by courts of equity, but differs from it in character, nature and extent."

See also Castles v. Friedman (1910) 11 C.L.R. p.580 at p.590 where Isaacs J. remarked that the re-opening provisions go: "far beyond anything previously known to our jurisprudence".

The equivalent of the clause appears in all existing Australian and New Zealand legislation: New South Wales s.30, Victoria s.28, South Australia s.32, Queensland s.4, A.C.T. s.6, Western Australia s.4, Tasmania, s.2, and New Zealand s.3. With certain minor amendments we have adopted cl.31 of the 1962 Draft Bill which is very similar to the New South Wales section, although somewhat better expressed.

We have added "oppressive" to "harsh" and "unconscionable" in cl.25(1)(c) as it makes for better definition.

26. Interest in excess of prescribed rate. This clause, although not found in existing Queensland legislation, is cl.32 of the 1962 Draft Bill, reworded. The Bill itself expresses a rate of interest which is prima facie excessive.

We do not believe that there is any real risk that cll.25 and 26 will have the effect of encouraging the charging of high interest rates; but, in any event, there would appear to be only two other alternatives, namely (1) to maintain the position which prevails under existing legislation whereby a rate of interest in excess of a prescribed figure is prohibited absolutely, and in pursuance thereof penal consequences are attached to the breach of such a provision and the loan rendered absolutely void and unenforceable; or (2) to provide that a rate of interest in excess of the prescribed maximum is prima facie void to the extent of the excess (only), leaving it to the lender to justify the higher rate by reference to the particular circumstances of the loan in question.

As such a justification could be established only by evidence in legal proceedings instituted either by the money lender to enforce the loan or by the borrower or guarantor to have it declared unenforceable either wholly or in part, this second alternative would appear to lead inevitably to provisions similar to those set out in cl. 25 and 26 and with a similar result.

While it is true that under the clause a rate of interest is rendered excessive only if legal proceedings are instituted, we can see no reasonable alternative to the provisions set out above.

27. Court's power to award interest where s. 23 not complied with. This clause, although not found in existing legislation, follows closely cl. 33 of the 1962 Draft Bill and in certain circumstances mitigates the effect of cl. 23: see Jacques v. Pacific Acceptance Corp. Ltd. (1963) 80 W.N. (N.S.W.) 1308.

The consequences attaching to a failure by a money lender to supply a proper memorandum or copy documents in relation to a loan vary considerably from State to State. However, as mentioned previously (see cl. 14), the tendency today in Australia is to adopt a far more liberal attitude towards transactions which do not comply with the legislative requirements than is the case in England.

The Victorian, New South Wales and Tasmanian Acts confer a statutory power on the courts to correct accidental or inadvertent errors in the memorandum, where such errors are not likely to mislead a borrower. The South Australian Act contains a similar provision, except that it applies not to a memorandum of loan but to the contract of loan. As to the conditions which must be satisfied to bring the provisions into operation, see Pannam (op. cit.) at page 193 et. seq.

28. Provisions as to guarantees. This clause is not found in existing legislation. The provision follows cl. 34 of the 1962 Draft Bill and is self-explanatory.

29. Prohibition of compound interest. Clause 29 follows the provisions existing legislation (e. g. New South Wales s. 28 and Victoria s. 26, and cl. 35 of the 1962 Draft Bill) but does not appear in the Queensland Act. It has not been uncommon for money lenders to charge compound interest or to increase the rate of interest when any default occurred in payment. With this in mind, we considered it essential that the Bill should provide an absolute prohibition against either former practice. Notwithstanding the provision, however, the money lender is permitted to charge simple interest on moneys due and payable (being both principal and interest) at a rate not exceeding the rate payable in respect of the principal from the date of default until the date of payment.

30. Restriction as to obtaining a loan. In regard to procuration fees, the Victorian, South Australian and New South Wales Acts contain almost identical provisions. In these States it is unlawful for a money lender to charge a borrower with any sum which is not specifically exempted from the statutory definitions of interest. The sections appear to be deficient in that they apply only to an agreement between the money lender and the borrower and there is nothing in the Victorian, South Australian or New South Wales Acts which prevents a third person, who is independent of the money lender, from charging a procuration fee.

The Queensland Act goes much further than any other in Australia and New Zealand in that it makes it unlawful for any person "to charge, recover, or receive directly or indirectly" any sum in respect of making or arranging a loan or making any recommendation, report or inquiries in regard to such a loan or proposed loan: see Queensland s. 14. The



only exemptions to this broad prohibition are certain costs or fees that a money lender is specifically authorised to charge to a borrower. The amending Act of 1968 somewhat liberalised the section and we have adopted the proviso in sub-s. (1)(d) of such amendment.

There are no provisions in regard to such matters in the Australian Capital Territory or New Zealand and in consequence it is quite lawful for a money lender or a third person in such jurisdictions to charge procuration fees. Following the High Court decision in Re Dempsey [1954] St. R. Qd. 351; [1954] A. L. R. 709, the whole transaction is not invalid but only that part of it which refers to such payments. As the Court said at p. 362:

"Statutory provisions invalidating transactions are not to be construed more widely than their language requires or the purpose of the legislation demands. In In re Burdett; Ex parte Byrne (1888) 20 Q. B. D. 310, at page 314, Fry L. J., delivering the judgment of the Court of Appeal, said:

'In our judgment, clauses in statutes avoiding transactions or instruments are to be interpreted with reference to the purpose for which they are inserted and, when open to question, are to receive a wide or a limited construction according as the one or the other will best effectuate the purpose of the statute (per Turner L. J. in Fortin v. South Eastern Railway Company (1854) 6 De G. M. & G. 270 at p. 275)'. "

"The evident policy of this legislation is to penalise and prevent the exaction of what may briefly be described as payments in the nature of procuration fees and to require the repayment thereof if they are obtained. There is no reason to suppose that it was intended to destroy the validity of the entire transaction if such an exaction forms an incident in it or is attendant upon it. "

Clause 30 of the Bill is virtually identical to s. 14 of the Queensland Act as amended by the Money Lenders Acts Amendment Act 1968.

31. Obligation of money lender to supply information as to state of loan. This clause is not found in the Queensland Act but appears in the Victorian Act (s. 30) and in New South Wales (s. 32). The wording of the present clause follows that of cl. 37 of the 1962 Draft Bill except that it has been extended to include a guarantor. A similar provision exists in hire purchase legislation.

32. Early repayments of loans. This clause is not in existing legislation and varies considerably from cl. 38 of the 1962 Draft Bill. In Queensland, by implication from s. 4B of the Money Lenders Act, a loan may be repaid at any time before the date stipulated for repayment. The amount of rebate to which a borrower is entitled when repaying a loan has always proved extremely difficult of computation and we consider that the clause as drawn will simplify the question. Similar provisions are to be found in hire purchase legislation.

We also gave consideration to including a guarantor within the ambit of the clause, but decided against it as it could result in a borrower being placed in a disadvantageous position, were a guarantor to pay off a loan against the wishes of a borrower before the due date for payment. It will be noted that the clause refers only to repayment in full and that we have amended our earlier Bill to provide for interest up to three months from the date of repayment or the balance of the loan, whichever is the lesser.

Messrs. McGarvie and Begg, on the other hand, are of the opinion that the borrower should be entitled to pay off the loan before the due date with interest up to the date of payment only. In this the Act would parallel the Hire Purchase legislation. Presumably they are also referring to payment in full. The Adelaide Law School Committee made a similar recommendation. In their opinion, the Hire Purchase Acts and the method provided for calculation of what is due on completion have proved satisfactory.

The Hire Purchase Acts also provide for voluntary termination of the hiring at any time. Contrary to the opinion of both Messrs. McGarvie and Begg and the Adelaide Law School Committee, we do not consider there is need of a provision of this nature in money lending transactions.

The Crowther Committee were of the opinion that in all credit transactions a debtor settling ahead of time should, subject to certain qualifications as to time and amount, be entitled to a rebate of charges. The Committee recommended that, in this regard, the rebate be calculated according to what is generally referred to as "the rule of 78". It would seem that in England, under existing legislation, there is no provision for a rebate for early settlement and the practice of giving such rebate is by no means uniform, neither are the methods adopted to calculate such rebates. The Committee made no recommendations in regard to voluntary termination.

33. Assignment of money lender's debts and securities to a money lender to be void. Clause 33 does not appear in the Queensland Act but is found in similar form in s.31 of the New South Wales legislation.

Clause 39 of the 1962 Uniform Bill has been adopted in preference to the New South Wales section and is self-explanatory. This clause has now been extended to include a guarantor (if any). As to guarantor's liability generally when principal security varied without guarantor's consent: see Duncombe v. Australia and New Zealand Bank Limited [1970] Qd.R. 202.

34. Notice and information to be given on assignment of money lender's debts. This clause is found in somewhat different form in existing legislation (Victoria s.31 and New South Wales s.33). The wording of cl.40 of the 1962 Draft Bill has been followed in the present Bill.

35. Application of Act as respects assignee. The provisions of cl.35(1) and 35(2)(a) and (b) are similar to those contained in existing legislation (Victoria s.32 and New South Wales s.34) and also cl.41 of the 1962 Draft Bill. We consider that the provisions of the Draft Bill should be extended to include the requirements of the Queensland Act. In consequence, cll. 35(2)(c) and (d) follow, with minor rewording, the provisions contained in s.6(3)(c) and (d) of the Queensland Act.

36. Execution and attestation of certain assignments. This clause follows present legislation (Victoria s.33, Queensland s.11 and New South Wales s.38) and cl.42 of the 1962 Draft Bill. The wording of cl.42 of the Draft Bill has been adopted with the addition of sub-s.(4) which has been taken from s.11(4) of the Queensland Act. Protection is afforded not only to a borrower but also to a guarantor.

37. Use of authorised name by money lenders. Clause 37 is similar to present legislation (Victoria s.24, New South Wales s.25 and Queensland s.6(4)(d)), also cl.43 of the 1962 Draft Bill. Penal provisions are provided for any contravention of the clause.

38. Restrictions of money lending advertisements. This clause is now in considerably different form to that which appeared in the earlier Bill. The previous clause followed substantially s. 5 of the U.K. Moneylenders Act 1927 and the Victorian (s.25) and New South Wales (s.26) legislation. After further consideration we are of opinion that the present restrictions on advertising in relation to money lenders should be considerably relaxed.

As is stated in the report of the Crowther Committee, the stringent restrictions on advertising contained in the U.K. Moneylenders Act 1927 were designed to prevent intending borrowers from being gulled into burdensome loan contracts by attractive advertisements offering easy terms. Many necessitous people were thereby induced to take loans without any appreciation of the heavy default conditions contained in the contract, and found that, whilst entry into the agreement was made deceptively easy, the money lender's attitude underwent a startling transformation when payment fell due. In this age, however, advertising is heavily relied upon to produce business. Restrictions imposed on one class of business, whilst discriminating unfairly against money lending, would also inevitably disturb the forces of competition, which it is in the interest of the consumer to foster. We accordingly amended the clause merely proscribing generally any inaccurate, deceptive, false or misleading statement or representation.

Sub-clause (3) of the clause was adapted from the Unfair Trading Practices Bill which was introduced into the South Australian Parliament in 1967 (but not proceeded with). The adoption of this clause was also recommended by the Adelaide Law School Committee.

We have also provided (cl. 50) that by Regulation the types of advertising that would be treated as inaccurate, deceptive, false or misleading may be specified. This would provide the flexibility necessary to meet new business techniques and at the same time guide credit grantors as to the forms of advertisement which will be regarded as offending against the Statute. We can see no harm in a money lender stating in an advertisement the effective rate or rates of interest being charged and we have accordingly deleted the earlier provision forbidding this.

In our view, the prohibition against personal canvassing or door-to-door hawking should be retained. As the Crowther Committee mentions there appears today to be a growing trend towards the peddling of credit. Any scheme of this kind would obviously provide a strong motivation for deception and sharp practice by agents appointed to call on prospective borrowers to induce them to borrow on whatever security may be available, whetting such prospect's appetite by pointing out the range of goods he would be able to purchase with the aid of the suggested loan. Postal advertising is on quite a different footing and we consider it reasonable to permit this form of activity.

39. Avoiding contract for payment of loan advanced during infancy. This clause finds its equivalent in s. 10 of the Queensland Act, s. 37 of the New South Wales Act and cl. 48 of the 1962 Draft Bill. In regard to this clause there was a division of opinion amongst the members of the Commission, at least one of whom could see no good reason why a money lending transaction should be on a different footing from any other form of contract.

At common law a contract of loan was not binding on an infant unless he expressly ratified it after attaining the age of twentyone years: Darby v. Boucher (1694) 1 Salk. 279. This applied even in the case of necessities: Earle v. Peale (1711) 1 Salk. 386. However, the Infants Relief Act 1874 (37 & 38 Vict. c. 62) altered the common law rule in England by providing inter alia that -

"No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age, of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age".

This legislation has been adopted in Victoria, Tasmania and New Zealand but not in New South Wales, A.C.T., Western Australia, Queensland or South Australia. Section 2 of the Infants Relief Act 1874 was later re-enforced by s.5 of the Betting and Loans (Infants) Act 1892: see Pannam (*op.cit.*) at p.346, and Halsbury's Laws of England, 3rd ed. vol.21 at p.139. Whilst in New South Wales and Queensland it is an offence to send an infant a circular or letter which invites him to borrow money, in no State legislation is a money lender forbidden to lend to infants. Although we have retained the existing prohibition in the Bill, the old common law rule would today seem, if anything, more appropriate.

40. Penalties for false statements and representations. This clause is in similar terms to s.7 of the Queensland Act, s.42 of the New South Wales Act, s.34 of the Victorian Act and cl.49 of the 1962 Draft Bill and prescribes the penalties for false statements or representations.

41. Method of making loan. Clause 41, except for some minor re-wording, follows ss.35 of the Victorian Act, 43 of the New South Wales Act, 15 of the Queensland Act and cl.50 of the Draft Bill of 1962. This clause is fundamental to any money lending legislation.

42. Contracting out prohibited. This follows s.44 of the New South Wales Act, s.17(i) of the Queensland Act and cl.51 of the 1962 Draft Bill. In addition the provisions of s.17 of the Queensland Act have been included in sub-cl.(3) of this clause.

43. Special provisions as to corporations. Clause 43 is in similar language, with minor amendments, to ss.48 of the Victorian Act, 17B of the Queensland Act and cl.53 of the 1962 Draft Bill, which latter has been adopted.

44. Name of borrower and others not to be published. Clause 44 does not appear in existing legislation. It follows cl.54 of the 1962 Draft Bill and is designed to safeguard from adverse publicity the financial commitments and affairs of a borrower.

45. Offences. This clause is similar to s.17H of the Queensland Act and prescribes the manner in which proceedings for offences may be commenced. In sub-cl.(2) the time within which a prosecution may be commenced has been extended to three (3) years.

46. Evidence of licence. Clause 46 follows s.49(1) of the New South Wales Act, s.50 of the Victorian Act and cl.56 of the 1962 Draft Bill. This is a machinery clause.

47. Entries in money lender's books deemed made by money lender. Clause 47 follows s.17A(1) of the Queensland Act, and is an evidentiary provision.

48. Penalty for demanding fee. This clause appears only in the Queensland Act (s.16) and it may well be argued that such a provision is out of context in money lending legislation. However, in Queensland the clause has been found to provide a very necessary and salutary brake on the activities of over-zealous debt collectors and has been included accordingly.

49. General penalty. Clause 49 follows s.17G of the Queensland Act and provides for a general penalty in appropriate circumstances.

50. Regulations. Clause 50 is a normal one providing for regulations under the Act and the matters in respect of which such regulations may be prescribed.

A number of matters which we have included in the present Bill could be dealt with if desired by regulation. The practice in the various States differs considerably in this regard.

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No.        of 197

A Bill to provide for the licensing of persons carrying on business as money lenders; to regulate money lending transactions entered into by licensed money lenders and certain other persons; to repeal the Money Lenders Act 1916-1969 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 Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:-

#### PART I - PRELIMINARY

1. Short title, commencement and division into Parts. (1) This Act may be cited as the Money Lenders Act 197 .

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) This Act is divided into Parts as follows:-

PART I        - PRELIMINARY, ss.1-4;

PART II       - LICENSING OF MONEY LENDERS, ss.5-21;

PART III      - REGULATION OF MONEY LENDING  
TRANSACTIONS

Division 1   - Documentation of Transactions with persons  
carrying on business as Money Lenders,  
ss.22-23;

Division 2   - General Provisions regulating Transactions  
to which Division 1 applies,        ss.24-36;

PART IV       - GENERAL PROVISIONS, ss.37-41;

PART V        - MISCELLANEOUS, ss.42-50.

2. Repeal and savings. The Money Lenders Act 1916-1969 is repealed.

3. Interpretation. (1) In this Act unless the context or subject matter otherwise indicates or requires, the following terms have the meanings set against them respectively, namely:-

"authorised name" and "authorised address" mean respectively the name under which and any address at which a money lender is authorised by a licence to carry on business as a money lender, and "authorised" address" includes a substituted authorised address endorsed pursuant to this Act upon a licence;

"corporation" has the meaning ascribed thereto by "The Companies Acts, 1961 to 1964";

"Court" means a Magistrates Court duly constituted under "The Magistrates Courts Acts, 1921 to 1964";

"firm" means an unincorporated body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who have entered into partnership with one another with a view to carrying on business in common with a view to profit;

"guarantee" includes indemnity;

"guarantor" includes a person who gives an indemnity;

"interest" does not include -

- (a) any sum lawfully agreed to be paid on account of duties or fees payable under any Act;
- (b) any sum payable to a legal practitioner for costs necessarily incurred by the lender in relation to a loan bona fide secured on any interest in land; or
- (c) any sum lawfully actually incurred and paid to a person other than the money lender for fees in respect of the valuation of any real property given as security for the loan if the sum paid does not exceed the appropriate amount for such a valuation under the prescribed scale of fees and no part of which is received by the money lender,

but save as aforesaid includes any amount (by whatsoever name called) in excess of the principal which amount has been or is to be paid or payable in consideration of or otherwise in respect of a loan;

"interest rate" for the purposes of this Act means the rate per centum per annum calculated and charged on the calendar monthly balance of the loan to the borrower after crediting the borrower with any instalment or instalments paid by him during the month from which instalment or instalments so paid during the month the interest payable for such month and as calculated monthly has been deducted;

"licence" means a valid and unexpired money lender's licence or renewed licence issued under this Act, and "licensed" and "licensee" have corresponding interpretations;

"loan" includes advance, money paid for or on account of or on behalf of or at the request of any person and every contract of loan, and "lend" and "lender" have corresponding interpretations;

"money lender" means -

- (a) a person registered as a money lender under this Act;
- (b) a person -
  - (i) whose business is that of lending money, or
  - (ii) who regularly lends money, or
  - (iii) who advertises or announces himself or holds himself out in any way as engaging in the business of or in the regular lending of money -

and who lends money at a rate of interest exceeding ten per centum per annum; and

- (c) a person who intends or is about to engage in the business of or in the regular lending of money at a rate of interest exceeding ten per centum per annum,

but does not include -

- (a) any pawnbroker who regularly lends money in accordance with the provisions of the Acts for the time being in force in relation to pawnbrokers;
- (b) any society duly registered under the law relating to Friendly Societies of Building Societies;
- (c) any body corporate incorporated or empowered by a special Act of Parliament to lend money in accordance with the provisions of such special Act;
- (d) any person or body corporate bona fide carrying on the business of banking and within the meaning of "a bank" as defined in s. 5 of the Banking Act, 1959, as amended from time to time;
- (e) any person or body corporate lawfully carrying on the business of insurance;
- (f) any body corporate for the time being exempted from registration under this Act by order of the Governor in Council published in the Gazette;

"prescribed" means prescribed by this Act or by the regulations;

"principal" means in relation to a loan the amount actually lent;

"Public Curator" means the Public Curator appointed under the provisions of "The Public Curator Acts 1915 to 1957";

"Registrar" means the Registrar of Money Lenders appointed under this Act; the term also includes a deputy registrar or an officer for the time being performing the duties of registrar;

"regulations" means regulations made under this Act;

"renewed licence" means licence for a further year in respect of any address issued under this Act to the holder of a licence in respect of that address;

"Schedule" means Schedule to this Act.

(2) A regulation made for the purposes of paragraph (c) of the definition of "interest" in subsection (1) of this section may specify scale of fees in the regulation or by reference to any scale fixed by or under any other Act or by any body or society whose members the Governor in Council considers are engaged in the selling or valuing of land may prescribe different scales in respect of different classes of cases.

(3) Where in respect of any loan or any contract or security made or given in relation to any loan, reference is made in this Act to a specified rate of interest per annum, the reference shall be read and construed as a reference to the corresponding rate in respect of any other period applicable to the loan, contract or security.

(4) Where in relation to any loan the lender agrees to accept a lower rate of interest so long as the borrower duly observes and performs all his covenants and agreements including those relating to the prompt payment of interest, the rate of interest in relation to the loan shall for the purposes of this Act be deemed to be the higher rate of interest.



(5) Nothing in Part III of this Act (sections 25 and 32 excepted) applies to or in respect of any loan of the following classes:-

- (i) a loan to any corporation, except in so far as such provisions would otherwise apply to any guarantee securing the repayment of any such loan;
- (ii) a loan to any person if the loan is, where no amount is prescribed, for an amount in excess of twenty thousand dollars (\$20,000.00), or where a greater amount is prescribed, for an amount in excess of such greater amount.

4. Appropriation of amount paid. Where, by a contract for the loan of money, the interest charged on the loan is not expressed in terms of a rate per centum per annum, any amount paid or payable to the lender under the contract (other than simple interest charged in accordance with subsection (2) of section 29 of this Act shall for the purposes of this Act be appropriated to interest and principal in the proportion that the total amount of the interest bears to the total amount of the principal.

## PART II - LICENSING OF MONEY LENDERS

5. Licences to be taken out by money lenders. (1) Every money lender (whether carrying on business alone or as a partner in a firm shall as hereinafter in this Act provided take out annually a licence in the prescribed form in his own name and in the business name if any of himself or of the firm and in no other name, and with the address or all the addresses if more than one at which he carries on business.

(2) For the purposes of this Act any address at which a money lender has an agency in connexion with his money lending business shall be deemed to be an address at which he carries on business as a money lender.

(3) The registration of any money lender under the Money Lenders Act 1916-1969 in force at the commencement of this Act shall, notwithstanding the repeal of that Act be deemed a licence under this Act and subject to this Act shall continue in force until the 31st day of March next after the commencement of this Act:

Provided that no such registration shall entitle a money lender to take out a renewed licence under this Act.

(4) Where an applicant for a licence is a corporation, the licence shall be taken out in the name of the corporation on the application of some person appointed in writing by the corporation.

(5) Notwithstanding anything in this Act, where in respect of any period licences are taken out by more than two money lenders in respect of any address at which they carry on business as partners in a firm, no fee shall be payable under this Act in respect of the issue of more than two of such licences.

6. Appointment of officers. (1) There shall be a Registrar of Money Lenders, and an office of the Registrar.

(2) The Registrar and any other officers required for the purposes of administering this Act shall be appointed and hold office under, subject to and in accordance with the Public Service Act 1922-1968.

- (3) (a) The Registrar shall make and keep in the form prescribed a register to be called "The Register of Money Lenders";  
(b) Such register shall be kept in the office of the Registrar and shall be open to inspection to any person upon payment of the prescribed fee at all times during which the office of the Registrar is open for the transaction of business.
- (4) The Registrar shall have such duties, powers and authorities as are prescribed.
- (5) All applications, notices or documents required to be lodged with, delivered, forwarded, furnished, or sent to the Registrar shall be kept in the office of the Registrar.
- (6) During the absence from duty of the Registrar by reason of illness, leave of absence or other cause, or during any vacancy in the office of the Registrar, the duties, powers and authorities of the Registrar may be performed and exercised by a Deputy Registrar appointed by the Governor in Council (whether generally or in respect of any particular period of absence from duty of, or vacancy in the office of, the Registrar).
- (7) In proceedings under this Act, a court may receive as evidence of the facts stated therein a document purporting to be either the original or a certified copy of a certificate signed by the Registrar as to the suspension, cancellation or disqualification of a licence.

7. Applications for licences or renewal of licences. (1) Every person who desires to obtain or renew a licence shall lodge an application in the prescribed form with the Registrar. Such application shall be accompanied by the prescribed fee and by a statement to be made by the applicant or, in the case of a corporation, on its behalf, in accordance with subsection (2) of this section, which application and statement shall either be delivered at the office of the Registrar of Money Lenders or transmitted to that office by prepaid registered post.

(2) Every such application shall -

(a) be accompanied by a statement containing -

- (i) the principal and each other place of business at which the applicant carries on or proposes to carry on business as a money lender;
- (ii) true and correct particulars regarding the names and addresses of the partners (if any) of the applicant and in the case of an application on behalf of a corporation the name and address of each of the persons responsible for the management thereof;
- (b) if made on behalf of a corporation, include a statement showing the names of all the directors and officers of the corporation and, in the case of a corporation which has less than fifty members, the names of all the shareholders in the corporation;

(3) Any person making any such application who fails to supply any such particulars or statement, or who supplies any such particulars or statement which are or is false or incorrect shall be guilty of an offence against this Act and liable to a penalty not exceeding five hundred dollars.

8. Registration. Subject to the provisions of this Act the Registrar, upon receipt of such application and statement and of the prescribed fee, shall issue to the money lender a licence in the prescribed form and shall, at any time upon request being made and the prescribed fee tendered by any person, issue to such person a duplicate of such licence.

9. Refusal to issue licence. (1) The Registrar of Money Lenders shall refuse to issue a licence upon the establishment of one or more of the following grounds -

- (a) that satisfactory evidence has not been produced of the good character of the applicant, and in the case of an application on behalf of a corporation of the managing director (if any), manager and secretary thereof;
- (b) that satisfactory evidence has been produced that the applicant, or any person responsible or proposed to be responsible for the management or conduct of the money lending business, is not a fit and proper person;
- (c) that satisfactory evidence has not been produced that the applicant, or in the case of a corporation, any person responsible for the management thereof, is of the age of twentyone years or upwards;
- (d) that the applicant, or any person responsible or proposed to be responsible for the management or conduct of the money lending business, is by order of a court disqualified from holding a licence;
- (e) that the applicant has not complied with the provisions of this Act or the regulations with respect to applications for licences unless the Registrar is satisfied that the failure to comply with such provision is of such a trivial nature as not to warrant the refusal of the application;
- (f) that the applicant, or any person responsible or proposed to be responsible for the management or conduct of the money lending business, is not domiciled in Australia;
- (g) that the applicant, not being a corporation, has not been continuously resident in Australia for the twelve months immediately prior to the making of the application or in the case of an application on behalf of a corporation, that the corporation is not incorporated in a State or Territory of the Commonwealth.

(2) Where but for this subsection the Registrar would be required to refuse to issue a licence by reason of the establishment of the ground referred to in paragraph (a) of subsection (1) of this section, the Registrar may notwithstanding the provisions of that paragraph issue a licence if he is of opinion that the conduct establishing that ground was of such a nature that the applicant should not be refused a licence and that the issue of a licence would not be contrary to the public interest.

10. Appeal against refusal to issue a licence. (1) Where pursuant to section 9 of this Act the Registrar refuses to issue a licence, the applicant may appeal against such refusal in accordance with rules of court to the Magistrates Court for the District in which the applicant resides or carries on business.

(2) Every such appeal shall be in the nature of a hearing de novo.

11. Form and duration of licences. (1) Subject to this Act, every licence shall -

- (a) be in the prescribed form;
- (b) take effect from a day (not being earlier than the day of payment of the prescribed fee) to be stated therein;
- (c) expire on the 31st day of March next following;
- (d) be taken out in the true name of the money lender and be void if taken out in any other name; and

- (e) show the name under which, and the address, or where there is more than one address the principal and each other address, at which the money lender is thereby authorised to carry on business as such.

(2) No licence shall authorise a money lender to carry on business -

- (a) under more than one name;
- (b) under any name except -
  - (i) his true name;
  - (ii) the business name of the firm in which he is a partner, not being a business name required by "The Business Names Act 1962 to 1965" or any Act amending or replacing that Act, to be registered thereunder;
  - (iii) where he is a partner in a firm the business name of which is registered under "The Business Names Acts 1962 to 1965", or any Act amending or replacing that Act, his true name with the addition of the words "carrying on business as" followed by the name of the firm; or
  - (iv) where immediately before the commencement of this Act he or a firm in which he is a partner -
    - (a) was carrying on business under a business name registered under "The Business Names Acts 1962 to 1965"; and
    - (b) was registered under such business name as a money lender under the Money Lenders Act 1916-1969 as amended by subsequent Acts,his true name with the addition of the words "carrying on business as" (here insert such business name);
- (c) in the case of a firm or corporation, under any name which in the opinion of the Registrar is undesirable.

12. Notice of ceasing business as a money lender. When any money lender ceases to carry on the business of a money lender he shall send by prepaid post or deliver to the Registrar a notice in the prescribed form, and upon receipt of such notice the Registrar shall cancel the registration of such money lender accordingly.

On the cancellation of the registration of a money lender such money lender shall be entitled to have refunded to him an amount bearing the same relation to the fee paid by him for and in respect of his licence as the unexpired portion of the original term of such registration bears to the whole of the term.

13. Offences relating to licences. (1) If a money lender -

- (a) fails to make application as prescribed for the issue of a licence; or
- (b) takes out a licence in any name other than his true name; or
- (c) carries on business as a money lender and is not licensed or, being licensed as a money lender, carries on business as such in any name other than his authorised name or at any place other than his authorised address; or
- (d) advertises or announces himself or holds himself out in any way as carrying on business as a money lender and is not licensed; or

- (e) lends money or takes any security for a loan in the course of his business as a money lender otherwise than in his authorised name,

he is guilty of an offence against this Act and liable -

- (i) if a corporation - for the first offence to a penalty not exceeding four hundred dollars and for a second or any subsequent offence to a penalty not exceeding one thousand dollars;
- (ii) if any other person - to a penalty not exceeding two hundred dollars and in the case of second or subsequent conviction to imprisonment with or without hard labour for any period not exceeding three months or to a penalty not exceeding two hundred dollars, or to both.

(2) Nothing in this section renders any person liable to a penalty or imprisonment by reason only of the fact that such person or any employee or agent of such person at any place other than the authorised address of such person carries out any preliminary transaction in connexion with a loan or any security for a loan in any case where according to usual commercial practice it is impracticable to carry out such transaction at the authorised address of such person.

14. Effect on transactions of offences under s.13 of this Act. (1) If any money lender is not the holder of a licence or is the holder of a licence which has been improperly obtained contrary to the provisions of this Act, or enters into a loan in any name other than his authorised name, any provision of any loan entered into by the money lender providing for the payment of interest on the money lent is unenforceable and any sum paid by the borrower or any guarantor of the loan to the money lender as interest shall be appropriated by the money lender to principal and any excess so paid may be recovered by the borrower or guarantor as the case may be, as a debt in any court of competent jurisdiction at any time during the currency of the contract of loan or within twelve months after the time when the transaction to which the loan relates was discharged by performance, or where the borrower or guarantor is deceased, within two years from the date of death, whichever is the later.

Nothing in this subsection affects the liability of any person under section 11 of this Act.

(2) Save as aforesaid, no contract or agreement or transaction entered into by a licensed money lender with any person is void or voidable by reason only that the money lender has, whether in connexion with that contract or agreement or transaction or not, been at any time guilty of an offence under section 11 of this Act, whether convicted thereof or not.

Nothing in this subsection affects the operation of subsection (1) of this section.

(3) A money lender shall on demand at any premises upon which he carries on his business produce his licence to the Registrar or to any member of the police force, and if without reasonable excuse he refuses or fails so to produce his licence he shall be liable to a penalty of not more than fifty dollars and for each and every subsequent offence to a penalty of one hundred dollars.

15. Transfer, etc. of licence. (1) The Registrar may upon application -

- (a) for the transfer of a licence by a licensed money lender - transfer the licence to any person or corporation approved by him in that behalf and endorse the transfer on the licence;

- (b) for the substitution of a new authorised address of the money lender for the authorised address of the money lender shown in his licence - substitute such new authorised address and endorse such substitution on the licence;
- (c) for the substitution of the new name of a corporation where the name of such corporation has been lawfully changed for the name shown in the licence issued to such corporation - substitute such new name for the name shown in the licence as aforesaid and endorse the substitution on the licence.

(2) Every application under subsection (1) of this section shall -

- (a) be made in the prescribed form and manner and contain such particulars as are prescribed; and
- (b) be lodged with the Registrar at least fourteen clear days before the day mentioned in the application as the day on which the application is made.

(3) The Registrar shall consider the application and on being satisfied as to the fitness of the applicant may make the endorsement on payment of the prescribed fee.

16. Power to executors, trustees, etc. to carry on business in case of death, etc. of licensee. (1) In the cases provided for in this section the business of a licensed money lender may be carried on and a licence may be transferred as follows:-

- (a) if a licensed money lender dies -
  - (i) the executor of his will or if there be no executor or if the executor be unwilling to act, then the widow or widower of the deceased licensed money lender of the age of twentyone years or upwards or any person on behalf of the family may apply to the Registrar to have his or her name endorsed on the licence as agent pending the granting of probate of the deceased licensed money lender's will or of letters of administration of the estate;
  - (ii) on the grant of probate or letters of administration the executor administrator or trustees shall forthwith apply to the Registrar to have his name or the name of some nominee on his behalf endorsed on the licence;
- (b) on the licensed money lender becoming a patient within the meaning of "The Mental Health Acts 1962 to 1964", as amended by subsequent Acts, or a backward person within the meaning of "The Backward Persons Act of 1938" as amended by subsequent Acts, the wife or husband of the licensed money lender or any member of the family of the licensed money lender of the age of twentyone years or upwards or any person on behalf of the family or the Public Curator may apply to the Registrar to have his or her name or the name of a nominee endorsed on the licence.

(2) Every such application shall -

- (a) be made in the prescribed form and manner and contain such particulars as are prescribed; and
- (b) be lodged with the Registrar at least fourteen clear days before the day mentioned in the application as the day on which the application is made.

(3) The Registrar shall consider the application and on being satisfied as to the fitness of the applicant or nominee may make the endorsement on payment of the prescribed fee.

(4) Every person whose name is so endorsed on any such licence -

- (a) may carry on the business under the licence until probate of the will or letters of administration of the estate of the deceased money lender are granted or until the money lender ceases to be a patient, a backward person, or until the licence is transferred or a new licence is granted in respect of the same place of business in the name of some other person (as the case may be); and
- (b) shall be subject to the same duties, liabilities, obligations, disqualifications and penalties as if he were the licensed money lender.

(5) No person shall otherwise than as provided in this section carry on any such business for a longer period than twentyeight days after the death of the money lender or his becoming a patient or a backward person.

(6) Any person who contravenes or fails to comply with the provisions of this subsection is guilty of an offence against this Act and is liable to a penalty not exceeding two hundred dollars or to imprisonment for a term not exceeding three months or to both such penalty and imprisonment.

(7) Subject to this section a renewed licence may in accordance with this Act be issued to any person as agent or nominee or to any person shown to be entitled to such renewed licence or to any nominee of the Public Curator.

(8) Subject to this section, every licence shall confer on the executors or administrators of a deceased licensed money lender the same rights and privileges and (if the executors or administrators avail themselves of those privileges) shall impose on them the same duties, liabilities, obligations, disqualifications and penalties as if the licence had been issued to them originally.

17. Cancellation of licences. (1) Any licensed money lender may be summoned by the Registrar to show cause why an order should not be made directing any or all of the following things, namely:-

- (a) that the licence held by the money lender be cancelled or suspended;
- (b) that the holder of the licence be disqualified, either temporarily or permanently, from holding a licence;
- (c) that the holder of the licence be disqualified either permanently or for such period as the Registrar specifies from conducting or managing a money lender's business.

(2) An order under this section may be made upon any of the following grounds, namely:-

- (a) that the licence was obtained contrary to the provisions of this Act; or
- (b) that the licensed money lender or any person responsible for the conduct or management of the money lending business is not a fit and proper person to continue any longer to conduct or manage such a business; or

- (c) that the licensed money lender or any person responsible for the conduct or management of the money lending business has been guilty of such conduct as renders him unfit to continue any longer to conduct or manage such a business; or
- (d) that the licensed money lender has lent money at an excessive rate of interest having regard to the risk, the value of any security, the time of repayment, the amount lent, and any other relevant circumstances, or upon terms that are otherwise harsh, oppressive, unconscionable; or
- (e) that the licensed money lender has published or caused to be published either directly or indirectly an advertisement containing a statement of the terms of interest on which he is prepared to make loans or any particular class of loans and has without proper cause made any such loan or (as the case may be) any loan of any such class on terms of interest less favourable to the borrower than those so advertised; or
- (f) that the Registrar has established in relation to the holder of the licence any of the grounds referred to in section 9 of this Act.

(3) Upon being satisfied of the existence of any of the grounds aforesaid the Registrar may if he thinks fit order that such licence be delivered up forthwith and may further make any order referred to in subsection (1) of this section.

(4) Where a Registrar makes any order referred to in subsection (1) of this section, the money lender in respect of whom the order was made may appeal against such order in accordance with rules of court to the Magistrates Court for the district in which the appellant resides or carries on business. Every such appeal shall be in the nature of a hearing de novo.

Rules of court may prescribe the manner in which and the time within which notice of any such appeal shall be given by the applicant, the persons to whom such notice shall be given, and the circumstances in which and the conditions under which any such notice of appeal shall operate as a stay on the order of the Registrar against which the appeal is made.

(5) Where a licensed money lender is a party to an action in the Supreme Court or a District Court or a Magistrates Court, and that court is satisfied, on the evidence before it in the action, that a proper case exists for making any such order as is referred to in subsection (1) of this section, such court may, of its own motion, make any such order and shall cause a copy thereof to be forwarded to the Registrar.

18. Effect of convictions on licences. Where any person is by any court convicted of any offence against this Act that court -

- (a) may order that any licence held by or on behalf of that person, and in the case of a partner in a firm, by or on behalf of any other partner in the firm, shall either be suspended for such time as the court thinks fit or be cancelled, and may also, if the court thinks fit, declare any person so convicted or any person by whom or on whose behalf any such licence is held or any person responsible for the management or conduct of the money lending business, to be disqualified from obtaining a licence or managing or conducting a money lender's business for such time as the court thinks fit; and



- (b) shall cause particulars of the conviction and of any order made by the court under this section to be endorsed on every licence held by or on behalf of the person convicted or by any other person affected by the order, and shall cause copies of those particulars to be remitted forthwith to the Registrar.

19. Disqualified money lender becoming director, etc. While his disqualification continues a person disqualified under this Act shall not be capable of becoming or continuing a director, manager, or officer of any corporation licensed under this Act.

20. Production of licence for endorsement, etc. Any licence required by the Registrar or a court under this Act for endorsement or cancellation shall be produced in such manner and within such time as the Registrar or court directs by the person by whom it is held, and any person who without reasonable cause makes default in producing any licence so required shall be guilty of an offence against this Act and liable to a penalty not exceeding ten dollars for each day during which such default continues.

21. Fee for licence. (1) The following fees shall be payable under this Act:-

- (a) for each licence issued to any person (whether carrying on business alone or as a member of a firm) or corporation where there is one authorised address - one hundred dollars or, where there is more than one authorised address - one hundred dollars in respect of each authorised address;
- (b) for each transfer of a licence - ten dollars;
- (c) for each substitution of a new authorised address for the authorised address shown in a licence or of any person or new name pursuant to paragraph (c) of subsection (1) of section 15 of this Act, - two dollars;
- (d) for each endorsement authorised by the Registrar with respect to the licence of a money lender who has died or become a patient or a backward person, - two dollars;
- (e) for each duplicate licence - two dollars;
- (f) on searching any book or record of money lenders kept by the Registrar (for every name inspected) - twentyfive cents;
- (g) on certified copies of or extracts from entries in any such book or record - fifty cents for each certified copy or extract not exceeding five folios of seventytwo words to the folio, and ten cents for each additional folio (or part thereof) of seventytwo words after the first five folios.

(2) Where the duration of a licence referred to in paragraph (a) of subsection (1) of this section is for not more than six months the fee for the licence shall be one half of the sum otherwise payable.

### PART III - REGULATION OF MONEY LENDING TRANSACTIONS

#### Division 1 - Documentation of Transactions with persons carrying on business as Money Lenders

22. Application of Division 1. (1) This Division applies to and in respect of loans made by money lenders after the commencement of this Act.

(2) A reference in this Division, other than in the foregoing provisions of this section, to a loan shall be read and construed as a reference to a loan to and in respect of which this Division applies, and "lent" has a corresponding interpretation.

23. Requirements relating to money lender's loans. (1) Every contract of loan and every contract to secure the repayment of a loan shall be in writing and signed by the borrower or the guarantor as the case may be.

(2) Every contract of loan and every contract to secure the repayment of a loan which is not in writing and signed by the borrower, or the guarantor as the case may be, shall be unenforceable by the lender.

(3) Before the borrower or guarantor as the case may be signs the contract of loan or the contract to secure the repayment of any such loan, the money lender shall prepare and give to the borrower or guarantor as the case may be a statement in writing in tabular form signed by the money lender or his duly authorised agent setting out the following and no other particulars:-

- (a) the amount of the principal of the proposed loan;
- (b) the interest rate to be charged under the contract for the proposed loan, not taking into account any rebates;
- (c) the total amount of the interest to be paid under the contract on the amount of the principal of the proposed loan for the full term of repayment of the proposed loan not taking into account any rebates;
- (d) an itemised statement of any amounts paid or payable by the borrower on account of duties and fees or on account of legal costs and valuation fees referred to in the definition of "interest" in subsection (1) of section 3 of this Act;
- (e) the number of instalments to be paid under the contract by the borrower;
- (f) the amount of each instalment and the place or places at which payment of each instalment is to be or may be made;
- (g) the date on which each instalment is payable;

Provided that nothing contained in paragraphs (e), (f) and (g) of this subsection shall apply to any loan secured over or payable out of the proceeds of sale of any primary produce.

(4) Before paying the money the subject of the loan the money lender shall have the contract of loan signed by the borrower in the presence of a witness and shall have any contract to secure the repayment of any such loan signed by all persons intended to be bound thereby in the presence of a witness.

(5) Within thirty (30) days after the making of the contract the money lender shall deliver to the borrower or send through the post addressed to the borrower:-

- (a) a copy in writing of the contract of loan or of any contract to secure the repayment of the loan;
- (b) a statement in writing in or to the effect of and completed in accordance with the form set out in the First Schedule.

(6) For the purposes of this section -

- (a) the date of the making of the loan shall be deemed to be the date on which under the loan any money is first paid or is first at call (whichever is the earlier); and
- (b) the amount of the principal of the loan shall be deemed to be the full amount agreed to be lent whether in fact all of such amount is lent or not.

(7) If any money lender fails to comply with any of the requirements specified in subsections (3), (4) or (5) of this section or if any particular furnished pursuant to subsection (3) of this section is false or misleading in any material respect -

(a) he is guilty of an offence against this Act and liable -

(i) if a corporation - to a penalty not exceeding four hundred dollars;

(ii) if any other person - to a penalty not exceeding two hundred dollars or to imprisonment for a term not exceeding three months or to both such penalty and imprisonment; and

(b) any provision in the loan providing for the payment of interest on the money lent is, subject to section 27 of this Act unenforceable by the lender and any sum paid by the borrower or guarantor of the loan to the money lender as interest shall be appropriated by the money lender to principal and any excess so paid may be recovered by the borrower or guarantor as the case may be, as a debt in any court of competent jurisdiction at any time during the currency of contract of loan or within twelve months after the time when the contract of loan was discharged by performance or where the borrower or guarantor is deceased within two years from the date of death, whichever is the later.

(8) For the purposes of this section "writing" shall be handwriting or typewriting which is clear and legible, or print of a size no smaller than that known as ten point times.

Division 2 - General Provisions regulating Transactions to which Division 1 applies

24. Application of Division 2. (1) Subject to subsections (2) and (3) of this section, this Division applies to and in respect of loans made after the commencement of this Act to and in respect of which the provisions of Division 1 of this Part apply.

(2) Without limiting the generality of subsection (1) of this section, section 25 of this Act applies to any loan made by any person whether or not he is a money lender.

(3) Section 32 of this Act applies only to any loan made by a money lender.

(4) A reference in this Division, other than in the foregoing provisions of this section, to a loan shall be read and construed as a reference to a loan to and in respect of which this Division applies or as the case may be, to and in respect of which section 25 or section 32 applies, and "lent" has a corresponding interpretation.

25. Re-opening of transactions of money lender. (1) Where proceedings are taken in any court by any person by whom a loan is made (or by the assignee or transferee or holder of a debt or security in respect of a loan made by any such person) for the recovery of any money lent, or the enforcement of any contract or security in respect of money lent, and there is evidence which satisfies the court that -

(a) the interest charged in respect of the sum actually lent is excessive; or

(b) the amounts charged for expenses, inquiries, fines, bonus, premiums, renewals, or any other charges are excessive; or

- (c) the transaction is harsh, oppressive and unconscionable;  
or
- (d) the transaction is otherwise such that a court of equity  
would give relief,

the court may -

- (i) re-open the transaction and take an account between the lender, assignee, transferee or holder aforesaid and the person sued; and
- (ii) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account in connexion with the transaction; and
- (iii) relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest, and charges as the court, having regard to the risk, the value of any security, the time of repayment, the amount of the loan, and all the other circumstances, may adjudge to be reasonable; and
- (iv) if any such excess has been paid or allowed in account by the debtor, or borrower, order the creditor or the lender to repay it; and
- (v) set aside, either wholly or in part, or revise, alter or vary, any security given or agreement made in connexion with the transaction; and
- (vi) if the security has been parted with or the debt has been assigned, order the lender to pay to the borrower or person sued such sum by way of indemnity as the court may determine; and
- (vii) determine what costs (if any) shall be paid by any party to the proceedings to any other party, and order that such costs shall be paid.

(2) Any court in which proceedings might be taken for the recovery of money lent shall have and may on the application of the borrower or surety or other person liable (or where such borrower, surety or other person is bankrupt, on the application of the official receiver or trustee in bankruptcy), exercise the like powers as may be exercised under this section where proceedings are taken for the recovery of money lent; and the court shall have power to entertain any such application notwithstanding any provision or agreement to the contrary, or that the time for repayment of the loan or any instalment thereof has not arrived.

(3) If it appears to the court that any person other than the money lender has shared in the profits of or has any beneficial interest, prospectively or otherwise, in the transaction, the court may cite such person as a party to the proceedings and may make such order in respect of such person as it deems fit.

(4) No proceedings to obtain any relief under this section shall be taken after twelve months from the time when the transaction in respect of or in connexion with which relief is sought was finally closed, save and except that the legal personal representative of any deceased person who had entered into the transaction may take such proceedings at any time within two years after the transaction was finally closed.

(5) Where the court re-opens a transaction of a licensed money lender under this section the court may cause such particulars as the court thinks desirable to be endorsed on any licence held by the money lender and a copy of the particulars to be sent to the Registrar.

(6) For the purposes of effectually carrying out this section all such orders may be made and directions given by the court as it deems necessary or proper.

26. Interest in excess of prescribed rate presumed excessive. (1) In any proceedings under section 25 of this Act in which it is found that the rate of interest charged in respect of the loan exceeds twenty per centum per annum or such other maximum rate of interest as may from time to time be prescribed, the court shall, unless the contrary is proved, presume for the purposes of subsection (1) of the said section 25 that the interest charged is excessive and that the transaction is harsh, oppressive and unconscionable.

(2) Nothing in this section prejudices the powers of any court under section 18 of this Act or of any court under section 25 of this Act where the court is satisfied that the interest charged, although not exceeding the rate of twenty per centum per annum, is excessive or that the transaction is harsh, oppressive and unconscionable or is otherwise such that a court of equity would give relief.

27. Court's power to award interest where s.23 not complied with. Notwithstanding the provisions of paragraph (b) of subsection (7) of section 23, the court may if it thinks that the money lender in the circumstances at the time of his entering into the contract relating to the loan or making the loan or taking the security in respect of the loan or making the loan or taking the security in respect of the loan was acting honestly and ought fairly to be excused for his failure to comply with the provisions of section 23, make an order that any provision in the contract relating to the loan or in the security, providing for the payment of interest on the money lent, shall have effect as if the interest rate payable pursuant to that provision were such amount, not exceeding twenty per centum per annum or such maximum prescribed as the court may specify in its order, and the contract or security shall have effect accordingly.

28. Provisions as to guarantees. Any contract of guarantee of any loan executed after the commencement of this Act which binds the guarantor -

- (a) to pay to the money lender a larger sum than that which the borrower is liable to pay under the contract in respect of which the guarantee is given; or
- (b) to perform any obligation in respect of any loan of money by the money lender other than the loan the subject of the contract in respect of which the guarantee is given,

is unenforceable and in any case referred to in paragraph (a) of this section any sum paid by the guarantor to the money lender in respect of the guarantee may be recovered as a debt in any court of competent jurisdiction at any time during the currency of the contract of loan or within twelve months after the time when the contract of loan was discharged by performance or where the guarantor is dead within two years from the date of death, whichever is the later.

29. Prohibition of compound interest. (1) Where any contract of loan or contract to secure the repayment of any such loan provides directly or indirectly for -

- (a) the payment of compound interest; or

- (b) any increase of interest by reason of any default in the payment of any sum due under the contract or by reason of any default in the performance or observance of any other term or condition of the contract,

any provision in the contract of loan or in any contract to secure the repayment of any such loan providing for the payment of interest on the money lent shall be unenforceable and any sum paid by the borrower or by any guarantor of the loan to the money lender as interest shall be appropriated by the money lender to principal and any excess so paid may be recovered by the borrower or guarantor, as the case may be, as a debt in any court of competent jurisdiction at any time during the currency of the loan or within twelve months after the time when the loan was discharged by performance or where the borrower or guarantor is deceased within two years from the date of death whichever is the later.

(2) Notwithstanding the provisions of subsection (1) of this section, provision may be made by any contract referred to in that subsection that if default is made in the payment upon the due date of any sum payable to the money lender under the contract, whether in respect of principal or interest, the money lender shall be entitled to charge simple interest on that sum from the date of the default until the sum is paid at a rate not exceeding the interest rate payable in respect of the principal apart from any default, and any interest so charged shall not be reckoned for the purposes of this Act as part of the interest charged in respect of the loan.

30. Restriction as to obtaining a loan. (1) Except as hereinafter in this section provided, it shall not be lawful for any person to charge, recover, or receive directly or indirectly or as a partner with any other person, any moneys -

- (a) for or in respect of the making, procuring, negotiating or obtaining of any loan, or of any proposal, application or offer to make, procure, negotiate or obtain any loan, or for or in respect of the collection of repayments of any loan;
- (b) for or in respect of any recommendation such person shall make or cause to be made or agree or offer to make or cause to be made that any loan should or may or should not or may not be made to any person;
- (c) for or in respect of any report which such person may make or cause to be made or agree or offer to make or cause to be made as to the financial status of any person (hereinafter referred to as "the said person") or as to the suitability of any person (hereinafter also referred to as "the said person") as a person to whom money may be advanced on loan if the said report is to be or may be or is intended to be used as a basis for making or refusing to make a loan to the said person; or
- (d) for or in respect of any inquiries which such person may make or cause to be made or agree or offer to make or cause to be made into or concerning the financial status of any person (hereinafter referred to as "the said person") or the suitability of any person (hereinafter also referred to as "the said person"), as a person to whom money may be advanced on loan if the information obtained or to be obtained as a result of such enquiries is to be or may be or is intended to be used as a basis for recommending or refusing to recommend the making of a loan to the said person or as a basis for making any report as to the financial status of the said person as a person to whom money may be advanced on loan:

Provided that the lender may charge and recover from the borrower costs, fees and charges -

- (a) paid or payable by the lender in respect of the preparation by a solicitor or conveyancer of documents evidencing the contract of loan in question or of any suretyship in relation thereto;
- (b) assessed and paid or assessed and payable (whichever is the less) by the lender in respect of stamp duty or registration fees payable under any Act in respect of the loan in question or in respect of documents relating (wholly or in part) thereto and, in the latter case, attributable to the loan in question;
- (c) paid by the lender in respect of a valuation obtained in connexion with the loan in question;
- (d) in a reasonable amount paid by the lender for a reasonable purpose (including that of collection fees) in connexion with the loan in question;

Provided further, that the total sums so charged in respect of any costs, fees or charges included in paragraphs (c) or (d) shall not exceed such per centum of the amount of the principal sum actually lent as may from time to time be prescribed.

(2) Every contract made or entered into or transaction entered into or performed in breach of or with intent to evade or avoid this section shall be unenforceable, and any money or money's worth directly or indirectly paid or allowed to or received by any person in contravention of this section may, notwithstanding any contract or agreement to the contrary, be recovered by the borrower in any court of competent jurisdiction.

(3) Any person who contravenes or fails to comply with any of the provisions of this section is guilty of an offence against this Act and liable to a penalty of not exceeding two hundred dollars, and in addition upon such conviction the court may order him to repay any moneys charged, recovered or received by him contrary to the provisions of this section.

31. Obligation of money lender to supply information as to state of loan.

(1) A money lender shall, within fourteen clear days after a request in writing has been made to him by the borrower or by the guarantor as the case may be at any time during the continuance of the contract give or send by prepaid, registered or certified post to that person a statement signed by the money lender or his agent, showing -

- (a) the date on which the loan was made, the amount of the principal of the loan, and the interest rate charged; and
- (b) the amount and date of any payment already received by the money lender in respect of the loan;
- (c) the amount of every sum due to the money lender but unpaid, and the date upon which it became due, and the total amount of interest accrued due and unpaid in respect thereof; and
- (d) the amount of every sum not yet due which remains outstanding, and the date upon which it will become due,

but a money lender need not comply with such a request if he has sent to such person any such statement in respect of the same loan within a period of three months immediately preceding the receipt of the request.

(2) A money lender shall within fourteen clear days after a request has been made to him by the borrower or guarantor as the case may be give or

send by prepaid, registered or certified post to that person a copy of any document relating to a loan made by him to the borrower, or any security therefor or, if the borrower or the guarantor so requires, to any person specified in that behalf in the request, and the borrower or guarantor shall pay therefor the prescribed fee.

(3) Any money lender who without reasonable excuse contravenes or fails to comply with the provisions of subsections (1) and (2) of this section is guilty of an offence against this Act and liable -

- (a) to a penalty not exceeding two hundred dollars; and
- (b) in addition to a daily penalty not exceeding ten dollars for each day on which the default continues, and so long as the default continues such money lender is not entitled to sue for or recover any sum due under the contract on account either of principal or interest and interest is not chargeable in respect of the period of the default.

32. Early repayments of loan. (1) A borrower may at any time before the date stipulated in the contract for repayment of the loan, repay in full the loan to the money lender.

(2) Where a loan is repaid in full before the date stipulated in the contract for repayment of the loan, no interest shall be charged or paid in respect of any period exceeding three months after the day of repayment of the loan, or the said date, whichever shall be the less, and any interest so paid shall be recoverable as a debt in a court of competent jurisdiction.

(3) If any money lender charges any interest in contravention of subsection (2) of this section, he is guilty of an offence against this Act and liable -

- (a) if a corporation - to a penalty not exceeding eight hundred dollars;
- (b) if any other person - to a penalty not exceeding four hundred dollars or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment.

33. Assignment of money lender's debts and securities to a money lender to be void. (1) Subject to section 36 of this Act any assignment -

- (a) of a debt in respect of money lent by a money lender, or in respect of interest on money so lent; or
- (b) of the benefit of any agreement made or security taken in respect of money so lent, or interest thereon,

is, if the assignment is made to a money lender, void unless made with the consent in writing of the borrower and the guarantor (if any).

(2) Subsection (1) of this section does not extend to -

- (a) an assignment made by a money lender bona fide for the purpose of transferring to the assignee the whole of the business carried on by the assignor as a money lender at an authorised address;
- (b) an assignment by operation of law, or in consequence of the death of a money lender;



- (c) an assignment made by the receiver or manager or official manager of a corporation that is a money lender; or
- (d) an assignment made by a composition and deed of assignment to which Part X of the Bankruptcy Act 1966 or an assignment made by deed of arrangement to which Part X of the said Act applies, or an assignment to a trustee under or in pursuance of a composition or scheme of arrangement approved under section 73 of the said Act.

34. Notice and information to be given on assignment of money lender's debts. (1) Where any debt in respect of money lent, or in respect of interest on any such debt or the benefit of any contract made or security taken in respect of any such debt or interest is assigned to any assignee, the assignor (whether he is the lender or any person to whom the debt has been previously assigned) shall, before the assignment is made -

- (a) give to the assignee notice in writing that the debt, contract, or security is affected by the operation of this Act; and
- (b) supply to the assignee all information necessary to enable him to comply with the provisions of this Act relating to the obligation to supply information as to the state of loans and copies of documents relating thereto.

(2) Any person acting in contravention of or failing to comply with any of the provisions of subsection (1) of this section is liable to indemnify any other person who is prejudiced by the contravention, and is also guilty of an offence against this Act and liable -

- (a) if a corporation - to a penalty not exceeding six hundred dollars;
- (b) if any other person - to a penalty not exceeding four hundred dollars or to imprisonment for a term not exceeding six months or to both such penalty and imprisonment.

(3) In this section "assigned" means assigned by an assignment other than an assignment by operation of law or in consequence of death, and the expressions "assignor" and "assignee" have corresponding interpretations.

35. Application of Act as respects assignee. (1) The provisions of this Act continue to apply to any debt to a money lender in respect of money lent by him after the commencement of this Act or in respect of interest on money so lent or of the benefit of any contract made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the contract or security is assigned to any assignee and, except where the context otherwise requires, any reference in this Act to a money lender or other person by whom the loan is made shall accordingly be construed as including a reference to any such assignee as aforesaid.

(2) Notwithstanding anything contained in this Act -

- (a) any contract with, or security taken by, a money lender in respect of money lent by him shall be and shall be deemed always to have been, valid in favour of any bona fide assignee transferee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him; and

- (b) any payment or transfer of money or property made bona fide by any person, whether acting in a fiduciary capacity or otherwise, on the faith of the validity of any such contract or security, without notice of any such defect shall in favour of that person be and be deemed always to have been as valid as it would have been if the contract or security had been valid;

but in either such case the money lender shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this section, and nothing in this subsection shall render valid a contract or security in favour of, or apply to proceedings commenced by, an assignee or holder for value who is himself a money lender.

And with respect to notice, the following provisions shall apply:-

- (c) a person shall not be deemed to have had notice of a defect in a contract or security by reason only that a search in the register established under this Act would have disclosed the defect or shown that the agreement or security was effected with a money lender;
- (d) a person making any such payment or transfer as aforesaid shall not be prejudicially affected by notice of any instrument, fact, or thing unless -
  - (i) it is within his own knowledge or would have come to his knowledge if such enquiries and inspections had been made as ought to reasonably have been made by him; or
  - (ii) in the same transaction with respect to which a question of notice to such person arises, it has come to the knowledge of his counsel, as such; or of his solicitor or other agent as such, or would have come to the knowledge of his solicitor or other agent, as such, if such enquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

This provision shall not exempt such person from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which the title is devised, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this provision had not been enacted.

(3) A person shall not by reason of anything contained in this provision be affected by notice in any case where he would not have been so affected if this provision had not been enacted.

(4) Nothing in this provision renders valid for any purpose any contract, security, or other transaction which would, apart from the provisions of this Act, have been void or unenforceable.

36. Execution and attestation of certain assignments. (1) No assignment to a money lender, whether absolute or by way of security or otherwise howsoever made, after the commencement of this Act, by any person (hereinafter in this section called the grantor) of or in respect of all or any part of his right, title or interest whether actual or expectant, in possession, remainder, reversion or contingency, or of any nature whatsoever, in or under any will, codicil, or deed or in, under or to the estate of any deceased person, whether the deceased or such lastmentioned person was before or after the making of such assignment or before or

after the commencement of this Act shall be of any force or validity at law or in equity and is void unless the assignment is in writing and was executed by the grantor in the presence of a magistrate, Registrar of a District Court, clerk of the Magistrates Court, or a solicitor instructed and employed independently of the money lender, and is certified by such magistrate, Registrar, clerk of the Magistrates Court, or solicitor as provided in subsection (2) of this section.

(2) The magistrate, Registrar, clerk of the Magistrates Court or solicitor -

- (a) shall read over and explain, or cause to be read over and explained in his presence, to the grantor the said assignment; and
- (b) shall examine the grantor as to his knowledge of the assignment; and
- (c) if he thinks fit may so examine him separately and apart from any other person; and
- (d) if he is satisfied that the grantor understands the true purport and effect thereof and freely and voluntarily executes the same, shall certify in writing upon the instrument of assignment that the instrument has been so read over and explained, and that he has examined the grantor and is satisfied as hereinbefore required, and that the grantor has executed the instrument in his presence.

(3) This section does not apply to any assignment made only for the purpose of vesting property in the person entitled thereto under or by virtue of the provisions of a will, codicil, or deed, or in a person entitled thereto as part of the estate of a deceased person, or to any assignment made by any person to whom any such property as aforesaid has been actually conveyed, assigned, or transferred.

(4) No assignment (except assignments by way of security) executed in pursuance of this section shall be impeached upon any ground whatsoever except in the case of fraud or any kind of imposition, and no assignment by way of security executed in pursuance of this section shall be impeached upon any ground whatsoever, except in the case of fraud or any kind of imposition, or except as provided by this Act.

(5) In this section -

"assignment" means any assignment, assurance, sale, mortgage, lien, charge, conveyance, transfer, or declaration of trust, and any contract, agreement, or arrangement for assignment, assurance, sale, mortgage, lien, charge, conveyance, transfer, or declaration of trust, and any power of attorney, appointment of agency, licence, or power to receive, or other authority of a like nature;

"deed" means any instrument (other than a will or codicil) whether under seal or not, whereby any property is settled, appointed, given, or declared to be held in trust, or is agreed to be settled, appointed, given or held in trust.

#### PART IV - GENERAL PROVISIONS

37. Use of authorised name by money lenders. (1) A money lender -

- (a) shall not for the purposes of his business as such issue or publish or cause to be issued or published any advertisement, circular, business letter, or other similar document which

does not show his authorised name in uniform lettering and in such manner as to be not less conspicuous than any other name; and

- (b) shall outside the premises occupied by him at his authorised address display or cause to be displayed his authorised name in uniform lettering and in such manner as to be conspicuous and not less conspicuous than any other name displayed in the vicinity of the premises in connection with his business as a money lender.

Any money lender who contravenes the provisions of this subsection is guilty of an offence against this Act and liable to a penalty not exceeding one hundred dollars.

(2) If a money lender for the purposes of his business as such issues or publishes or causes to be issued or published any advertisement, circular, or document of any kind whatsoever containing expressions which might reasonably be held to imply that he carries on banking or insurance business, he is guilty of an offence against this Act and liable -

- (a) if a corporation - to a penalty of not less than fifty dollars and not more than four hundred dollars;
- (b) if any other person - to a penalty of not less than twenty dollars and not more than one hundred dollars or to imprisonment for a term not exceeding three months or to both such penalty and imprisonment.

38. Restrictions on money lending advertisements. (1) No person shall send or deliver or cause to be sent or delivered to any person any circular or other document or printed or written matter concerning any money lender, or containing an invitation -

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

which contains any representation or statement which is inaccurate, deceptive, false or misleading and which such person knew or might on reasonable investigation have ascertained to be inaccurate, deceptive, false or misleading.

(2) No person shall publish or cause to be published in any newspaper or other printed or written matter, poster or placard, wireless, television or by any other means any advertisement advertising any such particulars concerning a money lender or containing any such invitation, which contains any representation or statement which is inaccurate, deceptive, false or misleading and which such person knew or might on reasonable investigation have ascertained to be inaccurate, deceptive, false or misleading.

(3) Subsection (2) of this section does not apply to -

- (a) an owner, publisher or printer of any newspaper, publication, periodical or circular;
- (b) an owner of any radio or television station;
- (c) an agent or employee of any person referred to in paragraph (a) or (b) of this subsection;

- (d) an agent of the advertiser;
- (e) a newsagent or bookseller,

who, in good faith and without knowledge of the fact that the advertisement contains a representation or statement that is inaccurate, deceptive, false or misleading, publishes the advertisement, disseminates it, circulates it or places it before the public or any member of the public or causes it to be published, disseminated, circulated or placed before the public or any member of the public or is concerned in its publication, dissemination or circulation or the placing of the advertisement before the public or any member of the public.

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

(5) Any person who contravenes or fails to comply with any of the provisions of this section is guilty of an offence against this Act and liable -

- (a) if a corporation - to a penalty of not less than forty dollars and not more than four hundred dollars for each occasion on which such advertisement is published;
- (b) if any other person - to a penalty of not less than twenty dollars and not more than one hundred dollars for each occasion on which such advertisement is published or to imprisonment for a term not exceeding three months or to both such penalty and imprisonment.

39. Avoiding contract for payment of loan advanced during infancy. If any infant, who has entered into a contract of loan with a money lender, agrees after he comes of age to pay any money which in whole or in part represents or is agreed to be paid in respect of any such loan, and is not a new advance, such agreement and any instrument, negotiable or otherwise, given in pursuance of or for carrying into effect such agreement or otherwise in relation to the payment of money representing or in respect of such loan shall so far as it relates to money which represents or is payable in respect of such loan, and is not a new advance be void absolutely as against all persons whosoever.

40. Penalties for false statements and representations. (1) A money lender or any manager, agent, or clerk of a money lender, or any person being a director, manager, or other officer of any corporation which is a money lender, shall not, by any false, misleading, or deceptive statement, representation, or promise, or by any dishonest concealment of material facts, induce or attempt to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed.

(2) Any person who contravenes any of the provisions of this section is guilty of an offence against this Act and liable to a penalty not exceeding one thousand dollars, or to imprisonment for a term not exceeding two years, or to both such penalty and imprisonment.

41. Method of making loan. (1) All loans made by a money lender shall be made in current money, bank notes, or cheques on bankers, and shall be made in full without any deduction for interest or otherwise, and no land, goods or articles of any kind whatever or choses in action shall be given or supplied in or by way of barter or otherwise for or as part of any such loan.

This subsection shall not be construed so as to prevent a money lender deducting from any loan any sum lawfully agreed to be paid in accordance with the provisions of this Act on account of duty or fees or on account of legal costs or valuation fees except interest.

(2) Every contract made or transaction entered into or performed in breach of or with intent to evade or avoid this section in respect of a loan after the commencement of this Act shall, to the extent of such breach, evasion, or avoidance, be absolutely void.

#### PART V - MISCELLANEOUS

42. Contracting out prohibited. (1) The provisions of this Act shall have effect notwithstanding any stipulation to the contrary whether made before or after the commencement of the Act.

(2) No contract or agreement made or entered into either before or after the commencement of this Act shall operate to annul or vary or exclude any of the provisions of this Act or to prevent any court from exercising any power under this Act.

(3) Nothing in this Act shall be construed as derogating from the powers or jurisdiction of any court, and the powers and jurisdiction conferred by this Act shall be deemed to be in addition thereto.

43. Special provisions as to corporations. (1) Where any notice or application is by or under this Act authorised or required to be given or made by any person in connexion with a licence the notice or application may, in the case of a corporation, be given or made by the corporation under its common seal or by the person appointed by the corporation to take out a licence on its behalf.

(2) Where a person who is guilty of an offence against this Act is a corporation, any person being a chairman, member of the governing body, director, manager, secretary, or officer of the corporation, or any person who took out a licence on behalf of the corporation, is deemed to have committed the like offence and liable to the pecuniary penalty or imprisonment or both provided by this Act in the case of such an offence by a person other than a corporation accordingly, unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

(3) Where a person who is guilty of an offence against this Act is the person who took out a licence on behalf of a corporation the corporation and any person being a chairman, member of the governing body, director, manager, secretary, or officer of the corporation is deemed to have committed the like offence and liable to the pecuniary penalty or imprisonment or both provided by this Act in the case of such offence by a corporation or (as the case requires) by a person other than a corporation accordingly, unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

44. Name of borrower and others not to be published. Any person who publishes in any newspaper or by radio, television or cinematograph the name, address or occupation of any party, being the borrower, surety, guarantor or other person liable in respect of a loan, to any proceedings under this Act is guilty of an offence against this Act and liable to a penalty not exceeding five hundred dollars.

45. Offences. (1) All proceedings, in respect of offences against this Act or for the recovery of any fees thereunder, shall be heard and determined in a summary way on complaint under "The Justices Acts, 1886 to 1968".

(2) A prosecution for any offence under this Act may be instituted at any time within three years after the offence was committed or within six months after the commission of the offence comes to the knowledge of the complainant, whichever is the later period.

(3) In any proceeding under or for a purpose of this Act, the averment in any complaint of the date on which the commission of any offence under this Act came to the knowledge of the complainant shall be evidence of that matter, and in the absence of evidence in rebuttal shall be conclusive evidence of such matter.

46. Evidence of licence. (1) A certificate purporting to be signed by the Registrar and stating that, at the date mentioned therein, the person named therein was licensed as a money lender is in all courts and before all persons prima facie evidence that the person was, at the date mentioned, a money lender within the meaning of this Act.

(2) A certificate purporting to be signed by the Registrar and stating that, at the date mentioned therein, the person named therein was not licensed as a money lender is in all courts and before all persons prima facie evidence of the truth of that statement.

47. Entries in books deemed made by money lender. Every entry in any book kept or belonging to a money lender or found on his premises shall be deemed, unless the contrary is shown, to have been made by or with the authority of such money lender.

48. Penalty for demanding fee. Any person, whether on his own behalf or as agent for another who, by any letter or written communication demanding or requesting payment of any debt or alleged debt by any person, makes upon such person any claim or charge as or by way of payment, fee, recompense, costs, expenses or otherwise for or in relation to such demand or request over and above the actual debt or alleged debt, shall be liable to a penalty not exceeding fifty dollars.

49. General penalty. Any person who is guilty of any offence or of any contravention of, or of neglecting or failing or refusing to observe any of the provisions of this Act shall, where no specific penalty is provided therein, be liable to a penalty not exceeding one hundred dollars.

50. Regulations. (1) The Governor in Council may from time to time make regulations not inconsistent with this Act for or with respect to -

- (a) the registration of money lenders (including the prescribing of the conditions for registration and the grounds on which they may be removed from the register), whether individuals, firms, societies, or companies, the form of the register and the particulars to be entered therein, and the fees to be paid on registration and renewal of registration, and respecting the inspection of the register and the fees payable therefor, and in any such regulations may prescribe such forms, declarations, notices, and fees in and for such purposes as it may deem fit;
- (b) without limiting the generality of the above provisions, such regulations may from time to time prescribe that, from and after any date or dates as specified in any such regulations, the maximum rate per centum per annum of interest (as charged and calculated in accordance with the provisions of this Act) in respect of any loan or transaction, as the case may be, made after any such prescribed date or dates, shall not exceed such maximum rate per centum per annum of interest as shall be so prescribed; provided that such

regulations may from time to time provide therein for such exemptions in respect of such amounts in regard to any such loan or transaction as so prescribed;

- (c) provided further that regulations may be made exempting any individual person or class or classes of persons from registration under this Act;
- (d) such regulations may also prescribe the duties, powers and authorities of the Registrar, the furnishing by the money lender to the borrower of prescribed statements showing the nature and details of the loan, the payments made thereunder and such other particulars as may be prescribed;
- (e) such regulations may also specify what types of advertising will be treated as inaccurate, deceptive, false or misleading for the purposes of this Act;
- (f) any other forms to be used under this Act;
- (g) prescribing penalties for any contravention of or failure to comply with the regulations; and
- (h) generally prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) All such regulations shall upon publication in the Gazette have the same effect as if they were enacted in this Act and shall not be questioned in any proceedings whatsoever.

(3) A copy of all such regulations shall be laid before Parliament within fourteen days from the publication thereof if Parliament is then sitting, and if it is not then sitting, within fourteen days from the commencement of the next Session.

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FIRST SCHEDULE

Advice to Borrowers from Persons Carrying on  
Business as Money Lenders

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1. Unless you have signed a written contract for the loan made to you or a written contract to secure the payment of the loan, as the case may be, the loan or guarantee cannot be enforced by the money lender (s.23).
2. Where you have signed a written contract for the loan the money lender is liable for a penalty, and cannot (except where the court excuses him and orders the borrower to pay not more than a rate per centum per annum fixed by it) recover any interest on the loan, unless -
  - (a) before you signed the contract, the money lender gave you a statement showing:
    - (i) the principal of the loan;
    - (ii) the interest rate on the loan;
    - (iii) the total amount of interest payable on the loan;
    - (iv) the amounts you are required to pay for duties, fees, legal costs and valuation fees;
    - (v) how many instalments you have to pay on the loan;
    - (vi) how much the instalments are and the place or places at which payment of each instalment is to be or may be made;
  - (b) you receive the money after signing the contract in the presence of a witness; and
  - (c) within thirty days after making the contract the money lender delivered or sent to you:
    - (i) a copy in writing of the contract of loan or any contract to secure the repayment of the loan and the particulars mentioned in paragraph (a) above; and
    - (ii) this statement.
3. If proceedings in any court are taken against you by the money lender in respect of the loan and the court is satisfied that the interest rate or other charges are excessive, or that the transaction is harsh, oppressive and unconscionable or that you are entitled to any relief, the court may vary the terms of the loan contract to make them less onerous on you. Without waiting for proceedings to be taken against you, you may apply to the court to ask it to vary the terms of the loan (s.25).
4. If the rate of interest charged on the loan exceeds [\*.....] per annum the onus is on the money lender if proceedings are taken against you to show to the court that the rate is not excessive (s.26).
5. Money lenders are required to supply on request in writing by the borrower and/or guarantor as the case may be a signed statement giving particulars as to the state of the loan (including the interest rate charged) and upon payment of a fee, a copy of any document relating thereto (s.31).

6. If you repay the loan before the due date for repayment, no interest shall be charged or paid in respect of the period after the date of repayment (in excess of three months after the date of repayment of the loan, or the balance of the loan, whichever shall be the less) and any interest so paid shall be recoverable as a debt in a court of competent jurisdiction (s. 32).

7. If you have any doubts about your liabilities and obligations under the loan you should immediately obtain legal advice.

[\* Here insert the maximum rate permitted]

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## CIRCULATION LIST

A Working Paper on this topic was circulated to the following:-

- The Minister for Justice and Attorney-General for Queensland
- Ministers of Queensland Cabinet
- Judges of the Supreme Courts, Brisbane, Townsville, Rockhampton
- \* The Hon. Mr. Justice M.B. Hoarè
- The Chairman of the District Courts, Brisbane
- The Dean of the Faculty of Law, University of Queensland
- The Vice-Chancellor, University of Queensland
- Dr. Clifford L. Pannam, University of Melbourne Law School
- Professor Arthur Rogerson, University of Adelaide
- The Hon. Sir Harry Gibbs, Sydney
- Sir George Paton, Law Foundation, Melbourne
- The Law Commission, London
- The Law Reform Commission, Sydney
- The Law Reform Committee, Adelaide
- The Law Reform Committee, Perth
- The Law Reform Committee, Hobart
- The Law Reform Commission, New Zealand
- The Research Officer, Dept. of the Attorney-General, Sydney
- Parliamentary Draftsman, Brisbane
- Parliamentary Draftsman, Melbourne
- Solicitor General, Brisbane
- Crown Law Department, Brisbane
- Commonwealth and State Attorneys-General
- Minister for Justice, New Zealand
- Commonwealth and State Solicitors General
- The Under Secretary, Department of Justice, Brisbane
- The Under Secretary, Treasury Department, Brisbane
- \* The Registrar of Money Lenders, Brisbane
- The Insurance Commissioner, Queensland
- The General Manager, S.G.I.O., Brisbane
- The Commissioner of Police, Brisbane
- The Bar Association of Queensland
- F.G. Brennan, Q.C., Brisbane
- \* M.G. Morley Esq., Barrister, Brisbane
- The Queensland Law Society Inc.
- \* The North Queensland Law Association, Townsville
- The Central District Law Association, Rockhampton
- The Gold Coast District Law Association, Surfers Paradise
- The Downs and South-Western Law Association, Toowoomba
- Ipswich and District Law Association
- Leo J. Williams & Williams, Solicitors, Brisbane
- \* A.M.P. Discount Corporation Limited, Brisbane
- \* Associated Banks (Queensland)
- \* Australian Finance Conference, Sydney
- Australian Institute of Credit Management, Brisbane
- Avco Financial Services Ltd., Sydney
- Fire & Accident Underwriters' Association of Queensland
- \* Life Offices' Association, Brisbane
- M.L.C., Brisbane
- \* Queensland Trustees Ltd.
- Short Term Acceptances Limited, Brisbane
- United Discount Co. of Aust. Ltd., Brisbane
- Union Fidelity Trustee Co. of Aust. Ltd., Brisbane

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\* those from whom comment was received.