

**ADVANCES TO SETTLERS  
(GOVERNMENT GUARANTEE)  
ACT.**

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**Act No. 46, 1929.**

**George V,  
No. 46, 1929.**

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An Act to provide for the constitution of a Government Guarantee Board; to enable the said board to guarantee the repayment to banks of advances made to settlers, with interest thereon; to make certain contingent appropriations out of the Consolidated Revenue Fund; and for purposes connected therewith or incidental thereto. [Assented to, 23rd December, 1929.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

**1.** This Act may be cited as the "Advances to Settlers (Government Guarantee) Act, 1929."

**2.**

**2.** (1) For the purposes of this Act the expression "Bank" means any corporation, company, or institution which carries on the business of banking and upon which its customers may draw cheques and which is approved of by the board. No. 46, 1929.  
"Bank."

(2) Such approval shall not be given except on an application made by the corporation, company, or institution to the board therefor.

(3) For the purposes of this Act the expression "Settler" "settler" means—

(a) a society registered under the Co-operation, Community Settlement, and Credit Act, 1923, as amended by subsequent Acts, which is, in the opinion of the board, mainly formed for the promotion of, or facilitation of any operations connected with, a rural industry, or the handling, treatment, manufacture, sale, or disposal of any products of a rural industry; or

(b) any person who is the holder or tenant of land of any tenure which he is using for agriculture, grazing, or dairying or any other rural industry prescribed, and in case any rural industry within the foregoing provision is carried on pursuant to a share-farming agreement, the expression "settler" includes each of the parties to such agreement.

**3.** In this Act, unless the context otherwise requires,— Definitions.

"Board" means the Government Guarantee Board constituted under this Act.

"Prescribed" means prescribed by this Act or by regulation.

"Regulation" means regulation made under this Act.

"Rural industry" means the use of land for agriculture, grazing, dairying, fruit growing, vegetable growing, viticulture, poultry farming, pig-keeping, bee-keeping, or any other rural purpose.

**4.** (1) There shall be a Government Guarantee Board, which shall consist of the Minister for Agriculture (who shall be chairman of the board), the Colonial Treasurer, Government  
Guarantee  
Board.

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and

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and an officer of the Department of Agriculture, appointed from time to time by the Governor, and who shall hold office during the pleasure of the Governor.

(2) Any two members of the board shall be a quorum and, subject to this Act, shall have all the powers and authority by this Act conferred upon the board.

(3) If at any meeting of the board at which two members only are present, such members differ in opinion upon any matter, the determination of such matter shall be postponed until all the members are present.

(4) No act or proceeding of the board shall be invalidated or prejudiced by reason only of the fact that at the time when such proceeding or act was taken, done, or commenced there was a vacancy in the office of any one member.

(5) At any meeting of the board at which the three members are present, the decision of a majority of the members shall, subject to this Act, be the decision of the board.

(6) The board shall keep minutes of its proceedings in such form and manner as is prescribed.

(7) The Governor may, under and subject to the Public Service Act, 1902, appoint a secretary and other officers of the board.

(8) For the purpose of carrying out the powers, duties, authorities, and obligations conferred or imposed upon the board by this or any other Act, the board, with the approval of the Minister of the department concerned, may make use of the services of any of the officers or employees of the Public Service.

(9) At any time the Governor considers it necessary so to do he may appoint any Minister of the Crown to be a deputy member of the board in place of the Minister for Agriculture or the Colonial Treasurer and during such appointment every such deputy member shall have the powers and authority and perform the duties of the Minister for Agriculture or the Colonial Treasurer as the case may be.

Board a body  
corporate.

**5.** The board shall be a body corporate by the name of "The Government Guarantee Board," and shall have perpetual succession and a common seal, and may in that name sue and be sued in any court or tribunal.

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6. The board shall for the purposes of this Act and for the exercise and performance of its powers and duties under this Act be capable of taking, purchasing, holding, selling, conveying, demising, disposing of or otherwise dealing with real and personal property, and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer.

Capacity of board.

7. The board may delegate any of its powers, duties, and functions to any one member by an instrument which shall be executed by all three members of the board and which shall define the powers, duties, and functions delegated and the period during which such delegation shall remain in force: Provided that the board may at any time revoke any such delegation:

Delegation by board.

Provided further that the doing or suffering by the delegate of any act or thing within the scope of the delegation shall be taken to be conclusive proof of the non-revocation of the delegation at the time when such act or thing was so done or suffered in favour of all persons dealing with the delegate in good faith and for valuable consideration without notice of such revocation.

8. All courts, judges, and persons acting judicially shall take judicial notice of the incorporation, and of the common seal of the board, affixed to any deed, instrument, or writing, and shall presume that such seal was properly affixed thereto; and such deed, instrument, or writing, when sealed, whether such instrument or writing is required to be sealed or not, shall be admissible in evidence for and against the board on the mere production thereof, without any other or further proof of the making of such deed, instrument, or writing.

Judicial notice of board's seal.

9. (1) A settler who desires to borrow from a bank that is not prepared to lend to him (except with the security of a guarantee under this Act) any money or as great a sum as he desires to borrow, may make an application for a guarantee under this Act.

Application for guarantee

(2) The application shall be made in the prescribed form, and shall contain full particulars of the settler's assets and liabilities, the amount of money he desires to borrow, the purposes for which he requires such money, and such other information as may be prescribed.

(3)

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(3) The application shall be made to the officer of the bank or other person as shall be prescribed.

(4) In the case of a society registered under the Co-operation, Community Settlement, and Credit Act, 1923, the application shall be made on its behalf by the person prescribed.

Report by bank.

**10.** The bank shall report to the board on the application stating therein the amount the bank is willing to advance to the settler without any guarantee under this Act, the amount (if any) the bank recommends the board to approve of being advanced by the bank to the settler, and such other information as may be prescribed.

Execution of guarantee by board.

**11.** If the board after considering the application, the report of the bank, and any other information it may have, is of opinion that having regard to the purposes for which the advance is desired, the securities offered by the settler and the other circumstances, a guarantee under this Act is justified in the case, the board shall—

- (a) approve of the amount to be advanced by the bank to the settler; and
- (b) determine the purposes on or for which the whole of the amount approved by the board to be advanced by the bank as aforesaid is to be expended by the settler; and

subject to the provisions of this Act, the board may execute a guarantee in favour of the bank in such form and on and subject to such terms and conditions as prescribed or as determined by the board.

Limit of board's liability as regards repayment of loan and interest where bank requires whole loan guaranteed.

**12.** If the bank desires the security of a guarantee under this Act in respect of the whole amount approved by the board to be advanced as aforesaid, the liability of the board under such guarantee shall be limited—

- (a) as regards repayment to the bank of the advances made by it to the settler, so as not to exceed the amount of such advances up to (but not exceeding) the said amount approved by the board to be advanced by the bank; and

- (b) as regards interest payable to the bank on the advances made by it to the settler, to interest on such advances up to (but not exceeding) the said amount approved by the board to be advanced by the bank.

**13.**

**13.** If the bank desires the security of a guarantee under this Act in respect of part only of the amount approved by the board to be advanced as aforesaid, the liability of the board under such guarantee shall be limited—

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Limit of board's liability as regards repayment of loan and interest where bank requires part of loan only guaranteed.

- (a) as regards repayment to the bank of the advances made by it to the settler, to a sum not exceeding the amount by which such advances up to (but not exceeding) the said amount approved by the board to be advanced exceed the amount the bank is willing to advance without any guarantee under this Act; and
- (b) as regards interest payable to the bank on the advances made by it to the settler, to interest on a sum not exceeding that to which the liability of the board is limited by subparagraph (a) of this section as regards repayment to the bank of the said advances.

**14.** Subject to the provisions of this Act, any guarantee under this Act may include the interest, charges and expenses chargeable by the bank against the settler in the course of its business, and the expenses of enforcing or obtaining or endeavouring to enforce or obtain payment of such moneys and repayment of the amount of the advance guaranteed and interest thereon.

Power to include in guarantee bank's charges and expenses.

**15.** The liability of the board for interest under any guarantee under this Act may, subject to this Act, be expressed to include compound interest.

Guarantee may include compound interest.

**16.** The bank shall, before advancing to the settler any part of the amount approved by the board to be advanced, obtain and take and, thereafter (subject to the provisions of this Act), hold such securities for repayment of that amount, with interest, as the board may require.

Bank to take and hold securities.

**17.** Notwithstanding anything in this Act—

Limitation of board's liability.

- (a) the liability of the board under any guarantee under this Act shall not exceed in the aggregate the sum of twenty-five thousand pounds in respect of a society registered under the Co-operation, Community Settlement, and Credit Act, 1923, or the sum of three thousand pounds in respect of any other settler;

(b)

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- (b) the liability of the board under all guarantees under this Act in force in respect of the one settler shall not exceed in the aggregate the sum of twenty-five thousand pounds in the case of a society registered under the Co-operation, Community Settlement, and Credit Act, 1923, or the sum of three thousand pounds in the case of any other settler ;
- (c) guarantees under this Act shall not be executed in the first year from the commencement of this Act or in any subsequent year so as to guarantee repayment by the board of advances made and to be made by banks to settlers on the security of guarantees under this Act executed in such year exceeding in the aggregate at the one time the sum of two million five hundred thousand pounds :

Provided that a statement in any guarantee under this Act that it does not infringe the the provisions of subparagraphs (b) and (c) of this section shall, in favour of the bank taking the guarantee without notice, be conclusive evidence thereof.

Bank to  
realize  
securities.

**18.** A guarantee under this Act shall not be enforceable against the board unless and until the bank has exercised or is unable to exercise its rights and remedies under all securities held by or for it other than the guarantee.

Deductions  
from board's  
liability  
under  
guarantee.

**19.** In the event of—

- (a) the bank failing to obtain, take, or hold in accordance with the provisions of this Act any security that may have been required by the board, or
- (b) any negligent act or omission on the part of the bank in or in connection with any such security (including any failure to register or re-register effectively or to give any valid notice) or in connection with any property subject to any such security (including any failure to effect or keep in force any insurance of any kind whatsoever of any such property authorised or required by any such security or the board); or

(c)

(c) the bank failing to observe or perform any provision of this Act or the regulations, the liability of the board under the guarantee shall not exceed in the aggregate for principal, interest, and otherwise the amount that would have been payable had the failure referred to in paragraph (a) or (c) or the negligent act or omission referred to in paragraph (b) not occurred.

**20.** The bank shall not, without the consent in writing of the board, assign or encumber the benefit of any guarantee given under this Act.

Guarantee not to be assigned or charged.

**21.** Such sums as may, in pursuance of the provisions of this Act, from time to time become due and payable by the board under any guarantee given by it under this Act, shall be paid out of the Consolidated Revenue Fund, which is hereby appropriated accordingly.

Appropriation out of Consolidated Revenue Fund.

**22.** On payment by the board of the amount which has, in pursuance of the provisions of this Act, become due and payable by the board under any guarantee given by it under this Act, and on such of the claims of the bank under its securities that are equal in priority to or prior to the liability so guaranteed by the board being satisfied, the board shall be entitled to have assigned to it every judgment, specialty or other security which shall be held by the bank in respect of the debt guaranteed by the board, whether such judgment, specialty or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt, and the board shall be entitled to stand in the place of the bank and to use all the remedies and, if need be, and upon a proper indemnity, to use the name of the bank in any action or other proceeding at law or in equity, in order to obtain from the principal debtor or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the board, and such payment so made by the board shall not be pleadable in bar of any such action or other proceeding by it: Provided always that the board shall not be entitled to recover from any other co-surety, co-contractor, or co-debtor by the means aforesaid more than the just proportion to which as between those parties themselves such last-mentioned person shall be justly liable.

The board discharging liability to be entitled to assignment of all securities held by the bank.  
Imperial Act, 19 & 20 Vic., c. 97, s. 5.

**23.**



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Bank's  
advance to be  
made by  
overdraft.

**23.** The amount that the board has approved of the bank advancing to the settler shall be wholly advanced by the bank to him by way of overdraft on a special current account of the settler with the bank at the branch of the bank approved by the board.

Payments  
into and out  
of settler's  
special  
account with  
bank.

**24.** (1) During the period commencing at the time when any part of the said amount can be obtained from the bank by the settler, and ending when the settler has fully discharged all his liabilities to both the bank and the board in respect of the said amount advanced by the bank and the guarantee under this Act—

- (a) the settler shall promptly pay and cause to be paid into such special account all his income and receipts arising from any source whatsoever, whether in or out of New South Wales, except as may be prescribed or as may be approved by the board;
- (b) the bank shall promptly pay and cause to be paid into the said special account all moneys derived by it from the securities held by or for it in respect of the said advance or from the property subject thereto or from the insurances relating to any of such property, except as may be approved by the board;
- (c) the settler shall not make any withdrawal from the said special account except that the amount that the board has approved of the bank advancing to him may be withdrawn at such times and in such sums as the board approves, and except that withdrawals may be made as may be prescribed or as may be approved by the board;
- (d) the bank shall not knowingly permit or suffer the settler to make any withdrawal from the said special account contrary to the provisions of this Act, and before permitting any withdrawal the bank shall take reasonable care to satisfy itself that the withdrawal is not contrary to the provisions of this Act;
- (e) the settler shall not, except as may be prescribed or as may be approved by the board, borrow money from any bank, institution, or person (other than the borrowing in accordance with

with this Act of the said amount approved by the board to be advanced by the bank to him for purchase any property on credit or become surety for the debt or duty of another person.

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(2) When any income or receipts of a settler, which, in pursuance of the obligation imposed by this section, ought to be paid into the said special account, are not paid into such account, nothing in this Act shall confer on the board or the bank a right to recover such income or receipts from the person to whom they have been paid, unless it is proved that such person knew that the income or receipts were paid to him in breach of such obligation as aforesaid; but such person shall not be deemed to have such knowledge by reason only that he has notice of the advance by the bank and the guarantee by the board.

See Imperial Act, 18 & 19 Geo. V, c. 43, s. 6 (4).

(3) Subject to the terms of the guarantee by the board and subject to any agreement between the board and the bank, all sums paid into the said special account shall be applied in discharge of the liabilities of the settler to the bank and subject thereto in discharge of the liabilities of the settler to the board.

(4) Nothing in this section shall abrogate or impair the liabilities of the settler to the bank, or the liabilities of the settler to the board.

**25.** The board may at any time after consultation with the bank, request the bank to call in the loan made by it to the settler, and on such request the bank shall (notwithstanding that the time for repayment may not have arrived) call in the loan, and on default by the settler in repayment thereof realize the securities (other than the guarantee under this Act) held by or for it in respect of the loan.

Board may require realization of securities held by bank.

**26.** (1) Any guarantee executed by the board under this Act may be revoked by the board at any time as to future transactions by notice to the bank.

Revocation of guarantee.

(2) The amount for which the board may be liable under any such guarantee may be reduced by the board at any time as to future transactions by notice to the bank.

**27.** When the liability of the board under any guarantee under this Act is satisfied, the bank shall execute a memorandum of discharge in the form prescribed.

Memorandum of satisfaction.

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Inspection  
of land and  
property of  
settler.

**28.** (1) A settler who has applied for a guarantee under this Act or in respect of whom such guarantee has been given shall at all times permit any person employed in the public service nominated by the board generally or in a particular case or cases to enter upon any land or building upon or in which the settler's business is carried on and any other land or building used by or under the control of the settler, and to inspect any such lands and buildings and the plant, crop, stock, and other property of the settler or in which he is interested, whether in or about such lands or building or otherwise.

(2) The settler shall afford and cause to be afforded to such person all proper facilities for such entry and inspection.

Inspection  
of books, &c.,  
of settler.

(3) Any person so nominated may inspect and take copies of any books, vouchers, accounts, documents, or writings in the custody or under the control of a settler who has applied for a guarantee under this Act or in respect of whom such guarantee has been given, and for that purpose may enter any premises where he believes any of such books, vouchers, accounts, documents, or writings may be.

(4) Any person who obstructs or hinders any person so nominated in the exercise of any power, duty, or authority conferred on him by this section, and any settler who refuses or neglects to comply with any of the provisions of this section, shall be guilty of an offence against this Act.

Obstruction  
an offence.

**29.** Any person who hinders or obstructs any person employed in the public service or any officer of a bank in the discharge of his duties under this Act or the regulations shall be guilty of an offence against this Act.

Various  
offences.

**30.** (1) Any person who wilfully makes any false statement—

- (a) in an application for a guarantee under this Act, or
- (b) in any statutory declaration under or for the purposes of this Act; or
- (c) in supplying under or for the purposes of this Act any oral or written information to the board or a bank in relation to his assets or liabilities,

liabilities, financial position, or business operations, or the purposes on or for which any of the amount approved by the board to be advanced by a bank to a settler has been expended,

shall be guilty of an offence against this Act.

(2) Any settler who in any manner directly or indirectly expends or permits to be expended any money advanced to him by a bank, being the whole or part of an advance the repayment of which is guaranteed wholly or in part by the board under this Act, contrary to the determination by the board of the purposes on or for which the said advance is to be expended, shall be guilty of an offence against this Act.

(3) Any settler who shall fail promptly to pay or cause to be paid into the special account referred to in section twenty-three any money which by section twenty-four he is required to pay into that account, shall be guilty of an offence against this Act.

(4) Any settler who in any manner directly or indirectly withdraws or permits to be withdrawn from the said special account any money which by section twenty-four he is not entitled to withdraw from such account, shall be guilty of an offence against this Act.

(5) Any settler who contravenes the provisions of paragraph (e) of section twenty-four of this Act shall be guilty of an offence against this Act.

**31.** Any person guilty of an offence against this Act for which no penalty is otherwise provided shall be liable, if a corporation, to a penalty not exceeding five hundred pounds, or if any other person, to imprisonment for any period not exceeding six months, or to a penalty not exceeding two hundred pounds. Penalty.

**32.** Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a stipendiary or police magistrate or any two justices. Recovery of penalties.

**33.** (1) Where any offence against any of the provisions of this Act or the regulations is committed by a corporation, the chairman of directors and every director and servant concerned in the management of the corporation shall, in addition to the liability of the corporation, be guilty of the offence committed by the corporation, and be liable to punishment accordingly, unless Managers and servants of corporations.

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unless he proves that the offence was committed without his knowledge or connivance, and without any negligence on his part.

(2) Where more than one person is liable in respect of the same offence, the guilt and liability to punishment of each person shall be independent of the guilt and liability of the others.

Report to Parliament.

**34.** The board shall, as soon as may be after the expiration of each year during which guarantees may be given under this Act, lay before both Houses of Parliament a statement of the number of guarantees given under this Act during that year, of the number of settlers in respect of whom such guarantees were given, of the aggregate amount of the advances secured by such guarantees, and of the total sums paid by the board in that year under guarantees given under this Act, and as soon as may be after the expiration of each succeeding year in which any guarantees given under this Act shall be in force the board shall lay before both Houses of Parliament a statement of the total sums paid by the board in that year under such guarantees.

Notices, &amp;c., by the board.

**35.** Any notice, request, or communication that is required to be given or that may be given by the board under this Act or the regulations shall be deemed to have been duly given, if signed by the secretary of the board or person acting as secretary for the time being, and sent by post in a letter addressed to the person to whom such notice, request, or communication is to be given at the place of abode or business in New South Wales of such person last known to the board; and such notice, request, or communication shall be deemed to have been given at the time when a letter so posted would in the ordinary course be delivered.

Regulations.

**36.** (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act, and, without limiting the generality of the foregoing power, in particular in regard to all or any of the following matters:—

- (a) prescribing the mode and form of making applications for guarantees under this Act and whether by statutory declaration or otherwise;

(b)

- (b) prescribing the settlers in respect of whom guarantees under this Act may be executed by the board;
- (c) prescribing the information, evidence, and facilities to be furnished and afforded by banks to the board;
- (d) prescribing the information, evidence, and facilities to be furnished and afforded by settlers to the board;
- (e) prescribing the securities and indemnities to be given by settlers to the board;
- (f) the proceedings of the board.

(2) The regulations may impose a penalty not exceeding fifty pounds (£50) for any breach thereof.

(3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session. If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

**37.** No guarantee shall be given by the board under this Act after the expiration of two years from the commencement of this Act. <sup>Expiry Act.</sup>