



ANNO OCTAVO

# EDWARDI VII REGIS.

A.D. 1908.

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## No. 960.

An Act to provide for Advances to Settlers on Crown Lands, and for other purposes.

*[Assented to, December 23rd, 1908.]*

**B**E 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 Advances to Settlers on Crown Lands Act, 1908." Short title.

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

*Interpretation.*

"Advance" means an advance made under this Act:

"Agreement" means an agreement containing a covenant to purchase Crown Lands:

"Crown lands" does not include any land repurchased under the provisions of Part X. of "The Crown Lands Act, 1903," or repurchased for the purposes mentioned in the said Part X. under any enactment or otherwise:

"Deputy Surveyor-General" means the person for the time being holding the office of Deputy Surveyor-General:

"Holding" means the land held by a settler under his lease or agreement:

"Land Board" means the Land Board under "The Crown Lands Act, 1903," and any Act amending that Act, or any Act substituted therefor:

"Prescribed" means prescribed by regulations made under this Act: "Settler"

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“Settler” means the holder of a lease of Crown lands or of an agreement, whether the original lessee or holder or a successor in title of the original lessee or holder:

“Surveyor-General” means the person for the time being holding the office of Surveyor-General:

“The Board” means the Advances to Settlers Board constituted by this Act:

“The Fund” means the Advances to Settlers Fund constituted by this Act:

“The Treasurer” means the Treasurer for the time being of the State:

“This Act” includes regulations made under this Act.

Advances to Settlers Board.

**3.** A Board is hereby constituted under the name of “The Advances to Settlers Board.”

Administration.

**4.** This Act and the Fund constituted by this Act shall be administered by the Board.

Members of Board.

**5.** (1) The members for the time being of the Land Board, the Surveyor-General, and the Deputy Surveyor-General shall be the members of the Board.

(2) The Surveyor-General shall be the Chairman of the Board.

Incorporation of Board.

W.A. 15, 1906, s. 6.

**6.** The Board shall be a body corporate with perpetual succession and a common seal, and be capable of suing and being sued, of holding, leasing, and alienating land, and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer.

Property held on behalf of Crown.

Cf. Tas. 8, 1898, s. 6.

**7.** The Board shall hold all property, all estates and interests in property, and all moneys acquired by them under this Act for and on account of the Crown.

Deputy member of Board.

Q. 24, 1901, s. 5.

**8.** In case of illness, suspension, inability, or absence of any member of the Board the Governor may appoint some other civil servant to act as the deputy of such member during such illness, suspension, inability, or absence; and every such deputy shall, whilst he acts as such deputy, have all the powers and perform all the duties of such member.

Chairman to preside.

**9.** (1) The Chairman shall preside at all meetings of the Board, but when the Chairman is absent from any meeting the members present may by the vote of the majority appoint one of their number to be Acting Chairman, who shall preside over such meeting during the absence of the Chairman.

(2) The Chairman or Acting Chairman shall have a casting as well as a deliberative vote.

**10.** Two

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**10.** Two members shall form a quorum at any meeting of the Board. Quorum.

**11.** (1) A Fund is hereby constituted, to be called "The Advances to Settlers Fund." Advances to Settlers Fund.

(2) The Treasurer shall set apart to the credit of the fund such loan moneys as are from time to time provided by Parliament for that purpose, not exceeding Two Hundred Thousand Pounds in any one financial year. Cf. C.L. Act, 1903, s. 136.

(3) All moneys received by the Board in repayment of advances shall be paid to the Treasurer and be placed to the credit of the fund and form part thereof. Moneys received by way of interest on advances shall be paid to the Treasurer and be applied in aid of the general revenue of the State.

(4) The Fund shall be held by the Treasurer and be applied to the purposes of this Act.

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

**13.** (1) Subject to the provisions of this Act, the Board may make advances to any settler on the prescribed security for— Advances to settlers.  
W.A. 15, 1906, s. 28.

(a) Making improvements on his holding, such as ring-barking, clearing, 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) Discharging any mortgage already existing on his holding.

(2) Subject to subsection (4) hereof, advances may be made to a settler under paragraph (a) of subsection (1) hereof of an amount not exceeding Fifteen Shillings in the Pound of the fair estimated value of the improvements (if any) already made on his holding and those in course of being made thereon. Cf., Q. 13, 1904, s. 3.

(3) Subject as aforesaid, advances may be made to a settler under paragraph (b) of subsection (1) hereof of an amount not exceeding Twelve Shillings in the Pound of the fair estimated value of the improvements already made on his holding.

(4) At no time shall the total advances to any one settler exceed the sum of Four Hundred Pounds.

**14.** Every application for an advance shall—

- i. Be made to the Board, and in the prescribed form, and shall contain such particulars as are prescribed:
- ii. Be supported by such evidence (if any) as is prescribed, or as the Board requires.

Applications for  
advances.

**15.** (1) Any

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Advances by instalments.

W.A. 15, 1906, s. 29.

**15.** (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 Board, 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 Board 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 Board 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.

Advance to be secured by mortgage.

Q. 24, 1901, s. 17.

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

(2) The provisions of "The Bills of Sale Act, 1886," or any Act amending that Act or substituted therefor, 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 mortgages.

W.A., 15, 1906, s. 31.

**17.** 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 a charge in favor of the Crown; but a second mortgage may be taken as collateral security.

Repayment of advance.

Ibid, s. 33.

**18.** (1) For the period of five years next following the date on which an advance is made, the settler shall pay to the Board interest on the advance at the rate of Five Pounds per centum per annum.

(2) Such 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 amount of the several instalments of such advance from the date when such instalments are advanced.

(4) After the expiration of the said period of five years the settler shall repay the advance to the Board by fifty equal half-yearly instalments, together with simple interest on the balance of the advance for the time being unpaid at the rate of Five Pounds per centum per annum.

(5) The

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(5) The first of such 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 of One Pound per centum per annum 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.

**19.** (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 such holding shall not be issued while such mortgage is in existence until a mortgage of the freehold has been executed under "The Real Property Act, 1886," containing such covenants and provisions as are proper to secure payment of the amount of the advance, together with interest as required by this Act.

Perfecting security over holdings when freehold acquired subsequent to mortgage.

*Ibid.*, s. 35.  
380 of 1886.

(2) For this purpose it shall be the duty of the proper officer of the Surveyor-General's Department to give notice to the Board that such grant is in his possession, and stating the name and last known address of the grantee, whereupon the Board shall call upon such grantee, by notice posted to such address, to execute such mortgage in favor of the Board; and if such grantee or his successor in interest fails within thirty days after the posting of such notice as last aforesaid to execute such mortgage, then the Chairman of the Board shall and he is hereby empowered to execute such mortgage in the name and on behalf of the grantee, and such mortgage shall be binding against all claimants, notwithstanding any error in the address or the notice, and notwithstanding the death, insolvency, lunacy, minority, or other disability of or any assignment for the benefit of creditors or otherwise made by the mortgagor or any such successor.

(3) Notwithstanding the provisions of "The Real Property Act, 1886," the Registrar-General shall, upon production, register every such mortgage so executed by such grantee or his successor in interest or the Chairman of the Board and duly indorse the grant accordingly.

(4) The Board shall be entitled to receive and retain possession of every such grant while such mortgage is in existence.

(5) All costs and expenses occasioned in giving effect to this section shall be borne by the mortgagor, and may, if the Board think fit, be added to and become part of the mortgage debt.

**20.** (1) Where

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Power for Board to  
acquire freehold.

*Ibid.*, s. 36.

**20.** (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 Board 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 Board shall be added to and become part of the mortgage debt, notwithstanding that the amount of the advance is thereby increased to more than Four Hundred Pounds.

(3) The grant of the holding shall be delivered to the Board, and thereupon the provisions of the next preceding section shall be observed.

Breach of terms of  
security to be breach  
of lease or agree-  
ment.

*Cf.* C.L. Act, 1903,  
s. 145.

**21.** Any breach by the settler in any of the terms or conditions of any mortgage 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.

*Cf.* W.A. 15, 1906,  
s. 37.

**22.** (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 Board 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 such holding, or such amount may be recovered in any Court of competent jurisdiction by action, in the name of the Board, from the settler of such holding for the time being.

How land to be sold.

(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 Board 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 and his lease or agreement, either by private sale or public tender or auction, and subject to any conditions of sale they think expedient, and after such notice of the time, place, terms, and conditions of sale as they may think just and expedient, and may transfer such holding and the lease or agreement to the purchaser and give a good and valid title thereto.

Application of pro-  
ceeds of sale.

(3) The Board shall apply the proceeds derived from such sale in payment, in the first instance, of all moneys due in respect of such holding, and in redemption of any amount charged thereon in favor of the Board, or of so much thereof as remains unpaid, and of all expenses incurred by the Board in relation to such sale or

otherwise

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otherwise with respect to such holding, and shall pay the balance (if any) to the persons appearing to the Chairman of the Board to be entitled to receive the same.

**23.** (1) The settler of any holding over which a mortgage or other security has been given under the provisions of this Act shall, during the continuance of the same, to the satisfaction of the Board, keep in good and tenantable repair all buildings, fences, fixtures, and improvements upon the holding comprised in such mortgage or other security. Mortgagor to effect necessary repairs.  
Ibid., s. 38.

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

- (a) The like consequences shall follow as are provided by the next two preceding sections 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 Chairman of the Board, or any person acting with his authority, may enter upon the holding and effect all repairs which the Chairman deems necessary; and the expense thereby incurred, with interest at the rate of Five Pounds per centum per annum, shall be repaid to the Board by the settler on demand, and until repayment shall be a charge under the mortgage or other security upon the holding.

**24.** (1) As between the Board and the settler of any holding with respect to which an advance has been made, the following conditions shall be imposed so long as such holding is subject to any charge in favor of the Board, namely:— Conditions annexed to land while subject to advances.  
Ibid., s. 39.

- (a) Such holding shall not be sublet or let by such settler, nor shall his lease or agreement be transferred without the consent of the Board:
- (b) Every sub-lease, agreement, and transfer contrary to the provisions of this section shall be void and of no effect:
- (c) If such settler sublets or lets such holding or any part thereof, or transfers his lease or agreement in contravention of the provisions of this section, the Board may cause the settler's estate and interest in the holding and his lease or agreement to be sold:
- (d) When the title to the lease or agreement is divested from the settler under any law relating to insolvency, the Board may cause the settler's estate and interest in the holding and his lease or agreement to be sold:

(2) The provisions of section 22, as to sale and application of proceeds of sale, shall apply to every sale made under the provisions of this section.

**25.** In

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Extension of time for repayment.

Cf. C.L. Act, 1903, s. 147.

**25.** In cases of hardship the Board may extend the time for making any payment required by this Act: Provided that the deferred payments shall bear interest at the rate of Five Pounds per centum per annum.

Board to obtain reports as to expenditure of advances.

**26.** The Board from time to time shall obtain reports from the inspectors and valuers of the Board 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 such advances and instalments have been paid to the settlers, and generally as to the state and condition of the holding in respect of which such advances and instalments have been paid.

Register of advances to be kept for inspection.

Cf. N.S.W. 1, 1899, s. 11.

**27.** The Board 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. Such register or list and index shall be open to public inspection on the payment of a fee of One Shilling.

Board to keep accounts.

Cf. C.L. Act, 1903, s. 138.

**28.** The Board shall keep accounts showing all operations on the Fund, as well as all moneys paid to and received from each settler to whom any advance is made, and such other accounts and records (if any) as are prescribed.

Audit.

**29.** (1) The accounts of the Board shall, once at least in every year, and also whenever so directed by the Governor, be audited by the Commissioner of Audit.

241 of 1882.

(2) The Commissioner of Audit shall, in respect of such accounts, have all the powers conferred on him by "The Audit Act, 1882," 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.

**30.** In every year the Board shall furnish to the Commissioner of Crown 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 Commissioner of Audit, shall be laid, as soon as possible, before both Houses of Parliament.

Regulations.  
Cf. Q. 24, 1901, s. 26  
N.S.W., 1, 1899, s. 14

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

- (a) Regulating the procedure at meetings of the Board:
- (b) Prescribing the duties of the officers and servants of the Board:
- (c) Prescribing the mode in which applications for advances are to be made:
- (d) Regulating the consideration and granting of applications:
- (e) Prescribing what inquiries and valuations shall be made in relation to applications:
- (f) Adding



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- (f) Adding to or altering the list of improvements for the making of which advances may be made:
- (g) Prescribing the mode in which the value of improvements shall be determined:
- (h) Prescribing the forms of mortgages and securities to be taken by the Board, and providing for the registration of such mortgages and securities:
- (i) Prescribing the records, books, and accounts to be kept by the Board:
- (j) Providing for the receipt and payment of moneys under this Act, and the safe custody of securities:
- (k) Prescribing the fees to be paid in respect of advances:
- (l) Prescribing anything which by this Act is required to be or may be prescribed:
- (m) Generally for carrying out the objects and provisions of this Act.

**32.** (1) All such regulations shall—

Publication and effect  
of regulations.

- (a) Be published in the *Government Gazette*;
- (b) Take effect from the date of such publication, or from a later date to be specified therein; and
- (c) Be laid before both Houses of Parliament within fourteen days after publication if Parliament is then in Session, and if not, then within fourteen days after the commencement of the next Session.

(2) Notwithstanding any publication thereof, no regulation shall continue to have any force or effect if the same is disapproved, either wholly or in part, by resolution of either House of Parliament within thirty days after such regulation has been laid before Parliament if Parliament is so long in Session: Provided that if Parliament is not in Session for thirty days after such regulation has been laid before Parliament, then such regulation shall not continue to have any force or effect if disapproved by either House of Parliament within thirty days after the commencement of the next Session of Parliament.

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

GEORGE R. LE HUNTE, Governor.