

Moneylenders (Licensing and Regulation) Bill 2011

1 Title

This Act is the Moneylenders (Licensing and Regulation) Act 2011.

2 Purpose

The purpose of this Act is to—

- (a) prevent undesirable and unfit persons from engaging in money lending or being employed by moneylenders; and
- (b) prevent the business of money lending from being carried on in places where it is contrary to the public interest to do so; and
- (c) assist the Police to prevent criminals and their associates from money laundering through the process of money lending; and
- (d) assist the Inland Revenue Department to identify and collect taxable profits of moneylenders; and
- (e) prevent oppressive conduct and prohibit extortionate terms of lending by moneylenders; and
- (f) prevent oppressive methods of debt collection by moneylenders and their agents; and
- (g) simplify terms upon which moneylenders offer credit to consumer borrowers.

Part 1

Preliminary Provisions

3 Interpretation

In this Act, unless the context otherwise requires,—

"Advertisement" means any form of written communication made to the public or a section of the public for the purpose of promoting the business of Money Lending, including any communication on the internet

"Certificate" means a certificate issued or renewed under this Act for a person engaged by a moneylender, and **Certified Employee** and **Certified Agent** shall be construed accordingly

"Credit", **"Creditor"** and **"Consumer Credit Contract"** have the same meanings as contained in the Credit Contracts and Consumer Finance Act 2003

"Exempt Moneylender" means any moneylender who is exempt under Section 5(3) or has been granted an exemption by the Registrar under Section 5(4) from holding a licence

"Financial Markets Authority" means the Financial Markets Authority established under the Financial Markets Authority Act 2011

"Guarantor" has the same meaning as contained in the Credit Contracts and Consumer Finance Act 2003

"Interest", in relation to a loan, means any amount by whatsoever name called in excess of the principal paid or payable to a moneylender in consideration of or otherwise in respect of the loan, but does not include any permitted fee, or other fee payable under this Act

"Licence" means a moneylender's licence issued or renewed under this Act, and **"licensee"** shall be construed accordingly

"Licence Number" means the number assigned to a licence by the Registrar

"Loan of Money" means—

- (a) money provided to a debtor or another person to the order of a debtor; or
- (b) a pre-existing monetary obligation of a debtor that is discharged or consolidated by the creditor

"Money Lending" means the giving of a loan of money under a Consumer Credit Contract

"Moneylender" means—

- (a) a person who, whether as principal or agent, carries on or holds himself or herself out in any way as carrying on the business of money lending, whether or not he or she carries on any other business—
- (b) but does not include a person who lends money on the security of goods of which the person takes possession, but not ownership, and is a licensed pawnbroker under the Second Hand Dealers and Pawn Brokers Act 2004

"Minister" means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Securities Act 1978

"Person" means any legal person and includes any company

"Police Report" means a report issued to the Registrar by the Commissioner of Police under Section 14

"Principal", in relation to a loan of money, means the amount actually lent by a moneylender under the consumer credit contract

"Relevant Criminal Conviction" means a conviction for an offence that would disqualify a person from holding a licence or a certificate under the Second Hand Dealers and Pawn Brokers Act 2004, or within the scope of Section 15(d)(i) of this Act

"Substantial Shareholder" means a person-

- (a) who has an interest or interests in one or more voting shares in the company; and
- (b) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares in the company.

"Uncertified Person" means a person—

- (a) who is presumed to be engaged by a moneylender under Section 7(2); and
- (b) who does not hold a current certificate, or at the relevant time holds a suspended certificate

"Unlicensed Moneylender" means a person—

- (a) who is presumed to be a moneylender under Section 7(1); and
- (b) who is not a licensee or an Exempt Moneylender

"Registrar" means the Registrar of Moneylenders appointed under Section 5 and includes a Deputy Registrar of Moneylenders and an Assistant Registrar of Moneylenders appointed under that Section

4 Registrar and Deputy Registrars of Moneylenders

1) There shall be—

- (a) a Registrar of Moneylenders; and
- (b) as many Deputy Registrars of Moneylenders as may be necessary for the purposes of this Act each of whom must be appointed by the Minister.

- 2) Subject to the control of the Registrar a Deputy Registrar has and may exercise the powers, duties and functions of the Registrar under this Act.
- 3) The fact that a Deputy Registrar exercises those powers, duties, or functions is conclusive evidence of the authority to do so.

Part 2

Licensing of Moneylenders and registration of persons engaged by them

5 Licensing of moneylenders

- 1) Subject to subsections (3) and (4), every person, who carries on business as a moneylender must hold a licence.
- 2) If two or more persons carry on business as moneylenders in partnership, each partner must hold a licence.
- 3) Any person, who by any enactment is authorised to take deposits, shall be exempt from being required to hold a licence or a certificate.
- 4) The Registrar may, by Order in Council, be authorised to grant exemptions from being required to hold a licence or a certificate, on such terms as are consistent with the purposes of this Act.

6 Certifying persons engaged by moneylenders

- 1) Every person, other than an employee or agent of an exempt moneylender, or an individual who holds a licence, must hold a certificate, if he or she—
 - (a) with the authority of the moneylender, negotiates or concludes a loan of money under a consumer credit contract on behalf of the moneylender; or
 - (b) with the authority of the Moneylender, acts as a repossession agent of the moneylender to enforce a loan of money under a consumer credit contract; or
 - (c) manages, supervises or controls any person, who, with the authority of the moneylender, negotiates or concludes a loan of money under a consumer credit contract on behalf of the moneylender or acts as a repossession agent for the moneylender exercising rights under a consumer credit contract for the loan of money.

7 Presumption of money lending and engagement by a moneylender

- 1) Any person, who, acting as a creditor enters into a consumer credit contract for a loan of money on six or more different days within any 12 month period shall be presumed, until the contrary is proven, to be carrying on business as a moneylender.
- 2) Any person, who—
 - (a) purports to negotiate or conclude a consumer credit contract for a loan of money on behalf of a moneylender; or
 - (b) purports to act as a repossession agent for a moneylender exercising rights under a consumer credit contract for a loan of money

shall be presumed, until the contrary is proven, to be acting with the authority of and engaged by the relevant moneylender.

8 Prescribed form and transfer of licences and certificates

- 1) A licence and a certificate shall be in the prescribed form.
- 2) A certificate is non-transferrable.
- 3) A licence is non-transferrable, except in a situation described in subsection (4).

- 4) The Registrar may transfer a licence to a temporary licence holder for a period of not more than 12 months, if the temporary licence holder is—
 - (a) the personal representative of a deceased licence holder; or
 - (b) the assignee in bankruptcy of a licence holder; or
 - (c) the manager, as defined in section 2 of the Protection of Personal Property Rights Act 1988, of a licence holder.
- 5) A temporary licence holder may apply for the extension of a temporary licence, which may or may not be granted by the Registrar.
- 6) A temporary licence holder shall have the same rights and responsibilities of a licence holder during the period of the temporary licence.

9 Display of signs and advertisements

- 1) Every licensee shall affix, in a conspicuous position at or in each of his or her places of business, a sign bearing his or her business name, the words "Licensed Moneylender" in the English language, and the number of the licence, such as to be visible to any person immediately outside the place of business.
- 2) Every consumer credit contract for the loan of money within the meaning of this Act, every pre-possession notice pursuant to Section 8 of the Credit (Repossession) Act 1999, and every post-possession notice pursuant to Section 20 of the Credit (Repossession) Act 1999 and every advertisement used by a moneylender in the course of business, shall include the moneylender's business name and licence number.

10 Issuance of licences and certificates

- 1) Subject to Sections 11 and 13, the Registrar may issue a licence or certificate, with or without conditions.
- 2) Subject to Section 15, the Registrar may refuse to issue a licence or certificate.
- 3) The Registrar shall notify the Commissioner for Inland Revenue of the issuance, renewal and revocation of any licence or variation of the terms of any Licence.
- 4) The Registrar shall notify the Commissioner of Police of the issuance, renewal and revocation of any licence or certificate, and of the variation of the terms of any licence.

11 Disqualified persons

- 1) Any person, who—
 - (a) is disqualified from holding a licence or certificate pursuant to the Second Hand Dealers and Pawn Brokers Act 2004; or
 - (b) is a disqualified person pursuant to Section 16 of the Credit (Repossession) Act 1997; or
 - (c) has had a licence or certificate revoked or had a renewal of a licence or certificate refused within the past five years; or
 - (d) is or was, at the relevant time, concerned in the management of a company or firm that has had its licence under this Act or under the Second Hand Dealers and Pawn Brokers Act 2004 cancelled within the past five years; or
 - (e) has been convicted of an offence under this Act within the past five years ; or
 - (f) holds a suspended licence or certificate—shall be disqualified from holding a licence or certificate under this Act.

12 Applications for licences and certificates

- 1) An application for the issue of a licence or a certificate shall be—
 - (a) made in such form and manner as may be determined by the Registrar; and

- (b) accompanied by the payment of a non-refundable application fee of a prescribed amount, which shall be paid in such manner as may be specified by the Registrar; and
 - (c) accompanied by payment, as security for the proper conduct of their business of money lending in New Zealand, a deposit of \$20,000 for each place of business, in respect of which the moneylender is to be licensed.
- 2) An application for the issuance of a licence or a certificate must be accompanied by a statutory declaration by the applicant, and, in the case of a company, by one of its directors, confirming the accuracy of all information contained in the application.
 - 3) An application for a licence by a company must contain—
 - (a) the names and residential addresses of all directors and all persons proposed to be involved in the management of the business; and
 - (b) the addresses at which it is proposed for the business to be carried on.

13 Unsatisfactory applications

- 1) Without prejudice to Section 11, the Registrar shall not issue a licence or a certificate—
 - (a) where any information or statement furnished by the applicant that is material to his or her application under this section is incomplete, false or misleading; or
 - (b) where the applicant does not satisfy the requirements of a licence or a certificate applied for; or
 - (c) where the applicant for a licence does not place with the Registrar as security for the proper conduct of his business of money lending, in such form as the Registrar may determine, a deposit of \$20,000 for each place of business, in respect of which he or she is to be licensed.

14 Procedure on receipt of applications

- 1) Upon receipt of each application for a licence or certificate, the Registrar shall send a copy of the application to the Commissioner of Police.
- 2) Within three weeks of receipt of the application from the Registrar, the Commissioner of Police shall notify the Registrar in the Police Report as to—
 - (a) whether the applicant is or is not of good character or otherwise a fit and proper person to carry on or be involved with money lending; and
 - (b) whether or not the applicant has relevant criminal convictions; and
 - (c) whether it is or is not in the public interest for a business of money lending to be conducted in any of the place or places stipulated in the application.
- 3) A copy of the Police Report shall be sent to the applicant at the same time it is sent to the Registrar.

15 Refusal to issue or renew licences

The Registrar may refuse to issue or renew a licence on any of the following grounds—

- (a) if—
 - (i) the applicant is not—
 - (A) an individual who is ordinarily resident in New Zealand; or
 - (B) a company, firm or limited liability partnership; or
 - (ii) any person, who is or will be responsible for the management of the applicant's business of money lending, is not ordinarily resident in New Zealand;

- (b) if the applicant, any director or partner of the applicant, or any person, who is or will be responsible for the management of the applicant's business of money lending, is below 18 years of age;
- (c) if the Registrar is not satisfied that the applicant has any place of business in respect of which the licence is to be issued or renewed that is suitable for a business of money lending, or the Registrar is of the view, having regard to the Police Report, that it is not in the public interest for a business of money lending to be conducted in such a place;
- (d) if the applicant, any director, partner or substantial shareholder of the applicant, or any person, who is or will be responsible for the management of the applicant's business of money lending,—
 - (i) has been convicted of any offence involving violence, dishonesty or moral turpitude;
 - (ii) is contravening or has contravened any provision of this Act;
 - (iii) has been convicted of any offence under this Act; or
 - (iv) is carrying on or has carried on any business of money lending, in New Zealand or elsewhere, in such a manner as renders him or her unfit to hold a licence;
- (e) if the Registrar is not satisfied as to the qualification or experience of the applicant, or any person, who is or will be responsible for the management of the applicant's business of money lending;
- (f) if, on the basis of the Police Report, the Registrar is not satisfied as to the good character of the applicant, any director, partner or substantial shareholder of the applicant, or any person, who is or will be responsible for the management of the applicant's business of money lending;
- (g) if, on the basis of the Police Report, the Registrar is not satisfied that the applicant, any director, partner or substantial shareholder of the applicant, or any person, who is or will be responsible for the management of the applicant's business of money lending, is a fit and proper person to carry on or manage a business of money lending.

16 Refusal to issue or renew certificates

- 1) When an application is made by any person for the issue or renewal of a certificate, the certificate shall not be issued or renewed if—
 - (a) any of the grounds for the refusal of a licence under Section 15 applies to the applicant for a certificate;
 - (b) the Registrar is not satisfied as to the good character of the applicant.

17 Procedure for aggrieved unsuccessful applicants

- 1) If the Registrar intends to refuse an application for a licence or a certificate, by reason of the Police Report, the Registrar shall notify the applicant and shall advise the applicant of his or her right of a hearing and hearing procedures under this Act.
- 2) Any applicant aggrieved by a notification under subsection (1), may, within 14 days of its issuance or such additional period as the Registrar may allow, request a hearing before the Registrar.
- 3) At any hearing before the Registrar the Commissioner of Police may be represented by a Police employee or by counsel and the applicant may appear in person or by counsel or both.
- 4) Regulations may be issued by Order in Council for the conduct of hearings before the Registrar.

- 5) If any applicant or the Commissioner of Police is aggrieved by the decision of the Registrar, he or she may appeal in writing to the Minister, whose decision shall be final.

18 Term of licences and certificates

Every licence or certificate shall come into operation on the date specified therein, and shall be valid for an initial period of one year and thereafter upon renewal for periods of up to five years or such other shorter prescribed period as may be specified in the licence or certificate, as the Registrar deems fit.

19 Variation of licences and certificates

The Registrar may at any time, by notice in writing to the licensee or certificate holder, vary or revoke any of the existing conditions of the licence or certificate and may impose new conditions.

20 Renewal of licences and certificates

- 1) An application for the renewal of a licence or certificate shall be made not later than one month before the expiry of the licence or certificate, in such form and manner as may be determined by the Registrar.
- 2) For the purpose of subsection (1), every licensee or certificate holder must notify the Registrar at least one month before the expiry of his or her licence or certificate if he does not wish to renew his licence or certificate.
- 3) The Registrar may renew a licence or certificate, with or without conditions, and he or she may refuse to renew a licence or certificate.
- 4) The Registrar may, upon renewal of a licence, release to the licensee the security deposit given pursuant to Section 12(c) or such part thereof as the Registrar thinks fit, having regard to the extent to which the licensee has complied with the terms of the licence.
- 5) The release of any security deposit pursuant to subsection (3) is entirely without prejudice to the Registrar's powers under section 19, to require a further payment of a security deposit, if the Registrar thinks fit.
- 6) Upon the renewal of a Licence or Certificate, it shall continue to be valid for a further period of five years or such shorter prescribed period as may be specified in the Licence or Certificate from the date immediately following that on which, but for its renewal, the Licence or Certificate would have expired.

21 Non renewal of licences and certificates

Without prejudice to Section 22, the Registrar shall not renew a licence or a certificate,—

- (a) Where any information or statement furnished by the licensee or certificate holder, which is material to his or her application for the renewal of his licence or certificate under this Section, is incomplete, false or misleading;
- (b) Where the licensee or certificate holder ceases to satisfy the requirements of the licence or certificate to be renewed; or
- (c) Where the licensee does not, if required, place or maintain with the Registrar, as security for the proper conduct of his business of money lending in New Zealand, in such form as the Registrar may determine, a deposit of \$20,000, for each place of business, in respect of which his licence is to be renewed.

22 Revocation of licences and certificates and forfeiture of deposits

- 1) The Registrar may revoke a licence or a certificate, or suspend it for such period as he or she considers appropriate, if he or she is satisfied that
 - (a) the licensee or certificate holder—
 - (i) has ceased to carry on the business of money lending, or is wound up or otherwise dissolved; or

- (ii) has entered into a consumer credit contract for the loan of money, which has subsequently been re-opened by the District Court; or
 - (iii) has contravened any condition of his or her licence or certificate; or
 - (iv) is conducting or has conducted his or her business of money lending in an improper or unsatisfactory manner; or
 - (v) has carried on a business of money lending at any place, which the Registrar has not approved, or has contravened any condition of approval for a place of business imposed under that section; or
- (b) the licensee or certificate holder had, in connection with an application for the issue or renewal of the licence or certificate—
- (i) knowingly or recklessly furnished any information or statement to the Registrar, which was false or misleading in a material particular; or
 - (ii) wilfully omitted to state any matter, without which the application was misleading in a material particular; or
 - (iii) produced to the Registrar any book, record or other document, which he or she knew or had reason to believe contained information which was false or misleading in a material particular; or
- (c) there exists a ground on which the Registrar may refuse to issue or renew a licence under Section 15, whether in relation to the licensee or his principal; or
- (d) there exists a ground on which the Registrar may refuse to issue or renew a certificate under Section 16.
- 2) The Police, the Financial Markets Authority and the Ministry for Consumer Affairs shall advise the Registrar, if any of them receives information, with respect to any licensee or certificate holder, of matters referred to in subsection (1).
- 3) Subject to subsection (4), the Registrar may, without prejudice to the exercise of any other power under this Act, forfeit the whole or such part of any security deposit placed with the Registrar under Section 12 (1)(c) as the Registrar thinks fit, if it is determined in accordance with this section that there exists a ground for the revocation or suspension of the licence.
- 4) If the Registrar is satisfied that the licensee has ceased to carry on the business of money lending and no other ground exists on which the license could be revoked, the Registrar shall, without prejudice to Section 23, return the security deposit to the licensee or temporary license holder pursuant to section 8.

23 Procedure for revocation of licences or certificates and forfeiture of security deposits

- 1) The Registrar shall, before revoking or suspending any licence or certificate, or forfeiting any security deposit, under Section 22(3), give the licensee or certificate holder notice in writing of his or her intention to do so, specifying a date, not less than 21 days after the date of the notice, upon which the revocation or suspension shall take effect, unless the licensee or certificate holder shows cause to the Registrar as to why the licence or certificate should not be revoked or suspended.
- 2) Where, after the licensee or certificate holder has shown cause under subsection (1), the Registrar shall convene a hearing.
- 3) At any hearing before the Registrar, the person who has provided the information, upon which basis the Registrar issued the notice under subsection (1), may appear and be represented by a Police employee or by counsel, and the applicant may appear in person or by counsel or both.

- 4) The Minister may issue regulations for the conduct of hearings before the Registrar.
- 5) Upon conclusion of the hearing, the Registrar may decide to do any of the following—
 - (a) revoke a licence or certificate; or
 - (b) forfeit any security deposit or part thereof; or
 - (c) suspend a licence or certificate for such period as he or she thinks fit; or
 - (d) issue a written warning to the licensee or certificate holder; or
 - (e) take no further action.
- 6) If any party to the hearing is aggrieved by the decision of the Registrar, they may appeal in writing to the Minister, whose decision shall be final.
- 7) If an appeal is made to the Minister under subsection (6), the decision appealed against shall not take effect unless it is confirmed by the Minister, or the appeal is for any reason dismissed by the Minister, or is withdrawn.

24 Effect of revocation of licence

Any decision of the Registrar to revoke or suspend a licence made under this section shall not affect any money lending transaction entered into before the date, on which the decision is made.

25 Replenishment of deposit in case of forfeiture

Where the licensee lawfully continues to carry on the business of money lending under this Act after his or her security deposit or any part thereof has been forfeited, he or she shall restore his or her security deposit to the full amount as required under this Act by placing with the Registrar an appropriate amount in such form and within such time as the Registrar may require.

26 Offences in relation to unlicensed money lending

- 1) Any person who contravenes, or who assists in the contravention of Section 5, shall be guilty of an offence, and—
 - (a) in the case where the person is a body corporate, shall on conviction be punished with a fine of not more than \$500,000; or
 - (b) in any other case—
 - (i) shall, on conviction be punished with a fine of not more than \$300,000 and shall be liable to imprisonment for a term not exceeding five years; and
 - (ii) on a second or subsequent offence, shall on conviction be punished with a fine of not more than \$500,000 and shall be liable to imprisonment for a term not exceeding seven years.
- 2) Any licensee, who employs or engages any uncertified person to negotiate or conclude consumer credit contracts for a loan of money or to act as a repossession agent, shall be guilty of an offence, and—
 - (a) in the case where the person is a body corporate, shall on conviction be punished with a fine of not more than \$50,000; or
 - (b) in any other case—
 - (i) shall on conviction be punished with a fine of not more than \$50,000 and with imprisonment for a term not exceeding one year; and
 - (ii) on a second or subsequent offence, shall on conviction be punished with a fine of not more than \$100,000 and with imprisonment for a term not exceeding five years.

- 3) Any person who, in connection with an application for the issue or renewal of a licence or for the approval of any place of business for money lending,—
- (a) knowingly or recklessly furnishes any information or statement to the Registrar, which is false or misleading in a material particular; or
 - (b) wilfully omits to state any matter, without which the application is misleading in a material particular; or
 - (c) produces to the Registrar any book, record or other document, which he or she knows or has reason to believe contains information which is false or misleading in a material particular—

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000, or to imprisonment for a term not exceeding two years, or to both.

- 4) Any licensee who—
- (a) contravenes any condition of his or her licence; or
 - (b) carries on the business of money lending under any name other than his or her business name—

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.

- 5) Any licensee who contravenes Section 9 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

27 Acts of assistance of unlicensed money lending

Without prejudice to the generality of Section 26, a person assists in a contravention of Section 5 if—

- (a) He or she collects or demands payment of a loan on behalf of a person, whom he or she knows or has reasonable grounds to believe is carrying on a business in contravention of Section 5; or
- (b) he or she receives, possesses, conceals or disposes of any funds or other property, or engages in a banking transaction relating to any funds, on behalf of any person, knowing or having reasonable grounds to believe that—
 - (i) the person is carrying on a business in contravention of Section 5; and
 - (ii) either the funds are (or are intended to be) disbursed as a loan by that person, or the funds or property are repayment of a loan made by the person; or
- (c) being the owner or person having management or control of any premises, he or she allows the premises to be used to carry on a business, knowing or having reasonable grounds to believe that the carrying on of such business contravenes Section 5; or
- (d) he or she lends or provides funds, or lends, sells or provides any property to a person, knowing or being reckless as to whether the funds or property will be used for the carrying on of a business in contravention of Section 5; or
- (e) he or she keeps the records and accounts of a business, knowing or being reckless as to whether the carrying on of such business contravenes Section 5; or
- (f) he or she promotes or advertises a business, knowing or or being reckless as to whether the carrying on of such business contravenes Section 5.

28 Presumption of assistance

For the purposes of Section 27, where the bank account or automated teller machine card of any person, or a telecommunication service subscribed in the name of or purchased by any person, is proven on a balance of probabilities to have been used to facilitate the

carrying on of the business of money lending by an unlicensed moneylender, that person shall be presumed, until the contrary is proven, to have assisted in the contravention of Section 5.

29 Loans by unlicensed moneylenders

Where any consumer credit contract for the loan of money has been entered into by an unlicensed moneylender, or any guarantee or security has been given for such a loan,—

- (a) the contract for the loan, and the guarantee or security, as the case may be, shall be unenforceable; and
- (b) any money paid by or on behalf of the unlicensed moneylender under the contract for the loan shall not be recoverable in any court of law.

Part 3

Terms of lending by moneylenders

30 Forms of security

- 1) No moneylender may take as security for any loan of money under a consumer credit contract—
 - (a) any passport, driver's licence, or documents of identification issued by any Government or Government agency, educational institution, or borrower's employer; or
 - (b) any card or article used to access bank automated teller machines for the purposes of withdrawing or transferring money; or
 - (c) the clothing, bedding, bed, school books, stationery or toys of any child under the age of 16; or
 - (d) any item used for the care of infants; or
 - (e) any photographs of the borrower, the surety, or their family whether alive or deceased; or
 - (f) the keys to any dwelling or automobile, post office box or safety deposit box; or
 - (g) any medicine or medical equipment; or
 - (h) any prosthetic device, spectacles, or equipment to aid in the mobility of a disabled person; or
 - (i) any food or non alcoholic beverages.
- 2) In respect of any consumer credit contract for the loan of money, each item of personal property, over which the moneylender shall hold a security interest and which will be taken in the event of a default, must be disclosed with full particularity as key information within the meaning of Schedule 1 to the Credit Contracts Consumer Finance Act 2003.
- 3) Any clause in a consumer credit contract for the loan of money, which purports to grant to the moneylender rights to take property that is not specifically listed in compliance with subsection (2), shall be unenforceable.

31 Oppression and Interest Rates

- 1) For the purposes of Part 5 of the Credit Contracts and Consumer Finance Act 2003, in determining whether a consumer credit contract for the loan of money under this Act is oppressive, regard shall be had to such evidence as is adduced concerning—
 - (a) the interest rates prevailing for similar loans, from exempt money lenders, at the time it was made;
 - (b) the factors mentioned in subsections (2) and (3); and

- (c) any other relevant considerations.
- 2) Factors applicable in relation to subsection 1(b) in relation to the debtor include, without limitation—
 - (a) the borrower’s age, experience in financial matters, state of mental and/or physical health, and his or her skill in the language in which the consumer credit contract for the loan of money is written; and
 - (b) the degree to which the borrower at the time of entering into the transaction, was under financial pressure and the nature of that pressure.
- 3) Factors applicable under subsection 1(b) in relation to the moneylender or other person, by whom the proceedings are taken, include, without limitation—
 - (a) the degree of risk accepted by the moneylender, having regard to the nature and value of any security provided and the previous credit history of the borrower; and
 - (b) the relationship between the moneylender and the borrower; and
 - (c) where one or more other transactions are to be taken into account, the question of how far any such other transaction was reasonably required for the protection of the borrower or the moneylender, or was in the interest of the borrower.
- 4) Any consumer credit contract for the loan of money in respect of which the rate of interest exceeds 48 percent per annum shall, having regard to that fact alone, be presumed to be oppressive, but the court may declare that any such agreement is not oppressive for the purposes of this Section if, having regard to all the circumstances relating to the agreement, including those matters described in subsections (2) and (3), the court is satisfied that such a rate is not unreasonable or unfair.
- 5) Nothing in this section shall be construed to presume that any consumer credit contract for the loan of money, in respect of which the rate of interest is less than 48 percent per annum, is not oppressive.

32 Charges other than permitted fees unenforceable

- 1) The Minister may prescribe the types or amounts of costs, charges and expenses that a licensed moneylender may impose in respect of every loan of money granted by the licensee, including the fees or charges for or on account of legal costs, subject to the principles, that the borrower’s cost of borrowing should in all situations only be by payment of interest and, that fees should only be charged when there is enforcement due to a default or early repayment and only when such events occur.
- 2) Where, under any contract for a loan between a licensee and a borrower, the borrower is required to pay to the licensee any sum on account of costs, charges or expenses, other than or in excess of the permitted fees, such sum—
 - (a) shall not be recoverable from the borrower or any surety; and
 - (b) if so paid, shall be recoverable as a debt due to the borrower or surety, as the case may be; and
 - (c) if not recovered, shall be set—off against the outstanding amount of the loan, and against all sums of interest, late interest and permitted fees payable under the contract for the loan.

33 No contracting out

- 1) The provisions of this Act have effect despite any provision to the contrary in any security agreement.
- 2) Every moneylender commits an offence, who purports to contract out of any provision of this Act, and is liable upon summary conviction to a fine not exceeding \$20,000.

34 Translations and multilingual contracts

- 1) Where a Money Lender provides a borrower with written Consumer Credit Contracts for the Loan of Money or written Guarantees to a Surety in more than one language, and a discrepancy of meaning or content exists between the two versions, the version more favourable to the borrower or surety shall prevail.
- 2) Where a Money Lender provides a borrower with a written Consumer Credit Contract for the Loan of Money or a written Guarantee to a Surety, that is written in more than one language and any discrepancy or inconsistency exists therein, the contract shall be construed in a way, which is most favourable to the borrower.

Part 4

Prohibited Dealings between moneylenders and borrowers

35 Harassing the borrower, deterring the debtor from seeking legal advice or relief

- 1) Subject to subsection (4) any moneylender who—
 - (a) displays or uses any threatening, abusive or insulting words, behaviour, writing, sign or visible representation, or causes damage to property; or
 - (b) commits any act likely to cause fear of physical harm to, or to disturb the sleep of his or her borrower or surety, any member of the family of the borrower or surety, or any other person, in connection with the loan of money to the borrower, whether or not the moneylender does the act personally or by any person acting on his behalf; or
 - (c) commits or omits any act with the purpose of preventing or deterring a borrower from seeking legal advice in connection with their indebtedness; or
 - (d) commits or omits any act with the purpose of preventing or deterring a borrower from applying for entry into the No Assets Procedure pursuant to Section 362 of the Insolvency Act 2006, in circumstances where the moneylender did not have grounds to object to such entry pursuant to Section 376 of the Insolvency Act 2006; or
 - (e) attempts to enforce the debt contrary to Section 369 of the Insolvency Act 2006, after having received notice that the borrower has made an application for admission to the No Assets Procedure of the Insolvency Act 2006—
shall be guilty of an offence under this Act,—
 - (f) in the case where the moneylender is a body corporate, shall be liable to a fine not exceeding \$20,000; or
 - (g) in any other case—
 - (i) shall be liable to imprisonment for a term not exceeding 12 months and shall also be liable to a fine of not exceeding \$5,000; and
 - (ii) on a second or subsequent offence, shall be liable to imprisonment for a term not exceeding five years and to a fine of not exceeding \$10,000.
- 2) A person who commits an offence under subsection (1), who is an unlicensed moneylender, shall be liable to imprisonment for a term not exceeding five years and to a fine not exceeding \$10,000.
- 3) Subject to subsection (4), any person who, purporting to act on behalf of a moneylender, commits or attempts to commit any of the acts specified in subsection (1), shall be guilty of an offence; and—
 - (a) shall be liable to imprisonment for a term not exceeding 12 months and to a fine not exceeding than \$5,000; and

- (b) in the case of a second or subsequent offence, shall be liable to imprisonment for a term not exceeding five years and to a fine not exceeding \$10,000.
- 4) For the purposes of paragraph (a) of subsection (1), a person who—
- (a) uses any threatening, abusive or insulting words in any telephone call made by him or her; or
- (b) by any means sends anything which contains any threatening, abusive or insulting words, writing, sign or visible representation, whether from a place in New Zealand or outside New Zealand, to any person or place in New Zealand—
- shall be taken to have committed an act referred to in that paragraph.
- 5) For the purposes of paragraph (a) of subsection (1), threatening words do not include any communication of the moneylender's intention to take lawful action to enforce his or her rights.
- 6) For the purposes of paragraph (b) of subsection (1), a person who makes any telephone call, or by any means sends any article, message, word, sign, image or representation, whether from a place in New Zealand or outside New Zealand, to any person or place in New Zealand, which is likely to cause alarm to a person referred to in that paragraph, shall be taken to have committed an act referred to in that paragraph.
- 7) For the purposes of subsection (3), any person who does any of the acts specified in subsection (1), in connection with a demand for the repayment of a loan to a moneylender, shall be presumed, until the contrary is proven, to be acting on behalf of such moneylender.
- 8) For the purposes of subsection (1), a person is deemed to have caused damage to any property if he does any of the following acts—
- (a) defacing the property by means of any pen, marker or any other delible or indelible substance; or
- (b) defacing the property by affixing, posting up or displaying on such property any poster, placard, bill, notice, paper or other document; or
- (c) defacing the property through the use of paint, or any other delible or indelible substance; or
- (d) destroying or damaging the property through the use of fire or any other substance; or
- (e) doing any other act of mischief, which causes a change in any property or, which diminishes its value or utility.
- 9) For the purposes of paragraphs (c) and (d) of subsection (1), a person is deemed to have acted or omitted to act with the purpose of preventing or deterring the borrower from seeking legal advice concerning their indebtedness or applying for entry to the No Assets Procedure, if he does any of the following—
- (a) communicates to the borrower or their surety, that it will be detrimental to the borrower to seek legal advice; or
- (b) communicates to the borrower or their surety that it will be beneficial not to seek legal advice; or
- (c) communicates to the borrower or their surety that enforcement of the debt will be postponed, or the debt or interest thereon will be reduced, if the borrower does not seek legal advice or apply for entry to the No Assets Procedure.

36 Prohibited communications and advertisements

- 1) Any person who attempts to communicate with a borrower or guarantor by telephone, including leaving messages on any electronic recording device and any text messaging

service, in connection with a request for repayment of a loan of money under a consumer credit contract, must—

- (a) only do so within the hours of 7.00 am and 9.00 pm; and
 - (b) state their full name and the correct business name of the moneylender; and
 - (c) provide the telephone number used to place the call; and
 - (d) not discuss matters relating to the loan with any person other than the borrower or surety.
- 2) No person shall place, in any publication or print or on the internet any notice or advertisement with the predominant purpose of disclosing to the public any details of a loan of money under a consumer credit contract, any default in repayment of the loan, or the identity of any borrower or guarantor.
- 3) Any failure to comply with this subsection, without reasonable excuse, commits an offence and is liable to a fine not exceeding \$2,000.

37 Abetment of Section 35

- 1) For the purposes of this Act, a person shall be taken to have abetted the commission of an offence under section 35 if he—
- (a) gives instruction to another person to carry out any act specified in section 35(1) in connection with a demand for the repayment of a loan to a moneylender; or
 - (b) provides or arranges transport for another person for the purpose of carrying out any such act, knowing or having reasonable cause to believe that the act is in connection with such a demand; or
 - (c) acts as or arranges a lookout for a person carrying out any such act, knowing or is reckless as to whether the act is in connection with such a demand; or
 - (d) provides or arranges transport to a person for the purpose of his acting as a lookout for a person carrying out any such act, and he or she knows, or is reckless as to whether the act is in connection with such a demand.
- 2) A person, who—
- (a) gives instruction to another person to carry out any act specified in section 35(1) in connection with a demand for the repayment of a loan to a Money Lender; and
 - (b) knowing or having reasonable cause to believe that the act is in connection with a demand, verifies that the act has been carried out in accordance with such instruction—

shall be taken to have abetted the commission of an offence under Section 35(1) or an offence under subsection (1)(a) (as the case may be) by the person giving the instruction.

- 3) For the avoidance of doubt, this Section is without prejudice to the generality of Section 66 of the Crimes Act 1961.

38 Offences involving minors below the age of 16

Any person of or above the age of 20 years, who incites, counsels or procures any person below the age of 16 years to commit an offence under Section 35 shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years and to a fine not exceeding \$20,000.

39 Offence of providing false contact information

- 1) A person shall be guilty of an offence if—
- (a) in connection with a loan by an unlicensed moneylender to him or her, or any other person, he or she gives any contact information, which he or she knows or believes to be false, to an unlicensed moneylender or a person acting on the unlicensed

moneylender's behalf, knowing or being reckless as to whether the unlicensed moneylender, or a person acting on his or her behalf, will use the information for the purpose of committing an offence under Section 35 against any other person; and

- (b) the unlicensed moneylender, or a person acting on his or her behalf, uses the contact information for the purpose of committing an offence under Section 35 against any other person.
- 2) Any person, who commits an offence under subsection (1), shall be liable to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000.
 - 3) In subsection (1), "contact information" means a residential address, business address, telephone number, email address, facebook page, facsimile number, or any other information given to enable an unlicensed moneylender to contact a borrower.

40 Unlawful taking of personal property

- 1) Any moneylender, or person purporting to act as a collection agent for a moneylender, who attempts to take personal property—
 - (a) of the type described in subsection (1) of Section 30; or
 - (b) property, which, to their knowledge, is not specifically listed in the consumer credit contract, pursuant to subsection (2) of Section 30 ; or
 - (c) contrary to Section 369 of the Insolvency Act 2006—commits an offence.
- 2) A person convicted under subsection (1) shall:
 - (a) be liable to imprisonment for a term not exceeding 12 months and a fine not exceeding \$5,000; and
 - (b) in the case of a second or subsequent offence upon conviction shall be liable to imprisonment for a term not exceeding five years and a fine not exceeding \$15,000.

41 Offences to be punishable on summary conviction

- 1) Every offence against this Act is punishable on summary conviction.
- 2) Notwithstanding anything in Section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against this Act may be laid at any time within two years of the time when the matter of the information arose.

Part 5

Police Powers

42 Power of Registrar and Police to enter premises and inspect books etc

- 1) Where—
 - (a) the Registrar, or any person authorised in writing for the purposes of this Section by the Registrar; or
 - (b) a police officer of or above the rank of Superintendent, or any other police officer authorised in writing for the purposes of this section by a police officer of or above such rank—

has reasonable grounds to suspect that a person has committed an offence against this Act (in this Section referred to as the "suspected offence"), he or she may, without a warrant, enter any premises where the business of money lending is being carried on and may demand the production of and inspect the moneylender's licence, or any books, accounts, documents, or writings relating to any loan made by the moneylender or to his

or her business as a moneylender, and may take notes, copies or extracts thereof or therefrom.

- 2) Where, pursuant to subsection (1), a police officer has entered any premises where the business of a moneylender is being carried on, he or she may seize anything relating to any loan made by the moneylender or relating to his business as a moneylender, that the police officer reasonably believes to be related to the suspected offence.
- 3) If no prosecution is instituted within six months in respect of the suspected offence to which they relate the Commissioner of Police shall return, or arrange for the return of, such seized things to the money lender, from whom they were seized.

43 Power of Commissioner of Police to require disclosure

- 1) Where the Commissioner of Police is satisfied that there is reasonable grounds to believe—
 - (a) that an offence under this Act may have been committed by any person; and
 - (b) that any share account, purchase account, club account, subscription account, investment account, trust account, mutual or trust fund account, expense account, bank account or other account of whatsoever kind or description, and any banker's books, company books, documents or other article of or relating to any person named or otherwise identified in writing by the Commissioner of Police, are likely to be relevant for the purposes of an investigation of such offence, he or she may for those purposes authorise in writing any police officer, on production by him of the authorisation, if so required—
 - (i) to investigate and inspect such accounts, books or documents or other article of or relating to the person named or otherwise identified by the Commissioner of Police; and
 - (ii) to require from any person the production of such accounts, books, documents, or other article of or relating to the person named or otherwise identified by the Commissioner of Police, which may be required for the purposes of such investigation, and the disclosure of all or any information relating thereto, and to take copies of such accounts, books or documents or of any relevant entry therein and photographs of any other article.
- 2) Any person who, having been lawfully required under this Section to disclose any information or to produce any accounts, books, documents or other article to a police officer authorized under subsection (1), shall, notwithstanding the provisions of any other act or rule of law to the contrary, save only the provisions of this Act, comply with such requirement, and any such person who fails or neglects, without reasonable excuse, so to do, and any person who obstructs any such police officer in the execution of the authorization given under subsection (1), shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years and to a fine not exceeding \$20,000.
- 3) The Commissioner of Police shall not without leave of the District Court, obtained on an ex parte application in chambers, issue an authorisation under this section.
- 4) The District Court shall not grant leave for the issue of an authorisation under Subsection 1(i) and (ii) unless on consideration of the application under subsection (3) it is satisfied as to the matters which the Commissioner must be satisfied under Subsection (1). The District Court must also have regard to the following considerations:
 - (a) There are reasonable grounds to believe that the material to which the application relates is likely to be relevant to the investigation or proceedings for the purposes of which the application is made; and
 - (b) There are reasonable ground for believing that the grant of leave is in the public interest having regard to:
 - (i) the seriousness of the offence suspected to have been committed;

- (d) (ii) whether or not the suspected offence could be effectively investigated if an order under this subsection is not made;
- (e) The benefit likely to accrue to the investigation or proceedings if the material is so produced or access to it is given.

44 Any person who falsely represents that an appropriate authorisation under section 43 has been given shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years and to a fine not exceeding \$20,000.

45 Protection of informers

1) Save as provided in subsection (2)—

- (a) no information for an offence under this Act shall be admitted in evidence in any civil or criminal proceeding; and
- (b) no witness in any civil or criminal proceeding shall be obliged—
 - (i) to disclose the name or address of any informer who has given information to the Registrar, the Police or the Commission with respect to an offence under this Act, or of any person who has assisted the Registrar, the Police or the Commission in any way with respect to such an offence; or
 - (ii) to answer any question if the answer thereto would lead, or would tend to lead, to discovery of the name or address of such informer or person—

if, in either case, such informer or person is not himself or herself a witness in such proceeding, and, if any evidence in which any such informer or person is named or described or which might lead to his or her discovery, the Court shall cause all such passages to be concealed from view or to be obliterated so far as may be necessary to protect the informer or such person from discovery.

2) If in any proceeding before a court for an offence under this Act the Court, after full inquiry into the case, is satisfied on the balance of probabilities that an informer wilfully made a material statement, which he or she knew or believed to be false or did not believe to be true, or if in any other proceeding the Court is of the opinion that justice cannot fully be done between the parties thereto without disclosure of the name of an informer or a person who has assisted the Registrar, the Police, or the Commission, the Court may permit inquiry and require full disclosure concerning the informer or such person.

46 Confidentiality of investigations

1) Any person, who, knowing or suspecting that an investigation in respect of an offence alleged or suspected to have been committed under this Act is taking place, without lawful authority or reasonable excuse, discloses to—

- (a) the person, who is the subject of the investigation (the "subject person"), the fact that he or she is so subject, or any details of such investigation; or
- (b) the public, a section of the public, or any particular person, the identity of the subject person or the fact that the subject person is so subject or any details of such investigation—

shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years and to a fine not exceeding \$20,000.

2) Subsection (1) shall not apply as regards disclosure of any of the descriptions mentioned in that subsection where, in connection with such investigation,—

- (a) a warrant has been issued for the arrest of the subject person;
- (b) the subject person has been arrested whether with or without warrant;
- (c) the residence or place of business of the subject person has been searched.

- 3) Without affecting the generality of the expression "reasonable excuse" in subsection (1), a person has a reasonable excuse as regards disclosure of any of the descriptions mentioned in that subsection, if, and only to the extent that, the disclosure reveals any unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by the Registrar, the Commission, the Commissioner of Police, or any police officer.

Part 6

Miscellaneous

47 Public access to public registers

The Registrar must take all reasonable steps to ensure—

- (a) that the information contained in the register of moneylenders is available to members of the public to view at all reasonable times; and
- (b) that members of the public may copy or purchase all, or any part of, the information contained in the Register at no more than a reasonable cost.

48 Act binds the Crown

This Act binds the Crown.

49 Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes—

- (a) prescribing fees for applications under this Act;
- (b) prescribing procedures for the conduct of hearings under this Act;
- (c) prescribing the form of applications made under this Act;
- (d) prescribing the content of information to be provided by applicants for licences and certificates under this Act;
- (e) prescribing the form, content and locations at which the Register shall be kept and made available to the public;
- (f) prescribing what records are to be maintained by moneylenders and who may inspect and take copies of such records and the circumstances in which such inspection and copies can occur or be taken;
- (g) prescribing the types or amounts of costs, charges and expenses that a moneylender and their agents may impose in respect of every loan of money granted by the licensee, including the fees or charges for or on account of legal costs;
- (h) prescribing any class of persons to be exempt moneylenders under this Act;
- (i) prescribing the administration and custodial arrangements of security deposits paid under this Act;
- (j) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

50 Role and functions of the Financial Markets Authority under this Act

- 1) The role of the Financial Markets Authority under this Act is to promote compliance with this Act.
- 2) The functions of the Financial Markets Authority, in relation to this Act, are to—
 - (a) assist the Registrar in the performance of his or her functions under this Act; and
 - (b) monitor trade practices among moneylenders and their agents; and

- (c) notify the Police of any information relating to possible offences under this Act; and
- (d) advise the Minister on what regulations or changes to regulations should be made; and
- (e) make available appropriate information for the guidance of consumers, moneylenders, licensed persons, and other interested persons in relation to promoting compliance with this Act.

51 Role of the Commissioner of Police under this Act

- 1) The role of the Commissioner of Police under this Act is to monitor compliance with this Act.
- 2) The functions of the Commissioner of Police under this Act are to—
 - (a) investigate suspected offences under this Act; and
 - (b) take prosecutions in relation to offences under this Act; and
 - (c) provide information to the Registrar necessary for the performance of the Registrar's functions under this Act.

52 Commencement Date

- 1) This Act comes into force 12 months after the date on which it receives royal assent.