

MORATORIUM ACT.

Act No. 48, 1930.

George V.
No. 48, 1930.

An Act to make provision for a moratorium; to restrict temporarily certain of the rights possessed by mortgagees, vendors, and others; and for purposes connected therewith. [Assented to, 19th December, 1930.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows.—

PART I.

PRELIMINARY.

Short title. **1.** This Act may be cited as the "Moratorium Act, 1930," and is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—MORATORIUM.

PART III.—MISCELLANEOUS.

**Interpreta-
tion.** **2.** In this Act, unless the context or subject-matter otherwise indicates or requires,—

"Hire-purchase agreement" includes a letting of goods with an option to purchase, and an agreement for the payment of goods by instalments, whether such agreement describes such instalments as rent or hire or otherwise.

"Mortgage"

- “Mortgage” means any deed, memorandum of mortgage, instrument, or agreement whereby security for payment of moneys or for the performance of any contract is granted over land or chattels or any interest therein respectively, and includes an equitable mortgage by deposit of title deeds, and any document by which the duration of a mortgage is extended.
- “Mortgagor” means the person liable under the provisions of a mortgage or entitled to redeem a mortgage, and includes any person who has guaranteed the payment of any money the payment of which is secured by a mortgage or the performance by the mortgagor of any covenant, condition, or agreement expressed or implied in the mortgage, whether such guarantee is expressed in the mortgage or in any other instrument.
- “Mortgagee” means the person entitled to the benefit of the security of any mortgage.
- “Prescribed date for repayment” means the date fixed by this Act as the date upon which the principal sum secured by a mortgage or agreement to which this Act applies shall be repayable.
- “Prescribed month for repayment” means the month in which the prescribed date for repayment occurs.
- “The Court” means a district court, or a court of petty sessions holden before a stipendiary or police magistrate.
- “The rate provided in the mortgage” means the rate of interest provided in the mortgage, or, where there is provided in the mortgage a reduced rate of interest in the case of punctual payment, the reduced rate, and shall not in any case be construed to refer to any increased rate of interest stipulated to be paid in any contingency.

PART II.

MORATORIUM.

Act not to apply to Crown or to certain fluctuating advances.

3. (1) This Act shall not bind the Crown nor shall it bind any statutory body representing the Crown.

In this subsection the expression "statutory body representing the Crown" includes the Sydney Harbour Trust Commissioners, the Railway Commissioners for New South Wales, the Commissioners of the Government Savings Bank of New South Wales, and any public body which the Governor may by proclamation published in the Gazette declare to be a statutory body representing the Crown.

(2) This Act shall not apply to any fluctuating advance exceeding three thousand pounds which is made by way of bank overdraft secured by a mortgage, unless the court, upon the application of the mortgagor, determines that, having regard to the matters mentioned in subsection four of section four of this Act, it is desirable that this Act should apply.

Limitation of rights of mortgagees.

4. (1) A mortgagee shall not, without leave of the court—

- (a) call up or demand payment from any mortgagor of the whole or any part of the principal sum secured by the mortgage;
- (b) exercise any power of sale;
- (c) commence any action or proceeding, or continue any action or proceeding commenced after the twenty-sixth day of November, one thousand nine hundred and thirty, for breach of any covenant, agreement, or condition expressed or implied in any mortgage other than a covenant, agreement, or condition for—
 - (i) the payment of interest, including, in the case of a second or subsequent mortgage, the payment of interest on any prior mortgage; or
 - (ii) the insurance, maintenance, or cultivation of the mortgage property, or the payment of rates, taxes, and other charges, including, in the case of lands held

held under the Crown Lands Consolidation Act, 1913, the payments due to the Crown thereon, or the doing of any acts for the preservation of the security ;

- (d) commence any action or proceeding, or continue any action or proceeding commenced after the twenty-sixth day of November, one thousand nine hundred and thirty, for interest at any rate higher than the rate provided in the mortgage or the rate payable under subsection five of this section as the case may be ; or
- (e) take any steps for obtaining foreclosure or possession or occupation :

Provided that where interest is in arrear for not less than twelve months or the mortgagor fails to observe the provisions of any covenant, agreement, or condition expressed or implied in the mortgage for any of the matters specified in subparagraph (ii) of paragraph (c) of this subsection, nothing in this subsection shall preclude the mortgagee from entering into possession of the mortgaged property, but in any such case the mortgagor may at any time within three months, or twenty-one days in the case of movable or wasting securities, after the mortgagee has entered into possession apply to the court for an order requiring the mortgagee to vacate the mortgaged property, and in the event of the application being granted by the court the mortgagee shall vacate the mortgaged property in accordance with the order of the court.

(2) An application for the leave of a district court may be made on summons which must be served on such persons as the court considers entitled to be affected by the application, or ex parte in any case in which by reason of special circumstances the court considers such procedure to be just and equitable.

An application for the leave of a court of petty sessions may be made on summons, which must be served on all persons affected by the application at least seven clear days before the day appointed for the hearing of the application.

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(3) In dealing with any application for leave under this section the court may, subject to this section,—

- (a) grant the application on such terms and conditions (if any) as the court thinks fit ; or
- (b) refuse the application :

Provided that the court shall not grant any application for leave to commence or continue proceedings for the recovery from a mortgagor of the whole or any part of the principal sum secured by mortgage, or for foreclosure, unless the court is satisfied that, having regard to all relevant circumstances, including the ability of the mortgagor to redeem the property out of his own moneys, it would be unjust and inequitable not to grant it.

(4) In any case where, after the date fixed by the mortgage for repayment of the principal sum, the principal sum or any part thereof remains unpaid, and the mortgagor satisfies the court that he is unable to redeem the property, or to repay a portion of the principal sum, as the case may be, from his own moneys, the court shall not grant leave to take any proceedings relating to such redemption or repayment unless the court is satisfied—

- (a) that, by reason of the wasting nature of the security, the continuance of the mortgage would seriously affect the security ; or
- (b) that the conduct of the mortgagor has, in respect of any breach by him of any covenant of the mortgage, or in respect of any dealing with the mortgagee, been such as to render him undeserving of the benefit or protection of this Act.

(5) In any case where, after the due date for repayment of the principal sum or any part thereof, the principal sum or part remains unpaid, the time for repayment of the principal sum or part shall, unless and until an application for leave is dealt with by the court under this section, be by force of this Act extended upon the terms that interest shall continue to be payable at the close of the same intervals of time

as are provided by the mortgage with respect to the interest thereby secured, or, if no provision is so made, then quarterly, and at the following rate:—

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- (a) in the case of a mortgage of which the principal sum or unpaid part does not exceed three thousand pounds—the rate provided in the mortgage, or the rate of seven per centum per annum, whichever is the less; and
- (b) in the case of a mortgage of which the principal sum or unpaid part exceeds three thousand pounds—the rate provided in the mortgage:

Provided that—

- (i) in the former case the court may, on the application of the mortgagee, fix a higher rate, not being higher than the rate provided in the mortgage or seven per centum per annum, whichever is the greater; and
- (ii) in the latter case the court may, on the application of the mortgagor, fix a lower rate, not being lower than the rate provided in the mortgage or seven per centum per annum, whichever is the less.

5. In every action or proceeding by a mortgagee for the recovery of any sum for interest secured by a mortgage, the court hearing the action or proceeding may, if in its discretion and in the circumstances of the case it deems it just and expedient, in lieu of giving judgment for immediate payment, give judgment for payment at a date to be fixed, or by instalments payable at such times as the court in its discretion determines, and for this purpose the court shall have jurisdiction to cause judgment to be entered in such form as it deems best to give full effect to the intent of this Act, and to direct the method of enforcement of the judgment.

Jurisdiction of court in actions for recovery of interest secured by mortgage.

6. Where by the terms of a mortgage or an agreement for the purchase and sale of land to which this Act applies, payment is provided by a series of regular instalments and the rate of interest is not fixed in the mortgage or agreement, or the instalments are expressed to be for principal only and interest is stated not to be payable, the instalments shall for the purposes of this Act be deemed to include interest at such rate as is

Where mortgage repayable by instalments.

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assessed by the court, and such interest shall be deemed to be payable in equal instalments at the end of each quarter from the date of such assessment.

Mortgages payable on demand.

7. Where a mortgage for a specific amount provides for the payment of the principal sum on demand, and a demand has not at the commencement of this Act been made, the principal sum shall for the purpose only of this Act be deemed to be payable immediately after the commencement of this Act.

Mortgagees in possession.

8. (1) Notwithstanding anything contained in the preceding provisions of this Act, any mortgagee in possession, who entered into possession on or before the twenty-sixth day of November, one thousand nine hundred and thirty, may exercise all his powers under the mortgage without leave of the court :

Provided that, on the application of the mortgagor, the court may, if in all the circumstances it thinks it just and equitable so to do, forbid the mortgagee from exercising any power of sale or of foreclosure, and may otherwise make such order in the premises as it thinks fit.

(2) The provisions of subsections two and three of section four of this Act shall apply to any such application in like manner as they apply to an application for the leave of the court under section four.

Jurisdiction of court—how exercisable.

9. (1) The jurisdiction conferred on a court by this Act may be exercised by a judge of the court sitting either in court or in chambers, or, in the case of a court of petty sessions, by a stipendiary or police magistrate.

(2) Every application shall be heard in open court unless the court in its discretion directs that an application shall be heard in camera.

Decisions of court final.

(3) Any determination, decision, judgment, direction, order, or assessment made or given by any court in any matter arising under this Act shall be final and conclusive and without appeal.

(4) Nothing in subsection two of this section shall prevent the court from reconsidering any matter which has been dealt with by it, or from rescinding, altering, or amending any decision or order previously made by it.

(5)

(5) The costs of any application under this Act to the court shall be in the discretion of the court. No. 48, 1930.
Costs.

10. (1) When a mortgagor is entitled to the benefit or protection of this Act, he may consent to the exercise by the mortgagee of any power, but such consent shall not take away the necessity of the leave of the court, unless the consent is in writing and witnessed by a solicitor of the Supreme Court who certifies in writing that the consent is given by his advice, and that he is not the solicitor for the mortgagee. Consent by mortgagor to exercise of powers by mortgagee.

(2) If consent is given and certified, the leave of the court shall, so far as the consent extends, be unnecessary.

11. (1) The provisions of this Act shall extend and apply, mutatis mutandis, to an agreement for sale and purchase of land (including exchange), to a lease of land containing an optional or compulsory purchasing clause, and to a hire-purchase agreement relating to goods. Extension of Act to agreements for sale and purchase of land, to leases containing a purchasing clause, and to hire-purchase agreements.

(2) For the purposes of this Act an agreement for sale and purchase of land shall be deemed to be a mortgage of such land to secure payment of the unpaid purchase-money and interest thereon, and fulfilment of the conditions set forth in the agreement.

(3) For the purposes of this Act a lease of land containing a purchasing clause shall be dealt with in all respects as if the lessee had already notified his exercise of an option to purchase under an optional purchasing clause, and as if the lessor were mortgagee and the lessee were mortgagor of the land, and as if the rent reserved by the lease were interest and the agreed purchase-money were principal-moneys secured.

The term of the lease shall, if necessary, be extended for the purpose of giving effect to this provision.

(4) For the purposes of this Act a hire purchase agreement relating to goods shall be deemed a mortgage of such goods to secure the fulfilment of the conditions set forth in the agreement and the payment of the amount of rent upon payment of which the goods would under the agreement become the property of the hirer.

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Agreements
for the sale
and purchase
of land where
purchaser
makes
default.

12. (1) Notwithstanding anything contained in this Act, if the purchaser of any land under an agreement for the sale and purchase of land—

- (a) is in arrear, for a period of twelve months, in respect of any payment of principal or interest due by him under the agreement, and
- (b) makes, during any period of six months, no payment in respect of any portion of the amount due by him under the agreement,

the vendor may forward, by registered post, to the purchaser, addressed to his last known place of address, a notice intimating that he proposes, after the expiration of a period of one month from the date when in the ordinary course of post the notice should be delivered to the purchaser, to exercise any or all of his rights under the agreement for sale and purchase of the land.

(2) After the expiration of the period specified in subsection one of this section the vendor may, unless the court upon application made by the purchaser within the period so specified otherwise directs, exercise any or all of his rights under the agreement as if the provisions of this Act had not extended and applied to the agreement.

Non-
application
of Act to
certain
transactions.

13. Subject to section three, section eight, and this section, this Act shall apply to and in respect of all mortgages, agreements for sale and purchase of land, leases of land containing a purchasing clause, and hire purchase agreements relating to goods in force at the commencement of this Act, but shall not apply to—

- (a) a mortgage, or an agreement for sale and purchase, or a lease containing an optional or compulsory purchasing clause, or a hire-purchase agreement, which is executed after the date upon which His Majesty's assent to this Act is signified, if the mortgage agreement or lease contains a condition or covenant expressly excluding the provisions of this Act; or
- (b) any lease containing an optional purchasing clause, if the Minister, by notice in writing, declares that he is satisfied that the lessee has no bona fide intention of exercising the option to purchase; or

(c)

- (c) any agreement for the sale and purchase of leasehold interests in land only, whether such agreement was entered into before or after the twenty-sixth day of November, one thousand nine hundred and thirty; but this provision shall not extend so as to exclude from the provisions of this Act agreements for the sale and purchase of land partly freehold and partly leasehold, or of a holding consisting of any leasehold held under any Act relating to the alienation of Crown lands or lands subject to the right of conversion into freehold; or
- (d) any mortgage to secure the repayment of a loan to one of its members by a Starr-Bowkett or building society registered under or included in the Second Schedule to the Co-operation Acts, 1923-1929; or
- (e) any mortgage to secure the repayment of a loan granted by a registered friendly society to a person who is not a member of the society, if the Minister, by notice in writing, declares that the mortgage is one or one of a class specified by him to which it is undesirable that this Act should apply.

14. (1) Where the Supreme Court or any other court has made an order for the payment by any person to any other person of a sum of money, and such court is satisfied that immediate payment of the whole or part of the money would inflict great hardship on the person ordered to pay the money by reason of the operation of this Act upon his property or investments, or upon the realization thereof, or by reason of any other cause which such court in the circumstances of the case deems sufficient, such court may, at the time of the entry of judgment or subsequently thereto, upon the application of the person ordered to pay the money, in its discretion, if in all the circumstances it thinks it desirable so to do, order that the payment of the whole or part of the sum of money in question shall be deferred until such time and upon such conditions as such court thinks fit. A default judgment shall be deemed to be an order of the court.

Court may grant relief against judgments in certain case ;

(2)

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(2) An order may be made under this section in respect of the payment of money made by any court before the commencement of this Act as well as in respect of orders made after the commencement of this Act.

Transfers of land on sales by mortgagees.

15. The Registrar-General may, upon the submission to him for registration of a transfer of property on sale by the mortgagee thereof, require such evidence as he deems necessary that the sale sought to be given effect to by the transfer does not contravene any provision of this Act, and may refuse to register the transfer until such evidence is submitted to him.

Dates for repayment of principal moneys.

16. (1) The time for repayment of the principal sum secured by a mortgage to which this Act applies, the due date for repayment of which would but for this Act have been a date within one of the periods specified in the first column of the following table, shall be, by force of this section, extended to a date within the month which is specified in the second column of the said table opposite to such period.

First Column.	Second Column.
Period within which, apart from this Act, the principal sum secured by a mortgage to which this Act applies is due for repayment.	Prescribed month for repayment.
Period before 1st January, 1931 ...	February, 1933.
Period between 1st January and 31st December, 1931, both dates inclusive	March, 1933.
Period between 1st January and 31st December, 1932, both dates inclusive	April, 1933.

(2) The prescribed date for repayment shall be that day in the prescribed month for repayment which corresponds to the day of the month which would but for this Act be or have been the due date for repayment:

Provided that where there is no day so corresponding the prescribed date for repayment shall be the last day of the prescribed month for repayment.

(3)

(3) The prescribed date for repayment of the principal sum secured by a mortgage to which this Act applies shall, if the principal sum—

- (a) is payable on demand; or
- (b) is by virtue of section seven of this Act deemed to be payable immediately after the commencement of this Act,

be the twenty-eighth day of February, one thousand nine hundred and thirty-three.

(4) Where by the terms of a mortgage to which this Act applies the principal sum secured by the mortgage is payable only upon notice, notice in accordance with the mortgage may be given by the mortgagee at any time after the twenty-eighth day of February, one thousand nine hundred and thirty-three, and the date specified in that notice as the date fixed for payment shall for the purposes of this Act be deemed to be the prescribed date for repayment.

(5) Until the prescribed date for repayment, the rate of interest, and the intervals of time at which it is payable, shall be such rate and intervals as are prescribed by or fixed under this Act.

(6) In the case of a mortgage or agreement for the sale and purchase of land to which this Act applies and which provides for payment by instalments, the date for payment of any instalment, which would, apart from this Act, have been due and payable on or before the twenty-eighth day of February, one thousand nine hundred and thirty-three, shall be determined in the same manner as if that instalment were the principal sum secured by a mortgage to which this Act applies; but nothing in this Act shall affect the date for payment of any instalment due and payable after the twenty-eighth day of February, one thousand nine hundred and thirty-three.

(7) Upon or after the prescribed date for repayment the mortgagee may exercise all his powers under the mortgage without leave of the court.

(8) Nothing in this section shall abridge the time which is ordered or allowed by any court, in pursuance of this Act, for repayment of the principal sum secured by a mortgage.

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Power to extend date for repayment in cases of hardship.

17. (1) Notwithstanding anything contained in section sixteen, the court may, upon the application of the mortgagor made not less than one month before the prescribed date for repayment, make an order on such terms and conditions (if any) as the court thinks fit, extending the date for repayment, and may fix the intervals of time and rate at which interest is payable during such extended period.

(2) An application under this section may be made in the same manner as an application for leave of the court under section four.

(3) An application under this section shall not be granted unless the court is satisfied—

- (a) that the obligation to repay the principal sum by the prescribed date for repayment would involve serious hardship to the mortgagor ;
- (b) that the conduct of the mortgagor in respect of dealings with the mortgagee has not been such as to render him undeserving of the benefit or protection of this section ; and
- (c) that the granting of the application would not seriously embarrass the mortgagee.

(4) No purchaser or other person dealing in good faith with any property affected by the order shall be affected thereby unless the order is registered in the office of the Registrar-General in the manner prescribed by regulations under the Conveyancing Act, 1919-1930.

Mortgagee not entitled to notice where mortgagor pays within time allowed.

18. Where the principal sum secured by a mortgage is paid upon, or within seven days before, the prescribed date for repayment, or where the court in pursuance of section seventeen has extended the date for repayment upon or within seven days before such extended date, the mortgagee shall not be entitled to receive any payment by way of interest in lieu of notice.

Leases of land containing optional purchasing clause.

19. (1) In the case of a lease of land in force at the commencement of this Act—

- (a) which contains an optional purchasing clause by the terms of which the last date for exercise of the option is a date not later than the thirty-first day of December, one thousand nine hundred and thirty-two ; and

(b)

- (b) which is under this Act treated as if the lessee had already notified his exercise of the option ; and
- (c) in respect of which the lessee has not in fact notified, prior to the commencement of this Act, his exercise of the option,

the lessee may, notwithstanding anything contained in the lease, notify at any time during the currency of the lease and up till the thirty-first day of December, one thousand nine hundred and thirty-two, his exercise of the option :

Provided that where, by the terms of any such lease, the date of the expiry of the lease is a date after the commencement of this Act, and on or before the thirty-first day of December, one thousand nine hundred and thirty-two, the lessee may before the date of expiry of the lease, notify the lessor that it is probable that he will, on or before a date specified by him, not being later than the said thirty-first day of December, notify his exercise of the option, and if the lessee so notifies the lessor the term of the lease shall, by force of this Act, be extended until—

- (a) the date specified by the lessee ; or
- (b) the said thirty-first day of December, one thousand nine hundred and thirty-two, whichever first happens :

Provided further that, where the term of a lease is so extended, the extension shall be upon the same terms and conditions as those prevailing immediately before the date upon which, but for this Act, the lease would have expired.

(2) Section sixteen of this Act shall not apply to any lease of land containing an optional purchasing clause.

(3) Section ten of this Act shall not apply to any lease of land containing an optional purchasing clause by the terms of which the last date for the exercise of the option is a date later than the thirty-first day of December, one thousand nine hundred and thirty-two.

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Hire-
purchase
agreements.

20. In the case of a hire-purchase agreement, the court may readjust the amount of the instalments to be paid and postpone the payment of all or any of such instalments in such manner and for such time as the court thinks just, due regard being had to the rights and interests of both parties to the agreement, to the conduct of the hirer, and to all the circumstances of the case.

In any such readjustment the court may direct interest upon any postponed instalment at such reasonable rate as it may fix to be paid to the vendor.

PART III.

MISCELLANEOUS.

Offences.

21. (1) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act and shall be liable upon summary conviction to a penalty not exceeding one hundred pounds or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment.

(2) An offence against this Act shall not be prosecuted without the written consent of the Minister.

Regulations.

22. (1) During the continuance of Part II of this Act the Governor may make regulations not inconsistent with this Act prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may impose a penalty for any breach thereof not exceeding twenty pounds.

(3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication, or from a later date specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

If

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or Part thereof, the regulation or Part shall thereupon cease to have effect.

23. The expiration of Part II of this Act in pursuance of section twenty-five of this Act or of any regulation made in pursuance of this Act shall not—

- (a) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under such Part or regulation; or
- (b) affect any penalty or punishment in respect of any offence committed against such Part or regulation; or
- (c) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, or punishment, as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty or punishment may be imposed as if such Part or regulation had not expired.

24. The provisions of Part II of this Act shall continue in force until the thirtieth day of April, one thousand nine hundred and thirty-three, and thereafter until such time as the Governor notifies by proclamation published in the Gazette that he is satisfied that any extended period allowed by a court upon application made under the said Part has expired:

Provided that after the thirtieth day of April, one thousand nine hundred and thirty-three the provisions of the said Part shall apply only to mortgages in respect of which a court has in pursuance of the said Part made an order extending the date of repayment.