



ANNO DECIMO

GEORGII V REGIS.

A.D. 1919.

No. 1403.

An Act to enable the Government to make Loans for Fencing, and for other purposes.

[Assented to, November 27th, 1919.]

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

1. This Act may be cited as the "Loans for Fencing Act, 1919." Short title.
2. This Act shall come into operation on a day to be fixed by proclamation. Commencement of Act.
3. In this Act—
Interpretation.
 - "Commissioner" means the Commissioner of Crown Lands :
 - "District Council" or "Council" means a District Council continued by or established under the District Councils Act, 1914 : No. 1182 of 1914.
 - "Fencing material" means fencing material other than wire netting :
 - "Fixed rate" means the annual rate of interest fixed by the Minister under section 31, which is in force at the time when the loan or advance in question is made :
 - "Occupier" includes the owner or tenant of any freehold land, and any person holding land from the Crown under a pastoral lease or agreement to purchase, or as scrub lessee, forest lessee, or miscellaneous lessee, or holding land from the Crown on lease with a right of purchase or on perpetual

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perpetual lease, or holding a perpetual lease of lands granted or dedicated by way of endowment for education :

“Petitioner” means any occupier signing a petition under section 6.

Loan for fencing materials may be made by Governor. Cf. Vermin Act, 1914, s. 163.

4. (1) A Council may borrow money from the Government for the purpose of purchasing fencing material and supplying the same to occupiers of land within the District of such Council.

(2) The Governor may, on the application of a Council, grant a loan to such Council for such purpose.

(3) Such loans shall be made out of any moneys voted by Parliament for the purposes of this section.

Application to be preceded by a petition. Cf. *ibid.*, s. 164. Requisites of petitions. Cf. *ibid.*, s. 165.

5. No Council shall apply for a loan until after the receipt by it of a petition under section 6.

6. (1) Every petition to a Council by the occupiers of land within its District to obtain a loan under section 4 shall—

- (a) be signed by each of the occupiers making the petition ;
- (b) describe shortly the land occupied by each petitioner, and state the acreage thereof ;
- (c) give an estimate of the probable cost of the whole of the fencing material required by the petitioners, and ask that the Council will apply to the Governor for a loan of the amount of such estimate ;
- (d) give an estimate of the fencing material required by each petitioner and the probable cost thereof, and an estimate of the extent of fencing to be erected by each occupier ;
- (e) state that each petitioner signing the petition undertakes to pay to the Council in each year one-twentieth part of the value of all fencing material obtained by the Council by means of the loan proposed to be obtained and furnished, or offered to be furnished, to him by the Council, together with interest at the fixed rate on the balance for the time being remaining unpaid, and also undertakes to pay annually to the Council, for the purpose of defraying the expenses of administration in connection with the loan, an additional sum calculated at the rate of Ten Shillings per centum per annum upon the amount for the time being due by him in respect of the value of such fencing material, or if any such sum so calculated amounts to less than One Shilling, then the sum of One Shilling ; and
- (f) contain an undertaking by each petitioner to erect on his land all fencing material furnished to him to the satisfaction of, and within the time required by, the Council.

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(2) A petition may be signed by one occupier only, in which case the requirements of this Act shall be complied with as nearly as possible by such occupier, and the signature of such petitioner, instead of being verified as provided in section 7, shall be verified by a Justice.

7. (1) Every signature to a petition shall be verified by the solemn declaration of some person signing such petition, and such declaration shall be in the form in the First Schedule, or in a form to the like effect.

Signatures to
petition.

Ibid., s. 166.

(2) Any person making any false statement in any such declaration shall be deemed to be guilty of wilful and corrupt perjury.

8. No petition shall be received by a Council unless accompanied by a declaration as required by section 7.

Declaration to
accompany petition.

Ibid., s. 167.

9. Every petition shall be left with the Clerk of the Council, and shall thereupon be deemed to be duly presented.

Presentation of
petition to Council.

Ibid., s. 168.

10. (1) The Council shall consider any petition so presented, and shall, if they determine to apply for a loan in accordance therewith, transmit such petition to the Commissioner, together with any information they desire to convey, or which the Commissioner may require, in reference thereto.

Council to transmit
petition to the
Commissioner.

Ibid., s. 169.

(2) The Council shall transmit, with such petition, an application for a loan on the terms prayed in such petition, or on such other terms as they think fit.

(3) Such application shall contain an undertaking to repay such loan in accordance with the provisions of this Act.

(4) The application may be in the form in the Second Schedule.

11. The Governor may, on the recommendation of the Commissioner, and subject to such terms and conditions as he thinks fit, make an order granting the whole or any part of the loan applied for.

Governor may grant
loan.

Ibid., s. 170.

12. (1) If a Council, having received a petition under section 6, does not apply under section 10 for such loan, the Council shall transmit the petition to the Commissioner, together with any information they desire to convey, or which the Commissioner may require, in reference thereto, and also with a statement of the reasons why the loan is not applied for.

If Council unreasonably fails to apply for loan, Governor may make advances on account of the Council.

Ibid., s. 172.

(2) If upon considering such petition, information, and statement the Commissioner is not satisfied that sufficient reasons exist for not applying for the loan, the Commissioner may give notice to the Council that he will recommend the Governor to make advances to the petitioners on account of the Council unless, within a time specified by such notice, the Council applies for the loan.

(3) If the Council does not within the time so specified apply for the loan the Commissioner may recommend to the Governor that
advances

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advances be made to the petitioners, and the Governor may, subject to such terms and conditions as he thinks fit, make an order granting advances to the petitioners, or any of them, of the whole or any part of the amount of the estimate given in the petition, and advances shall be made accordingly. Such order shall specify the amount of the several advances made to the petitioners respectively, and shall require each petitioner to use the fencing material purchased or obtained by the petitioner by means of such advance in fencing on the land in respect of which the advance is made, and shall shortly describe such land. Notice of such order shall be given by the Commissioner to the petitioners.

(4) Such advances shall be deemed to be made by the Governor on account of the Council, and all the provisions of this Act shall apply, *mutatis mutandis*, as if—

- I. the order granting the advances were an order under section 11 granting a loan applied for by the Council, and a notice given by the Council to a petitioner under section 14 ;
- II. the total amount of the advances were a loan granted to the Council under section 11, and were the value of fencing material obtained by the Council by means of such loan ;
- III. the amounts of the several advances were respectively the values of fencing material furnished by the Council under section 14 to the persons to whom the advances are made by the Governor ; and
- IV. the fencing material purchased or obtained by an occupier by means of such advances was fencing material furnished to him under section 14.

Particulars of loan to be kept.
Ibid., s. 173.

13. A Council receiving a loan shall keep a separate account-book in respect thereof, and full particulars shall be recorded therein of—

- (a) such loan and the mode of repayment thereof ;
- (b) all the moneys collected and received in respect of such loan ;
- (c) the mode of application of such moneys ;
- (d) all occupiers to whom fencing material has been furnished or offered to be furnished ;
- (e) the amounts payable by each such occupier ; and
- (f) the land in respect of which such fencing material has been furnished.

Loans to be used for purchase of materials for wire fencing, &c.
Ibid., s. 174.

14. (1) The Council shall—

- (a) expend the whole amount, or the whole of every instalment, of any loan, or such part thereof as is necessary, in purchasing and obtaining fencing material ;
- (b) furnish

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(b) furnish or offer to furnish such fencing material to the petitioners proportionately to the requirements of the petitioners respectively ; and

(c) repay to the Commissioner any loan moneys not so expended.

(2) When furnishing or offering to furnish such fencing material to any petitioner, the Council shall give notice in writing to such petitioner, specifying the value thereof, and requiring him, within a time to be specified in the notice, to use such material in fencing on the land in respect of which it is furnished or offered to be furnished, shortly describing such land.

15. The following provisions shall apply if a petitioner refuses to accept fencing material furnished or offered to be furnished to him by the Council :—

Additional powers of Council where netting is refused. Cf. *ibid.*, s. 176.

i. The Council may, without prejudice to any rights or remedies available to it under this Act against the petitioner so refusing, offer such fencing material or any part thereof to any other occupier of land within the District of such Council.

ii. If such other occupier accepts such offer, the said fencing material or any part thereof may, with the consent in writing of the Commissioner, be furnished to such other occupier. In such case the occupier to whom any such fencing material is so furnished shall be deemed to be a petitioner, and all the provisions of this Act shall apply to him and to the land in respect of which such materials are so furnished as if he were a petitioner.

iii. If the Council subsequently furnishes such fencing material or any part thereof to any other occupier or occupiers as hereinbefore provided, all the liability of the petitioner in respect of such fencing material or part shall cease and determine, but the petitioner so refusing shall nevertheless be guilty of an offence against this Act, and shall be liable to a penalty not exceeding Twenty Pounds.

16. When any occupier does not, within the time specified in any notice given pursuant to section 14, duly use the material furnished or, in the case of a petitioner, offered to be furnished, in fencing on the land in respect of which the same was furnished or offered to be furnished, to the satisfaction of the Council, then the Council shall undertake and carry out such fencing at the expense of such occupier, and may recover such expense at any time in a summary way or by action in any court of competent jurisdiction from the occupier for the time being of the land in respect of which such material was furnished or offered to be furnished, or of any part of such land.

On default Council may itself erect fence. *Ibid.*, s. 175.

17. (1) The value, as specified in the notice given pursuant to section 14, of all fencing material furnished to an occupier, or, if such

Repayment of advance by petitioners.

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such occupier is a petitioner, offered to be furnished by the Council to such occupier, shall be repaid to the Council in twenty yearly instalments with interest at the fixed rate on the balance thereof for the time being remaining unpaid, together with the additional sum mentioned in section 6. Each such yearly instalment shall be due and payable by the occupier for the time being of the land in respect of which such fencing material was furnished or offered to be furnished, on the first day of February in each year, the first of such instalments to be due and payable on the first day of February next after the date of the order granting the loan to the Council.

(2) Every such yearly instalment shall bear interest at a rate being One Pound per centum per annum in excess of the fixed rate from the date whereon the same is payable until actual payment, and such interest shall be added to and form part of such yearly instalment.

(3) Such yearly instalments as they become due and payable, with interest as aforesaid, together with the additional sum mentioned in section 6, may be recovered at any time by the Council as a debt due to such Council from the occupier for the time being of the land in respect of which the fencing material is furnished or offered to be furnished, in a summary way or by action in any court of competent jurisdiction.

Loans to be first charge on land.

18. (1) The yearly instalments payable in respect of the value of fencing material furnished or offered to be furnished to an occupier, as they become due and payable, with interest as aforesaid, together with the additional sum mentioned in section 6, and the expense (if any) mentioned in section 16 shall be, and until paid shall remain, a first charge on the land of the occupier.

(2) Any mortgagee or encumbrancee of such land, upon default being made by the occupier in the payment of any of such instalments, interest, additional sum, or expense, may pay the same to the Council, and such payment when so made shall be deemed to be added to and to form part of the principal sum secured by the mortgage or encumbrance of such mortgagee or encumbrancee, and shall be subject to the provisions, powers, and trusts thereof.

Undertaking in petition to be deemed a specialty contract.

Ibid. s. 171 (part).

19. The undertaking referred to in subdivision (f) of section 6 shall, as between each person who signed the petition under that section, or the occupier for the time being of the land of such person, and the Council, be deemed to be, and may be enforced as, a specialty contract.

Repayment of loan.
Ibid., s. 180.

20. (1) The Council shall repay the amount of the loan granted to it under section 11 in twenty equal annual instalments, together with simple interest at the fixed rate on the balance for the time being unpaid.

(2) Such repayments shall be made out of the yearly instalments received from the occupiers as aforesaid, or out of the revenue of the Council.

(3) The

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(3) The Council shall take all proper steps to recover all moneys due from any occupier.

(4) All such moneys received by the Council shall, within fourteen days, be paid to the Commissioner.

21. (1) When a Council fails—

- (a) to pay to the Commissioner, as directed by subsection (4) of section 20, any moneys received by such Council; or
- (b) to fully repay to the Commissioner, before the first day of May in each year, either by means of moneys received from occupiers or out of the revenue of the Council, one-twentieth part of any loan granted to it as aforesaid, together with the interest on the unpaid balance of such loan up to such date,

Procedure on default
by Council.
Ibid., s. 181.

the Commissioner shall make and sign a certificate to that effect.

(2) Such certificate shall be *prima facie* evidence that the sums therein mentioned are due and unpaid, and such sums or any part thereof remaining unpaid may be deducted by the Commissioner from any subsidy granted to the Council, and shall until paid or deducted bear interest at a rate being One Pound per centum per annum in excess of the fixed rate.

(3) Upon the making and signing of any certificate as mentioned in subsection (1) hereof the Commissioner may apply on summons to a Judge for the appointment of, and such Judge shall thereupon appoint, such person or persons (not exceeding three) to be a receiver or receivers to collect all yearly payments due to the Council in respect of fencing material supplied or offered to be supplied by the Council or fencing erected by the Council.

Receiver may be
appointed.

(4) Such receiver or receivers shall act under the directions of, and may be removed by, a Judge.

(5) Such receiver may exercise all the powers of the Council for the purpose of collecting such payments.

22. Every receiver appointed under section 21 shall receive such remuneration for his services as a Judge directs.

Receiver's com-
mission.
Ibid., s. 182.

23. Every such receiver shall apply all moneys received by him in payment of all proper costs and expenses, including his remuneration, and in payment and discharge of the whole amount due under section 17 in respect of any loan made under this Act in connection with which he has been appointed receiver, and the surplus (if any) shall be paid to the Council in default.

Application of
moneys recovered
by receivers.
Ibid., s. 183.

24. Every such receiver shall have access to all books and documents under the control of the Council, and may make extracts therefrom at all reasonable times without fee.

Receiver to have
access to books, &c.
of the Council.
Ibid., s. 184.

25. For the more effectual recovery of moneys due to a Council for fencing material and fencing, such Council, in addition to any powers

Powers of recovery.
Ibid., s. 185.

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powers conferred by this Act, shall also have the like powers of enforcement and recovery as are conferred on Councils with regard to unpaid rates under any District Councils Act.

Additional power to make by-laws.
Ibid., s. 186.

26. The Council may make by-laws pursuant to the provisions of the District Councils Act, 1914, for—

- I. ascertaining the liability of petitioners, and of occupiers of land, to whom fencing material has been furnished under section 14;
- II. facilitating and regulating the collection and recovery of moneys due and payable to the Council pursuant to this Act; and
- III. generally carrying out the provisions of this Act.

Power to obtain loans to be in addition to power to borrow under District Councils Act and Vermin Act.
Ibid., s. 187.

27. The power of obtaining loans conferred by this Act on a Council shall be in addition to any power to borrow conferred on such Council by the District Councils Act, 1914, and the Vermin Act, 1914.

Loans to be expended to Commissioner's satisfaction.
Ibid., s. 188.

28. All loans granted to a Council under this Act shall be expended by the Council to the satisfaction of the Commissioner.

On default Council may resume materials.
Ibid., s. 189.

29. Where any money is due and payable to the Council in respect of fencing material used, or fencing erected, upon any land, the Council may, with the consent of the Commissioner, enter upon such land and remove such fencing, or any fencing material on such land, and again use or dispose of the same as provided by this Act.

Power to fence across district roads.
Cf. *ibid.*, s. 178.

30. (1) In enclosing two or more adjoining properties with one continuous fence, such fence, with the approval in writing of the Council, may be erected across a district road.

(2) A swing gate, at least twelve feet wide, shall be erected wherever such fence crosses such road.

(3) The Council may remove a fence erected across a district road upon giving six months' notice of intention to remove such fence, such notice to be published in the *Gazette*.

The Commissioner may from time to time fix the rate of interest on loans.
Ibid., s. 220.

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

What rate to be in force.

(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.

32. The

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32. The Governor may make regulations prescribing the kind of fences to be erected in pursuance of this Act and generally for carrying the purposes of this Act into effect.

Regulations.
Ibid., s. 161.

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

Notices, how served.

- (a) served on such occupier 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.

(2) Where there is more than one occupier 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.

34. Any occupier who does not, within fourteen days after service upon him by a Council of a notice requiring him to repair a fence erected upon his land under the provisions of this Act, or any gate therein, or to keep such fence or gate clear of sand, rubbish, or other accumulation, duly comply with such notice, shall be liable to a penalty not exceeding Twenty Pounds.

Non-compliance
with notice to repair
fence.
Cf. *ibid.*, s. 246.

35. (1) In addition to the other powers conferred upon him by this Act the Commissioner may, out of moneys provided by Parliament for the purpose, purchase fencing material and supply the same to any occupier of land not situated within a District Council District who makes application to the Commissioner for the supply to him of fencing material for the purpose of effectively fencing the land occupied by him, or any part thereof.

Loans for fencing
material to occupiers
of land outside
District Council
Districts.

(2) Every such application shall contain, as nearly as possible, the particulars required by section 6 to be contained in a petition to a Council, and shall be accompanied by a statutory declaration by the applicants as to the correctness of such particulars, and shall contain an undertaking to repay to the Commissioner the value of the fencing material to be supplied to the applicant.

(3) The provisions of sections 14 (2), 15, 17, 18, 25, 29, 31, and 34 of this Act shall apply for the purposes of this section as if herein re-enacted: Provided that the word "Commissioner" shall be deemed to be substituted for the word "Council" wherever the latter word occurs in the said sections, and that the said sections shall be read and construed, *mutatis mutandis*, accordingly.

(4) In this section "fencing material" includes wire netting.

36. Any occupier who—

Offences.

- (a) fails to comply with a notice given pursuant to section 14 ;
- or
- (b) uses

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(b) uses any fencing material furnished to him by a Council for any purpose other than the purpose for which it was so furnished; or

(c) expends any advance made to him under section 12, or any part thereof, for any purpose other than the purpose for which such advance was made,

shall be liable to a penalty not exceeding Twenty Pounds.

Summary proceedings for offences.

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

Appeal.

38. There shall be an appeal in respect of proceedings in respect of offences against this Act.

Special case.

39. In the event of an appeal in respect of proceedings in respect of offences against this Act, a special case may be stated.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

H. L. GALWAY, Governor.

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THE SCHEDULES.

THE FIRST SCHEDULE.

Loans for Fencing Act, 1919.

DECLARATION.

Section 7.

I, _____, of _____, do hereby solemnly and sincerely declare that all the signatures [or, if the case so require, such and such signatures (describing them as initialled or otherwise marked by the declarant)] affixed to the above petition are the genuine signatures of the persons whose signatures they purport to be, and that such persons are occupiers of land in the District therein referred to.

Declared at
this _____ day of _____
19 _____, before me, _____, J.P.

THE SECOND SCHEDULE.

Loans for Fencing Act, 1919.

UNDERTAKING TO REPAY LOAN.

Section 10.

The District Council of _____ hereby makes application to His Excellency the Governor, pursuant to section 10 of the Loans for Fencing Act, 1919, for a loan of £ _____, in accordance with the petition which accompanies this application; and the said District Council hereby undertakes to repay the amount of such loan in accordance with the provisions of the said Act.

Dated this _____ day of _____, 19 _____.

_____, Chairman.
_____, Councillor.
_____, Clerk.

