

SOUTH AUSTRALIA

LOANS FOR FENCING AND WATER PIPING ACT, 1938

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at **1 October 1991**.*

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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LOANS FOR FENCING AND WATER PIPING ACT, 1938

being

Loans for Fencing and Water Piping Act, 1938, No. 2409 of 1938
[Assented to 1 December 1938]¹

as amended by

Loans for Fencing and Water Piping Act Amendment Act, 1940, No. 42 of 1940 [Assented to 28 November 1940]

Loans for Fencing and Water Piping Act Amendment Act, 1945, No. 8 of 1945 [Assented to 8 November 1945]

Loans for Fencing and Water Piping Act Amendment Act, 1952, No. 32 of 1952 [Assented to 27 November 1952]

Statute Law Revision Act, 1973, No. 77 of 1973 [Assented to 6 December 1973]

Vertebrate Pests Act, 1975, No. 46 of 1975 [Assented to 10 April 1975]²

Statutes Amendment (Rural and Other Finance) Act, 1986, No. 37 of 1986 [Assented to 28 August 1986]

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

¹ Came into operation 1 February 1939: *Gaz.* 19 January 1939, p. 121.

² Came into operation 1 July 1975: *Gaz.* 26 June 1975, p. 2457.

An Act to empower the State Bank of South Australia to make loans for fencing and water piping, to repeal the Loans for Fencing and Water Piping Act, 1930, and for other purposes.

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 *Loans for Fencing and Water Piping Act, 1938*.

Commencement of Act

2. This Act shall come into force upon a day to be fixed by proclamation.

Repealing provision

3. (1) The *Loans for Fencing and Water Piping Act, 1930*, is repealed.

* * * * *

Interpretation

4. In this Act—

"bank" means the State Bank of South Australia:

"fencing material" includes wire netting:

"fixed rate" means the annual rate of interest fixed under section 18 which is in force when the loan in question is made:

"mortgage" includes any mortgage, lien, charge or encumbrance of any land or interest in land for securing money or money's worth whether subsisting at law or equity and also includes a lien over the document of title to any land:

"mortgagee" means any person from time to time deriving title under a mortgage:

"owner" means—

- (a) the registered proprietor under *The Real Property Act, 1886-1936*, of any estate of freehold in possession:
- (b) as regards land not under *The Real Property Act, 1886-1936*, any person who is seised of any estate of freehold in possession, or if the said estate is subject to redemption under any mortgage, the person who upon payment of all moneys secured by such mortgages would be entitled to a conveyance of such an estate:
- (c) as regards land belonging to the Crown, any person who has agreed to purchase the land from the Crown or is the lessee of the land under any lease granted by the Crown,

but does not include a mortgagee in possession:

"repealed Act" means—

- (a) the *Loans for Fencing and Water Piping Act, 1930-1936*;
- (b) the *Loans for Fencing Acts, 1919 to 1930*;
- (c) Divisions II, III, and IV of Part V of the *Vermin Act, 1931-1936*;
- (d) Divisions II, III, and IV of Part VI of the *Vermin Act, 1914*;
- (e) Divisions I and II of Part VI of the *Vermin Act, 1905*.

Power to make loans

5. (1) The bank may make loans to owners for fencing material and water piping as provided by this Act.

(2) All such loans shall be made out of moneys provided by Parliament for the purpose.

(3) The bank shall not make a loan pursuant to this Act after 30 June, 1986.

Application for loan

6. (1) Any owner may make application to the bank for a loan for the supply of any fencing material or water piping.

(2) Every application shall—

- (a) be signed by the applicant;
- (b) describe shortly the land owned by the applicant, and state the acreage thereof;
- (c) state whether the land of the applicant is charged with any mortgage and state the amount of any such mortgage and the name and address of the mortgagee;
- (d) give an estimate of the fencing material or water piping required by the applicant;
- (e) state that the applicant undertakes to pay to the bank in each year one-twentieth part of the value of all fencing material or water piping supplied to him by the bank, together with interest at the fixed rate on the balance for the time being unpaid;
- (f) contain an undertaking by the applicant to erect upon his land all fencing material supplied to him to the satisfaction of and within the time required by the bank or, as the case may be, to lay down in or upon his land or in or upon any road all water piping supplied to him to the satisfaction and within the time required by the bank;
- (g) contain such other matters as are prescribed.

(3) Any application in respect of any land of which there is more than one owner shall be made by all the owners.

Verification of signature on application

7. (1) Every application shall be verified by the solemn declaration of the person or persons making the application.

(2) Any person who wilfully makes any false statement in any application shall be deemed to be guilty of wilful and corrupt perjury.

Notice of application to mortgagee

8. (1) Before considering any such application with respect to any land the bank shall, in the cases hereinafter mentioned, give notice in writing to the mortgagee under any mortgage of the land, and shall consider any representations which are, within one month after the giving of the notice to any such mortgagee made to the bank by the mortgagee. The bank shall give notice as aforesaid to the mortgagee under any mortgage of the land which is registered under *The Real Property Act, 1886-1936*, and shall also give notice to every other mortgagee under any mortgage of the land (not registered as aforesaid) whose name is stated in the application.

(2) If the consent in writing of any such mortgagee to the granting of the loan is forwarded to the bank, the bank need not give notice to that mortgagee as provided by this section.

(3) If any such mortgagee does not consent to the granting of the loan, the bank shall not grant the loan if it considers that the granting of the loan will prejudicially affect the security of the mortgagee.

(4) If the application is made by the registered proprietor under *The Real Property Act, 1886-1936*, of a life estate of freehold in possession, the bank shall, before considering the application, give notice in writing to every person who is registered under *The Real Property Act, 1886-1936*, as the proprietor of any estate of freehold in remainder in respect of the said land and shall consider any representations which are, within one month after the giving of the notice to any such person, made to the bank by such person. If the consent in writing of any such person to the granting of the loan is forwarded to the bank, the bank need not give notice to that person as provided by this subsection.

Power to bank to grant loan

9. (1) The bank may, subject to such terms and conditions as the bank thinks fit, grant a loan to any applicant to the extent of the whole or any part of the loan for which application is made. The amount of the loan shall be the net cost to the bank of the fencing material or water piping, as the case may be, supplied as provided by this section.

(2) If any loan is granted, the bank shall cause to be supplied to the applicant fencing material or, as the case may be, water piping.

(3) When supplying fencing material or water piping to an applicant, the bank shall give notice in writing to the applicant, specifying the value thereof, and requiring him, within a time to be specified in the notice, to erect the fencing material on or, as the case may be, lay down the water piping in or upon, the land or road in respect of which it is supplied, shortly describing the land or road.

Purpose for which loan for water piping may be made

9a. (1) A loan may be made for the purpose of the supply of water piping to be laid down—

(a) in or upon the land of the owner;

(b) for the purpose of supplying water to the land of the owner, in or upon any road;

- (c) for the purpose of supplying water to the land of the owner, in or upon any other land in or upon which the owner to whom the loan is made has the right to lay down the water piping by virtue of an easement lease or sublease registered pursuant to the *Real Property Act, 1886*, or the *Registration of Deeds Act, 1935*, and appurtenant to the land of the owner.

(2) If any loan is made for any purpose described in paragraph (b) or (c) of subsection (1) of this section, the loan shall, for the purposes of section 12 and of the other provisions of this Act, be deemed to have been made in respect of the land of the owner, for the supply of water to which the water piping is laid down.

Special provision for pastoral leases

10. (1) In any case where an application for a loan is made in respect of land held under a pastoral lease and the loan is required for the purpose of erecting a dog-proof fence or for making a fence a dog-proof fence, the bank may, on the recommendation of the Pastoral Board, instead of supplying fencing material, advance to the applicant the sum equal to the cost of supplying the fencing material at the port or railway station nearest the land.

(2) No sum shall be paid under this section until fencing material costing the amount of that sum has been actually utilised by the applicant in erecting the fence or making the fence a dog-proof fence to the satisfaction of a Government inspector.

(3) In this section "dog-proof fence" has the meaning given to that term by the *Vertebrate Pests Act, 1975*.

Payment of loan

11. (1) The value, as specified in the notice given pursuant to section 9, of all fencing material or water piping supplied to an applicant or, as the case may be, the amount advanced to the applicant pursuant to section 10, shall be deemed to be a loan to the applicant and shall be repaid to the bank in twenty equal yearly instalments with interest at the fixed rate on the balance thereof for the time being remaining unpaid. Every such yearly instalment, together with interest as aforesaid, shall be due and payable by the owner for the time being of the land in respect of which the loan was made, on the first day of February in every year, the first of the said instalments to be due and payable on the first day of February next after the granting of the loan to the applicant.

(2) When any yearly payment required by this section is not made before the first day of May next after the day upon which the same is required to be made, that part thereof which represents principal shall bear interest, at a rate per annum being one per centum in excess of the fixed rate calculated from the date whereon the same became payable until actual payment, and the said interest shall be added to and form part of the yearly payment. The bank may, in any case it thinks fit, remit payment of the whole or any part of the said interest.

(3) The said yearly instalments as they become due and payable, with interest as aforesaid, may at any time be recovered by action in any court of competent jurisdiction by the bank as a debt due to the bank from the owner for the time being of the land in respect of which the loan was made.

(4) Any loan may, at the option of the owner of the land, be repaid at any time sooner than is in this Act provided, or be repaid in larger instalments.

Loans to be charge on land

12. (1) The yearly instalments payable in respect of any loan made before the passing of the *Loans for Fencing and Water Piping Act Amendment Act, 1940* (whether the loan is made under this Act or under any repealed Act), as they become due and payable (whether before or after the commencement of this Act), and the interest thereon, shall be, and until paid, shall remain, a charge on the land in respect of which the loan is made.

The amount for the time being remaining unpaid of every loan made after the passing of the *Loans for Fencing and Water Piping Act Amendment Act, 1940*, and the interest thereon, shall be, and until paid shall remain, a charge on the land in respect of which the loan is made.

(2) If any such loan was made before the commencement of this Act, the charge shall be a first charge on the land in respect of which the loan was made.

(3) If any such loan is made after the commencement of this Act in respect of any land comprised in a Crown lease or an agreement for sale and purchase with the Crown, the charge shall be a first charge on such land.

(4) If any such loan is made after the commencement of this Act in respect of any land (other than land such as is described in subsection (3)) and the mortgagee under every mortgage of the land which is registered under *The Real Property Act, 1886-1936*, or the *Registration of Deeds Act, 1935*, consents to the granting of the loan and to the charge being a first charge on the land, the charge shall be a first charge on such land. If every such mortgagee does not consent to the granting of the loan and to the charge being a first charge on the land, the charge on the land shall be subject to every mortgage of the land which is registered under *The Real Property Act, 1886-1936*, or, as the case may be, the *Registration of Deeds Act, 1935*, prior to a memorandum of the charge being endorsed or a memorial of the charge being registered as provided by section 13.

(5) Any mortgagee of any such land, upon default being made by the owner in the payment of any instalment under any loan or any interest thereon, or any part thereof, may pay the same to the bank, and any such payment when so made shall be deemed to be added to and to form part of the principal sum secured by the mortgage of the mortgagee, and shall be subject to the provisions, powers and remedies expressed or implied or exercisable in respect of the mortgage or of any debt or liability thereby secured.

Endorsement of charge upon title

13. (1) Forthwith upon any land being charged with a loan made under this Act (whether pursuant to section 12 or section 15) the bank shall give notice in writing thereof to the Registrar-General who shall endorse or cause to be endorsed on the appropriate folio of the register book or register of Crown leases a memorandum of the charge specifying the nature of the charge.

(2) If any land is charged with any loan made under any repealed Act and a memorandum relating to such charge does not appear upon the folio of the register book or register of Crown leases relating to the land, the bank shall, within six months after the commencement of this Act, give notice in writing thereof to the Registrar-General who shall endorse or cause to be endorsed on the appropriate folio of the register book or register of Crown leases a memorandum of the charge.

(3) If any default is made in the payment of any instalment of any loan or any interest thereon, or any part thereof, the bank shall have in respect of the land referred to in the memorandum of charge, the same powers of sale as are given by *The Real Property Act, 1886-1936*, to a mortgagee under a mortgage in respect of which default has been made in the payment of the principal money or interest or any part thereof, and for such purpose the balance of the loan then unpaid shall be deemed to be the principal money secured by the charge.

(4) If any loan is apportioned as provided by section 14, the bank shall give notice in writing thereof to the Registrar-General who shall endorse or cause to be endorsed on the appropriate folio of the register book or register of Crown leases a memorandum of the apportionment.

(5) Upon any loan being fully repaid to the bank or upon any charge being removed from any land pursuant to section 15, the bank shall give notice in writing thereof to the Registrar-General who shall endorse or cause to be endorsed on the appropriate folio of the register book or register of Crown leases a memorandum of the removal of the charge.

(6) If any land charged with any loan is not under *The Real Property Act, 1886-1936*, the board shall register in the General Registry Office a memorial of the charge, apportionment thereof, or discharge thereof, as the case may be.

(7) The bank shall, in the cases aforesaid, pay to the Registrar-General such fees as are fixed from time to time by the Registrar-General. All such fees shall be paid to the bank by the applicant owner except in the case of the fees payable in respect of endorsements made pursuant to subsection (2).

(8) The provisions of this section shall apply notwithstanding the provisions of *The Real Property Act, 1886-1936*.

Apportionment of charge

14. (1) Where any land is charged with any loan made under this Act or any repealed Act, the bank may, by notice in writing, apportion the loan charged upon the land, and any arrears thereof, between different portions of the land so charged.

(2) After a day to be fixed by the bank the respective portions of the land shall be charged as provided by section 12 with such proportion of the loan and arrears thereof, and with respect to such future instalments, together with interest at the fixed rate on the balance thereof for the time being unpaid, as is fixed by the bank but with no other portion of the loan, arrears, and future instalments and interest.

(3) The provisions of section 8 shall, *mutatis mutandis*, apply to any application to the bank to apportion a loan.

Transfer from one holding to another

15. (1) Upon the application of any owner whose land is charged with any loan under this Act or any repealed Act, the bank may, by notice in writing, authorize the owner to remove the fencing material or water piping in respect of which the loan was made to any other land specified by the bank of which the applicant is the owner.

(2) In any such case the owner shall remove the fencing material or water piping and erect the fencing material upon or, as the case may be, lay down the water piping in or upon the land specified by the bank.

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(3) After a day to be fixed by the bank the land in respect of which the loan was made shall cease to be charged with the loan as provided by section 12, but the land specified by the bank shall be charged with the loan as provided by section 12.

(4) The provisions of section 8 shall, *mutatis mutandis*, apply to any application under this section.

Provision where Crown lease or agreement is cancelled

16. If any loan is made under this Act or any repealed Act in respect of any land comprised in a Crown lease or agreement for sale and purchase with the Crown and the lease or agreement is cancelled or is otherwise determined and the land is, after the passing of the *Loans for Fencing and Water Piping Act Amendment Act, 1952*, again held under lease or agreement as aforesaid, the loan shall not be a charge upon the land comprised in the lease or agreement.

Power to remove material

17. (1) When any money is due to the bank under any loan made under this Act or any repealed Act in respect of any fencing material or water piping, the bank may enter upon any land and remove the fencing material or water piping. The bank may again dispose of the fencing material or water piping as provided by this Act or may sell the same.

(2) In any such case the amount payable under the loan shall be deemed to be reduced by the value of the fencing material or water piping so removed. For the purposes of this subsection the value aforesaid shall, if the fencing material or water piping is again disposed of for the purposes of a loan under this Act, be the amount of the loan granted in respect thereof and, if the fencing material or water piping is sold, be the amount realised from the sale, less, in each case, any costs incurred in the removal and any sale thereof.

Power of bank to fix the rate of interest on loans

18. (1) The bank may, from time to time, by notice published in the *Gazette*, fix the annual rate of interest to be paid on loans made by the bank under this Act, and may, in like manner, annul any rate so fixed.

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

Capitalization of arrears

19. If any payment in respect of any loan under this Act or any repealed Act is in arrear, the bank may capitalize the arrears which represent interest. In any such case the amount in arrear which represents principal and the amount so capitalized shall be paid to the bank within such time and upon such terms as the bank thinks fit.

Fees to bank

20. Before granting any application under this Act the bank may require payment by the applicant of such inspection fees as the bank deems necessary and of any fees payable pursuant to section 13.

Provision for past advances

21. (1) In this section "advance" means any advance for fencing material or water piping made before the commencement of this Act by any district council or vermin board to any person pursuant to any repealed Act, and in respect of which any amount is due at or will become due after the commencement of this Act.

(2) At the commencement of this Act every advance shall cease to be repayable to the district council or vermin board by which it was made and shall be repayable to the bank.

(3) Every such advance shall, subject to this Act, be repayable to the bank to the same amount and in the same instalments and shall bear interest at the same rate and shall be subject to the same payments as would be the case if the advance continued to be repayable to the district council or vermin board.

(4) The liability to pay the said instalments, interest and other payments shall be upon the occupier to whom the advance was made by the district council or vermin board and, if such person ceases (whether before or after the commencement of this Act) to be the occupier of the land in respect of which the advance was made, shall be upon the owner for the time being of the land in respect of which the advance was made.

(5) The provisions of this Act (so far as applicable) shall apply to every such advance as if it were a loan under this Act, and every such advance shall (so far as the provisions of this Act are applicable) be deemed to be a loan under this Act.

(6) Every district council and vermin board to which, at the commencement of this Act, any such advance was payable shall forward to the bank all records in the possession of the district council or vermin board relating to the advance.

(7) If in any case the records of any district council or vermin board do not clearly show the amount outstanding (whether of principal or interest) of any advance, the bank may, by notice in writing, fix that amount. The notice and any variation thereof made by the bank shall be final and binding upon all persons.

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Provision for past advances to occupiers

23. (1) All advances made pursuant to section 35 of the *Loans for Fencing and Water Piping Act, 1930-1936*, or Division IV of Part V of the *Vermin Act, 1931-1936*, or any corresponding provision of any other repealed Act, shall continue, subject to this Act, to be repayable to the bank to the same amount and in the same instalments, and shall bear interest at the same rate and shall be subject to the same payments as would be the case as if this Act had not been passed.

(2) The provisions of this Act shall apply to every such advance as if it were a loan under this Act, and every such advance shall be deemed to be a loan under this Act.

Power to bank to erect fence or lay down piping on default

24. If an applicant does not, within the time specified in any notice given pursuant to section 9, duly use the fencing material or water piping supplied in fencing on or, as the case may be, laying down water piping in or upon the land or road in respect of which the same was supplied, to the satisfaction of the bank, the bank may undertake and carry out the said fencing or laying down the water piping. The cost to the bank of so doing shall be deemed to be added to the amount of the loan and shall, with interest at the fixed rate on the balance for the time being unpaid, be repaid in such instalments as are fixed by the bank.

Service of notices

25. (1) Any notice to be given under this Act to any person shall be duly given if—

- (a) served on him personally;
- (b) left at his usual or last known place of abode or business in the State;
- (c) served on any person resident on the land in question; or
- (d) sent by post in a prepaid letter addressed to the person at his usual or last known place of abode or business.

(2) Where there is more than one owner of the same land, service upon any one of them in manner aforesaid shall be deemed service upon all.

(3) Any person to whom any such notice is required to be given may, by words or conduct, waive the same.

Regulations

26. The Governor may make regulations—

- (a) prescribing forms for the purposes of this Act;
- (b) prescribing the kind of fences to be erected in pursuance of this Act;
- (c) prescribing the kinds of water piping to be laid down in pursuance of this Act;
- (d) prescribing the manner and conditions of erecting such fences or laying down such water piping;
- (e) generally for carrying the purposes of this Act into effect.

Evidence of moneys owing

27. In any proceedings where it is desired to prove the amount of any payments due at the time of the proceedings or thereafter payable in respect of any loan made under this Act or any repealed Act, an itemised statement of account certified by the bank to be correct shall be *prima facie* evidence as to the amount.

Non-compliance with notice to repair fence

28. Any owner who does not, within fourteen days after service upon him by the bank of a notice requiring him to repair a fence erected upon his land under the provisions of this Act or any repealed Act, or any gate in any such fence, or to keep any such fence or gate clear of sand, rubbish, or other accumulation, or to repair any water piping laid down in or upon his land under the provisions of this Act or any repealed Act, duly comply with the notice, shall be guilty of an offence against this Act and liable to a penalty not exceeding forty dollars.

Offences

29. Any person who—

- (a) fails to comply with a notice given pursuant to section 9; or

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- (b) uses any fencing material or water piping supplied to him by the bank for any purpose other than the purpose for which it was so supplied; or
- (c) expends any advance made to him under section 10, or any part thereof, for any purpose other than the purpose for which the advance was made,

shall be guilty of an offence against this Act and liable to a penalty not exceeding forty dollars.

Summary proceedings for offences

30. All proceedings in respect of offences against this Act shall be disposed of summarily.

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12.

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 6 of The Public General Acts of South Australia 1837-1975 at page 46.

Section 5(3): inserted by 37, 1986, s. 3