

INTEREST REDUCTION ACT.

Act No. 44, 1931.

An Act to provide for the reduction of rates of interest in certain cases; to make certain provisions relating to hire-purchase agreements; to modify in certain respects the rights of preference shareholders in certain companies; to amend the Usury, Bills of Lading, and Written Memoranda Act, 1902, and certain other Acts, and for purposes connected therewith. [Assented to, 2nd October, 1931.]

George V,
No. 44, 1931.

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.

1. (1) This Act may be cited as the "Interest Reduction Act, 1931." Short title and commencement.

(2) This Act shall commence upon the first day of October, one thousand nine hundred and thirty-one.

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

PART I.—PRELIMINARY.

PART II.—INTEREST REDUCTION.

PART III.—HIRE-PURCHASE AGREEMENTS.

PART IV.—PREFERENCE SHARES.

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Construction.

2. (1) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act or the application thereof to any person or circumstances is held invalid the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

(2) Without limiting the generality of the provisions of subsection one of this section, this Act shall be read and construed subject to the agreement ratified by the Financial Agreement Ratification Act, 1928, and to the agreement ratified by the Debt Conversion Agreement Act, 1931.

PART II.

INTEREST REDUCTION.

Definitions.

3. (1) In this Part of this Act, unless the context or subject-matter otherwise requires,—

“Creditor” means a person who is entitled to receive payment of interest.

“Debtor” means a person who is liable to pay interest, and includes any person who has guaranteed the payment of such interest or who is entitled to redeem any security under or in respect of which such interest is payable.

“Obligation to pay interest” means an obligation to pay interest at a specified or ascertainable rate and includes an obligation to pay interest at a reduced rate in lieu thereof in case of punctual payment, or upon any other contingency.

“Prescribed” means prescribed by this Act or by regulation made thereunder.

“Statutory body” means any of the following authorities, that is to say:—

The Hunter District Water Supply and Sewerage Board;

The

The Water Conservation and Irrigation Commission ;
 The Main Roads Board of New South Wales ;
 The Metropolitan Meat Industry Board ;
 The Metropolitan Water Sewerage and Drainage Board ;
 The Metropolitan Transport Trust ;
 The Newcastle and District Transport Trust ;
 The Railway Commissioners for New South Wales ;
 The Sydney Harbour Trust Commissioners ;
 The Government Insurance Office of New South Wales ;
 The Board of Fire Commissioners of New South Wales.

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(2) In this Part of this Act the expression "the Crown" does not include the Commissioners of the Government Savings Bank of New South Wales or the Superannuation Board of New South Wales, or any authority mentioned in the definition of "statutory body."

4. (1) This Part of this Act shall apply only in respect of an obligation to pay interest created before the commencement of this Act. Application of Part II of Act.

(2) This Part of this Act shall not extend to interest payable in respect of any period prior to the commencement of this Act.

(3) This Part of this Act shall, subject to subsection four of this section, extend to an obligation to pay interest where the debtor is the Crown, but shall not extend to an obligation to pay interest where the creditor is the Crown, or any Minister of the Crown as such, or any person acting on behalf of the Crown or any statutory body.

(4) This Part of this Act shall not extend to the obligation of the Colonial Treasurer to pay interest at the rate of four pounds per centum per annum in pursuance of subsection three of section 23A or subsection three of section 23B of the Government Savings Bank Act, 1906, as amended by subsequent Acts.

(5) This Part of this Act shall take effect notwithstanding any agreement to the contrary.

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Reduction of interest.

Minimum rate of interest.

5. Subject to this Act an obligation to pay interest shall be deemed to be satisfied by payment of a sum equal to the amount which would have been payable as interest if this Act had not been enacted, less four shillings and sixpence in every pound of such amount.

6. (1) The provisions of section five of this Act shall not have the effect of reducing the interest payable under any mortgage to a rate less than five pounds per centum per annum, or in the case of mortgages to the Commissioners of the Government Savings Bank of New South Wales to secure moneys advanced from funds obtained from the Commonwealth Savings Bank in pursuance of the Commonwealth Housing Act, 1927-1928, to a rate less than five and three quarters per centum per annum, nor have the effect of reducing the rate of interest payable under any debenture to a rate less than four per centum per annum.

(2) Where the rate of interest under any mortgage has been reduced by or under the Moratorium Act, 1930, the reduction in pursuance of the provisions of section five of this Act shall be made from the amount which would have been payable as interest if the Moratorium Act, 1930, had not been enacted, and where the reduction made under that Act exceeds the reduction in pursuance of section five of this Act, that section shall not apply to the mortgage during the period for which the reduction under that Act operates.

(3) In this section "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, or the terms thereof varied, and an agreement for the sale and purchase or the exchange of lands; and also a hire-purchase agreement.

Power of court to modify or exclude provisions of section five.

7. (1) Where an obligation to pay interest is affected by the provisions of section five of this Act, the creditor may at any time within three months after the commencement of this Act make application in accordance with this section to a court for an order modifying or excluding the operation of the said provisions in relation to such obligation. (2)

(2) The application may be made to a judge of the Supreme Court or where the amount in respect of which interest is payable does not exceed one thousand pounds may be made to a court of petty sessions holden before a stipendiary magistrate or a police magistrate within the police district in which the creditor resides, or in which the interest is payable. ^{No. 44, 1981.}

(3) The application shall be by summons calling upon the debtor to show cause why the operation of the provisions of section five of this Act should not be modified or excluded in relation to the obligation upon the grounds specified in the summons.

The summons shall be in or to the effect of the prescribed form and shall be served as prescribed upon the debtor and upon such other persons, if any, as may be prescribed.

(4) The debtor or any such person may before the hearing of the application lodge an objection in the manner prescribed to the granting of the application and shall be entitled to be heard in support of such objection.

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

(6) Upon the hearing of the application the court may make such order as it deems just modifying or excluding the operation of the provisions of section five of this Act in relation to any obligation to pay interest if the creditor satisfies the court that—

- (a) the interest has already been reduced; or
- (b) the rate of interest was fixed subsequently to the first day of March, one thousand nine hundred and thirty-one, and such rate was by reason of the anticipation of a general reduction of interest rates by legislative action or otherwise fixed at a lower rate than would otherwise have been provided.

(7) The court may direct the summons to be served upon any person it thinks fit, and such person shall be entitled to appear and be heard.

(8) Any order made by a court under this section shall be final and conclusive.

(9)

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(9) The court may make such order for the payment of costs as it deems just. The amount of any costs so ordered to be paid may be recovered by the person entitled thereto as a debt in any court of competent jurisdiction.

Representative orders.

8. (1) Where there are several creditors interested in the same obligation to pay interest or having or claiming whether jointly or severally any right to apply under section seven of this Act in respect of the same obligation or series of obligations, any one of such creditors may apply to the court for an order appointing one or more persons to make an application under section seven of this Act on behalf or for the benefit of all such creditors.

An application under this subsection shall be made as prescribed by rules of the Supreme Court, and the court may, subject to such conditions as may be prescribed by such rules or as the court may order, appoint one or more persons to make the application under section seven accordingly.

An order of the court made under section seven upon the application of the person or persons so appointed shall bind all the creditors so represented and the debtor.

(2) Any creditor being entitled to receive payment of interest upon several obligations from separate debtors and desirous of having the provisions of section five modified or excluded in relation to all such obligations, may upon taking out a summons against any one of such debtors under section seven of this Act apply to the court for special directions as to service.

The court may make an order for service of the summons on such persons as it thinks fit to represent all the debtors and may direct such advertisement, by the applicant, of notice of the application as the court may think proper.

(3) Upon compliance with an order made under subsection two of this section the summons shall be deemed to have been served on every debtor affected thereby, and every such debtor shall be bound by any order made thereon modifying or excluding the provisions of section five of this Act.

(4)

(4) Every application made under subsection one of this section, and every application under section seven—

- (a) made by the person or persons appointed under subsection one of this section ; or
- (b) upon which it is intended to apply under subsection two of this section for special directions as to service,

shall, notwithstanding anything contained in section seven of this Act, be made to a judge of the Supreme Court.

9. An order made under section seven of this Act may, where it affects any charge on land, be registered in the Register of Causes, Writs, and Orders affecting land. Registration of orders.

No such order shall take effect until it is so registered.

Where the charge is a memorandum of mortgage or a memorandum of encumbrance of land under the provisions of the Real Property Act, 1900, the Registrar-General may of his own motion, and on application in accordance with regulations made under the Conveyancing Act, 1919-1930, shall make appropriate entries in the register-book of such order in respect of all grants, certificates of title, and other instruments affected thereby and the duplicates thereof, if or when available.

For the purposes of this section a duplicate grant, certificate of title, or other instrument which is not in the possession of the Registrar-General shall be deemed to be wrongfully retained within the meaning of section one hundred and thirty-six of the Real Property Act, 1900, and the provisions of that Act applicable in respect of a grant, certificate of title, or instrument wrongfully retained shall apply in respect of such duplicate.

In any other case the court may direct that a memorandum of the order shall be endorsed on any instrument evidencing the title of the creditor.

10. (1) Where any person interested in a contract for the sale and purchase or the exchange of land, or for the sale of goods alleges that interest is included in any Power of court where interest not readily ascertainable.

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any amount or amounts to be paid under the contract and that the rate of interest payable under the contract is not readily ascertainable, such person may in default of agreement apply to the court under this section.

(2) The application shall be by summons calling upon the respondent to show cause why the court should not make a declaration that interest is included in any amount or amounts payable under the contract, and ascertain the rate of interest so included.

(3) Upon the hearing the court may, if the applicant satisfies the court that interest is included in any amount or amounts payable under the contract, make a declaration accordingly, and may thereupon ascertain the rate of interest, and may by the same or a subsequent order make such adjustments of the amount or amounts payable under the contract as will give effect to the reduction of interest by this Act, or may make any order which it might have made under section seven.

(4) The court may direct that a memorandum of the order shall be entered on the contract.

(5) The provisions of subsections two, three, four, five, and seven of section seven of this Act shall apply mutatis mutandis to any application made under this section.

The provisions of subsections eight and nine of section seven of this Act shall apply mutatis mutandis to any order made under this section.

Creditor
trustee.

11. (1) If any creditor is a trustee—

- (a) such creditor shall not be deemed guilty of any breach of trust by reason only of his bona fide failure to make an application under section seven of this Act; and
- (b) the court in making any order as to costs under that section shall have regard to the fiduciary position of such creditor.

(2) In this section “trustee” includes legal representative of a deceased person, committee of the estate of an insane person, manager of the estate of an incapable person, the Master in Lunacy, the Master in Equity, director of a company, and any other person acting in any fiduciary capacity.

12.

12. Every payment of interest by a debtor made at a rate ascertained in pursuance of section five or section six of this Act, or in accordance with any order made under section seven of this Act, shall be a full discharge of such debtor's liability to pay interest in respect of the period to which such payment relates.

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Effect of reduction.

13. Every reduction of interest made by this Act, and unless the court for special reasons otherwise directs, every order modifying or excluding the application of section five of this Act to any obligation to pay interest, shall continue in force during the continuance of the obligation affected.

Period for which reduction operates.

14. (1) The Governor may make regulations not inconsistent with this Part of this Act prescribing all matters which by this Part of this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out the provisions of this Part of this Act.

Regulations.

(2) The regulations shall—

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

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

PART III.

HIRE-PURCHASE AGREEMENTS.

Amendment
of Act No.
43, 1902.
New s. 13.

15. The Usury, Bills of Lading, and Written Memoranda Act, 1902, is amended by inserting after section twelve the following new subheading and section :—

Hire-purchase agreements.

Re-opening
hire-purchase
transactions.
Qld., 7 Geo. V
No. 13, s. 5;
S.A., 15 Geo. V
No. 1617, s. 5.

13. (1) Where by any instrument it is expressed that any person lets any chattels to any other person at a rent to be paid by instalments upon the terms that the property in the chattels shall pass to the other person upon payment of the instalments but not otherwise, and proceedings are taken in any court in respect of any matter arising out of the transaction, the court, if satisfied by evidence that—

- (a) the amount charged by the instalments (and in especial whether directly or indirectly in respect of interest on the purchase money outstanding) is excessive; or
- (b) the amounts charged for expenses, inquiries, fines, bonus, premium, or any other charges are excessive; or
- (c) the transaction is harsh and unconscionable, or is such that a court of equity would give relief,

may—

- (i) reopen the transaction and take an account between the parties thereto; and
 - (ii) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, reopen any account in connection with the transaction; and
 - (iii) relieve the lessee from payment of any sum in excess of the sum adjudged by the court to be fairly payable in respect of purchase money, interest, and charges as the court, having regard to the risk, the value of the chattels, the time of payment, and all the other circumstances, may adjudge to be reasonable; and
- (iv)

- (iv) if any such excess has been paid or allowed in account by the lessee, order the lessor to repay it; and
- (v) set aside either wholly or in part, or revise or alter, any agreement made in connection with the transaction.

(2) The court shall have power, notwithstanding any provision or agreement to the contrary, to entertain an application by the lessee for relief, notwithstanding that the time for payment of any instalment has not arrived.

In this section "court" means a judge of the Supreme Court or of a district court, and in any case in which the amount involved does not exceed one hundred pounds, includes a court of petty sessions holden before a stipendiary magistrate or a police magistrate.

(3) When it appears to the court that any person other than the lessor 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 to such person as it deems fit.

(4) No proceeding to obtain any relief under this section shall be taken after six months from the time when the transaction in respect of or in connection with which relief is sought was finally closed.

(5) 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.

PART IV.

PREFERENCE SHARES.

Modification
of rights of
preference
shareholders.

16. (1) The right of the holder of a preference share in any company incorporated under any Act or registered or deemed to be registered under the Companies Act, 1899, to receive in preference or priority to any other shareholder in the company a dividend at a specified rate, shall, in respect of so much of any period for which a dividend is declared after the commencement of this Act as is subsequent to such commencement, be deemed to be modified by the substitution for such specified rate of a rate less than such specified rate by twenty-two and one half per centum thereof or of a rate of five per centum, whichever is the higher.

(2) Where the holder of a preference share has a right at the commencement of this Act to participate in the profits of the company after payment to other shareholders of a dividend at a specified rate, any memorandum of association, articles of association, or other instrument or resolution governing the rights of shareholders in the company, shall, in respect of so much of any period for which a dividend is declared after the commencement of this Act as is subsequent to such commencement, be deemed to be modified by the substitution for such specified rate of a rate less than such specified rate by twenty-two and one-half per centum thereof or of a rate of five per centum, whichever is the higher.

(3) Where the rate of dividend to which a holder of a preference share is entitled is limited to a specified rate, and that specified rate is modified by the operation of subsection one of this section, the holder of the preference share shall by virtue of this Act be entitled to a right to participate by way of dividend in the profits of the company equally with other shareholders after such other shareholders have received a dividend equal to that received by him.

This section shall not be construed to entitle the holder of a preference share to receive a dividend at any rate higher than the specified rate.

(4)

(4) In this section "the specified rate" means ^{No. 44, 1931.} the rate specified in the memorandum of association, articles of association, or other instrument or resolution governing the rights of shareholders in a company in relation to their participation in the profits of the company by way of dividend.
