

SOUTH AUSTRALIA

ADVANCES TO SETTLERS ACT, 1930

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SCHEDULE

ADVANCES TO SETTLERS ACT, 1930

being

Advances to Settlers Act, 1930, No. 1994 of 1930
[Assented to 20 November 1930]

as amended by

Advances to Settlers Act Amendment Act, 1944, No. 22 of 1944 [Assented to 14 December 1944]
Advances to Settlers Act Amendment Act, 1952, No. 28 of 1952 [Assented to 27 November 1952]
Advances to Settlers Act Amendment Act, 1958, No. 32 of 1958 [Assented to 20 November 1958]
Advances to Settlers Act Amendment Act, 1968, No. 9 of 1968 [Assented to 3 October 1968]
Advances to Settlers Act Amendment Act, 1970, No. 5 of 1970 [Assented to 20 August 1970]
Advances to Settlers Act Amendment Act, 1972, No. 95 of 1972 [Assented to 9 November 1972]
Statutes Amendment (Rural and Other Finance) Act, 1986, No. 37 of 1986 [Assented to 28 August 1986]
Advances to Settlers Act Amendment Act, 1988, No. 60 of 1988 [Assented to 15 September 1988]

Note: Asterisks indicate repeal and deletion of text. For further explanation see Appendix.

An Act to consolidate certain Acts providing for the making of advances to settlers on Crown lands.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title

1. This Act may be cited as the *Advances to Settlers Act, 1930*.

Repeal

2. (1) This Act is a consolidation of the Acts mentioned in the schedule, and the said Acts are hereby repealed to the extent herein mentioned.

(2) Wherever in any Act, or any regulation, or any other document or instrument of any kind, any reference is made to any of the said Acts, or to any provision of any of the said Acts, such reference shall be read and construed as a reference to this Act, or to the corresponding provision of this Act.

Interpretation

3. In this Act, unless a contrary meaning appears—

"advance" means an advance made under this Act or under a repealed Act:

"agreement" means an agreement containing a covenant to purchase Crown lands:

"bank" means the State Bank of South Australia established by the *State Bank Act, 1925*:

"Crown lands" includes—

- (a) Crown lands within the meaning of the *Crown Lands Act, 1929*;
- (b) lands belonging to the Crown which are subject to agreements or leases granted by or on behalf of the Crown under any Act or otherwise, but does not include any such lands which are subject to leases granted under the *Irrigation Act, 1930*;
- (c) lands repurchased under Part X of the *Crown Lands Act, 1903*, or the *Closer Settlement Act, 1910*, or Part X of the *Crown Lands Act, 1915*, or Part X of the *Crown Lands Act, 1929*; and
- (d) any other lands vested in or under the control of the Commissioner of Water Conservation or any other Minister, officer, or servant of the Crown, as such Minister, officer, or servant, which the Governor, by proclamation, published in the *Government Gazette*, declares to be Crown lands for the purposes of this Act:

"fixed rate" means the annual rate of interest fixed by the Treasurer under section 3 of the *Advances to Settlers on Crown Lands Act Further Amendment Act, 1912*, under section 20 of the *Advances to Settlers on Crown Lands Act, 1914*, or under section 13 of this Act, which is in force at the time when the advance in question is made:

3.

"fund" means the Advances to Settlers Fund continued by this Act:

"holding" means the land held by a settler in fee simple or under his lease or agreement:

"repealed Act" means any Act repealed by this Act or repealed by an Act hereby repealed:

"settler" means any person who is engaged in agricultural, horticultural, viticultural, or pastoral pursuits on any land—

- (a) of which he is the proprietor of any estate in fee simple; or
- (b) which is comprised in a lease or agreement held by him, whether the original lessee or holder or a successor in title of the original lessee or holder.

Administration

4. This Act and the fund continued by this Act shall be administered by the bank.

Payment of money to the Consolidated Account

5. (1) Money standing to the credit of The Advances to Settlers Fund shall be credited to the Consolidated Account.

(2) All money paid to, or recovered by, the bank in respect of advances made under this Act shall be paid by the bank to the Treasurer for the credit of the Consolidated Account.

Officers

6. The Governor may from time to time, upon the recommendation of the bank, appoint a secretary, an accountant, inspectors, valuers, and such other officers and servants of the bank as may be necessary for carrying out the provisions of this Act.

Advances to settlers

7. (1) Subject to the provisions of this Act, the bank may, in its discretion, make advances to any settler on the prescribed security for—

- (a) making improvements on his holding, such as ringbarking, clearing (including rolling or logging down and burning), grubbing, fencing, draining, erecting or making permanent water improvements (such as dams, wells, tanks, watercourses, windmills, and the like), boring for water, erecting permanent buildings, or such other improvements as are prescribed; or
- (b) stocking his holding; or
- (c) discharging any mortgage already existing on his holding; or
- (d) any other purpose.

(2) Advances may be made to a settler for any purpose mentioned in subsection (1) hereof but the total sum so advanced shall, subject to subsection (3) hereof, not exceed the amount of six thousand dollars.

4.

(3) Any advance made under this section shall not be made to an amount so that the total amounts secured by mortgage (whether made pursuant to this or any other Act or otherwise) of the holding of the settler exceeds nine-tenths of the fair estimated value of the holding of the settler and any improvements already made on his holding and those in the course of being made thereon.

* * * * *

(6) When a holding is held by two or more persons, each of those persons shall, for the purpose of estimating the limit of the amount of the advances which may be made to him, be deemed to be one settler; and for the said purpose the improvements on the said holdings, or in course of being made thereon, shall be deemed to belong to the said persons in the proportions of their respective interests in the holding.

(7) The bank shall not make an advance under this section after 30 June, 1986.

Applications for advance

8. Every application for an advance shall—

- (a) be made to the bank, and in the prescribed form, and shall contain such particulars as are prescribed:
- (b) be supported by such (if any) evidence as is prescribed, or as the bank requires.

Advances by instalments

9. (1) Any advance may be made by instalments, subject to anything prescribed in that behalf, as the improvements are being effected.

(2) If at any time, in the opinion of the bank, any money advanced under this Act has not been applied for the purpose for which it was advanced, or has not been carefully and economically expended, the bank may refuse to pay any further instalment of the proposed advance, and may at once call in the whole amount already advanced, whereupon the settler shall forthwith repay the same, and in default the bank shall have the same remedies for the recovery of the same as are provided by this Act for the recovery of sums payable by the settler.

Power of bank to effect improvements

10. (1) The bank may, on the application of a settler, make, construct, or erect upon the holding of the settler any or all of the following improvements:—

- I. Grubbing, clearing (including rolling or logging down and burning), and otherwise effectively preparing for cultivation any area not exceeding two hundred and fifty acres:
- II. Permanent water improvements (such as dams, wells, tanks, watercourses, windmills, and the like or sheds having rain water catchment roofs and tanks connected therewith for the storage of rain water), and boring for water:
- III. Dwelling-houses and other buildings:
- IV. Such other improvements as are prescribed.

(2) The settler's application shall—

5.

- (a) be made to the bank, and in the prescribed form;
- (b) contain such particulars as are prescribed; and
- (c) be supported by such (if any) evidence as is prescribed, or as the bank requires.

(3) The bank shall not commence to effect any improvements under this section until the settler has entered into an agreement with the bank, in the prescribed form, agreeing to repay in manner prescribed all moneys expended in effecting the improvements, and to secure the repayment thereof by executing a first mortgage of his holding as hereinafter provided.

(4) The bank shall, by writing, certify the cost of the improvements effected by the bank under this section on the holding, and the said certificate shall be conclusive as to the cost thereof.

(5) The cost so certified shall be deemed to be an advance made to the settler by the bank, and the settler shall execute a mortgage to the bank, of his estate and interest in the holding and of the improvements thereon, to secure the payment to the bank of the amount of the advance, with or without such additional security as to the bank seems fit.

(6) For the purposes of subsection (2) of section 7, improvements to be effected under this section shall be deemed to be purposes mentioned in paragraph (a) of subsection (1) of the said section; and the bank shall in the exercise of its powers under this section have regard to the limitations prescribed by the said section.

(7) The provisions of sections 11 to 30 shall, mutatis mutandis, apply to advances and mortgages and improvements under this section and to all matters and things connected therewith, incidental thereto, or consequent thereon.

(8) The moneys required by the bank for effecting improvements under this section shall be supplied to the bank from time to time by the Treasurer out of the fund.

(9) The bank shall not grant an application under this section after 30 June, 1986.

Advance to be secured by mortgage

11. (1) No advance shall be made except upon the security of a mortgage or mortgages to the bank of the settler's estate and interest in his holding as well as of the improvements already thereon, and the improvements with respect to which the advance is made, with or without such additional security as to the bank seems fit. The settler may, notwithstanding any enactment or law, or anything in any lease or agreement to the contrary, lawfully execute any such mortgage or other security.

(2) The provisions of the *Bills of Sale Act, 1886*, shall not apply to any mortgage or other security executed under the provisions of this Act, or affect the validity of any such mortgage or security in respect of any chattels comprised therein.

Advances only to be made on first mortgage

12. No advance shall be made on any property which is encumbered by any previous mortgage or charge, other than a mortgage or charge under this Act or any repealed Act, or a charge in favour of the Crown; but a second mortgage may be taken as collateral security.

Special provision for the making of advances for the erection of dwelling-houses**12a.**

* * * * *

(2) The bank may make an advance of any amount not exceeding the prescribed amount to any settler for the purpose of erecting, enlarging or altering a dwelling-house on the holding of that settler.

(2a) For the purposes of subsection (2) of this section "the prescribed amount" means the maximum amount that for the time being, otherwise than under this Act, the bank advances, out of moneys provided by Parliament for the purpose, for a housing loan.

(3) The power to make an advance under this section shall be in addition to any other power to make advances under this Act.

(4) Every advance under this section shall be made subject to the following provisions:—

- I. The dwelling-house erected, enlarged or altered by means of the advance shall be used for the purpose of residence by the settler or by a member of the family or an employee of the settler who is employed upon the holding of the settler or by a person who, pursuant to an agreement for the share farming or the letting of the holding of the settler or any part thereof, is engaged in agricultural, horticultural, viticultural or pastoral pursuits on the holding or part thereof:
- II. No advance shall be made except upon the security of a mortgage of the estate and interest of the settler in his holding. If the holding is encumbered by a previous mortgage or charge in favour of the Crown or any instrumentality of the Crown, the bank may make the advance upon the security of a mortgage subject to such previous mortgage or charge. If the holding is encumbered by a previous mortgage or charge other than a mortgage or charge in favour of the Crown or any instrumentality of the Crown, the advance may be made upon the security of a subsequent mortgage of such estate or interest subject to such previous mortgage or charge but no such advance shall be made unless the Land Board is satisfied that the primary production derived from the holding is sufficient to justify the erection, enlarging or alteration of the dwelling-house and that the fair estimated value of the holding is such that the advance should be made in accordance with this section and the Land Board recommends the making of the advance:
- III. An advance made under this section shall not be made to an amount so that the total amounts secured by mortgage (whether made pursuant to this or any other Act or otherwise) of the holding of the settler exceeds nine-tenths of the fair estimated value of the holding of the settler and any improvements already made on his holding together with the fair estimated value of the improvement to be made by the erection, enlargement, or alteration of the dwelling-house for which the advance is made.

(5) Except where inconsistent with the provisions of this section, the provisions of this Act shall apply with respect to every advance under this section.

(6) Advances under this section shall be made out of moneys from time to time provided by Parliament for the purpose.

(7) The bank shall not make an advance under this section after 30 June, 1986.

Power of the Treasurer to from time to time fix the interest on advances

13. (1) The Treasurer may, from time to time, by notice published in the *Government Gazette*, fix the annual rate of interest to be paid on advances, or the rate at which a rebate of interest shall be allowed under subsection (6) of section 14, and may, in the same manner, annul any rate so fixed.

(2) Any rate so fixed shall come into force on the fourteenth day after the date of the *Government Gazette* in which the same is published, and shall continue in force until the fourteenth day after the date of the *Government Gazette* in which the notice annulling the same is published.

Repayment of advance

14. (1) During such period next following the date on which an advance is made as is fixed by the bank at the time of the making of the advance (but in no case exceeding five years), the settler shall pay to the bank interest on the advance at the fixed rate.

(2) The said interest shall be payable half-yearly, the first payment to be made on the first day of the seventh calendar month commencing next after the advance is made.

(3) If any advance is made by instalments, interest shall be calculated on the actual amounts of the several instalments of the advance from the date when the instalments are respectively advanced.

(4) After the expiration of the period fixed by the bank under subsection (1) of this section, the settler shall repay the advance to the bank by such number of equal half-yearly instalments as is fixed by the bank at the time of the making of the advance, together with simple interest at the fixed rate on the balance of the advance for the time being unpaid. The number of instalments fixed as aforesaid shall in no case exceed seventy.

(5) The first of the half-yearly instalments shall be paid on the first day of the sixth calendar month commencing next after the day upon which the last payment of interest is to be made under subsection (2) hereof.

(6) When any half-yearly payment required by this section is made within fourteen days next after the day upon which the same is required to be made a rebate of interest at the rate fixed under section 13 which was in force at the time when the advance was made shall be allowed to the settler.

(7) Any advance may, at the option of the settler, be repaid at any time sooner than is herein provided, or be repaid in larger instalments.

Power of bank to determine mode of repayment of advances made for stocking holding

15. When an advance has been made to a settler for the purpose of stocking his holding, the settler shall repay to the bank the advance, together with simple interest on the balance thereof for the time being unpaid at the fixed rate, within such time and by such instalments and subject to such conditions as the bank determines.

Perfecting security over holding when freehold acquired subsequent to mortgage

16. (1) When an advance has been made upon the security of a mortgage of a holding the freehold whereof may under any Act be acquired from the Crown, the grant in respect of the holding shall not be issued while the mortgage is in existence, except to the bank, nor unless it bears an endorsement showing that it is subject to the mortgage.

(2) When an advance has been made upon the security of a mortgage of a lease over a holding, no fresh lease of the holding shall be issued while the mortgage is in existence, except to the bank, nor unless it bears an endorsement showing that it is subject to the mortgage.

(3) When a grant or fresh lease has been endorsed as mentioned in this section, the grant or lease shall be subject to the mortgage as if it were expressly charged thereby; and, notwithstanding the provisions of *The Real Property Act, 1886*, the Registrar-General shall make any entry in the register book which may be necessary for the purpose of showing that the grant or fresh lease is subject to the mortgage.

(4) The bank shall be entitled to retain possession of every such grant or fresh lease while any such mortgage is in existence.

Power of bank to acquire freehold

17. (1) Where an advance has been made upon the security of a mortgage of a holding the freehold whereof may under any Act be acquired from the Crown, the bank may, at any time and notwithstanding the provisions of any Act, acquire the freehold of the holding on behalf of the mortgagor or his successor in interest, and for that purpose may make all such payments to the Crown and otherwise as are necessary.

(2) All payments so made by the bank shall be added to and become part of the mortgage debt, notwithstanding that the amount of the advance is thereby increased beyond the limits prescribed by section 7.

(3) The grant of the holding shall be delivered to the bank, and shall bear an endorsement showing that it is subject to the mortgage, and thereupon the provisions of subsections (3) and (4) of section 16 shall apply in respect of the grant.

Power of bank to pay off prior mortgage

17a. (1) In any case where—

- (a) an advance made under this Act or any repealed Act in respect of any holding is secured by a mortgage which is subject to a previous mortgage or charge; and
- (b) the settler has made default in any payment required to be made pursuant to the previous mortgage or charge; and
- (c) the bank is satisfied that, for the proper protection of the security given to secure the repayment of the advance made under this Act or any repealed Act it is desirable so to do,

the bank may pay to the person entitled thereto the whole or any part of the amount by which the settler is so in default.

(1a) Money required for the purposes of this section shall be debited against the Consolidated Account which is appropriated by this subsection to the necessary extent.

(2) Any amount so paid by the bank shall be deemed to be added to the advance made under this Act or any repealed Act and any mortgage (whether given before or after the passing of the *Advances to Settlers Act Amendment Act, 1952*) to secure any such advance shall be deemed to provide accordingly.

Breach of terms of security to be breach of lease or agreement

18. Any breach by the settler in any of the terms or conditions of any mortgage of his estate or interest in any lease or agreement or other security for securing the repayment of any advance shall be deemed a breach of the conditions of his lease or agreement, and shall render the lease or agreement liable to be cancelled and forfeited in the same manner as Crown leases or agreements where rent is in arrear.

Remedies for recovery of instalments

19. (1) In addition and without prejudice to any other remedy, if at any time any half-yearly payment required by this Act, or any part thereof, is unpaid for thirty days next after the time appointed for the payment thereof, then, although no legal demand has been made for the payment thereof, the bank may enter upon the holding charged, or any part thereof, and recover the amount due by distress and sale of any goods and chattels on the holding, or the said amount may be recovered in any court of competent jurisdiction by action, in the name of the bank, from the settler of the said holding for the time being.

(2) If at any time any half-yearly payment required by this Act, or any part thereof, is unpaid for three calendar months next after the time appointed for the payment thereof, then, although no legal demand has been made for the payment thereof, the bank may enter upon and take possession of the holding with respect to which the advance has been made, and may sell the estate and interest of the settler therein, either by private sale or public tender or auction, and subject to any conditions of sale the bank thinks expedient, and after such notice of the time, place, terms, and conditions of sale as the bank thinks just and expedient, and may transfer the estate and interest of the settler in the holding to the purchaser and give a good and valid title thereto.

(3) The bank shall apply the proceeds derived from any such sale in payment, in the first instance, of all moneys due in respect of the holding, and in redemption of any amount charged thereon in favour of the bank, or of so much thereof as remains unpaid, and of all expenses incurred by the bank in relation to the sale or otherwise with respect to the holding, and shall pay the balance (if any) to the persons appearing to the bank to be entitled to receive the same.

Duty of mortgagor to effect necessary repairs

20. (1) The settler of any holding over which a mortgage or other security has been given under the provisions of this Act or any Act hereby repealed shall, during the continuance of the same, to the satisfaction of the bank, keep in good and tenable repair all buildings, fences, fixtures, and improvements upon the holding comprised in the mortgage or other security.

(2) If after the expiration of two months notice in writing by the bank any settler has not complied with the requirements of this section—

- (a) the like consequences shall follow as are provided by sections 18 and 19 in case of breach of the terms or conditions of the mortgage or other security, or default made in the payment of any interest or instalment payable under the provisions of this Act; or

- (b) the bank, or any person acting with its authority, may enter upon the holding and effect all repairs which the bank deems necessary; and the expense thereby incurred, with interest at the same annual rate as that which is payable on the advance, shall be repaid to the bank by the settler on demand, and until repayment shall be a charge under the mortgage or other security upon the holding.

Conditions annexed to land while subject to advances

21. (1) As between the bank and the settler of any holding with respect to which an advance has been made, the following conditions shall be imposed so long as the holding is subject to any charge in favour of the bank, namely:—

- I. The holding shall not be sublet or let by the settler, nor shall any part of his estate or interest in the holding be transferred without the consent of the bank:
- II. Every sublease, agreement, and transfer contrary to the provisions of this section shall be void and of no effect:
- III. If the settler sublets or lets the holding or any part thereof, or transfers any part of his estate or interest in the holding in contravention of the provisions of this section, the bank may cause the settler's estate and interest in the holding to be sold:
- IV. When the title to any lease or agreement of the holding of the settler is divested from the settler under any law relating to bankruptcy, the bank may cause the settler's estate and interest in the holding to be sold.

(2) The provisions of section 19, as to sale and application of proceeds of sale, shall apply to every sale made under the provisions of this section.

Extension of time for repayment

22. In cases of hardship the bank may extend the time for making any payment required by this Act: Provided that the deferred payments shall bear interest at the same annual rate as that which is payable on the advance.

Capitalization of overdue interest

23. (1) The amount of any interest due and unpaid under a mortgage, made either before or after the passing of this Act as security for the repayment of an advance may, at the option of the bank, be capitalized and added to the advance; and every such mortgage shall be deemed to provide for such capitalization and addition.

(2) When any addition is made under this section the amount added shall be repayable as a further advance: Provided that the instalments in repayment of the further advance—

- (a) shall be payable at the same times as the instalments in repayment of the advance to which the addition is made; and
- (b) shall be of such number that the last of them shall be payable at the same time as the last instalment in repayment of the advance to which the addition is made.

Duty of bank to obtain reports as to expenditure of advances

24. The bank from time to time shall obtain reports from the inspectors and valuers of the bank as to the manner in which advances and instalments of advances have been expended and used by the settlers, and as to the state and condition of the improvements for the purpose of which the advances and instalments have been paid to the settlers, and generally as to the state and condition of the holding in respect of which the advances and instalments have been paid.

Register of advances

25. The bank shall keep a register or list of all advances, with the names of the persons to whom the advances have been made, and also an alphabetical index of the names of such persons. The register or list and index shall be open to public inspection on the payment of a fee of ten cents.

Duty of bank to keep accounts

26. The bank shall keep accounts showing all operations on the fund, as well as all moneys paid to and received from every settler to whom any advance has been made, and such (if any) other accounts and records as are prescribed.

Audit

27. (1) The accounts of the bank shall, once at least in every year, and also whenever so directed by the Governor, be audited by the Auditor-General.

(2) The Auditor-General shall, in respect of the said accounts, have all the powers conferred on him by the *Audit Act, 1921*, and any Act for the time being in force relating to the audit of public accounts.

Balance-sheet and report to be laid before Parliament

28. In every year the bank shall furnish to the Minister of Lands a balance-sheet and a report upon the operation of this Act, and every such balance-sheet and report, together with the report of the Auditor-General, shall be laid, as soon as possible, before both Houses of Parliament.

Regulations

29. The Governor may from time to time make regulations for all or any of the following purposes, namely:—

- I. Prescribing the duties of the officers and servants of the bank:
- II. Prescribing the mode in which applications for advances are to be made:
- III. Regulating the consideration and granting of applications:
- IV. Prescribing what inquiries and valuations shall be made in relation to applications:
- V. Adding to or altering the list of improvements for the making of which advances may be made:
- VI. Prescribing the mode in which the value of improvements shall be determined:
- VII. Prescribing the forms of mortgages and securities to be taken by the bank, and providing for the registration of such mortgages and securities:

- VIII. Prescribing the records, books, and accounts to be kept by the bank:
- IX. Providing for the receipt and payment of moneys under this Act, and the safe custody of securities:
- X. Prescribing the fees to be paid in respect of advances:
- XI. Prescribing anything which by this Act is required to be or may be prescribed:
- XII. Generally for carrying out the objects and provisions of this Act.

* * * * *

Alteration of instalments in repayment of certain advances

31. (1) Any advances made before the twenty-eighth day of October, 1915, shall be repayable, and shall be deemed to have been repayable as from the making thereof, by seventy, instead of by fifty, equal half-yearly instalments; and every mortgage made as a security for the repayment of such an advance shall be construed so as to give effect to this subsection.

(2) If any instalment by way of repayment of such an advance has been paid before the said date, the surplus of principal which, by reason of this section, is shown to be included in such instalment, shall not be refunded, but shall be credited against the principal included in instalments subsequently to be paid, until the surplus is exhausted.

SCHEDULE

ACTS CONSOLIDATED AND REPEALED

Number of Act	Short Title of Act	Extent of Repeal
No. 1166 of 1914	The Advances to Settlers on Crown Lands Act, 1914	The whole
No. 1198 of 1915	Advances to Settlers on Crown Lands Act Amendment Act, 1915	The whole
No. 1703 of 1925	State Bank Act, 1925	Section 58 and the Third Schedule
No. 1815 of 1927	Advances to Settlers on Crown Lands Act Amendment Act, 1927	The whole

APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 1 of The Public General Acts of South Australia 1837-1975 at page 230.

Section 5:	substituted by 37, 1986, s. 2(a)
Section 7(7):	inserted by 37, 1986, s. 2(b)
Section 10(5):	amended by 60, 1988, s. 2
Section 10(9):	inserted by 37, 1986, s. 2(c)
Section 11(1):	amended by 60, 1988, s. 3
Section 12a(7):	inserted by 37, 1986, s. 2(d)
Section 17a(1a):	inserted by 37, 1986, s. 2(e)