

AUSTRALIAN CAPITAL TERRITORY

MERCANTILE LAW ORDINANCE 1962

EXPLANATORY MEMORANDUM

No. 4 of 1962

The main purpose of this Ordinance is to replace by local legislation, the provisions of the Imperial Statutes and New South Wales Acts specified in the Schedule to the Ordinance, which apply to the Territory. The provisions of these laws have been reviewed and have been extended and clarified in the following respects.

Part II of the Ordinance contains provisions which define the powers of a mercantile agent, a consignee of goods and an owner of goods. Generally, a consignee of goods has, in respect of advances made to or for the use of the consignor, a lien on the goods which may be transferred to any person.

Where a mercantile agent is entrusted as such with the possession of goods or the documents of title to goods, a disposition of the goods to a person acting in good faith and not having at the time of the disposition notice either that the agent had not authority to make the disposition or that the goods had ceased to be entrusted to the agent, is valid even though the agent had not the authority or the entrusting had ceased. Section 7 of the Ordinance prescribes certain presumptions regarding the activities of a mercantile agent. Section 10 of the Ordinance protects the owner of the goods from unauthorised dealings by an agent.

Part III contains provisions in respect of guarantors and sureties for the debt, default or miscarriage of another person. Some doubt existed as to the rights of a guarantor who had discharged the debt of a borrower. This position has been clarified by investing the guarantor with the right to have assigned to him the securities held by the creditor and to stand in the place of the creditor.

Part IV of the Ordinance provides that the maximum rate of interest on a loan that may be recovered in an action or suit where the rate of interest was not agreed upon by the parties is eight per centum per annum.

Part V of the Ordinance prevents the bringing of an action against a person in respect of a promise or ratification made after full age to pay a debt contracted during infancy unless the promise or ratification is made in writing signed by the party to be charged.

Part VI of the Ordinance introduces new provisions relating to liens available to warehousemen on goods to the extent of expenses incurred in storing and preserving the goods and other expenses incidental thereto. Notice of the lien must be given to the owner of the goods by the warehouseman. The warehouseman is given power to sell by auction goods on which he holds a lien for charges which have

become due. Notice of intention to sell the goods must be given to the persons specified in section 22 and must contain the information prescribed in that section. The sale of the goods is to be advertised twice at an interval of not less than seven days in a daily newspaper circulating in the Territory. A person having an interest in the goods may apply to the Court for a stay of proceedings to sell or may pay out the lien on the goods. The person satisfying the lien on behalf of another may recover the amount together with interest at the rate of 4% per annum. If goods are sold by a warehouseman he is required to pay into Court the balance of the proceeds of the sale not required to satisfy his lien.

The Ordinance does not authorise the sale of any goods the sale of which is prohibited either by auction or by other means by any other law in force in the Territory.

GORDON FREETH