

Acts reprinted pursuant to the Amendments Incorporation Act,
1937.

ANIMALS AND BIRDS PROTECTION ACT,
1919-1938

BUILDING SOCIETIES ACT, 1881-1938

FISHERIES ACT, 1917-1938

LOTTERY AND GAMING ACT, 1936-1938

ROAD TRAFFIC ACT, 1934-1938

With notes of judicial decisions affecting sections of the reprinted Acts.



ANIMALS AND BIRDS PROTECTION ACT, 1919-1938.

BEING

ANIMALS AND BIRDS PROTECTION ACT, 1919, No. 1365 OF 1919
[ASSENTED TO 16TH OCTOBER, 1919.]

AS AMENDED BY

ANIMALS AND BIRDS PROTECTION ACT AMENDMENT ACT 1922,
No. 1534 OF 1922 [ASSENTED TO 21ST DECEMBER, 1922.]

ANIMALS AND BIRDS PROTECTION ACT AMENDMENT ACT, 1927,
No. 1833 OF 1927 [ASSENTED TO 5TH JANUARY, 1928.]

ANIMALS AND BIRDS PROTECTION ACT AMENDMENT ACT, 1928,
No. 1855 OF 1928 [ASSENTED TO 4TH OCTOBER, 1928.]

ANIMALS AND BIRDS PROTECTION ACT AMENDMENT ACT 1932,
No. 2073 OF 1932 [ASSENTED TO 3RD NOVEMBER, 1932.]

STATUTE LAW REVISION ACT, 1934, No. 2168 OF 1934 [ASSENTED
TO 15TH NOVEMBER, 1934.]

AND

ANIMALS AND BIRDS PROTECTION ACT AMENDMENT ACT, 1938,
No. 2390 OF 1938 [ASSENTED TO 22ND SEPTEMBER, 1938.]

An Act to provide for the protection of wild animals and birds, and to regulate the use of firearms for the purpose of sport, 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:

1. This Act may be cited as the "Animals and Birds Protection Act, 1919-1938."

Short title.
Cf. U.K.,
1 & 2,
Will 4, c. 32.

2. The Acts mentioned in the first schedule hereto are hereby repealed.

Repeal of
certain Acts.

3. In this Act, except where the context otherwise requires or some other meaning is clearly intended—

Interpretation.
Cf. 1106,
1912, s. 3.

"animal" means any wild mammalian animal of any kind, whether native or introduced:

Amended by
1534, 1922,
s. 3.

“carcass” means the carcass of an animal or bird, and includes any part of the carcass of an animal or bird:

“close season” means, with regard to an animal or bird of any kind, the period of time during which animals or birds of that kind are protected:

“closed area” means any area declared under this Act to be a closed area:

“Crown lands” means all lands in the State except—

(a) lands lawfully granted, or contracted to be granted, in fee simple by or on behalf of the Crown;

(b) lands subject to any agreement for sale or purchase, lease, or licence lawfully granted by or on behalf of the Crown,

and includes all lands which, having been granted or held under agreement or lease, have been or are surrendered and all lands, which, having been lawfully held by any person for any estate or interest, have been or are lawfully forfeited to or resumed by, or by any means whatsoever have reverted to or revert to, or have been or are acquired by, the Crown:

“day” means a period of twenty-four hours commencing from midnight:

“device” means any implement, gear, trap, contrivance, or engine (other than gun) used to take any animals or birds:

“gun” includes a firearm of any description, and any air-gun, and any kind of gun from which any shot, bullet, or other missile can be discharged:

“inspector” means an inspector appointed under this Act, and includes the chief inspector, and any member of the police force:

“Minister” means the Minister of the Crown to whom the administration of this Act is for the time being committed by the Governor:

“protected” means protected by this Act:

“skin” means the skin of an animal, and includes any part of the skin of an animal:

“take” includes any act of hunting, catching, destroying, killing, or injuring, or of attempting or assisting to hunt, catch, destroy, kill, or injure:

Substituted
by 2390,
1938, s. 2
(a).

Inserted by
2390, 1938,
s. 2 (b).

Cf. U.K.,
33 & 34
Vict., c. 57,
s. 8.

Amended by
2390, 1938,
s. 2 (c).

“this Act” includes proclamations made under this Act:

“waters” includes the sea and all bays, gulfs, and inlets of the sea, and every lake and lagoon, river, creek, and stream, and any waters on or over private land.

The verb to sell includes—

- I. to sell, barter, or exchange;
- II. to agree to sell, barter, or exchange;
- III. to offer, expose, store, have in possession, send, consign, or deliver for or on sale;
- IV. to receive for sale;
- V. to cause or suffer to be sold, bartered, or exchanged, or to be agreed to be sold, bartered, or exchanged;
- VI. to cause or suffer to be offered, exposed, stored, had in possession, sent, consigned, or delivered for on sale;
- VII. to cause or suffer to be received for sale; and
- VIII. to attempt to do any of such acts or things;

and the word “sale” shall be construed accordingly.

The verb to buy includes to buy, to receive or accept under an agreement to sell, and to offer to receive or accept or cause or suffer to be received or accepted under an agreement to sell.

4. Unless otherwise prescribed, the provisions of this Act shall apply throughout the whole of the State of South Australia.

Application of the Act.
Cf. 1106, 1912, s. 4.

5. (1) The Governor shall appoint the Chief Inspector of Fisheries to be the chief inspector under this Act, and may appoint such inspectors and other officers as he thinks fit to carry out the provisions of this Act.

Appointment of officers.
Cf. *ibid.*, s. 5.

(2) Every member of the police force shall, by virtue of his office, be an inspector under this Act.

Protection of Animals and Birds.

6. (1) All animals and birds which are not mentioned in the third or fourth schedule are hereby wholly protected.

Animals protected wholly.
Cf. *ibid.*, s. 6.

(2) The animals and birds mentioned in the third schedule are hereby partly protected.

Subsec. (1) substituted by 2390, 1938, s. 3.

(3) The animals and birds mentioned in the fourth schedule are unprotected.

Close season.
 Cf. 1106,
 1912, s. 7.
 Cf. U.K.,
 1 & 2,
 Will. 4, c. 32,
 s. 3 (part).
 Cf. U.K.,
 22 & 23
 Geo. 5, c. 23,
 s. 1.

7. (1) Wholly protected animals and wholly protected birds are protected animals and protected birds at all times.

(2) Partly protected animals and partly protected birds are protected animals and protected birds during the period specified in the third schedule, or during such other period as is prescribed.

Powers of
 the Governor.
 Cf. 1106,
 1912, s. 8.

Para. (a)
 repealed and
 paras. (a) to
 (a2) to
 inserted by
 2390, 1938,
 s. 4 (a).

8. (1) The Governor may from time to time, by proclamation—

(a) include any animal or bird in the third or fourth schedule:

(a1) transfer any animal or bird from the third or fourth schedule to the other of the said schedules:

(a2) remove any animal or bird from the third or fourth schedule:

(b) prescribe either for the whole State or any specified portion thereof a close season for any partly protected animal or partly protected bird, either in substitution for the period specified in the third schedule or otherwise:

(b1) prescribe either for the whole State or any specified portion thereof and subject to any conditions specified in the proclamation, a period to be specified in the proclamation during which any wholly protected or partly protected animal or bird shall cease to be protected within the area specified in the proclamation and may lawfully be taken:

(c) prescribe any area within which the provisions of this Act or any specified provisions of this Act shall or shall not apply with respect to animals or birds generally, or to any particular kind of animal or bird:

(d) declare any Crown lands, or any other land with the consent of the owner and the occupier of such other land or any waters in or over which all proprietary rights are vested in the Crown or any other waters with the consent of all persons whose proprietary rights are thereby affected to be a closed area with respect to animals or birds generally, or to any particular kind of animal or bird:

(e) with respect to any kind of animal or bird mentioned in the third schedule, or with respect to any animal or bird which is for the time being unprotected pursuant to any proclamation made under paragraph

Amended by
 1534, 1922,
 s. 4 (a).

Inserted by
 2390, 1938,
 s. 4 (b).

Amended by
 1534, 1922,
 s. 4 (b).

Amended by
 1534, 1922,
 s. 4 (c).

Amended by
 2390, 1938,
 s. 4 (c)
 and (d).

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(b1) of this subsection, fix the maximum number of animals or birds of that kind which may be taken by any one person on any day on which such animals or birds may lawfully be taken: Provided that different maximum numbers may be fixed with respect to persons holding gun licences and persons holding game licences:

(f) declare any specified device, or any specified device which is used in any other than the manner prescribed for its use, to be an illegal device:

Paras. (f) and (g) inserted by 1534, 1922, s. 4 (d).

(g) declare any animal or bird to be a prohibited animal or bird:

(h) prescribe rates of royalties payable in respect of any animals or birds or the skins or carcasses of any animals or birds taken pursuant to this Act.

Para (h) inserted by 1833, 1927, s. 2.

(2) The Governor may, by proclamation, revoke any proclamation made pursuant to this section.

Subsec. (2) inserted by 1534, 1922, s. 4 (e).

8a. (1) Notwithstanding any provision of this Act or any proclamation or regulation made thereunder, the close season for ducks of all species throughout the whole State shall be from the first day of July until the thirteenth day of February, both dates included, and the close season for quail of all species throughout the whole State shall be from the first day of August until the thirteenth day of February, both dates included.

Close season for duck and quail.
Cf. U.K., 1 & 2 Will. 4, c. 32, s. 3.
Inserted by 2073, 1932, s. 3, as amended by S.L.R. Act, 1934.

(2) Notwithstanding any provision of this Act, no proclamation or regulation shall be made so as to prescribe for the birds mentioned in this section any other close season than that fixed by this section, and any proclamation or regulation in force at the third day of November, nineteen hundred and thirty-two, or made or purporting to be made after the said day, shall to the extent to which it fixes any other close season, be void and inoperative.

9. (1) All animals and birds with respect to which a closed area has been declared shall, within such closed area, be deemed to be wholly protected animals and wholly protected birds, notwithstanding that they are elsewhere only partly protected or are unprotected.

Closed areas.
Cf. 1106, 1912, s. 9.

(2) Any dog found trespassing upon any closed area may be destroyed by an inspector, the owner of any land forming part of such closed area whereon the dog is found, or any person authorised by such owner, and the destruction thereof shall not confer any right to compensation upon any person.

Amended by 1534, 1922, s. 5.

Permits to take animals and birds for scientific purposes or domestic pets. Cf. 1106, 1912, s. 10.

10. (1) The Minister may grant permits for the taking, on Crown lands or on any other land with the consent of the occupier of such land, for scientific purposes, of any protected animals or birds, or the eggs of any protected birds, or for the taking, on Crown lands or on any other land with such consent as aforesaid, of any protected animals or birds for the purpose of the same being kept in confinement or in a domesticated state.

(2) The Minister may also grant permits to sell any protected animals or birds which have been bred in captivity, or any protected animals or birds which have been lawfully taken for the purpose of the same being kept in confinement or in a domesticated state.

Inserted by 1833, 1927, s. 3 (a).

(2a) In any case where the Minister is satisfied that the occupier of any land is desirous of breeding for sale any protected animals or birds on the said land, and the Minister is of opinion that it is desirable to issue a permit as is hereinafter mentioned, the Minister may issue a permit to such occupier of land to take on the said land any protected animals or birds of the kinds specified in the permit and to sell any such animals or birds or the carcasses or skins thereof.

Amended by 1833, 1927, s. 3 (b).

(3) Every permit granted hereunder shall be issued subject to the payment of any fee prescribed by regulation and may be issued subject to such restrictions and upon such terms as the Minister thinks fit: Provided that—

- i. every permit shall be liable to revocation by the Minister;
- ii. every permit shall specify a period during which the same will remain in force unless revoked before the expiration of such period; and
- iii. in no case shall such period exceed twelve months.

Special powers of the Minister.

11. In addition to all other things which he is by this Act empowered or required to do, the Minister may—

- (a) appoint persons (in addition to the persons appointed by this Act) to issue game and gun licences under this Act;
- (b) direct the manner in which any forfeited property may be disposed of;
- (b1) upon the application of any person holding any licence under this Act, cancel the licence and refund to that person such portion of the licence fee as the

Inserted by 2390, 1938, s. 5.

Minister thinks fit, but not exceeding such proportion of the fee as the unexpired portion of the term of the licence bears to the full term of the licence;

- (c) revoke any game or gun licence issued under this Act; and
- (d) do all things which may be necessary or convenient for carrying into effect the provisions and objects of this Act.

12. Every inspector may, at any time, without any warrant other than this Act—

Powers of inspectors.
Cf. 1106,
1912, s. 11.

- (a) apprehend any person offending against the provision of this Act who refuses on demand to give his name and address, or who in the opinion of the inspector gives a false name or address:

- (b) enter and search any premises or place where there is, or he reasonably suspects there is, any animal, or the carcass or skin of any animal, or any bird, or the carcass or any feathers of any bird, or any eggs, taken, or which he reasonably suspects to have been taken in contravention of the provisions of this Act, or where any animal, or the carcass or skin of any animal, or any bird, or the carcass or any feathers of any bird, is or are on sale, or in which he believes the same to be on sale:

Amended by
2390, 1938,
s. 6 (a).

- (c) search any vehicle or boat or vessel, or any box, receptacle, or package, and open any box, receptacle, or package containing, or which he reasonably suspects to contain, any animal or bird or any eggs, feathers, carcass, or skin taken, or which he reasonably suspects to have been taken, in contravention of the provisions of this Act, and examine any such animal or bird or feathers, eggs, carcass or skin:

Amended by
2390, 1938,
s. 6 (b).

- (c1) enter and search any premises, or search any vehicle, boat, vessel, or any box, receptacle, or package, or open any box, receptacle, or package containing, or which he reasonably suspects to contain, any article made from the feathers, carcass, or skin of any animal or bird taken in contravention of the provisions of this Act, and examine any such article:

Inserted by
2390, 1938,
s. 6 (c).

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- (d) seize any property forfeited by, or which he has reason to believe to be liable to forfeiture under, this Act:
- (e) demand the production of any licence or permit issued under this Act:
- (f) demand the name and address of any person whom he has reason to suspect of any offence against the provisions of this Act: and
- (g) do any other thing prescribed, or which may be necessary for enforcing the provisions of this Act, or for detecting offences against this Act.

Forfeiture.
Cf. 1106,
1912, s. 12.
Amended by
1534, 1922,
s. 6.

13. Every animal or bird taken and the carcass and skin of every animal taken and the carcass and feathers of every bird taken, and all eggs taken in contravention of any provision of this Act are hereby forfeited to His Majesty and shall be disposed of as directed by the Minister or any person generally authorised by the Minister to give directions under this section, and the forfeiture and disposal thereof shall not confer any right to compensation upon any person.

Payment of
royalties.
Cf. Qld. 13,
1924, s. 2
(4).
Inserted by
1833, 1927,
s. 4.

13a. (1) There shall be charged and paid in respect of every animal or bird or the skin or carcass of every animal or bird of any kind fixed by proclamation which is taken in South Australia pursuant to this Act, a royalty at such rate per centum of the selling value thereof as is prescribed by proclamation. The said royalty may vary in respect of different animals or birds or the skins or carcasses thereof.

(2) The selling value of any animal or bird or the skin or carcass of any animal or bird shall in any case where the animal or bird or skin or carcass thereof is sold by auction, be the actual gross price thereof. In all other cases the selling value shall be the amount fixed by the chief inspector as the selling value in respect thereof.

(3) The royalty shall be payable by the person who takes the animal or bird, but every person who, whether on his own behalf or on behalf of any other person, deals in animals or birds or the skins or carcasses thereof shall be liable for the payment of the prescribed royalty thereon, unless the royalty shall have been previously paid.

Collection of
royalties.
Inserted by
1833, 1927,
s. 4.

13b. (1) The Governor may, for the purpose of carrying out the provisions of section 13a, appoint collectors of royalty, and a notification of every such appointment shall be published in the *Government Gazette*.

(2) On receipt of the prescribed royalty the collector shall, in accordance with the regulations, cause the animal or bird or skin or carcass thereof to be branded or otherwise marked with a prescribed brand or mark as evidence of payment of the royalty. In lieu of the receipt of the prescribed royalty, the collector may, in any case he thinks fit, accept an undertaking in writing to pay the prescribed royalty.

Amended by
2390, 1938,
s. 7 (a).

(3) A collector or inspector may seize any animal or bird or the skin or carcass thereof charged with the payment of royalty under this section in respect of which the royalty has not been paid or undertaken to be paid, and may keep possession thereof until the royalty is paid.

Amended by
2390, 1938,
s. 7 (b).

(4) The Minister may recover on behalf of the Crown any royalty payable under section 13a by action or proceeding in his official name in the Supreme Court or in any local court or in any court of summary jurisdiction, and may also in like manner, apply for and obtain from any such court an order for sale of any animal or bird or the skin or carcass of any animal or bird charged with the payment of royalty hereunder. The proceeds of any such sale shall be applied as the Minister directs.

13c. (1) Any person who evades or attempts to evade payment of royalty under section 13a shall be liable to a penalty not exceeding fifty pounds. A prosecution for an offence against this section may be brought at any time within six months after the fact of the commission of the offence came to the knowledge of the Minister.

Penalties.
Inserted by
1833, 1927,
s. 4 and
amended by
S.L.R. Act,
1934.

(2) In any action or proceeding under section 13b or this section the fact that any animal or bird or the skin or carcass of any animal or bird is not branded or marked with the prescribed brand or mark as aforesaid shall be *prima facie* evidence that royalty thereon has not been paid.

(3) In any action or proceeding under section 13b or this section the onus of proof that royalty has been paid on any animal or bird, or the skin or carcass thereof, shall be upon the defendant.

13d. (1) The chief inspector may on receipt of the prescribed fee issue a dealer's licence to any person who, in the opinion of the chief inspector, is a fit and proper person to be the holder of a dealer's licence.

Licensing of
dealers.
Cf. U.K.,
1 & 2 Will. 4,
c. 32, s. 18.
Inserted by
1833, 1927,
s. 4, and
amended by
2390, 1938,
s. 8.

(2) If any person not being the holder of a dealer's licence buys from the holder of any game licence any animal or bird or the carcass or skin thereof upon which royalty is payable under this Act, and whether the royalty has been paid or not,

without first obtaining the consent in writing of the chief inspector to such sale, then both the said person and the said holder of the game licence shall be guilty of an offence against this Act.

Regulations.
Inserted by
1833, 1927,
s. 4.

13e. In addition to any other powers to make regulations conferred by this Act, the Governor may make regulations prescribing means for the prevention of the evasion of the payment of royalties under section 13a, and for the mode of enforcing payment thereof.

Offences.
1106, 1912,
s. 13.
745, 1900,
s. 4.
Cf. U.K.,
1 & 2 Will. 4,
c. 32, s. 4.

14. (1) Every person shall be guilty of an offence against this Act who—

(a) takes any protected animal or bird or the eggs of any protected bird;

(b) takes on any one day on which such animals or birds may lawfully be taken a greater number of any kind of animal or bird than is prescribed;

(c) has any protected animal or bird, or the carcass or skin of any protected animal or the carcass or any eggs or feathers of any protected bird, in his possession or under his control;

(d) buys or sells any protected animal or bird or the carcass or skin of any protected animal or the carcass or any eggs or feathers of any protected bird, or any article wholly or partially made from the skin of any protected animal or bird or the feathers of any protected bird;

(e) without the consent of the chief inspector exports, or keeps for the purpose of export, any protected animal or bird or the carcass or skin of any protected animal or the carcass or any eggs or feathers of any protected bird;

(f) enters, or is upon, any closed area with any gun, net, trap, or other instrument capable of being used for the purpose of taking any animal or bird: Provided that this subdivision shall not apply to any person so acting under authority from the Minister, or from any person or body, corporate or otherwise, in whom the control of such closed area is vested;

Amended by
2390, 1938,
s. 9 (b).

(g) uses, discharges, carries, keeps, or has in his possession for the purpose of shooting at any animals or birds any gun the bore of which is greater than No. 10;

Amended by
2390, 1938,
s. 9 (c).

(h) refuses to give his name or address, or to produce any licence or permit, when lawfully demanded under this Act;

(i) refuses to deliver up to any inspector any property forfeited by, or liable to forfeiture under, this Act;

Amended by
S.L.E. Act,
1934.

(j) resists, or in any way interferes with or hinders, any inspector in the execution of his duty;

(k) takes any animal or bird with an illegal device;

Paras. (k)
and (l)
inserted by
1534, 1922,
s. 7.

(l) imports into the State, from any country outside the Commonwealth, without the consent in writing of the Minister, any prohibited animal or bird.

(2) The provisions of paragraphs (c), (d), and (e) of subsection (1) shall apply whether the animals or birds referred to in the said paragraphs were taken within the State or outside the State.

Inserted by
1833, 1927,
s. 5.

(3) It shall be a defence—

Inserted by
2390, 1938,
s. 9 (d).

(a) to any proceedings under paragraph (a) of subsection (1) if proof is given that at the time and place the animal or bird or eggs were taken the animal or bird was not a protected animal or bird, or that the animal or bird was taken pursuant to an authority granted under subsection (2) of section 20;

(b) to any proceedings under paragraph (c) of subsection (1) wherein any person is charged with having in his possession or under his control the carcass, skin, eggs, or feathers of any animal or bird, if proof is given that at the time and place the animal or bird or eggs were taken, the animal or bird was not a protected animal or bird;

(c) to any proceedings under paragraph (d) of subsection (1) if proof is given that at the time and place the animal or bird was taken the animal or bird was not a protected animal or bird, or, as the case may be, that the carcass or skin of the animal or the carcass, eggs, or feathers of the bird were sold pursuant to the consent of the Minister under subsection (3) of section 20, or, as the case may be, that the article was made from the skin or feathers of an animal or a bird which at the time and place it was taken was not a protected animal or bird;

(d) to any proceedings under paragraph (e) of subsection (1) if proof is given that at the time and place the animal or bird was taken, the animal or bird was not a protected animal or bird.

Inserted by
2390, 1938,
s. 9 (d).

(4) In any proceedings under paragraph (c), (d), or (e) of subsection (1), wherein any person is charged with having in his possession or under his control the carcass or skin of any protected animal or bird, or with buying or selling the carcass or skin of or any article wholly or partially made from the skin of any protected animal or bird, or with exporting or keeping for export the carcass or skin of any protected animal or bird, it shall be a defence if proof is given that the carcass or skin has been branded with a brand showing that the prescribed royalty has been paid thereon pursuant to this Act, or if other proof is given that the prescribed royalty has been paid or undertaken to be paid pursuant to this Act in respect of the carcass or skin.

Presumption
as to carcasses
of partly pro-
tected animals
and birds.
1106, 1912,
s. 14.

15. In the case of partly protected animals and partly protected birds, any carcass or skin and any eggs or feathers as to which during the close season any question arises shall be deemed to be and to have been the carcass or skin of a protected animal or the carcass or eggs or feathers of a protected bird, as the case may require, unless it is proved that the animal or bird or eggs or feathers were in fact taken before the commencement of such close season.

Use of artificial
light for
taking opos-
sums an
offence.
Cf., *ibid.*,
s. 15.

16. Every person who uses any artificial light for the purpose of taking any opossum shall be guilty of an offence against this Act.

Scaring away
birds from
soaks in
Coorong, etc.,
prohibited.

17. Every person who erects or places near any water or soak in those portions of the State known as the Coorong, and Lakes Alexandrina and Albert, any scare-crow or other device for the purpose of scaring away birds from such water or soak shall be guilty of an offence against this Act.

Trespasser to
give name,
etc., and quit
when
required.
Cf. *ibid.*,
s. 16.
Cf. U.K., 9
Geo. 4, c. 69,
s. 2.
Cf. U.K.,
1 & 2,
Will. 4, c. 32,
s. 31.

18. The owner or occupier of any land, or the servant or agent of such owner or occupier, may demand the name and address of any person trespassing upon such land whom he suspects of any offence against this Act, and may require any such trespasser to quit such land.

19. (1) Every person shall be guilty of an offence against this Act who—

Offences by trespasser.
Cf. 1106,
1912, s. 17.

- (a) enters or is upon any land, other than Crown lands, for the purpose of taking any animal or bird or any eggs of any bird without the permission of the owner or occupier of such land;
- (b) refuses to give his name and address, or gives a false name or address, when lawfully demanded under section 18;
- (c) refuses to quit any land when lawfully required under section 18; or
- (d) re-enters upon any land after having been lawfully required under section 18 to quit the same.

(2) In any proceedings for any offence under this section the onus of proving the permission of the owner or occupier shall lie upon the defendant.

(3) In any proceedings for any offence under subdivision (a) of subsection (1) of this section, proof that any person who was on any such land as therein referred to had with him or in his possession any dog, gun, net, trap, or other instrument capable of being used for the purpose of taking any animal or bird shall be *prima facie* evidence that such person entered or was upon such land for the purpose of taking some animal or bird.

20. (1) Notwithstanding anything in this Act, it shall be lawful for—

Exemption in certain cases.
Cf. *ibid.*,
s. 18.

- (a) any aboriginal inhabitant of this State to take any animal or bird or any eggs of any bird upon any Crown lands (other than a closed area), or upon any other land with the consent of the occupier of such land, sufficient only for food for himself or his family, but not for sale:
- (b) any person to keep any animal or bird as a domestic pet:

* * * * *

Para. (c)
repealed by
2390, 1938,
s. 10 (a).

(2) If the chief inspector is satisfied that damage or injury to any person's crops or property is being committed or is likely to be committed by any protected animals or birds, he

Inserted by
2390, 1938,
s. 10 (b).

may, by notice in writing, authorise the said person or any other persons named in the notice to destroy any specified number of animals or birds of the kind specified in the authority which are found upon the land upon which the crops or property is situated. Any such authority may be given upon such terms and conditions as the chief inspector thinks fit, and may be revoked by him at any time.

Inserted by
2390, 1938,
s. 10 (b).

(3) It shall be lawful for any person to take any protected animal or bird in pursuance of any authority given pursuant to subsection (2), but the carcass or skin of any animal so taken, and the carcass, eggs, or feathers of any bird so taken shall be sold only if the consent in writing of the Minister to the sale is first obtained.

Power to cur-
tail privileges
of aboriginals.

21. Notwithstanding anything contained in this Act, the Governor may, if he is satisfied that any of the privileges conferred by this Act upon any aboriginal inhabitants of this State have been or are being abused, by regulation curtail such privileges in such manner and for such period and in such part or parts of this State as he thinks proper.

Exemption of
permittees to
take animals
or birds for
scientific pur-
poses or for
domestic pets.
Cf. 1106,
1912, s. 19.

Para. (a)
substituted by
2390, 1938,
s. 11 (a).

22. Nothing in this Act—

- (a) shall render unlawful anything done by any person pursuant to a permit granted by the Minister or an authority granted by the chief inspector under this Act;
- (b) shall render unlawful the buying of protected animals or birds from any person to whom a permit has been granted by the Minister to sell such animals or birds: Provided that the sale is within the authority conferred by such permit; or

Para. (c)
repealed by
2390, 1938,
s. 11 (b).

* * * * *

Amended by
2390, 1938,
s. 11 (c).

- (d) shall apply in respect of any animal or bird taken for or kept by the South Australian Zoological and Acclimatisation Society, Incorporated, or the Board of Governors of the Public Library, Museum, and Art Gallery of South Australia: Provided that if any animal or bird is taken for either of the said bodies by any person, such person at the time of taking has the written authority thereof to take the animal or bird.

Use of Firearms.

23. Any person not being the holder of a licence in that behalf under this Act (in this Act called a "gun licence") who uses, discharges, carries, keeps, or has in his possession any gun for the purpose of shooting at any animals or birds shall be guilty of an offence against this Act:

Provided that this section shall not apply—

- i. to any occupier of any land, or any employee or member of the household of any such occupier, using, discharging, carrying, keeping, or having in his possession any gun (not being a gun the bore of which is greater than No. 10) for the sole purpose of shooting as aforesaid on such land; nor
- ii. to any aboriginal inhabitant of this State.

Heading amended by 2390, 1938, s. 12.
Persons using firearms for sport to be licensed.
Of. 6, 1875, s. 1.
Of. U.K., 33 & 34 Vict., c. 57, s. 7.
Amended by 1833, 1927, s. 7, and S.L.R. Act, 1934.

24. No gun licence issued under this Act shall have any operation or effect on any Sunday, and the holder of any such licence who on any Sunday uses, discharges, carries, or has in his possession any gun for the purpose of shooting at any animals or birds shall be guilty of an offence against this Act: Provided that this section shall not apply in any part or parts of the State which are declared by proclamation to be exempted from the operation thereof, nor to any holder of a gun licence carrying or having in his possession outside any such exempted part of the State any gun for the purpose of the same being lawfully used within such exempted part.

Shooting by holders of gun licences on Sundays an offence.
Of. 6, 1875, s. 3.
Of. U.K., 1 & 2 Will. 4, c. 32, s. 3.
Amended by 1833, 1927, s. 7, and S.L.R. Act, 1934.

25. (1) Any person not being the holder of a licence in that behalf under this Act (in this Act called a "game licence") who, at any time when the same may lawfully be taken, takes an animal or bird of any of the kinds mentioned in the third schedule or the eggs of any such bird for the purposes of sale shall be guilty of an offence against this Act.

Persons taking animals or birds for sale to be licensed.
Of. U.K., 1 & 2 Will. 4, c. 32, s. 18.

(1a) Any person who sells the carcass or skin of any animal or bird of any of the kinds mentioned in the third schedule or the eggs of any such bird, shall be guilty of an offence against this Act unless he satisfies the court that he is—

Inserted by 2390, 1938, s. 13.

- (a) the holder of a game licence; or
- (b) the holder of a consent to sell such carcass, skin, or eggs granted by the Minister under subsection (3) of section 20; or
- (c) the holder of a licence under the Hide, Skin, and Wool Dealers Act, 1915-1935.

(2) Any person who is the holder of a game licence shall be deemed to be also the holder of a gun licence under this Act.

Subsecs. (2a)
and (2b)
inserted by
1833, 1927,
s. 8.

(2a) Any such game licence may authorise the holder thereof to take animals and birds and the eggs of birds as aforesaid—

(a) throughout the whole of the State; or

(b) within any portion or portions of the State specified in the game licence; or

(c) upon any land specified in the game licence which is occupied by the holder thereof.

(2b) The holder of any game licence issued pursuant to paragraph (b) or (c) of subsection (2a) hereof shall be deemed to be the holder of a game licence only within the portions of the State specified in the said game licence.

Inserted by
1855, 1928,
s. 2.

(2c) Any game licence issued pursuant to this section (in addition to any other restrictions contained therein) may authorise the holder thereof only to take the animals and birds specified in the licence, and no other, or any animals and birds other than those specified in the licence.

Gun and
game licences.
Of U.K.,
33 & 34
Vict., c. 57,
s. 5.
Amended by
1833, 1927,
s. 9, and
1855, 1928,
s. 3.

26. (1) Gun licences and game licences under this Act shall be issued in the prescribed form and upon payment of the fees prescribed by regulation. The fee prescribed in respect of any of the kinds of game licence mentioned in subsection (2a) or (2c) of section 25 may be greater or less than the fee prescribed in respect of any of the other kinds of game licence mentioned as aforesaid.

Amended by
2390, 1938,
s. 14 (a).

(2) Such licences shall be yearly licences, and may be issued at any time: Provided that every licence shall expire on the last day of December next after the same is issued: Provided further that if any licence is issued after the thirtieth day of June in any year one-half only of the prescribed fee shall be payable.

Inserted by
2390, 1938,
s. 14 (b).

(2a) If application is made by any person who is the holder of a current licence, a licence of the same kind may be issued to that person at any time within fourteen days before the expiry of the current licence. In such case the licence so issued shall commence from the expiry of the current licence and shall, for the purposes of subsection (2) be deemed to be issued upon the date of the expiry of the current licence.

(3) All fees payable for gun licences and game licences shall, when received, be paid by the person receiving the same to the Treasurer for the purposes of the general revenue of the State.

27. (a) The chief inspector and every member of the police force who is for the time being in charge of any police station is hereby appointed and authorised to issue gun licences, and

Issue of licences.
Cf. 1293, 1917, s. 15.

(b) the chief inspector is hereby authorised and appointed to issue game licences

and to receive the prescribed fees therefor: Provided that no such licence shall be issued to any person under the age of fifteen years: Provided also that no game licence shall be issued to any person who does not satisfy the chief inspector that he is *bona fide* engaged in the business of taking animals or birds for sale.

Cf. 6, 1875, s. 2, proviso.

28. In any proceedings for an offence against section 23 or section 25 the onus shall be on the defendant to prove that he is the holder of a gun licence or a game licence, as the case may be, under this Act.

Onus on defendant to prove he is licensed.
Cf. *ibid.*, s. 5.

29. In all proceedings against the holder of a gun licence or a game licence under this Act for an offence against any provision of section 14, 19, or 24, such holder shall produce his licence to the special magistrate or justices hearing the case.

Licensees to produce his licence on prosecution.

30. The special magistrate or justices before whom the holder of a gun licence or a game licence under this Act is convicted of an offence against section 14, 19, or 24 may, in addition to imposing a penalty for the offence, cancel the licence by indorsing thereon a memorandum of such conviction; and in such case the licence shall be surrendered to the clerk of the court, who shall forward or deliver it to the chief inspector.

Cancellation of licence on conviction.

31. (1) Every holder of a gun licence or a game licence under this Act shall carry such licence with him at all times whilst engaged in the doing of anything for the lawful doing of which the authority of such licence is required, and shall produce such licence and also furnish his name and address to any person demanding the same at any such time.

Gun and game licences to be carried and produced on demand.

Cf. 6, 1875, s. 6.
Cf. U.K., 23 & 24 Vict., c. 90, s. 10.
Cf. U.K., 33 & 34 Vict., c. 57, s. 9.

(2) If any holder of a gun licence or a game licence under this Act fails to comply with any requirement of this section, he shall be guilty of an offence against this Act.

Governor may make regulations. Amended by 1855, 1928, s. 4.

32. The Governor may make any regulations which may be necessary or convenient for carrying out or giving effect to the provisions or objects of this Act, including regulations prohibiting or restricting throughout either the whole or any portion of the State the taking for sale, or sale of, any specified animals or birds and regulations prescribing the payment of fees, and imposing penalties not exceeding ten pounds for any breach of the same or any other regulation.

Penalties. Cf. 6, 1875, s. 21.

33. Every person who is guilty of an offence against this Act, shall, except where otherwise prescribed, be liable—

- (a) for the first offence to a penalty of not less than one pound nor more than five pounds;
- (b) for a second or subsequent offence to a penalty of not less than five pounds nor more than thirty pounds; and
- (c) in the case of any offence against subdivision (a), (b), (c), (d), (e), (k), or (l) of section 14, to pay, in addition to the penalty imposed for the offence, the value of every animal or bird, carcass, or skin improperly taken, held, imported, or dealt with. Such value shall be deemed to be five pounds if the subject matter of the offence is a wholly protected animal or a prohibited animal or bird or the carcass or skin of a wholly protected animal or a wholly protected bird or the carcass of a wholly protected bird, and in all other cases shall be deemed to be two pounds.

Appropriation of penalties. Amended by S.L.R. Act, 1934.

34. All moneys received for or on account of penalties imposed for offences against this Act shall be paid to the Treasurer for the public uses of the State, except moneys received in respect of an offence committed within the limits of a municipality or a district council district, when the complaint for such offence is laid by an officer of the municipality or district, which shall be paid over to and for the use of the corporation or district council.

Summary proceedings for offences.

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

Ss. 36 and 37 repealed by S.L.R. Act, 1934.

* * * * *

Protection to officers. Cf. 6, 1875, s. 25.

38. No action shall be brought against any inspector or other person for or on account of any matter or thing done or committed by him in the execution, or intended execution, of his duty or office under this Act, unless such action is commenced within six months after the cause of action arises.

39. All proclamations made before the passing of the Animals and Birds Protection Act Amendment Act, 1938, pursuant to the powers conferred by paragraph (a) of subsection (1) of section 8 (as enacted before the passing of the said Act) are hereby revoked.

Revocation of certain proclamations.
Inserted by 2390, 1938, s. 16.

SCHEDULES.

THE FIRST SCHEDULE.
ACTS REPEALED.

Sec. 2.

Reference to Act.	Title or Short Title of Act.
No. 6 of 1875 . . .	An Act to regulate the use of Guns and Firearms in certain cases.
No. 508 of 1891 . .	An Act to Reduce the Fee Payable under the Act No. 6 of 1875, intituled an Act to Regulate the Use of Guns and Firearms in certain cases.
No. 745 of 1900 . .	The Birds Protection Act.
No. 828 of 1903 . .	The Birds Protection Act Amendment Act, 1903.
No. 1106 of 1912 .	The Animals Protection Act, 1912.

* * * * *

Second schedule repealed by 2390, 1938, s. 17.

THIRD SCHEDULE.

Sec. 6 (2).

Part I.—Animals Partly Protected.

Substituted by 2390, 1938, s. 18.

Kind of Animal.	Close Season.
Deer (fallow <i>Cervus dama</i>)	From 1st July to 31st December
Kangaroos (<i>Macropus</i>) all species except white kangaroos	(a) From 1st March to 31st July within that portion of Eyre Peninsula south of 33° parallel of latitude: (b) From 1st October to 31st March within all the State not comprised within that portion of Eyre Peninsula south of the 33° parallel of latitude
Wallaby (<i>Macropus</i>) all species except rock and toolach	From 1st October to 31st March

Wombats (*Phascolomys*) From 1st July to 31st December
all species

Part II.—Birds Partly Protected.

Kind of Bird.	Close Season.
Bald Coot (<i>Porphyrio spp.</i>)	1st July to 13th February
Ducks (all species)	1st July to 13th February
Emu (<i>Dromaius novae-hollandiae</i>)	1st September to 30th April
Greenshank (<i>Tringa nebularia</i>)	1st March to 30th September
Maned goose (<i>Chenonetta jubata</i>)	1st July to 13th February
Mutton bird (<i>Puffinus spp.</i>)	1st September to 31st March
Pelican (<i>Pelecanus conspicillatus</i>)	1st September to 31st March
Quail (all species)	1st August to 13th February
Silver gull (<i>Larus novae-hollandiae</i>), except those found within the portion of the Hundred of Menzies bounded as follows:—	1st September to 31st March

Commencing at a point on low-water mark being the intersection of a line being the production northerly of the western boundary of section 6; thence easterly, southerly, and south-westerly along said low-water mark to a point being the intersection of a line being the production south-easterly of the south-western boundaries of sections 164 and D; thence north-westerly along said line and boundaries; thence northerly along the western boundary of said section 164; north-easterly along the north-western boundaries of

stone reserve No. 2 and section 165; northerly across road and along the western boundary of section 5; across road and along the western boundary of section 6 and its production to the point of commencement.

Snipe (*Gallinago spp.*) .. 1st March to 30th September
Teal (*Querquedula spp.*) 1st July to 13th February

FOURTH SCHEDULE.

Sec. 6 (3).

*Part I.—Animals Unprotected.*Substituted
by 2390,
1938, s. 19.

Domestic cats run wild (*Felis cattus*).

Foxes (*Canis vulpes*).

Hares (*Lepus europæus*).

Rabbits (*Oryctolagus cuniculus*).

Rats and mice (*Mus spp.*)

Seals, fur and hair (*Arctocephalus spp.*) except those found within St. Vincent Gulf and Spencer's Gulf North of a line from Cape Catastrophe to Cape Borda, thence along the northern shore of Kangaroo Island to Cape Hart and from Cape Hart to the mouth of the River Murray.

Wild dogs (*Canis familiaris*).

Part II.—Birds Unprotected.

African love bird (*Agapornis spp.*).

Blackbird (*Turdus merula*).

Black tailed native hen (*Tribonyx ventralis*).

Blue mountain parrot (*Trichoglossus moluccanus*).

Canary (*Fringillidae spp.*).

Chestnut finch (Zebra).

Cockatoo, sulphur crested (*Kakatoe galerita*).

Corella (*Kakatoe tenuirostris* K. *Sanguinea*).

Cormorant (*Phalacrocorax spp.*).

Crow (*Corvus spp.*).

Eagle hawk (*Uroaetus audax*).

English chaffinch (*Fringillidae spp.*).

English house sparrow (*Passer domesticus*).

English starling (*Sturnus vulgaris*).

Galah (*Kakatoe roseicapilla*).

Goldfinch (*Carduelis carduelis*).

Goshawk (*Astur fasciatus*).

- Greenfinch (*Chloris chloris*).
 King parrot (*Glossopsitta concinna*).
 Love bird (or Nyassa) (*Agapornis spp.*).
 Mistletoe bird (*Dicaeum hirundinaceum*).
 Musk lorikeet (king parrot).
 Myna (*Acridotheres tristis*).
 Native hen, black tailed (*Tribonyx ventralis*).
 Nyassa parrot (love bird).
 Red wattle bird (*Anthochoera carunculata*).
 Rosella parrot (*Platycercus eximius* and *P. adelaidae*).
 Shell parrot (*Melopsittacus undulatus*).
 Silver eye (*Zosterops spp.*).
 Silver gull (*Larus novae-hollandiae*) when found within the portion of the Hundred of Menzies bounded as follows:—
 Commencing at a point on low-water mark being the intersection of a line being the production northerly of the western boundary of section 6; thence easterly, southerly, and south-westerly along said low-water mark to a point being the intersection of a line being the production south-easterly of the south-western boundaries of sections 164 and D; thence north-westerly along said line and boundaries; thence northerly along the western boundary of said section 164; north-easterly along the north-western boundaries of stone reserve No. 2 and section 165; northerly across road and along the western boundary of section 5; across road and along the western boundary of section 6 and its production to the point of commencement.
- Sulphur crested cockatoo (*Kakatoe galerita*).
 Warbling grass parrot (Shell).
 Zebra finch (*Taeniopygia castanotis*).



THE BUILDING SOCIETIES ACT, 1881-1938.

BEING

THE BUILDING SOCIETIES ACT, 1881, No. 211 OF 1881
[ASSENTED TO 18TH NOVEMBER, 1881.]

AS AMENDED BY

BUILDING SOCIETIES ACT AMENDMENT ACT, 1933, No. 2122 OF 1933
[ASSENTED TO 9TH NOVEMBER, 1933.]

STATUTE LAW REVISION ACT, 1935, No. 2246 OF 1935 [ASSENTED TO
19TH DECEMBER, 1935.]

STATUTE LAW REVISION ACT, 1936, No. 2293 OF 1936 [ASSENTED TO
8TH OCTOBER, 1936.]

AND

BUILDING SOCIETIES ACT AMENDMENT ACT, 1938, No. 2411 OF 1938
[ASSENTED TO 8TH DECEMBER, 1938.]

An Act to amend the law relating to building societies.

WHEREAS it is expedient to amend the law relating to building societies in manner hereinafter provided—Be it therefore enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:—

Preamble.

1. This Act shall come into operation on a day to be fixed by the Governor, by proclamation, to be published in the *Government Gazette*, and may be cited for all purposes as “The Building Societies Act, 1881-1938.”

Commence-
ment and
short title.

2. Ordinance No. 12 of 1850, intituled “To Establish and Regulate Benefit Building Societies,” is hereby repealed; but this repeal shall not affect any building society constituted under the said Act until such society shall have obtained a certificate of incorporation under this Act; and this repeal shall not affect the past operation of the said Act, or the

Repeal.

s. 1. The Building Societies Act, 1881, was proclaimed to commence on 16th December, 1881: *Gazette* 15th December, 1881, p. 1747.

force or operation, validity or invalidity of anything done or suffered, or any bond or security given, or any right, title, obligation, or liability accrued, or any proceedings taken thereunder, or under the rules of any society which has been constituted thereunder.

Interpreta-
tion of terms.

Cf. U.K.,
37 & 38 Vict.
c. 42, s. 13.

3. In this Act—

the term “building society” or “society” means any society having for its object, or one of its objects, the raising of a fund by the payment, subscriptions, or contributions of its members and the application of such fund in assisting its members to obtain freehold or leasehold property, or in the making of loans or advances to its members or others, upon the security of freehold or leasehold property or transfer of partly paid up shares with the periodical repayment of principal and interest by instalments:

the term “committee of management” means the managing body of any society under this Act, whether called a “board of directors,” “committee,” or otherwise:

the term “existing society” means any building society existing at the time of the passing of this Act, the rules of which have been allowed or confirmed by the Governor under Ordinance No. 12 of 1850:

U.K., 37 & 38
Vict., c. 42,
s. 5 (part).

the term “terminating society” means a society which by its rules is to terminate at a fixed date, or when a certain event or result specified in its rules is arrived at:

U.K., 37 & 38
Vict., c. 42,
s. 5 (part).

the term “permanent society” means a society which has not by its rules any fixed date or certain event or result when it shall terminate:

the term “secretary” means the secretary, manager, managing director, or other principal executive officer of a society, by whatever name he may be called:

the term “investing member” means any member of a society who holds shares which participate in the profits of the society, whether such shares have been borrowed or advanced on or not:

the term “investing shares” means any shares which participate in the profits of the society, whether such shares have been borrowed or advanced on or not:

the term "court" means the Supreme Court of South Australia:

Amended by
S.L.R. Act,
1935.

the term "registrar" means the person for the time being holding the office of Public Actuary in the public service of the State.

Amended by
S.L.R. Act,
1935.

4. (1) Any number of persons, not less than ten, may establish a society under this Act either terminating or permanent.

Formation of
societies.
N.S.W. 1.
1924, s. 39.
Substituted
by 2411,
1938, s. 3.

(2) Before any society formed after the enactment of this section is registered there shall be held a meeting at which ten or more persons qualified to be members of the society are present.

(3) At the meeting there shall be presented—

- (a) a written statement showing the objects of the society, and the reasons for believing that, when registered, it will be able to carry out its objects successfully:
- (b) a copy of the rules which it is proposed to tender for registration.

(4) If, at the same or any subsequent or adjourned meeting, after consideration of the statement and rules, ten or more persons (qualified to be members) approve the rules with or without amendment and sign an application for membership, they shall proceed to elect the first committee of management of the society in accordance with the rules as so approved.

(5) Within two months after the election of the committee of management, an application shall be made to the registrar for the registration of the society, and shall be accompanied by—

- (a) a statutory declaration from the chairman and secretary of the meeting declaring that the requirements of the preceding provisions of this section have been complied with:
- (b) a copy of the written statement presented to the meeting:
- (c) two copies of the proposed rules signed by not less than ten applicants for membership, each of whose signatures shall be attested by a witness:
- (d) a list containing the full name and the occupation and address of each member of the committee of management:

- (e) a list containing the full name and the occupation and address of each applicant for membership and the number of shares subscribed for by him:
- (f) such other particulars as may be prescribed by regulation.

(6) The statutory declaration mentioned in subsection (5) of this section may be accepted by the registrar as sufficient evidence of compliance with the requirements of this section.

(7) If the registrar is satisfied that the society has complied with the provisions of this Act and the regulations, and that the proposed rules of the society are not contrary to this Act or to the regulations, the registrar shall register the society and its rules, and return one copy of the rules to the society with a certificate in the form of the second schedule to this Act, that the society is incorporated under this Act.

(8) The expenses of and incidental to the formation of any society may be paid either out of capital or income.

(9) No building society shall be formed or established except under this Act.

Prohibition of identity of names of societies.

U.K., 37 & 38 Vict., c. 42, s. 17 (part).

5. No society shall be registered under this Act by a name identical with that by which an existing society is already registered, or in the opinion of the registrar so nearly resembling the same as to be calculated to deceive, unless such existing society is in the course of being terminated or dissolved, and consents to such registration.

Registration of existing societies.

Cf. U.K., 37 & 38 Vict., c. 42, s. 11.

6. Any existing society shall be entitled to be registered under this Act, and when so registered its rules shall, so far as the same are not contrary to any express provision of this Act, continue in force until altered or rescinded as herein-after mentioned; but any of its rules which are contrary to any express provision of this Act shall, after such registration, cease to be of any force or validity save as to any transactions, matters, or things done prior to such registration.

Authority to register existing society.

7. No existing society shall be registered under this Act except by the authority of a general meeting of the society, convened and held in accordance with its rules for the time being, and specially called for the purpose, and the registrar may require a statutory declaration from the secretary, and such other evidence, if any, as he may think fit, that such authority was duly given.

8. Any existing society entitled to be registered under this Act and desirous of being so registered shall transmit to the registrar two copies of its rules purporting to be duly allowed or confirmed under Ordinance No. 12 of 1850, authenticated by the statutory declaration of the secretary, and to which an impression of the common seal intended to be used shall be applied, and such other evidence, if any, as the registrar may require; and the registrar, if satisfied that such rules were duly allowed and confirmed under the said Act, and that the necessary authority for the registration of the society under this Act has been given, shall return one copy to the secretary with a certificate of registration, and shall retain and register such rules, and thereupon such society shall be deemed to be registered under this Act.

Mode of registration of existing society.
Cf. U.K. 37 & 38 Vict., c. 42, s. 10.

9. Upon the registration of any society under this Act the registrar shall forthwith notify in the *Government Gazette*, in the form or to the effect in the first schedule to this Act, that such society is registered, and thereupon the then present members of the society, together with such other persons as may from time to time become members of the society, shall be a body corporate by the name contained in its rules, capable forthwith of exercising all the functions of an incorporated society and having perpetual succession and a common seal. Such notice shall be conclusive evidence that all the requirements of this Act in respect of registration have been complied with.

Incorporation.
Cf. U.K., 37 & 38 Vict., c. 42, s. 9.

10. A certificate in the form or to the effect in the second schedule to this Act under the hand of the registrar for the time being (whose handwriting it shall not be necessary to prove, and who is hereby required to give such certificate to any person applying for the same on payment of one shilling) shall be conclusive evidence that the society named in such certificate is incorporated under this Act.

Proof of incorporation.
Cf. U.K., 37 & 38 Vict., c. 42, s. 20 (part).
Amended by S.L.R. Act, 1935.

11. Upon the registration under this Act of any existing society, such society shall forthwith, by passing a new rule for the purpose, make provision for the custody and use of the common seal of the society, which shall in all cases bear the registered name thereof.

Common seal.

12. All rights of action, and other rights, and all estates and interest in real and personal estate whatsoever, belonging to, or held in trust for any existing society registered under this Act, shall, on the incorporation of the society under this Act, vest in the society, without any conveyance, transfer, or assignment whatsoever: Provided that in the

Property, etc., to vest on incorporation.
Cf. U.K., 37 & 38 Vict., c. 42, s. 27.
Amended by S.L.R. Act, 1935.

case of freehold land under the provisions of "The Real Property Act, 1886," or any Act amending the same, it shall be necessary for an application to be made to the Registrar-General, under the seal of the society, applying to be registered as proprietor of such land, whereupon the Registrar-General, on payment of the transfer fee, shall register the society accordingly.

Matters to be included in rules.

Of U.K.,
37 & 38 Vict.,
c. 42, s. 16.
Of U.K.,
57 & 58 Vict.,
c. 47, s. 1.

13. The rules of every society established under this Act shall set forth—

- i. the name of the society, and chief office or place of meeting for the business of the society:
- ii. the manner in which the stock or funds of the society are to be raised; the terms upon which the paid-up shares (if any) are to be issued and repaid, and whether preferential shares are to be issued, and if so, within what limits, if any; and whether the society intends to avail itself of the borrowing powers contained in this Act, and if so within what limits, not exceeding the limits prescribed by this Act:
- iii. the purposes to which the funds of the society are to be applied, and the manner in which they are to be invested:
- iv. the terms upon which shares may be withdrawn, and upon which mortgages may be redeemed:
- v. the manner of altering and rescinding the rules of the society and of making additional rules:
- vi. the duties and powers of and manner of appointing, remunerating, and removing the committee of management, auditors, and other officers:
- vii. the manner of calling general and special meetings of the members, the quorum necessary to constitute such meetings, and the mode of voting and number of votes to be given by each member at such meetings:
- viii. the mode of drawing and signing cheques, drafts, bills of exchange, promissory notes, and other negotiable instruments for and on behalf of the society:
- ix. the species of security to be given by any paid officer of the society having the receipt or charge of any money belonging to the society:

- x. provision for an annual or more frequent audit of the accounts, and inspection by the auditors of the mortgages and other securities belonging to the society:
- xi. whether disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled by reference to arbitration or how otherwise:
- xii. provision for the device, custody, and use of the seal of the society, which shall in all cases bear the registered name thereof:
- xiii. provision for the custody of the mortgage deeds and other securities belonging to the society:
- xiv. provision for the payment of all funds belonging to the society to the credit of the society at some incorporated or chartered bank in South Australia:
- xv. the fines and forfeitures to be imposed on members of the society:
- xvi. the manner in which the society, whether terminating or permanent, shall be terminated or dissolved.

13a. No rules of a building society providing for the withdrawal of shares by members shall be registered after the enactment of this section unless they prescribe the withdrawal value of the shares and the society satisfies the registrar by the certificate of an actuary or such other evidence (if any) as the registrar requires that the withdrawal values so prescribed are equitable.

Withdrawal of shares from building society.
N.S.W. 1, 1924, s. 55.
Inserted by 2411, 1938, s. 4.

13b. (1) The Governor may by regulation prescribe model rules for any kind of society.

Model rules.
S. Af. 1922, No. 28, s. 8.

(2) A society which is to be registered under this Act, or which is registered thereunder, may adopt as its rules all or any of the model rules applicable to such society.

Inserted by 2411, 1938, s. 4.

(3) No alteration of any model rules shall apply to any society which is established before the alteration is published in the *Gazette*, unless the society by rule adopts the alteration.

13c. (1) The members of the committee of management shall be elected at a general meeting of the society in accordance with the rules: Provided that the first members of the committee of management shall be elected at the meeting for the formation of the society.

Committee of management.
N.S.W. 1, 1924, s. 84.
Inserted by 2411, 1938, s. 4.

(2) The number of members of the committee of management shall be not less than three, and no person shall be qualified to be a member of the committee of management unless he is a member of the society.

(3) Every member of the committee of management acting in the business or operations of the society in pursuance of a resolution duly passed by the committee shall be deemed to be the agent of the society for all purposes within the objects of the society.

(4) The acts of a member of the committee of management shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

(5) Subsections (1) and (2) of this section shall apply only to societies formed after the enactment of this section; subsections (3) and (4) shall apply to all societies whether formed before or after the enactment of this section.

Society may receive bonus.

14. Any society, if so provided for by its rules, may receive from any member any sum of money by way of bonus on any share or shares for the privilege of receiving the amount of the same in advance prior to the same being realised, and also any interest for the share or shares the amount of which may be so received, or any part thereof.

Forms of conveyance, etc., may be prescribed.
U.K., 37 & 38 Vict., c. 42, s. 19.

15. Any society under this Act may, in a schedule to its rules, prescribe the forms of conveyance, mortgage, transfer, agreement, bond, security, for deposit or loan, or other instrument necessary for carrying its purposes into execution.

Existing society may alter rules.
Cf. U.K., 37 & 38 Vict., c. 42, s. 18 (part).

16. Any existing society registered under this Act may alter or rescind any of its rules, or make any additional rule in manner prescribed by its rules, or if no manner be so prescribed, then by the vote of two-thirds of the members present at a general meeting of the society, convened and held in accordance with its rules for the time being, and specially called for the purpose by notice of seven days at the least, specifying the proposed alteration, rescission, or addition.

Alteration of rules to be registered.
Cf. U.K., 37 & 38 Vict., c. 42, s. 18 (part).

17. Every society under this Act altering or rescinding any rule, or making an additional rule, shall forward to the registrar two copies of every resolution for rescission of a rule, and of every alteration of or addition to its rules, signed by three members and the secretary and if the registrar is satisfied that such alteration, addition, or rescission is in conformity with this Act, he shall register one of such copies,

and return the other to the secretary with a certificate of registration, and no such rescission, alteration, or addition shall be of any force or validity until so registered.

18. Every society under this Act shall supply to any person requiring the same a complete printed copy of its rules for the time being in force, with a printed copy of its certificate of incorporation appended thereto, and shall be entitled to charge therefor a sum not exceeding one shilling.

Copy rules, etc., to be supplied.
Cf. U.K., 37 & 38 Vict., c. 42, s. 17 (part).

19. The rules of a society under this Act shall be binding on the several members and officers of the society, and on all persons claiming on account of a member, or under the rules, all of whom shall be deemed and taken to have full notice thereof, and shall not have power to question or impugn the legality or validity thereof.

Rules binding on members.
Cf. U.K., 37 & 38 Vict., c. 42, s. 21.

20. A society under this Act may change its name by resolution of three-fourths of the members present at a meeting called for the purpose, provided that the new name is not identical with that of any society previously registered and still subsisting, or in the opinion of the registrar so nearly resembling the same as to be calculated to deceive, unless such subsisting society is in the course of being terminated or dissolved, and consents to such registration.

Change of name.
Cf. U.K., 37 & 38 Vict., c. 42, s. 22.

Notice of the change of name shall be sent to the registrar, and registered by him, and he shall give a certificate of registration within seven days from the receipt of such notice.

Such change of name shall not affect any right or obligation of the society, or of any member thereof, or other person concerned.

21. Married women and minors may become investing members in any society under this Act, and their receipts, notwithstanding coverture or infancy, shall be sufficient discharges to the society for all moneys paid to any such married woman or minor, and the share or interest of any such married woman, to the extent of not more than six shillings weekly, may, if she shall so direct at the time of becoming such member, be held for her sole and separate use, independent of the debts or control of any husband.

Married women and minors.
Cf. U.K., 37 & 38 Vict., c. 42, s. 38.

22. Two or more persons jointly, or any corporation or incorporated company, may hold shares in any society under this Act.

Joint holders and corporations.
Cf. U.K., 37 & 38 Vict., c. 42, s. 39.

Liability of members.

Cf. U.K., 37 & 38 Vict., c. 42, s. 14.

23. The liability of any member of a society under this Act in respect of any share upon which no advance has been made, shall be limited to the amount actually paid, or in arrear on such share, and profits declared or accumulated thereon, and in respect of any share upon which an advance has been made, shall be limited to the amount payable thereon under any mortgage or other security, or under the rules of the society.

Employment of funds.

Cf. U.K., 37 & 38 Vict., c. 42, s. 13 (part).

24. Any society under this Act may employ its funds for such of the following purposes as are provided for in its rules:—

To make advances to members of the society upon security of their shares:

To make advances to members and other persons, and to corporate bodies, upon the security of freehold or leasehold estate by way of mortgage:

And the society may accept the security of other property by way of collateral security:

Provided that any land to which any society may become absolutely entitled by forfeiture or by surrender or other extinguishment of the rights of redemption shall, as soon afterwards as may be conveniently advantageous, be sold or converted into money.

Officers borrowing from the society.

N.S.W. 1, 1924, s. 88.

Inserted by 2411, 1938, s. 5.

24a. A member of the committee of management of a society or an officer of a society shall not borrow from that society, and the society shall not lend to a member of its committee of management or to any of its officers, and if any loan is made in contravention of this subsection, the members of the committee of management who authorised the loan shall be jointly and severally liable for any loss which the society sustains by reason of the loan.

This section shall not apply to—

- (a) any loan made on the security of shares held by the borrower if such loan does not exceed the amount paid up on such shares; or
- (b) any loan made pursuant to a resolution carried at a general meeting of the society:
- (c) any loan to which a person has become entitled under the rules of a society by reason of his having been successful in a ballot for loans, duly conducted by the society in accordance with those rules.

25. Any society under this Act may from time to time, when and as provided in its rules raise funds by the issue of shares of one or more denominations, either paid up in full or to be paid by periodical or other subscriptions, and with or without accumulating interest, and may repay such funds at such time as is provided in the rules of the society.

Issue of shares.
Of. U.K.,
37 & 38 Vict.,
c. 42, s. 13
(part).

26. Any society under this Act may purchase, build, hire, or take upon lease any building for conducting its business, and may adapt and furnish the same, and may purchase or hold upon lease any land for the purpose only of erecting thereon a building for conducting the business of the society, and may sell, exchange, or let such building, or any part thereof.

Business premises.
U.K., 37 & 38
Vict., c. 42,
s. 37.

26a. (1) Every society shall have a registered office in the State.

Registered office of society.

(2) Every society shall keep its registered office open and accessible to the public for not less than three hours between the hours of eight o'clock in the morning and six o'clock in the evening each day for at least two days a week.

N.S.W. 1,
1924, s. 72.
Inserted by
2411, 1938,
s. 6.

(3) All communications and notices to the society may be addressed to the society at its registered office.

(4) Every society shall give notice to the registrar of the situation of its registered office and of the days and hours during which it is accessible to the public.

The notice shall be given—

(a) in the case of a society existing at the time of the enactment of this section, within one month after the enactment of this section; and

(b) in the case of any society formed after the time of the enactment of this section within one month after the registration of the society.

(5) Every society shall before making any change in the situation of its registered office, or in the days and hours when such office is open to the public, give notice of such change to the registrar.

(6) Every society shall keep at its office throughout office hours—

(a) a copy of this Act and the regulations;

(b) a copy of the rules of the society;

- (c) a copy of the last balance-sheet and the last profit and loss account of the society, together with the report of the auditor thereon;
- (d) a register of the names and addresses of the members of the committee of management, and the list of members kept pursuant to section 35b of this Act; and
- (e) a register showing the amounts of the loans raised by the society, and the dates thereof, and the securities given and bonds issued by the society,

and shall permit any member or creditor of the society to inspect any such document without fee.

(7) If any society fails to comply with this section in any particular it shall be guilty of an offence and liable on summary conviction to a fine not exceeding twenty pounds.

Deposits and
loans.
Cf. U.K.,
37 & 38 Vict.,
c. 42, s. 15.

27. Any society under this Act may obtain bank overdrafts or receive deposits or loans, at interest, from the members or other persons, or from corporate bodies, joint stock companies, or from any other building or friendly society, to be applied to the purposes of the society, provided that the total amount received on deposit or loan and not repaid by any society, in the case of a permanent society, shall not at any time exceed two-thirds of the amount for the time being secured to the society by mortgages from its members, or in the case of a terminating society shall not exceed twelve months' income on the shares for the time being in force.

Any deposits with or loans to an existing society made before its registration under this Act in accordance with its certified rules, are hereby declared to be valid and binding on the society although such deposits or loans may exceed the limit aforesaid, but all such deposits and loans shall be taken into account in determining the amount which any such society may legally receive on deposit or loan after being registered under this Act; and no further deposits or loans shall be received by any society except within the limits provided by this section.

Any member or other person, corporate body, joint stock company, or other building or friendly society depositing or lending money with or to any society under this Act shall not be bound to see to the application thereof, or that the society has not exceeded its borrowing limit.

27a. (1) The Treasurer may on the recommendation of the registrar and with the approval of the Governor, execute a guarantee in favour of any bank, or of any friendly society registered under the Friendly Societies Act, 1919-1937, or of any other body of persons, corporate or unincorporate, approved by the Treasurer, for the repayment of any advance made or to be made by the bank, friendly society, or body approved as aforesaid (as the case may be) to any society.

Government
guarantee
to banks.
N.S.W. 57,
1934, s. 3.
Inserted by
2411, 1938,
s. 7.

(2) Before executing any such guarantee the Treasurer may require the society to comply with any conditions which the Treasurer thinks necessary for the purpose of securing the efficient management and working of the society and preventing loss.

(3) The guarantee may include the interest (whether compound or otherwise) and expenses chargeable by the bank, friendly society, or body approved as aforesaid (as the case may be), against the society in the usual course of its business and the expenses of enforcing or obtaining or endeavouring to obtain payment of the debt guaranteed and such interest and expenses.

(4) Any sums which may become due and payable by the Treasurer under any guarantee given by him pursuant to this section may be paid out of the general revenue of the State without any appropriation other than this Act.

27b. Where a building society proposes to lend money to a member who is not already the owner of a dwelling-house, and—

- (a) such money is to be lent for the purpose of enabling the member to purchase land upon which a dwelling-house is already erected or to purchase land and erect a dwelling-house thereon, or to erect a dwelling-house on land already owned by him; and
- (b) the dwelling-house is to be occupied by the member to whom the money is to be lent; and
- (c) the amount proposed to be lent does not exceed five hundred and fifty pounds; and
- (d) the amount proposed to be lent reduced by the paid up value of the member's share capital exceeds eighty per centum but does not exceed ninety per centum of the value of the land and the dwelling-house erected or to be erected thereon, as ascertained in such manner as the registrar directs; and

Treasurer
may under-
take to
indemnify
building
societies
against loss
in certain
circumstances.
N.S.W. 1,
1924, s. 17a.
Inserted by
2411, 1938,
s. 7.

- (e) the payments to be made to the society by the member in repayment of the principal and interest of the loan are at a rate not exceeding three shillings a week for each hundred pounds of the loan; and
- (f) a life insurance policy has been taken out on the life of the member insuring the payment in the event of his death during the currency of the loan of—
- i. an amount not less than fifty per centum of the principal outstanding in respect of the loan at the time of the death; or
 - ii. two hundred pounds,
- and the policy is by assignment or otherwise made security for repayment to the society of any amounts of principal or interest outstanding in respect of the loan at the time of the death of the member,

the Treasurer may, with the approval of the Governor, by agreement undertake to indemnify the society against so much of any loss sustained by the society in respect of the loan as is directly attributable to the fact that the amount so lent reduced by the paid up value of the member's share capital is in excess of eighty per centum of the value of the land and dwelling-house as ascertained in accordance with paragraph (d) of this section.

Acknowledgments for loans or deposits to bear copies of ss. 23, 27, and 28.

U.K., 37 & 38 Vict., c. 42, s. 15 (5).

28. Every deposit-book, or acknowledgment, or security of any kind, given for a deposit or loan by a society shall have printed or written thereon the whole of the twenty-third, twenty-seventh, and twenty-eighth sections of this Act.

Purchaser, etc., not bound to see to application of purchase money.

29. No member of any society under this Act, nor any purchaser of any land from any such society, shall be obliged to inquire into the application of the consideration money mentioned in any conveyance or reconveyance, receipt, or statutory release, or be answerable or accountable for the misapplication, non-application, or loss thereof.

Investments of funds.
Cf. U.K., 37 & 38 Vict., c. 42, s. 25.
Amended by 2122, 1933, s. 4.

30. Any society under this Act may, from time to time, unless its rules otherwise direct, invest any portion of its funds not immediately required for its purpose in the public funds, or in or upon any Government debentures, stock, or securities or in or upon any debentures, stock, or securities, payment of the interest on which is guaranteed by authority

of Parliament; and notwithstanding the provisions of any Act relating to the Savings Bank of South Australia any society may deposit in that bank any of its funds without restriction as to amount.

31. Every paid officer of a society under this Act, having the receipt or charge of any money belonging to the society, shall give such security as the rules of the society direct, in such sum as the committee of management require, for rendering a just and true account of all moneys received and paid by him on account of the society, and for payment of all sums of money due from him to the society, at such times as its rules appoint or the committee of management may require.

Paid officers to give security. Cf. U.K., 37 & 38 Vict., c. 42, s. 23.

32. Every paid officer of a society under this Act, his executors or administrators, shall, upon demand made or notice in writing given or left at his last or usual place of residence, give in to the committee of management an account of all moneys received by him from or on account of the society to be examined or allowed or disallowed by them, and shall, on the like demand or notice, pay over all the moneys remaining in his or their hands, and deliver all securities and effects, books, papers, and property of the society in his or their hands or custody to such person as the committee of management shall appoint; and in case of any neglect or refusal to deliver such account, or to pay over such moneys, or to deliver such securities and effects, books, papers, and property in manner aforesaid, the society may sue upon the security given by such officer, or may apply to the court by motion either upon notice or *ex parte* as the court may think fit, and the court may proceed thereupon in a summary way and make such order thereon, and as to the cost of such application as to the court in its discretion shall seem just, which order shall be final and conclusive.

Paid officers to account and deliver up books, etc., on demand. Cf. U.K., 37 & 38 Vict., c. 42, s. 24.

33. If any person appointed to any office and intrusted with the keeping of accounts, or having in his hands or possession, by virtue of his said office or appointment, any moneys or effects belonging to such society, or any deeds or securities relating to the same, shall die or become insolvent, or have any attachment or execution, or other process issued, or action or proceedings commenced against his lands, goods, chattels, or effects, or property or estate, or make any assignment, disposition, or other conveyance thereof, for the benefit of his creditors, his heirs, executors, administrators, or assigns, or other persons having legal

Society to have first claim on assets of officer dying, becoming insolvent, etc. Cf. U.K., 37 & 38 Vict., c. 42, s. 26.

right, or the Sheriff or other officer executing such process, or the party using such action or proceedings, shall, within twenty-one days after demand in writing, by order of such society, or committee thereof, or the major part of them, assembled at any meeting thereof, deliver and pay over all moneys and other things belonging to such society to such person as such society or committee shall appoint, and shall pay out of the estates, assets, or effects of such person all sums of money remaining due which the said person received by virtue of his said office or appointment before any other of his debts are paid or satisfied, or before the money directed to be levied by such process as aforesaid, or which may be recoverable under the same, is paid over to the party issuing such process or using such proceedings, and all such assets, lands, goods, chattels, property, estates, and effects shall be bound to the payment and discharge thereof accordingly.

Contracts.

34. Contracts on behalf of any society under this Act may be made, varied; or discharged as follows, viz:—

Any contract which, if made between private persons, would be by law required to be in writing under seal, may be made, varied, or discharged, in the name and on behalf of the society in writing under the common seal of the society:

Any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, may be made, varied, or discharged in the name and on behalf of society in writing, signed by any person acting under the express or implied authority of the society:

Any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be made, varied, or discharged, by parol, in the name and on behalf of the society by any person acting under the express or implied authority of the society.

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the society and all other parties thereto, their heirs, executors, and administrators, as the case may be.

Annual
account.
U.K., 37 & 38
Vict., c. 42,
s. 40.
Of U.K.,
57 & 58 Vict.,
c. 47, s. 2.

35. The secretary of every society under this Act shall, once in every year at least prepare a general statement of its funds and effects, liabilities and assets, showing the amounts due to the holders of the various classes of shares

respectively, to depositors and creditors, and also the balance due or outstanding on its mortgage and other securities (not including prospective interest), and the amount invested in other securities, and also an account or statement of receipts and expenditure from the last preceding similar statement, together with a statement of profit and loss, and every such account and statement shall be attested by the auditors to whom the mortgage deeds and other securities belonging to the society shall be produced, and such account and statement shall be countersigned by the secretary and published in the *Government Gazette* and in one newspaper circulating in the locality in which the chief office of the society is situate, and every member, depositor, and creditor shall be entitled, on application therefor to the secretary, to receive from the society a copy of such account and statement, and a copy thereof shall be sent to the registrar within fourteen days after the annual or other general meeting at which it is presented, and another copy thereof shall be suspended in a conspicuous place in the chief office of the society, and be kept so suspended until the suspension in like manner of the next succeeding similar account; and every such account or statement shall be in the forms prescribed by the fourth schedule hereto, or to the like effect.

35a. (1) Every auditor of the accounts of a society shall be appointed by the members of the society at a general meeting.

Provisions as to auditors.
Of U.K.,
57 & 58 Vict.,
c. 47, s. 3.
Inserted by
2122, 1933,
s. 5.

(2) At least one of the auditors of every society shall be a person holding one of the following qualifications, namely:—

- (a) the diploma in commerce of the University of Adelaide; or
- (b) membership, fellowship, or associateship of the Institute of Chartered Accountants in Australia, the Institute of Chartered Accountants in England and Wales, the Society of Incorporated Accountants and Auditors, the Commonwealth Institute of Accountants, the Federal Institute of Accountants, or the Australian Institute of Secretaries; or
- (c) some other qualification prescribed by regulation under this Act.

(3) Any rule of any society which is inconsistent with this section shall be void to the extent of the inconsistency, and the rules of every society shall be construed as if they contained provisions to the effect of subsections (1) and (2) of this section.

(4) This section shall apply to every society forthwith upon the expiration of its financial year current at the time of the commencement of the Building Societies Act, 1933, but not earlier.

List of
members.
Inserted by
2122, 1933,
s. 5.

35b. (1) Every society shall keep at its head office and at every branch office a list showing—

- (a) the name and address of every member;
- (b) if the members are allotted distinguishing numbers, the number assigned to every member; and
- (c) if the right to vote at meetings of the society is based on any principle other than that of one vote for each member, the number of votes to which each member is entitled.

The society shall permit any member to inspect the said list at any reasonable time during which the office of the society is open.

(2) If default is made in compliance with this section the secretary and every director of the society shall be guilty of an offence, and liable to a penalty not exceeding ten pounds.

Provision as
to notice of
general
meetings.
Inserted by
2122, 1933,
s. 5.

35c. (1) No general meeting of any society called for the purpose of passing any statements of account or balance-sheet, or for the consideration of any amendments of the constitution or rules of the society, shall be deemed to be duly called or held, unless—

- (a) at least seven days before the day of such meeting an advertisement specifying the time and place for holding such meeting, and the purpose thereof, has been inserted, at least twice in a daily newspaper circulating throughout the State; and
- (b) notice of the said meeting specifying the said particulars has been posted up in a conspicuous place in the head office and every branch office of the society.

(2) This section shall apply notwithstanding anything in the rules of any society and notwithstanding any agreement between the society and its members, and the rules of every society shall be construed as if they contained provisions to the effect of subsection (1) of this section.

36. (1) At least one per cent. of the total number of members of any society or five members, whichever is the greater number, may apply in writing to the registrar for an investigation into all or any of the accounts, transactions, and affairs of the society. The application shall state fully the reasons why the investigation is desired.

Inspection of books and affairs of the society.

Cf. U.K., 57 & 58 Vict., c. 47, ss. 4, 5.

Substituted by 2122, 1933, s. 6.

If the registrar is of opinion that the application discloses good reasons for holding an investigation he shall by notice served on the secretary of the society and on the applicants, or not less than two of them, fix a date not earlier than fourteen days from the service, on which he will hear any relevant evidence, information, or arguments submitted by the representatives of the applicants and of the society. He shall also forward a copy of the application to the secretary of the society.

Amended by S.L.R. Act, 1935.

On the day so fixed no more than two representatives of the society and of the applicants may attend before the registrar and place before him any relevant evidence, information, or arguments.

If, after hearing the representatives, he considers that an investigation is necessary and that the applicants are not actuated by malicious motives he may by order appoint some competent auditor, accountant, or actuary to make investigation into all or any of the matters stated in the application. Before an order is made the applicants shall give security to an amount not exceeding fifty pounds for payment of the costs of the investigation.

If the registrar suspects that any fraud or crime has been committed in connection with the affairs of a society he may on his own initiative or on any application made in accordance with the previous provisions of this section appoint an inspector without giving notice to or hearing any person and may dispense with or reduce the amount of security for costs.

Any person appointed by the registrar to conduct an investigation is in this section referred to as "an inspector."

(2) Any inspector appointed under this section may for the purpose of his investigation inspect or require the production of all or any of the books, accounts, securities, or

documents of the society, and may examine on oath or affirmation any officer, member, agent, or servant of the society, and may administer an oath or affirmation accordingly.

(3) If any person—

- (a) upon being required by an inspector to produce any books, documents, or securities in his possession or under his control and relevant to the matters under investigation fails to produce them accordingly; or
- (b) prevents any inspector from inspecting any such books, documents, or securities; or
- (c) obstructs any inspector in his inspection of such books, documents, or securities; or
- (d) being required by any inspector to take an oath or affirmation refuses to do so; or
- (e) fails to answer any question put to him by an inspector relevant to the matters under investigation or knowingly gives a false answer to any such question,

he shall be guilty of an offence and liable to a fine not exceeding fifty pounds, and in the case of an offence under paragraph (e) of this subsection to a fine not exceeding one hundred pounds or imprisonment for any period not exceeding six months.

(4) On the conclusion of the investigation, the inspector shall report his opinion to the registrar, and the registrar shall forward a copy of the report to the society and to all or any of the applicants requesting the same.

(5) If from the report it appears to the registrar that any person has been guilty of any offence, he shall also send a copy of the report to the Attorney-General.

(6) The registrar may make such order as he thinks just against the society, or any director, member or officer thereof, or against any applicant, as to payment of the whole or any part of the costs of and incidental to the appointment of the inspector, and the making of the investigation.

(7) Any such order or a copy thereof certified by the registrar as correct may be filed in the local court nearest to the head office of the society, and when it has been so filed the order may be enforced in all respects as if it were a judgment of that local court.

(8) Any person aggrieved by an order of the registrar under the last preceding subsection may appeal to the Supreme Court against the order and the court may on such appeal affirm, quash, or vary such order or substitute any other order therefor. The jurisdiction conferred upon the Supreme Court by this section may be exercised on summons by a judge sitting in chambers.

36a. (1) The registrar or any public servant, accountant, or actuary authorised in writing by the registrar may inspect and take copies of any books, accounts or records of any society.

Inspection by registrar.
N.S.W. 1, 1924, s. 17.
Inserted by 2411, 1938, s. 8.

(2) If—

(a) any person who has in his possession or under his control any books, accounts, or records of any society fails to produce them for inspection and copying when required by the registrar or any person authorised by him in writing under this section; or

(b) any person hinders or obstructs the registrar or any such authorised person in making any inspection or taking any copies under this section,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding twenty pounds.

(3) The registrar may require the manager of any bank or branch of a bank in which the funds of a society are deposited or invested to furnish him with a statement of the amount of such deposit or investment and any other particulars required by him to be furnished.

Any person who upon receipt of a demand under this subsection fails to comply therewith shall be guilty of an offence and liable on summary conviction to a fine not exceeding twenty pounds.

37. (1) Every dispute between any member of any society under this Act, or any person claiming through or under such member and the society or any officer thereof, shall be decided in the manner directed by its rules, and the decision so made shall be binding and conclusive on all parties, and shall be final to all intents and purposes, and shall not be subject to appeal, and shall not be removed or removable into any court of law, or restrained or restrainable by the injunction of any court.

Disputes.
Cf. U.K.,
37 & 38 Vict.,
c. 42, s. 34.

Subsecs. (2),
(3), (4),
inserted by
2122, 1933,
s. 7.

(2) If any party to any dispute does not obey any order or award made for the purpose of deciding such dispute the Supreme Court upon being satisfied that such order or award was made and has not been obeyed, may make any order which it thinks just for enforcing compliance with such order or award. The jurisdiction conferred upon the Supreme Court by this section may be exercised on summons by a judge sitting in chambers.

(3) Nothing in this Act nor in the rules of any society shall prevent any society or any member thereof or any person claiming through or under it or him from obtaining in the ordinary courts of law any remedy in respect of any mortgage or other contract and to which he or the society would otherwise be by law entitled.

Cf. U.K.,
47 & 48 Vict.,
c. 41, s. 2.

(4) In this Act, and in the rules of any society made under this Act, the word "disputes" means disputes between the society and a member or any representative of a member, in his capacity of a member of the society, and does not include any dispute between any society and any member thereof or other person whatever as to the construction or effect of any mortgage, deed, or any contract contained in any document other than the rules of the society.

Termination
or dissolution
of society.

Cf. U.K.,
37 & 38 Vict.,
c. 42, s. 32.

38. (1) A society under this Act may terminate or be dissolved—

- I. upon the happening of any event declared by its rules to be the termination of the society:
- II. by dissolution in manner prescribed by its rules:
- III. in cases where no manner is prescribed by its rules, by dissolution with the consent of three-fourths of the investing members, holding not less than two-thirds in value of the investing shares in the society then current, testified by their signatures to the instrument of dissolution. The instrument of dissolution shall set forth—
 - (a) the liabilities and assets of the society in detail:
 - (b) the number of members and the amount standing to their credit in the books of the society:
 - (c) the claims of depositors and other creditors, and provision to be made for their payment:

- (d) the intended appropriation or division of the funds and property of the society:
- (e) the names of one or more persons to be appointed trustees for the special purpose of winding up the society, and their remuneration:

Alterations in the instrument of dissolution may be made with the like consent testified in the same manner.

The instrument of dissolution, and all alterations therein, shall, when signed by the required number of members, be transmitted to the registrar with a statutory declaration by the secretary verifying the signatures thereto, and that it is signed by the required number of members, and shall thereupon be registered by the registrar, and shall be binding upon all the members of the society:

- iv. by winding-up by the court, if the court shall so order on the petition of any member, authorised by three-fourths of the investing members, holding not less than two-thirds in value of the investing shares in the society then current, present at a general meeting of the society specially called for the purpose, to present the same on behalf of the society, or on the petition of any judgment creditor for not less than one hundred pounds, but not otherwise:
- v. by winding-up by the court on the petition of the registrar on the happening of any of the events specified in subsection (2) of this section:

Inserted by
2411, 1938,
s. 9 (a).

General rules or orders for regulating the proceedings of the court in relation to the winding-up of societies under this Act may be from time to time made by any three judges of the court. In the absence of any such rules or orders the rules or orders for the time being regulating the winding-up of companies under the Companies Act, 1934, shall apply so far as applicable:

Amended by
S.L.R. Act,
1936.

Notice of the commencement and termination of every dissolution or winding-up shall be sent to the registrar, and registered by him.

N.S.W. 1,
1924, s. 92.
Inserted by
2411, 1938,
s. 9 (b).

(2) The registrar may, if he is satisfied that the facts justify him in doing so, apply by petition for the winding-up of a society in any of the following cases:—

- (a) If the number of members of the society is reduced to less than ten:
- (b) If the society has not commenced business within a year of registration, or has suspended business for more than six months:
- (c) If the period, if any, fixed for the duration of the society by its rules has expired:
- (d) If an event has occurred upon the occurrence of which the rules of the society provide that the society is to be wound up:
- (e) If the registration of the society has been obtained by fraud or mistake:
- (f) If the society exists for an illegal purpose:
- (g) If the society has unlawfully and after notice from the registrar, violated this Act, or the rules of the society.

Too few
members.
Inserted by
2411, 1938,
s. 10.

38a. If a society continues to carry on business for one month after the number of its members is reduced below ten, every person who is a member of the committee of management of the society at any time while it so continues to carry on business, and is aware that it is so carrying on with less than ten members, shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding five pounds for every day during which the offence continues.

Societies may
unite or
transfer
engagements.

Cf. U.K.,
37 & 38 Vict.,
c. 42, s. 33.
Cf. U.K.,
40 & 41 Vict.,
c. 63, s. 5.

39. Two or more societies under this Act may unite and become one society with or without a dissolution or division of the funds of such societies or either of them, or a society under this Act may transfer its engagements to any other society under this Act, upon such terms as shall be agreed upon by three-fourths of the investing members (holding not less than two-thirds in value of the investing shares then current) of each of such societies present at general meetings respectively convened for the purpose; but no such union or transfer shall prejudice any right of any creditor of either society. Notice of every such union or transfer shall be sent to the registrar, and registered by him.

40. When all moneys intended to be secured by any mortgage or further charge given to a society under this Act have been fully paid or discharged, the society may endorse upon or annex to such mortgage or further charge a receipt under the seal of the society, in the form specified in the third schedule to this Act, and such receipt shall vacate the mortgage or further charge and debt, and also all further charges relating to the same land dated subsequently to the mortgage or further charge on or to which such receipt shall be endorsed or annexed and prior to the date of the receipt, and vest the estate of and in the property therein comprised in the person for the time being entitled to the equity of redemption, without any reconveyance or re-assignment whatever, and so that the person for the time being entitled to the equity of redemption in cases where he was the original mortgagor of the property shall hold the property to the same uses and upon the same trusts so far as they have not been varied or altered as he held the property before mortgaging, and in cases where the person for the time being entitled to the equity of redemption is not the original mortgagor of the property, shall hold the property to the same uses and upon the same trusts as he held the equitable estate.

Receipt to operate as reconveyance.
Cf. U.K., 37 & 38 Vict., c. 42, s. 42.

40a. (1) On the death of a member the society shall, except as otherwise provided in subsection (2) of this section or in the rules of the society, transfer his share or interest to one of the following persons:—

Death of member.
N.S.W. 1, 1924, s. 58.
Inserted by 2411, 1938, s. 111.

- (a) to the nominee of the member nominated by a written nomination deposited with the secretary of the society; or
- (b) if there is no such nominee, then to the executor or administrator of the member; or
- (c) to such person as the nominee, or if there is no such nominee, then as the executor or administrator may specify in an application made to the society within three months after the death of the member.

(2) If there is no such nominee, executor, administrator, or other person willing to have the share or interest transferred to him, the board may purchase such share or interest and pay the amount of the purchase-money to the nominee, or if there is no such nominee, then to the executor or administrator:

Provided that the board shall not be bound to make such payment until all moneys due from the deceased member or his estate have been repaid to the society.

(3) The share or interest shall for the purposes of this section include any credit balance due to the member, and the value of the share or interest shall be ascertained in accordance with the rules.

(4) The nominee nominated by the member shall not be an officer or employee of the society unless the officer or employee is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the member.

(5) The nomination shall not be valid or effectual if at the date of the nomination the member is under the age of sixteen years, or if at the death of the member the value of his share or interest exceeds two hundred pounds.

(6) The nomination may be revoked or varied by a written notice deposited with the secretary of the society, but shall not be revocable or variable by will or codicil.

(7) The nomination shall be revoked by the marriage of the member, unless expressed to be made in contemplation of marriage and in favour of the intended wife: Provided that where the society makes any transfer or payment to a nominee in ignorance of a marriage contracted by the member after the date of the nomination, the receipt of the nominee shall be a valid discharge to the society, and the society shall be under no liability to any other person claiming the share or interest.

(8) Any transfer or payment made by the society in accordance with this section shall be valid and effectual against any demand made upon the society by any other person.

Administra-
tion may be
dispensed
with in
certain cases.
Of. U.K.,
37 & 38 Vict.,
c. 42, s. 29.

41. If any member of, or depositor with, a society under this Act, having in the funds thereof a sum of money not exceeding one hundred pounds, die intestate, or if any person entitled to the equity of redemption of any property mortgaged to any society under this Act die intestate, and upon the sale of the mortgaged premises any money not exceeding one hundred pounds remains in the hands of the society after paying the amount due to the society, and the costs and expenses of sale, then, and in either of such cases, such money may be paid to any person who shall appear to the society to be entitled to obtain letters of administration of the estate of such deceased member, depositor, or person, as aforesaid, without his taking out letters of administration, upon such person giving such security, and upon such evidence as the committee of management shall consider satisfactory of such

death and intestacy, and that the person so claiming is entitled as aforesaid; and whenever the society has paid any sum of money not exceeding one hundred pounds, under the provisions aforesaid, the receipt of the person to whom the same has been paid shall be a valid and effectual discharge to the society for the money so paid, but nevertheless the person who has received the same shall be liable to account to the next of kin, or personal representative of such deceased member, depositor, or person, as aforesaid, for the amount so received.

Nothing in this section shall affect the rights of a nominee under any nomination, made by a member and in force at the material time.

Inserted by
2411, 1938,
s. 12.

41a. (1) On any application for registration of a society or of any rule or document under this Act, the registrar may require any applicant to furnish him with any information reasonably required for the purpose of showing that the application should be granted.

Information
and evidence.
Cf. N.S.W. 1,
1924, s. 116.
Inserted by
2411, 1938,
s. 13.

(2) The registrar may at any time require from any society any information reasonably required for the purpose of showing that the society is *bona fide* carrying on business and is complying or has complied with the requirements of this Act.

(3) The registrar may require any such information to be verified by a statutory declaration.

41b. (1) If (except as provided for in the rules of the society) any officer of a society accepts any commission, fee, or reward, whether pecuniary or otherwise, from any person for or in connection with a transaction of such person with the society, he shall be guilty of an offence, and shall be liable on summary conviction to imprisonment for any term not exceeding six months or to a penalty not exceeding one hundred pounds.

Commission.
N.S.W. 1,
1924, s. 110.
Inserted by
2411, 1938,
s. 13.

(2) Every officer who is guilty of an offence under subsection (1) of this section shall further be liable to make good to the society double the value or amount of such commission, fee, or reward.

41c. Every year the Governor shall cause an investigation to be made into the operations and administration of those societies whose loans have been guaranteed under section 27a of this Act, or to which the Treasurer has given

Annual
investigation.
Inserted by
2411, 1938,
s. 13.

indemnities under section 27b of this Act, and shall cause the report on such investigation to be laid before both Houses of Parliament.

Annual
report.

Inserted by
2411, 1938,
s. 13.

41d. The registrar shall within three months after the close of each financial year present to the Minister a report on the working of this Act during that financial year and the report shall, as soon as practicable after the receipt thereof, be laid before both Houses of Parliament.

Penalties for
breach of this
Act.

Of. U.K.,
37 & 38 Vict.,
c. 42, s. 43.

42. If any building society, or any persons representing themselves to be a society under this Act, commences business without first obtaining a certificate of incorporation under this Act, or if any society under this Act makes default in forwarding to the registrar any returns or information by this Act required, or makes a return wilfully false in any respect, the committee of management, secretary, and every other officer of such society, or pretended society, shall be liable for every day business is carried on, or for every such default or false return, upon summary conviction before a special magistrate or two justices, at the complaint of the registrar, to a penalty not exceeding five pounds. If any society under this Act receives loans or deposits in excess of the limits prescribed by this Act, every member of the committee of management of such society shall be personally liable for the amount so received in excess.

Offences.

Of. U.K.,
37 & 38 Vict.,
c. 42, s. 31.

43. If any person whosoever, by false representation or imposition, obtains possession of any moneys, securities, books, papers, or other effects of a society under this Act, or having the same in his possession, withholds or misapplies the same, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society, and authorised by this Act, he shall be liable on summary conviction to a penalty not exceeding twenty pounds, with costs not exceeding twenty shillings, and to be ordered to deliver up to the society, or to any person named in the order, all such moneys, securities, books, papers, or other effects of the society, or to repay the amount of money applied improperly, and in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs, to be imprisoned, with or without hard labour, for any time not exceeding three months; but nothing herein contained shall prevent any such person from being prosecuted under any law now or hereafter to be in force, if a conviction has not been previously obtained against him for the same offence under the provisions of this Act.

FOURTH SCHEDULE.

A General Statement of Receipts and Expenditure of the

Building Society for the [year, half-year, or quarter] ending

	£	s.	d.
Dr.			
To Balance from previous statement (if any)			
Subscriptions—Payments on shares			
Redemption of shares			
Loans—General deposits received			
" Repayment of mortgages (not shareholders')			
" of other securities			
Entrance fees			
Rents and recoveries			
Fines			
Transfer fees			
Interest on loans, etc.			
Bonus or premiums on shares			
Balance due bank (if any)			
Cheques outstanding (if any)			
Receipts from other sources (distinguishing nature of same)			
	£		

We, the undersigned, being auditors of the this society, and compared the same with the above statement of receipts and expenditure, and that the same is correct.

Secretary.

A General Statement of the Assets and Liabilities of the

	£	s.	d.
Dr.			
To amount received on subscription shares			
Profit to credit of			
Loans—General deposits and interest			
Bank overdraft (if any)			
Reserve account (if any)			
Cheques outstanding (if any)			
Other liabilities (distinguishing nature of same)			
	£		

We, the undersigned, being auditors of the said society, and compared the same with the books and vouchers of the said society, and that the above statement of assets and liabilities is correct.

Secretary.

	£	s.	d.
Cr.			
By Balance from previous statement (if any)			
Advances upon shares and freehold or leasehold security of other security (distinguishing nature of same)			
Matured or worked out shares—Subscriptions			
Profit			
Withdrawn shares—Subscription			
Profit			
Loans—General deposits			
Interest—Loans and deposits			
Current expenses, viz.—Distinguishing the items of Directors' fees, Survey or inspection fees, Office rent, Auditors' fees, Salaries and commissions, Solicitors' fees, Office expenses and stationery, etc., etc.			
Other payments—Bank balances, Cash in hand, etc., distinguishing the same			
	£		

We, the undersigned, being auditors of the books and vouchers of this society, do hereby certify that we have examined the books and vouchers of receipts and expenditure, and that the same is correct.

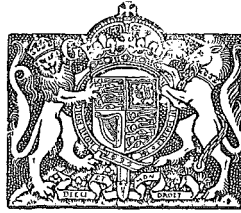
Auditors.

Building Society on the day of

	£	s.	d.
Cr.			
By Amount due upon £ advanced upon shares and freehold and leasehold security to shareholders (interest to date only included)			
Amount due on mortgages (not shareholders')			
Amount invested in Government stocks or securities, or securities guaranteed by Government			
Office buildings, freehold or leasehold			
Balance in bank (if any)			
Cash in hand			
Other assets or securities (distinguishing nature of same)			
	£		

We, the undersigned, being auditors of the securities held by the said society, and that the above statement of assets and liabilities is correct.

Auditors.



FISHERIES ACT, 1917-1938.

BEING

FISHERIES ACT, 1917, No. 1293 OF 1917 [ASSENTED TO 15TH
NOVEMBER, 1917.]

AS AMENDED BY

FISHERIES ACT AMENDMENT ACT, 1922, No. 1530 OF 1922
[ASSENTED TO 21ST DECEMBER, 1922.]

FISHERIES ACT AMENDMENT ACT, 1930, No. 1984 OF 1930
[ASSENTED TO 20TH NOVEMBER, 1930.]

STATUTE LAW REVISION ACT, 1934, No. 2168 OF 1934
[ASSENTED TO 15TH NOVEMBER, 1934.]

CRIMINAL LAW CONSOLIDATION ACT, 1935, No. 2252 OF 1935
[ASSENTED TO 21ST DECEMBER, 1935.]

FISHERIES ACT AMENDMENT ACT, 1938, No. 2391 OF 1938
[ASSENTED TO 22ND SEPTEMBER, 1938.]

AND

FISHERIES ACT AMENDMENT ACT (No. 2), 1938, No. 2419 OF 1938
[ASSENTED TO 15TH DECEMBER, 1938.]

An Act to consolidate and amend certain Acts for the preservation and protection of fish, and certain Acts to promote the breeding of oysters and to regulate oyster fisheries.

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

PART I.

PART I.

PRELIMINARY.

Short title.

Cf. U.K.
31 & 32 Vict.
c. 45.
Cf. U.K.
23 & 24
Geo. 5 c. 45.

1. This Act may be cited as the "Fisheries Act, 1917-1938."

Criminal Law Consolidation Act, 1935: This Act was proclaimed to commence on 2nd January, 1936: *Gazette* 2nd January, 1936, p. 1.

2. The provisions of this Act are arranged as follows:—

PART I.—Preliminary.

PART II.—Administration—

DIVISION I.—Powers of the Governor:

DIVISION II.—Powers of the Minister:

DIVISION III.—Inspectors and their Duties.

PART III.—Fisheries and Oyster Fisheries—

DIVISION I.—General Licences to take Fish and Oysters:

DIVISION II.—Registration of Boats:

DIVISION III.—Natural Oyster Beds:

DIVISION IV.—Artificial Oyster Beds:

DIVISION V.—Miscellaneous Provisions with respect to Oyster Fishing.

PART IV.—Miscellaneous.

PART V.—Offences and Penalties.

PART VI.—Regulations.

PART VII.—Evidence and Legal Procedure.

3. The Acts specified in the schedule hereto are repealed.

Repeal.

4. In this Act, unless some other meaning is clearly intended—

“boat” includes every vessel, barge, or punt of any description:

“close season” means the period of time during which waters are closed against the use of any device, or the taking of fish or oysters, or any species of fish or oysters:

“closed waters” means any waters reserved for a hatchery, or any waters declared by proclamation to be waters within which it shall not be lawful to take fish or oysters:

“Crown lands” means Crown lands as defined in any Act or Acts for the time being in force relating to Crown lands, and includes any foreshore, as well as any land under the sea within the territorial limits of the State, or under any tidal or inland water, or under any river, lake, lagoon, or other water in the State, the property in which land is vested in the Crown:

“device” means any implement, gear, contrivance, or engine used to take any fish or oysters:

Interpretation
of terms.

Cf. 864,
1904, s. 3.
Cf. U.K.
51 & 52 Vict.
c. 54, s. 14.
Cf. U.K.
13 & 14
Geo. 5 c. 16,
s. 92.

Inserted by
1530, 1922,
s. 3.

PART I.

Substituted
by 2391,
1938, s. 2
(a).
Of. U.K.
31 & 32 Vict.
c. 45, s. 5.
Of. U.K.
23 & 24
Geo. 5 c. 45,
s. 9.

“fish” means—

- (a) every species of fish:
- (b) shellfish (other than oysters) and other molluscs:
- (c) crayfish, crabs, prawns, shrimps, and other crustaceans:
- (d) mammals:
- (e) the spat, spawn, fry and young of anything hereinbefore defined as fish:

Inserted by
2391, 1938,
s. 2 (b).

“hand crab-net” means a hoop or ring not exceeding three feet six inches in diameter to which netting is attached in the form of a cone and which is hauled by means of a line:

“hand-line” means any line intended or used for catching fish, to which not more than three fishing hooks are attached:

“hatchery” means any water used for the spawning, propagation, or culture of fish or oysters:

“hauling” includes casting, shooting, fixing, setting, placing, or staking:

“inspector” means inspector of fisheries, and includes Chief Inspector of Fisheries and any inspector of fisheries *ex officio*:

“licence” means licence issued pursuant to this Act:

Amended by
2391, 1938,
s. 2 (c).

“oysters” means oysters and all brood, spat, and spawn of oysters:

“oyster culture” means the cultivation of oysters, and the taking of oysters for sale:

“prescribed” means prescribed by this Act:

Inserted by
1984, 1930,
s. 2.

“River Murray” includes any affluent, effluent, ana-branch, or extension of the River Murray, and any river, creek, stream, watercourse, spring, lake, lagoon, swamp, or marsh connected with the River Murray:

“rod and line” means a single rod and line to which not more than three fishing hooks are attached:

“stocked waters” means any waters which have been artificially stocked with fish:

“take,” with its derivatives, includes fish for, catch, kill, destroy, dredge for, raise, tong, collect, gather, obtain by any means, or carry away:

The verb to sell includes—

- i. to sell, barter, or exchange;
- ii. to agree to sell, barter, or exchange;

- III. to offer, expose, store, have in possession, send, consign, or deliver for or on sale;
- IV. to receive for sale;
- V. to cause or suffer to be sold, bartered, or exchanged, or to be agreed to be sold, bartered, or exchanged;
- VI. to cause or suffer to be offered, exposed, stored, had in possession, sent, consigned, or delivered for or on sale;
- VII. to cause or suffer to be received for sale; and
- VIII. to attempt to do any of such acts or things; and the word "sale" shall be construed accordingly.

The verb to buy includes to buy, to receive or accept under an agreement to sell, and to offer to receive or accept or cause or suffer to be received or accepted under an agreement to sell.

"this Act" includes any proclamations and regulations made under the provisions of this Act:

"to fish" and "fishing" include any mode of taking oysters:

"use" includes assist in the use of:

"waters" includes the sea, and all bays, gulfs, and inlets of the sea, and every lake and lagoon, river, creek, and stream, and any waters on or over private land:

"weight" includes length and size.

PART II.

PART II.

ADMINISTRATION.

DIVISION I.—POWERS OF THE GOVERNOR.

DIVISION I.

5. The Governor may, subject to the provisions and for the purposes of this Act, appoint a Chief Inspector of Fisheries and such other inspectors and officers as may be necessary.

Governor may appoint officers.
864, 1904, s. 4 (part).

6. (1) The Governor may, by proclamation—

- I. declare any waters to be reserved for a hatchery;
- II. declare areas or waters within which any specified devices are not to be used, or within which it shall not be lawful to take fish or oysters;
- III. declare close seasons for the protection of fish or oysters, or any species of fish or oysters:

General powers of the Governor.
Cf. *ibid.*, s. 4 (part).
Cf. U.K. 40 & 41 Vict. c. 42, ss. 4, 5, 8, 9, 10.
Cf. U.K. 51 & 52 Vict. c. 54, s. 2.
Cf. U.K. 4 Geo. 5 c. 3.

PART II.
 DIVISION I.
 Cf. U.K.
 13 & 14
 Geo. 5 c. 16,
 ss. 6, 7,
 Parts III.,
 VI.
 Cf. U.K.
 23 & 24
 Geo. 5 c. 45,
 s. 3 (1).
 Amended by
 1530, 1922,
 s. 4, and
 1984, 1930,
 s. 3.
 Para. Iva.
 inserted by
 1984, 1930,
 s. 3 (a).

- iv. declare any specified device, or any specified device which is used in any other than the prescribed manner, or any specified device when used in prescribed areas or waters, to be illegal and liable to forfeiture:
- iva. declare any specified kind of net when used in any specified waters at a greater depth than six feet to be an illegal device:
- v. prescribe what shall be the lawful length and depth of any device and the size of mesh which may be lawfully used for the whole or any part of any device, and also the lengths of hauling lines which may be attached thereto, and the number of devices that may be attached to each other:
- vi. prescribe the minimum weight at which any prescribed species of fish or oysters may be taken or had in possession or sold, and from time to time vary any such weights, or add to the list of the species of fish or oysters already prescribed any additional species of fish or oysters, and the minimum weight at which such additional species may be taken or had in possession or sold:
- via. prescribe species of fish which may not be taken pursuant to section 47 unless of or over the prescribed weight and prescribe areas in which such fish may during any one day be taken up to the number fixed in the proclamation:
- vii. exempt any jetty, pier, or wharf from all or any of the provisions of this Act.

(2) Every proclamation made under this section shall have effect according to the tenor thereof.

(3) The Governor may by proclamation revoke any proclamation made under this section.

Inserted by
 2391, 1938,
 s. 3.

Inserted by
 1530, 1922,
 s. 4 (c).

DIVISION II.

DIVISION II.—POWERS OF THE MINISTER.

Special powers
 of the
 Minister.

Cf. 864, 1904.
 s. 5.

Para. (a)
 repealed by
 2391, 1938,
 s. 10 (b).

7. (1) The Minister may—

* * * * *

(b) direct the manner in which any forfeited boat or device, or fish or oysters, may be disposed of:

(c) empower any inspector to enter any place at all times to search for and take any forfeited boat or device, or fish or oysters, and to search for and seize any device which, in his opinion, is used, or intended to be used, contrary to the provisions of this Act:

(d) issue permits for taking fish or oysters from closed waters for scientific purposes, or for stocking other waters:

Cf. U.K.
13 & 14
Geo. 5 c. 16,
s. 5.

(e) direct the carrying out of experiments in methods of culture, propagation, and catching of fish or oysters, and take steps for the discovery of spawning places, trawling grounds, and oyster beds, and grant permits for any of such purposes:

(f) cancel any licence or permit under this Act:

(f1) upon the application of any person holding any licence or certificate under this Act revoke the licence or certificate and refund to that person such portion of the licence or certificate fee as the Minister thinks fit but not exceeding such proportion of the fee as the unexpired portion of the term of the licence or certificate bears to the full term of the licence or certificate:

Inserted by
2391, 1938,
s. 4 (1).

(g) establish any hatchery on or over any waters: Provided that if such waters are on or over any private land, a hatchery may be established only with the consent of the owner or lessee of such land, on such terms and conditions as may be agreed:

The establishment of a hatchery by the Minister shall have the effect of vesting in the Minister the exclusive right during the continuance thereof to stock such hatchery with fish or oysters, and to take therefrom any fish or oysters, and to sell or otherwise dispose of fish or oysters from such hatchery:

(h) do all things which he is by this Act empowered or required to do, or which may be necessary or convenient for carrying into effect the objects of this Act.

(2) The Minister may, upon the recommendation of the chief inspector, direct that a licence to take fish or oysters be issued without fee to any person who the Minister is satisfied is over the age of sixty years and is a fisherman of long standing. Any such licence may thereupon be issued without fee.

Inserted by
2391, 1938,
s. 4 (2).

DIVISION III.

DIVISION III.—INSPECTORS AND THEIR DUTIES.

Ex officio
inspectors.
864, 1904,
s. 6.

8. All members of the police force shall be *ex officio* inspectors.

General
powers of
inspectors.
Cf. *ibid.*, s. 8.
Cf. U.K.
31 & 32 Vict.
c. 45 s. 9.
Cf. U.K.
51 & 52 Vict.
c. 54 s. 6 (2).
Cf. U.K.
13 & 14
Geo. 5 c. 16,
Part VIII.
Cf. U.K.
23 & 24
Geo. 5 c. 45,
s. 3 (4).

9. An inspector may at any time—

- (a) destroy any fish or oysters which are unfit for human consumption:
- (b) enter upon any waters, and pass through or along the banks or borders of the same, and examine all tributaries, sluices, and watercourses communicating therewith:
- (c) board any fishing-boat or oyster fishing-boat:
- (d) examine any device:
- (e) demand the production of any licence or permit:
- (f) seize any device which, in his opinion, is used, or intended to be used, contrary to the provisions of this Act:
- (g) seize any fish or oysters which he has reasonable grounds for suspecting to have been illegally taken:
- (h) seize any boat containing any illegal device, or any boat which is being used for the purpose of taking fish or oysters contrary to this Act: and
- (i) do all other acts and things which he is by this Act required or authorised to do.

Powers of
inspectors to
enter and
search and
seize.

Cf. 864, 1904,
s. 7.
Cf. U.K.
40 & 41 Vict.
c. 42, s. 12.
Cf. U.K.
51 & 52 Vict.
c. 54 s. 7.
Cf. U.K.
13 & 14
Geo. 5 c. 16,
s. 69.

Amended by
2391, 1938,
s. 5.

10. Every inspector, in addition and without prejudice to any other power vested in him, may go on board any boat, or enter any fish market or other place where fish or oysters are, or are reasonably suspected by him to be, sold, or packed or prepared for sending to any market or shop or to any agent, fish salesman, or auctioneer, or to any person or place for sale, and therein search for and examine any device, or fish or oysters, and may seize and take away any fish or oysters which are under the prescribed size, or any parcel, box, or bag of fish or oysters in which such undersized fish or oysters, or any fish or oysters, diseased or unwholesome, are found, and may examine and make copies of any records, books, or documents relating to any fish or oysters: Provided that the chief inspector may, in his discretion, order the restoration to the owner thereof of any or all of the fish or oysters and things so seized.

PART II.
DIVISION III.

10a. (1) Any inspector may require any person in charge of any boat registered under section 16 to permit the inspector to use the boat for the purpose of enforcing the provisions of this Act.

Power to requisition fishing boat.
Inserted by 2391, 1938, s. 6.

(2) Any person who refuses to permit an inspector to use any such boat shall be guilty of an offence against this Act.

(3) The Minister shall pay such amount as is reasonable for the use of the boat by the inspector. The said amount shall not exceed five pounds per day during the time the boat is used plus an amount equal to any damage caused to the boat during the time it is used. The said amount shall be paid to the person who by reason of the use of the boat by the inspector is deprived of the use of the boat.

11. Inspectors are hereby required to apprehend any person offending against any of the provisions of this Act who, on being thereunto required by an inspector, refuses to give his name or address, or gives a false name or a false address.

Inspectors to apprehend certain offenders.
977, 1909, s. 5 (part).

12. No person shall, without the consent of the Minister, be competent to be, or to continue, an inspector under this Act who has, or after his appointment shall have, any interest, direct or indirect, in the sale of fish or oysters, or in any fishery or oyster fishery, or in any boat used in fishing or oyster fishing, or who acts as agent for any person so interested.

Person interested in oyster fishing, etc., not to act as inspector.
366, 1885, s. 30.

PART III.

PART III.

FISHERIES AND OYSTER FISHERIES.

DIVISION I.—GENERAL LICENCES TO TAKE FISH AND OYSTERS.

DIVISION I.

13. (1) Licences to take fish and oysters shall be issued in the prescribed form to applicants who make application therefor in the prescribed form and pay the prescribed fee.

Fishermen's licences.
Of. *ibid.*, s. 10.
Of. 864, 1904, s. 12.
Subsec. (1) amended by 2391, 1938, s. 7 (a).

(2) Such licences shall be either half-yearly or yearly licences, and may be issued at any time: Provided that every half-yearly licence shall expire on the last day of June or the last day of December (whichever is the earlier day), and every yearly licence shall expire on the last day of December, next after the same is issued.

PART III.
DIVISION I.

Inserted by
2391, 1938,
s. 7 (b).

(2a) If application is made by any person who is the holder of a current licence issued under this section, a licence under this section may be issued to that person at any time within fourteen days before the expiry of the current licence. In such case the licence so issued shall commence from the expiry of the current licence and shall, for the purpose of subsection (2), be deemed to be issued upon the date of the expiry of the current licence.

Inserted by
1984, 1930,
s. 4.

(3) No licence shall be issued under this section except to a natural born British subject or a naturalized British subject: Provided that, with the consent of the Minister, a licence may be issued to an unnaturalized person who has not qualified for naturalization by the length of his residence in Australia or to an unnaturalized person who has made application for a certificate of naturalization.

Licence sufficient for
licensee and
one member
of family.

864, 1904,
s. 15.

Amended by
2391, 1938,
s. 8.

14. (1) One such licence as referred to in section 13 shall be sufficient for the person named therein as licensee, and also for his wife or for one member of his family under the age of twenty-one years whilst his wife or such member is working with the same plant as such licensee.

(2) For the purposes of this section the following persons and no others shall be deemed to be members of the licensee's family, namely, his sons, daughters, stepsons, and step-daughters.

Employee's
licences.
Inserted by
2391, 1938,
s. 9.

14a. (1) If the chief inspector is satisfied that any person who is licensed under section 14 employs another person to take fish or oysters he may, upon application in the prescribed form and upon payment of the prescribed fee, issue to the first mentioned person in the prescribed form an employee's licence to take fish and oysters.

(2) Every employee's licence shall be a yearly licence which shall, subject to subsection (3), expire on the last day of December next after the same is issued.

(3) If any person who is the holder of current licences under section 14 and this section makes application pursuant to subsection (2a) of section 13 for the issue of a licence under section 14 and also makes application for the issue of an employee's licence, an employee's licence may be issued to that person at any time within fourteen days before the expiry of the current licence. In such case the licence so issued shall commence from the expiry of the current licence and shall expire on the last day of December next after the expiry of the current licence.

(4) Subject as hereinafter provided, every employee's licence shall be deemed a sufficient licence to take fish and oysters for any one person employed as aforesaid by the person to whom the licence is issued. A licence issued under this section shall apply only to any person employed as aforesaid who is a natural born British subject or a naturalized British subject: Provided that, with the consent of the Minister, an employee's licence may apply to an unnaturalized person who has not qualified for naturalization by the length of his residence in Australia or to an unnaturalized person who has made application for a certificate of naturalization.

15. Every licence under section 13 or section 14a shall be issued by the chief inspector or by some person authorized by him in writing to issue such licences.

Issue of licences.

Substituted by 2391, 1938, s. 10 (a).

15a. (1) The Minister may grant a licence or certificate to any person, giving such person, his executors, administrators, and assigns, during the whole period of the licence or certificate the sole and exclusive right by himself or themselves, or his or their servants, agents, or licensees, to take such kinds of fish as are specified in the licence or certificate within such area of the sea or of bays, gulfs, or inlets of the sea within the territorial limits of the State or within such area of any river in the State as is specified in the licence or certificate.

Power of Minister to grant exclusive licences.

Inserted by 1530, 1922, s. 5, as amended by S.L.R. Act, 1934, and amended by 2391, 1938, s. 11.

(2) No licence or certificate granted pursuant to this section shall abrogate or in any way affect the right of any person other than the holder thereof to take fish of the kind specified in such licence or certificate within the area specified in such licence or certificate for any purpose other than for the purpose of sale or for use in connection with any business.

(3) Such licence or certificate shall be for such period, and upon such terms, conditions, and restrictions, and subject to such payments, as the Minister thinks fit.

(4) The area in respect of which any licence or certificate may be granted pursuant to this section shall not extend for a distance of more than ten miles along any shore or coast.

(5) The Minister may, by notice published in the *Government Gazette* revoke any such licence or certificate, which shall thereupon cease and determine, and the holder thereof shall not be entitled to any compensation for such revocation.

(6) The Minister may grant any licence or certificate under this section without any consent being obtained under section 76 of the Harbors Act, 1936.

s. 15a. (6) The expression "section 67 of the Harbors Act, 1913," altered to "section 76 of the Harbors Act, 1936," pursuant to the Amendments Incorporation Act, 1937.

PART III.
DIVISION I.Duties of
licensees.Inserted by
1530, 1922,
s. 6, as
amended by
S.L.R. Act,
1934, and
amended by
2391, 1938,
s. 12.

15b. The holder of a licence or certificate granted pursuant to section 15a of this Act shall set up on some convenient part of the adjacent shore, not being private property, distinguishing marks or buoys or other floating marks, to be approved by an inspector, for indicating the limits of the area with respect to which the licence or certificate is issued.

DIVISION II.

DIVISION II.—REGISTRATION OF BOATS.

Registration
and marking
of boats.Cf. 804, 1904,
s. 16,
1128, 1913,
s. 7.

16. (1) No person shall take any fish or oysters for sale in any boat, or use any boat in the taking of fish or oysters for sale, or otherwise for any purpose of the trade or calling of a fisherman, or manage or take part in the management of a boat when the same is so used, unless such boat is—

- i. registered as herein provided; and
- ii. marked as prescribed by regulation.

(2) Any person desiring to obtain the registration of a boat for the purposes of this section, and to have a mark allotted to him for such purposes, shall make application therefor to the chief inspector in the prescribed form, whereupon the chief inspector shall issue to the applicant a certificate of registration in the prescribed form, and shall allot to him a distinguishing number or mark, which shall be painted or otherwise marked on such boat in the prescribed manner and position.

(3) Registration of a boat may be effected at any time, but shall expire upon the person to whom the certificate of registration is issued ceasing to take fish or oysters as aforesaid in such boat, or to use such boat in the taking of fish or oysters as aforesaid, or to manage or take part in the management of such boat when the same is so used.

(4) If the ownership of any registered boat is transferred, the transferee shall within one month of the transfer, give notice in writing to the chief inspector of the transfer.

Inserted by
2391, 1938,
s. 13.

DIVISION III.

DIVISION III.—NATURAL OYSTER BEDS.

Discoverer of
oyster bed
may apply
for exclusive
licence.366, 1885,
s. 14.

17. Any person who discovers on or near the coast of South Australia a natural oyster-bed may apply to the Minister for the issue to him of an exclusive licence for the use of such oyster-bed, or any part thereof, and the Minister may, without any such consent as is required by section 76 of the Harbors Act, 1936, issue to the applicant an exclusive

s. 17. The expression "section 67 of the Harbors Act, 1913," altered to "section 76 of the Harbors Act, 1936," pursuant to the Amendments Incorporation Act, 1937.

licence to use such oyster-bed, or any specified part thereof, for such period, upon payment of such fees, and upon such terms, conditions, and restrictions, as the Minister thinks fit.

18. The licensee, his executors, administrators, and assigns shall, subject to the provisions of this Act, during the whole of the period in the said licence mentioned have the sole and exclusive right by himself or themselves, or his or their servants, agents, or licensees, to fish for oysters in the oyster-bed or part for which the licence is issued.

Licensee to have exclusive right to fish for oysters.
366, 1885, s. 20.
Cf. U.K. 31 & 32 Vict. c. 45, s. 51.

19. If at any time during the currency of such licence it is proved to the satisfaction of the Minister that the holder of such licence, or any person by his direction or permission, is managing or using the oyster-bed or part with respect to which the licence is issued in such a manner that the same is likely to be exhausted or greatly reduced in value, the Minister may, by notice published in the *Government Gazette*, revoke such licence, which shall thereupon cease and determine, and the licensee shall not be entitled to any compensation for such revocation.

Licence may be forfeited for unhusbandlike management.
366, 1885, s. 21.

20. The holder of an exclusive licence for the use of any natural oyster-bed, or any part thereof, shall set up on some convenient part of the adjacent shore, not being private property distinguishing posts or buoys or other floating marks, to be approved by an inspector, for indicating the limits of such oyster-bed or part.

Boundaries of oyster-beds to be indicated by marks on shore or afloat.
Ibid., s. 27.

21. Every person who knowingly deposits on any natural oyster-bed any ballast, sand, mud, refuse, or injurious matter of any kind whatsoever, shall be liable to a penalty not exceeding twenty pounds, in addition to such reasonable compensation for the damage done, not exceeding one hundred pounds, as the special magistrate or justices adjudicating may determine.

Penalty for depositing injurious matter on beds.
Ibid., s. 31.
Cf. U.K. 31 & 32 Vict. c. 45, s. 53.

22. (1) The Minister may from time to time, by one month's notice published in the *Government Gazette*, fix a term, not exceeding four years, during which any natural oyster-bed, not being on private land nor the subject of an exclusive licence, shall be closed, and upon the expiration of such notice the same shall be closed accordingly during the term fixed by such notice.

Minister may close natural oyster-beds.
366, 1885, s. 28.

(2) Every person fishing for oysters on any such closed oyster-bed shall be liable to a penalty not exceeding twenty pounds, or to imprisonment for any period not exceeding three months.

PART III.

DIVISION IV.

DIVISION IV.—ARTIFICIAL OYSTER BEDS.

Minister may lease Crown lands for oyster culture. 1128, 1913, s. 9.

23. (1) The Minister may, on the recommendation of the chief inspector, lease any Crown lands for oyster culture for any term not exceeding fifteen years, at such rental, and subject to such conditions and restrictions, as the chief inspector recommends.

(2) On the application of the lessee made at least three months before the date of expiry of the lease, the Minister may, on the like recommendation, renew the term for a like or a shorter period at the same rental, and with such limitations in other respects as the chief inspector recommends.

Lease for oyster culture. Ibid., s. 10.

24. The Minister may, on the recommendation of the chief inspector, offer, by auction or tender, for any term not exceeding fifteen years, the lease of any Crown lands for oyster culture, at such rental, and subject to such conditions and restrictions, as the chief inspector recommends; and, on the application of the lessee made at least three months before the date of expiry of the lease, the Minister may, on the like recommendation, renew the term for a like period, but at such rent, and subject to such limitations in other respects, as the chief inspector recommends.

Lessee deemed to be in possession on payment of first year's rent. Ibid., s. 11.

25. The lessee, or the purchaser of the lease, of any Crown lands under this Act shall, upon payment of the rent therefor for the first year, be deemed to be in actual and absolute possession of the area comprised therein for all purposes of this Act, notwithstanding that the lease may not have been issued; and such lessee or purchaser or any inspector may seize any oysters removed therefrom without lawful authority; and any person found unlawfully taking oysters in or from such lands shall be liable to a penalty not exceeding fifty pounds; and all oysters found at the time in possession of such person shall be deemed to have been unlawfully taken by him, and may be forthwith seized and returned to such area.

Property and rights conferred by lease. Ibid., s. 12. Cf. U.K. 31 & 32 Vict. c. 45, s. 51.

26. Every lease issued under this Act shall vest in the lessee, his executors, administrators, and permitted assigns, all oysters within the area leased and the exclusive right during the currency of the lease, or any renewal thereof, of laying and planting oysters on, and of dredging and taking oysters from, the area leased, but subject always to the provisions of this Act and to the right of any inspector or authorised officer to enter upon such area.

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27. Occupation under any such lease shall not give any right to the lessee to occupy or to use any portion of any Crown lands abutting on but not included in his lease, except for such purposes and during such times as are prescribed.

Abutting land not included in lease, 1128, 1913, s. 13.

28. Any leased area may be described in the lease by reference to posts, stakes, buoys, marks, connections, or natural features showing the boundaries of such leased area in a manner sufficient to allow of their identification; and the boundaries of any leased area shall be marked by the lessee in manner aforesaid.

Leased area, how described. Ibid., s. 14.

29. The Minister may, on the recommendation of the chief inspector, accept a surrender of any such lease, after the second year of its currency, in any case where it appears, to the satisfaction of the chief inspector, that oyster culture cannot be carried on upon the leased area with any reasonable hope of success, or where, for any other reason, the chief inspector recommends such surrender.

Surrender of lease. Ibid., s. 15.

30. Every leased area shall be subject to all such conditions, provisions, and limitations as are prescribed or as are approved by the Minister, and shall also be subject to the rights of the Crown to carry out all public works upon the area or its immediate vicinity without compensation.

Conditions of leases. Ibid., s. 16.

31. The Minister may, on the recommendation of the chief inspector, resume wholly or in any part any area a lease whereof has been granted under this Act, but subject to the payment by the Crown to the lessee thereof of compensation for the loss of such area or part; which compensation shall, in case of dispute, be determined in manner provided by subsection (2) of section 53 of the Crown Lands Act, 1929, with reference to leases granted after the twenty-third day of December, eighteen hundred and ninety-three: Provided that the Crown shall not be liable to pay compensation for the resumption of any lease that has been issued with a provision relieving the Crown or the Government of the said State from liability for any damage or injury that might be done to the area leased or to the oysters thereon by the carrying out of public works.

Resumption of leases. Ibid., s. 17.

32. Any lessee who is at any time in arrear with the rent of any one or more leased areas shall not be entitled to take oysters from any such area, or to obtain a lease of a further area, until all such rent due has been paid; and any lease

Lessees in arrear in rent not to take oysters or be granted further leases. Ibid., s. 18.

s. 31. The expression "subsection (2) of section 56 of the Crown Lands Act, 1915," altered to "subsection (2) of section 53 of the Crown Lands Act, 1929," pursuant to the Amendments Incorporation Act, 1937.

shall be liable to forfeiture if the rent is not paid within the time prescribed.

Cancellation
of lease in
certain cases.
1128, 1918,
s. 19.

33. (1) If it appears to the chief inspector that any lessee has not, within a period of one year from the date of his lease, taken proper measures to carry out the conditions of his lease and to cultivate the area leased, he may recommend the Minister to cancel his lease.

(2) The Minister shall have power to cancel the same accordingly by notification in the *Government Gazette*, and upon the publication of such notification all rights and privileges granted by such lease, and the unexpired term thereof, shall cease and determine.

(3) Before making any such recommendation the chief inspector shall cause a notice in writing stating his intention to make such recommendation to be given to the lessee. Such notice may be given to the lessee personally, or, in case the lessee cannot be found, by inserting it once in the *Government Gazette*, and at least three times in a daily newspaper published in Adelaide. No such recommendation shall be made until after the expiration of one month from the giving of such notice.

Cancellation
for misman-
agement.
Ibid., s. 20.

34. (1) Upon the receipt of a report from any inspector that a leased area is being so stripped of oysters or otherwise mismanaged by the lessee thereof that the production of oysters thereon has been so reduced as to threaten its partial or total destruction as an oyster-bearing area, or that proper steps for cultivation have not after the first year been taken, the chief inspector may, by notice given as provided by section 33, prohibit the further dredging of, or removal of oysters from, such leased area, and may by the same or a like notice call upon the lessee to show cause why the lease of such area should not be cancelled.

(2) After the expiration of one month from the service or publication of the last-mentioned notice, the chief inspector may recommend the cancellation of such lease, and the Minister may thereupon, by notification published in the *Government Gazette*, cancel such lease. Upon such publication all rights and privileges granted by such lease, and the unexpired term thereof, shall cease and determine.

Protection of
leased areas.
Ibid., s. 22.

35. (1) It shall not be lawful for any person other than the lessee, his agents or servants, to do any of the following acts, namely:—

(a) to take, or in any way disturb or interfere with, any oysters upon any leased area without the consent of the lessee:

- (b) to cut, or lop, or remove mallee or any other timber from any leased area:
- (c) to remove from any leased area any mangroves or other timber, shells, tiles, slates, shingles or other substances suitable as spat-catchers, or to dredge or drag upon any leased area with any implement unless by direction or authority of the chief inspector; or
- (d) to place upon any leased area any implement or thing likely to injure oysters, except for a lawful purpose of navigation or anchorage.

(2) Any person who does any act in contravention of this section shall be liable to a penalty not exceeding twenty pounds, and shall also, upon conviction of any offence under this section, be liable to make such reasonable compensation, not exceeding one hundred pounds, to the lessee for the damage sustained by him by reason of the unlawful act, as the special magistrate or justices adjudicating may determine, and in default of payment the same may be recovered by the lessee in any court of competent jurisdiction.

Penalties.

(3) In case any such act as mentioned in subdivision (c) of subsection (1) of this section is lawfully done, reasonable compensation shall be made therefor, subject, however, to the provisions of section 30.

DIVISION V.—MISCELLANEOUS PROVISIONS WITH RESPECT TO OYSTER FISHING.

DIVISION V.

36. The Minister may, by notification in the *Government Gazette*, declare any Crown lands to be a public oyster reserve and to be exempt from any power of licensing or leasing conferred by this Act, and, on the recommendation of the chief inspector, may in like manner cancel such notification wholly or in part.

Portions of Crown lands may be declared public oyster reserves. 1128, 1913, s. 23.

37. (1) Whenever the chief inspector, upon the report of any inspector or by his own inspection, is satisfied that the whole or any part of an oyster-bearing area, whether under lease or not, has by over-dredging or from any other cause been reduced to such a state that the taking of oysters therefrom ought to be suspended, or that the oysters thereon are in such a condition as to be not fit for consumption as food, the chief inspector may recommend the Minister to prohibit the taking of oysters from such area.

When oyster-bearing areas may be closed. *Ibid.*, s. 21.

(2) Thereupon the Minister may, by notification in the *Government Gazette*, prohibit for any term not exceeding

PART III.
DIVISION V.

three years the taking of oysters from such area. The Minister may in like manner rescind wholly or in part any such notification.

(3) If any person, without lawful authority, at any time during the period mentioned in such notification (unless the same has been rescinded as aforesaid), takes oysters from such area, he shall be liable to a penalty not exceeding fifty pounds. All oysters, and the bags and packages containing them, found in the possession of any person so offending may be seized, and upon the conviction of the offender shall become forfeited to His Majesty.

(4) Notwithstanding anything in this section, when on an area under lease for oyster culture the reduction to the state mentioned in subsection (1) of this section has, in the opinion of the chief inspector, resulted from natural causes only, such as floods or disease, the Minister may release the lessee of such area from payment of rent for the period of the prohibition.

Penalties for unlawful dredging or taking of oysters.
1128, 1913,
s. 24.

38. (1) All oysters on every public oyster reserve, or on Crown lands, or on any area from which the taking of oysters is prohibited under this Act, and all oysters taken therefrom without lawful authority, shall be the property of His Majesty.

(2) If any person without lawful authority dredges for or otherwise takes any oysters from any such reserve, Crown lands, or area, or is found dredging for or taking oysters within the limits of any such reserve, Crown lands, or area, he shall be liable to a penalty not exceeding fifty pounds; and all oysters found in his possession shall be deemed to be taken unlawfully by him, and shall be seized, and, on his conviction, shall become forfeited to His Majesty.

PART IV.

PART IV.

MISCELLANEOUS.

Selling, etc., underweight fish.

864, 1904,
s. 16.
Cf. U.K.
23 & 24
Geo. 5 c. 45,
s. 4.

Minister may remove natural obstructions.
Cf. 864, 1904,
s. 17.

39. No person shall take or have in his possession or sell any fish or oysters of less than the prescribed weight.

40. (1) If in any waters any natural or artificial obstruction prevents the free passage of any fish, the Minister or any person authorised by him may remove the obstruction and secure a free passage to the fish.

(2) Anything done by the Minister or any such authorised person as aforesaid in the exercise of the power hereby conferred, or which is incidental thereto, shall not render the Minister or such person liable to any action or other proceeding at the suit of any person.

41. (1) All fish with respect to which any offence against this Act has been committed, and all boats and devices used or intended to be used contrary to this Act, shall be forfeited to His Majesty, and may be disposed of by sale or otherwise as the Minister directs.

Fish illegally taken.
Cf. 864, 1904, s. 18.
Cf. U.K. 9 Edw. 7 c. 8, s. 1.

(2) The proceeds of any sale under this section shall be paid to the Treasurer for the purposes of the general revenue of the State.

42. If more than one-tenth of the fish contained in any receptacle are under weight, the receptacle may be seized and, together with the whole of the fish therein, forfeited.

Fish receptacles may be forfeited.
864, 1904, s. 19.

43. Every inspector and officer under this Act, without any authority other than this Act, may seize any boat or device, or any fish or oysters, which he may have reason to believe is forfeited or liable to forfeiture.

Devices may be seized.
Cf. *ibid.*, s. 20.

44. No compensation shall be payable to any person on account of fish or oysters destroyed as unfit for human consumption.

No compensation for destroyed fish or oysters.
Cf. *ibid.*, s. 9.

45. If any person who has unintentionally taken any fish or oysters contrary to the provisions of this Act immediately returns the same to the water with as little injury as possible to the fish or oysters so taken, such person shall not be liable to any penalty under this Act.

Fish or oysters taken unintentionally to be returned to water.
Cf. *ibid.*, s. 23.

46. No person shall be entitled by virtue of any lease or licence or permit under this Act—

Lease or licence not to warrant trespass.
Cf. 366, 1885, s. 25.

(a) to enter upon any private land; or

(b) to take any fish or oysters in or from any waters on or over such land

without the consent of the owner or occupier of such land.

47. (1) Notwithstanding anything contained in paragraph i. of subdivision (a) of section 53—

Exemption from operation of Act.
Cf. 864, 1904, s. 22.

(a) except from stocked waters wherein fishing is prohibited by proclamation any person may, without any licence, take fish with a rod and line, or a hand line, or a hand crab-net, or a fish spear, and—

Amended by para. (a) inserted by 2391, 1938, s. 14 (a), (b), and (c).

- (i.) any such person may, in manner aforesaid, when fishing from any wharf or jetty (other than a wharf or jetty constructed in or adjacent to the River Murray), take any fish whether under the prescribed weight or not:
- (ii.) any such person may, in manner aforesaid, when fishing from other than a jetty or wharf, or when fishing from a wharf or jetty constructed in or adjacent to the River Murray, take any fish, whether under the prescribed weight or not, except such fish as are prescribed, in which case the fish so taken shall be of or over the prescribed weight:
- (iii.) any such person may, in manner aforesaid, when fishing from other than a jetty or wharf and when fishing in a prescribed area, take during any one day, up to the prescribed number, any such prescribed fish, whether under the prescribed weight or not:

(b) any person may, without any licence, take oysters from any natural oyster-bed which is not subject to any exclusive licence under this Act:

Provided that any fish or oysters so taken are not sold or are not taken for the purpose of sale.

(2) Any person taking fish or oysters under this section shall in so doing observe all the provisions of this Act in the same manner as if he were taking such fish or oysters by virtue of a licence issued to him under this Act.

(3) In any proceedings where any person is charged with having in his possession any fish under the prescribed weight, the onus shall be upon the defendant to prove that the fish was taken whilst fishing from a wharf or jetty other than a wharf or jetty constructed in or adjacent to the River Murray.

Inserted by
2391, 1938,
s. 14 (d).

Special exemp-
tions.
Cf. 864, 1904,
s. 22.

48. Nothing in this Act shall apply to—

- (a) any full-blooded aboriginal inhabitant of this State taking fish for his household consumption: Provided that no explosive or noxious matter is used in the taking of such fish; nor
- (b) any person taking fish or oysters with a lawful device and not during close season in waters on or over land whereof he is the owner or occupier, or with the consent or authority of such owner or occupier; nor

- (c) any person with the written consent of the Minister taking fish *bona fide* for the purpose of removing them to stock other waters, or for such other purpose as is approved by the Minister.

48a. (1) The Minister, upon such conditions and for such term as he thinks fit, may issue licences for—

Licences for
canning of
tunny,

- (a) the canning of tuna and tunny-like fish:
 (b) the manufacture of fish-meal and fish-oil from tuna and tunny-like fish:
 (c) sharp freezing or otherwise preserving tuna and tunny-like fish.

Inserted by
2419, 1938,
s. 2.

(2) The Minister may, in respect of any part of the State, issue to any person an exclusive licence under this section for all or any of the purposes mentioned in subsection (1), and whilst any such licence is current no other licence for any of the purposes included in the exclusive licence shall be issued under this section in respect of the said part of the State.

Every such exclusive licence shall—

- (a) define the part of the State to which it applies:
 (b) require that the person to whom it is issued shall expend the amount or amounts fixed by the licence in the establishment and development of the industry and shall contain a condition that, failing such expenditure, the licence may be revoked by the Minister:
 (c) be for a period of not more than ten years:
 (d) be issued upon such other conditions as are fixed by the Minister.

(3) If any exclusive licence is granted as aforesaid and the holder thereof satisfies the Minister that markets would not be available for the holders of any additional licences which may be issued under this section in respect of the part of the State to which the exclusive licence applies, the Minister may, upon the expiry of the exclusive licence, issue a further exclusive licence for a period of not more than ten years to the holder of the expired exclusive licence.

(4) If any person not licensed under this section carries on the business of—

- (a) canning tuna or tunny-like fish; or
 (b) manufacturing fish-meal or fish-oil from tuna or tunny-like fish; or
 (c) sharp freezing or otherwise preserving tuna or tunny-like fish,

PART IV.

he shall be guilty of an offence against this Act and liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for every day during which he carries on business as aforesaid.

Taking fish
for bait.
Of. 864,
1904, s. 22.
Amended by
2391, 1938,
s. 15 (a).

49. Any person licensed under this Act to take fish may, subject to the provisions of this Act, take fish for bait with a lawful device, whether such fish are under the prescribed weight or not: Provided that—

- i. such fish are not taken from closed waters, and
- ii. the waters wherein such fish are taken are not closed against the device used in such taking, and
- iii. such fish are not of the species known as whiting (*Sillaginodes punctatus*) or of any other prescribed species.

Inserted by
2391, 1938,
s. 15 (b).

Rents, fees,
etc., may be
recovered by
the chief
inspector.
864, 1904,
s. 31.

50. (1) All rents, fees, and other moneys due and payable under this Act, or any lease or licence granted thereunder, may be sued for and recovered by and in the name of the chief inspector on behalf of the Crown.

(2) The proceedings in any such case may be conducted by any inspector.

Fees, &c., to
be paid to
Treasurer.

51. All rents, fees, and other moneys due and payable under this Act shall, when received, be paid by the person receiving the same to the Treasurer for the purposes of the general revenue of the State.

How moneys
provided for
purposes of
Act.
864, 1904,
s. 32.

52. The moneys required for the purposes of this Act shall be supplied by the Treasurer out of moneys provided by Parliament for such purposes.

PART V.

PART V.

OFFENCES AND PENALTIES.

Offences.
Of. 864, 1904,
s. 24.
Of. U.K.
13 & 14
Geo. 5 c. 16,
ss. 1, 3.
Unlawfully
taking fish or
oysters.

53. Every person shall be guilty of an offence against this Act who—

(a) takes any fish or oysters—

- i. without a licence in that behalf:
- ii. during any closed season without a permit:
- iii. from any closed waters:
- iv. with any illegal device:

- v. under the prescribed weight, without forthwith returning the same to the water:
 - vi. within one hundred yards of any jetty, pier, or wharf, except with a rod and line, hand-line, or hand crab-net:
- (b) uses any device in any other than the prescribed manner: Using device unlawfully.
- (c) refuses, upon demand by an inspector or other officer appointed by or under this Act, to give his name or address, or gives a false name or a false address: Refusing name.
- (d) refuses, upon demand as aforesaid, to produce his licence: Licence.
- (e) refuses to deliver up to an inspector any forfeited boat or device, or any forfeited fish or oysters: Forfeited fish or oysters.
- (f) stakes, fixes, or otherwise sets across the mouth of any waters, or across or substantially across any channel, creek, stream, or river, any device: Obstruct waters.
Of. U.K. 13 & 14 Geo. 5 c. 16, Part II.
- (g) uses any device which is—
- i. larger than the prescribed dimensions; or
 - ii. of smaller mesh than is prescribed; or
 - iii. set in such a manner as to delay, injure, or strand any fish, or to impede the free passage of fish: Unlawful device.
Of. U.K. 13 & 14 Geo. 5 c. 16, s. 7.
- * * * * *
- (i) drags or draws ashore any device in such a manner, or to such a distance from the water, as to prevent under-weight fish from escaping into the water: Para. (h) repealed by 2391, 1938, s. 16.
Preventing escape of under-weight fish.
- (j) neglects to return to the water any fish or oysters under the prescribed weight or taken from closed waters: Neglect to release under-weight fish.
- (k) sells or has in his possession any fish or oysters under the prescribed weight or taken from closed waters: Selling under-weight fish, etc.
Of. U.K. 23 & 24 Geo. 5 c. 45, s. 2.
- (l) sells any fish unfit for human consumption: Selling un-wholesome fish.
- (m) sells any fish known as "crayfish" of a size less than prescribed, or any female of such fish, of whatsoever size, having eggs or spawn attached: Crayfish.

PART V.

Damaging
lawful devices
by placing
obstacles.

Obstructing
fisherman.

Carrying
explosives,
etc., in boat.

Explosives,
etc., not to be
used.
Of U.K.
13 & 14
Geo. 5 c 16,
s. 9.

Not to lend
or improperly
use licence.

Wrongful pos-
session of fish
or oysters.

Removing
eggs or
spawn of
crayfish.

- (n) wilfully or maliciously drives or places any thing whatsoever in any place or position whereby any device may be injured or damaged:
- (o) places a boat in such a position as to obstruct any fisherman from hauling a lawful device to shore, on any recognised hauling ground, or, when requested, neglects to remove such obstruction:
- (p) carries any explosive substance, or any poisonous or noxious thing, in any registered fishing boat without a permit:
- (q) I. by the explosion of any substance, or by means of any poisonous or noxious thing, destroys or takes fish; or
- II. explodes any substance in, under, or immediately above any waters; or
- III. places or causes to flow into any waters any poisonous or noxious thing; or
- IV. assists the person committing any of such offences:
- Provided that the Minister may consent, in writing, to any person exploding torpedoes or dynamite in any waters:
- (r) lets out, lends, or hires any licence, or uses or has in his control or possession any licence not issued to him, or represents himself to be the person mentioned in any such licence:
- (s) following the trade or calling of a fisherman, whether as his only trade or calling or not, and not—
- I. having a licence to take fish, has any fish in his boat or in his possession or uses any boat in taking fish, or
- II. being authorised by lease or licence under this Act to take oysters, has any oysters in his boat or in his possession, or uses any boat in taking oysters:
- (t) detaches or otherwise removes the eggs or spawn, or the hair or fibre to which the eggs or spawn naturally attach, from any fish known as "crayfish," or knowingly has in his possession or control any crayfish from which the eggs or spawn or such hair or fibre has been detached or otherwise removed:

- (u) whether or not authorised by lease or licence under this Act to take fish or oysters, takes any fish or oysters for sale in an unregistered boat, or uses an unregistered boat in the taking of fish or oysters for sale or otherwise for any purpose of the trade or calling of a fisherman, or manages or takes part in the management of an unregistered boat when the same is so used.

Using un-registered boat.

53a. (1) There shall be provided to every pump pipe-line whereby water is drawn from the sea or any river a fish protection screen of a pattern approved by the chief inspector.

Provision of fish screens.
Inserted by 2391, 1938, s. 17.

(2) If any water is drawn as aforesaid by means of any such pump pipe-line which is not provided with a screen as aforesaid, the owner of the pump pipe-line shall be guilty of an offence against this Act.

54. Every person who takes, or in any way disturbs or interferes with, oysters in any oyster-bed held under lease or licence under this Act without the consent of the lessee or licensee thereof, or in any oyster-bed upon private land without the consent of the owner or occupier thereof, shall be liable to a penalty not exceeding fifty pounds, in addition to such reasonable compensation for the damage done, not exceeding one hundred pounds, as the special magistrate or justices adjudicating may determine.

Penalty for interfering with beds.
866, 1885, s. 32.

55. Any person who—

- (a) obstructs or hinders any inspector, or
 (b) in any way interferes with or prevents the exercise of any of the powers conferred or the discharge of any of the duties imposed by this Act upon inspectors, or
 (c) disobeys any lawful order or direction of an inspector,

Obstructing inspectors.
Cf. 977, 1909, s. 8.
Cf. U.K. 31 & 32 Vict. c. 45, s. 11.

shall be guilty of an offence against this Act.

55a. (1) There shall be legibly marked on the outside of or on a label attached to the outside of any box, basket, bag, or other receptacle containing fish or oysters consigned for sale by any person who follows the trade or calling of a fisherman or who deals in fish—

Marking of packages.
Inserted by 2391, 1938, s. 18.

- (a) the full name or the initials and surname of the person consigning the fish, and, in either case, his address; and

- (b) if the person consigning the fish is the holder of a certificate of registration of a boat under section 16, the registered number of the boat.

If more than one person consigns fish as aforesaid, in the same box, basket, bag, or other receptacle, it shall be sufficient compliance with this subsection if the particulars required by this subsection and relating to one of such persons are given as aforesaid.

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence against this Act.

(3) The provisions of subsection (1) shall not apply to any fish or oysters whilst in any boat registered under section 16.

(4) In any proceedings under this Act, evidence that any box, basket, bag or other receptacle containing fish or oysters in the course of consignment, bore the name of any person, shall, in the absence of evidence to the contrary, be sufficient proof that the fish or oysters were the property of the person so named on the box, basket, bag or receptacle, or on the label attached thereto, and that the fish or oysters were being consigned for or on sale.

Offences.

56. (1) Any contravention of or failure to observe any provision of this Act, whether by act or omission, shall be an offence against this Act.

Penalties.

(2) Any person guilty of an offence against this Act for which no specific punishment is prescribed shall be liable to a penalty for a first offence of not more than twenty pounds, and for any subsequent offence of not more than fifty pounds.

On second conviction licence may be forfeited.
 Cf. 366, 1885, s. 33.

57. If any person holding any lease or licence or permit under this Act is convicted of a second or subsequent offence against the provisions of this Act, he shall, if the special magistrate or justices adjudicating so determine, in addition to suffering the penalty for such second or subsequent offence, forfeit such lease or licence or permit, and be for three years disqualified from obtaining any other lease or licence or permit under this Act.

S. 58
 repealed by
 2252, 1935,
 s. 4.

* * * * *

PART VI.

PART VI.

REGULATIONS.

59. In addition to any power by any other section of this Act conferred on the Governor to make regulations as to any matter (which power shall in every case be implied for the purposes of any section in which the word "prescribed" is used), the Governor may make any regulations which may be necessary or convenient for carrying out any of the provisions of this Act, or for better effecting the objects of this Act, and in particular (without limiting the effect of this section) for all or any of the following purposes, namely:—

Governor may make regulations.
 Cf. 864, 1904, s. 36.
 Cf. U.K. 13 & 14 Geo. 5 c. 16, Part VI.

- (a) regulating the powers and duties of all officers appointed by or under this Act:
- (b) fixing the fees to be paid for licences by persons engaged in fishing or oyster fishing:
- (c) providing for the more effectual protection and improvement of fish or oysters, and the management of any waters in which fishing or oyster fishing may be carried on, including the complete or partial closing of any waters against fishing or oyster fishing, and limiting the use which may be made of any waters:
- (c1) for the issue and revocation of licences for amateur fishermen; prescribing fees therefor; and fixing periods during which only persons licensed as amateur fishermen may take fish from any stocked waters:
- (c2) prohibiting the sale of fish or oysters of any kind during a close season for fish or oysters of that kind:
- (c3) requiring any persons licensed under this Act to supply for statistical purposes to the chief inspector returns of fish and oysters taken:
- (c4) requiring persons who are engaged in—
 - (i.) the selling of fish or oysters at any market; or
 - (ii.) the selling of fish or oysters which have not been sold at a market; or
 - (iii.) the preserving, curing, smoking, drying or salting of fish or oysters; or
 - (iv.) the bottling or canning of fish or oysters or of any fish or oyster product intended for human consumption; or

Cf. U.K. 40 & 41 Vict. c. 42, s. 4.
 Cf. U.K. 57 & 58 Vict. c. 26, s. 1.

Paras. (c) to (c5) inserted by 2391, 1938, s. 19.

- (v.) the preparation of fish by-products intended for human consumption; or
- (vi.) the preparation of fertilisers from fish or any fish products or by-products not intended for human consumption; or
- (vii.) the carriage of fish or oysters by sea or land,
to supply for statistical purposes to the chief inspector returns of the sales, output, or business of such persons:
- (c5) prescribing the method whereby licences or certificates shall be granted under section 15a:
- (c6) regulating the granting of licences under section 48a and prescribing the terms and conditions of such licences:
- (d) imposing any penalty not exceeding twenty pounds for any breach of the same or any other regulation.

Inserted by
2419, 1938,
s. 3.

EVIDENCE AND LEGAL PROCEDURE.

60. In any proceedings for an offence against this Act—

- (a) the possession or occupancy by any person of a boat containing any fish or oysters or any fishing net, device, or other thing ordinarily used in taking fish or oysters, shall be *prima facie* evidence that such person uses such boat in taking fish or oysters for sale:
- (b) the possession by any person on any particular day of any illegal device shall, until the contrary is proved to the satisfaction of the special magistrate or justices adjudicating, be sufficient evidence that such person used such device on such day in taking fish or oysters:
- (c) the failure by any person to produce his licence when required by an inspector or other officer appointed by or under this Act so to do shall be *prima facie* evidence that such person is unlicensed:
- (d) the onus of proving that an accused person, who is alleged to follow or to have followed the trade or calling of a fisherman, did not at the time of the alleged offence follow that trade or calling, shall be on such accused person:

Onus of proof.
Cf. 977,
1909, s. 17.
Cf. U.K.
31 & 32 Vict.
c. 45, s. 55.
Cf. U.K.
9 Edw. 7
c. 8, s. 2.

(e) any fish or oysters proved to have been taken shall, until the contrary is proved to the satisfaction of the special magistrate or justices adjudicating, be deemed to have been taken for sale and to have been taken in South Australia:

Amended by
1934, 1930,
s. 5.

(f) the fact that on any particular day there were in any boat any fish or oysters shall be *prima facie* evidence that the person who on such day was in possession or occupancy of such boat took such fish or oysters on such day:

(g) the fact that any person charged with unlawfully taking oysters on any particular day was on such day on board any boat engaged in taking oysters shall be conclusive evidence that such person was so taking oysters:

366, 1885,
s. 13.

(h) if any person is found in possession of, or has in his boat, any explosive substance immediately after an explosion in the vicinity of such boat, it shall be *prima facie* evidence that such person caused such explosion.

864, 1904,
s. 28.

61. When an offence against this Act has been committed by a person employed on or in connection with a boat, the master or other person for the time being in charge of such boat shall also be guilty of the offence unless he proves—

Master of
boat *prima
facie* liable
for offences
of employees.

(a) that he issued proper orders for the observance, and used all proper means to enforce the observance, of this Act, and

Cf. U.K.
31 & 32 Vict.
c. 45, s. 63.
Cf. U.K.
38 & 39 Vict.
c. 18, s. 4.
Cf. U.K.
46 & 47 Vict.
c. 22, s. 20.

(b) that the offence in question was actually committed by some other person without his connivance.

62. The production of the *Gazette* containing any proclamation, regulation, or notice purporting to have been made or given under this Act shall be *prima facie* evidence of such proclamation, regulation, or notice, and that the same is in force.

*Gazette prima
facie* evi-
dence.

864, 1904,
s. 20.
Cf. U.K.
13 & 14
Geo. 5 c. 16,
s. 81.

63. Any special magistrate or justices before whom any proceedings are taken in respect of any offence against the provisions of this Act for which a pecuniary penalty only is imposed may, in lieu of such pecuniary penalty, impose a term of imprisonment not exceeding six months.

Imprisonment
may be im-
posed in lieu
of pecuniary
penalty.

864, 1904,
s. 30.
Cf. U.K.
13 & 14
Geo. 5 c. 16,
s. 74.

64. All actions to be brought against the Minister or any inspector, officer, or other person for anything done under this Act shall be commenced within six months after the act complained of was committed.

Limitation of
actions.

Cf. 864, 1904,
s. 35.

PART VII.

Summary proceedings for offences.

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

Appeal.

66. There shall be an appeal from any proceedings in respect of offences against this Act.

Special case.

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

Treasurer may provide for costs of legal proceedings.

68. The Treasurer may cause to be paid the costs or charges of any action brought by or against the Minister or any inspector, officer, or other person acting under the authority or in the execution of this Act.

THE SCHEDULE.

Section 4.

ACTS REPEALED.

Reference to Acts.	Short Titles of Acts.
No. 366 of 1885	The Oyster Fishery Act, 1885.
No. 864 of 1904	The Fisheries Act, 1904.
No. 977 of 1909	The Fisheries Act Amendment Act, 1909.
No. 1128 of 1913	The Oyster Fishery Act Amendment Act, 1913



The Lottery and Gaming Act, 1936-1950, including all amendments passed to the end of 1950 and notes of judicial decisions, is reprinted in the Annual Volume, 1950, at page 205.

LOTTERY AND GAMING ACT, 1936-1938.

BEING

LOTTERY AND GAMING ACT, 1936, No. 2282 OF 1936 [ASSENTED TO 3RD SEPTEMBER, 1936.]

AS AMENDED BY

LOTTERY AND GAMING ACT AMENDMENT ACT, 1938, No. 2394 OF 1938 [ASSENTED TO 6TH OCTOBER, 1938.]

AND

LOTTERY AND GAMING ACT AMENDMENT ACT (No. 2), 1938, No. 2417 OF 1938 [ASSENTED TO 15TH DECEMBER, 1938.]

An Act to consolidate certain Acts relating to lotteries and gaming.

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

PART I.

PART I.

PRELIMINARY.

1. This Act may be cited as the "Lottery and Gaming Act, 1936-1938." Short title.

2. This Act is divided into parts as follows:—

Division of Act.

PART I.—Preliminary.

PART II.—Lotteries.

PART III.—Totalizator.

PART IV.—Licensing of Bookmakers.

PART V.—Unlawful Gaming.

PART VI.—Common Gaming-houses.

PART VII.—Evidence.

PART VIII.—Procedure and Miscellaneous.

3. This Act is a consolidation of the Acts mentioned in the first schedule, and the said Acts are hereby repealed. Repeal.

Commencement: The Lottery and Gaming Act Amendment Act (No. 2), 1938, was proclaimed to commence on 19th December, 1938: *Gazette* 15th December, 1938, p. 1497.

PART I.

Interpretation.

1285, 1917,
s. 4.
1447, 1920,
s. 3.
1494, 1921,
s. 3.
2135, 1933,
s. 3.

Amended
by 2417,
1938, s. 2.

4. In this Act, except where the subject matter or context or some other provision requires a different construction—

“board” means the Betting Control Board:

“chairman” means the chairman of the board:

“court” means a special magistrate or two or more justices of the peace sitting as a court of summary jurisdiction:

“loiter” means to idle or linger about:

“lottery” means any scheme or device for the sale or gift or disposal or distribution of any property, real or personal, or money, or thing, or any right thereto, or of any share therein depending upon or to be determined by lot or drawing, whether out of a box or other receptacle, or by cards, token, coin, or dice, or by any machine, ticket, envelope, or device, or chance whatsoever:

“occupier” in relation to occupiers of any house, office, room, or place used for a purpose forbidden by this Act means the owner, occupier, or keeper of any house, office, room, or place, or any person using the same, or any person procured or employed by or acting for or on behalf of the owner, occupier, or keeper, or person using the same, or any person having the care or management, or in any manner conducting the business thereof:

U.K. 4,
Geo. 4,
c. 60, s. 60.

“place” means any house, office, room, tent, ship, building, erection, road, street, thoroughfare, alley, right-of-way (either public or private), and all land (whether public or private) enclosed or otherwise:

s. 4. (Definition of “lottery.”) O’SULLIVAN v. TANNER (1921) S.A.S.R. 248. Where a person invited the public to order suits of clothes and promised that one suit would be given free in every hundred orders received, held that the scheme was a lottery.

CHURCH, *vice* HORSEMAN v. NEWS LIMITED (1933) S.A.S.R. 70; 9 Austn. Digest 404. Held that a competition determined mainly by chance was a lottery, although some degree of skill was involved. If the element of skill involved in a competition preponderates or balances the element of chance the competition is not a lottery.

(Definition of “public place.”) REGINA v. BARNARD (1884) 18 S.A.L.R. 54; 6 A.L.J. 6; 9 Austn. Digest 506. Held that a part of a racecourse fenced by a picket fence 4ft. high, and to which access was granted only to members of certain clubs, was not a public place or a place to which the public had access whether on payment of money or otherwise within the meaning of Act 282, 1883.

SANDERSON v. ALLCHURCH (1922) S.A.S.R. 7; 9 Austn. Digest 506. The public lawns in front of the grandstand on a racecourse are a “public place” within the meaning of section 4.

“public place” means—

- (a) every public place;
- (b) every place to which the public are permitted to have access tacitly or otherwise and whether upon payment of money or not;
- (c) any premises in respect of which a licence granted under the Licensing Act, 1932, is in force;
- (d) any shop, and any part of a building occupied in connection with, or for the purposes of, a shop;
- (e) any factory, and the appurtenances of any factory;
- (f) any building or place occupied by any club (whether a racing club or not), and the appurtenances thereof; and
- (g) any place commonly used by the public whether as trespassers or otherwise.

Cf. U.K.
6 Edw. 7
c. 43, s. 1
(4).

“street” means every public street, thoroughfare, private street, or road commonly used by or to which the public are permitted to have access:

“sweepstakes” means every transaction, scheme, device, or arrangement (expressed or implied) whereby any money or valuable thing is paid, contributed, or subscribed by any persons for the purpose of payment to or division among any person or persons in any proportions on any event or contingency dependent on the result of any race, game, sport, or exercise, whether such race, game, sport, or exercise shall be within or outside the State:

Cf. U.K.
18 & 19
Geo. 5 c. 41,
s. 1 (3) (a).

“totalizator” means the machine or instrument known as “The Totalizator” and any other machine or instrument of a like nature and conducted on like principles:

“unlawful gaming” means—

- (a) the playing at or in engaging in any game with cards or other instruments, or with money, in or as the result of which game any person or persons derives or is intended to derive (other than in his capacity as a player) any part or percentage of any money or thing played for, staked,

or wagered, such part or percentage not being money received for deposit in any licensed totalizator; and

- (b) any contravention of or failure to observe any provision of this Act, whether that provision relates to unlawful gaming as hereinbefore defined or not.

PART II.

PART II.

LOTTERIES.

Lotteries declared nuisances.

1285, 1917, s. 5.
U.K. 10
Will. 3 c. 23, s. 1;
42 Geo. 3 c. 119, s. 1;
24 & 25 Geo. 5, c. 58, s. 21.

5. Every lottery is hereby declared to be a common nuisance and unlawful, and every sale or gift, disposal or distribution made by means or in pursuance thereof void.

Opening lotteries, and aiding and playing thereof.

1285, 1917, s. 6.
U.K. 10
Will. 3, c. 23, ss. 2, 3;
12 Geo. 2 c. 28, s. 1;
42 Geo. 3, c. 119, s. 2.

6. (1) No person shall, either publicly or privately exercise, open, or show, to be played, thrown, or drawn at, any lottery.

Penalty—One hundred pounds, or in default imprisonment for six months.

(2) No person shall employ, aid, or abet, any other person in publicly or privately exercising, opening, or showing to be played, thrown, or drawn at, any lottery.

Penalty—Fifty pounds, or in default imprisonment for three months.

(3) No person shall play, throw, or draw at any such lottery.

Penalty—Ten pounds, or in default imprisonment for one month.

s. 5. O'SULLIVAN v. TANNER (1921) S.A.S.R. 248. Where a person invited the public to order suits of clothes and promised that one suit would be given free in every hundred orders received, held that the scheme was a lottery.

CHURCH, *vice* HORSEMAN v. NEWS LIMITED (1933) S.A.S.R. 70; 9 Austn. Digest 404. Held that a competition determined mainly by chance was a lottery, although some degree of skill was involved. If the element of skill involved in a competition preponderates or balances the element of chance the competition is not a lottery. [See also the cases noted under section 10.]

7. No person shall promise or agree to—

- (a) pay any sum of money; or
- (b) deliver any goods; or
- (c) do or forbear doing anything for the benefit of any person,

Promises to pay money or deliver goods, etc., on event of lottery.
1285, 1917, s. 7.
Cf. U.K. 8 Geo. 1 c. 2, s. 36 (part); 42 Geo. 3 c. 119, s. 5.

whether with or without consideration, on any event or contingency relative or applicable to the drawing of any ticket or tickets, lot or lots, numbers, figures, or names in any lottery, or

- (d) publish any proposal for any of the purposes aforesaid.

Penalty—Fifty pounds, or in default imprisonment for three months.

8. No person shall print, exhibit, or publish, or cause to be printed, exhibited, or published, any placard, handbill, card, writing, sign, or advertisement of any lottery, or of any proposal for any lottery.

Advertising lotteries.
1285, 1917, s. 8.
Cf. U.K. 9 Anne c. 6, s. 57; 6 & 7 Will. 4 c. 66, s. 1; 24 & 25 Geo. 5 c. 58, s. 22.

Penalty—Fifty pounds, or in default imprisonment for three months.

9. Nothing in this Part of this Act shall extend to or affect—

- (a) any allotment of real or personal estate or interest which according to law is legally allottable, or may be allotted or held by, or by means of, any allotment or partition by lots:

Exceptions from Act.
1285, 1917, s. 9.
U.K. 9 & 10 Vict. c. 48; 24 & 25 Geo. 5 c. 58, ss. 23-25.

- (b) any voluntary association or branch thereof formed or established in the State for the purchase of paintings, drawings, or other works of art to be afterwards allotted and distributed by chance or otherwise among the several members, subscribers, or contributors forming part of such association, or for raising sums of money by subscription or contribution, to be allotted and distributed by chance or otherwise as prizes amongst the members, subscribers, or contributors forming part of such association: Provided that—

- (i.) such sums of money so allotted and distributed are expended solely and entirely in the purchase of paintings, drawings, or other works of art; and

- (ii.) the proceedings of such association are carried on in good faith for the encouragement of the fine arts.

Publication of information regarding lotteries.

1285, 1917, s. 10.
 Cf. U.K. 8 Geo. 1 c. 2, s. 86 (part).
 Cf. 6 & 7 Will. 4 c. 66, s. 1;
 24 & 25 Geo. 5 c. 58, s. 22.

10. No person shall—

- (a) print, publish, or exhibit, or cause to be printed, published, or exhibited in any newspaper, or on any placard, handbill, circular, or card, any advertisement, sign, notice, or other information of or relating to the establishment, commencement, promotion, carrying on, or drawing, or intended establishment, commencement, promotion, carrying on, or drawing of any illegal lottery, whether wholly or partly established, commenced, carried on, promoted, or managed in the State or elsewhere; or
- (b) being registered as the proprietor, printer, or publisher of any newspaper, permit or suffer any such advertisement, sign, notice, or information to be printed or published in such newspaper; or
- (c) print any ticket or other thing entitling or intended to entitle any person or persons to any chance or share in any illegal lottery; or
- (d) sell, circulate, exhibit, or dispose of any newspaper printed in any part of the Commonwealth of Australia which contains any advertisement, sign, notice, or information relating to any illegal lottery, or the drawing, conduct, or management thereof.

Sale of lottery tickets.

1285, 1917, s. 11.
 Cf. U.K. 8 Geo. 1 c. 2, s. 36 (part);
 4 Geo. 4 c. 60, s. 41.

11. No person shall sell, or offer for sale, or deliver, or give, or buy, or pay for, or knowingly receive or accept any ticket, chance, or share in any illegal lottery.

8. 10. O'SULLIVAN v. TANNER (1921) S.A.S.R. 248; 9 Austrn. Digest 426. A person causes an advertisement to be published if he hands a copy of it to the agent of a newspaper proprietor and asks that it be printed in a paper published by the proprietor. Proof of such a request satisfies the onus on the prosecutor as to *mens rea*. If the advertisement discloses a scheme for disposal of property by chance, that is sufficient evidence of an intended lottery without proof that the scheme was to be carried out.

KNEEBONE v. WHITTLE (1922) S.A.S.R. 257; 9 Austrn. Digest 405. An advertisement relates to the establishment of an illegal lottery if—(a) the language used can only be reasonably interpreted as describing a scheme which is a scheme for distributing money by chance even if some other scheme is in fact intended to be carried out; or (b) if, though innocent on its face, the advertisement relates to a scheme which is, in fact, a lottery.

NEWS LIMITED v. HORSEMAN (1931) S.A.S.R. 278; 9 Austrn. Digest 412. A lottery carried on in another State, though legal there, is an illegal lottery within the meaning of section 10 (a).

12. (1) No person shall placard, post up, or exhibit, or permit or suffer to be placarded, posted up, or exhibited, or shall assist in placarding, posting up, or exhibiting in or on or about any land, building, hoarding, or premises any information or notice relating to any illegal lottery.

Placards relating to illegal lotteries. 1285, 1917, s. 12.

(2) Where any such information or notice is placarded, posted up, or exhibited on any land, building, or premises, it shall, unless the contrary is proved, be presumed to have been so placarded, posted up, or exhibited by or with the permission of the occupier of that land, building, hoarding, or premises.

13. No person shall, for gain or otherwise, in any manner whatever directly or indirectly forward or partly forward, or give or receive for the purpose or intent that the same shall be so forwarded, any packet, or parcel, or money, cheque, draft, order for the payment of money, or valuable thing whatsoever to the promoters, managers, or conductors of any illegal lottery or sweepstakes conducted or drawn or intended to be conducted or drawn in any state, country, or place within or outside the State, and whether such lottery or sweepstakes is illegal according to the law of such state, country, or place, or otherwise.

Sending money to lotteries. 1285, 1917, s. 13. Cf. U.K. 9 Geo. 1 c. 19, s. 4; 6 Geo. 2 c. 35, s. 29; 24 & 25 Geo. 5 c. 58, s. 22.

14. The allegations in any complaint laid in relation to any alleged offence against the provisions of the next preceding section—

Allegations *prima facie* proof. 1285, 1917, s. 14.

- (a) that any packet, parcel, money, cheque, draft, order for the payment of money or valuable thing specified in such complaint has been forwarded or partly forwarded, or has been given or received for the purpose or intent that the same should be forwarded (as the case may be):
- (b) that any person or persons, club, association, or company named in the complaint is the promoter, manager, or conductor (as the case may be) of any illegal lottery:
- (c) that any lottery named or described in the complaint is an illegal lottery,

shall be accepted by the court as proof of the truth of such allegations, unless the contrary is proved.

PART III.

PART III.

TOTALIZATOR.

Totalizator
licences.
1285, 1917,
s. 15.
1882, 1919,
s. 3.
1986, 1980,
s. 2.
Cf. U.K.
18 & 19
Geo. 5 c. 41.

15. (1) The Commissioner of Police may, upon application made to him for the purpose, and subject to the approval of the Chief Secretary, issue licences to the committees or other executive bodies of racing clubs authorizing the use of the totalizator upon the terms and conditions prescribed by the regulations in the second schedule to this Act.

(2) Every such application shall be made in writing in the form of the third schedule, or to the like effect, by the chairman or secretary of the club seeking to be licensed.

Cf. U.K.
24 & 25
Geo. 5 c. 58,
s. 10.

(3) Every licence so issued shall be in force from the day specified in the licence until the succeeding thirty-first day of December (both days inclusive), and shall entitle the club therein mentioned to use the totalizator upon the racecourse and upon the days specified in the licence, or upon such other day or days in place of any of the days so specified as the Chief Secretary may from time to time, in writing upon such licence, approve.

(4) Not more than one licence shall be granted to any one club in respect of any one year.

(5) No licence shall be issued to authorize the use of the totalizator, except at horse racing.

(6) In granting any licences the Commissioner of Police shall give priority to the claims of any racing club owning or leasing a racecourse and to whom a licence was issued prior to the twentieth day of November, nineteen hundred and thirty.

Restriction on
licences in
metropolitan
area.
1285, 1917,
s. 20.
Cf. U.K.
24 & 25
Geo. 5 c. 58,
s. 1 (1).

16. No licence shall be issued for the use of the totalizator on any racecourse situated within twenty miles of Adelaide, except for the racecourses known as the Victoria Park, Morphettville, Cheltenham, and Onkaparinga racecourses, unless a resolution has been passed by both Houses of Parliament authorizing the issue of such a licence.

Restriction on
other licences.
1285, 1917,
s. 21.
1447, 1920,
s. 4.

17. (1) No licence shall be issued for the use of the totalizator on any racecourse situate within ten miles of any racecourse in respect of which a licence to use the totalizator has been or usually is issued, and where more applications than one are simultaneously made for racecourses situate within twenty miles of each other, it shall be in the discretion of the Commissioner, subject to the approval of the Chief Secretary, to license which racecourse he thinks fit.

(2) This section shall not apply to the racecourses known as the Victoria Park, Morphettville, Cheltenham, and Onkaparinga racecourses, nor to the racecourses used by Jamestown Jockey Club, the North-Western Jockey Club, and the Quorn Jockey Club.

18. No licence shall be issued to any racing club unless the applicant proves to the satisfaction of the Commissioner of Police the following matters:—

Conditions of
issue of
licence.
1285, 1917,
s. 16.

(a) where the racing club uses a racecourse situated within ten miles of Adelaide—

- i. that there are at least one hundred members of such club; and
- ii. that the annual value of members' subscriptions of such club amounts to not less than two hundred pounds;

(b) where the racing club uses a racecourse situated a greater distance than ten miles from the City of Adelaide—

- i. that there are at least fifty members of such club; and
- ii. that the annual value of members' subscriptions amounts to not less than fifty pounds.

19. No licence granted under this Act shall sanction the use of any totalizator—

Number of
times
totalizator
may be used.

(a) on any racecourse within fifteen miles of the General Post Office, Adelaide, for more than fifteen days in any one year:

1285, 1917,
s. 22,
1447, 1920,
s. 5,
1986, 1930,
s. 2,
2188, 1934,
s. 3.

Provided that a licence granted to the South Australian Jockey Club, Limited, may sanction the use of the totalizator on the Morphettville racecourse on one additional day if the Commissioner of Police is satisfied that on that day a race meeting will be held on that course by at least three racing clubs jointly, and that the net profits from that meeting will be devoted to charitable purposes:

Amended by
2417, 1938,
s. 3.

(b) on any other racecourse for more than eight days in any one year.

20. (1) No licence to use the totalizator shall be granted to any club unless the Commissioner of Police is satisfied that that club provides or will provide facilities for the public to use the totalizator on those portions of the racecourse known as the "Grandstand," "Derby," and "Flat," on payment of either two shillings or two shillings and sixpence per ticket

Totalizator on
the flat.
1447, 1920,
s. 11,
1494, 1921,
s. 12,
1877, 1928,
s. 8,
2188, 1935,
s. 10.

on every day on which the totalizator is used on any other portion of the racecourse: Provided that this section shall not apply in respect of any racecourse situated more than twenty miles from the General Post Office at Adelaide, nor in respect of the racecourse known as the Onkaparinga racecourse: Provided further that nothing in this section shall be deemed to prevent the committee or executive body of the club from issuing from any totalizator tickets for both the amounts aforesaid, nor from issuing tickets for any amount which is a multiple of either such amount.

(2) If, in the opinion of the Commissioner of Police, such facilities are not being provided, the Commissioner may at any time, after having given at least two months' notice in writing to the club concerned, revoke the said licence.

Use of
totalizator at
trotting races.
2188, 1934,
s. 11.

21. (1) Notwithstanding any provision of this Act, the Commissioner of Police may, upon application made to him for the purpose, and subject to the approval of the Chief Secretary, issue a licence to the committee or other executive body of any trotting club authorizing the use of the totalizator at any trotting race meeting or meetings for which a permit has been obtained under the next succeeding section.

(2) The licences granted under this section shall not authorize the use of the totalizator in the aggregate for more than thirty-five nights per year in the metropolitan area and sixty nights per year outside the metropolitan area, or for more than eleven nights per year at any one town outside the metropolitan area.

Inserted by
2417, 1938,
s. 4.

The Commissioner of Police, if satisfied that the net proceeds of any trotting meeting will be devoted to charitable purposes, may, upon application made to him for the purpose and subject to the approval of the Chief Secretary, issue an additional licence for the use of the totalizator at such trotting meeting: Provided that licences additional to the number before mentioned in this section shall not be issued for more than two nights in the metropolitan area nor more than five days or nights outside the metropolitan area and, in the case of licences outside the metropolitan area, shall not be issued for more than one day or night for any trotting club.

Permits to
hold trotting
races.
2188, 1934,
s. 12.

22. (1) No trotting race meeting at which the totalizator is used shall be held unless a permit, in writing, authorizing it to be held has been issued by the South Australian Trotting League Incorporated.

(2) The said League may, with the consent of the Commissioner of Police, issue such permits for the holding of trotting race meetings as it thinks fit. Each permit shall be for one night only as regards a meeting to be held in the metropolitan area, and for either one day or one night as regards a meeting to be held outside the metropolitan area.

(3) If any trotting race meeting is held in contravention of this section, the person by or on whose behalf the trotting race meeting is held, or, if the meeting is held by an association of persons, each member of the committee or other executive body of the association, and any person acting at the meeting as steward, starter, or judge shall be guilty of an offence punishable on summary conviction.

Penalty—Twenty pounds.

(4) For the purpose of this Act no agricultural show shall be deemed to be a trotting race meeting.

(5) In this section "metropolitan area" means the area within a radius of twenty miles from the General Post Office.

Amended by
2394, 1938,
s. 2.

22a. (1) Notwithstanding any law, or any rule, regulation, or by-law of the South Australian Trotting League Incorporated (in this section called "the League"), the League shall be constituted in accordance with this section.

Constitution
of South
Australian
Trotting
League.

Inserted by
2417, 1938,
s. 5.

(2) On the thirty-first day of December, nineteen hundred and thirty-eight, all members of the League then in office shall retire and thereafter the League shall consist of one delegate from each trotting club affiliated with the League.

(3) During the month of December, nineteen hundred and thirty-eight, and in the month of December in each year thereafter each trotting club affiliated with the League shall nominate a delegate to the League by writing delivered to the secretary of the League.

If any trotting club fails to nominate a delegate the board may nominate one on its behalf. Every delegate so nominated shall be a member of the League as from the first day of January next following his nomination.

(4) The members of the League shall elect one of their number to be chairman of the League. If the chairman is not present at any meeting of the League at which a quorum is present the members of the League present at that meeting shall elect an acting chairman for the day. The chairman or acting chairman shall have a deliberative vote and if the vote on any question is equal the chairman or acting chairman shall also have a casting vote.

Lottery and Gaming Act, 1936-1938.

(5) A majority of the members of the League shall form a quorum thereof. At every meeting of the League every matter coming up for decision shall be decided by a majority of the votes cast by the members present.

(6) No proceeding of the League shall be invalid by reason only of a vacancy in the office of any member or any defect or irregularity in the nomination of any member.

(7) The League shall not delegate its powers to any sub-committee or other body, but this subsection shall not prevent the League from employing officers and servants to assist it in carrying out its functions.

(8) Any affiliated club which is aggrieved by any decision of the League affecting such club may appeal to the board against that decision.

The appeal shall be commenced by written notice given to the board not later than two months after the decision appealed against was given.

The board shall decide the matter of every appeal in such manner as it deems just and its decision thereon shall be final.

Application of
Lottery and
Gaming Act
to totalizator
at trotting
races.
2188, 1934,
s. 13.

23. Sections 18, 25, the rules and regulations under section 26, sections 27, 28, 29, and 30 of this Act, and the provisions of the Stamp Duties Act, 1923, relating to totalizator duty shall apply, with the necessary modifications, in respect of the licensing, use, and receipts of the totalizator used at trotting race meetings, pursuant to this Act.

Employment
of females in
totalizator.
1447, 1920,
s. 12.

24. Notwithstanding anything contained in this Act, no female shall be employed in any capacity in connection with the work in or about a totalizator. If any club fails to observe this provision, the chairman thereof shall be deemed to be guilty of an offence.

Penalty—Not less than ten pounds nor more than fifty pounds.

Duty of
racing clubs
to prevent
illegal
betting.
1285, 1917,
s. 16a.
1877, 1928,
s. 8.

25. (1) Every licence under this Part shall be deemed to be issued subject to the condition that the racing club to which it is issued shall if the Commissioner of Police or any inspector or sub-inspector of police informs the club or the secretary or any official thereof that he believes that any person on the racecourse on any day when races are being held is an unlicensed bookmaker, or is on the racecourse for the purpose of unlawful gaming, take or cause to be taken all necessary and lawful steps to remove and exclude that person from the racecourse and keep him excluded therefrom.

(2) If the Commissioner of Police is satisfied that any club has wilfully or negligently failed to comply with this section he may, with the approval of the Chief Secretary—

- (a) revoke the licence of that club:
- (b) suspend the said licence for such period as he thinks fit:
- (c) if the licence is revoked, direct that no further licence shall be issued to the club within such period, not exceeding twelve months, as he thinks fit.

26. The Governor may—

- (a) revoke or vary any of the rules and regulations set out in the second schedule hereto:
- (b) make new rules and regulations in addition to or in substitution for any of such rules and regulations:
- (c) make regulations—
 - i. for regulating the manner of approaching to and departing from totalizators;
 - ii. generally for regulating the conduct of persons in the vicinity of totalizators;
 - iii. authorizing members of the police force to control and direct the conduct of persons in the vicinity of totalizators;
 - iv. providing for the compliance by persons in the vicinity of totalizators with the reasonable directions of members of the police force; and
 - v. imposing a penalty, not exceeding ten pounds, for the breach of any regulation made under the provisions of subdivision (c) of this section.

Rules and regulations.
1285, 1917,
s. 17.
1494, 1921,
s. 4.

27. (1) No person under the age of twenty-one years shall bet by means of the totalizator.

Penalty—First offence, not less than one pound nor more than seventy pounds. Each subsequent offence, not less than five pounds nor more than fifty pounds.

Use of totalizator by minors.

1285, 1917,
ss. 18 & 19.
Cf. U.K.
18 & 19
Geo. 5 c. 41,
s. 4;
24 & 25
Geo. 5 c. 58,
s. 15.

(2) A clearly printed copy of this section shall be affixed over each door or opening in every totalizator.

(3) No licensee of any totalizator shall use that totalizator without having affixed such copies as aforesaid.

Penalty—Twenty pounds.

PART III.

Mode of dealing with moneys paid into totalizator. 1285, 1917, s. 23. 1494, 1921, s. 5. 1877, 1923, s. 5. Cf. U.K. 24 & 25 Geo. 5 c. 58, s. 18.

28. (1) Every club—

- (a) shall deduct (for the purpose of being dealt with in accordance with this section) twelve and three-quarters per centum of the moneys paid into the totalizator in respect of each race;
- (b) shall, after making such deduction, pay out by way of dividends all moneys paid into the totalizator, but so that it shall not be necessary—
- (i.) in respect of a ticket issued on payment of any sum not exceeding five shillings, to pay out any smaller fraction of a shilling than three pence; and
- (ii.) in respect of a ticket issued on payment of any sum exceeding five shillings, but not exceeding ten shillings, to pay out any smaller fraction of a shilling than six pence; and
- (iii.) in respect of a ticket issued on payment of any other sum to pay out any fraction of a shilling.

(2) The amount remaining by reason of the non-payment of such fractions shall be paid by the club holding the same to such charitable purposes and in such amounts as the committee of the club, with the approval of the Commissioner of Police, thinks fit.

(3) If approval for the payment of any such amount is not obtained, and payment made in accordance with such approval, within six months from the date of the race meeting in respect of which the amount accrued, the chairman of the club making default shall be guilty of an offence against this Act.

(4) Out of the moneys deducted in accordance with subsection (1) of this section the club shall pay to the Commissioner of Stamps the duty payable under the Stamp Duties Act, 1923, in respect of the gross takings of the totalizator from which takings the moneys were deducted, and the balance of the moneys so deducted may be retained by the club as commission for the use and benefit of the club.

29. (1) Within twenty-one days after every race meeting held on any day for which any licence is granted under this Act, every club so licensed shall deposit with the Commissioner of Police a full and true account under the hand of its

Club to render account. 1285, 1917, s. 24. 1447, 1920, s. 6. 1494, 1921, s. 6.

secretary, or the hands of two members of its committee or executive body, showing—

- (a) the sums received by the club through the totalizator on the occasion of the use thereof under the licence;
- (b) the amount paid in dividends through the totalizator on that occasion;
- (c) the amount of commission retained by the club;
- (d) the manner in which that commission has been expended; and
- (e) the amounts of dividends unclaimed by the persons entitled to receive them.

(2) Within twenty-one days after the last day for which any licence is granted under this Act every club so licensed shall deposit with the Commissioner of Police a correct schedule of the names, addresses, and occupation of its members.

(3) The amount of all dividends unclaimed for a period of two months after they became payable by the persons entitled to receive them, shall be paid by the club holding those dividends to the Commissioner of Police, who shall pay them to the Treasurer of the State to be applied by him for the public uses of the State.

(4) If any club fails to observe any provision of this section, the chairman thereof shall be deemed to be guilty of an offence against this Act.

Penalty—Not less than twenty pounds nor more than fifty pounds.

(5) For the purpose of the recovery of the amount of any dividend which is payable under the provisions of subsection (3) hereof, that amount shall be deemed to be a debt due by the club to the Commissioner of Police, who may in his own name sue the club for the same in any court of competent jurisdiction. In any such proceedings the secretary of the club or any member of its committee or executive body may be named as defendant on behalf of the club, but no such person shall incur any personal liability by reason only of his having been so named.

(6) In any such proceedings a document purporting to be an account deposited by the defendant club under subsection (1) of this section or under subsection (1) of section 24 of the Lottery and Gaming Act, 1917, shall be admitted in evidence

on its mere production from the custody of the Commissioner of Police, and, so far as its truth is not disproved by the defendant, shall be conclusive evidence of the truth of its contents.

Gazette notice.
685, 1897,
s. 9,
1285, 1917,
s. 25,
1382, 1919,
s. 4.

30. (1) The Commissioner of Police shall cause to be published in the *Government Gazette* in the month of January in each year particulars of all licences granted for that year, with the names of the clubs to which those licences have been granted, and the racecourses whereon and the dates upon which any such clubs are licensed to use the totalizator.

(2) If any licence is granted after the publication of the particulars aforesaid, the Commissioner of Police shall, as soon as possible after the granting of the licence, cause to be published in the *Government Gazette* the same particulars with respect to the licence so granted.

Detention
rooms for use
of police.
1494, 1921,
s. 15.

31. (1) Every racing club licensed to use the totalizator shall provide such a detention room as hereinafter mentioned on every racecourse whereon it is licensed to use the totalizator during every day on which the club is licensed to use the totalizator thereon.

(2) The detention room shall be for the sole use of members of the police force on duty on the racecourse on that day in carrying out their duties, and shall be of such dimensions and so constructed and furnished and so situated as the Commissioner of Police thinks proper: Provided that, if the club is dissatisfied with any requisition made by the Commissioner under this section, it may appeal to the Minister against such requisition, and the Minister's decision on the matter shall be final.

(3) If, in the opinion of the Commissioner of Police, a racing club has not complied with the provisions of this section after one month's notice has been given to the secretary of the club requiring the club so to comply, the Commissioner of Police may revoke the licence to use the totalizator issued to the club which is for the time being in force.

PART IV.

LICENSING OF BOOKMAKERS.

32. In this Part, unless the context otherwise requires—

“country racing clubs” means the Balaklava Racing Club, Berri Racing Club Limited, Burra Racing Club, Clare Racing Club, Jamestown Racing Club Limited, Kadina and Wallaroo Jockey Club, Kalangadoo Racing Club, Laura Jockey Club Limited, Loxton Racing Club, Mannum Racing Club, Millicent Racing Club, Mount Gambier Racing Club, the Murray Bridge Racing Club Limited, Naracoorte Racing Club, Orreroo Jockey Club, Penola Racing Club Limited, Pinnaroo Racing Club Limited, Port Augusta Racing Club Limited, Port Lincoln Racing Club, Port Pirie Racing Club Limited, Quorn Jockey Club, Renmark Racing Club Limited, Snowtown Racing Club, Strathalbyn Racing Club, Streaky Bay Racing Club, Tailem Bend Racing Club, The Peterborough Racing Club Limited, the Waikerie Racing Club, and any other racing club included in this definition by proclamation made by the Governor:

“coursing meeting” means any meeting for the hunting or coursing of hares but does not include any kind of speed coursing or dog racing:

“metropolitan racing clubs” means the South Australian Jockey Club, Adelaide Racing Club Limited, Port Adelaide Racing Club Limited, Onkaparinga Racing Club, Gawler Jockey Club Limited, the Amateur Turf Club Incorporated, Adelaide Hunt Club, The S.A. Tattersalls Club Incorporated, the S.A. Licensed Victuallers Racing Club Limited, and any other racing club included in this definition by proclamation made by the Governor:

“licence” means a bookmaker’s, clerk’s, or agent’s licence for the time being in force under this Part:

“racecourse” means any land which is being used for holding a race meeting for horse races:

“racing club” means any metropolitan or country racing club:

“registered” means registered under this Part and “registration” has a corresponding meaning:

PART IV.

Cf. U.K.
24 & 25
Geo. 5 c. 58,
ss. 2, 3.

Interpreta-
tion.

1285, 1917,
s. 25a,
2135, 1933,
s. 4,
2159, 1934,
s. 4.

Amended by
2417, 1933,
s. 6.

“rules” means rules made by the board under this Part:

“this Part” includes the rules made under this Part:

“trotting ground” means any land which is being used for holding a race meeting for trotting races:

“trotting club” means a club controlling a trotting ground for the time being.

Power to
make
proclamation.

Inserted by
2417, 1938,
s. 7.

32a. (1) The Governor may from time to time by proclamation declare any racing club to be a country racing club or a metropolitan racing club and may revoke any such proclamation.

(2) The Governor may from time to time by proclamation declare that any racing club described by section 32 as a country racing club or a metropolitan racing club shall cease to be a country racing club or metropolitan racing club, as the case may be.

(3) If at any time the Governor is satisfied that any country racing club or metropolitan racing club has not held a race meeting during a period of at least two years (whether the said period occurs before or after or partly before or after the commencement of the Lottery and Gaming Act Amendment Act (No. 2), 1938), and that the failure to hold a race meeting was without reasonable cause, the Governor shall by proclamation declare that the racing club shall cease to be a country racing club, or a metropolitan racing club, as the case may be.

Legalization
of betting
with
bookmakers.
1285, 1917,
s. 25b.
2135, 1933,
s. 4.
2159, 1934,
s. 4.
Cf. U.K.
24 & 25
Geo. 5 c. 58,
ss. 4, 12.

33. (1) Notwithstanding any law to the contrary it shall be lawful to bet by way of wagering or gaming in accordance with this Part—

(a) on any racecourse or trotting ground during the holding of a race meeting for horse races or trotting races thereon; or

(b) at any place where a coursing meeting is being held;
or

(c) at or in any premises registered under this Part.

(2) Such betting shall not be a ground on which any premises or place shall be deemed or declared to be a common gaming house.

s. 33. **KIRK v. MILLER** (1936) S.A.S.R. 277. The words “purpose of betting” in paragraph (b) of subsection (3) means the purpose of betting in accordance with Part IV. of the Act.

(3) It shall be a defence to any charge of an offence under this Act—

(a) in a case where the defendant is the holder of a licence, that he was at all relevant times acting in accordance with this Part and the terms and conditions of his licence and of his permit or the registration of the premises in which he was operating:

(b) in a case where the defendant is not the holder of a licence, that the matter proved was betting or offering to bet with a licensed bookmaker in any place where the bookmaker was licensed to bet, or being in any such place for the purpose of betting, and that the defendant was over the age of twenty-one years, and was not knowingly concerned in any breach of this Part or of the terms and conditions of the bookmaker's licence or permit, or of the registration of the premises in which the bookmaker was betting.

Amended by 2417, 1938, s. 8.

(4) Nothing in this Part shall affect section 50 of this Act.

34. (1) For the purpose of this Part there shall be constituted a board to be known as the Betting Control Board.

Betting Control Board.

(2) The board is charged in the performance of its duties and exercise of its powers hereunder with the duty of controlling betting in such a manner as is reasonably consistent with the welfare of the public generally and the interests of persons and bodies liable to be affected thereby.

Substituted by 2417, 1938, s. 9.

(3) Upon the passing of the Lottery and Gaming Act Amendment Act (No. 2), 1938, all the present members of the Betting Control Board shall retire, and thenceforth the board shall consist of three members only.

(4) The Governor may without nomination fill the three vacancies on the board created by the operation of subsection (3) hereof by appointing thereto a chairman and two members.

(5) At the end of the third year of office one of the three members of the board provided for by this section, to be determined by lot, shall retire, and at the end of the fourth year of service on the board one of the two other original members of the board, to be determined by lot, shall retire. At the end of the fifth year the third original member shall retire. Thereafter every member of the board shall retire after he has held office for a term of three years from his appointment or re-appointment. A member appointed to fill

Lottery and Gaming Act, 1936-1938.

any casual vacancy shall retire at the time that the member in whose place he has been appointed would have retired. Each retiring member shall be eligible for re-appointment.

(6) Neither the chairman nor any member of the board, nor any officer or servant of the board shall, as such, be subject to the Public Service Act, 1936-1938.

(7) Two members of the board shall form a quorum thereof.

(8) The board shall be a body corporate with perpetual succession and a common seal, and with power to hold real and personal property of all kinds.

(9) No act or decision of the board shall be invalid or defective on the ground that when such act was done or decision made a vacancy existed on the board, or on the ground of any defect in the appointment or nomination of any member of the board.

(10) Each of the present members of the Betting Control Board at the passing of the Lottery and Gaming Act Amendment Act (No. 2), 1938, who is not immediately after the said passing appointed as chairman or member of the board as constituted by this section shall be paid as compensation for loss of office such sum as the Governor in each case thinks fit.

Remuneration
of board.
1285, 1917,
s. 25d.
2135, 1938,
s. 4.

35. (1) The board may pay to the chairman and members such salaries or fees as are approved by the Governor.

(2) The board may also pay to the chairman and any other member of the board any travelling or other expenses reasonably incurred by him in carrying out his duties under this Part.

Officers of
board.
1285, 1917,
s. 25e.
2135, 1938,
s. 4.

36. The board may appoint officers, servants, or agents necessary for carrying this Part into effect and may prescribe their duties and fix their remuneration.

Exemption of
board from
stamp duties.
Inserted by
2417, 1938,
s. 10.

36a. Notwithstanding the provisions of any law relating to stamp duties, no stamp duty shall be payable upon any receipt given or cheque drawn by the board.

Power of
board to
make rules as
to book-
makers.
1285, 1917,
s. 25f.
2135, 1938,
s. 4.
Gf. U.K.
24 & 25
Geo. 5 c. 58,
ss. 6, 9.

37. (1) The board may make rules as to all or any of the following matters:—

(a) the licensing of bookmakers, bookmakers' clerks, and bookmakers' agents and the number and classes of licences to be issued:

(b) the terms and conditions upon which licences may be obtained, and which are to be observed by the holders of licences:

- (c) the conduct of bookmakers and their clerks and agents:
- (d) the regulation and control of betting by and with bookmakers:
- (e) requiring licensed bookmakers to give security for the due observance of this Part and the rules, and of the terms and conditions of their licences:
- (f) the registration of premises upon which licensed bookmakers may bet and the terms and conditions of registration and the duration, suspension, and cancellation thereof:
- (g) the suspension and cancellation of licences:
- (h) requiring bookmakers to keep accounts and records and to make the same available for the board's inspection from time to time and furnish to the board weekly, annual or other returns of their transactions, and prescribing the form of and all matters relevant to such accounts, records, and returns:
- (i) prohibiting or restricting advertising by bookmakers:
- (j) the general administration of this Part:
- (k) imposing fines recoverable summarily for breach of any rule:
- (l) the issue, renewal and transfer of bookmakers' licences:
- (m) appeals to the board under this Act and the procedure thereon.

Cf. U.K.
24 & 25
Geo. 5 c. 58,
s. 16.
Amended by
2417, 1938,
s. 11 (a).

Paras. (l)
and (m)
inserted by
2417, 1938,
s. 11 (b).

38. (1) Every application for a licence shall be made to and determined by the board. The board shall have an unfettered discretion to grant or refuse any application without assigning any reason.

Applications
and effect of
licences.
1285, 1917,
s. 25g
2135, 1933,
s. 4.
2159, 1934,
s. 5.
Cf. U.K.
24 & 25
Geo. 5 c. 58,
s. 7.

(2) On every application for a bookmaker's licence there shall be paid to the board a fee of one pound and on every application for a clerk's or agent's licence a fee of ten shillings. The fee shall be retained by the board and applied towards its general expenditure.

(3) A bookmaker's licence shall entitle the holder thereof to carry on the business of a bookmaker for the period between the day whereon it was granted and the next succeeding thirty-first day of July subject to this Part upon any race-course or trotting ground or at any coursing meeting for which he holds a permit, or in any premises registered under this Part, but not otherwise.

Amended by
2417, 1938,
s. 12.

(4) A clerk's licence shall entitle the holder to act as a clerk of a bookmaker for one year from its date.

(5) An agent's licence shall entitle the holder to act as agent of a bookmaker within the area specified therein for one year from its date.

(6) No licence shall be granted to any person who holds any licence for the sale of liquor under the Licensing Act, 1932, or who is employed in any capacity by any such licensee, nor to any person whose usual place of abode throughout the whole of the period of twelve months immediately before his application for a licence is made was not within the State.

Permits to bet on racecourses.

1285, 1917, s. 25h.

2135, 1933, s. 4.

2150, 1934, s. 6.

Cf. U.K.

24 & 25

Geo. 5 c. 58, s. 11.

39. (1) A licence shall not authorize a bookmaker to carry on business as such on any racecourse or trotting ground unless he has first obtained a permit from the committee of the club controlling the racecourse or trotting ground for the time being.

(2) A licence shall not authorize a bookmaker to carry on business as such at any coursing meeting unless he has first obtained a permit for that coursing meeting from the committee of the National Coursing Association of South Australia. No such permit shall be issued in respect of any coursing meeting unless the board consents to the issue of permits for that coursing meeting, and permits shall not be issued authorizing bookmakers to carry on business at more than sixty-five meetings in any year, nor at more than fifteen enclosed coursing meetings in any year, nor at more than fifty open coursing meetings in any year.

(3) Any such committee may grant permits to licensed bookmakers subject to any conditions which it thinks fit.

Payment of commission on bets and returns.

1285, 1917, s. 25j.

2135, 1933, s. 4.

Cf. U.K.

16 & 17

Geo. 5 c. 22, Part II.

40. (1) Every bookmaker shall, not later than noon on Saturday in every week, pay to the board—

(a) a sum by way of commission equal to one pound per centum of all moneys paid or payable contingently or otherwise to such bookmaker in respect of—

(i.) every bet made by him during the previous week on any racecourse in respect of any horse race whether held within or outside the State; and

(ii.) every bet made by him during the previous week in respect of any trotting or coursing event;

Subsec. (1) substituted by 2417, 1938, s. 13.

(b) a sum by way of commission equal to two pounds per centum of all moneys paid or payable contingently or otherwise to such bookmaker in respect of every bet made by him during the previous week in any registered premises in respect of any horse race whether held within or outside the State.

(2) If any bookmaker makes default in paying any commission required by this section to be paid by him, the board, in addition to any other powers conferred upon it by the rules, may recover the amount payable from the bookmaker upon complaint in a court of summary jurisdiction, or by action in any court of competent jurisdiction.

(3) Every bookmaker shall not later than noon on Saturday in every week forward to the board a return in the prescribed form and verified by statutory declaration—

(a) setting forth a true and complete account of all moneys paid or payable to him contingently or otherwise in respect of all bets made by him during the previous week;

(b) showing the races on which the bets were made, and the dates on which those races were held, and the name of the racing club promoting or controlling each such race;

(c) showing the coursing events on which bets were made, and the dates on which those coursing events were held;

(d) setting forth separately the bets made on racecourses or at coursing meetings, and the bets made elsewhere; and

(e) containing any other matter prescribed by the rules.

(4) Where a bet is made upon the contingency of more races or coursing events than one it shall be deemed for the purpose of the return to relate only to the first of such races or coursing events.

(5) It shall not be necessary to include in any return—

(a) any bet made in relation to a race or coursing event which is abandoned or any bet which is declared off; or

(b) the name of any person with whom any bet was made.

Application of
commission.
Substituted
by 2417,
1938, s. 14.

41. (1) The board shall keep full and true accounts of all moneys received by it as commission under section 40, and shall pay all moneys into an account in a bank in the name of the board.

(2) The commission shall be applied as follows:—

- (a) The costs of the administration of this Part (to the extent that they are not paid out of fees payable on application for licences) shall be paid:
- (b) An amount equal to the commission on all bets made on races held outside the State shall be paid to the Treasurer in aid of the general revenue:
- (c) Thirty-five per centum of the commission on all bets made in registered premises on horse races held within the State (less such costs of administration as are provided to be paid by paragraph (a) of this subsection) shall be paid to the Treasurer in aid of the general revenue:
- (d) Sixty-five per centum of the commission on all bets made in registered premises on horse races held within the State shall be divided among the racing clubs in proportion to the amounts of the bets made on horse races conducted by each club during the period in respect of which the commission is payable:
- (e) The commission on all bets made on any racecourse on horse races held within the State shall be divided among the racing clubs in proportion to the amounts of the bets made on horse races conducted by each club during the period in respect of which the commission is payable:
- (f) The commission on all bets made on trotting races shall be divided amongst the trotting clubs in proportion to the amounts of the bets made on trotting races held by each club during the period in respect of which the commission is payable:
- (g) The commission on all bets made on coursing events shall be divided among the coursing clubs in proportion to the amounts of the bets made on coursing events held by each club during the period in respect of which the commission is payable.

(3) Payments under this section to the Treasurer and the racing clubs, trotting clubs, and coursing clubs shall be made monthly.

42. (1) The board may in accordance with the rules register any premises as premises in which betting may be carried on by any licensed bookmaker in accordance with this Part and his licence.

Registration of premises. 1285, 1917, s. 251. 2135, 1933, s. 4. 2183, 1934, s. 4.

(2) No registration shall be effective until the board has published a notice thereof in the *Gazette*.

(3) Upon and after the publication of the notice it shall be lawful for any licensed bookmaker to carry on the business of bookmaking in such building or premises in accordance with this Part so long as the registration remains in force.

(4) If the board registers under this section any premises occupied by a club registered under the Licensing Act, 1932, and if that club has in each of the ten years prior to the registration of its premises by the board held a licence to use the totalizator at race meetings conducted by it, the fact that those premises are registered by the board and that betting takes place thereon in accordance with this Part, shall not be a ground of objection to the grant or renewal of the registration of the club under the Licensing Act, 1932, nor shall any betting carried on in the club premises in accordance with this Part, be a ground on which any person shall be convicted of any offence.

(5) If the board is satisfied that any provision of this Part as to registered premises or any term or condition of registration has not been observed, the board may as an administrative act cancel the registration of the premises by notice in the *Gazette*, and thereupon the registration shall cease to have effect.

(6) If a race meeting is held at a racecourse which is more than twenty-five miles from the General Post Office at Adelaide and any part of which is within ten miles in a direct line from any registered premises, and bookmakers are permitted to carry on business at such race meeting, no person shall, after one o'clock on the day on which the race meeting is held—

(a) carry on business as a bookmaker at those premises;
or

(b) keep those premises open to the public.

Penalty—One hundred pounds.

(7) On any day on which a race meeting is being held at Victoria Park Racecourse, Morphettville Racecourse or Cheltenham Park Racecourse no licensed bookmaker or any employee or agent of any licensed bookmaker shall, in any premises registered under this Part which are situate within

Inserted by 2417, 1938, s. 15.

a radius of twenty miles from the General Post Office, Adelaide, exhibit or otherwise make known, prior to the commencement of any horse race held at any race meeting, whether within or outside the State, any information relating to betting odds in any such race other than the contents of one reading of betting odds supplied to him by a press agency authorized by the board to supply such reading.

Penalty—Fifty pounds.

This subsection shall not apply to any race meeting held at any of the said racecourses where at the request of the racing club holding the race meeting, the board otherwise directs.

Unlawful
betting.

Inserted by
2417, 1936,
s. 16.

42a. (1) Any person who—

(a) carries on business as a bookmaker; or

(b) bets with a bookmaker on the result of any horse racing, trotting, or coursing event,

at any time, or at any place, except in accordance with this Part, shall be guilty of an offence.

Penalty—For a first offence, one hundred pounds. For a subsequent offence, imprisonment for not more than three months.

(2) For the purposes of this section “bookmaker” includes any person who acts as a bookmaker whether he holds a licence or not.

Betting
tickets.

1285, 1917,
s. 25m.
2185, 1933,
s. 4.

43. (1) Every bookmaker upon making a bet with any person shall issue and deliver to that person a betting ticket in respect of each bet made with that person.

(2) If the bookmaker and the bettor are in each other's presence when the bet is made the ticket shall be delivered to the bettor forthwith.

If the bet is made by post or other indirect communication the bookmaker shall deliver the ticket or post it to the bettor within twenty-four hours after receiving the communication.

(3) If any bookmaker—

(a) fails to issue and deliver any ticket as required by this section; or

(b) issues or delivers to any person in respect of any bet a betting ticket previously used in respect of any other bet,

he shall be guilty of an offence.

Penalty—For a first offence, fifty pounds. For a subsequent offence, imprisonment for not more than three months.

(4) No person shall bet with a bookmaker without obtaining or demanding from such bookmaker a betting ticket in respect of every bet so made.

Penalty—Five pounds.

(5) No person with intent to evade any of the provisions of this Part, when making a bet with a bookmaker shall fail to obtain from such bookmaker a betting ticket in respect of such bet.

Penalty—For a first offence, a fine of twenty-five pounds. For any subsequent offence, a fine of fifty pounds.

44. (1) There shall be charged on every betting ticket issued by a bookmaker under this Part a stamp duty of one halfpenny.

Stamp duty on betting tickets.

1285, 1917, s. 25n
2135, 1933, s. 4.
2138, 1934, s. 5.

(2) All moneys received by the Treasurer by way of stamp duty under this Part shall be paid into and form part of the general revenue of the State.

Subsec. (1) substituted by 2417, 1938, s. 17.

(3) The Governor may by regulation prescribe any matters necessary or convenient for securing payment of duty under this section and preventing fraud and evasion, and may by any regulation prescribe penalties not exceeding twenty pounds, for breach of any regulation.

(4) If any bookmaker issues or delivers any betting ticket which is not stamped as required by this section he shall be guilty of an offence.

Penalty—For a first offence, fifty pounds. For a subsequent offence, imprisonment for six months.

44a. (1) Subject as hereinafter provided, there shall be charged upon every payment to any person made by a licensed bookmaker in respect of any bet made with him by such person in any premises registered under this Part a tax equal to threepence in the pound of the amount of the payment: Provided that this subsection shall not apply—

Tax upon winning bets made in registered premises.

Inserted by 2417, 1938, s. 18.

(a) where the payment to be made in respect of the bet is less than five shillings; or

Lottery and Gaming Act, 1936-1938.

- (b) to any refund of a bet which is refunded in accordance with any rule made by the board; or
- (c) to any payment in respect of a bet made by a licensed bookmaker with any licensed bookmaker under any scheme or arrangement authorized by the rules of the board for the laying-off of bets by bookmakers.

(2) If any bet is made upon credit by a licensed bookmaker in any licensed premises and any payment is made by the bookmaker in respect of that bet, the payment shall, for the purposes of estimating the tax payable under this section, be deemed to be the amount of the winnings plus the amount of the bet.

(3) If any bet is made by a licensed bookmaker in any licensed premises and the bookmaker, instead of making a payment in respect of the bet, sets off the amount which would otherwise be payable against any amount owing to the bookmaker or credits such amount to any person, the amount which otherwise would be payable (calculated as provided by subsection (2)) shall for the purposes of estimating the tax payable under this section be deemed to be a payment made by the bookmaker at the time of the set-off or credit.

(4) For the purposes of the preceding subsections of this section if any payment or amount deemed to be a payment is less than one pound or any part thereof is less than one pound, the payment or part, as the case may be, shall for the purposes of estimating the tax payable be regarded as one pound.

(5) Every bookmaker shall deduct from every payment upon which tax is payable as provided by this section, the amount of the tax and shall, not later than noon on Saturday in every week, pay to the board a sum equal to the amount of the deduction which during the previous week, he is bound under this section to make.

(6) If any bookmaker—

- (a) fails to make any such deduction as required by this section; or
- (b) fails to make any such payment to the board as required by this section,

he shall be guilty of an offence.

Penalty—For a first offence, fifty pounds. For a subsequent offence, imprisonment for six months.

(7) The board shall keep full and true accounts of all moneys received by it pursuant to this section and shall pay all such moneys into an account in the name of the board in a bank.

(8) The moneys received under this section shall be applied as follows:—

(a) An amount of eighteen thousand pounds shall in every financial year be distributed as follows—

Fifty per centum thereof shall be divided equally among the South Australian Jockey Club, the Adelaide Racing Club Limited, and the Port Adelaide Racing Club Limited:

Eighteen per centum thereof shall be divided equally between the Gawler Jockey Club Limited, and the Onkaparinga Racing Club:

Three per centum thereof shall be paid to the South Australian Tattersalls Club Incorporated:

Twenty-nine per centum thereof shall be divided equally among the country racing clubs:

(b) The balance then remaining shall be paid to the Treasurer in aid of the general revenue.

(9) Payments to the Treasurer and the racing clubs under this section shall be made monthly.

45. (1) No bookmaker shall bet with any person under the age of twenty-one years.

Penalty—For a first offence, five pounds. For a subsequent offence, twenty pounds.

(2) It shall be a defence to any charge under subsection (1) of this section if the defendant satisfies the court that he had reasonable grounds for believing the person with whom any bet is made to have been of or over the age of twenty-one years.

(3) If any person under twenty-one years of age is in or upon any premises registered under this Part whilst the premises are open to the public for the purpose of betting, that person shall be guilty of an offence.

Penalty—Ten pounds.

Betting with minors.
1285, 1917, ss. 250 and 250a.
2135, 1933, s. 4.
2188, 1934, s. 6.
Cf. U.K., 24 & 25 Geo. 5 c. 58, s. 15.

s. 45. MILLER v. TASKER (1936) S.A.S.R. 256. To establish the defence allowed by section 45 (2) the defendant must show that he had an actual belief based on reasonable grounds. Where the defendant had not applied his mind to the age of the infant with whom he bet, held that he had no reasonable ground for believing him to be over 21.

(4) If any person under twenty-one years of age is in or upon any premises registered under this Part whilst the premises are open to the public for the purpose of betting, the person in charge of those premises shall be guilty of an offence unless he shows that he could not, by the exercise of all reasonable precautions, have prevented that person from entering those premises.

Penalty—Ten pounds.

(5) Any member of the police force may remove from any registered premises any person who is on those premises in contravention of this section.

False returns.
1285, 1917,
s. 25s.
2135, 1933,
s. 4.

46. No bookmaker, with intent to defraud, shall—

- (a) furnish to the board any return which is false in any material particular:
- (b) fail to include in any such return any bet or other transaction or particular required to be included:
- (c) fail to record in accordance with the rules every bet made by him.

Penalty—Fifty pounds, or imprisonment for three months.

Cancellation
of licences.
1285, 1917,
s. 25q.
2135, 1933,
s. 4.
2188, 1934,
s. 7.

47. If the holder of any licence is convicted of any offence against this Part, or if the board is satisfied that the holder of any licence has failed to observe any provision of this Part or of the rules or any condition of his licence, it may, as an administrative act, cancel the licence.

Control of
trotting races.
1285, 1917,
s. 25r.
2135, 1933,
s. 4.

48. (1) No trotting race meeting at which bookmakers are permitted to operate shall be held unless a permit in writing authorizing it to be held has been issued by the South Australian Trotting League Incorporated.

(2) The said League may with the consent of the board issue such permits for the holding of trotting race meetings as it thinks fit.

(3) Each permit shall be for one night only as regards a meeting to be held in the metropolitan area and for either one day or one night as regards a meeting to be held outside the metropolitan area.

(4) If any trotting race meeting is held in contravention of this section the person by or on whose behalf the meeting was held, or if the meeting was held by an association, each

member of the committee or other executive body of the association and any person acting at the meeting as steward, starter, or judge shall be guilty of an offence, punishable on summary conviction.

Penalty—Twenty pounds.

(5) For the purpose of this section—

- (a) an agricultural show shall not be deemed to be a trotting race meeting:
- (b) “metropolitan area” means the area within a radius of twenty-five miles from the General Post Office at Adelaide.

48a. Where any money which, under this Part or the rules is payable by the board to any person, has been held by the board for twelve months after that person first became entitled thereto, and during that period no claim has been made to that money by the person entitled thereto, the board shall pay that money to the Treasurer in aid of the general revenue of the State.

Unclaimed money.
Inserted by 2417, 1938, s. 19.

This section shall apply to money received by the board whether before or after the enactment of this section.

PART V.

PART V.

UNLAWFUL GAMING.

49. No person shall win from any other person any money or valuable thing by fraud or any other unlawful means—

- (a) in playing at, or with, cards, dice, tables or other games; or
- (b) in bearing a part in the stakes, wagers, or adventures, or in betting on the sides or hands of them that do play; or
- (c) in betting on the event of any game, sport, pastime, or exercise.

Obtaining money, etc., by cheating.
1285, 1917, s. 26.
Cf. U.K. 8 & 9 Vict. c. 109, s. 17.

Penalty—Such fine as the court determines, or imprisonment for two years.

PART V.

Avoidance of gaming contracts.

1285, 1917, s. 27.
 Cf. U.K. 9 Anne c. 19; 5 & 6 Will. 4 c. 41, s. 1; 8 & 9 Vict. c. 109, s. 18; 55 & 56 Vict. c. 9, s. 1.

50. (1) All contracts or agreements whether by parol or in writing by way of gaming or wagering shall be void.

(2) No action shall be brought or maintained in any court to recover any sum of money or valuable thing—

(a) alleged to be won upon any bet; or

(b) which has been deposited in the hands of any person to abide the event on which any bet has been made:

Provided that this section shall not apply to any subscription or contribution or agreement to subscribe or contribute for or to any plate, prize, or sum of money to be awarded to the winner of any race or lawful game.

Extending provisions to gaming with coin, etc.

1285, 1917, s. 28.

51. Any person who in any public place at or with any table or instrument of gaming, or any coin, card, token, or other article used as an instrument or means of wagering or gaming—

(a) plays at any game or pretended game of chance; or

(b) bets by way of wagering or gaming on any game or pretended game of chance,

shall be deemed a rogue and vagabond within the meaning of the Police Act, 1916, and may be so convicted and punished under the provisions of that Act.

Gambling, etc., in public places.

1285, 1917, s. 29

52. No person shall in any public place—

(a) exhibit any implements or articles for unlawful gaming, in order to induce or entice any person to engage in any unlawful gaming; or

(b) by any fraudulent act or device, cheat any person.

Penalty—Imprisonment for three months, and also at the same time a sentence to repay any money, or restore any property which has been obtained by means of any such offence, and, failing the immediate payment or restoration, imprisonment for a further sixty days.

Betting with infants.

1285, 1917, s. 30.

53. No person shall make or shall offer to make a bet with any person who is under the age of twenty-one years.

Penalty—One hundred pounds, or imprisonment for six months.

s. 50. *MIDDLETON V. CAVANETT* (1923) S.A.S.R. 255; 9 Austr. Digest 396. A contract to act as agent in making bets is not necessarily illegal. The agent paying bets under such a contract can recover the amount paid from the principal under an implied contract of indemnity.

s. 51. The Police Act, 1916, has been repealed and superseded by the Police Act, 1936-1938.

54. No person under the age of twenty-one years shall make or offer to make a bet with any other person.

Betting by infants.
1285, 1917,
s. 31.

Penalty—Twenty pounds.

55. No person shall either directly or indirectly receive from any person under the age of twenty-one years, whether for himself or on behalf of some other person, any money or any valuable thing upon the understanding or agreement, either expressed or implied, that such money or valuable thing shall be placed in or used either directly or indirectly for the purpose of any totalizator or sweepstakes, or betting.

Receiving money for gaming from infants.
1285, 1917,
s. 32.

Penalty—One hundred pounds, or imprisonment for six months.

56. No person shall, for fee, commission, or reward, share, or interest—

Promoting sweepstakes for reward.
1285, 1917,
s. 33.

- (a) carry on any sweepstakes; or
- (b) pay, deposit, or receive any money or valuable thing for or in respect of any such sweepstakes; or
- (c) give or receive any card, ticket, paper, document, or other thing relating to or in connection with any such sweepstakes.

Penalty—One hundred pounds, or imprisonment for six months.

57. No person shall upon any racecourse or in any other public place or street directly or indirectly invite or solicit any other person to give or entrust to him any money or valuable thing for the purpose or intent that such money or thing, or any part thereof respectively, shall be placed or invested in any totalizator (whether such totalizator is lawful or not).

Soliciting totalizator investments.
1285, 1917,
s. 34.

Penalty—Twenty-five pounds, or imprisonment for two months.

58. No person shall for fee, commission, reward, share, or interest of any kind whatever, or upon any understanding or agreement, either expressed or implied, for such fee, commission, reward, share, or interest—

Totalizator agents.
1285, 1917,
s. 35.

- (a) receive from any other person any money for the purpose of investing the same in any totalizator licensed or otherwise or with a bookmaker; or

Amended by 2417, 1938,
s. 20.

s. 58. SUMNER V. SOLOMON (1908) S.A.L.R. 20; 9 Austn. Digest 396. Where the plaintiff employed the defendant to put money on the totalizator for him, and the defendant failed to do so, held that no action lay against the defendant for money had and received or for damages for breach of contract.

- (b) receive any money upon any such agreement, understanding, or intention that such money shall be so invested.

Penalty—One hundred pounds for a first offence, and for a subsequent offence imprisonment for not more than three months.

Proof of offence.

Inserted by 2417, 1938, s. 21.

58a. In any proceedings for an offence under section 57 or 58 the proof of the receipt by any person of any money for the purpose alleged in the complaint shall be *prima facie* evidence that it was invited or solicited by the recipient, and that it was received by him for fee, commission, reward, share, or interest, as the case may be.

Certain games unlawful.

1285, 1917,

s. 36.

1494, 1921,

s. 7.

Cf. U.K.

88 Hen. 8,

c. 9; 12 Geo.

2 c. 28, s. 2;

13 Geo. 2

c. 19, s. 9.

59. The games, tricks, or devices commonly known as “the purse trick,” “the three card trick,” “thimble rig,” “faro,” “banker,” “fan tan,” “two up,” “pitch-and-toss,” “hazard,” and all other games played in the same way, or of a kindred nature, are hereby declared to be unlawful games.

Betting and inviting to subscribe to a bet or sweepstakes.

1285, 1917,

s. 37.

Cf. U.K.

6 Edw. 7

c. 43, s. 1.

60. No person shall—

- (a) in any public place bet or offer to bet by way of wagering or gaming; or
- (b) in any public place get up or take part in any sweepstakes; or
- (c) publish or cause to be published in any public newspaper or by circular, any advertisement inviting the public to subscribe to or take part in any bet or sweepstakes.

Penalty—(1) Not less than two pounds nor more than one hundred pounds.

(2) For a second offence the offender shall be deemed a rogue and vagabond within the meaning of the Police Act, 1916, and as such may be convicted and punished.

s. 60. BEE v. JANZEN (1884) 18 S.A.L.R. 39; 9 Austn. Digest 510. Where a number of persons stake money on the result of a game played in a public place and in which they take no part, they are guilty of betting.

WHITTLE v. JENNINGS (1922) S.A.S.R. 394; 9 Austn. Digest 390. To constitute a bet it is essential that each party stands to win or lose.

The Police Act, 1916, has been repealed and superseded by the Police Act, 1936-1938.

61. (1) No person shall be guilty of unlawful gaming.

Penalty—One hundred pounds.

(2) No person shall play at any unlawful game.

Penalty—One hundred pounds.

(3) No person shall—

(a) be present at any unlawful gaming or at the playing of any unlawful game; or

(b) be in any place in which any unlawful gaming is taking place, without lawful excuse (the proof of which excuse shall be upon him).

Penalty—Twenty pounds.

62. (1) No person shall be in or upon any street or public place for the purpose of betting except by means of a totalizator duly licensed under this Act.

Penalty—

For a first offence, imprisonment for not less than one month nor more than three months:

For a second offence, imprisonment for not less than three months nor more than six months:

For a third or any subsequent offence, imprisonment for not less than six months nor more than twelve months.

Unlawful gaming and playing of unlawful games.
1285, 1917, s. 38.
1494, 1921, s. 8.
Cf. U.K. 12 Geo. 2 c. 23, s. 3; 18 Geo. 2 c. 34, s. 2.

Being in public place for betting.
1285, 1917, s. 39.
1447, 1920, s. 7.
1494, 1921, s. 11.
1877, 1928, s. 4.
2135, 1933, s. 5.
Cf. U.K. 24 & 25 Geo. 5 c. 58, ss. 2, 30.

- s. 61. BURCHELL v. STYLES (1906) S.A.L.R. 11; 9 Austn. Digest 447. Held, under Act 812, 1902, section 7, which penalised "a person found in a place used for unlawful gaming, without lawful excuse," that the onus of proving lawful excuse was on the defendant.
- s. 62. LAMPARD v. ALLCHURCH (1924) S.A.S.R. 341; 9 Austn. Digest 510. Settling bets is not betting within the meaning of section 62. [But see now section 62 (3).] An offence against section 62 may be committed if the defendant forms the purpose of betting while in a public place, and remains there to give effect to that purpose.
- CONNELLY v. ALLCHURCH (1925) S.A.S.R. 7; 9 Austn. Digest 543. Held that memorandum pads (on one of which the defendant was proved to have written), booklets, a settling book, a settling sheet, and a doubles book carried by the defendant on the relevant occasion were admissible in evidence to show the purpose of the defendant.
- ALLCHURCH v. BERESFORD (1928) S.A.S.R. 450; 9 Austn. Digest 533. An acquittal of a charge under section 62 will not support a plea of *autrefois acquit* on a complaint under section 90 (3).
- THATCHER v. LENTHALL (1933) S.A.S.R. 322; 12 Austn. Digest 635. In fixing the penalty for an offence under section 62 an important matter to be considered is whether the evidence discloses anything in the nature of a regular business of betting, and the size of the business.
- KIRK v. MILLER (1936) S.A.S.R. 277. A person negotiates bets if he undertakes to make bets for other persons with a registered bookmaker in a betting shop.
- s. 62. (1) LANE v. GILES (1934) S.A.S.R. 311. Held that the evidence did not prove that the appellant was in a public place for the purpose of betting. LAMPARD v. ALLCHURCH (*supra*) approved but distinguished.

Lottery and Gaming Act, 1936-1938.

(2) Notwithstanding the provisions of the Justices Act, 1921, or any other enactment, no court shall have power—

- (a) to impose on any person guilty of a second or third or subsequent offence under this section, any sentence lower than the minimum fixed by this section; or
- (b) to impose a fine in lieu of imprisonment under this section for any such second or third or subsequent offence.

In determining whether any offence is a second, third, or subsequent offence within the meaning of this section, the court shall have regard only to offences committed after the fifth day of December, nineteen hundred and thirty-three.

Of. U.K.
6 Edw. 7
c. 43, s. 1.

(3) In this section the term “betting” without limiting the meaning thereof includes negotiating bets, receiving or paying money in connection with bets, and settling bets, except the settling of bets made on a racecourse in accordance with Part IV. of this Act and the terms of a licence issued thereunder.

Loitering in
street.
1285, 1917,
s. 40.

63. No person standing in any street shall refuse or neglect to move on when requested by a police constable so to do, or shall loiter (whether such loitering shall cause or tend to cause any obstruction to traffic or not) in any street or public place after a request having been made to him by any police constable not to so loiter.

Penalty—Twenty pounds, or imprisonment for two months.

Betting
information.
1285, 1917,
s. 41.
2135, 1933,
s. 6.

64. No person shall—

- (a) print, exhibit, publish, sell, circulate, distribute, give away, or post up; or
- (b) cause to be printed, exhibited, published, sold, circulated, distributed, given away, or posted up,

s. 63. *MATTIN v. CURRIE* (1927) S.A.S.R. 459; 9 Austn. Digest 521. Held that a person standing stationary in a street cannot be convicted of loitering. (This decision is inconsistent with *ROSEY v. REYNOLDS*, *JOHNS v. BERRY*, and *JOHNS v. DALTON*, *infra*.)

ROSEY v. REYNOLDS (1929) S.A.S.R. 408; 9 Austn. Digest 522. In making a request not to loiter, the constable must specify the place in which the person is to cease loitering. A request not to loiter may be made to a person moving.

JOHNS v. BERRY; *JOHNS v. DALTON* (1934) S.A.S.R. 111. A person may loiter although he is not moving about. Meaning of “loiter” discussed.

PROVIS v. MEPSTEAD (1935) S.A.S.R. 42. Where the defendant remained in the street for about 20 minutes after being requested by a constable not to loiter there, held that a *prima facie* case of loitering had been made out.

any newspaper or printed card or written document, list or card (whether published, written, or printed in the State or elsewhere), which contains or purports to contain any advertisement or notification by or on behalf of any person, club, or association, as to betting on any intended horse, pony, trotting race or races, coursing event, or other sport or exercise whatever in any part of the Commonwealth, or as to betting odds on any such race or races.

65. No person shall print, write, exhibit, publish, sell, circulate, distribute, give away, or post up or cause to be printed, written, exhibited, published, sold, circulated, distributed, given away, or posted up any placard, handbill, card, writing, sign, advertisement, or notification (whether published, printed, or written in the State or elsewhere) whereby—

Advertising
by tipsters.
1285, 1917,
s. 42.
Of. U.K.
37 & 38 Vict.
c. 15, s. 3.

- (a) it is made to appear that that person or any other person will if required bet or give information or advice directly or indirectly, as to the probable result of any intended horse race or pony race or trotting race in any part of the Commonwealth, or as to the betting odds on any such race; or
- (b) any information or advice is given or purported to be given relating to the probable result of any such race or as to the betting thereon, or as to any unlawful game:

Provided that nothing contained in this section shall prohibit the publication in a newspaper by the printer or publisher thereof of a forecast of the probable result of any race, if such publication is not for money or gain.

66. (1) Any person who for fee or reward gives any oral information or advice relating or purporting to relate to the probable result of any intended horse race, pony race, trotting race, coursing event, or any other sport or exercise whatever or as to the betting odds thereon, shall be guilty of an offence.

Oral
information as
to racing.
1285, 1917,
s. 42A.
2135, 1933,
s. 7.
2188, 1934,
s. 8.

(2) In any proceedings for an offence against this section the allegation in the complaint that any information or advice was given for fee or reward shall be *prima facie* evidence of the facts so alleged.

(3) Nothing in this section shall apply to any information or advice given by or to a bookmaker licensed under this Act.

(4) In this section the expression “give oral information or advice” includes every method of communicating information by spoken words whether directly or through the medium of any apparatus for the reproduction of sound.

PART V.

Authorized information as to racing. 1285, 1917, s. 42B. 2188, 1934, s. 9.

67. (1) The Betting Control Board may in writing grant to any person a general or limited authority to publish or communicate, in any manner specified by the board, oral or written information or advice, relating to any horse race, pony race, trotting race, or coursing event, or to the betting odds thereon.

(2) Such an authority may contain any conditions imposed by the board and shall be void if any condition thereof is not observed.

(3) No person shall be liable to any proceedings or penalty in consequence only of publishing or communicating information or advice pursuant to an authority under this section.

Prohibition of broadcasting certain betting particulars. Inserted by 2417, 1938, s. 22.

67a. If any race meeting, trotting meeting, or coursing meeting is held in the State no person shall at any time, prior to or during the time the race meeting, trotting meeting, or coursing meeting is being held, by means of any wireless broadcast, broadcast any information relating to the betting on any horse or dog taking part in any horse race, trotting race, or coursing event to be held or held at such meeting.

Penalty—Fifty pounds.

Betting notices and placards. 1285, 1917, s. 43. Cf. U.K. 16 & 17 Vict. c. 119, s. 7.

68. No person shall—

(a) placard, post up, or exhibit; or

(b) permit or suffer to be placarded, posted up, or exhibited; or

(c) assist in placarding, posting up, or exhibiting,

in or on or about any land, building, or premises, any information or notice or list, directly or indirectly relating to betting or any unlawful game.

Removal from racecourses of persons suspected of offences. 1285, 1917, s. 44. 1447, 1920, s. 3. 1494, 1921, s. 9. 2185, 1933, s. 8.

69. (1) If any member of the police force has reasonable grounds for suspecting that on any place upon which any horse racing, foot racing, cycle racing, football match, cricket match, or any other sport of a kind usually attended by the public, is then being carried on, or on any other place any person is guilty of, or has on that day been guilty of, unlawful gaming, that member of the police force may, without warrant, arrest that person and remove him from that place.

S. 69. JUNNER V. FARQUHAR AND OTHERS (1909) S.A.L.R. 116; 9 Austn. Digest 525. The expression "reasonable grounds for suspicion" refers to a suspicion which an observation of the plaintiff's conduct on the occasion in question would reasonably cause in the mind of a discreet and fair-minded person.

MORRIS V. ADAMSON (1921) S.A.S.R. 242; 9 Austn. Digest 525. Held, that a strip of land outside a racecourse, and which was referred to as a road, and on which the public stood to buy tickets, but which gave no view of the races, was not a place where racing was carried on.

(2) No person who has been so removed from any such place shall, during the day on which he was so removed, re-enter or be again upon that place, or any place contiguous thereto.

Penalty—Fifty pounds.

(3) No member of the police force who has acted *bona fide* in the intended exercise of the powers conferred on him by subsection (1) of this section shall be liable to any proceedings, civil or criminal, in consequence of his having so acted.

70. (1) The committee of any racing club, or the secretary or any other official of a racing club when authorized by the committee thereof, may do any of the following things, namely:—

Power for racing clubs to revoke tickets and remove persons from racecourses. 1285, 1917, s. 44A. 1877, 1928, s. 6.

- (a) at any time revoke either verbally or by writing any licence, right, or title which has been granted by or on behalf of the racing club or the committee thereof, whether to a member of the club or any other person, and which authorizes any person to enter, be, or remain upon any racecourse on any one or more occasions when horse races are being run thereon:
- (b) on any day when horse races are being held by the club, request any person who is upon or in the racecourse where the races are being held to leave the same:
- (c) use all reasonable and necessary force to eject from the racecourse any person who having been so requested to leave neglects or refuses forthwith to do so.

(2) Any member of the police force, at the request of the committee of any racing club or the secretary or any official of any racing club, shall eject or assist in ejecting from the racecourse any person who having been requested to leave as aforesaid neglects or refuses forthwith to do so.

(3) The committee of a racing club shall not be liable to pay any compensation or damages whatsoever to any person in respect of the revocation of any licence, right, or title under this section, or the ejecting of any person from a racecourse under this section, except the amount of any valuable consideration paid for the licence, right, or title.

(4) Except as mentioned in subsection (3) no member of the police force or other person, acting in good faith in the intended exercise of the powers conferred on him under this section, shall be liable to any proceedings, civil or criminal, in consequence of his having so acted.

(5) No person who has left a racecourse pursuant to a request under this section, or who has been removed from a racecourse under this section, shall, during the day on which he so left or was removed, re-enter or be again upon the racecourse.

Penalty—Fifty pounds.

(6) In this section, without limiting the meaning which the terms herein defined have elsewhere in this Act, the following terms shall have the following meaning, namely:—

“committee” means the committee, executive, or other controlling body or person by whatever name called of a racing club, and includes any member of a committee as so defined:

“racing club” means any association of persons corporate or unincorporate which promotes or carries on horse racing or trotting races:

“racecourse” includes the land and premises on which horse or trotting races are actually run, and all land and premises to which the public have access for the purposes of viewing the races and any other land or premises usually regarded as part of a racecourse or trotting ground.

Power of the police.

1285, 1917,
s. 45.
1877, 1928,
s. 7.
2135, 1933,
s. 9.
Cf. U.K.
42 Geo. 3
c. 119, s. 4
(part);
4 Geo. 4
c. 60, s. 59;
8 & 9 Vict.
c. 109,
ss. 6-7;
16 & 17 Vict.
c. 119,
ss. 11-12;
24 & 25
Geo. 5 c. 58,
s. 27.

71. (1) It shall be lawful for—

(a) any special magistrate or two justices of the peace, upon complaint or information upon oath before him or them that there is reason to suspect that unlawful gaming is or is about to be carried on in or upon any place; or

(b) the Commissioner of Police, upon receiving a report in writing from any superintendent or inspector of police that he suspects that unlawful gaming is or is about to be carried on in or upon any place,

to give to any member of the police force a warrant in the form of the fourth schedule to this Act, or to the like effect.

(2) A warrant so given shall authorize the member of the police force therein named with such assistance as may be necessary—

- (a) to enter or re-enter into and upon and search the place therein named at any time and from time to time, and at all times during the day or night, within the space of three clear days from the date of the warrant:
- (b) to remain in and upon that place during the whole or any part of the three days aforesaid:
- (c) to use force if necessary in making entry or re-entry, whether by breaking open doors or otherwise:
- (d) to arrest and bring before a special magistrate or two justices of the peace all persons found therein or thereupon:
- (e) to seize all dice, balls, counters, tables, or other instruments of gaming, money, lists, cards, papers, documents or things found therein or thereupon, or upon the said persons which may reasonably be supposed to have been used or designed for use in connection with or in relation to such suspected offence:
- (f) to detain the same until the owner or owners thereof appear before a special magistrate or two justices of the peace to claim the same, and satisfy the magistrate or justices how and for what use or purpose the same were intended.

(3) The special magistrate or justices may confiscate the dice, balls, counters, tables, or other instruments of gaming, money, lists, cards, papers, documents, and things, or otherwise dispose of them as he or they deem fit, if—

- (a) the said owner or owners do not appear before the magistrate or justices within four days after the seizure; or
- (b) if he or they do so appear, and do not show to the satisfaction of the magistrate or two justices after due examination, that the dice, balls, counters, tables, or other instruments of gaming, money, lists, cards, papers, documents or other things, were not in any such house, office, room, or place, or upon the said persons for the purpose of being used in relation to, or in connection with, any matter made unlawful by this Act.

PART V.

Obstructing constables in the execution of their duty.
1285, 1917, s. 46.
2135, 1933, s. 10.
Cf. U.K. 42 Geo. 3 c. 119, s. 4 (part).

72. No person shall wilfully—

- (a) prevent any member of the police force or other person acting in his assistance under a warrant under this Act to enter any house, room, or place, from entering the same or part thereof; or
- (b) obstruct or delay any such member of the police force or person in so entering; or
- (c) by any bolt, bar, chain, or other contrivance secure any external or internal door of or means of access to any house, room, or place so authorized to be entered; or
- (d) use any means or contrivance whatsoever for the purpose of preventing, obstructing, or delaying the entry of any such member of the police force or person into any such house, room, or place or any part thereof.

Penalty—One hundred pounds, or imprisonment for six months.

Power of police as to premises where unlawful gaming is carried on.
1285, 1917, s. 46A.
2135, 1933, s. 11.

73. (1) Upon receiving a report in writing from any police officer of or above the rank of sub-inspector that he is of opinion that unlawful gaming is or is about to be carried on in any place, the Commissioner of Police may give notice in writing addressed to the occupier of that place, or if the name of the occupier is unknown, then addressed to that particular place, ordering that all doors or other means of entrance on that place or leading to or from that place, both internal and external, shall be opened and kept open so as to admit of the free ingress and egress of any member of the police force authorized in writing by the Commissioner of Police and any persons assisting him during the days and hours stated in the notice. The notice shall be served upon the occupier of the said place, or, if the occupier cannot be found, it shall be deemed a sufficient service if the notice is fastened in a conspicuous place on the outside of any door or other means of entrance to or leading to or from the said place.

(2) After service of the notice the following provisions shall apply:—

- (a) any member of the police force authorized in writing by the Commissioner of Police and any persons assisting him may enter, re-enter, and remain in or upon the said place or any part thereof or any premises leading thereto during the days and hours

stated in the notice for the purpose of observing the conduct of all persons in or upon the said place:

- (b) any occupier, or, in the absence of the occupier any other person present upon the said place who refuses or neglects immediately to open or keep open during the days and hours stated in the notice, any door or means of entrance mentioned in the notice, and any person who at any time during the said days and hours closes any such door or means of entrance shall be guilty of an offence.

Penalty—A fine not exceeding one hundred pounds.

- (c) any member of the police force authorized in writing by the Commissioner of Police and any member of the police force assisting him may use force if necessary in making entry or re-entry, whether by breaking doors or otherwise.

PART VI.

PART VI.

COMMON GAMING-HOUSES.

74. (1) Any house, office, room, or place—

- (a) which is used for the playing therein of any unlawful game; or
- (b) which is used for the purpose of enabling any person or persons to bet with others or with one another, or to pay or receive money or valuable consideration in respect of any bet on events which have not happened, whether made in or at such house, office, room, or place, or elsewhere; or

Common gaming-houses.
1285, 1917, ss. 47 and 48.
1447, 1920, s. 9.
Cf. U.K. 8 & 9 Vict. c. 109, s. 2; 16 & 17 Vict. c. 119, s. 2.

s. 74. NATION v. KROGDAHL (1923) S.A.S.R. 94; 9 Austr. Digest 444. "User" may be established by proof of use on a single occasion. Where the evidence showed that on one occasion a game of hazard was played by a number of men and a number of bets were made, held that the "carrying on" of an unlawful game was proved.

LENTHALL v. MITCHELL (1933) S.A.S.R. 231; 9 Austr. Digest 446. The acts, words and conduct of persons using premises are relevant to show what its character is, regardless of whether there is an occupier in any other sense or not.

- (c) which is occupied by any company or club having for its object or one of its objects the enabling of shareholders or members thereof to make bets or pay or receive money in respect of bets on events which have not happened, whether so made either amongst themselves or with other persons not necessarily being shareholders or members,

shall be deemed to be a common gaming-house.

(2) A house, office, room, or place where an unlawful game is carried on shall be deemed to be a common gaming-house, notwithstanding that the same is open only for the use of subscribers or of members or shareholders of any particular club or company, and is not open to all persons desirous of using the same.

Occupying common gaming-house.
1285, 1917,
s. 48A.
1494, 1921,
s. 10.

75. No person shall be the occupier of a common gaming-house.

Penalty—Five hundred pounds, or imprisonment for twelve months.

Allowing use of premises as common gaming-house.
1285, 1917,
s. 49.

76. No owner or agent acting on behalf of the owner and no occupier of any house, office, room, or other place shall allow or permit it to be used as a common gaming-house: Provided that an owner or agent who is not an occupier, and who was in ignorance of and had no reasonable grounds to suspect such use, or had taken all reasonable steps to prevent it, shall not be guilty of an offence.

Allowing use of premises as access to a gaming-house.
1285, 1917,
s. 50.

77. No owner or agent acting on behalf of the owner, and no occupier of any house, office, room, or place shall allow or permit or suffer it to be used as a means of access to or exit or escape from any house, office, room, or place used as a common gaming-house: Provided that if the owner, agent, or occupier was in ignorance of and had no reasonable grounds to suspect such use, or had taken all reasonable steps to prevent it, he shall not be guilty of an offence.

s. 75. **BOND v. BERRESFORD** (1931) S.A.S.R. 285; 9 Austn. Digest 444. On a charge under section 75, all facts (including the posting of a sentry to give warning of the approach of the police) showing the use of the premises may be proved.

WELLS AND ANOTHER v. NOBLETT (1933) S.A.S.R. 134; 9 Austn. Digest 442. Personal knowledge of the defendant as to the use of the premises on a particular occasion is not a necessary ingredient of an offence against section 75, but there must be some degree of knowledge or connivance on the part of the occupier as to the use of the premises.

JOHNSON v. LENTHALL (1934) S.A.S.R. 13. By reason of the definition of common gaming house in section 74 it is necessary for the prosecutor to prove that the owner or his agent either knows that the premises are used for betting and does not interfere, or purposely abstains from ascertaining whether betting is going on or not.

78. (1) Any owner of any house, office, room, or place who has reasonable grounds to suspect that it is used—

Power to evict occupier of house used as gaming-house, etc.
1285, 1917, s. 51.

- (a) as a common gaming-house; or
- (b) as a means of access to or of exit or escape from any house, office, room, or place used as a common gaming-house,

may serve on the tenant or occupier a notice to quit.

(2) The serving of such notice shall, subject to this Act, determine as from the seventh day after the date of service any tenancy under which the occupier holds as if the tenancy had expired by effluxion of time. The owner may thereupon, without any authority other than this Act, take legal proceedings to evict, and may evict, such occupier.

(3) The notice shall be served personally on the occupier, but if he cannot be found service may be effected by posting a copy of the notice on some conspicuous part of the said house, office, room, or place.

(4) Upon proof, to the satisfaction of the Registrar-General, that such a notice has been served on the tenant or occupier in manner aforesaid, he shall, at the expiry of seven days from the date of service, cause a memorial of the service and of the date thereof to be entered in respect of land under the provisions of The Real Property Act, 1886, in the Register Book of Titles kept pursuant to that Act, and in respect of land not under the provisions of that Act in the General Registry Office of Deeds for the said State.

79. (1) Any such notice to quit may at any time be cancelled as from the date of such notice and relief be granted by the Supreme Court subject to such terms as the Court thinks fit on application being made to the Court by the occupier and on proof that he has not at any time used or allowed or permitted or suffered the house, office, room, or place to be used—

Cancellation of notice to quit.
1285, 1917, s. 52.

- (a) as a common gaming-house; or
- (b) as a means of access to or of exit or escape from any house, office, room, or place used as a common gaming-house.

(2) Notice of intention to make such application shall be served on the owner at least seventy-two hours before the hearing of the application, and on being so served shall operate until the determination of the application as a stay of any proceedings under the last preceding section to evict the occupier.

PART V.

Declaration that house a common gaming-house.

1285, 1917, s. 53.

80. (1) On the affidavit of a commissioner, inspector, or sub-inspector of police, showing reasonable grounds for suspecting that any house, office, room, or other place is used in contravention of this Act, a judge of the Supreme Court may declare such house, office, room, or place to be a common gaming-house.

(2) Every such declaration shall be in force until rescinded.

Rescission of declaration.

1285, 1917, s. 54.

81. (1) Any such declaration may be rescinded by a judge of the Supreme Court, subject to such terms as he thinks fit, on application being made to him—

(a) by the owner, tenant, or occupier of the house, office, room, or place the subject of the declaration, on proof that he has not at any time allowed the house, office, room, or place to be used in contravention of this Act; or

(b) by a commissioner, inspector, or sub-inspector of police, on proof that the house, office, room, or place is not used in contravention of this Act.

(2) Where the application is made by the owner, tenant, or occupier as aforesaid, notice in writing of intention to make the same shall be served on a commissioner, inspector, or sub-inspector of police two days at least before the hearing of the application.

Publication of notice of declaration and rescission.

1285, 1917, s. 55.

82. (1) Notice of any such declaration, and of any rescission of the same, shall be published in the *Gazette*.

(2) In any proceedings under this Act the production of a copy of the *Gazette* containing such notice shall be evidence that the declaration or rescission therein notified was duly made.

Notice given of declaration.

1285, 1917, s. 56.

83. (1) The Commissioner, or a superintendent, inspector, or sub-inspector of police, on such declaration being made with respect to any house, office, room, or place—

(a) shall cause to be published on two days in a newspaper circulating in the neighbourhood of the house, office, room, or place, a notice of the making of the declaration:

(b) shall cause such notice to be served on the owner and occupier of the house, office, room, or place. The service shall be personal, except when it cannot be promptly effected, in which case the notice may be

served on the owner, tenant, and occupier aforesaid, by causing a copy thereof to be affixed at or near to the entrance to the house, office, room, or place.

(2) In any proceedings under this Act the production of a copy of a newspaper containing any such notice shall be evidence that that notice was duly published in that newspaper on the date appearing thereon.

84. If after publication, in pursuance of paragraph (a) of the last preceding section, of notice of the making of a declaration with respect to a house, office, room, or place, and during the time that the declaration is in force, any person is found in or on or entering or leaving—

Persons found in house declared a common gaming-house.
1285, 1917, s. 57.

(a) that house, office, room, or place; or

(b) any land or building used as a means of access to, or of exit or escape from the same,

any member of the police force may, without warrant, arrest that person and take him before a court. That person, unless he proves that he was in, or on, or entering, or leaving as aforesaid, for a lawful purpose shall be liable to a penalty of fifty pounds, or to imprisonment for three months.

85. If after service on an owner, in pursuance of paragraph (b) of section 83 of notice of the making of a declaration with respect to a house, office, room, or place, and while the declaration is in force, that house, office, room, or place is used in contravention of this Act, the owner shall, unless he proves that he has taken all reasonable steps to evict the occupier from the same, be liable to a penalty of not less than thirty and not more than one hundred pounds.

Penalty on owner of house used in contravention of Act.
1285, 1917, s. 58.

86. If after service on an occupier, in pursuance of paragraph (b) of section 83 of notice of the making of a declaration with respect to a house, office, room, or place, and while the declaration is in force, that house, office, room, or place is used in contravention of this Act, the said occupier shall be liable to a penalty not less than thirty and not exceeding three hundred pounds, unless he proves that he has taken reasonable steps to prevent such use.

Penalty on occupier.
1285, 1917, s. 59.

87. While any such declaration is in force with respect to any house, office, room, or place, any member of the police force may, without warrant—

Entry by police.
1285, 1917, s. 60.

(a) enter the said house, office, room, or place:

- (b) enter any land or building which he has reasonable grounds to suspect is used as a means of access to or of exit or escape from the same:
- (c) pass through, from, over, and along any other land or building for the purpose of entering in pursuance of paragraph (a) or paragraph (b) aforesaid:
- (d) for any of the purposes aforesaid, break open doors, windows, and partitions, and do such other acts as are necessary:
- (e) seize any instruments of gaming and any instruments of betting and documents relating to betting, and any money and securities for money in any such house, office, room, or place.

Obstructing
the police.

1285, 1917,
s. 61.

Amended by
2417, 1938,
s. 23.

88. No person shall—

- (a) obstruct;
- (b) aid in obstructing; or
- (c) solicit any other person to obstruct or aid in obstructing,

a member of the police force in the exercise of any power conferred on him by this Act.

Penalty—For a first offence seventy-five pounds, and for a second or subsequent offence imprisonment for not more than six months.

Certain
offences.

Inserted by
2417, 1938,
s. 24.

88a. Any person who is in or near to any place whether a public place or not for the purpose of giving any warning to any person of the presence or approach of any member of the police force or for the purpose of preventing the detection of any offence against this Act shall be guilty of an offence.

Penalty—For a first offence, seventy-five pounds, and for a second or subsequent offence imprisonment for not more than six months.

Evidence of
house being a
gaming-
house.

1285, 1917,
s. 62.
Cf. U.K.
17 & 18 Vict.
c. 88, s. 2.

89. If—

- (a) any member of the police force or other person acting in his assistance authorized under this Act to enter any house, room, office or place is wilfully prevented from or is obstructed or delayed in entering the same or any part thereof; or

s. 89. *JOHNS v. MILBURN* (1934) S.A.S.R. 317. Where the police were delayed in entering a house, but gave no notice to the occupier that they were armed with a warrant, held that such delay did not establish a *prima facie* case on complaints for being the occupier of a house used for unlawful gaming, and for being the occupier of a common gaming house.

- (b) any external or internal door of or means of access to any such house, office, room, or place so authorized to be entered is found to be fitted or provided with any bolt, bar, chain, or any means or contrivance for the purpose of preventing, delaying, or obstructing the entry into the same or any part thereof of any member of the police force authorized as aforesaid, or any person acting in his assistance, or for the purpose of giving an alarm in case of such entry; or
- (c) any such house, office, room, or place is found fitted or provided with any means or contrivance for unlawful gaming, or with any means or contrivance for concealing, removing, or destroying any instruments of gaming,

it shall be evidence, until the contrary is made to appear, that such house, office, room, or place, is used as a common gaming-house, and that the persons found therein were playing an unlawful game therein.

90. (1) No house, office, room, or place shall be opened, kept, or used for the purpose of—

- (a) unlawful gaming:
- (b) the occupier betting with persons resorting thereto:
- (c) any money or valuable thing being received by or on behalf of the occupier as or for the consideration for any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter

Keeping house for purpose of gaming.
1285, 1917, s. 63 (part).
Gf. U.K.
18 Geo. 2 c. 34, s. 1;
8 & 9 Vict. c. 109, s. 4;
16 & 17 Vict. c. 119, s. 1;
17 & 18 Vict. c. 38, s. 4.

Gf. U.K.
16 & 17 Vict. c. 119, s. 4.

s. 90. ALLCHURCH v. BERESFORD (1928) S.A.S.R. 450; 9 Austn. Digest 533. An acquittal under section 62 will not support a plea of *autrefois acquit* on a complaint under section 90 (3).

BOND v. JENNINGS (1930) S.A.S.R. 103; 9 Austn. Digest 480. Held that a "tipping" competition organized by proprietors of a newspaper, was an undertaking to pay money on an event relating to a horse race.

LENTHALL v. MITCHELL (1933) S.A.S.R. 231; 9 Austn. Digest 446. A place used for unlawful gaming includes a common gaming house. The acts, words and conduct of persons using premises are relevant to show what its character is regardless of whether there is an occupier in any other sense or not.

WADE v. TROTTER (1934) S.A.S.R. 62. Held that a fine of £100 or in default imprisonment for 12 months was an excessive penalty where it was not shown that the defendant had any interest in the betting being carried on in his hotel.

BOND v. FORAN (1934) 53 C.L.R. 364; affirming FORAN v. BOND (1934) S.A.S.R. 323; 9 Austn. Digest 485. To prove an offence against section 90 (3) it is necessary to prove *mens rea* in the sense that the occupier of the premises or the person to whom the management of the premises was committed, knew or connived at the use to which the premises were put. In order that the premises may be "used" within the meaning of section 90 (3), it must be shown that the person carrying on the illegal business has so acted as to establish the premises as his business site.

Lottery and Gaming Act, 1936-1938.

any money or any valuable thing on any event or contingency of or relating to any race, fight, game, sport, or exercise, or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency.

(2) Every house, office, room, or place opened, kept, or used for any of the purposes aforesaid is hereby declared to be a common nuisance and unlawful.

(3) No person shall be the occupier of any such house, office, room, or place kept or used for any of the purposes aforesaid.

Penalty—Five hundred pounds, or imprisonment for twelve months.

Inserted by
2417, 1938,
s. 25.

(4) It shall not be necessary to prove that the occupier knew that the premises were kept or used for any of the purposes aforesaid, but such person shall not be convicted if he proves that he did not know and could not by the exercise of all reasonable diligence have known that the premises were being so kept or used.

Advancing
money for the
purpose of
gaming.
1285, 1917,
s. 63 (part).

91. No person shall advance or furnish money for the purpose of gaming with persons frequenting any such house, room, or place.

Penalty—Five hundred pounds, or imprisonment for twelve months.

Receiving
money for
betting.
1285, 1917,
s. 64.

92. (1) No occupier of any house, office, room, or place used for any of the purposes mentioned in section 90 shall receive, directly or indirectly, any money or valuable thing as a deposit on any bet on the happening of any event or contingency of or relating to any race, fight, game, sport, or exercise, or as or for the consideration for any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any such event or contingency.

Penalty—Fifty pounds, or imprisonment for six months.

(2) No person shall, on the receipt of any money or valuable thing so paid or given as aforesaid, give any acknowledgment, note, security, or draft purporting or intending to entitle any other person to receive any money or valuable thing on the happening of any such event or contingency as aforesaid.

Penalty—Fifty pounds, or imprisonment for six months.

(3) Any money or valuable thing received by any such person aforesaid as a deposit on any bet, or as or for the consideration for any such assurance, undertaking, promise, or agreement, as aforesaid, shall be deemed to have been received to or for the use of the person from whom it was received, and that money or valuable thing, or the value thereof, may be recovered accordingly, with full costs of suit, in any court of competent jurisdiction.

93. (1) No person shall—

- (a) print, exhibit, or publish, or cause to be printed, exhibited, or published any placard, handbill, card, writing, sign or advertisement from which it appears that any house, office, room, or place is opened, kept, or used for the purpose of making bets on any event or contingency of or relating to any race, fight, game, sport, or exercise, or for the purpose of exhibiting lists for betting, or with intent to induce any person to resort to such house, office, room, or place for the purpose of making such bets:
- (b) on behalf of the occupier of any such house, office, room, or place invite other persons to resort thereto, for the purpose of making such bets.

Exhibiting placards or advertising betting-houses. 1285, 1917, s. 65.

Penalty—Thirty pounds, or imprisonment for two months.

94. No person shall print, send, exhibit, publish, or shall cause to be printed, sent, exhibited, or published any letter, circular, telegram, placard, handbill, card, or advertisement or shall make or cause to be made any announcement by means of any wireless broadcast—

Betting advertisements. 1285, 1917, s. 66. Amended by 2417, 1938, s. 26.

- (a) from which it appears that any person, either in the State or elsewhere, will on application give information or advice for the purpose of or in respect to any bet on any event or contingency of or relating to any race, fight, game, sport, or exercise, or will make on behalf of any other person any such bet:
- (b) with intent to induce any person to apply to any house, office, room, or place, or to any person with a view to obtaining information or advice for the purpose of any such bet or with respect to any such event or contingency:
- (c) inviting any person to make or take any share in or in connection with any such bet.

Penalty—Thirty pounds, or imprisonment for two months.

PART VI.

Giving false names or addresses.
1285, 1917, s. 67.
Cf. U.K. 17 & 18 Vict. c. 38, s. 3.

95. No person found in any house, room, or place entered by any constable or person assisting him to enter the same, upon being arrested by such constable or person assisting, or upon being brought before any justices, on being required by such constable or person or by such justices to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address.

Penalty—Fifty pounds, or imprisonment for one month.

Entrance and nomination fees exempted.
1285, 1917, s. 68.
Cf. U.K. 8 & 9 Vict. c. 109, s. 18 proviso, 16 & 17 Vict. c. 119, s. 6.

96. Nothing in this Act shall extend to the deposit, receipt, subscription, holding or payment of any money or valuable thing as entrance or nomination fees, in respect of any lawful race, game, sport or exercise, or as part of the prize or stakes therefor.

PART VII.

PART VII.

EVIDENCE.

Immunity of police and other authorized persons.
1285, 1917, s. 69,
1447, 1920, s. 10.

97. No member of the police force acting under the orders or instructions of any other member of the police force who is his superior in rank, and no other person acting under the lawful instructions of any member of the police force, shall be deemed to be an accomplice in the commission of any offence against this Act, nor shall the member giving such order or instructions, nor the member or other person who acts in pursuance or attempted pursuance thereof be liable to conviction or punishment for any act or matter done or committed by either of them in relation to or under such order or instructions, although, but for this section, such members or other person or any of them might have been deemed to be such accomplices or accomplice or have been liable to such conviction or punishment.

Incriminating evidence.
1285, 1917, s. 70.

98. (1) No person (other than the defendant) required to be examined as a witness in the hearing of any complaint laid in relation to any offence alleged to have been committed

s. 98. R. v. SCOTT; *Ex parte* SCOTT (1927) S.A.S.R. 492; 9 Austn. Digest 545. Explanation of section 98. A person who procures himself to be called or is called as a witness for any sinister or collateral purpose is not "required to be examined" within the meaning of section 98 and, therefore, is not entitled to a certificate.

TROTTER v. BADENOCH (1931) S.A.S.R. 84; 9 Austn. Digest 546. On the trial of a person for aiding and abetting an offence, the principal offender (whose case had been adjourned part heard) was held not to be "the defendant" within the meaning of the exception in subsection (1), and was therefore entitled to the benefit of a certificate granted to him.

BURKE v. CRAFTER (1935) S.A.S.R. 323. A co-defendant is not a compellable witness under section 98. Held, that a co-defendant who gave evidence must be assumed to have been called as witness on his own application.

against this Act, shall be excused from being so examined or from answering any question or questions put to him as such witness on the ground that his evidence or the answer to any such question or questions might tend to incriminate him or render him liable to a prosecution.

(2) Any such person so required to be examined who refuses to make oath accordingly or to answer any question or questions shall be liable to the same penalties and to be dealt with in all respects as any witness may be dealt with for refusing to be sworn or to give evidence.

Of. U.K.
17 & 18 Vict.
c. 88, s. 5.

(3) Every such person so required to be examined who upon such examination makes a true and faithful discovery to the best of his knowledge of all matters as to which he is examined shall receive from the court a certificate in writing to that effect, and thereupon, but not otherwise, be freed from all prosecution, penalties, and punishment to which he might have been or become liable in respect of the matters touching which he has been so examined.

Of. U.K.
18 Geo. 2
c. 34, s. 9;
8 & 9 Vict.
c. 109, s. 9;
17 & 18 Vict.
c. 88, s. 6.

99. The allegations in any complaint laid in respect of any alleged offence or offences against this Act—

Allegations to
be *prima facie*
proof.

(a) that any person, firm, company, or partnership (as the case may be) named in the complaint is the owner, user, or occupier (as the case may be) of any place, room, or premises mentioned in the complaint:

1285, 1917,
s. 71.
2135, 1933,
s. 12.

(b) that any horse race, cycle race, or foot race, or coursing event (as the case may be) mentioned in the complaint was run at a place and on a date therein specified, and that any horse or horses, dog or dogs, or person or persons named in the complaint took part in any race or coursing event therein mentioned;

shall be accepted by the court as evidence of the truth of such allegations unless the contrary is proved.

100. Any person, club, firm, company, or partnership using or occupying any place, room, or premises for the purpose of unlawful gaming shall be deemed to be so using or occupying such place for such purpose with the knowledge and consent of the owner and the immediate landlord of such place or premises unless the contrary is proved.

Knowledge of
owner as to
occupancy of
premises.
1285, 1917,
s. 72.

s. 99. LENTHALL v. MITCHELL (1933) S.A.S.R. 231; 9 Austr. Digest 441. A defendant alleged in a complaint to be the occupier of premises must satisfy the court on the balance of probabilities that he is not such an occupier.

PART VII.

Secondary evidence relating to lotteries. 1285, 1917, s. 73.

101. In every complaint laid in respect of any offence relating to any illegal lottery alleged to have been or to be intended or about to be drawn or conducted elsewhere than in the State, the court may in its discretion receive and act upon such secondary or other evidence as may be adduced for the purpose of proving the existence, drawing, conduct, or intention to draw or conduct such lottery.

Evidence of illegal lottery. 1285, 1917, s. 74.

102. (1) In any proceedings against any person for establishing, commencing, or being a partner in any illegal lottery, or managing, conducting, or assisting to manage or conduct any illegal lottery, or selling or disposing or buying or accepting any ticket or thing purporting to be or usually known as a lottery ticket and relating to an illegal lottery, it shall, in default of or in addition to other evidence, be sufficient in support of the complaint to show that such ticket or thing was bought or accepted by the purchaser or acceptor under the belief by him that the possession and production of such ticket purporting to be a lottery ticket or other thing conveyed a right to the purchaser or any holder thereof to draw for, compete, or have an interest in an illegal lottery.

(2) The sale of a ticket or thing commonly known as a Chinese lottery ticket, whether marked or otherwise, shall be *prima facie* evidence of the existence of a lottery and of an undertaking, agreement, or promise, expressed or implied, to pay a sum of money to the purchaser or holder of such ticket on the happening of a certain event or contingency.

(3) In any proceedings it shall not be necessary to prove that any ticket purporting to be or usually known as a Chinese lottery ticket relates to any particular lottery, or that any lottery has been or will be drawn.

Prima facie evidence of unlawful gaming. 1285, 1917, s. 75. Cf. U.K. 8 & 9 Vict. c. 109, s. 8.

103. Whenever any place is entered under a warrant under the provisions of this Act, the discovery therein or about the person of any of those found therein (under circumstances which, combined with such discovery, raise in the mind of the court a reasonable suspicion that the purpose and provisions of this Act have been contravened) of cards, dice, balls, counters, tables, or other instruments of gaming, or of lists, cards, papers, documents, or things relating to racing or betting, shall be *prima facie* evidence that such place is used for unlawful gaming.

s. 103. *JOHNS V. MILBURN* (1934) S.A.S.R. 317. Held, on the facts, that a *prima facie* case had not been established by virtue of section 103.

104. If on the hearing of any complaint for unlawful gaming the court is of opinion that any money or thing which has to its satisfaction been proved to have been given to, or received, or paid by the accused person, or given to, or received, or paid by any person or persons on his behalf, has been given in circumstances which, in the mind of the court, raise a reasonable suspicion that such money or thing was so given, received, or paid in contravention of the purposes and provisions of the Act, or any of them, such giving, receiving, or paying as aforesaid shall be deemed *prima facie* evidence of the commission by the accused person of the offence charged against him in the complaint.

Evidence as to offences.
1285, 1917, s. 76.
Cf. U.K., 8 & 9 Vict., c. 109, s. 5.

105. (1) If on the hearing of any complaint against any person for unlawful gaming, the evidence for the prosecution is such as to raise in the mind of the special magistrate or justices hearing the complaint a reasonable suspicion that that person is guilty of the offence charged against him in the complaint, that evidence shall be deemed to be *prima facie* evidence that that person is guilty of that offence.

Reasonable suspicion sufficient to set up a *prima facie* case.
1494, 1921, s. 14.

- s. 105. SANDERSON v. ALLCHURCH (1922) S.A.S.R. 7; 9 Austn. Digest 511. Every offence against the Act is unlawful gaming within the meaning of section 105. Reasonable suspicion means a suspicion which a reasonable man could reasonably entertain on the evidence for the prosecution. On a charge of being in a public place for the purpose of illegal betting the following facts were held sufficient to raise a reasonable suspicion of guilt:—(a) The defendant, whilst standing in the front of the grand stand on a racecourse spoke to several men at intervals, made entries in a race book, and when approached by the police threw away the book and several slips of paper; (b) the defendant had £60 in notes in his pockets; (c) some of the slips had entries thereon requiring explanation.
- ALLCHURCH v. DENTON (1922) S.A.S.R. 91. On a charge of being in a public place for the purpose of illegal betting, *semble* a reasonable suspicion may be entertained against a bookmaker's clerk, although his employer has been acquitted on a similar charge relating to the same occasion.
- THOMPSON v. ALLCHURCH (1922) S.A.S.R. 217; 9 Austn. Digest 512. "Unlawful gaming" includes every offence against the Lottery and Gaming Act and a complaint may be for unlawful gaming although the words "unlawful gaming" are not used. On a charge of being in a public place for the purpose of betting the following facts were held sufficient to raise a reasonable suspicion of guilt:—(a) The acts of the defendant in a public place prior to his being spoken to by the police, which acts were such as would be done by a man making a bet, though capable of an innocent interpretation; (b) the conduct of the defendant after arrest, which was incapable of an innocent interpretation.
- NATION v. KROGDAHL (1923) S.A.S.R. 94; 9 Austn. Digest 444. On a charge of being the occupier of a common gaming house the following facts were held sufficient to raise a reasonable suspicion of guilt:—(a) That on one occasion a game of hazard was being played on the premises by a number of persons and that a considerable number of bets were made; (b) that the defendant was the occupier of the premises; (c) that he was familiarly addressed by some of the players; (d) that on the arrival of the police the lights were turned down, a warning cry was given, and the players dispersed.
- HOLMES v. ALLCHURCH (1926) S.A.S.R. 255; 8 Austn. Digest 470. Held that where the evidence for the prosecution raised a reasonable suspicion of guilt, but the mind of the special magistrate may have been influenced by evidence wrongly received, the conviction should be quashed.
- LAMPARD v. WEST (1926) S.A.S.R. 293; 9 Austn. Digest 536. Reasonable suspicion in the mind of the court leads inevitably to a conviction in absence of evidence for the defence if the reasonable suspicion is established on facts proved beyond

(2) The provisions of this section shall not limit the effect of any provisions of section 104 of this Act, and the provisions of that section shall not limit the effect of any provision of this section.

106. The allegation in any complaint under section 114 of this Act that—

- (a) any person is the secretary of the company named in that complaint; or
- (b) any person is the manager of that company; or
- (c) any person is a director of that company; or
- (d) the premises named are or have been in the occupation or under the control of that company,

shall be *prima facie* evidence of the facts alleged.

Certain allegations *prima facie* evidence. 1285, 1917, s. 77.

s. 105. (contd.) reasonable doubt. Discussion of onus imposed on defendant by establishment of reasonable suspicion.

MCLEAN v. DAWKINS (1930) S.A.S.R. 94; 9 Austn. Digest 541; reversing DAWKINS v. MCLEAN (1930) S.A.S.R. 7; 9 Austn. Digest 537. On a charge of being on licensed premises for the purpose of illegal betting acts of the defendant consistent with making a bet, coupled with the absence of a denial or explanation of suspicious circumstances were held sufficient to create a reasonable suspicion. Where magistrates hold a *prima facie* case exists by reason of section 105, they should say so.

LENTHALL v. POWELL (1930) S.A.S.R. 185; 8 Austn. Digest 163, 468; 9 Austn. Digest 536, 546; affirmed by POWELL v. LENTHALL 44 C.L.R. 470; 4 A.L.J. 311; 9 Austn. Digest 542. Where the evidence on a charge for an offence against the Lottery and Gaming Act satisfies the judicial conscience that it is right to suspect the accused person, the court is bound to entertain the suspicion and hold that a *prima facie* case is made out.

POWELL v. LENTHALL (1930) 44 C.L.R. 470; 4 A.L.J. 311; 9 Austn. Digest 542; affirming LENTHALL v. POWELL (1930) S.A.S.R. 185; 9 Austn. Digest 536, which reversed LENTHALL v. POWELL (1930) S.A.S.R. 13; 9 Austn. Digest 536. The Supreme Court on appeal may examine the whole adjudication of the magistrate under section 105 including both the question whether he had a suspicion and whether he ought to have had one.

HINTON v. TROTTER (1931) S.A.S.R. 123; 5 Austn. Digest 716; 9 Austn. Digest 539. A *prima facie* case established by reasonable suspicion may be rebutted by disproving the facts on which the suspicion is founded, or by proving facts which make it more likely than not that the defendant is innocent. It is not enough for the defence to disprove particular facts if the suspicion remains as a real suspicion reasonably based on the facts in evidence. Failure to explain suspicious circumstances at the relevant time may support an inference of guilt.

BOND v. BERRESFORD (1931) S.A.S.R. 285; 9 Austn. Digest 444. Where the evidence for the prosecution is equally consistent with guilt and innocence, section 105 does not apply. There must be some evidence which warrants an inference of guilt rather than of innocence.

MOORE v. NOBLET (1932) S.A.S.R. 6. On a charge of unlawful betting in a billiard saloon the following facts were held to justify a reasonable suspicion of guilt:— (a) That the defendant was in possession of and attempted to conceal a betting book; (b) that he had knowledge of its contents; (c) that he refused to give an explanation as to his possession of or interest in the book when questioned by the police; (d) that he gave false evidence in the witness box.

BLIGHT AND ANOTHER v. BOND (1932) S.A.S.R. 121; 9 Austn. Digest 544. On a joint charge against two defendants for unlawful betting in an hotel, conduct of the defendants in the hotel consistent with betting, the facts that one of the defendants had a large sum of money of different denominations distributed over a number of pockets, and the other defendant had betting slips in his possession, and both defendants falsely denied any knowledge of the slips, held sufficient to justify a reasonable suspicion.

107. Whenever in any proceedings under this Act it is material to show that any person was at any material time under the age of twenty-one years—

Proof of age.
1285, 1917,
s. 77A,
2135, 1933,
s. 13.
Cf. U.K.
6 Edw. 7.
c. 43, s. 1
(3);
18 & 19
Geo. 5 c. 41,
s. 4 (2).

(a) the opinion of the court on its own view of such person; or

(b) the opinion of a police officer who has seen such person,

that such person was at the material time under the age of twenty-one years shall be *prima facie* evidence of that fact.

108. (1) If the name of any person is printed or published upon any placard, handbill, card, writing, sign, advertisement, circular, newspaper, or other notice or notification or document that fact may be accepted by the court as *prima facie* evidence that the said placard, handbill, card, writing, sign, advertisement, circular, newspaper, or other notice or notification or document was printed or, according to the nature of the charge, published by such person.

Proof of publication.
1285, 1917,
s. 77B.
2135, 1933,
s. 13.

(2) In this section “name” includes any name, or any designation whatever, used or assumed by any person or by which any person is usually known or which is usually applied to any business or business premises of any person.

108a. If it is proved on the hearing of any complaint for unlawful gaming that on the premises where it is charged that such unlawful gaming has taken place there is installed a telephone instrument the number of which does not appear in the current telephone directory, such proof shall be *prima facie* evidence of the truth of such charge.

“Silent”
telephone
evidence of
unlawful
gaming.
Inserted by
2417, 1933,
s. 27.

PART VIII.

PART VIII.

PROCEDURE AND MISCELLANEOUS.

109. (1) All proceedings under this Act shall be disposed of summarily.

Proceedings
for offences.
1285, 1917,
s. 78.

(2) Penalties for any offence under this Act shall be recovered summarily.

PART VIII.

General penalty for offences.
1285, 1917, s. 79.
Cf. U.K. 24 & 25 Geo. 5 c. 58, s. 80.

110. Unless otherwise specified in this Act, every person who commits any offence against this Act, shall be liable to a penalty not exceeding fifty pounds, or to imprisonment for not longer than three months.

More than one offence may be charged in complaint.
1285, 1917, s. 80.

111. In any complaint laid in respect of any alleged offence or offences against this Act any number of offences to the number of not more than three may be charged against the defendant and evidence given in support thereof; and the court may convict the defendant of any one of those offences which to the satisfaction of the court has been proved, and may inflict such penalty therefor as is by law provided.

Power to amend.
1285, 1917, s. 81.

112. (1) It shall be held sufficient in any complaint under this Act if the complaint gives the accused a reasonably clear and intelligible statement of the offence with which he is charged.

(2) No conviction or warrant of commitment shall be held void, invalid, or quashed for any defect in substance or in form.

(3) The court shall amend every complaint which, in its opinion, is defective or ought to be amended upon such terms as to costs, adjournment, or otherwise as the court thinks fit.

(4) Any special magistrate may amend any conviction or warrant of commitment at any time after it has been signed and before it has been executed.

Discretion of Registrar of Companies.
1285, 1917, s. 82.

113. The Registrar of Companies shall not be required to register any club, association, or persons as a company under any Act relating to companies if, in his opinion, the purposes or objects, or any of them, of such club, association, or persons, are designed, or intended either directly or indirectly, or either wholly or in part, to contravene or evade in any way the provisions and purposes of this Act, or any of them.

Cancellation of registration of companies under certain circumstances.
1285, 1917, s. 83.

114. (1) On complaint being laid on oath before a special magistrate by any police constable stating that the constable has reasonable grounds of suspicion that the premises occupied by or under the control of any company registered under The Companies Act, 1892, or the Companies Act, 1934, are being or have been during their occupation or control by that company used for the purpose of unlawful gaming, the

S. 111. *ALLCHURCH V. TASKER* (1922) S.A.S.R. 336; 9 *Austn. Digest* 532. If more than one offence is proved the court has a discretion to convict of such offence as it thinks fit, and may hear the parties as to how its discretion should be exercised.

special magistrate may issue his summons to the manager, secretary, or directors of the company, or any of them, requiring him or them or any of them to appear before him, the said magistrate, at the place and time mentioned in the summons, to answer the matter of the complaint and to show cause why the registration of the company should not be cancelled.

(2) If the party or parties so summoned do not appear, or if upon the hearing of the complaint the party or parties so summoned fail to show to the satisfaction of the special magistrate that the premises in question were not used for the purpose of unlawful gaming, then the special magistrate may, by an order under his hand, declare the registration of the company named in such complaint to be cancelled.

(3) Upon such order being made, and immediately after it has been published in the *Government Gazette*, the company in respect of which the order has been made shall for all purposes of law be deemed to be unregistered.

115. (1) Any justice or any officer of the police force of rank not lower than sergeant or any member of the police force authorized in writing by any such officer may demand entrance at any time by day or night into—

Entry of shops, factories, and club premises. 1494, 1921, s. 18.

- (a) any premises in respect of which a licence granted under the Licensing Act, 1932, is in force;
- (b) any shop or any part of a building occupied in connection with or for the purposes of a shop;
- (c) any factory and the appurtenances of any factory; or
- (d) any building or place occupied by any club (whether a racing club or not) and the appurtenances thereof.

(2) If admittance is refused or delayed for such time as makes it appear that wilful delay was intended—

- (a) such justice, officer, or member may break into and employ force to enter such place; and
- (b) notwithstanding such breaking and entry, the occupier of such place and the person to whom such demand was made shall be guilty of an offence against this Act, and shall be liable to a penalty for the first offence of not less than five pounds and not more than twenty pounds, and for any subsequent offence of not less than ten pounds and not more than thirty pounds.

(3) The authority of a member of the police force, referred to in subsection (1) of this section, may be limited to one or more specified occasions, or one or more specified localities, or one or more specified places, or may authorize such member to act generally as in the subsection mentioned without limitation as to occasion, locality, or place, or may be limited in any manner deemed proper by the officer giving the authority.

Exemption of certain sweepstakes. 1285, 1917, s. 83A. 2185, 1933, s. 14. Cf. U.K. 24 & 25 Geo. 5 c. 58, ss. 28, 24.

116. Nothing in this Act shall apply to any sweepstake held upon a racecourse, or any place not being a public place, if—

- (a) the total contributions do not exceed five pounds;
- (b) no person contributes more than five shillings;
- (c) the promoter does not promote, and the individual subscribers do not contribute to, more than one sweepstake on any one race; and
- (d) the total sum contributed is paid to the winner without any deduction.

Half penalties to be paid to informer. 1285, 1917, s. 84.

117. One half part of every sum which shall be imposed as a penalty under sections 6, 7, 8, 49, 51, 52, 72, 90, 91, 92, 93, 94, and 95 of this Act shall be paid to the person on whose complaint the conviction has been obtained, unless the complaint was laid by or on behalf of a public officer.

Construction of Act. Inserted by 2417, 1938, s. 28.

118. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected.

SCHEDULES.

THE FIRST SCHEDULE.

ACTS REPEALED.

Number and Year of Act.	Title.	Extent of Repeal.
1285 of 1917 ..	Lottery and Gaming Act, 1917	The whole.
1382 of 1919 ..	Lottery and Gaming Act Amendment Act, 1919	The whole.
1447 of 1920 ..	Lottery and Gaming Act Amendment Act, 1920	The whole.
1494 of 1921 ..	Lottery and Gaming Act Amendment Act, 1921	The whole.
1877 of 1928 ..	Lottery and Gaming Act Amendment Act, 1928	The whole except section 9.
1986 of 1930 ..	Lottery and Gaming Act, 1930	The whole.
2135 of 1933 ..	Lottery and Gaming and Licensing Acts Amendment Act, 1933	Part I.
2159 of 1934 ..	Lottery and Gaming Act Amendment Act, 1934	The whole.
2188 of 1934 ..	Lottery and Gaming Acts Amendment Act, 1934	The whole.
2245 of 1935 ..	Lottery and Gaming Acts Amendment Act, 1935	The whole.

THE SECOND SCHEDULE.

RULES AND REGULATIONS AS TO THE TOTALIZATOR.

Made in Executive Council, 26th May, 1937: *Government Gazette* 27th May, 1937, p. 1207.

Licences to Use the Totalizator.

1. The Commissioner of Police may, subject to the provisions of the Lottery and Gaming Act, 1936, and to the rules and regulations made thereunder, grant a licence for the use on any racecourse or trotting grounds of the totalizator. The totalizator, when used in accordance with such licence, and every office, room, or place upon the racecourse or trotting grounds used for the purpose of the totalizator, and every placard, advertisement, letter or circular referring to the same, shall be exempt from the provisions of the Police Act, 1936, the Lottery and Gaming Act, 1936, and every other Act, prohibiting gaming and wagering.

Conditions to which Licences Subject.

2. Any reference, in the conditions set out in regulation 3, to a club, unless the context or subject matter requires a different construction, includes a reference to—

- (a) the chairman, the secretary, and every member of the committee or executive body of such club; and
- (b) every person employed by such club.

3. Every licence for the use of the totalizator hereafter granted shall be subject to the following conditions, namely:—

- 1. The club shall not permit or suffer any person to follow the occupation of a totalizator agent, or any similar occupation, or to carry on or engage in any unlawful gaming, on the racecourse or on any grounds used in connection with any race or trotting meeting at which the use of the totalizator is licensed.

Lottery and Gaming Act, 1936-1938.

- II. The club shall cause to be removed from the racecourse and such grounds every person on such racecourse or grounds carrying on or attempting to carry on any such occupation, or receiving, or offering as a totalizator agent, or in any similar manner, to receive money for investment in or in connection with the totalizator, whether gratuitously or otherwise, or carrying on or engaging in any unlawful gaming, and shall exclude such person from such racecourse and grounds throughout the remainder of the meeting.
- III. The provisions of paragraphs I. and II. hereof do not apply to the servants of the club within the totalizator receiving money from the public for investment in the totalizator in accordance with the provisions of the Lottery and Gaming Act, 1936.
- IV. No investment shall be received in any totalizator in respect of any race after such race has actually started.
- V. In all totalizators, except automatic totalizators, no person shall interfere with any totalizator ticket box or container except for the purpose of reading the numbers of the totalizator tickets in such tin or container, and the tickets therein shall be left facing the public for five minutes or such less time after the start of a race as the police supervisor may direct.
- VI. No person shall sell any totalizator ticket, or pay any dividend on any totalizator ticket to any person inside the totalizator building.
- VII. The club shall cause a set of books to be accurately kept showing—
 - (a) the names of all horses starting in each race and the names of all non-starting horses in respect of which any investment has been made:
 - (b) the amount invested in the totalizator on each horse in each race:
 - (c) the total amount invested in the totalizator on each race:
 - (d) the amount of stamp duty payable to the Commissioner of Stamps in respect of the amount invested on each race:
 - (e) the amount of commission retained by the club, and how it is expended:
 - (f) the amount of dividends declared on the first horse and the total amount payable to investors thereon:
 - (g) the amount of dividends declared on the second horse and the total amount payable to investors thereon:
 - (h) the amount of dividends declared on the third horse and the total amount payable to investors thereon:
 - (i) the amount of dividends on each race unclaimed by the persons entitled to receive the same on the day of the race meeting:
 - (j) the amount of dividends on each race unclaimed for a period of two months after they become payable to the persons entitled to receive the same; the dividends on the first, second, and third horses to be shown separately:
 - (k) the amount of fractions held by the club in respect of each race.
- VIII. The club shall during any race meeting permit any member of the police force, or any other person authorized in writing for the purpose by the Commissioner of Police, to enter all enclosures and buildings upon the racecourse or trotting ground, and shall, on demand by such member or any such authorized person, produce to him any document, book, form, return, or record, or tickets relating to the working of the totalizator.
- IX. All books of account, vouchers, paid dividend tickets, documents, forms, returns, working sheets, or records of the club shall, on demand by the Commissioner of Police, or any member of the police force, or other person authorized by him in that behalf, be submitted by the club to any person nominated by the Commissioner of Police for audit and examination.
- X. The club shall cause to be delivered on demand to any member of the police force or other person authorized by the Commissioner of Police a carbon copy of the original readings of the totalizator taken after each race, showing the amount invested on each horse and the total amount invested on the race.

- XI. Prior to the beginning of each race or trotting meeting the club shall, on demand, cause to be delivered to any member of the police force or other person authorized by the Commissioner of Police in that behalf, a statutory declaration, made and declared by the chairman and secretary of the club, setting forth the number and amount of each denomination of totalizator tickets printed or prepared for issuing in respect of each horse entered to be run at such race or trotting meeting for each race in which such horse is so entered.
- XII. Forthwith after the result of each race run at a race or trotting meeting is declared by the judge, the club shall, on demand by any member of the police force or other person authorized by the Commissioner of Police in that behalf, cause all tickets prepared or printed for issuing to persons investing in the totalizator on each horse in such race in respect of which a dividend is, or is to be, declared, and also on all non-starting horses in respect of which any investment has been made, which are unissued, to be placed in a packet, and such packet to be securely fastened up and sealed by the officer in charge of such totalizator, and be delivered to such member of the police force.
- XIII. Forthwith after the expiration of two months from the date of the holding of each race or trotting meeting, the club shall cause every totalizator ticket issued at such race or trotting meeting upon which a dividend has been paid, or in case of a non-starting horse, upon which any money has been refunded, to be delivered to the Commissioner of Police or any member of the police force authorized by the Commissioner of Police in that behalf.
- XIV. Subdivisions XII. and XIII. shall apply only to clubs whose permanent office for the transaction of the business of the club is situated more than 10 miles in a direct line from the General Post Office at Adelaide.
- XV. No totalizator dividend shall be paid to any person unless the totalizator ticket representing the number of a horse upon which a dividend is declared is produced to the paying out officials at the totalizator on the day of race or trotting meeting or to the secretary of the racing or trotting club concerned within two months of the date of the race or trotting meeting being held.
- XVI. The club shall cause to be erected to the satisfaction of the Commissioner of Police a barrier in front of every window used in connection with the totalizator for supplying tickets or change, or for paying dividends. Such barrier shall be so constructed as to provide separate places of entry and exit.
- XVII. The club shall cause every totalizator used by such club to be provided with separate windows for use exclusively by women: Provided that this condition shall not apply on any racecourse which is situate more than twenty miles in a direct line from the General Post Office, Adelaide, and in respect of which the Commissioner of Police has certified that in his opinion this condition is unnecessary: Provided further that any such certificate with respect to any racecourse or trotting grounds may at any time be revoked by the Commissioner of Police, whereupon this condition shall again apply on such racecourse or trotting grounds.
- XVIII. On any default by any club in the observance of any of the above conditions in any respect, the licence shall be revocable by the Commissioner of Police, or by the chief officer of police on the racecourse or grounds, either immediately upon such default or at any time within 14 days thereafter.

Form of Licence and Fees.

4. Every licence shall be in the following form, or as near thereto as circumstances permit, and shall be granted to the committee or executive body of the club, or one or more members of such committee or executive body, on application by or on behalf of such club or the committee thereof, but only for the racecourse or trotting ground and the days named in such licence.

Lottery and Gaming Act, 1936-1938.

Form of Licence.

By virtue of the Lottery and Gaming Act, 1936, and subject thereto, and to all rules and regulations made thereunder, these are to licence Mr....., being the chairman of, and the other members of the committee or executive body of the.....club called the....., to use the totalizator on the.....at....., during theday of.....the.....day of.....the.....day of.....the.....day of.....the.....day of.....the.....day of.....the.....day of.....or upon such other day or days in place of any of the said days as the Chief Secretary may, from time to time, in writing upon this licence, approve. This licence shall be in force from the.....day of.....19..., to the succeeding 31st day of December (both days inclusive).

Given under my hand the.....day of....., 19....

Commissioner of Police.

5. Every club applying for a licence shall, on such application, pay to the Commissioner of Police a licence fee of one pound one shilling for every day for which such licence is applied for; and if the licence is not granted for as many days as are applied for, the Commissioner of Police shall return the said licence fee, or a proportional part thereof, as the case may be; or if any race or trotting meeting is subsequently abandoned the Commissioner of Police shall return the licence fee in respect of such day.

6. On application by any person, and on payment of a sum not exceeding one shilling for every folio of 72 words, the Commissioner of Police shall furnish two copies, certified under his hand as such, of any licence granted, and of any account deposited under the Lottery and Gaming Act, 1936, or under these rules and regulations.

Control of Queues.

7. (1) Persons approaching any window of a totalizator shall form up in a queue in single file extending away from such window.

(2) When any such queue has been formed, no person shall approach the window to which such queue leads except as a member of such queue.

8. No person shall—

- (a) push into any such queue, or join the same except at the rear end thereof;
- (b) take precedence of any person who from his position has a prior right in any queue;
- (c) stand or walk between any queues so formed, or within four yards of either of the outside queues;
- (d) pass money or a ticket to any person in any queue.

9. Every person shall at all times observe and comply with any reasonable directions given by any member of the police force as to—

- (a) the manner of approaching to or departing from any totalizator;
- (b) the conduct of such person in the vicinity of any totalizator.

Penalties.

10. Any person who contravenes any provision of regulation 7, 8, or 9 hereof, whether by omission or commission, shall be liable to a penalty not exceeding ten pounds for every breach of such provision.

THE THIRD SCHEDULE.

FORM OF APPLICATION FOR LICENCE.

To _____ Esq., Commissioner of Police.
 I, the undersigned, being the _____
 of the Racing Club, called _____, do hereby
 apply on behalf of such club for a licence under the Lottery and Gaming Act,
 1936, for the said club to use the totalizator on the racecourse situate at
 _____ during the year
 upon the days hereunder specified.
 [Here specify dates.]
 Dated the _____ day of _____

THE FOURTH SCHEDULE.

SEARCH WARRANT.

South [Royal Arms] Australia.
 (To wit.)

To _____
 Whereas it appears to me (or us) _____ [a Special
Magistrate, the Commissioner of Police, or two Justices of the Peace], acting in
 and for the State of South Australia, that there is reason to suspect that unlawful
 gaming is being or is about to be carried on in or upon a certain place, to wit.
 This is therefore to authorize and require you, with such assistance as may be
 necessary, to enter and re-enter into and upon and search such place at any time,
 and from time to time and at all times during day or night, within the space of
 three clear days from the date of this warrant, and to remain in and upon such
 place during the whole or any part of the three days aforesaid, and if necessary
 to use force in making such entry or any re-entry, whether by breaking open doors
 or otherwise, and to arrest and bring before a Special Magistrate or two Justices
 of the Peace all such persons as may be found therein or thereupon, and to seize
 all dice, balls, counters, tables, or other instruments of gaming, moneys, lists,
 cards, papers, documents, or things found upon such persons, or in or upon such
 place, as may be reasonably supposed to have been used or designed for use in
 connection with or in relation to any such suspected offence, and to detain any
 such dice, balls, counters, tables, or other instruments of gaming, moneys, lists,
 cards, papers, documents, or things so found, to be dealt with according to law:
 And for so doing this shall be your warrant.
 Given under my hand at _____ in South Australia,
 this _____ day of _____

4
The Road Traffic Act, 1934-1950, including all amendments passed to the end of 1950 and notes of judicial decisions, is reprinted in the Annual Volume, 1950, at page 279.

937.]



ROAD TRAFFIC ACT, 1934-1938.

BEING

ROAD TRAFFIC ACT, 1934, No. 2183 OF 1934 [ASSENTED TO
29TH NOVEMBER, 1934.]

AS AMENDED BY

ROAD TRAFFIC ACT AMENDMENT ACT, 1936, No. 2332 OF 1936
[ASSENTED TO 3RD DECEMBER, 1936.]

AND

ROAD TRAFFIC ACT AMENDMENT ACT, 1938, No. 2416 OF 1938
[ASSENTED TO 15TH DECEMBER, 1938.]

An Act to consolidate certain Acts relating to road traffic.

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

PART I.

PART I.

PRELIMINARY MATTERS.

1. (1) This Act may be cited as the "Road Traffic Act, 1934-1938," and shall come into operation on a day to be fixed by proclamation.

(2) This Act is divided into Parts and Divisions as follows:—

PART I.—Preliminary matters.

PART II.—Motor vehicles.

s. 1. (1) Commencement of Acts:—

Commencement of the Road Traffic Act, 1934 (except section 110): 2nd January, 1935; *Gazette* 20th December, 1934, p. 1217.

Commencement of section 110 of the Road Traffic Act, 1934: 1st March, 1935; *Gazette* 20th December, 1934, p. 1217.

Commencement of the Road Traffic Act Amendment Act, 1936 (except sections 153 and 154): 1st April, 1937; *Gazette* 18th March, 1937, p. 585.

Commencement of section 153 of the Road Traffic Act Amendment Act, 1936: 3rd December, 1936; *Gazette* 3rd December, 1936, p. 1193.

Commencement of section 154 of the Road Traffic Act Amendment Act, 1936: 1st December, 1937; *Gazette* 18th November, 1937, p. 1345.

s. 1. (2) In addition to the Parts mentioned in subsection (2), Part IIA. (insurance against third party risks arising out of the use of motor vehicles), Part VI. (general rules to be observed by traffic), and Part VII. (protection of roads), which were enacted by the Road Traffic Act Amendment Act, 1936, are included in this reprint.

Short title,
commence-
ment, and
division of
Act.

PART III.—Vehicles other than motor vehicles.

PART IV.—Width of tires.

PART V.—Lights on vehicles other than motor vehicles.

2. The Acts mentioned in the schedule are repealed.

Repeal.

3. (1) The Governor may by proclamation commit the administration of any Part of this Act to any Minister, and may from time to time revoke or alter any such proclamation.

Administra-
tion of Act.

(2) In this Act the term "Minister" means the Minister for the time being administering the Part of this Act in which the term Minister occurs.

PART II.

PART II.

MOTOR VEHICLES.

4. (1) In this Part, unless inconsistent with the context, or some other meaning is clearly intended—

Interpreta-
tion.

"commercial motor vehicle" means any motor vehicle wholly or mainly adapted for the carriage of goods, and includes a motor vehicle of the type commonly called "buckboard":

1480, 1921,
s. 4.
1695, 1925.
ss. 3, 15.
1941, 1929,
s. 4.
Cf. U.K.
20 & 21
Geo. 5 c. 43,
s. 1.

"court" means the special magistrate or justices before whom a complaint for an offence against this Act is heard:

"driver" means any person driving a motor vehicle or a motor cycle, and as regards a trailer means a person driving the motor vehicle by which the trailer is being drawn:

"licence" means licence under this Part:

"motor vehicle" includes any motor car, motor carriage, automobile, motor cycle, or other vehicle or carriage driven or propelled, or ordinarily capable of being driven or propelled, either partly or wholly, by any volatile spirit, steam, or electricity, or by means other than animal power, and includes a trailer at any time attached to a motor vehicle; but does not include any vehicle run upon a railway or tramway, or any farm tractor which is not used on a public road:

Cf. U.K.
20 & 21
Geo. 5 c. 43,
s. 2.

“number” includes a number combined with one or more letters of the alphabet:

“owner” includes the holder under a hire purchase agreement:

“registrar” means the Registrar of Motor Vehicles appointed under this Act or the Acts hereby repealed:

“road” includes every public road, street, terrace, thoroughfare, or other public place, and every private road or street commonly used by the public, or to which the public are permitted to have access:

“trailer” means any vehicle without motive power constructed and adapted for being drawn by a motor vehicle: Provided that a vehicle without motive power constructed and adapted for being drawn by a motor vehicle shall not be deemed a trailer, but shall be deemed part of the motor vehicle by which it is drawn if—

- (a) it has two wheels only;
- (b) it is constructed for attachment to a motor vehicle by means of a turntable and kingpin; and
- (c) a substantial part of its weight and of the weight of its load rests upon the motor vehicle by which it is drawn.

(2) For the purpose of this Part the person driving any motor vehicle to which a trailer is attached shall be deemed to be the driver of the trailer and the trailer shall be deemed to be driven by that person.

Registrar and
inspectors of
motor
vehicles.
1480, 1921,
s. 5.
1760, 1926,
s. 8.

5. (1) The Governor may, for the purposes of this Part, appoint a Registrar of Motor Vehicles, and such deputy registrars of motor vehicles and inspectors of motor vehicles as he considers necessary.

(2) Every inspector appointed under this Part shall have the same powers, functions, and duties as are conferred by this Part upon members of the police force.

(3) Every reference in this Part to a member of the police force shall be deemed to include a reference to such an inspector, and every reference in this Part to the registrar shall be deemed to include a reference to any deputy registrar appointed under this Part.

6. (1) The registrar shall keep a register for the registration of motor vehicles. Such register shall be called the "Register of Motor Vehicles."

Registrar to keep register of motor vehicles.
1480, 1921, s. 6.
2095, 1932, s. 3.

(2) The prescribed forms of application received by the registrar from the persons applying to register motor vehicles shall be bound or otherwise assembled by the registrar and arranged in order as the registrar determines, and shall constitute the Register of Motor Vehicles within the meaning of this Part: Provided that the regulations may provide that the register shall be constituted and kept in any other way.

7. (1) No person shall drive any motor vehicle on any road unless that vehicle has been registered under this Part and the registration thereof is for the time being in force: Provided that this subsection shall not apply if the motor vehicle is driven on a road in the circumstances mentioned in section 27, and has thereon trader's plates as required by that section: Provided further that this subsection shall not apply if the motor vehicle is driven on any road whilst carrying persons or fire-fighting appliances to or from any fire.

Duty to register.
1480, 1921, s. 7.
1941, 1929, s. 5.
2095, 1932, s. 4.

Proviso added by 2416, 1938, s. 3.

(2) Any person who drives a motor vehicle in contravention of this section shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(3) If any person other than the owner drives a motor vehicle in contravention of this section, the owner thereof shall also be guilty of an offence and shall be liable to a penalty not exceeding fifty pounds. It shall be a defence to a charge under this subsection that the motor vehicle was so driven without the knowledge or against the instructions of the owner.

(4) Whenever any person, whether the owner of the motor vehicle or not, is convicted for an offence under this section the court may, in addition to imposing a penalty, summarily order that person to pay to the registrar the amount payable under this Part for registration for a full year of the motor vehicle in respect of which the offence was committed.

(5) A motor tractor shall not be deemed to be driven on any road so as to require registration under this Part by reason only of the fact—

(a) that it is driven on any road for the purpose of carrying out any contract made with a municipal or district council for scarifying, grading, and/or rolling any roads or streets:

- (b) that it is driven on any road for the purpose of drawing farm implements or machinery from one farm to another.

Permits to use certain tractors and other vehicles without registration.

Inserted by 2416, 1938, s. 4.

7a. (1) The registrar may at his discretion without fee grant to any primary producer who owns a tractor or unregistered motor vehicle a permit to drive that tractor or motor vehicle along any route specified in the permit for the purpose only of enabling the tractor or motor vehicle to be used in connection with the working of two or more separate parcels of land worked in conjunction with each other by that primary producer. Any such permit shall be subject to such conditions as the registrar thinks proper. The registrar shall not grant a permit for a tractor under this section, unless the tractor is equipped with pneumatic tyres or other tyres which, in the registrar's opinion, will not cause undue damage to roads.

(2) Any such tractor or motor vehicle may be driven in accordance with the terms of a permit granted under this section without registration.

(3) If any tractor or motor vehicle for which a permit is in force under this section is driven on any road otherwise than in accordance with the terms and conditions of the permit the person driving the tractor or motor vehicle shall be guilty of an offence and liable to a penalty not exceeding twenty-five pounds.

Provisions as to registration.

1480, 1921, s. 8.
1941, 1929, s. 5.

8. (1) Every application to register a motor vehicle shall be made to the registrar by or on behalf of the owner of the motor vehicle in accordance with the regulations, and at the time of making the application for registration a fee calculated in the manner set forth in the next succeeding section shall be paid to the registrar.

Amended by 2332, 1936, s. 4.

(2) Upon application duly made and payment of the fee as required by subsection (1) the registrar shall register the motor vehicle in the register of motor vehicles for a period of either six months or twelve months, at the option of the person applying for registration, and shall assign a number to the vehicle.

(3) If a motor vehicle registered under this section has been previously registered by the same owner the registrar shall, if the owner requests, assign to the motor vehicle on registration under this section the number assigned to the vehicle on the previous registration: Provided that the registrar may refuse so to assign the latter number if more

than three months have elapsed between the expiration of the previous registration and the new application for registration.

(4) The plates bearing any registration number assigned under this section shall be black and the number thereon shall be white.

(5) The registrar shall, on payment of the prescribed fee, furnish the owner of any registered motor vehicle with a copy of the entries in the register relating to that motor vehicle.

8a. If a court has ordered that a vehicle shall not be registered until some condition is complied with, the registrar shall not register that vehicle until he is satisfied that that condition has been complied with.

Refusal to register unfit vehicles.

Inserted by 2332, 1936, s. 8.

8b. After the day proclaimed as the day on which Part II. of this Act shall come into operation, the registrar shall not register any vehicle unless the application contains a statement by the owner of the vehicle or by the person applying for registration on behalf of the owner that a policy of insurance complying with this Act is in force in relation to the vehicle and a statement of the name of the insurer who has issued the policy.

Statements in application as to insurance.

Inserted by 2332, 1936, s. 8.

8c. After the thirty-first day of March, nineteen hundred and thirty-nine, the registrar shall not register any motor vehicle unless, when the application for registration is made, there is produced to him a certificate given by or on behalf of an approved insurer, certifying that a policy of insurance has been issued by that insurer in relation to the motor vehicle, and that the policy complies with Part II. of this Act, and will unless lawfully cancelled remain in operation throughout the period for which registration is applied for.

Certificates of insurance.

Inserted by 2416, 1938, s. 5.

9. The registration fee for a motor vehicle shall be calculated according to the following provisions:—

(1) (a) The power-weight (indicated in this section by the letters P.W.) of a motor vehicle shall be ascertained by adding the weight in hundredweights of the vehicle to the horsepower calculated as hereinafter mentioned.

Mode of computing registration fee.

1480, 1921, s. 8K.
1941, 1929, s. 5, and The Schedule.
2095, 1932, ss. 17-20.
Cf. U.K. 23 & 24 Geo. 5 c. 19, s. 25, 7th Sch.

(b) The horsepower of a motor vehicle propelled by any volatile spirit shall be determined by squaring the measurement in inches of the internal diameter of the cylinder of the engine and multiplying the number so found by the number of cylinders and dividing the product by 2.5.

The horsepower of a motor vehicle driven by steam shall be calculated by dividing the number of the square inches of area of the fire grate of the boiler of such vehicle by 25.

The horsepower of a vehicle driven by electricity shall be ascertained by dividing the number of watts of electrical energy consumed by the power unit of the vehicle when the vehicle is running under full load at normal speed by 746.

(c) The weight of a vehicle in hundredweights and the horsepower of a vehicle shall be calculated to the nearest whole number.

(2) The registration fee for a motor bicycle shall be as follows:—

	£	s.	d.
If the bicycle has not a side-car attached thereto	1	10	0
If the bicycle has a side-car attached thereto	2	0	0

(3) The registration fee for a motor tricycle or motor trivan shall be as follows:—

	£	s.	d.
If the tricycle or trivan does not exceed 10 P.W.	2	0	0
If the tricycle or trivan does exceed 10 P.W. .	4	0	0

(4) The registration fee for a motor vehicle (other than a motor bicycle, motor tricycle, trailer, or motor trivan) fitted with pneumatic tires shall be:—

	£	s.	d.
If the vehicle does not exceed 25 P.W.	4	0	0
If the vehicle exceeds 25 P.W. but does not exceed 30 P.W.	5	0	0
If the vehicle exceeds 30 P.W. but does not exceed 35 P.W.	6	0	0
If the vehicle exceeds 35 P.W. but does not exceed 40 P.W.	7	0	0
If the vehicle exceeds 40 P.W. but does not exceed 45 P.W.	8	0	0
If the vehicle exceeds 45 P.W. but does not exceed 50 P.W.	9	0	0
If the vehicle exceeds 50 P.W. but does not exceed 55 P.W.	10	0	0
If the vehicle exceeds 55 P.W. but does not exceed 60 P.W.	11	0	0
If the vehicle exceeds 60 P.W. but does not exceed 65 P.W.	12	0	0
If the vehicle exceeds 65 P.W. but does not exceed 70 P.W.	13	0	0

	£	s.	d.
If the vehicle exceeds 70 P.W. but does not exceed 75 P.W.	14	0	0
If the vehicle exceeds 75 P.W. but does not exceed 80 P.W.	15	0	0
If the vehicle exceeds 80 P.W. but does not exceed 85 P.W.	17	0	0
If the vehicle exceeds 85 P.W. but does not exceed 90 P.W.	18	0	0
If the vehicle exceeds 90 P.W. but does not exceed 95 P.W.	19	0	0
If the vehicle exceeds 95 P.W. but does not exceed 100 P.W.	20	0	0
If the vehicle exceeds 100 P.W. but does not exceed 110 P.W.	23	0	0
If the vehicle exceeds 110 P.W. but does not exceed 120 P.W.	26	0	0
If the vehicle exceeds 120 P.W. but does not exceed 130 P.W.	29	0	0
If the vehicle exceeds 130 P.W. but does not exceed 140 P.W.	32	0	0
If the vehicle exceeds 140 P.W. but does not exceed 150 P.W.	35	0	0
If the vehicle exceeds 150 P.W. but does not exceed 160 P.W.	38	0	0
For every additional P.W.	0	5	0

If the motor vehicle has all or any of its wheels fitted with rubber tires other than pneumatic tires the fee shall be at such one of the above rates as is applicable, plus 50 per cent. thereof.

If the motor vehicle has all or any of its wheels fitted with metal tires the fee shall be at such one of the above rates as is applicable, plus 100 per cent. thereof.

(5) The registration fee for a trailer fitted with pneumatic tires shall be:—

	£	s.	d.
If the weight of the trailer unladen does not exceed 1 ton	1	10	0
If the weight of the trailer unladen exceeds 1 ton, but does not exceed 1½ tons	2	0	0
If the weight of the trailer unladen exceeds 1½ tons, but does not exceed 2 tons	2	10	0
If the weight of the trailer unladen exceeds 2 tons	3	0	0

If the trailer has all or any of its wheels fitted with rubber tires other than pneumatic tires, the fee shall be at such one of the above rates as is applicable, plus 50 per cent. thereof.

If the trailer has all or any of its wheels fitted with metal tires, the fee shall be at such one of the above rates as is applicable, plus 100 per cent. thereof.

Amended by
2332, 1936,
s. 5.

(6) The fees previously set out in this section are those payable for a full period of twelve months. If any registration is effected for a period of six months the fee for registration shall be the percentage hereinafter mentioned of that which would be payable for the full period of twelve months.

The percentage referred to in this subsection shall be as follows:—

- (a) If registration is effected during the period of twelve months after the commencement of the Road Traffic Act Amendment Act, 1936, fifty-five per centum:
- (b) If registration is effected within the period of twelve months commencing after the expiration of the period mentioned in paragraph (a), fifty-three and three-quarters per centum:
- (c) If registration is effected at any time after the expiration of the period mentioned in paragraph (b), fifty-two and one-half per centum.

Amended by
2332, 1936,
s. 6.

Cf. U.K.
26 Geo. 5 & 1
Edw. 8 c. 34,
s. 12.

(7) If the registrar is satisfied by statutory declaration or such other evidence as he requires that—

- (a) any commercial motor vehicle is owned by a primary producer; and
- (b) such motor vehicle will not be used on roads for carrying His Majesty's mails, goods, or passengers, for pecuniary reward or for carrying goods in the course of any trade or business other than that of a primary producer,

the registration fee shall be the amount which would otherwise be payable under this section, less 50 per cent. thereof.

Passage
inserted by
2416, 1938,
s. 6.

The carriage of goods or passengers on any motor vehicle which is on the establishment of any unit of the military forces of the Commonwealth, if those goods or passengers are carried in connection with military training or other military operations carried on by the Commonwealth, shall not be regarded as the carriage of goods or passengers within the meaning of subparagraph (b) of this paragraph.

(8) If the registrar is satisfied by the production of a certificate from the Director of Mines or such other evidence as he requires, that—

- (a) any commercial motor vehicle is owned by a genuine prospector whose principal business consists in prospecting for metals or minerals; and
- (b) such motor vehicle will not be used on roads except for carrying plant, tools, stores, or other equipment used in connection with such prospecting, or metals or minerals won by the said owner from the soil,

the registration fee shall be fifty per centum of the amount which would otherwise be payable under this section.

(9) If the registrar is satisfied by the production of a certificate from the Chief Inspector of Fisheries or such other evidence as he requires that—

- (a) any commercial motor vehicle is owned by a person who is engaged in fishing as his sole means of livelihood; and
- (b) that such motor vehicle will not be used on roads or streets except for carrying fish, or equipment used in connection with the occupation of fishing,

the registration fee shall be fifty per centum of the amount which would otherwise be payable under this section.

(10) If the registrar is satisfied by statutory declaration or such other evidence as he requires that—

- (a) any motor tractor is owned by a primary producer; and
- (b) such motor tractor will not be used on roads except for transporting goods the produce of the land of such primary producer to the railway station nearest to such land, or if there is a port nearer to such land than any railway station, then to such port, or to the nearest town not being a town where there is a railway station or port,

the registration fee for such motor tractor shall be twenty-five per centum of the amount which would otherwise be payable under this section.

Of. U.K.
26 Geo. 5 & 1
Edw. 8 c. 34,
s. 12.

(10a) If the registrar is satisfied by statutory declaration or such other evidence as he requires—

- (a) that any motor vehicle will, during the period for which registration is applied for, be used wholly or mainly in areas which are not within any municipality or district council district;
- (b) that during the said period that motor vehicle will be in the possession and under the control of a person whose place of abode at the time will not be within any municipality or district council district; and
- (c) that that motor vehicle, when not in use, will during the said period be usually kept at premises not within any municipality or district council district,

the registration fee shall, if the applicant is not entitled to have the motor vehicle registered at a reduced fee under paragraph (7), (8), (9), or (10) of this section, be the amount which would otherwise be payable under this section, less fifty per centum thereof.

If the registrar is satisfied that at any time during the period for which a vehicle has been registered at a reduced fee by virtue of this paragraph that vehicle did not comply with subparagraph (a), (b) or (c) of this paragraph, he may, by notice in writing, notify the person who applied for registration of the vehicle that the balance of the full fee for that period must be paid. Upon the expiration of seven days after the giving of the notice that balance shall become due and payable and the registrar may recover it by action in any court of competent jurisdiction; and without prejudice to his right to do so may cancel any registration of the vehicle for the time being in force if that balance is not paid in full upon its becoming due and payable. For the purposes of this paragraph the whole of Kangaroo Island shall be taken to be outside any municipality or district council district.

- (11) (a) If any commercial motor vehicle for the registration of which a reduced registration fee has been paid as allowed by paragraph 7 is used for the carriage of goods or passengers for pecuniary reward or for carrying goods in the course of any trade or business other than that of a primary producer; or

- (b) if any commercial motor vehicle for the registration of which a reduced registration fee has been paid as allowed by paragraph 8 or 9 is used for any purpose other than a purpose set out in paragraph 8 or 9, as the case may be; or
- (c) if any motor tractor for the registration of which a reduced registration fee has been paid as allowed by paragraph 10 is used for any purpose other than the purpose mentioned in that paragraph,

the balance of a full year's registration fee shall in all cases be forthwith due and payable, and may be recovered from the owner by the registrar in a summary way on complaint in a court of summary jurisdiction.

(12) If the Commonwealth of Australia imposes any Customs duty on motor spirit in addition to the Customs duty existing on the twelfth day of December nineteen hundred and twenty-nine, and pays the proceeds thereof to the State, the Governor may from time to time by proclamation vary the amounts of the registration fees as set out in this section to such an extent that the total revenue received in each year from the altered registration fees and the payments to the State by the Commonwealth, as mentioned above, would be approximately equal to the amount which would have been received from the registration fees set out in this section if they had not been altered.

(13) The registrar shall register without fee—

- (a) any motor vehicle owned by the Fire Brigades Board or any voluntary fire brigade or any motor vehicle owned by a voluntary fire-fighting organization and used solely for the purposes of fire-fighting:
- (b) any ambulance motor vehicle for the use of which no charge is made:
- (c) any commercial motor vehicle owned by the corporation or council of any municipality, or by any district council, and used solely or mainly in connection with the construction or maintenance of roads:
- (d) any motor vehicle owned by the Crown:
- (e) any motor vehicle owned by the Municipal Tramways Trust:
- (f) any motor vehicle consisting of mobile machinery and plant used for the purpose of boring for water:

Amended by
2416, 1938,
s. 8 (2).

PART II.

Inserted by
2416, 1938,
s. 7.

(g) any motor vehicle owned by a consular officer *de carriere* who is a national of the country which he represents and who resides in the State.

Inserted by
2416, 1938,
s. 8 (1).

(13a) Where the Treasurer is satisfied that any motor ambulance is operated by a municipal or district council, or by any society or association otherwise than for the purpose of monetary gain to the individual members thereof, he may, at his discretion, direct that that ambulance shall be registered without fee.

Where any such ambulance has been registered since the first day of March, nineteen hundred and thirty-eight, and the registration fee has been paid therefor the Treasurer may at his discretion refund the amount of that fee to the council, society, or association which paid it.

(14) In this section—

“primary producer” means any person engaged in agricultural, horticultural, viticultural, pastoral, or other like pursuits; and

“weight” means the weight of a vehicle without passengers, load, or petrol, but including the oil, buffers, accessories, and tools usually carried.

Reduced fees
for vehicles
of British
origin.
1480, 1921,
s. 8 A.
1941, 1929,
s. 5.

10. (1) The Governor may, from time to time, by proclamation, declare that any commercial motor vehicles, or any class of commercial motor vehicles described or referred to in the proclamation shall be commercial motor vehicles of British origin for the purposes of this Part.

(2) The Governor at any time by proclamation may partially or wholly revoke, or may vary any proclamation for the time being in force under this section.

(3) The fees payable under this Act for registration of any motor vehicles which, by any proclamation for the time being in force under this section, are declared to be commercial motor vehicles of British origin, shall be the amount which would otherwise be payable under this Part, less ten per centum thereof.

Refunds in
certain cases.

Inserted by
2332, 1936,
s. 9.

10a. If during the period for which a motor vehicle has been registered any alteration is made to that vehicle and that alteration is such that if it had been made before the registration of the vehicle the fee for registration would have been less than the amount actually paid, the Treasurer may, at his discretion, make to the owner of the vehicle a refund of such amount as he deems just in the circumstances.

Provision for ascertaining power-weight. 2131, 1933, s. 3.

11. (1) The registrar shall prepare and keep in his office available for public inspection a list containing the usual names or designations of all models of motor cars commonly in use, and stating the standard power-weight of motor cars of each model when constructed and equipped as mentioned in the list.

(2) The power-weight shown in the list as the standard power-weight of motor cars of any model shall be the power-weight of every motor car of that model, unless—

- (a) the owner at the time of applying for registration, objects to the power-weight as so shown; or
- (b) the motor car has some attachment or alteration affecting its weight and not taken into account when computing the power-weight shown in the list.

(3) The owner of any motor car who objects to the determination of the power-weight by reference to the list may—

- (a) weigh the motor car on a public weighbridge in the presence of the registrar or a person nominated by him; and
- (b) strip his engine or power unit for measure or examination by the registrar or a person nominated by him,

in which case the weight shall be calculated in accordance with the weighbridge certificate, and the horse power in accordance with the measurements of the registrar or the nominated person.

12. Where an applicant applies for registration of—

- (a) any motor car the power-weight of which cannot be ascertained from the list; or
- (b) any motor vehicle other than a motor car,

Determination of power-weight by other means. 2131, 1933, s. 4.

the registrar may require the applicant for registration to produce a weighbridge certificate showing the weight of the vehicle or any other evidence of the weight or horsepower of the vehicle.

13. (1) Every motor vehicle (not being a trailer) required by this Part to be registered shall, at all times whilst it is being driven or is standing in any road, carry attached thereto in the prescribed positions two plates as prescribed, one on the front and one on the rear thereof, each having the registered number conspicuously painted or otherwise

Duty to carry registered number on motor vehicle. 1480, 1921, ss. 10, 34 (c). 1527, 1922, s. 4. 1695, 1925, s. 7.

Road Traffic Act, 1934-1938.

legibly and permanently marked thereon in manner prescribed: Provided that any motor vehicle, not being a motor cycle, instead of carrying the plate required by this section, to be attached to the rear thereof, may have the registered number painted or marked on the rear of such vehicle itself in which case all the provisions of this Act relating to plates and the numbers thereon shall, so far as the same are applicable, apply respectively to that portion of the rear of such vehicle on which the number is painted or marked, and to such number.

(2) Every trailer required by this Act to be registered shall, at all times whilst it is being driven or is standing in any road, carry attached thereto in the prescribed position, one or more plates as prescribed having the registered number conspicuously painted or otherwise legibly and permanently marked thereon in manner prescribed.

(3) If any person owns or drives any motor vehicle which does not comply with this section he shall be guilty of an offence: Provided that where the owner and driver are different persons both shall not be punished in respect of the same contravention.

(4) Any person who, unless exempted by the regulations, drives or causes or permits to be driven or to stand in any road any motor vehicle—

- (a) having any number plate thereon obscured so that the numbers upon such plate are not clearly visible; or
- (b) having the registered number upon any number plate wholly or partly obliterated by paint or any other material; or
- (c) having any number plate thereon so damaged that the registered number is not complete and distinctly visible; or
- (d) having upon any number plate a number which is not the registered number assigned to the motor vehicle,

shall be guilty of an offence: Provided that no person shall be liable to a penalty for any breach of this subsection if he proves to the satisfaction of the court that he took all reasonable precautions to prevent such breach or that such breach was the result of an accident.

(5) Any person who forges or fraudulently alters or uses or fraudulently lends or allows to be used by any other person any number plate, trader's plate, or registration card shall be guilty of an offence and liable to a fine of not more than one hundred pounds, or to imprisonment for not more than twelve months.

Inserted by
2332, 1936,
s. 10.

14. Any person who owns or drives upon a road any unregistered motor vehicle having upon it any numbers or number plate of a description prescribed to be affixed to registered motor vehicles shall be guilty of an offence.

Prohibition
of use of
plates on
unregistered
vehicles.
1480, 1921,
s. 35 (d).

15. Where any motor vehicle is registered under this Part and is also licensed by a municipal or district council to ply for hire within its municipality or district, there may appear on the number plates required by this Part to be attached to such motor vehicle, in addition to the registered number, some distinctive design, character, or letter approved by the registrar, for the purpose of indicating that such motor vehicle is so licensed.

Distinctive
marks for
number plates
of vehicle
licensed to
ply for hire.
1480, 1921,
s. 11.

16. (1) Every registration of a motor vehicle effected prior to the commencement of the Road Traffic Act Amendment Act, 1936, shall, unless sooner terminated under this Part, expire on the thirty-first day of March, nineteen hundred and thirty-seven.

Duration of
registration.
Amended by
2332, 1936,
s. 11.

(2) Every registration of a motor vehicle effected on or after the date of the commencement of the Road Traffic Act Amendment Act, 1936, shall expire upon the expiration of six months or twelve months calculated as from the commencement of the month in which it was effected, according to the period for which registration was applied for.

17. (1) The registrar shall at the time of registration issue to every person who registers a motor vehicle under this Part a registration card having printed or written thereon particulars of the motor vehicle registered, the duration of the registration, and any other matters which the registrar thinks proper to insert.

Issue of, and
duty to carry,
registration
card.
1480, 1921,
s. 8G.
1941, 1929,
s. 5.
2131, 1933,
s. 7.

(2) Every registration card or the prescribed part thereof shall throughout the period during which the registration remains in force be affixed to and carried on the motor vehicle for which the card is issued, in accordance with the regulations.

Road Traffic Act, 1934-1938.

(3) Any person who on any road drives any motor vehicle registered under this Part which does not carry the registration card issued for that vehicle under this section, or which carries the said registration card otherwise than in conformity with all the requirements of this section and the regulations, shall be guilty of an offence and liable to a penalty for a first offence not exceeding ten pounds and for a second or any subsequent offence not exceeding twenty pounds.

(4) If any motor vehicle does not carry at any time a registration card issued in respect of that vehicle and for the time being in force, that fact shall be *prima facie* evidence that the said vehicle is not registered at that time.

Offences in connection with registration cards.
1480, 1921, s. 8 D.
1941, 1929, s. 5.
Cf. U.K. 23 & 24 Geo. 5 c. 53, s. 34.

18. Any person who—

- (a) drives a motor vehicle on which is affixed any registration card other than a registration card issued under this Part in respect of that motor vehicle and for the time being in force;
- (b) makes any false statement in or in connection with any application for registration under this Part;
- (c) without lawful excuse has in his possession any registration card or any article resembling a registration card and liable to be mistaken therefor;
- (d) alters, defaces, mutilates, or adds anything to any registration card;
- (e) drives a motor vehicle on which is affixed any registration card which has been altered, defaced, mutilated, or added to; or
- (f) drives a motor vehicle on which is affixed any colourable imitation of a registration card,

shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Duty to notify registrar of transfer of motor vehicle.
1480, 1921, s. 8 E.
1941, 1929, s. 5.
2095, 1932, s. 5.
2131, 1933, s. 7 (2).

19. (1) If an owner who has registered a motor vehicle transfers the ownership thereof to some other person whether on a sale or any other transaction, he shall within twenty-one days of the transfer—

- (a) notify the registrar in the prescribed form of the transfer:
- (b) deliver to the registrar the registration card issued in respect of the transferred motor vehicle and for the time being in force, or take such other action in relation to the said card as is prescribed by regulation.

(2) If any person fails to comply with any requirement of this section he shall be guilty of an offence.

20. (1) Upon or after delivery to the registrar of the registration card in accordance with the last preceding section, or upon taking the prescribed action in relation to the card, the transferor may either—

Transfer of registration or refund.
1480, 1921, s. 8F.
2095, 1932, s. 6.
2131, 1933, s. 6.

- (a) join with the transferee in a joint application to the registrar to transfer the registration of the motor vehicle to the transferee; or
- (b) apply for cancellation of the said registration and a refund or credit of part of the registration fee in accordance with the next succeeding section.

(2) If such a joint application for the transfer of the registration is made the registrar shall upon payment by the transferee of a fee of two shillings and sixpence transfer the registration to the transferee and issue to him a registration card similar to that issued upon the original registration of a motor vehicle.

(3) Unless a joint application for the transfer of the registration, accompanied by the proper fee, or an application for cancellation of the registration, is lodged with the registrar within twenty-one days after the transfer, or within such longer period as the registrar fixes, the registration shall, upon the expiration of the said twenty-one days, become void, and the registrar shall neither transfer such registration nor refund or credit any money in respect thereof.

21. (1) The owner or (as the case may be) the former owner of any registered motor vehicle may in any of the circumstances mentioned hereunder, upon delivery to the registrar of the current registration card issued in respect of that vehicle, or upon taking the prescribed action in relation to the card, apply to the registrar to cancel the registration of the vehicle and pay or credit to him the prescribed amount as defined in this section.

Refunds of registration fee in certain cases.
1480, 1921, s. 8 G.
2095, 1932, s. 6.
2131, 1933, s. 7.

(2) The circumstances in which an application under this section may be made are the following:—

- (a) If the applicant has ceased to be the owner of the vehicle:
- (b) If the motor vehicle has become permanently unfit for use as a motor vehicle:

(c) If the motor vehicle has been removed from the State for permanent use out of the State, and, where the removal is to another State of the Commonwealth, has been registered in that State:

(d) If the motor vehicle has been used by a person engaged in business as a seller of motor vehicles, for the purpose of demonstrating its qualities to prospective purchasers, but has ceased to be so used.

(3) The prescribed amount shall be one-twelfth of the full annual registration fee for the particular vehicle for each complete month of the registration period which is unexpired at the time when the registration card is delivered by the applicant to the registrar or, as the case may be, when the prescribed action is taken in relation to the card.

(4) Where the ownership of a registered motor vehicle is transferred before the end of the period for which it was registered and the transferor within twenty-one days of the transfer applies to register another motor vehicle, the registrar shall make such refund in respect of the transferred vehicle and such charge for the registration of the other vehicle—

(a) that in respect of the month in which the application is made, the transferor shall pay one-twelfth of the annual registration fee for one vehicle only, plus the transfer fee of two shillings and sixpence:

(b) that if the fees for registration of the transferred vehicle and the other vehicle are different, the said payment shall be one-twelfth of the greater fee.

(4a) Where the registration of a vehicle used for the purpose of demonstration as mentioned in paragraph (d) of subsection (2) of this section is cancelled, and the owner of the vehicle applies forthwith after the cancellation for the registration of another vehicle which the registrar is satisfied will be used for the said purpose of demonstration, the registrar shall credit such amount in respect of the registration which has been cancelled, and make such charge for the registration of the other vehicle—

(a) that in respect of the month in which the application for registration is made the applicant shall pay one-twelfth of the annual registration fee for one vehicle only, plus the transfer fee of two shillings and sixpence:

Inserted by
2416, 1938,
s. 9 (1).

Inserted by
2416, 1938,
s. 9 (2).

(b) that if the fees for registration of the two vehicles are different the said payment shall be one-twelfth of the greater fee.

(5) The registrar may require any applicant to satisfy him by statutory declaration or other means as to the truth of the matters on which he bases his claim for a refund or credit.

21a. (1) Whenever the registration of a motor vehicle has become void before the expiration of the period for which it was granted, the registrar or any person authorised by him or any member of the police force may remove from that vehicle the registration card relating to that registration and for the purpose of so doing may at any reasonable time enter and remain upon any place or premises.

Destruction of registration card.

Inserted by 2416, 1938, s. 10.

(2) Any person who hinders the registrar or any person authorised by him or any member of the police force in the exercise of any power conferred by this section shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

22. If any applicant for registration of a motor vehicle pays the registration fee by cheque and the cheque is dishonoured on presentation the registration of the motor vehicle for which the cheque was tendered shall be void as from the day on which it was effected, and the applicant shall on demand made by the registrar immediately deliver to him the registration card issued in respect of that motor vehicle. If any applicant fails so to deliver the card he shall be guilty of an offence and liable to a fine not exceeding twenty pounds.

Avoidance of registration where cheque dishonoured.

1480, 1921, s. 8 H.
2095, 1932, s. 6.

23. (1) If any motor vehicle is incorrectly described in the application for registration thereof, and as a result of the mis-description the vehicle is registered without the full amount of the fee payable for the said registration being paid, the applicant for registration shall be liable to pay to the registrar a sum equal to the balance of the fee short paid, and the said sum may be recovered by the registrar as a debt by action in any court of competent jurisdiction.

Provision for recovery where registration fee short paid.

1480, 1921, s. 8 I.
2095, 1932, s. 6.
2131, 1933, s. 9.

(2) Where, owing to understatement of the power weight of any motor vehicle, that vehicle has before the thirtieth day of November, nineteen hundred and thirty-three, been registered at a fee less than the fee fixed by law, the Treasurer, if satisfied that the understatement was not fraudulent, may remit the balance of the fee, or any part of that balance, and if the balance has been recovered from the owner, may refund the whole or any part thereof if he thinks circumstances warrant that action.

PART II.

Exemption of registered trailers from licensing under other provisions of this Act.

1480, 1921, s. 8 I.
1941, 1929, s. 5.

24. If a trailer is registered as a motor vehicle under this Part it need not be licensed under any other Part of this Act.

Inspection of motor vehicles to ascertain power-weight.

1480, 1921, s. 8 J.
1941, 1929, s. 5.

25. Any member of the police force or the registrar or any person authorised in writing by the registrar to examine motor vehicles for the purposes of this Part may—

- (a) examine or stop and examine any motor vehicle for the purpose of determining any facts necessary to ascertain the amount of the fee payable for registration of that motor vehicle:
- (b) enter any premises at any time and search therein for motor vehicles and examine for the purposes aforesaid any motor vehicles found therein:
- (c) take from any part of any motor vehicle a sample of any liquid fuel used or appearing to be used for propelling that motor vehicle.

Duty of owners to notify changes in vehicles and tires to registrar.

1480, 1921, s. 8 L.
1941, 1929, s. 5.

26. (1) The owner of a registered motor vehicle, to which at any time after registration any of the alterations or additions mentioned in subsection (2) of this section are made, shall, within fourteen days after the making of the alteration or addition, give notice thereof in writing to the registrar, and shall forward to the registrar such particulars as are prescribed, of the alteration or addition.

(2) The alterations and additions referred to in subsection (1) hereof are the following:—

- (a) Any alteration of or addition to the motor vehicle by which its horsepower or weight as defined in the provisions of this Part as to the mode of computing the amount of the registration fee is increased:
- (b) In the case of a motor vehicle fitted entirely with pneumatic tires, the removal of any pneumatic tire and the substitution therefor of any tire other than a pneumatic tire:
- (c) In the case of a vehicle not having metal tires, the removal of any tire and the substitution therefor of a metal tire:

(d) In the case of a motor cycle not having a side-car attached thereto the attachment thereto of a side-car.

(3) At the time of giving notice to the registrar of any alteration or addition the owner of the motor vehicle shall pay an additional fee which shall consist of the difference between the amount actually paid as registration fee for the motor vehicle and the amount which would have been payable if the alteration or addition had been made at the time of registration, due allowance being made for every full month expired at the time of the making of the alteration or addition.

(4) Any person failing to comply with any requirement of this section shall be guilty of an offence.

27. (1) The registrar may, upon payment of the proper fee as fixed by this section for each pair, issue in accordance with this section trader's plates to any person who has proved to his satisfaction that he is engaged in the business of manufacturing, repairing, or dealing in motor vehicles, and has suitable premises for the purpose. There shall be two kinds of trader's plates, namely, general trader's plates, and limited trader's plates.

Trader's plates.
1480, 1921, s. 9.
2095, 1932, s. 7.
Cf. U.K. 10 & 11 Geo. 5 c. 72, s. 9.

(2) Every pair of trader's plates shall remain operative as such until the thirty-first day of March next after the date of the issue thereof and no longer unless the period of operation thereof is extended. The registrar may from time to time upon payment of the proper fee extend the period of operation of any trader's plates for any period not exceeding twelve months and expiring on the thirty-first day of March.

* * * * *

Subsec. (3) repealed by 2416, 1938, s. 11 (a).

(4) The number of trader's plates which may be issued to any one person shall be determined by the registrar, due regard being paid to the business requirements of the applicant.

Amended by 2416, 1938, s. 11 (b).

(5) No limited trader's plate shall be issued to any person who is not the holder of a current general trader's plate.

(6) The fees for the issue or extension of operation of trader's plates shall be as follows:—

Amended by 2416, 1938, s. 11 (c).

For the issue or extension of operation of one pair of general trader's plates, eleven pounds eleven shillings:

Road Traffic Act, 1934-1938.

For the issue or extension of operation of a second or any subsequent pair of general traders' plates, eight pounds eight shillings:

For the issue or extension of operation of each pair of limited trader's plates ten shillings:

Provided that if the trader's plates are issued between the thirtieth day of September and the first day of April the said fee shall be half of the fee otherwise payable.

(7) The registrar shall keep a record showing the name and place of business of every person to whom any trader's plates have been issued under this section.

(8) Every pair of trader's plates shall bear a distinctive number and conform to such specifications as the Minister from time to time directs by notice in the *Gazette*.

(9) Any person selling or disposing of his business during the currency of any trader's plates issued to him shall, within seven days thereafter, give written notice of such sale or disposal to the registrar; and the registrar may, upon payment of a transfer fee of five shillings cause the trader's plates to be transferred to the purchaser of the business for the remainder of the period for which such trader's plates were issued.

(10) No person shall on any road drive for the purpose of carrying passengers or goods for hire or reward any motor vehicle having a trader's plate attached thereto.

(11) No person shall on any road drive any motor vehicle having a limited trader's plate attached thereto unless he is—

- (a) the person to whom such trader's plate was issued;
- (b) a partner of the person or member of the company to whom or to which such trader's plate was issued;
- (c) a salaried officer or regular employee of the person or company to whom or to which such trader's plate was issued;
- (d) a prospective purchaser of the motor vehicle accompanied (except in the case of a motor cycle) by any such person as is mentioned in paragraph (a), (b), or (c) of this subsection; or
- (e) a purchaser of the motor vehicle and resident in another State.

(12) No person shall on any road drive any motor vehicle having a limited trader's plate attached thereto unless the vehicle is at the time—

- (a) on trial, during the course of construction or repairs or immediately after completion of construction or repairs, for the purpose of ascertaining whether its parts are in proper working condition;
- (b) on trial for the benefit of a prospective purchaser, or any person *bona fide* interested in the exchange or sale of the vehicle;
- (c) proceeding to or returning from a prospective purchaser for or after trial;
- (d) proceeding for delivery to a purchaser or being driven by a purchaser resident in another State to a place within that State;
- (e) proceeding to or returning from a workshop for painting or repairs;
- (f) proceeding to a railway station or wharf for entraining or shipment or proceeding from a railway station or wharf to the premises of a manufacturer or dealer;
- (g) proceeding to an exhibition or show for display or trial or returning therefrom;
- (h) proceeding to or returning from any garage, auction room, or other place at which vehicles are usually stored or usually or periodically offered for sale, and at which the vehicle is to be, or has been stored, or is to be, or has been offered for sale; or
- (i) proceeding to or returning with a motor vehicle which, while being driven upon a road or street, has become unable to proceed under its own power.

(13) No person shall on any road, by means of any motor vehicle having a limited trader's plate attached thereto—

- (a) convey any person to or from any race meeting, trotting meeting, foot races, football or cricket match, or other sport; or
- (b) carry any goods or load whatsoever except a load which consists solely of some ordinary form of ballast such as sand, gravel, scrap iron, or the like and is carried solely for the purpose of testing the vehicle.

(14) No person shall on any Sunday or public holiday drive on any road any motor vehicle having a limited trader's plate attached thereto.

(15) If any vehicle is driven in contravention of subsection (11), (12), (13), or (14) of this section the driver of the vehicle, and if the driver is not the person to whom the trader's plates were issued, then that person also shall be guilty of an offence.

(16) Every trader's plate issued under this section shall remain the property of the Minister; and if any trader's plate at any time ceases to be operative as such the person to whom it was issued shall, on demand made by the registrar, return the plate to him within seven days thereafter, and if he fails to do so he shall be guilty of an offence and liable to a penalty of not more than ten pounds.

(17) Any person who is driving or has driven a motor vehicle to which a trader's plate is or was attached shall, when required by any member of the police force, forthwith truly answer any questions put to him by such member relevant to the purpose for which, and the circumstances in which, such vehicle is being driven or was driven.

If any person fails to comply with this section he shall be guilty of an offence.

(18) Every person to whom any trader's plate has been issued under this section shall, when required to do so by any member of the police force, furnish to such member the name and address of any person driving on any occasion specified by such member any motor vehicle to which such plate was attached. If any person upon being so required refuses or fails to furnish such name and address or furnishes a false name or false address he shall be guilty of an offence.

(19) Any person guilty of any failure to observe or contravention of any of the provisions of this section shall be guilty of an offence; and any person guilty of an offence against this section for which some other penalty is not specifically provided shall be liable to a penalty not exceeding thirty pounds.

28. (1) Every person who is registered as the owner of a motor vehicle, shall, upon request by the registrar, produce to the registrar such evidence of the nature and weight of any motor vehicle owned by such person and of the nature of the tires with which that vehicle is fitted, as is prescribed, or as is required by the registrar.

(2) Any person failing to comply with any request under this section shall be guilty of an offence.

29. (1) The owner of any motor vehicle on being served with a notice signed by the registrar requiring him within a time mentioned in the notice to cause his motor vehicle to be weighed unladen on the weighing machine mentioned in the notice or any one of the weighing machines so mentioned if more than one are mentioned, shall obey such notice and shall forward to the registrar forthwith the document showing the result of the weighing.

Duty of owners to weigh motor vehicles in certain cases. 1695, 1925, s. 17.

(2) This section shall not apply if the distance from the place where the motor vehicle is usually kept to the weighing machine mentioned in the notice, or to the nearest of those weighing machines, if more than one are mentioned, is greater than three miles.

(3) Any person failing to comply with any requirement of the registrar under this section shall be guilty of an offence.

Licensing of Drivers.

30. Any person who, unless exempted by the regulations, drives a motor vehicle on any road without being the holder of a licence for the time being in force, or employs or permits any person not being the holder of such a licence to drive a motor vehicle on any road shall be guilty of an offence.

Duty to obtain driver's licence. 1480, 1921, s. 34 (a). Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 4.

31. (1) The registrar may, subject to the provisions of this Part, issue a licence to any person who—

Issue of drivers' licences.

(a) makes written application therefor in the prescribed form; and

1480, 1921, ss. 12 & 13 (2). 1527, 1922, s. 5.

(b) forwards with such application the fee fixed by this section,

1827, 1927, s. 5. Cf. U.K. 24 & 25 Geo. 5 c. 50, s. 6; 26 Geo. 5 & 1 Edw. 8 c. 23.

and, subject as aforesaid, may, upon application in the prescribed form, renew any licence. Such renewal shall be in the prescribed form.

(2) The annual fees for licences shall be—

(a) for a licence to drive a motor vehicle of any kind—ten shillings:

(b) for a licence to drive a motor cycle only—five shillings.

Where a licence takes effect from a day between the thirty-first day of December and the next ensuing first day of July, one half of the annual fee shall be payable therefor.

(3) Every application for the renewal of a licence shall be accompanied by the annual fee therefor.

Inserted by
2332, 1936,
s. 12.

(4) A licence to drive a motor cycle may be surrendered to the registrar in exchange for a licence to drive a motor vehicle of any kind expiring on the same day as the licence to drive a motor cycle upon payment of the following fee:—

(a) If the licence issued in exchange takes effect from a day between the thirtieth day of June and the first day of January, five shilings;

(b) if the licence issued in exchange takes effect from a day between the thirty-first day of December and the first day of July, two shillings and sixpence.

Inserted by
2332, 1936,
s. 13.

(5) Every application for a licence shall contain a statement, signed by the applicant, that he is aware that it is an offence to drive a motor vehicle on a road unless there is in force a policy of insurance insuring any person driving that vehicle against his liability in respect of the death of or bodily injury to any person caused by or arising from the use of the vehicle.

Restricted
drivers'
licences.

Inserted by
2416, 1938,
s. 12.

31a. (1) Where the registrar is satisfied that owing to the age or any physical defect or infirmity of any applicant for a driver's licence it is desirable that any licence issued to that applicant should be subject to restrictive conditions, the registrar may issue to that applicant a licence containing conditions as to the localities in which the applicant shall be entitled to drive, or the class or equipment of the vehicles which the applicant shall be entitled to drive or as to any other matters which the registrar thinks necessary for the purpose of preventing danger to the applicant or the public.

(2) In any case where the registrar is satisfied that, by reason of the distance necessary to be travelled by an applicant for a driver's licence to be examined as provided by section 32a, it would be unreasonable to require the applicant to submit to such an examination, he may, without examination as provided by section 32a, issue to the applicant a licence as provided by subsection (1) of this section.

(3) If any such applicant is not willing to accept a licence containing any such conditions proposed by the registrar the registrar may refuse him a licence and the refusal shall be subject to appeal as mentioned in section 32 of this Act.

(4) If any person contravenes any such condition he shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

32. (1) If the registrar suspects that any applicant for the issue or renewal of a driver's licence is for any reason incompetent to drive a motor vehicle without danger to the public, the registrar shall not issue a driver's licence to that applicant until he is satisfied that that applicant is competent to drive a motor vehicle without danger to the public.

Tests of drivers.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 5; 24 & 25 Geo. 5 c. 50, s. 6; 26 Geo. 5 & 1 Edw. 8 c. 23.

If the registrar refuses to grant any application for the issue or renewal of a licence to any applicant, that applicant may, in accordance with rules of court made under this section, appeal against that refusal to any special magistrate sitting in chambers. On the appeal the special magistrate may—

Subsec. (1) amended by 2332, 1936, s. 14, and by 2416, 1938, s. 13.

- (a) hear the parties and their witnesses;
- (b) confirm, reverse or vary the decision appealed against;
- (c) make any other order which he thinks just including any order as to costs.

Rules of court shall be made under the Local Courts Act, 1926, prescribing the time within which, and the mode in which appeals are to be instituted and dealt with under this section, and any other matters relevant to such appeals.

(2) The registrar, in order to satisfy himself of the competence of any such person, may require him to furnish such evidence of competency as is prescribed, or as the registrar thinks necessary, or to submit to such tests as are prescribed, or as the registrar thinks proper to impose, and may refuse to issue the licence until the applicant furnishes such evidence or satisfies such tests.

32a. (1) Where an applicant for a driver's licence has not previously held a licence and applies for a licence after a day to be proclaimed by the Governor as the day on which this section shall come into operation, the registrar shall not issue a licence unless the applicant produces to the registrar a certificate from an examiner certifying that the applicant has passed an examination conducted by that examiner, in the rules required by law to be observed by owners and drivers of motor vehicles. No person shall be deemed to have passed an examination for the purposes of this section unless he has answered correctly at least three-quarters of the questions asked in the examination.

Examination of applicant for driver's licence.
Cf. U.K. 24 & 25 Geo. 5 c. 50, s. 6.
Inserted by 2332, 1936, s. 15.

Although a person may have answered correctly at least three-quarters of the questions asked in the examination, the registrar may treat him as having failed if he has given an incorrect answer to any question dealing with any rule which in the registrar's opinion is one of special importance.

Passage inserted by 2416, 1938, s. 14.

(2) Every member of the police force shall be an examiner for purposes of this section, and the Governor may appoint such other persons as he thinks fit to be examiners.

(3) The examination shall consist of twelve questions to be answered by the applicant in writing; and the questions for each applicant shall be selected by the examiner from a series of questions formulated and supplied to him by the registrar. Every question shall be such that the answer to it is either "Yes" or "No."

(4) A person who has sat for and failed to pass an examination under this section may again sit for a similar examination at any time after an interval of two clear days.

Age of
drivers to
whom licences
may be
issued.
Cf. U.K.
20 & 21
Geo. 5 c. 43,
s. 9.

Amended
by 2332,
1936, s. 16.

Licences may
be refused
in certain
cases.
1480, 1921,
s. 17.
Cf. U.K.
20 & 21
Geo. 5 c. 43,
s. 4 (6).

33. No licence (whether to drive a motor vehicle or a motor cycle) shall be issued to any person who has not previously been granted a licence and who is under the age of sixteen years.

34. Upon the direction in writing of the Minister, the registrar shall refuse to issue or renew a licence to any person who has been convicted of driving a motor vehicle whilst so much under the influence of intoxicating liquor as to be incapable of exercising effective control of such motor vehicle, or of driving a motor vehicle in any road in a culpably negligent manner, furiously, or recklessly, or at a speed or in a manner which is dangerous to the public, or of any offence which, in the opinion of the Minister, renders him unfit to hold a licence, or who, in the opinion of the Minister, is otherwise unfit to hold a licence.

Appeal on
refusal to
issue or
renew licence.
1480, 1921,
s. 18.
Cf. U.K.
20 & 21
Geo. 5 c. 43,
s. 5 (5);
24 & 25
Geo. 5 c. 50,
s. 6.

35. (1) Any applicant for the issue or renewal of a licence whose application has been refused may, on giving to the registrar at least seven clear days' notice in writing of his intention so to do, appeal against such refusal to the Local Court of Adelaide, or, at the option of the applicant, to the local court nearest to his residence.

(2) If after hearing the appeal the local court decides that the application ought to be granted, the registrar shall issue or renew the licence accordingly.

(3) The decision of the local court shall be final and conclusive, and shall not be challenged, appealed against, reviewed, quashed, or called in question, or be subject to prohibition or mandamus, in any court on any account whatever.

(4) The local court on the hearing of any such appeal may make any order as to costs which it thinks fit.

(5) For any such appeal the local court shall consist of a special magistrate.

36. Unless cancelled or suspended under this Part every licence shall continue in force until the thirtieth day of June next after the licence commences to be in force.

Duration of licence.
1480, 1921, s. 13.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 4 (4).

37. (1) Upon the application of the holder of any licence the registrar may, on proof to his satisfaction of the loss or destruction of such licence, and on payment of a fee of two shillings and sixpence, issue to the holder of the licence a duplicate licence bearing all memoranda indorsed on the original licence.

If licence lost, duplicate may be issued.
1480, 1921, s. 14.

(2) Such duplicate shall avail for all purposes as if it were the original licence.

38. (1) The registrar shall keep a register of the names and addresses of all licensed drivers, and of all indorsements on, and renewals and cancellations of, licences.

Register of licences.
1480, 1921, s. 19.
2095, 1932, s. 8.

(2) The prescribed forms of application received by the registrar from persons applying for licences shall be bound or otherwise assembled by the registrar and arranged in order as the registrar determines and shall constitute the register of licences within the meaning of this Act: Provided that the regulations may provide that the register of licences shall be constituted and kept in any other way.

38a. (1) When any person is convicted, before any court, for any offence against any provision of this Act relating to motor vehicles, or for any offence in the commission of which a motor vehicle was used, or the commission of which was facilitated by the use of a motor vehicle, the court may order that that person be disqualified either for a period fixed by the court or until further order from holding and obtaining a driver's licence.

Suspension of licence and disqualification of holder on conviction.
Cf. U.K. 20 & 21 Geo. 5 c. 43, ss. 7, 8; 24 & 25 Geo. 5 c. 50, s. 5.

(2) An order made under this section may be in addition to any other penalty to which the defendant is liable.

Inserted by 2332, 1936, s. 17.

s. 38a. *GEORGE V. TROTTER* (1938) S.A.S.R. 48. Where the defendant entered an intersection at a very fast rate of speed and narrowly escaped a collision and was convicted under section 131, held that the defendant's licence was rightly suspended.

PART II.

Power of suspension, cancellation, and disqualification where vehicle used for criminal purposes.

Inserted by 2332, 1936, s. 17.

38b. If a court of summary jurisdiction on complaint duly laid is satisfied that any person has used or is likely to use a motor vehicle in connection with the commission of any offence by himself or any other person, or to facilitate the escape of himself or any other person from arrest or punishment, it may order that the person who used or is likely to use the vehicle be disqualified either for a period fixed by the court or until further order from holding and obtaining a driver's licence.

Disqualification of addicts to liquor or drugs.

Inserted by 2332, 1936, s. 17.

38c. If a court of summary jurisdiction presided over by a special magistrate on complaint duly laid by the Commissioner of Police or by the registrar, is satisfied that any person is by reason of intemperance in the consumption of alcoholic liquor or by reason of the habitual use of drugs, likely to cause danger to the public if he drives a motor vehicle on roads, the court may order that that person be disqualified either for a period fixed by the court or until further order from holding and obtaining a driver's licence.

Removal of disqualification.

Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 7.

Inserted by 2332, 1936, s. 17.

38d. (1) Where an order has been made against any person disqualifying him from holding and obtaining a driver's licence until further order that person may on complaint duly laid before a court of summary jurisdiction, and served on the Commissioner of Police as defendant to the proceedings, apply to that court for an order removing the disqualification, and the court may, if it deems it expedient to do so, order that the disqualification be removed as from any date which it thinks proper.

(2) No application shall be made under this section earlier than three months after the making of the original order for disqualification, nor shall any application under this section be made within three months of a previous application relating to the same order of disqualification.

Suspension of licence on the ground of incompetence to drive.

Inserted by 2332, 1936, s. 17.

38e. (1) If the Commissioner of Police or the registrar has reasonable cause to suspect that any person holding a driver's licence is incompetent to drive a motor vehicle without danger to the public, he may require that person to satisfy him by a practical test that he is competent to drive a motor vehicle without danger to the public and if he fails to pass such a test may suspend the licence held by him.

(2) The Commissioner of Police or the registrar, at the request of any person whose licence has been suspended under this section, shall at a convenient time conduct a further test of that person's ability to drive a motor vehicle; and if that

person fails to pass the test he shall be entitled to undergo further tests from time to time at intervals of not less than fourteen days. When that person passes a test the suspension of his licence shall forthwith cease.

38f. Every suspension imposed by the registrar or the Commissioner of Police, shall be by a document in writing under his hand, and shall be served on the holder of the licence either personally or by registered post.

Mode of suspension by Commissioner of Police or registrar.

Inserted by 2332, 1936, s. 17.

38g. (1) If the registrar has reasonable cause to suspect that any applicant for temporary registration of a motor vehicle registered in another State, or any person who has been granted such temporary registration, has used, is using, or is likely to use that motor vehicle in connection with the commission of any offence by himself or any other person, or to facilitate the escape of himself or any other person from arrest or punishment, he may refuse to issue or, as the case may be, revoke such temporary registration.

Refusal or revocation of temporary registration of vehicle from other States.

Inserted by 2332, 1936, s. 17.

(2) The revocation shall be by a document in writing under the hand of the registrar, and personally served on the person thereby affected.

39. Any person who—

- (a) by any false statement or by misrepresentation obtains or attempts to obtain a licence; or
- (b) without lawful excuse has in his possession a licence or any article resembling such licence and liable to be mistaken therefor; or
- (c) forges or fraudulently alters or uses or fraudulently lends or allows to be used by any other person any licence,

Offences in connection with licences. 1480, 1921, s. 35.

shall be guilty of an offence.

Warning devices, silencers, and lights on motor vehicles.

40. (1) Any person who drives in any road or who, being the owner, causes or permits any person to drive on any road a motor vehicle which has not attached thereto, under the immediate control of the hand or foot of the driver, a proper horn or other instrument capable of giving audible and sufficient warning of the approach and position of that motor vehicle, shall be guilty of an offence:

Duty to carry warning device. 1480, 1921, s. 30. 1695, 1925, s. 10. Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 59 (1). (b).

Amended by 2332, 1936, s. 18, and by 2416, 1938, s. 15.

s. 40. JOLLY v. WALLMAN (1936) S.A.S.R. 121. Where a dangerous situation arises at a time when it is too late for a warning to be effective, there is no need to give warning of the approach of a vehicle.

Provided that this subsection shall not apply to any trailer so long as the motor vehicle to which that trailer is attached complies with this subsection.

(2) Any driver of a motor vehicle who does not whenever necessary, by sounding the horn or other instrument attached thereto, give audible and sufficient warning of the approach or position of that motor vehicle, shall be guilty of an offence.

Inserted by
2332, 1936,
s. 18.

(3) A bell or siren shall not be taken to be a proper horn or other instrument within the meaning of this section except where the motor vehicle to which it is attached is—

- (a) being used at the time by the Fire Brigades Board or a fire brigade or the Police Department; or
- (b) an ambulance; or
- (c) an emergency vehicle being used at the time by the Municipal Tramways Trust.

Misuse of
warning
devices.

Inserted by
2332, 1936,
s. 19.

40a. (1) If any person—

- (a) uses the warning device of a motor vehicle otherwise than for giving reasonable warning of the approach of that vehicle; or
- (b) uses the warning device of a motor vehicle in such a manner as to produce an offensive noise,

he shall be guilty of an offence.

(2) If any person in any road sounds any bell or siren attached to or being upon any motor vehicle other than—

- (a) a vehicle being used at the time by the Fire Brigades Board, or a fire brigade, or the Police Department; or
- (b) an ambulance; or
- (c) an emergency vehicle being used by the Municipal Tramways Trust,

he shall be guilty of an offence.

Duty of
drivers as to
silencers and
elimination of
noise, smoke,
&c.

1480, 1921,
s. 31.
2095, 1932
s. 11.

41. (1) Any person who in any road drives a motor vehicle—

- (a) which has not attached to it and in use a silencer which eliminates all unnecessary noise; or
- (b) which has attached to it a silencer to which any alteration has been made which reduces or is likely to reduce the effectiveness of such silencer; or

(c) on which there is any device which may be used to reduce the effectiveness of the silencer, shall be guilty of an offence.

(2) Any person who makes any alteration to a silencer which reduces or is likely to reduce its effectiveness shall be guilty of an offence.

(3) Any driver of a motor vehicle who allows it to make or emit any unnecessary noise, smoke, visible vapour or smell shall be guilty of an offence.

42. (1) Every motor vehicle (other than a motor cycle or trailer) which is at any time between half an hour after sunset and half an hour before sunrise on any road shall carry attached thereto—

Lights on motor vehicles.
1480, 1921, s. 32.
1527, 1922, s. 6.
1695, 1925, s. 11.
1827, 1927, s. 7.
Para. (a) amended by 2416, 1938, s. 16.

(a) two lighted lamps carried one on each side of such motor vehicle, such lamps being so constructed and carried as to show a bright white yellow or amber-coloured light in front of such motor vehicle; and

(b) a lighted lamp carried on the off side of the rear of such motor vehicle, such lamp being so constructed and carried as to illuminate and render easily distinguishable from a distance of at least forty feet each figure and letter on the number plate attached to the rear of such motor vehicle, and to show a red light in such a position and manner as to be clearly visible at a distance of at least two hundred yards to any person approaching such motor vehicle from the rear:

Para. (b) amended by 2332, 1936, s. 20.

Provided that—

(a) if one or more trailers are attached to such motor vehicle the light provided for by subdivision (b) hereof shall be placed on the off side of the rear of such trailer, or on the off side of the rear of the rearmost of such trailers, if there is more than one, instead of on such motor vehicle:

(b) this subsection shall not apply to any such motor vehicle if and so long as such motor vehicle is stationary in a road and is standing under or near a lighted public street lamp or other lamp, so illuminating such road as to render such motor vehicle clearly visible and to remove any risk of accident by collision or otherwise; and

PART II.

Para. (c)
amended by
2332, 1936,
s. 20.

(c) this subsection shall not apply to any such motor vehicle if and so long as such motor vehicle is stationary in a road, and the rear lamp of such motor vehicle is alight and is showing a light sufficiently bright to indicate the presence of such motor vehicle, and to remove any risk of accident by collision or otherwise.

Subsec. (1a)
inserted
by 2332,
1936, s. 20,
and amended
by 2416,
1938, s. 17.

(1a) Every motor vehicle which, or the load on which, is more than six feet six inches wide and which is at any time between half an hour after sunset and half an hour before sunrise on any road, shall carry attached to the extreme off-side of the vehicle or, where there is a load projecting from the off side of the vehicle, at the extreme off side of that load, a lighted lamp so constructed and carried as to show a bright green light in front of the vehicle clearly visible at a distance of at least two hundred yards from the front of the vehicle, and a bright red light clearly visible at a distance of at least two hundred yards from the rear of the vehicle, or alternatively two lighted lamps showing respectively a green light and a red light complying with the foregoing provisions of this subsection. The lamp so carried shall be not less than three and not more than six feet from the ground, and shall be affixed as near as practicable to the edge of the vehicle or load.

It shall be sufficient compliance with this subsection if any lamp or lamps carried in pursuance of the other provisions of this Act also comply with this section.

Subsec. (1b)
inserted by
2332, 1936,
s. 20.

(1b) Every motor vehicle the load on which extends more than three feet behind the rear of the motor vehicle and which is at any time between half an hour after sunset and half an hour before sunrise on any road shall carry attached to the extreme rear of that load a lighted lamp so constructed and carried as to show a red light clearly visible from a distance of two hundred yards from the rear of the motor vehicle.

For the purpose of this subsection any frame work, fixed or placed on a motor vehicle, shall be deemed to be the load or portion of the load on that motor vehicle.

(2) Every motor cycle which is on any road between half an hour after sunset and half an hour before sunrise shall carry—

Amended by
2416, 1938,
s. 16.

(a) a lighted lamp attached to the front of the motor cycle and so constructed and carried as to show a bright white yellow or amber-coloured light in front of the motor cycle and also illuminate and

render easily distinguishable from a distance of at least ten yards each figure and letter on the number-plate attached to the front of the motor cycle:

- (b) a lighted lamp attached to the rear of the motor cycle and so constructed and carried as to show a red light clearly visible at a distance of at least two hundred yards from the rear of the motor cycle and illuminate and render easily distinguishable from a distance of at least forty feet each figure and letter on the number-plate attached to the rear of the motor cycle:
- (c) if a side-car is attached to the motor cycle, in addition to the lighted lamps provided for by the preceding paragraphs a lighted lamp attached to the front of that side-car, such lamp being so constructed and carried as to show a bright white light in front of the side-car:

Provided that this subsection shall not apply to any motor cycle if and so long as such motor cycle is stationary in a road and is standing under or near a lighted public street lamp or other lamp so illuminating such road as to render the motor cycle clearly visible and to remove any risk of accident by collision or otherwise.

(3) If any person owns or drives any motor vehicle not complying with this section in any particular he shall be guilty of an offence: Provided that where the owner and driver of the vehicle are different persons both shall not be punished in respect of the same contravention.

Brakes on Motor Vehicles.

42a. (1) In this section, unless the context otherwise requires—

“independent brake” means a brake of which the entire operating mechanism or system is either—

- (a) separate from all parts and connections of any other brake or brake system, so that the brake in question cannot be adversely affected by the operation or failure of any other brake; or

Brakes on motor vehicles.

Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 59 (1) (a).

Inserted by 2332, 1936, s. 21.

Road Traffic Act, 1934-1938.

(b) common to any other brake or brake system only in parts or connections which are of such design and strength, that there is no reasonable probability of failure of the independent brake by reason of the failure of any other brake or brake system:

“retaining-brake” means a brake so constructed and of such a nature that it is capable, when applied on used grades with any load carried or likely to be carried by the vehicle, of retaining all road-wheels, other than the steering-wheels, immovable for an indefinite period and without further attention than the initial application:

“tractor” means any motor vehicle used solely for the purposes of traction, and not for the carriage thereon of passengers (other than the driver) or goods:

“used grades” includes every road of whatever grade upon which the motor vehicle in question is used or likely to be used.

(2) In this section the term “capable of stopping” as applied to a brake means capable of bringing to a standstill the vehicle to which it is attached from a speed of twenty miles per hour upon a hard, dry, level road having a surface of tar, bitumen, concrete, or similar substance, and free of loose material, without assistance from the compression of the engine, within the specified distance from the point at which the brake is applied.

(3) Every motor vehicle (not being a motor cycle, and not being a tractor the maximum possible speed of which is fifteen miles per hour or less) shall be equipped with two independent brakes attached thereto.

(4) At least one of the brakes shall be a retaining brake.

(5) At least one of the brakes shall be so constructed as to act directly on the wheels, and not through transmission gear.

(6) In the case of a vehicle driven by steam—

(a) if the engine is capable of being reversed; and

(b) if the engine is incapable of being disconnected from all the road-wheels or all the axles, other than the front wheel or axle, save by the sustained action of the driver; and

(c) if there is no differential gear or similar mechanism between any two of the axles,

then it shall be sufficient if the vehicle is equipped with one brake independent of the engine, and complying with the requirements of subsections (4) and (5) of this section.

(7) One brake of a motor vehicle shall, if that brake acts on four wheels, be capable of stopping the vehicle within thirty feet, and if it acts on two wheels, within forty-five feet, and the other brake shall be capable of stopping the motor vehicle within seventy feet.

(8) Every motor cycle (with or without a side-car attached) shall be equipped with at least one brake which shall be capable of stopping the cycle within forty feet.

(9) Every motor cycle having a side-car attached shall, after the first of April, nineteen hundred and thirty-eight, be equipped with two independent brakes attached thereto, one being a brake complying with the requirements of the last preceding subsection and the other a brake of reasonable efficiency.

Amended by
2416, 1938,
s. 19 (1).

(9a) A three wheeled motor vehicle (not being a motor cycle with a sidecar attached) shall be equipped with two independent brakes, one of which shall be capable of stopping the vehicle within forty-feet and the other a brake of reasonable efficiency.

Inserted by
2416, 1938,
s. 19 (2).

(10) A trailer need not be equipped with brakes, if the motor vehicle by which it is drawn has brakes capable of stopping that vehicle with the trailer attached, within the distance prescribed by this section.

(11) A motor vehicle of the self-laying track type, having a continuous band or bands as its sole means of locomotion or traction, or having in addition thereto no more than two wheels in contact with the ground, is hereby exempted from the requirement of subsection (5).

(12) Each brake referred to in this section shall be capable of easy adjustment, and shall be maintained at all times in good working order.

(12a) The Governor may make regulations prescribing the standards or percentages of efficiency (as ascertained or measured by any brake-testing apparatus mentioned in the regulations) for brakes on motor vehicles of any class and if

Inserted by
2416, 1938,
s. 19 (3).

the brakes on any motor vehicle do not comply with any such regulation, that motor vehicle shall be deemed not to comply with this section.

Nothing in this subsection or in the regulations made under this subsection shall affect the obligation to comply with the other subsections of this section.

(13) Any person who drives or causes or permits any person to drive on any road any motor vehicle which in any particular does not comply with this section shall be guilty of an offence.

Windscreen Wipers and Rear Vision Mirrors.

Windscreen
wipers.

Inserted by
2332, 1936,
s. 21.

42b. (1) Every motor vehicle having a windscreen, shall be equipped with a windscreen wiper, capable at all times of effectively removing rain or other moisture from the portion of the windscreen immediately in front of the driver, and so constructed and situated that it can be controlled or operated from the driver's seat of the vehicle.

(2) If the motor vehicle is registered for the first time after the first of January, nineteen hundred and thirty-seven, the windscreen wiper shall be capable of being operated by a mechanical power.

(3) Any person who drives or causes or permits any person to drive on any road any motor vehicle which in any particular fails to comply with this section, shall be guilty of an offence.

Reflecting
mirrors.

Inserted by
2332, 1936,
s. 21.

42c. (1) Every motor vehicle, other than a motor cycle, shall be equipped with a mirror, so constructed and fitted to the motor vehicle as to give the driver of the motor vehicle a view along the carriage-way of the road behind the vehicle, for at least one hundred yards on a straight road: Provided that this section shall not apply to a motor vehicle when drawing a trailer.

Subsec. (2),
substituted by
2416, 1938,
s. 18.

(2) Any person who drives or who, being the owner, causes or permits any person to drive on any road a motor vehicle which in any respect fails to comply with this section shall be guilty of an offence.

(3) It shall be a defence to any charge made under this section if the defendant shows that owing to the mode of construction of the vehicle, or the load carried thereon, it was not practicable to comply with this section.

Duties of Drivers and Owners of Motor Vehicles.

43. (1) Any person who drives a motor vehicle on any road at an excessive speed shall be guilty of an offence.

Provision as to speed of motor vehicles.

(2) It shall be *prima facie* proof only that a person has driven at an excessive speed if it is proved that he drove on a road—

1480, 1921, s. 20, 2095, 1932, s. 9. Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 10; 24 & 25 Geo. 5 c. 50, ss. 1, 2.

(a) in any municipality, town, or township at a greater speed than twenty-five miles per hour; or

(b) outside a municipality, town, or township at a greater speed than forty miles per hour.

(3) Subsection (2) of this section shall not apply to—

Cf. U.K. 24 & 25 Geo. 5 c. 50, s. 3.

(a) any motor vehicle owned by the Fire Brigades Board or any fire brigade, or the controlling authority thereof, and which is being driven to a fire for use in connection with the extinguishing thereof;

(b) any motor vehicle which is being used by a member of the police force for the purpose of effecting an arrest, or otherwise in connection with the detection, suppression, or prevention of crime; or

(c) any ambulance motor vehicle which is being used for ambulance work.

(4) In considering whether an offence has been committed under this section the court shall have regard to the nature, condition, and use of the road upon which the offence is alleged to have been committed and to the amount of traffic which at the time actually is or which might reasonably be expected to be upon such road and to the vehicle concerned, and to all other circumstances affecting the matter, whether of the same nature as those mentioned or not.

43a. (1) Any person who on any road, drives at a greater speed than twenty-five miles per hour a two wheeled motor cycle carrying any person in addition to the driver, shall be guilty of an offence.

Speed of motor cycles carrying pillion passengers.

Inserted by 2332, 1936, s. 22.

(2) This section does not apply to a motor cycle having a side-car attached thereto.

s. 43. BOND V. HALL (1938) S.A.S.R. 59. Where evidence was given as to speed by reference to a speedometer but there was evidence that the speedometer had not been tested, held that the recording by the speedometer was lawful evidence (and see also section 157 (3), enacted since this decision).

GIBSON V. JENNINGS AND ANOTHER (1938) S.A.S.R. 330. A speed exceeding that mentioned in subsection (2) is an element to consider on the question of negligence in a civil action.

S. 44 repealed by 2332, 1936, s. 23.

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Duty of driver to produce licence and give name and address. 1480, 1921, s. 22. Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 4 (5).

45. (1) Any driver of a motor vehicle who—

(a) when requested by a member of the police force in the execution of his duty under this Act to produce his licence fails to do so within forty-eight hours of the making of the request; or

(b) when requested by a member of the police force to state his name and place of abode or the name and place of abode of the owner of such motor vehicle refuses or fails to do so or states a false name or place of abode,

shall be guilty of an offence.

(2) Any inspector may without any warrant other than this Act apprehend any driver of a motor vehicle who is guilty of any offence under this section.

S. 46 repealed by 2332, 1936, s. 24.

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S. 47 repealed by 2332, 1936, s. 26.

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Driving whilst drunk or under the influence of drugs.

Substituted by 2416, 1938, s. 20.

48. (1) Any person who—

(a) drives a motor vehicle; or

(b) occupies the driver's seat and attempts to put a motor vehicle in motion,

whilst he is so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle shall be guilty of an offence.

s. 48. BURROWS v. HANLIN (1930) S.A.S.R. 54. The opinion of persons, not experts, as to whether a man is drunk, or capable of driving a car, is not admissible as evidence.

DAYMAN v. SIMPSON (1935) S.A.S.R. 320. Where the defence suggests that an expert witness, called by the prosecutor as to the condition of the defendant, has given an unsound opinion, that should be suggested to the witness before he leaves the box. Complaint referred for re-hearing where this rule was not observed.

HENNIG v. ROBERTSON. ROBERTSON v. HENNIG (1937) S.A.S.R. 400. Where a person, who had been convicted under section 26 of the Motor Vehicles Act, 1921, of driving a motor vehicle whilst so much under the influence of liquor as to be incapable of exercising effective control of the vehicle, committed this offence under section 48 of this Act, held that the penalty to be inflicted was that appropriate to a second offence under section 48.

CHUCK v. WEST (1938) S.A.S.R. 51. It is not necessary on a charge under section 48 to show that the defendant was drunk.

Penalty—For a first offence, a fine of not less than twenty pounds and not more than fifty pounds and disqualification from holding and obtaining a driver's licence for such period as the court thinks fit, but in no case less than three months.

For a second offence, a fine of not less than fifty pounds and not more than one hundred pounds, or imprisonment for not less than two months and not more than six months, or both such fine and imprisonment, and in any case disqualification from holding and obtaining a driver's licence for such period as the court thinks fit but in no case less than six months.

For a third or any subsequent offence, imprisonment for not less than three months and not more than twelve months and disqualification from holding and obtaining a driver's licence for such period as the court thinks fit, but in no case less than three years.

(2) Notwithstanding any other Act the minimum amount of any fine and the minimum period of imprisonment or disqualification prescribed by this section shall not be reduced or mitigated in any way except as follows:—

In the case of a first offence, the court, if it is satisfied by evidence given on oath that the offence is trifling, may order disqualification for a period less than three months or may refrain from ordering disqualification.

(3) The court by which any person is convicted under this section on the complaint of a member of the police force, may, in addition to ordering any other penalty, order on the application of the complainant that the defendant pay to the complainant a reasonable sum to cover the expenses of any of the following things:—

- (a) Apprehending the defendant:
- (b) Conveying him to any police station:
- (c) Keeping him in custody until trial:
- (d) Medically examining him.

Any amount received by the complainant under this section shall be paid by him into the general revenue of the State.

* * * * *

50. Every person registered as the owner of a motor vehicle and every holder of a licence who permanently changes his place of abode shall, within fourteen days of so doing, give written notice to the registrar of his new place of abode.

S. 49 repealed by 2332, 1936, s. 26.

Registered owners and licensed drivers to notify change of address. 1480, 1921, s. 28.

PART II.

Side-car to be on left side of motor cycle. 1480, 1921, s. 38.

51. (1) No motor cycle having a side-car attached thereto shall be driven or shall stand in any road unless such side-car is so attached on the left side of such motor cycle.

(2) If any person owns or drives any motor cycle not complying with this section in any particular he shall be guilty of an offence: Provided that where the owner and driver of the cycle are different persons both shall not be punished in respect of the same contravention.

S. 52 repealed by 2332, 1936, s. 27.

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Penalty for using motor vehicle without consent of owner.

1480, 1921, s. 37. 1695, 1925, s. 13. Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 28.

53. (1) Any person who drives or uses any motor vehicle without first obtaining the consent of the owner thereof shall be guilty of an offence.

Penalty—For a first offence, imprisonment for not more than three months. For any subsequent offence, imprisonment for not more than twelve months.

Subsec. (1) amended by 2416, 1938, s. 21.

(2) The court may, in addition to any other penalty impossible under this section, order the defendant to pay to the owner of the motor vehicle used in contravention of this section such a sum as the court thinks proper by way of compensation for any loss or damage suffered by the owner.

(3) This section shall not apply to any member of the police force in the execution of his duty under this Act.

S. 54 repealed by 2332, 1936, s. 27.

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Interfering with motor vehicle. 1480, 1921, s. 39. Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 29 (2).

55. Any person who interferes with or tampers with a motor vehicle or any part thereof, without first obtaining the consent of the owner thereof, shall be guilty of an offence.

Procuring use of car by fraud. 1480, 1921, s. 40.

56. Any person who procures the use or hire of any motor vehicle by fraud or misrepresentation shall be guilty of an offence and liable to a fine not exceeding twenty pounds or to imprisonment for any period not exceeding six months, or to both such fine and imprisonment.

s. 53. BOLLMEYER v. DALY (1933) S.A.S.R. 295; 5 Austn. Digest 168. "Use" covers every degree of use. The mens rea necessary to support a charge under section 53 is an intention to use a motor vehicle without the consent of the owner.

57. (1) Whenever a licensed driver is charged with any breach of this Part he shall produce his licence to the court at the time of the hearing of the charge.

Production of licence at court.
1480, 1921, s. 41.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 8.

(2) Any such driver who fails without reasonable excuse to produce his licence as aforesaid shall be guilty of an offence.

58. Any person who wilfully makes any false statement in an application under this Part for the registration of a motor vehicle, or in an application for the issue or renewal of a licence to drive a motor vehicle, shall be guilty of an offence.

False statement by applicant for licence or for registration punishable.
1480, 1921, s. 42.

59. (1)—

(a) If any commercial motor vehicle, for the registration of which a reduced registration fee has been paid as allowed by paragraph (7) of section 9 of this Act, is during the period of the registration used for the carriage of His Majesty's mails, goods, or passengers for pecuniary reward or for carrying goods in the course of any trade or business other than that of a primary producer; or

Penalty on improper use of vehicles registered for reduced fee.
Substituted by 2416, 1938, s. 22.

(b) if any commercial motor vehicle for the registration of which a reduced registration fee has been paid as allowed by paragraph (8) or (9) of section 9 of this Act is during the period of registration used for any purpose other than a purpose set out in the said paragraph (8) or (9) as the case may be; or

(c) if any motor tractor for the registration of which a reduced registration fee has been paid as allowed by paragraph (10) of section 9 of this Act is during the period of the registration used for any purpose other than a purpose set out in the said paragraph (10),

and the balance of the full registration fee for the said period has not been paid before the vehicle is so used, then the person driving the vehicle and, if that person is employed by any other person to drive the vehicle, then the employer also shall be guilty of an offence.

(2) The carriage of goods and passengers on any motor vehicle which is on the establishment of any unit of the military forces of the Commonwealth, shall not, if those goods or passengers are carried in connection with military training or other military operations carried on by the

Commonwealth, be regarded as the carriage of goods or passengers within the meaning of paragraph (a) of subsection (1) of this section.

Powers and duties of police.

1480, 1921, s. 43.
 Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 49.

60. (1) Every member of the police force shall see that this Part is duly observed.

(2) Any member of the police force in the execution of his duty under this Part may give such reasonable directions to persons driving motor vehicles upon any road as are, in his opinion, necessary for the safe and efficient regulation of the traffic thereon, or for the purpose of ascertaining whether any offence against this Part has been or is being committed.

(3) Any person who—

- (a) obstructs or hinders any member of the police force in the exercise of his duties under this Part; or
- (b) in any way interferes with or prevents the exercise of any of the powers conferred or the discharge of any of the duties imposed by this Part upon members of the police force; or
- (c) disobeys any lawful order or direction of a member of the police force in the exercise of his duties under this Part,

shall be guilty of an offence.

Regulations as to motor vehicles.

Regulations.
 1480, 1921, s. 44.
 Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 30.

61. (1) In addition to any power by any other section of this Part conferred on the Governor to make regulations (which power shall in every case be implied for the purpose of any section in which the word "prescribed" is used), the Governor may make regulations prescribing all matters and things which by this Part are contemplated, required or permitted to be prescribed, or which appear to him to be necessary or convenient to be prescribed for the purpose of more effectually carrying out any of the provisions of this Part, or for better effecting the objects of this Act, and in particular (without limiting the effect of this section) for all or any of the following purposes, namely:—

- I. Regulating the use of motor vehicles and the conditions under which they may be used;

s. 61. GRAVES v. WALKOM (1926) S.A.S.R. 34. The breach of a statutory regulation may tend to show negligence on the part of the plaintiff or defendant.

FORBY v. LAUCKE (1933) S.A.S.R. 60. The existence of a statutory regulation for the use of the highway is a circumstance to be taken into account in applying the principles of common law in an action for negligence.

- II. Regulating the speed of motor vehicles in particular localities or under particular circumstances, and for such purposes varying the rates of speed declared by this Part to be *prima facie* evidence of driving at excessive speed;
- III. Prescribing and regulating the affixing and use of warning devices on motor vehicles;
- IV. Prescribing and regulating the affixing of efficient brakes on motor vehicles;
- V. Providing for minimising the noise and the issue of smoke or fumes from the working of motor vehicles;
- VI. Prohibiting the use of motor vehicles that, owing to defects in construction or other causes, are unsuitable for safe use;
- VII. Prohibiting or restricting the use of motor vehicles upon any specified roads, or within the roads in any specified area, either generally or within certain hours;
- VIII. Prohibiting or regulating the carrying of any person on a motor cycle in addition to the rider thereof;
- IX. Regulating the form of the registered numbers assigned to motor vehicles, and the manner of placing them upon such vehicles;
- X. Providing that any regulations under this section may be of a local nature and limited in their application to a particular area, or may be restricted in their operation to any specified class of motor vehicle;
- XI. Providing for the erection of uniform signs and notices for the guidance of motor drivers;
- XII. Providing for the temporary registration of motor vehicles owned by persons resident outside the State and temporarily in the State, and of the drivers thereof;
- XIII. Providing for the regulation of the owners and drivers of motor vehicles; and
- XIV. Providing for any other purpose which the Governor may consider necessary for the safety or convenience of the public, or for the protection of property;
- XV. Requiring motor vehicles to be provided with apparatus for deflecting, dipping, dimming, or otherwise adjusting the headlights thereof and for regulating the use of such apparatus.

Cf. U.K.
20 & 21
Geo. 5 c. 43,
s. 16.

Inserted by
2416, 1938,
s. 23.

(2) Any such regulation may impose a penalty not exceeding twenty pounds for any breach of the same or any other regulation.

Inconsistency
of regulation
or by-law.
1480, 1921,
s. 47.

62. When any regulation or by-law made by any municipal or district council or other authority is inconsistent with a regulation made under this Part, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Legal Proceedings and Evidence.

Offences.
1480, 1921,
s. 48.

63. Any contravention of or failure to observe any provision of this Part, whether by act or omission, shall be an offence.

Penalties.
1480, 1921,
s. 49.

64. Any person guilty of an offence under this Part for which no specific pecuniary penalty is provided shall be liable to a penalty of not more than twenty pounds.

Copy of
record of
registration
and licences
to be evidence.
1480, 1921,
s. 50.
1695, 1925,
s. 14.
2095, 1932,
s. 15.

65. (1) A document purporting to be an extract from, or copy of, any entry contained in the register of motor vehicles or in the register of licences and purporting to be certified as such under the hand of the registrar shall, in all courts and upon all occasions whatsoever be admissible as evidence, and shall be *prima facie* evidence of the truth of the matters stated in such document without the production of such registers, or any licence, notice, or other document upon which any entry may be founded.

(2) A document purporting to be a certificate under the hand of the registrar stating all or any of the following matters, namely:—

- (a) That the person therein described was not on any given date the holder of a licence:
- (b) That the person therein described had not on any given date registered any motor vehicle whatever, or any particular motor vehicle therein described:
- (c) That no trader's plate or no trader's plate bearing a particular number had on any given date been issued to the person therein described:
- (d) That any number therein mentioned was not the number on any trader's plate in force on any given date:
- (e) That any motor vehicle therein described was not on any given date a registered motor vehicle:

- (f) That any number therein mentioned was not on any given date assigned to any motor vehicle whatever, or to any particular motor vehicle therein described:
- (g) That any person therein described had not on any given date notified the registrar in the prescribed form of the transfer of any motor vehicle therein described:
- (h) That any person therein described had not on any given date delivered to the registrar the registration card issued in respect of any transferred motor vehicle therein described:
- (i) That any person therein described had not on any given date notified the registrar in writing of his permanent change of address from any address therein described to any other address therein described,

shall in all courts and upon all occasions whatsoever, be admitted as *prima facie* evidence of the truth of the matters stated as aforesaid.

66. In any proceedings for an offence against this Part—

Facilitation
of proof.
1480, 1921,
s. 51.

- (a) proof that a motor vehicle has not upon it a distinguishing number as prescribed by this Part shall be *prima facie* evidence that that motor vehicle is not registered;
- (b) proof that a person is registered as the owner of a motor vehicle shall be *prima facie* evidence that that person is the owner of that motor vehicle;
- (c) the fact that any place is described as a street or road shall be *prima facie* evidence that that place is a road within the meaning of this Part; and
- (d) the allegation in the complaint that any road whereon it is alleged that any such offence was committed is situated in a municipality, or in a town or township, shall be *prima facie* evidence that that road is situated as alleged.

67. (1) When a holder of a driver's licence is disqualified under this Act from holding and obtaining a licence, or when the licence of any such holder is suspended, he shall forthwith produce his licence to such person as the court or other person or authority ordering the disqualification or suspension directs for the purpose of having a memorandum of the disqualification or suspension endorsed thereon.

Endorsement
of disqualifi-
cation.
Cf. U.K.
20 & 21
Geo. 5 c. 43,
ss. 7, 8.
Cf. U.K.
24 & 25
Geo. 5 c. 50,
s. 5.

Substituted
by 2332,
1936, s. 28.

(2) Any person who fails to produce a licence as and when required to do so under this section shall be guilty of an offence.

Effect of disqualification from holding licence.
Of. U.K.
20 & 21.
Geo. 5 c. 43,
ss. 4 (6), 7.

67a. (1) A driver's licence shall during the period during which it is suspended or the holder is disqualified from holding and obtaining a licence be of no force or effect.

Inserted by
2332, 1936,
s. 28.

(2) The registrar shall not issue a driver's licence to any person who is disqualified from holding and obtaining a driver's licence.

Enforcement of obligation to procure driver's licence.

Inserted by
2332, 1936,
s. 28.

67b. The Commissioner of Police shall at intervals of not less than twelve months take such steps as are reasonably practicable to ascertain whether any persons are driving motor vehicles without holding drivers' licences.

Suspension of registration.

Inserted by
2332, 1936,
s. 29.

67c. In any proceedings against the owner of a motor vehicle for any offence against this Act if the court is satisfied that the vehicle does not comply with any requirement of this Act or is otherwise so defective that it cannot be driven on a road without danger to the public, the court may order that—

- (a) the registration of the vehicle be suspended and not renewed; or
- (b) if the vehicle is unregistered, that the vehicle be not registered,

until the vehicle is made to comply with this Act or otherwise rendered safe for use to the satisfaction of a police officer.

Offences by employees.

Inserted by
2332, 1936,
s. 30.

67d. If a person charged with driving a motor vehicle which does not comply with a requirement of this Act as to lights, warning devices, brakes, windscreen wipers, rear-vision mirrors, or other equipment, proves—

- (a) that he is the employee of another person;
- (b) that he drove the vehicle on the relevant occasion under the express instructions of his employer;
- (c) that he was not aware that the vehicle did not comply with this Act or that before driving the vehicle he called the attention of his employer to the fact that the vehicle did not comply with this Act,

that person so charged shall be acquitted.

67e. (1) A person who by virtue of an order of a court under this Act is disqualified from holding and obtaining a driver's licence may appeal against the order in the same manner as against a conviction.

Suspension of orders of disqualification.
Inserted by 2416, 1938, s. 24.

(2) Pending the hearing and determination of any such appeal the operation of any such order may be suspended—

(a) in the case of an order made by a court of summary jurisdiction, by the court which made the order, or a judge of the Supreme Court;

(b) in the case of an order made by the Supreme Court, by a judge of that Court.

(3) An order of suspension may be made before or after the institution of the appeal, but shall not have any effect until the defendant—

(a) has duly instituted the appeal and paid the appropriate court fees; and

(b) has served on the registrar the order of suspension or a copy thereof, and a notice that the appeal has been duly instituted and the fees paid.

68. All proceedings for offences against this Part shall be disposed of summarily.

Summary proceedings for offences.

69. This Part applies to persons in the public service of the Crown while engaged on such service, as well as when not so engaged.

Persons in service of the Crown bound.

70. Nothing in this Part shall affect any liability of any person under any statute or at common law.

Common law or statutory liability not affected.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 33.

PART II.A.

PART II.A.

INSURANCE AGAINST THIRD PARTY RISKS ARISING OUT OF THE USE OF MOTOR VEHICLES.

70a. (1) In this Part, unless the context otherwise requires—

Interpretation and application of this Part.

“approved insurer” means any person or association of persons carrying on the business of insurance who or which has been approved by the Treasurer as an approved insurer under this Part:

Inserted by 2332, 1936, s. 31.

s. 70. FORBY v. LAUCKE (1933) S.A.S.R. 60. Section 70 means that the other provisions of the Act are not to alter the principles upon which liability falls to be determined under any other statutes or at common law. The existence of a statutory regulation for the use of the highway is a circumstance to be taken into account in applying the principles of the common law in an action for negligence.

Road Traffic Act, 1934-1938.

“insured person” means the owner of a motor vehicle in respect of which a policy of insurance is in force under this Part and the driver and the person in charge at the material time whether with or without the consent of the owner:

“owner” includes every person who is the owner or joint owner or part owner of a motor vehicle and any person who has the use of any motor vehicle under a hire purchase agreement, but does not include an unpaid owner of a motor vehicle the subject of a hire purchase agreement:

“policy of insurance” includes a cover note which is binding on the insurer.

(2) Other words and expressions used in this Part shall, unless the context otherwise requires, have the same meaning as they have in Part II. of this Act.

(3) This Part shall not render it obligatory to insure any vehicle owned by the Crown and used solely in the public business of the State or any vehicle owned by the Municipal Tramways Trust and used solely in connection with the business of that Trust: Provided that in relation to any motor vehicle which is owned by the Crown or the Municipal Tramways Trust and is not insured the Crown or the Municipal Tramways Trust shall be under the same liabilities and have the same rights as an insurer who has issued to the Crown or the Municipal Tramways Trust (as the case may be) a policy of insurance complying with this Part in relation to the use of that vehicle.

Insurance
against third
party risks.
U.K. 20 & 21
Geo. 5 c. 43,
s. 35.

Inserted by
2332, 1936,
s. 31.

70b. (1) After a day to be proclaimed by the Governor as the day on which this Part shall come into operation no person shall use, or cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with this Part.

Any person contravening this subsection shall be guilty of an offence and liable for a first offence to a fine of not more than one hundred pounds and for any subsequent offence to a fine of not more than two hundred pounds.

s. 70b. *RAKE v. BOND* (1938) S.A.S.R. 253. The discretionary powers of the court under subsection (2) to grant an order of exemption discussed.

PENNEY v. BOURKE (1938) S.A.S.R. 328. Where a person had used a motor car without having a policy of insurance in force for approximately three weeks, held that the suspension of his driver's licence for a period of three months was not excessive.

(2) Any person convicted of an offence under this section shall (unless the court for special reasons thinks fit to order otherwise) be disqualified from holding and obtaining a driver's licence or the registration of a motor vehicle under this Act for a period of twelve months from the date of the conviction.

(3) Proceedings for an offence under this section may be commenced—

- (a) within a period of six months from the date of the commission of the alleged offence; or
- (b) within a period which exceeds neither three months from the date on which it came to the knowledge of the prosecutor that the offence had been committed nor one year from the date of the commission of the offence,

whichever period is the longer.

(4) In any prosecution for an offence under this section, the allegation in the complaint that at any time mentioned in the complaint there was not in force in respect of any particular motor vehicle a policy of insurance complying with this Part shall be *prima facie* evidence of the fact so alleged.

(5) Any owner of a motor vehicle shall on being so requested by a member of the police force produce evidence that there is in force in respect of every motor vehicle owned by him a policy of insurance complying with this Part. The owner shall be deemed to have complied with this subsection if he produces the necessary evidence at a police station (to be nominated by the owner to the member of the police force at the time when the request is made) within five days of the time when its production was requested.

Cf. U.K.
20 & 21
Geo. 5 c. 43,
s. 40.

Any person who without just excuse fails to comply with this subsection shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

(6) Every application for registration of a motor vehicle shall contain a statement by the owner of the vehicle or by the person applying for registration on behalf of that owner that a policy of insurance complying with this Part is in force and a statement of the name of the insurer who has issued the policy.

PART IIA.

Requirements in respect of policies.

Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 36.

Inserted by 2332, 1936, s. 31.

70c. (1) In order to comply with this Part, a policy of insurance must—

- (a) be issued by an approved insurer :
- (b) except as provided in this section insure the owner of the vehicle mentioned in the policy and any other person who at any times drives that vehicle, whether with or without the consent of the owner, in respect of all liability for negligence which may be incurred by that owner or other person in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle.

(2) A policy of insurance shall be deemed to comply with this Part notwithstanding that the liability of the insurer—

- (a) is limited to two thousand pounds in respect of any claim made by or in respect of any passenger carried in the vehicle mentioned in the policy, and to twenty thousand pounds in respect of all claims made by or in respect of such passengers, and such limits shall be inclusive of all costs in relation to any such claim or claims :
- (b) does not indemnify the insured in respect of any claim based on the death of, or injury suffered by, any person who at the time of the accident was—
 - (i.) the spouse or a child or other relative of the insured of a degree not more remote than the fourth :
 - (ii.) a servant of the insured :

* * * * *

Subpara. (iii.) repealed by 2416, 1938, s. 25 (1).

Inserted by 2416, 1938, s. 25 (1).

(2a) Every policy which relates to a vehicle used for the carriage of passengers for hire by a person a substantial part of whose usual business is such carriage must indemnify the insured in respect of any claim based on the death of or bodily injury to any person who, as a passenger carried or about to be carried for hire, was being conveyed in or on or was entering or alighting from that vehicle. Except as mentioned in this subsection, it shall not be necessary to insure against any claim for death of or injury to any person driving or being conveyed in or on, or entering or alighting from any vehicle.

* * * * *

Subsec. (3),
repealed by
2416, 1938,
s. 25 (2).

70d. (1) Any person who has obtained a judgment against an insured person in respect of death or bodily injury caused by negligence in the use of a motor vehicle specified in a policy of insurance under this Part may recover by action from the insurer such amount of the money (including costs or a proportionate part thereof) payable pursuant to the judgment as relates to death or bodily injury and is unsatisfied: Provided that before the action in which judgment was obtained against the insured person, came on for hearing, the insurer knew that that action had been commenced: Provided also that the right to recover under this subsection shall be subject to any limitations prescribed by the policy of insurance as to the amount in respect of which the insured is indemnified or as to the persons in respect of whose death or injury the insured is indemnified.

Liability of
insurers.
Of. U.K.
24 & 25
Geo 5 c. 50,
s. 10.

Inserted by
2332, 1936,
s. 31.

Proviso
substituted
by 2416,
1938, s. 26
(1).

(2) Where an insured person has caused death or bodily injury by negligence in the use of a motor vehicle specified in a policy of insurance under this Part but that insured person is dead or cannot be served with process, any person who could have obtained a judgment in respect of the death or bodily injury so caused against that insured person if he were living or if he had been served with process may recover by action against the insurer the amount of the judgment which he could have so recovered against the insured person: Provided that he cannot so recover unless he proves that he gave to the insurer notice of the claim and a short statement of the grounds thereof as soon as possible after he knew that the insured person was dead or could not be served, or that such notice was given within such time as would prevent the possibility of the insurer being prejudiced by want of such notice.

(3) Where the driver of a motor vehicle has caused death or bodily injury by negligence in the use of a motor vehicle, but the identity of the vehicle cannot be ascertained, any person who could have obtained a judgment in respect of the death or bodily injury so caused against that driver may obtain by action against a nominal defendant to be named by the Treasurer the judgment which in the circumstances he could have recovered against the driver of the vehicle: Provided that as soon as possible after he knew that the identity of the vehicle could not be ascertained, he gave to the Treasurer notice of the claim and a short statement of the grounds thereof.

Road Traffic Act, 1934-1938.

(4) It shall be no defence by an insurer to an action against him under this section that he is not liable under a policy of insurance by reason of the fact that—

- (a) the policy was obtained by any mis-statement or non-disclosure whether fraudulent, material, or otherwise;
- (b) the insured person has committed any breach of any term, condition or warranty of a policy or any provision of this Part; or
- (c) the insured has failed to comply with any condition of the policy as to what the insured person should do or should not do after the event giving rise to liability.

(5) The insurer may, in addition to any other right or remedy he may have, recover from the insured person liable in respect of any such accident, and if two or more persons were so liable from those persons jointly and severally—

- (a) such part of any judgment so obtained against the insurer; or
- (b) such sums as the insurer has paid in payment settlement or compromise of the claim or judgment against the insured person or the insurer; and
- (c) such costs and expenses,

as would not have been recovered from or incurred or paid by the insurer but for the last preceding subsection of this section, and that amount may be recovered either in a separate action or by means of third party procedure in the action against the insurer by the person who obtained the judgment: Provided that if the insured person has made any written request to the insurer that he should settle or compromise up to any specified sum or should pay or should contest the claim, and if the insurer acts unreasonably in failing to comply with such request then the insurer shall not recover more than the amount of the liability which the insurer would have paid or incurred if he had not so acted unreasonably.

(6) This section shall not apply—

- (a) so as to confer any rights against an insurer upon the spouse or a child or other relative of the insured person of a degree not more remote than the fourth; or upon a servant of the insured person or any passenger (other than a passenger carried or about to be carried for hire in a vehicle such as

mentioned in subsection (2a) of section 70c of this Act), in, or any person entering or alighting from, or about to enter or alight from the vehicle specified in the policy, nor

(b) so as to make an insurer liable for more than two thousand pounds (including costs) in respect of any one passenger nor more than twenty thousand pounds (including costs) in respect of all passengers in the motor vehicle specified in the policy if at the material time it was being used in the business of carrying passengers for hire:

Amended by
2416, 1938,
s. 26 (2).

(c) to any accident which happened before the commencement of this Part.

(7) A nominal defendant shall not be liable to satisfy any judgment obtained against him but the judgment and the nominal defendant's costs shall be paid by all those who were approved insurers at the date of the accident giving rise to the liability in proportions determined by the Treasurer who, in so determining, shall have regard to the premium income for insurance under this Part received by each such insurer during the previous year.

The Treasurer may out of the general revenue of the State and without any appropriation other than this Act pay the amount of any judgment obtained against a nominal defendant under this section and of the nominal defendant's costs; and the approved insurers who are under this subsection liable for such judgment and costs shall upon demand made by the Treasurer repay to him their respective proportions of any amounts so paid by him.

Inserted by
2416, 1938,
s. 27.

(8) No policy shall be deemed to comply with this Act if any term, warranty or condition thereof is in form or substance a term, warranty or condition of which the committee appointed under section 70m. of this Act has expressed its disapproval by notice in the *Gazette*: Provided that every such notice shall come into effect upon the expiration of three months after the publication thereof in the *Gazette* and not earlier.

Cf. U.K.
20 & 21
Geo. 5 c. 43,
s. 38;
24 & 25
Geo. 5 c. 50,
s. 12.

70e. (1) Upon the happening of any accident which results in the death of or causes bodily injury to any person and is caused by, or arises out of the use of a motor vehicle, the driver and the person in charge thereof shall give written notice forthwith to the insurer concerned, and such notice (which notice shall not be subject to discovery or admissible

Duties of
owner or
insurer.
Cf. U.K.
24 & 25
Geo. 5 c. 50,
s. 13.
Inserted by
2332, 1936,
s. 31.

Road Traffic Act, 1934-1938.

in evidence in any proceedings except proceedings for an offence under this section) shall set forth the following information with as full particulars as the owner is able to give:—

- (a) The fact of the accident:
- (b) The time and place at which it occurred:
- (c) The circumstances of the accident:
- (d) The name and address of any person killed or injured therein:
- (e) The names of any witnesses of the accident.

(2) When neither the driver nor the person in charge of the motor vehicle is the owner of the motor vehicle concerned the owner shall give a like notice immediately upon the accident coming to his knowledge.

(3) An insured person, immediately upon any claim being made upon him in respect of an accident, shall give notice of the claim to the insurer concerned, and supply to that insurer such particulars of the claim as he requires.

(4) If any person fails to comply with any requirement of subsection (1) or subsection (3) of this section he shall be guilty of an offence and liable to a fine not exceeding five pounds.

(5) An insured person shall not, without the consent in writing of the insurer concerned—

- (a) enter upon, or incur any expense in, any litigation:
- (b) make any offer or promise of payment or settlement:
- (c) make any payment or settlement: or
- (d) make any admission of liability,

in respect of any claim in respect of which he is insured with such insurer, but this provision shall not prevent any person truthfully answering any question reasonably asked of him.

(6) The insurer shall be entitled to recover from an insured person who has failed to comply with any provision of this section all moneys paid and costs incurred by the insurer in relation to any claim arising out of the accident in respect of which such failure has occurred.

70f. (1) The insurer may on behalf of the insured, conduct the negotiations in respect of any claim against the insured, and may assume the conduct and control of any legal proceedings in respect of any such claim, and at any stage of those negotiations or proceedings may pay, compromise, or settle any such claim.

Power of insurers to deal with claims against insured.

Inserted by 2332, 1936, s. 31.

(2) The insured shall sign and execute all such warrants, authorities, and other documents as are necessary to give effect to this section, and, if the insured makes default in doing so or is absent or cannot be found, the warrants, authorities, or other documents may be signed or executed by the insurer on behalf of the insured.

(3) Where, as the result of the use of a motor vehicle an accident happens which results in the death of or bodily injury to any person, as well as damage to property, and claims are made in respect of the death or bodily injury and also in respect of the damage to property, and the person against whom claims are made is insured against his liability for death or bodily injury but not against his liability for damage to property, then nothing said or done in any negotiations for settlement of either of the claims, and no judgment given in any legal proceedings in respect of either of the claims, shall be evidence in any legal proceedings in respect of the other claim unless the negotiations or proceedings in respect of both claims are conducted or controlled by the person against whom the claims are made with the authority of the insurer, or by the insurer with the authority of the said person.

Inserted by 2416, 1938, s. 28.

70g. (1) Where—

(a) (i.) any legally qualified medical practitioner or registered nurse renders emergency treatment in respect of bodily injury (including fatal injury) to any person caused by or arising out of the use of a motor vehicle; or

Emergency treatment. Cf. U.K. 24 & 25 Geo. 5 c. 50, s. 16.

Inserted by 2332, 1936, s. 31.

(ii.) the person so injured is immediately after such injury conveyed in any vehicle; and

* * * * *

Para. (b), repealed by 2416, 1938, s. 29 (a).

(c) notice in writing of a claim under this section is given by the medical practitioner, nurse, or person who conveyed the injured person, to the insurer who issued the policy of insurance in force under this Part in relation to the said motor vehicle within one month after the occurrence out of which the death or bodily injury arose,

Amended by 2416, 1938, s. 29 (b).

Road Traffic Act, 1934-1938.

the insurer shall make such of the following payments as are applicable to the case:—

- (i.) To the medical practitioner the sum of twelve shillings and six pence for each person to whom emergency treatment is rendered together with any travelling expenses reasonably and necessarily incurred in respect of the emergency treatment so rendered:
- (ii.) To the nurse the sum of ten shillings and six pence for all emergency treatment rendered by her to the person or persons injured in the accident together with any travelling expenses reasonably and necessarily incurred in respect of the emergency treatment so rendered which sum shall, if emergency treatment is rendered to two or more persons, be deemed to have been paid on behalf of all those persons in equal shares:
- (iii.) To any person who conveyed the injured person as mentioned in paragraph (a) of this subsection, an amount to be ascertained in accordance with the regulations.

(2) Where bodily injury (including fatal injury) is caused by or arises out of the use of two or more motor vehicles in respect of which policies were issued by different insurers each such insurer shall pay an equal share of the payments required to be made under subsection (1) of this section.

(3) The liability (if any)—

- (a) of the owner or driver of such motor vehicle in respect of the death or bodily injury; and
- (b) of the insurer to the owner or driver in respect of the contract of insurance,
- (c) of the injured person or his personal representatives to the person to whom the payment is made under this section,

shall be reduced by the amount paid by the insurer under this section.

(4) In this section “emergency treatment” means such medical or surgical treatment or examination by a legally qualified medical practitioner or a registered nurse as is immediately required as the result of any such injury as mentioned in subsection (1).

Substituted
by 2416,
1938, s. 29
(c).

Inserted by
2416, 1938,
s. 29 (d).

(5) Every policy issued in pursuance of this Part of this Act which is in force at the time of the enactment of this subsection shall be deemed to impose an obligation on the insurer named therein to make the payments prescribed by this section.

Inserted by
2416, 1938,
s. 29 (e).

Every policy of insurance issued after the enactment of this subsection shall not be deemed to comply with this Part unless it binds the insurer to make the payments prescribed by this section.

(6) A sum payable under this section shall be recoverable as if it were a simple contract debt due from the insurer to the person entitled to that sum.

Inserted by
2416, 1938,
s. 29 (e).

(7) The Commissioner of Police shall if so requested by a person who alleges that he is entitled to a payment under this section furnish that person with any information at his disposal as to the identification marks of any motor vehicle which that person alleges to be a motor vehicle out of the use of which the death or bodily injury arose, and as to the identity and address of the person who was using the vehicle at the time of the event out of which the death or bodily injury arose.

Inserted by
2416, 1938,
s. 29 (e).

(8) Any person who was using a motor vehicle at the time when death or bodily injury was caused by or arose from such use, shall upon request of any person who alleges that he is entitled to payment under this section, furnish such person with the name and address of the insurer who issued the policy in force in relation to that vehicle at the time of the death or injury.

Inserted by
2416, 1938,
s. 29 (e).

70h. (1) Where—

- (a) any payment is made (whether or not with an admission of liability) by an insurer, under or in consequence of a contract of insurance under this Part, in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle; and
- (b) the person who has so died or been injured received treatment at a hospital, whether as an in-patient or as an out-patient in respect of the bodily injury (fatal or otherwise) so caused or arising; and
- (c) notice in writing of a claim under this section is made by that hospital to the insurer within one month after the occurrence out of which the death or bodily injury arose,

Hospital
treatment.
U.K. 24 & 25
Geo. 5 c. 50,
s. 16.

Inserted by
2332, 1936,
s. 31.

there shall be paid by the insurer to the hospital the amount owing to the hospital in respect of treatment afforded to the person who has so died or been injured.

(2) Where two or more insurers make payments under or in consequence of a contract of insurance under this Part in respect of the death or of bodily injury to a person caused by or arising out of the use of two or more motor vehicles each such insurer shall pay an equal share of the payments required to be made under subsection (1) of this section.

(3) The liability (if any)—

(a) of the owner or driver of the motor vehicle in respect of the death or bodily injury; and

(b) of the insurer to the owner or driver in respect of the contract of insurance,

shall be deemed to be reduced by the amount paid by the insurer to the hospital under this section.

(4) The amount to be paid by the insurer to the hospital in respect of any such bodily injury (fatal or otherwise), shall not exceed fifty pounds for each person so treated as an in-patient or five pounds for each person so treated as an out-patient: Provided that in either case the amount to be paid to the hospital as aforesaid shall not exceed one-fifth of the total amount (exclusive of costs) paid by the insurer in respect of such fatal or bodily injury.

(5) If the person who has died or been bodily injured has received treatment at more than one hospital, and the total amount owing to those hospitals in respect of treatment afforded to that person exceeds fifty pounds, the sum of fifty pounds shall be divisible between the hospitals in proportion to the claims of the hospitals.

(6) The insurer shall not be liable to pay the amounts payable under this section as well as the amount payable under the Public Hospitals (Charges) Act, 1931, but shall pay the larger of such amounts.

Actions to be tried without jury.

Inserted by 2332, 1936, s. 31.

70i. Every action brought against the owner or driver of a motor vehicle for damages in respect of the death of or bodily injury to any person caused by or arising out of the use of that vehicle, shall be tried without a jury.

s. 70h. (6) The Public Hospitals (Charges) Act, 1931, has been repealed by the Hospitals Act, 1934, and superseded by Part VI. of that Act.

70j. The registrar shall not grant a certificate of temporary registration in respect of any motor vehicle of a person visiting the State unless in his opinion that person is adequately insured against any liability which may be incurred by him in respect of the death of or bodily injury to any person caused by or arising out of the use of that motor vehicle in the State.

Insurance by visiting motorists.

Inserted by 2332, 1936, s. 31.

70k. (1) Any approved insurer may apply on complaint to a court of summary jurisdiction for an order that any person be disqualified for such period as the court fixes from holding and obtaining a driver's licence.

Power to suspend or cancel drivers' licences on application of approved insurer.

(2) If it is proved to the satisfaction of the court that the defendant is likely, in the event of his continuing to drive motor vehicles, to endanger unduly the safety of the public, the court may make such order under subsection (1) as it thinks just.

Inserted by 2332, 1936, s. 31.

(3) An insurer shall not terminate a policy of insurance complying with this Part before its expiry by effluxion of time except upon fourteen days' notice in writing given to the person to whom the policy was issued and to the Registrar of Motor Vehicles, unless the insurer substitutes another policy of insurance which complies with this Part, and commences immediately upon the termination of the previous policy.

(4) Upon the termination of the policy on such a notice, the motor vehicle specified in the policy shall be an unregistered vehicle unless and until the registrar is satisfied that another policy of insurance has been issued in respect of the use of that vehicle.

701. (1) Every approved insurer shall, whenever so required by the Treasurer, furnish to the Treasurer such information as the Treasurer reasonably requires relating to the following matters:—

Information to be furnished by insurers.

Inserted by 2332, 1936, s. 31.

- (a) Premiums received for insurance under this Part:
- (b) Claims paid under this Part:
- (c) Persons insured under this Part:
- (d) Any other matters relevant to this Part.

(2) Any insurer who without lawful excuse fails to furnish any information to the Treasurer within two months after receipt of a written notice demanding such information shall be guilty of an offence and liable to a penalty of one hundred pounds.

(3) Any insurer who wilfully or negligently furnishes any false information to the Treasurer shall be guilty of an offence and liable to a penalty of two hundred pounds.

Inquiries into premium.

Inserted by 2332, 1936, s. 31.

70m. (1) Upon the recommendation of the Treasurer the Governor may from time to time appoint a committee to enquire into and report upon the question whether the premiums charged for insurance under this Part are fair and reasonable.

(2) The persons appointed to such a committee shall be—

(a) a judge of the Supreme Court or a special magistrate or a legal practitioner actually practising law, who shall be chairman:

(b) the Public Actuary:

(c) two persons appointed as representing owners of motor vehicles:

(d) two persons appointed as representing approved insurers.

(3) The members referred to in paragraphs (c) and (d) of the last preceding subsection shall be appointed after consultation with such body or bodies as in the opinion of the Treasurer represent the interests of approved insurers and owners of motor vehicles respectively.

(4) The committee shall have all the powers of a Royal Commission, and the Royal Commissions Act, 1917, with the necessary modifications shall apply to the chairman and other members of the committee and its proceedings and to witnesses and persons summoned as witnesses before the committee.

(5) The Treasurer shall lay every report of the committee before Parliament.

Summary procedure.

Inserted by 2332, 1936, s. 31.

70n. Proceedings for any offence against this Part shall be disposed of summarily.

Regulations.

Inserted by 2332, 1936, s. 31.

70o. The Governor may make any regulations necessary or convenient for carrying this Part into effect or for facilitating the operation of this Part, and may by any regulation impose penalties recoverable summarily and not exceeding twenty pounds for breach of any regulation.

70p. Any contract (whether under seal or not) by virtue of which any person in advance contracts out of any right to claim damages or any other remedy for the negligence of any other person in driving a motor vehicle shall to that extent be void.

Contracting out of liability for negligence.
Inserted by 2416, 1938, s. 30.

70q. Notwithstanding anything in any enactment, a person issuing a policy of insurance whether under this Part or otherwise in relation to a motor vehicle shall, as from the date of the policy, be liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of these persons or classes of persons.

Rights of persons named in policies.
Inserted by 2416, 1938, s. 30.

70r. (1) Where any claim has been made by or on behalf of any person for bodily injury caused by or arising out of the use of a motor vehicle, such person shall from time to time if and as required by the person against whom the claim is made, submit himself for examination by a duly qualified medical practitioner provided and paid by the person against whom the claim is made: Provided that a person shall not be required to submit himself for examination under this section otherwise than in accordance with such regulations (if any) as may be made by the Governor nor at more frequent intervals than are prescribed by those regulations.

Medical examination of claimants.
Inserted by 2416, 1938, s. 30.

(2) If any person refuses to submit himself to any examination as required by this section, or in any way obstructs the examination his right to commence proceedings or (if commenced) to continue proceedings shall be suspended until the examination has taken place.

(3) A person shall not be entitled to any damages or compensation for any period during which he refuses to submit himself to or obstructs the examination or during which he has unreasonably delayed making a claim.

(4) Upon demand made by or on behalf of the person submitting himself to an examination under this section the person against whom the claim is made shall deliver to him a full and true copy of any report of the medical practitioner, and if default is made in such delivery for one week the report shall cease to be privileged from discovery.

70s. (1) No person shall directly or indirectly for personal gain—

Soliciting instructions to persons claiming.

(a) solicit or hold himself out as being willing to accept instructions or authority to act on behalf of any other person in respect of the making or commencement of any claim or action for damages for the

Inserted by 2416, 1938, s. 30.

death of or bodily injury to any person arising out of the use of a motor vehicle or in respect of the negotiation, compromise or settlement of such claim or action; or

- (b) on behalf of any other person make or commence or cause to be made or commenced any claim or action for such damages aforesaid, or negotiate settle or compromise any such claim or action when made or commenced.

(2) This section shall not apply to any solicitor or barrister who is carrying on his profession in the ordinary way nor to any officer of an association acting in the course of his duties for a member of such association.

(3) Any agreement to pay any money for work done or services rendered contrary to this section shall be void, and any money so paid shall be recoverable by the person who has paid it.

PART III.

PART III.

LICENSING OF VEHICLES OTHER THAN MOTOR VEHICLES.

Interpretation.

1699, 1925,
s. 3.
1823, 1927,
s. 3.

71. In this Part, unless the context otherwise requires—

“licence” means a licence issued pursuant to this Part and “licensed” and “unlicensed” have corresponding meanings:

“metropolitan area” means the Municipalities of Adelaide, Brighton, Glenelg, Henley and Grange, Hindmarsh, Kensington and Norwood, Port Adelaide, Prospect, St. Peters, Thebarton, Unley, and Woodville, and the District Council Districts of Burnside, Campbelltown, Marion, Mitcham, Payneham, Walkerville, West Torrens, and Yatala South, and

s. 71. (Definition of “metropolitan area.”) The district council district of Burnside has been constituted a municipality, *Gazette* 16th May, 1935, p. 1308, and the name of the district council district of Yatala South has been altered to Enfield, *Gazette* 11th July, 1935, p. 38.

the Garden Suburb, and any other municipalities and district council districts or parts of municipalities or district council districts contiguous to any part of the metropolitan area as defined for the time being to which the Governor, by proclamation, declares that this Act shall apply:

“owner” includes the holder under a hire purchase agreement and the verb “to own” has a corresponding meaning:

“registrar” means the Registrar of Motor Vehicles holding office under Part II. of this Act, or any deputy registrar of motor vehicles:

“road” includes every public road, street, terrace, thoroughfare, or other public place, and every private road or street commonly used by the public, or to which the public are permitted to have access:

“vehicle” means every vehicle of any description whatsoever which is drawn or propelled by animal but not human power and used or ordinarily intended to be used on roads or streets.

72. The following vehicles are exempted from the operation of this Part, namely:—

Exemption of
certain
vehicles.
1699, 1925,
s. 4.

- (a) Every vehicle owned by the Fire Brigades Board, or any volunteer fire brigade:
- (b) Any ambulance vehicle for the use of which no charge is made:
- (c) Any vehicle owned by the corporation or council of any municipality, or by any district council, and used solely in connection with the construction and maintenance of roads.

73. (1) Any person who on any road within the metropolitan area drives, or causes or permits to be driven, any vehicle which is not licensed pursuant to this Part shall be guilty of an offence and liable to a penalty of not more than twenty pounds.

Duty to
obtain
licences for
vehicles.
1699, 1925,
ss. 5, 10, 11.
Cf. U.K.
10 & 11
Geo. 5 c. 72,
s. 13.

(2) Any person who owns any vehicle which is driven on any road within the metropolitan area and is not licensed pursuant to this Part shall be guilty of an offence and liable to a penalty of not more than twenty pounds.

PART III.

Applications
for and issue
of licences.
1699, 1925,
ss. 5 (2), 6.

74. (1) A licence may be obtained on application duly made in accordance with this Part and the regulations to the registrar or some other person authorised for that purpose by the Minister.

(2) No licence shall be issued to any applicant unless and until the fee as set out in the next succeeding section has been paid to the registrar or other person authorised pursuant to the last preceding subsection.

(3) Every application for a licence shall be made during the currency of the year in which the licence is to have effect or in the month immediately preceding that year.

Fee for
licence.
1699, 1925,
The Schedule,
1823, 1927,
s. 5.
Cf. U.K.
51 & 52 Vict.
c. 8, s. 4;
10 & 11
Geo. 5 c. 72,
s. 7 (6).

75. (1) The licence fee for a vehicle shall be calculated as follows:—

- (a) If the weight unladen of the vehicle does not exceed 25cwts. the fee shall be calculated at the rate of two shillings per cwt. of such weight:
- (b) If the weight unladen of the vehicle exceeds 25cwts. but does not exceed 40cwts. the fee shall be calculated at the amount of the fee for a vehicle of 25cwts., plus five shillings for every cwt. by which the weight unladen of the vehicle exceeds 25cwts.
- (c) If the weight unladen of the vehicle exceeds 40cwts. the fee shall be calculated at the amount of the fee for a vehicle of 40cwts., plus nine shillings for every cwt. by which the weight unladen of the vehicle exceeds 40cwts.

The weight of a vehicle shall be calculated to the nearest hundredweight.

(2) Where a licence is issued to take effect from a date between the thirty-first day of March and the thirtieth day of September in any year one-half the amount payable for a licence for a year shall be payable.

(3) Notwithstanding the foregoing provisions of this section—

- (a) the minimum fee payable for a licence for a vehicle used or ordinarily capable of being used solely or mainly for the carriage of goods or merchandise shall be one pound, or, if the licence is issued between the first day of April and the thirtieth day of September, ten shillings; and

- (b) the minimum fee payable for a licence for any other vehicle shall be ten shillings, or, if the licence is issued between the first day of April and the thirtieth day of September, five shillings.

76. Every licence shall remain in force until the thirtieth day of September next after the day on which it commences to take effect.

Duration of licences.
1699, 1925,
s. 6 pt.

77. The applicant for a licence shall produce to the registrar or other person authorised to issue licences such evidence as to the nature and weight of the vehicle in respect of which a licence is applied for as the registrar or other person authorised as aforesaid requires or as is prescribed.

Evidence in support of application for licence.
1699, 1925,
s. 7.
Cf. U.K.
10 & 11
Geo. 5 c. 72,
s. 5 (1).

78. (1) The registrar or other person issuing a licence shall deliver to the applicant a metal disc of a size and shape to be fixed annually by the Minister by notice published in the *Gazette*, and to be annually varied, on which shall be inscribed the year of issue and any other particulars which may be prescribed.

Licence discs.
1699, 1925,
s. 8,
1823, 1927,
s. 4.
Cf. U.K.
10 & 11
Geo. 5 c. 72,
s. 6.

(2) The disc shall, during the whole period in respect of which it is issued, be kept securely affixed to the vehicle in respect of which the disc and the licence are issued.

(3) Any person—

- (a) who drives a vehicle licensed under this Part to which vehicle there is not affixed the metal disc delivered with the licence for such vehicle to the person applying for the same; or
- (b) who drives a vehicle licensed under this Part on which vehicle the said disc is affixed otherwise than in the manner prescribed by this Part or any regulation under this Part,

shall be guilty of an offence, and shall be liable to a penalty not exceeding ten pounds.

79. (1) Upon application, the registrar or other person authorised to issue licences, may, on proof to his satisfaction of the loss or destruction of any licence or disc, and on payment of a fee of two shillings and sixpence, issue to the applicant a duplicate licence or disc.

Duplicate licences and discs.
1699, 1925,
s. 9.

(2) Any such duplicate licence or disc shall be effectual for all purposes as if it were the original licence or disc.

PART III.

Penalty for affixing discs to wrong vehicles.
1699, 1925, s. 12.

80. Any person who affixes any disc issued pursuant to this Part, to any vehicle other than the vehicle in respect of which the disc was issued, shall be guilty of an offence liable to a penalty of not more than twenty pounds.

Penalty for unlawfully obtaining licence.
1699, 1925, s. 13.
Cf. U.K. 10 & 11 Geo. 5 c. 72, s. 13 (2), (11).

81. Any person who—

- (a) by any false statement or misrepresentation obtains or attempts to obtain a licence or disc under this Part; or
- (b) without lawful excuse has in his possession a licence or disc, or any article resembling a licence or disc and liable to be mistaken therefor; or
- (c) forges or fraudulently alters or uses, or fraudulently lends or allows to be used by any other person, any licence or disc,

shall be guilty of an offence and liable to a penalty of twenty pounds.

Facilitation of proof.
1699, 1925, s. 14.
Cf. U.K. 10 & 11 Geo. 5 c. 72, s. 13 (3).

82. In any proceedings for an offence against this Part—

- (a) proof that a vehicle has not affixed upon it a disc of the size and shape fixed by the Minister for the current year shall be *prima facie* evidence that the vehicle is unlicensed;
- (b) the allegation in the complaint that any person is the owner of a vehicle shall be *prima facie* evidence that that person is the owner of the vehicle;
- (c) the allegation in the complaint that any place is a road shall be *prima facie* evidence that the place is a road within the meaning of this Part;
- (d) the allegation in the complaint that any road wherein it is alleged that any such offence was committed is situated within the metropolitan area shall be *prima facie* evidence that the road is situated as alleged; and
- (e) any conveyance shall be deemed to be a vehicle within the meaning of this Part unless the defendant satisfies the court to the contrary.

Summary proceedings for offences.
1699, 1925, s. 15

83. All proceedings in respect of offences against this Part shall be disposed of summarily.

84. The Governor may make any regulations necessary or convenient for carrying into effect the provisions and objects of this Part, including (though without limiting the operation of this section) regulations in respect of the following matters:—

- I. the form of licence and the application therefor:
- II. any matters in this Part left to be expressed or ascertained by regulations.

PART IV.

PART IV.

WIDTH OF TIRES.

85. In this Part, unless some other meaning is clearly intended—

Interpretation.
1580, 1923,
s. 3.

“council” means a municipal or district council, and includes the Renmark Irrigation Trust No. 1:

“inspector” means inspector of the Highways and Local Government Department appointed for the purposes of this Act by the Minister:

“load” includes everything inanimate or animate carried on a vehicle:

“local government area” or “area” means a municipality or a district council district, and includes the area of the Renmark Irrigation Trust No. 1:

“motor vehicle” means any motor vehicle within the meaning of Part II. of this Act: Provided that the term shall not include—

(a) any motor vehicle not used exclusively or principally for the conveyance of goods; or

(b) any trailer, semi-trailer, or jinker:

“non-mechanical vehicle” means any wagon, dray, trolly, cart, car, truck, or any other vehicle drawn or propelled by animal power, or any trailer, semi-trailer, or jinker attached to any vehicle (howsoever drawn or propelled) or to any motor vehicle; but does not include any motor vehicle:

Part IV. JAMES v. JOHNSON (1922) S.A.S.R. 294. The term “carry” in Part IV. means to support or sustain and applies to a stationary vehicle. Held, that the weight of the load carried by a jinker usually connected with a horse dray, was its weight ascertained when the jinker was disconnected from the dray and stationary.

“owner”, when used in relation to a vehicle, includes not only the owner but also the hirer or borrower or other person for the time being entitled to the possession of the vehicle and also any manager, overseer, foreman, agent, or other representative of the owner with whose orders the driver or other person in charge of the vehicle is bound to comply:

“road” means any street, road, terrace, thoroughfare, court, lane, alley, cul-de-sac, or other place, commonly used by the public, or to which the public are permitted to have access:

“vehicle” includes motor vehicles and non-mechanical vehicles:

“width”, when used in relation to the tire (being a metal tire) of a wheel of a vehicle, means the width of the bearing surface of the tire which would actually come in contact with or bear upon a road when the wheel is attached to the axle and the vehicle is ready for use, and when used in relation to the tire (being a rubber tire) of a wheel of a vehicle shall mean the distance between the inside of the flanges on the rim of such wheel.

Maximum
axle load for
non-mechanical
vehicles.
1580, 1923,
s. 4 (2).

86. Any person who drives or causes or permits to be driven on any road any four-wheeled non-mechanical vehicle carrying on any axle thereof a greater weight than the maximum which may, in accordance with the rules contained in section 92 lawfully be carried on a two-wheeled vehicle fitted with wheels of the same diameter and width of tire as the two wheels turning on such axle shall be guilty of an offence.

Maximum
total load
for non-
mechanical
vehicles.
1580, 1923,
s. 4 (1).

87. Any person who drives or causes or permits to be driven on any road—

- (a) any non-mechanical vehicle carrying a weight greater than that calculated in accordance with the rules contained in section 92;
- (b) any non-mechanical vehicle having metal tires and carrying a weight greater than that calculated at the rate of five tons for each axle of such vehicle; or
- (c) any non-mechanical vehicle having rubber tires and carrying a weight greater than that calculated at the rate of six tons for each axle of the vehicle,

shall be guilty of an offence.

88. Any person who drives or causes or permits to be driven on any road—

Maximum axle load for motor vehicles.
1580, 1923
s. 6 (1)

- (a) any motor vehicle carrying on any axle thereof a greater weight than the maximum which may lawfully in accordance with the rules contained in section 92 be carried on a two-wheeled vehicle fitted with wheels of the same diameter and width of tire as the two wheels turning on such axle;
- (b) any motor vehicle having metal tires and carrying on any axle thereof a greater weight than six tons and ten hundredweights; or
- (c) any motor vehicle having rubber tires and carrying on any axle thereof a greater weight than eight tons,

shall be guilty of an offence.

89. Any person who drives or causes or permits to be driven on any road any motor vehicle carrying a weight greater than that computed in accordance with the rules contained in section 92 shall be guilty of an offence.

Maximum total load for motor vehicles.
1580, 1923,
s. 6 (2).

90. The provisions of this Part as to the maximum total load or maximum axle load for vehicles shall not apply to—

Exemptions.
1580, 1923,
s. 4 (4).

- (a) any tractor or traction engine not usually used upon a road; or
- (b) the conveyance of any piece of heavy machinery or other merchandise which cannot be taken apart without great expense or loss: Provided that the vehicle conveying such machinery follows the special route (if any) along which the town or district clerk of every municipality or district through which such machinery is carried, has ordered that it be conveyed to its destination.

91. If any person is guilty of an offence against section 86, 87, 88, or 89, he shall be liable to a penalty calculated at the rate of not less than two shillings and six pence for each hundredweight or part of a hundredweight carried in excess of the weight allowed by this Act.

Penalty.
1580, 1923,
ss. 4 (3),
6 (3).

PART IV.

Rules as to
maximum
weight.
1580, 1923,
The Schedule.

92. The rules for determining by reference to the width of tires, the maximum weight which may be carried by any vehicle are as follows:—

- I. The maximum weight which may be carried on any vehicle shall be calculated at the rate of seven hundredweights for each inch of the total width of the tires on all wheels fitted to such vehicle which are thirty inches or less in diameter and at the rate of eight hundredweights for each inch of the total width of the tires on all wheels fitted to such vehicle which are more than thirty inches in diameter: Provided that where the vehicle has metal tires and carries a load any part of which exceeds ten feet in height from the level of the roadway or ten feet in width the maximum weight shall be calculated at the rate of seven hundredweights for each inch of the total width of all tires on all wheels fitted to such vehicle. This proviso shall not apply to any part of the State outside a radius of fifty miles from the General Post Office, Adelaide:
- II. In computing the maximum weight which may be carried on a three-wheeled vehicle that vehicle shall be treated as if it were a two-wheeled vehicle fitted with two wheels of such vehicle which turn on the same axle:
- III. (a) For the purpose of these rules if the two wheels on any vehicle which turn on the same axle are not of the same width the wider tire shall be deemed to be of the same width as the narrower tire:
(b) The total width of each tire shall be calculated to the nearest half inch:
- IV. In computing the actual weight carried on any vehicle or axle the weight of the vehicle itself shall be taken into account:
- V. These rules apply in respect to all vehicles.

Rules to be
observed with
respect to
tires.

1580, 1923,
s. 5.

93. (1) The following rules shall be observed in respect of every vehicle having metal tires on any road:—

- I. The tire of each wheel of any such vehicle shall have an even-bearing surface across its full width:
- II. No tire of any such vehicle shall be less than one-and-a-quarter inches in width.

(2) If any vehicle in respect of which any of the said rules is not complied with is on any road, the person in charge of such vehicle and also the owner of such vehicle shall be guilty of an offence: Provided that both shall not be punished in respect of the same non-compliance.

(3) This section shall not apply to any vehicle not plying for hire, and constructed or adapted and ordinarily used for the carriage of passengers only, even if goods or merchandise are on any particular occasion carried in such vehicle.

94. (1) Any council may appoint any person to be an authorised officer for the purpose of carrying out the provisions of this Part within the area of such council, and any person so appointed shall, within the area of the council appointing him, be an authorised officer for the purposes of this Part.

Authorised
officers.
1580, 1923,
s. 7,
1714, 1925,
s. 2.

(2) The Minister may appoint any person to be an authorised officer for the purpose of carrying out the provisions of this Part in any part of the State, and any person so appointed shall, within any such part of the State, be an authorised officer for the purposes of this Part.

95. (1) Any council may within its area erect weighing machines with suitable houses or structures for the weighing of vehicles, goods, or merchandise, or may provide any weighing apparatus of a prescribed kind for similar purposes, and may license any weighing machine erected, or any such apparatus as aforesaid provided, by any person within its area.

Weighing
machines.
1580, 1923,
s. 8,
1641, 1924,
s. 2.

(2) The Minister may in any part of the State erect weighing machines with suitable houses or structures for the weighing of vehicles, goods, or merchandise, or may provide any weighing apparatus of a prescribed kind for similar purposes, and may license any weighing machine erected, or any such apparatus as aforesaid provided, by any person within any part of the State not within a local government area.

96. (1) Every person in charge of a vehicle on any road shall, if required by any member of the police force, any inspector, or any authorised officer, forthwith cause such vehicle, with the load (if any) thereon, to be weighed by means of any available weighing apparatus of a prescribed kind provided or licensed by a council or the Minister, or at the most convenient weighing machine erected or licensed by

Vehicles and
load to be
weighed if
required.
1580, 1923,
s. 9.

a council or the Minister, for the purpose of ascertaining the weight of such vehicle, and the load thereon, or the weight carried on any axle of such vehicle.

(2) If there is any such weighing apparatus or such a weighing machine within one mile of the place where the requisition is made, and any such person refuses or fails to comply with any such requisition, that person shall be guilty of an offence.

Load may be measured.
1580, 1923,
s. 10.

97. (1) Every person in charge of any vehicle on any road shall, if required by any member of the police force, any inspector, or any authorised officer, allow that member of the police force, inspector, or officer—

(a) to measure and examine such vehicle, or the tires or the load on such vehicle; or

(b) to ascertain the weight of the load on the vehicle, or the weight carried on any axle of such vehicle, by measurement or otherwise in accordance with the appropriate regulation.

(2) If any such person—

(a) refuses or fails to comply in any respect with subsection (1) of this section; or

(b) obstructs or interferes with any such member, inspector, or authorised officer, in doing any act mentioned in subsection (1),

he shall be guilty of an offence.

Weight ascertained in accordance with regulation *prima facie* proof.
1580, 1923,
s. 11.

98. (1) The weight of the load on any vehicle ascertained in accordance with the appropriate regulation shall, in any proceedings in respect of any offence against this Act, be taken to be, in the absence of proof to the contrary, the actual weight of that load, unless the owner or the person in charge of the vehicle—

(a) at the time of the ascertainment as aforesaid, gives notice to such member of the police force, inspector, or authorised officer of his intention to have the load weighed at a weighing machine erected or licensed by a council or the Minister, or by means of any weighing apparatus of a prescribed kind provided or licensed by a council or the Minister; and

(b) forthwith upon such weighing delivers, or causes to be delivered, to such member of the police force, inspector, or authorised officer the document showing the result of such weighing.

(2) In the event of any proceedings for an offence against this Act in respect of the load so weighed, the document (if any) showing the result of such weighing received by such member of the police force, inspector, or authorised officer shall be produced to the court at the hearing.

(3) The weight carried on the axle of any vehicle ascertained in accordance with the appropriate regulation shall, in any proceedings in respect of any offence against this Act, be taken to be, in the absence of proof to the contrary, the actual weight carried on such axle.

99. (1) Any member of the police force, any inspector, or any authorised officer may require the person in charge of any vehicle on any road to stop, and may request such person to state his name and address and the name and address of the owner of the vehicle.

Vehicles may be stopped and questions asked.
1580, 1923, s. 12.

(2) Any person in charge of any vehicle on any road who—

(a) upon being requested to stop as aforesaid, refuses or fails to stop; or

(b) upon being requested to stop as aforesaid, refuses or fails to state his name or address, or the name or address of the owner of the vehicle, or states a false name or address,

shall be guilty of an offence.

(3) Any member of the police force may, without any warrant other than this Act, apprehend any person who is guilty of any offence under this section.

* * * * *

S. 100 repealed by 2332, 1936, s. 32.

101. (1) The owner of any vehicle, upon being served with a notice in the prescribed form signed by any member of the police force, any inspector, or any authorised officer and by a justice of the peace, requiring him with all practical speed to cause the vehicle to be weighed unladen by means of any apparatus of a prescribed kind provided or licensed by a council or the Minister, which is available, or on any weighing machine erected or licensed by a council or the Minister,

Vehicle to be weighed if required.
1580, 1923, s. 14.

shall forthwith obey such order, and shall forthwith upon such weighing deliver, or cause to be delivered, to such member of the police force, inspector, or officer the document showing the result of such weighing.

(2) Any such owner who refuses or fails forthwith to obey any such order or forthwith upon such weighing to forward the document showing the result of such weighing, as provided by subsection (1) hereof, shall be guilty of an offence.

(3) This section shall not apply if—

- (a) the distance from the place where such vehicle is at the time of service of the notice to such apparatus or the nearest weighing machine erected or licensed by a council or the Minister is greater than two miles; and
- (b) the owner produces to the inspector or authorised officer signing such notice a statement of the weight of such vehicle signed by the person in charge of any such apparatus or weighing machine, wherever situated.

Regulations.
1580, 1923,
s. 15.

102. (1) In addition to any power by any other section of this Part conferred on the Governor to make regulations (which power shall in every case be implied for the purpose of any section in which the word “prescribed” is used) the Governor may make regulations—

- (a) prescribing the method of ascertaining the weight of the load on any vehicle, and the weight carried on any axle of any vehicle, whether by weighing, measurement, or otherwise; and
- (b) prescribing the kinds of apparatus which the Minister or a council may provide or license for the weighing of vehicles, goods, or merchandise for the purposes of this Part; and
- (c) prescribing all matters and things which by this Part are contemplated, required, or permitted to be prescribed, or which appear to him to be necessary or convenient to be prescribed, for the purpose of more effectually carrying out any of the provisions of this Part or for better effecting the objects of this Part.

(2) Any such regulation may fix penalties not exceeding in any case the sum of ten pounds for the breach of the same or any other regulation.

103. (1) The Governor may make regulations restricted in their application to any road or roads named therein, or any part or parts of the State described therein, prescribing for vehicles or any class of vehicles a maximum weight which may be carried on any such vehicle or on the axle thereof, lower than that fixed by or under this Part. Such regulations may definitely fix the maximum weight applicable to any case or may prescribe the method by which the said maximum weight is to be calculated, and may differentiate between vehicles having different kinds of tires.

Alteration of maximum loads.
1580, 1923, s. 16.
1961, 1930, s. 3.

(2) Any maximum weight so fixed shall, subject to the restrictions aforesaid, be deemed to be substituted for that fixed by or under the relevant provisions of this Part.

104. In any proceedings for an offence against this Part—

Evidence.
1580, 1923, s. 17.

(a) the production of a statement purporting to be signed by the person in charge of any apparatus of a prescribed kind owned or licensed by a council or the Minister, or any weighing machine erected or licensed by a council or the Minister shall be *prima facie* evidence of the weight of the load or of the vehicle therein specified, or of the weight both of such load and of such vehicle, or the weight carried on the axle of such vehicle; and

(b) any apparatus of a prescribed kind or weighing machine shall, until the contrary is proved, be deemed to be apparatus of a prescribed kind or a weighing machine erected or licensed by a council or the Minister (as the case may require) for the purposes of this Part.

105. Any person who is guilty of any offence against this Part for which no other penalty is provided shall be liable for the first offence to a penalty of not more than ten pounds, and for every subsequent offence to a penalty of not less than two pounds and not more than twenty pounds.

Penalty.
1580, 1923, s. 18.

106. All proceedings in respect of offences against this Part shall be disposed of summarily.

Summary proceedings for offences.
1580, 1923, s. 19.

107. All money collected as fines in respect of convictions under this Part shall be paid into general revenue: Provided that where any fine is imposed in respect of an offence committed within a local government area and the complaint in respect of the offence was made by an officer of the council of such area, one moiety of such fine shall be paid to the council for the use and benefit of the area.

Appropriation of penalties.
1580, 1923, s. 20.

PART V.

Heading amended by 2416, 1938, s. 31.

Interpretation.
1870, 1919, s. 4.
Of. U.K. 17 & 18
Geo. 5 c. 37, s. 15.

PART V.

LIGHTS AND EQUIPMENT ON VEHICLES OTHER THAN MOTOR VEHICLES.

108. In this Part, unless the context or subject matter requires a different construction—

“council” means any municipal or district council, and includes the Renmark Irrigation Trust No. 1:

“bicycle” does not include motor bicycle:

“inspector” means any inspector appointed by or under this Part:

“local government area” means a municipality or district council district, as the case may require, and includes the Renmark Irrigation District No. 1:

“owner”, used with reference to a vehicle, includes not only the owner, but also the hirer or borrower or other person for the time entitled to the possession of the vehicle, and also any manager, overseer, foreman, agent, or other representative of the owner, with whose orders the driver or other person in charge of the vehicle is bound to comply:

“road” includes every public street, road, terrace, thoroughfare, or other public place, and every private street or road commonly used by the public, or to which the public are permitted to have access:

“tricycle” does not include motor tricycle:

“vehicle” means any vehicle other than a motor vehicle within the meaning of Part II. of this Act, and includes a handcart and a road roller.

109. (1) No person shall drive upon any road or cause or permit to be upon any road at any time between half an hour after sunset and half an hour before sunrise, any vehicle which has not attached thereto:—

(a) two lighted lamps carried one on each side of such vehicle, each lamp being so constructed and carried as to show a bright white light in front of such vehicle; and

Vehicles to carry lights at night.
1870, 1919, s. 5.
1858, 1925, s. 2.
Of. U.K. 17 & 18
Geo. 5 c. 37, s. 1.

- (b) a lighted lamp carried on the off side of the rear of such vehicle, such lamp being so constructed and carried as to show a red light at the rear of such vehicle, which said light is clearly visible to any person approaching the vehicle from the rear.

(2) No person shall drive upon any road or cause or permit to be upon any road at any time between half an hour after sunset and half an hour before sunrise any vehicle which, or the load on which, is more than seven feet wide unless that vehicle carries attached to the extreme off side of the vehicle or, where there is a load projecting from the off side of the vehicle, at the extreme off side of the load, a lighted lamp so constructed and carried as to show a bright green light in front of the vehicle.

Subsec. (2)
inserted by
2332, 1936,
s. 33.

It shall be a sufficient compliance with this subsection if any lamp carried in pursuance of subsection (1) of this section also complies with this subsection.

110. (1) No person shall ride any bicycle or any tricycle upon any road at any time between half an hour after sunset and half an hour before sunrise unless it has attached thereto either one or two lighted lamps complying with this section.

Lights on
bicycles and
tricycles.

1370, 1919,
s. 6.
1858, 1928,
s. 3.
2019, 1931,
s. 2.
2169, 1934,
ss. 2, 3.
Of. U.K.
17 & 18
Geo. 5 c. 37,
ss. 5, 9;
24 & 25
Geo. 5 c. 50,
s. 19.

(2) Where one lamp is carried it shall be affixed on the off side of the bicycle or tricycle in such a position and manner as to show a bright white light clearly visible to any person approaching the bicycle or tricycle from the front and a red light clearly visible to any person approaching the bicycle or tricycle from the rear.

(3) Where two lamps are carried—

(a) one shall be affixed on the front of the bicycle or tricycle in such a position and manner that a bright white light from the lamp is clearly visible to any person approaching the bicycle or tricycle from the front; and

(b) one shall be affixed on the rear of the bicycle or tricycle not more than twenty inches above the ground in such a position and manner that a red light from the lamp is clearly visible to any person approaching the bicycle or tricycle from the rear.

Para. (b)
amended by
2332, 1936,
s. 34.

(4) In this section the term “visible” means “visible at a distance of at least two hundred yards from the bicycle or tricycle on which the lamp or lamps is or are carried”.

Amended by
2232, 1936,
s. 34.

(5) This section shall not apply to any part of the State not comprised within a municipality or a district council district or the Garden Suburb.

(6) This section shall come into operation on a day to be fixed by proclamation which shall not be earlier than the first of March, one thousand nine hundred and thirty-five, and may be a day other than the day on which the remainder of this Act comes into operation.

(7) Until this section comes into operation section 6 of the Lights on Vehicles Act, 1919, as existing prior to the passing of the Lights on Vehicles Act Amendment Act, 1934, shall remain in operation.

Lights where
load projects.
1370, 1919,
s. 7.
Cf. U.K.
17 & 18
Geo. 5 c. 37,
s. 6.

111. (1) Whenever any load carried on any vehicle which is being driven or is standing upon any road at any time between half an hour after sunset and half an hour before sunrise projects more than three feet behind the body of the vehicle, a lighted lamp shall be kept attached to the rearward extremity of such load in such a position and manner as to show a red light clearly visible to any person approaching such vehicle from the rear or passing such vehicle from the front.

(2) Any person who on any road drives any vehicle not complying with this section; shall be guilty of an offence.

Duty to
stop and
give name and
address.
1370, 1919,
s. 8.

112. (1) Any driver of a vehicle or any rider of a tricycle or bicycle who, when requested by an inspector, in the execution of his duty under this Part, to stop or to state his name and place of abode, refuses or fails to do so, or, when so requested, states a false name or place of abode shall be guilty of an offence.

(2) Any inspector may, without any warrant other than this Part, apprehend any person who is guilty of any offence under this section.

Brakes on
bicycles.
Inserted by
2416, 1938,
s. 32.

112a. No person shall ride any bicycle or tricycle on any road unless that bicycle or tricycle is equipped with an efficient brake in proper working order.

Warning
devices on
bicycles.
Inserted by
2416, 1938,
s. 32.

112b. No person shall ride any bicycle or tricycle on any road unless that bicycle or tricycle has attached thereto a bell or other suitable instrument capable of giving audible and sufficient warning of the approach of that bicycle or tricycle.

A siren shall not be a suitable instrument within the meaning of this section.

112c. Every rider of a bicycle or tricycle shall, whenever necessary, by sounding the warning instrument attached thereto, give audible and sufficient warning of the approach of the bicycle or tricycle.

Duty to use warning instrument.
Inserted by 2416, 1938, s. 32.

113. (1) Every member of the police force and every inspector in the Highways and Local Government Department of the public service shall, without any further appointment, be an inspector under this Part for the whole State.

Who to be inspectors under Act. 1370, 1919, s. 9.

(2) The Governor may appoint any other person to be an inspector under this Part for the whole State, or for any particular portion of the State.

(3) Any council may appoint any other person to be an inspector under this Part within the local government area of such council.

(4) The exercise by every inspector appointed otherwise than for the whole State of his powers and duties under this Part shall be limited to the portion of the State or the local government area, for which he was appointed.

114. Any contravention of or failure to observe any provision of this Part, whether by act or omission, shall be an offence.

Offences. 1370, 1919, s. 10.

115. Any person guilty of an offence under this Part shall be liable to a penalty for a first offence of not more than two pounds, and for any subsequent offence of not more than five pounds.

Penalties. 1370, 1919, s. 11.

116. All moneys received for or on account of penalties imposed for offences against this Part shall be paid to the Treasurer for the public uses of the State; except moneys received in respect of an offence committed within the limits of a local government area, which shall be paid over to, and for the use of, the council of such area.

Appropriation of penalties. 1370, 1919, s. 15.

117. Whenever in any proceedings for an offence against this Part, any place is described as a road such description shall be *prima facie* evidence that that place is a road within the meaning of this Part.

Facilitation of proof. 1370, 1919, s. 14 (a). 1609, 1924, s. 2.

118. All proceedings in respect of offences against this Part shall be disposed of summarily.

Summary proceedings for offences. 1370, 1919, s. 16.

PART VI.

PART VI.

GENERAL RULES TO BE OBSERVED BY TRAFFIC.

General provisions as to traffic.

Of U.K. 20 & 21 Geo. 5 c. 43, ss. 1, 2.

Inserted by 2332, 1936, s. 35.

119. (1) In this Part, unless the context otherwise requires—

“vehicle” includes motor vehicle as defined in Part II. of this Act, vehicle propelled by animal power, bicycle, tricycle, and any other like vehicle propelled by human power, but does not include a vehicle run on a tramway or railway line:

“animal” means horse, mule, ass, bullock, camel, or other beast used to draw or carry vehicles, loads, or human beings:

“driver” means any person driving or riding a vehicle or animal and as regards a trailer means a person driving the vehicle by which the trailer is being drawn:

“left” means left reckoned by reference to the direction in or towards which the vehicle, animal, or person is proceeding or facing at the material time:

“road” includes every public road, street, terrace, thoroughfare, or other public place, and every private road or street commonly used by the public, or to which the public are permitted to have access:

“trailer” means any vehicle without motive power constructed or adapted or used for being drawn by another vehicle: Provided that a vehicle without motive power constructed and adapted for being drawn by a motor vehicle shall not be deemed a trailer, but shall be deemed part of the motor vehicle by which it is drawn if—

(a) it has two wheels only;

(b) it is constructed for attachment to a motor vehicle by means of a turntable and king-pin; and

(c) a substantial part of its weight and of the weight of its load rests upon the motor vehicle by which it is drawn.

(2) This Part does not apply to any stock travelling loose on a road.

120. (1) If any person drives or rides any vehicle or animal or walks on a road without due care or attention or without reasonable consideration for other persons using the road he shall be guilty of an offence.

Careless driving.
U.K. 20 & 21
Geo. 5 c. 43,
s. 12.

Inserted by
2332, 1936,
s. 35.

(2) If any person rides a bicycle on any road without having at least one hand upon the handle-bar in such a position as to have adequate control of the steering of the bicycle he shall be guilty of an offence.

121. (1) If any person drives or rides any vehicle or animal on a road recklessly or at a speed or in a manner which is dangerous to the public he shall be guilty of an offence and liable to a fine for a first offence of not less than ten pounds and not more than fifty pounds, and for any subsequent offence of not less than fifty pounds and not more than one hundred pounds, and may for any subsequent

Reckless driving.
U.K. 20 & 21
Geo. 5 c. 43,
s. 11;
24 & 25
Geo. 5 c. 50,
ss. 4, 5.
Inserted by
2332, 1936,
s. 35.

- s. 120. HUNT v. BOND (1930) S.A.S.R. 46; 12 Austn. Digest 285. Held that a complaint alleging negligent driving, without giving particulars of the negligence, was sufficient.
- WINTULICH v. LENTHALL (1932) S.A.S.R. 60. Held (under section 21 of the Motor Vehicles Act, 1921, which made it an offence to drive a motor car negligently) that the standard of care required was that which an ordinarily prudent man would deem necessary in the circumstances presented to him, in order to avoid injury or damage to the person or property of others. Wilful or intentional negligence need not be proved.
- NEALE v. WALSH (1932) S.A.S.R. 429. Any substantial breach of the ordinary duty to take care amounted to "driving negligently" within the meaning of section 21 of the Motor Vehicles Act, 1921.
- KIERNAN v. PIERCE (1933) S.A.S.R. 137. Where the circumstances proved against a defendant proved to have been involved in a collision are such that he may be presumed to know why the collision occurred, and the only evidence before the court indicates that the other party was not blameworthy, the defendant must either explain why the collision occurred or submit to the conclusion that it occurred because he was driving negligently.
- s. 121. MOORE v. THE KING (1926) S.A.S.R. 52; 5 Austn. Digest 280; affirmed by MOORE v. THE KING (1926) 39 C.L.R. 602. *Semble*, that if the accused (although not guilty of criminal negligence) had committed the offence of negligent or dangerous driving, and thereby killed a person, he could not make out the defence of homicide by misadventure.
- KELLY v. WALSH (1929) S.A.S.R. 481. On a charge of dangerous driving it is not necessary to show that the safety of any particular person was endangered. It is enough if there is some substantial possibility of injury to persons who might reasonably be expected to come upon a road. Conviction quashed where the defendant had not endangered any person and the court was of opinion that there was no potentiality of mischief to the public in the circumstances.
- BARNETT v. WALSH (1934) S.A.S.R. 303. Where the defendant and another person, through an error of judgment, endangered each other's safety, but not that of the public, held that the defendant was not guilty of dangerous driving.
- KELDOULIS v. FRENCH (1935) S.A.S.R. 192. An attempt to pass between stationary motor cars held to be dangerous driving.
- THOMPSON v. COPELAND (1936) S.A.S.R. 45. Held that "recklessness" implies that the possible consequences of his act are adverted to by the actor, but he is indifferent whether they occur or not.
- BOND v. COCKS (1938) S.A.S.R. 14. Circumstances which would justify a reduction of penalty under section 75 of the Justices Act, 1921, discussed.
- DANKIEL v. BOND (1938) S.A.S.R. 45. Where evidence was given that the defendant (who collided with a woman) drove in a normal manner and at a reasonable speed and that he was not drunk but to some extent under the influence of liquor, and it was inferred he did not keep a proper look-out, held a conviction for driving in a manner dangerous to the public could not be supported.

offence be imprisoned for any term not exceeding three months.

(2) In considering whether an offence has been committed under this section the court shall have regard to all the circumstances of the case including the nature, condition and use of the road upon which the offence is alleged to have been committed, and to the amount of traffic which at the time actually is or which might reasonably be expected to be upon that road.

Crossing
railways at
unauthorised
places.

Inserted by
2332, 1936,
s. 35.

122. (1) If any person crosses or attempts to cross or rides or drives or attempts to ride or drive any vehicle or animal across any line of railway elsewhere than at an authorised crossing place he shall be guilty of an offence.

(2) If any person crosses or attempts to cross or rides or drives or attempts to ride or drive any vehicle or animal across any line of railway at an authorised crossing place—

- (a) carelessly; or
- (b) in such a manner or at such a time as to give rise to the possibility of a collision between that person, vehicle or animal and any train or vehicle which is using the railway at or in the vicinity of the crossing place; or
- (c) when warned not to do so by an employee of the Railways Commissioner; or
- (d) when any mechanical or electrical or other warning device at or in the vicinity of the crossing is operating,

he shall be guilty of an offence.

Inserted by
2416, 1938,
s. 33.

(3) Subsection (1) of this section shall not apply to any part of the State not comprised within a municipality or a district council district.

Obedience to
police
directions and
traffic signs.

Of. U.K.
20 & 21
Geo. 5 c. 43,
ss. 20 (3),
49.

Inserted by
2332, 1936,
s. 35.

123. If any person driving or riding or in charge of any vehicle or animal or walking on any road—

- (a) fails to obey any reasonable direction of any member of the police force given for the purpose of regulating traffic; or
- (b) fails to conform to the indication given by any sign lawfully placed on or near any road for regulating the movement of traffic or indicating the route to be followed by traffic,

he shall be guilty of an offence.

124. If any person riding or driving any vehicle or animal upon any road—

Duty to keep vehicles and animals to the left.

(a) does not keep as near as practicable to his left hand side of that road; or

Inserted by 2332, 1936, s. 35.

(b) when meeting any other vehicle or animal going in the opposite direction, does not pass on his left hand side of that other vehicle or animal,

he shall be guilty of an offence.

125. If any person leaves any vehicle or animal stationary on the carriage-way of any road, and not being drawn in as near as practicable to the left hand side of the road, he shall be guilty of an offence.

Duty to keep stationary vehicle on left of road.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 50.

Inserted by 2332, 1936, s. 35.

126. If any person riding or driving any vehicle or animal on any road, does not, when passing any other vehicle or animal going in the same direction, keep on his right hand side of that other vehicle or animal, he shall be guilty of an offence.

Duty to overtake vehicle on right-hand side.

Inserted by 2332, 1936, s. 35.

127. If any person riding or driving any vehicle or animal, does not, when passing any tram car travelling or about to travel in the same direction, keep on his left hand side of the tram car, he shall be guilty of an offence: Provided that if the tramway line is laid so near the left hand side of the road as not to permit the free passage of the animal or vehicle on the left of the tram car, or if owing to any obstruction in the road, it is not practicable to pass on the left of the tram car, the animal or vehicle may lawfully be ridden or driven on the right of the tram car.

Overtaking tram cars.

Inserted by 2332, 1936, s. 35.

128. (1) If any person walking on the carriage-way of a road parallel with the line of the traffic thereon, does not keep as near as practicable to his right hand side of that carriage way, he shall be guilty of an offence.

Pedestrians on road to face traffic.

Inserted by 2332, 1936, s. 35.

(1a) Subsection (1) of this section shall not apply to a person walking on the carriage-way of a road parallel with the line of traffic thereon if he is drawing or pushing any vehicle or leading any animal, but section 124 of this Act shall apply to any such person.

Subsecs. (1a) and (1b), inserted by 2416, 1938, s. 34.

s. 124. DUNN v. BEEVOR (1937) S.A.S.R. 386. Held that the regulation which required vehicles to keep close to the left of the road was not directed to the safety of vehicles emerging from by-streets.

(1b) If any person riding or driving any vehicle or animal upon any road, does not, when passing any pedestrian who is proceeding towards him on the same side of the road, keep on his right hand side of that pedestrian, he shall be guilty of an offence.

(2) This section shall not restrict the operation of any Act, regulation or by-law which regulates walking upon roads.

Overtaking
other
vehicles.

Inserted by
2332, 1936,
s. 35.

129. If any driver of a vehicle on any road commences to overtake any vehicle proceeding in the same direction, and if the road is not then clearly visible to the driver of the overtaking vehicle, or is not clear of traffic in front of the vehicle which is being overtaken, for a sufficient distance to enable the overtaking vehicle to completely pass the other vehicle without impeding the free passage or endangering the safety of traffic on that road, the driver of the overtaking vehicle shall be guilty of an offence.

Warning by
driver of
overtaking
vehicle.

Cf. U.K.
20 & 21
Geo. 5 c. 43,
s. 59 (1)
(b).

Inserted by
2332, 1936,
s. 35.

130. (1) If any driver of a motor vehicle, before overtaking another vehicle, signals by use of the warning instrument his desire to pass that other vehicle, thereupon the driver of that other vehicle shall move to his left, if the movement is possible with safety, so as to allow the overtaking vehicle a reasonable space in which to pass.

(2) After the signal has been given, the driver of the vehicle being overtaken shall not increase his speed until the overtaking vehicle has had a reasonable opportunity to pass and draw clear of the overtaken vehicle.

(3) If any person contravenes this section in any way, he shall be guilty of an offence.

Stopping and
slowing down
at intersec-
tions and
bridges.

Inserted by
2416, 1938,
s. 35.

130a. (1) The Commissioner of Police or any municipal or district council with the approval of the Commissioner of Police may erect or cause to be erected on the left hand side of any road at or near the place where the road joins or intersects any other road, or near the approach to any bridge, a sign containing in clearly legible letters or figures of the size prescribed by regulation—

(a) the word "Stop"; or

(b) the words "Slow _____ m.p.h.", indicating the number of miles per hour to which speed is to be reduced.

(2) Provided that the Commissioner shall not less than one month before the erection of any such sign publish in the *Government Gazette* a notice of his intention to erect such sign specifying the type of sign which he proposes to erect and the place where it is to be erected.

(3) Any person objecting to the erection of any such sign shall in writing set out to the Minister the grounds of his objection and the Minister may thereupon either prohibit or approve the erection, with or without modification, of such sign, and the Minister's decision shall be final.

(4) When any such sign containing the word "Stop" is erected the rider or driver of a vehicle or animal in the street in which the sign is erected—

(a) shall before entering the junction or intersection at or near which the sign is erected, stop his vehicle or animal; and

(b) shall not enter that junction or intersection until the road on both sides thereof is sufficiently clear of traffic so as to allow his vehicle or animal to pass through the junction or intersection without danger.

(5) When any such sign requiring a reduction of speed is erected the rider or driver of any vehicle or animal in the street in which the sign is erected shall not—

(a) enter the junction or intersection at or near which the sign is erected until the road on both sides thereof is sufficiently clear of traffic so as to allow his vehicle or animal to pass through the intersection or junction without danger; or

(b) drive or ride his vehicle or animal across any part of the junction or intersection at a speed exceeding that mentioned in the sign; or

(c) drive or ride his vehicle or animal across the bridge at the approach to which the sign is erected at a speed exceeding that mentioned in the sign.

(6) Section 131 of this Act shall not apply to any junction or intersection at or near which a sign is erected under this section.

(7) In this section—

"intersection" means the quadrilateral or other area comprised within straight lines joining the corners formed by the intersection of two or more roads:

“junction” means that part of a road which is comprised between the lines formed by the production of the alignments of another road which abuts on the first mentioned road.

(8) The Commissioner of Highways shall, at the request of the Commissioner of Police, provide and erect on behalf of the Commissioner of Police any signs which the Commissioner of Police desires to erect under this section.

The cost of all signs so erected shall be defrayed from the moneys appropriated by Parliament for main roads.

Stop signs at
railway
crossings.

Inserted by
2416, 1938,
s. 35.

130b. (1) The South Australian Railways Commissioner may on any road at or near any level crossing erect signs clearly visible to traffic approaching the crossing and containing in clearly legible letters of the size prescribed by regulation the word “Stop”.

(2) The rider or driver of any vehicle or animal approaching a level crossing at or near which any such sign is erected from the direction in which the sign is facing shall stop his vehicle at least ten yards away from the railway line, and if he fails to do so shall be guilty of an offence.

(3) In this section “level crossing” means a place at which a road and a railway cross each other at the same level.

Centre lines
on roads.

Inserted by
2416, 1938,
s. 35.

130c. (1) The Commissioner of Highways may mark on any part of any road a double line running longitudinally along the road at or near the centre of the carriage way thereof.

(2) Every such line shall be of the colour and width prescribed by regulations.

(3) If any person drives or rides any vehicle or animal so that the whole or any part of that vehicle or animal is on his right hand side of any line marked on a road in accordance with this section he shall be guilty of an offence:

Provided that no person shall be punished for failing to comply with this section if the court is of the opinion that he was obliged to cross the line in order to avoid an accident, or owing to an obstruction on the roadway.

(4) The allegation in any complaint for an offence against this section that any line was marked on any road in accordance with this section shall be *prima facie* evidence of that fact.

131. (1) When two vehicles are approaching the junction or intersection of two or more roads in such circumstances that there is a reasonable possibility that they might arrive at the same point simultaneously, or that a dangerous situation might otherwise be created, the rider or driver of the vehicle who has the other vehicle on his right shall either decrease the speed of his vehicle to such an extent, or stop his vehicle for such time, as is necessary to allow the vehicle on his right to continue on its course in front of his vehicle without change of speed: Provided that a person shall not be convicted for failure to comply with this section, if it appears to the court that he was not aware, and could not, by exercising reasonable care, have become aware, of the approach of the other vehicle.

Right-of-way
at points
where roads
meet.

Inserted by
2332, 1936,
s. 35.

(2) When a vehicle and a tram car are approaching the junction or intersection of two or more roads in such circumstances that there is a reasonable possibility that they might arrive at the same point simultaneously, or that a dangerous situation might otherwise be created, the rider or driver of the vehicle shall either decrease the speed of his vehicle to

s. 131. THE MUNICIPAL TRAMWAYS TRUST v. AUSTIN (1930) S.A.S.R. 81. In civil proceedings the onus of proving a breach of section 131 and of negating the proviso to section 131 (1) is on the party who alleges the breach.

MORRIS v. PFUHL (1932) S.A.S.R. 78. Section 131 does not apply to two vehicles approaching an intersection from the same direction along the same road.

RECHNER v. PALMER (1934) S.A.S.R. 409. Held as regards regulation 6A (which section 131 follows, with alterations):—(a) Regulation 6A did not apply only when the driver having the other vehicle on his right could see or was otherwise made aware of the approaching vehicle before he reached the intersection: (b) the area to which the regulation applied included not only the quadrilateral of the intersection but the immediate neighbourhood: (c) regulation 6A did not lessen the obligation of a person who was about to drive out of a by-street into a main thoroughfare.

SUTER v. RUEDIGER AND ANOTHER (1936) S.A.S.R. 130. Held that the driver of a vehicle is entitled to assume that other drivers will observe the regulation applicable to traffic at intersections, but is not entitled to disregard the possibility of traffic approaching from the left.

RAKE v. ADELAIDE Co-OPERATIVE SOCIETY LIMITED (1937) S.A.S.R. 281. Where two roads running northerly came together in the form of a V at the point of junction with a main road running north-east, held, under the regulation relating to traffic at intersections, that the junction of the two roads was an intersection within the meaning of the regulation. Held also that, in applying the regulation, allowance must be made for the nature of the intersection.

DREW v. GLEESON (1937) S.A.S.R. 380. Where a vehicle is already on a junction the driver does not, by altering his course, acquire a right-of-way as against the driver of another vehicle who is continuing his course and thus crossing the junction. Subsection (1) gives a right to continue a course, not to alter it across that of another vehicle. Meaning of "junction" examined.

DUNN v. BEEVOR (1937) S.A.S.R. 386. Held under the regulation relating to traffic at intersections that an intersection is a place where two or more ways cross each other and that the regulation made no provision for a by-road which merely meets or enters a main thoroughfare without anything in the nature of a crossing.

PEARCE v. BOURKE (1937) S.A.S.R. 404. Where justices, prior to the hearing, visited the intersection for the purposes of refreshing their memories and qualifying

such an extent, or stop his vehicle for such time, as is necessary to allow the tram car to pass in front of his vehicle without change of speed.

(3) This section shall not apply if at the junction or intersection the traffic was at the material time being controlled by a member of the police force or some other authorised person, or by any system of signs or lights.

(4) Subsection (1) and subsection (2) of this section, shall each be deemed to create a single offence, and no objection shall be taken on the ground of duplicity or uncertainty to a complaint under either subsection alleging that, in the circumstances mentioned in the subsection, the defendant "did not decrease the speed of his vehicle to such an extent or stop his vehicle for such time" as is required by the subsection.

(5) This section shall also apply in cases where two animals, or an animal and a vehicle or tram car are approaching a junction or intersection in the circumstances mentioned in subsection (1) or (2), and the term "vehicle" shall be so construed as to include an animal.

s. 131. themselves to follow the evidence, but it did not appear that they used their own
(contd.) knowledge to correct or supplement the evidence, held that this did not constitute a ground of objection to the proceedings.

ELLIS V. HOEPNER AND ANOTHER (1937) S.A.S.R. 461. Observations as to the application of the regulation relating to traffic at intersections.

BOND V. HOLLOWAY (1938) S.A.S.R. 41. A driver of a motor vehicle on approaching an intersection is not entitled to ignore the risk that another driver will cross over the intersection at a speed beyond that allowed by law.

BOURKE V. SMITH (1938) S.A.S.R. 74. The driver of a vehicle, approaching an intersection when another vehicle is approaching from his right, is not entitled to assume that the other vehicle will alter its course or speed. The speed or course of the other vehicle may become relevant when it becomes necessary to consider whether the defendant's ignorance of its approach was consistent with due care on his part. There is no rule of law which requires a driver to approach an intersection at a speed which enables him to see whether any other vehicle is approaching from his right; the circumstances of each case must be taken into consideration (but see section 130a, enacted since this decision).

HART V. BRATCHELL (1938) S.A.S.R. 141. Where two roads intersect by reason of one road curving towards and meeting the other, section 131 applies. It does not necessarily follow that, because a person commits a breach of section 131, the breach confers upon a party injured thereby a civil cause of action for damage. Where section 131 applies, there is an implied duty on the part of the person entitled to proceed to continue on his course without change of speed, unless and until some other course of conduct, being possible, becomes prudent, proper, and imperative in the interests of safety and to avoid a collision.

BARRINGTON V. POWER (1938) S.A.S.R. 321. Where the driver of a motor vehicle approaching a junction became aware of the approach of another vehicle on his right, held that the proviso to subsection (1) did not apply.

SMITH V. MAY (1938) S.A.S.R. 410. In an action for negligence arising out of the death of a person who failed to give way as required by section 131, held that the onus of showing that the defendant could have avoided the collision, if he had acted reasonably, was upon the plaintiff.

132. (1) If any person in any municipality, town, or township drives or rides any vehicle or animal over that part of any intersecting roads, which is common to two or more roads, at a greater speed than twenty-five miles per hour, he shall be guilty of an offence.

Speed at
intersections.
Inserted by
2332, 1936,
s. 35.

(2) In this section "intersecting roads" means roads each of which completely crosses and extends on both sides of the other.

(3) Subsections (1) and (2) of this section shall not apply to—

- (a) any motor vehicle owned by the Fire Brigades Board or any fire brigade, or the controlling authority thereof, and which is being driven to a fire for use in connection with the extinguishing thereof;
- (b) any motor vehicle which is being used by a member of the police force for the purpose of effecting an arrest or otherwise in connection with the detection, suppression or prevention of crime; or
- (c) any ambulance motor vehicle which is being used for ambulance work.

133. (1) If any person rides or drives any vehicle or animal at a greater speed than six miles per hour—

Speed in
certain cir-
cumstances.

- (a) when proceeding from any land abutting on a road into that road; or
- (b) when passing any tram car which, on any road in the course of a journey in the same direction as the overtaking vehicle or animal, has stopped for the purpose of allowing passengers to board or alight,

Inserted by
2332, 1936,
s. 35.

he shall be guilty of an offence.

(2) If any person rides or drives within ten miles from the General Post Office at Adelaide any vehicle or animal at a greater speed than ten miles per hour when turning from one road into another he shall be guilty of an offence.

- s. 132. *BOND v. GOUDIE* (1937) S.A.S.R. 416, reversing *BOND v. GOUDIE* (1937) S.A.S.R. 371. The Port Road is comprised of two carriage ways, one reserved for up and the other for down traffic; the ways are separated by a reserve and cross roads intersect the ways and reserves. Held that, for the purposes of section 132, the Port Road was one road only and, accordingly, that a road entering the Port Road and crossing the up track and the reserve to enter the down track but not continuing further, does not form an intersection with the up track.
- s. 133. *JOLLY v. WALLMAN* (1936) S.A.S.R. 121. Held that a Sunday school was not a school within the meaning of a regulation prescribing a speed limit for vehicles passing schools. (But see subsection (4), enacted since this decision).

Proviso
added by
2416, 1938,
s. 36 (1).

(3) If any person rides or drives any vehicle or animal at a greater speed than fifteen miles an hour whilst passing any school or school playground or children's playground at any time when children are going into or coming out of that school or playground, he shall be guilty of an offence: Provided that no person shall be convicted of an offence against this subsection unless the prosecution shows that on or near the road on which the defendant rode or drove a vehicle or animal as aforesaid there was a sign bearing in clear letters the word "school", "school playground" or "children's playground", as the case may be, and erected in such a position as to give reasonable warning to the defendant of the existence of the school or playground.

Amended by
2416, 1938,
s. 36 (2).

(4) In this section "children's playground" means a children's playground which is maintained by a municipal or district council and "school" includes any church or other building used as a Sunday school, together with the land used in connection therewith.

Signals.

Inserted by
2332, 1936,
s. 35.

134. (1) Whenever the driver or rider of any vehicle or animal is about to turn his vehicle or animal to the right, in or into any road, he shall, at least one hundred feet before the point where he commences to turn, signify his intention to do so by extending his right arm horizontally from the right hand side of the vehicle or animal with the palm facing forward, the arm being in such a position that it is clearly visible from a distance of at least one hundred feet to any person following the vehicle or animal.

Inserted by
2416, 1938,
s. 37.

(1a) No person shall be deemed to have signified his intention to turn to the right as required by subsection (1) of this section unless he has given the signal prescribed by that subsection continuously for a distance of one hundred feet before the point where his vehicle commences to turn.

(2) Whenever the driver or rider of any vehicle or animal is about to slow down or stop he shall at least one hundred feet before the point where he commences to slow down signify his intention to do so—

(a) by extending his right arm horizontally from the right-hand side of the vehicle or animal with the palm of the hand turned downwards the arm being in such a position that it is clearly visible at a distance of at least fifty feet to any person following the vehicle or animal; and

(b) by moving the arm slowly up and down.

(3) It shall be sufficient compliance with the provisions of this section to give the appropriate signal by some mechanical or electrical device which has been approved by the Registrar of Motor Vehicles.

(4) If any person fails to comply with this section he shall be guilty of an offence.

135. (1) No person shall drive upon any road any vehicle having any vehicle (not being a trailer) attached thereto for the purpose of being towed, if any of the following provisions is not observed:—

Requirements
as to towing.
Inserted by
2332, 1936,
s. 35.

- (a) The space between the vehicles shall not exceed twelve feet:
- (b) When the towed vehicle is a motor vehicle, a competent person shall be in charge of that vehicle, to control it so far as the condition of its brakes and mechanism will permit:
- (c) Where the two vehicles are joined by means of a tow rope, chain or wire, there shall be displayed on the tow rope, chain or wire, midway between the two vehicles, a white flag or cloth, so as to be clearly visible as a warning of danger:
- (d) Between half an hour after sunset, and half an hour before sunrise, a lighted lamp, showing a bright white light, shall be affixed to the front of the towed vehicle in such a manner as to render clearly visible, any flag or cloth displayed in accordance with paragraph (c) of this subsection, and a lighted lamp shall be affixed to the off side of the rear of the towed vehicle, showing a red light clearly visible at a distance of 200 yards, to any person approaching the vehicle from the rear:

Provided that where the vehicle being towed is fastened in actual contact with the towing vehicle, the white flag or cloth mentioned in paragraph (c), and the lighted lamp affixed to the front of the towed vehicle, mentioned in paragraph (d), shall not be required.

(2) If any person contravenes this section in any respect, he shall be guilty of an offence.

136. If any person in charge of a vehicle or animal causes or permits that vehicle or any trailer drawn thereby or that animal to remain at rest on any road in such a position or in such condition or circumstances as to be likely to cause danger to other persons using the road, he shall be guilty of an offence.

Leaving
vehicles in
dangerous
positions.
U.K. 20 & 21
Geo. 5 c. 43,
s. 50.
Inserted by
2332, 1936,
s. 35.

PART VI.

Driving or riding on footpaths, &c. Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 14.

Inserted by 2332, 1936, s. 35.

Control of animals by driver.

Inserted by 2332, 1936, s. 35.

Duty to stop in case of accident. U.K. 20 & 21 Geo. 5 c. 43, ss. 20, 22, 113 (3).

Inserted by 2332, 1936, s. 35.

Subsec (1), amended by 2416, 1938, s. 38 (a).

137. If any person rides, drives, or leads any animal, or rides or drives any vehicle so that that animal or vehicle or any part thereof is on any footpath, causeway, or place set apart or constructed on or by the side of any road for the accommodation of foot passengers, he shall be guilty of an offence: Provided that this section shall not apply where the animal or vehicle is ridden, driven, or led across any such footpath, causeway, or place at right angles in crossing to or from any premises.

138. If the driver of a vehicle drawn by an animal on any road, is at such a distance from that vehicle or in such a situation that he cannot properly guide and control the animal drawing the vehicle, he shall be guilty of an offence.

139. (1) If, owing to the presence of a vehicle on a road, an accident occurs, whereby damage or injury is caused to any person, vehicle or animal, or any other property real or personal, the driver of the vehicle shall stop and, if required so to do by any person having reasonable grounds for so requiring, give his name and address, and also the name and address of the owner of the vehicle and, if the vehicle is a registered motor vehicle, the registered number of the vehicle.

(2) When any such accident happens, the driver of the vehicle shall also report the accident at a police station or to a police constable as soon as reasonably practicable, and in any case, within twenty-four hours after the occurrence thereof.

(3) In this section, the expression "animal" means any horse, cattle, ass, mule, sheep, pig, goat, or dog.

(4) If any person fails to comply with this section in any respect he shall be guilty of an offence: Provided that no person shall be punished for failing to comply with this section if the court is of opinion that the accident was a trivial

s. 139. *MINERVINI v. WALSH* (1928) S.A.S.R. 286. The obligation to stop implies that the vehicle must be brought to rest within such a distance and time as is reasonable in the circumstances.

NOBLET v. CONDON (1935) S.A.S.R. 329. Held that section 52 of the Road Traffic Act, 1934 (re-enacted by section 139 with amendments not material to this case), required the driver to stop so long as reasonably necessary to enable the proper questions to be put, if there was anyone in the vicinity who desired to put them.

JARMAN v. WALSH (1936) S.A.S.R. 25. Held that section 52 of the Road Traffic Act, 1934 (re-enacted by section 139 with amendments not material to this case), required the driver of a motor vehicle to stop in case of accident as soon as practicable in the circumstances.

BOND v. GILBERT (1938) S.A.S.R. 37. The offence of failing to stop may be of a trifling nature although the accident occasioning the stop may be more than trivial.

one or if the defendant satisfies the court that he did not know that any accident had occurred: Provided also that it shall be a defence to a charge of an offence under this section if it is shown that the only damage or injury resulting from the accident was damage or injury to property owned by the defendant.

Proviso added by 2416, 1938, s. 38 (b).

(5) An apparently genuine document produced by the prosecution, purporting to be signed by the Commissioner of Police and to certify that any accident specified in the document (whether by reference to the approximate time and place thereof, or to the person or persons involved or otherwise so as to reasonably identify it) had not been reported at a police station or to a police constable prior to any date mentioned in the certificate shall be *prima facie* evidence of the matter so certified.

Inserted by 2416, 1938, s. 38 (c).

140. (1) Any owner of any vehicle shall, if required by a member of the police force, or by any inspector appointed under Part II. of this Act, truly answer any question put to him which may lead to the identification of the person who was driving that vehicle on any occasion when an offence under this Act is alleged to have been, or is suspected of having been, committed.

Duty of owner to give information to identify driver.

Cf. U.K. 20 & 21 Geo. 5 c. 48. s. 113 (3).

Inserted by 2332, 1936, s. 35.

(2) Any such owner who refuses to answer, or fails to answer truly, any such question shall be guilty of an offence.

(3) In this section the term "owner" shall include a bailee.

Inserted by 2416, 1938, s. 39.

141. If any person drives or causes or permits to be driven on any road any vehicle, upon which the load extends beyond any portion of the vehicle, and—

Projecting loads.

Inserted by 2332, 1936, s. 35.

- (a) the load is not as nearly as practicable parallel to the sides of the vehicle; or
- (b) any iron, timber, piping, or other solid materials projecting beyond any portion of the vehicle, is not wrapped at the projecting ends thereof, with bagging or other suitable material, and securely tied so as to prevent noise, flapping, and swaying, and covered with some white material so as to indicate the presence of such projection,

he shall be guilty of an offence.

PART VI.

Width of
vehicles, and
number of
trailers.

Of. U.K.
20 & 21
Geo. 5 c. 43,
s. 18.

Inserted by
2332, 1936,
s. 35.

142. (1) No person shall drive any motor vehicle on any road if—

- (a) the width of the vehicle or of any part of the load thereon exceeds eight feet; or
- (b) the vehicle (being a tractor) has more than two trailers attached thereto; or
- (c) the vehicle (being a vehicle other than a tractor) has more than one trailer attached thereto.

(2) Any person who contravenes this section shall be guilty of an offence.

In any proceedings for an offence of driving on a road a motor vehicle the width of which exceeds eight feet it shall be a defence to prove that the motor vehicle was, on the first day of September, nineteen hundred and thirty-six, a registered motor vehicle, and that at the said date the motor vehicle was of the same width as at the time of the alleged contravention, and that the load on the motor vehicle did not project beyond either side of the vehicle.

(3) If the Registrar of Motor Vehicles is satisfied that it is reasonable to permit any vehicle to be driven on any road, although the width of that vehicle or of any part of the load thereon exceeds eight feet he may on the application of the owner of the vehicle grant a permit, either general or restricted as to time, place, or circumstance, permitting that vehicle to be driven on any specified roads or on roads generally and such a permit shall render lawful anything done in accordance therewith.

(4) The Governor may by proclamation declare that this section shall not apply to any road or part of a road mentioned in the proclamation, and may from time to time revoke or alter any such proclamation. The operation of this section shall be restricted according to the terms of all proclamations for the time being in force under this subsection.

(5) Notwithstanding subsection (1) of this section it shall be lawful to drive on any road a vehicle carrying a load more than eight feet wide if that load consists of any agricultural machine or motor bodies more than eight feet wide.

(6) No agricultural machine shall be deemed to be a vehicle within the meaning of this section.

(7) In this section "agricultural machine" means any machine (other than a tractor) used for cultivating land or sowing or harvesting crops.

(8) For the purposes of this section any frame work fixed or placed on a motor vehicle shall be deemed to be the load or portion of the load of that motor vehicle.

Inserted by
2416, 1938,
s. 40.

143. (1) If more than one person is carried on a road on a bicycle not propelled by mechanical power and not constructed or adapted for the carriage of more than one person, each of those persons shall be guilty of an offence.

Restriction
on carriage of
persons on
bicycles.
U.K. 24 & 25
Geo. 5 c. 50,
s. 20.

(2) In this section references to a person carried on a bicycle shall include reference to a person riding the bicycle.

Inserted by
2332, 1936,
s. 35.

(3) This section shall apply only within the areas in which the Governor declares that it shall apply. The Governor may by proclamation declare the areas within which this section shall apply and may at any time by proclamation alter any such area, or revoke any proclamation in force under this section.

143a. No person shall on any road drive any motor vehicle carrying any person on the roof or bonnet thereof, or on the driver's seat on the right hand side of the driver.

Places where
passengers
must not be
carried.

Inserted by
2416, 1938,
s. 41.

144. (1) If the driver of a vehicle knowingly permits any person riding a bicycle or other vehicle propelled by human power to attach himself to the vehicle being driven while it is in motion on any road, that driver shall be guilty of an offence.

Holding on
to motor
vehicles, and
riding with-
out driver's
consent.

Of U.K.
20 & 21
Geo. 5 c. 43,
s. 29.

(2) Any rider of a bicycle or other vehicle propelled by human power, who attaches himself to any other vehicle whilst that vehicle is in motion on any road shall be guilty of an offence.

Inserted by
2332, 1936,
s. 35.

(3) Any person who rides on a vehicle without the consent of the driver of that vehicle shall be guilty of an offence.

145. If any person riding a bicycle travels on any road for more than three hundred yards behind any motor vehicle and within six feet from that vehicle he shall be guilty of an offence.

Pacing by
cyclists.

Inserted by
2332, 1936,
s. 35.

146. Any person who in any road, boards or alights from any tram car or vehicle whilst in motion, shall be guilty of an offence.

Boarding and
alighting from
moving
vehicles.

Inserted by
2332, 1936,
s. 35.

PART VI.

Driving and riding abreast.

Inserted by 2332, 1936, s. 35, and amended by 2416, 1938, s. 42.

147. (1) If two or more vehicles are driven or ridden abreast of each other in the same direction on any road, the rider or driver of each of those vehicles shall be guilty of an offence: Provided that this section shall not apply—

(a) where two bicycles and no more are ridden abreast at any place more than five miles from the General Post Office at Adelaide:

(b) where a vehicle is driven abreast of another vehicle for the purpose of passing that other vehicle.

(2) A vehicle shall be deemed to be abreast of another vehicle if any part of the vehicle is by the side of any part of that other vehicle.

Prohibition of riding horses abreast.

Inserted by 2332, 1936, s. 35.

148. (1) If three or more horses are ridden abreast on the carriage-way of any road within twelve miles of the General Post Office at Adelaide, the rider of each horse shall be guilty of an offence: Provided that this section shall not apply where the horses are ridden by members of the police force on duty.

(2) A horse shall be deemed to be abreast of another horse if any part of that horse is by the side of any part of the other horse.

Injurious matter on roads.

Inserted by 2332, 1936, s. 35.

149. If any person deposits or drops or causes or suffers to be deposited or dropped upon any road, any matter or substance likely to cause damage or danger to vehicles, being any wood, stone, sand, gravel, nail, tack, scrap iron, glass, wire, tin, bottle, thorn, clipping, oily or sticky substance or other matter or substance, he shall be guilty of an offence: Provided that it shall be a defence to a charge under this section if the defendant proves that he had taken reasonable precautions to prevent the matter or substance from being so deposited or dropped.

Removal of vehicles from roads.

Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 59 (1).
(c); 24 & 25 Geo. 5 c. 50, s. 22.

Inserted by 2332, 1936, s. 35.

150. (1) If—

(a) any vehicle or animal is left unattended on a road in such a position or in such a condition or in such circumstances as to be likely to cause danger to other persons using the road; or

(b) on any day on which a road is closed to the public or forms part of the route of a procession which has been duly advertised under any enactment, regulation, or by-law, any vehicle is left unattended for more than one hour,

any member of the police force or any officer of any municipal or district council may remove that vehicle or animal to a place of safe custody.

(2) Forthwith after such removal, the person removing the vehicle or animal, or some person on his behalf, shall give the owner written notice of the removal, and of the place to which the vehicle or animal was removed. The notice shall, wherever practicable, be served upon the owner personally; but, if it is not so served within fourteen days after the removal, it shall forthwith upon the expiration of those fourteen days be given by public advertisement in two newspapers circulating generally in the State.

(3) If the owner of the vehicle or animal does not, within one month after the service or advertisement of the notice, pay all expenses in connection with the removal, custody, and maintenance of the vehicle or animal, and of serving or advertising the notice, and take possession of the vehicle or animal, the Commissioner of Police, or the municipal or district council whose officer removed the vehicle or animal shall sell it by public auction, and apply the proceeds as follows:—

- (a) Firstly, in payment of the expenses of the sale:
- (b) Secondly, in payment of the cost of removal, custody, and maintenance of the vehicle or animal, and of the notice served or advertised under this section:
- (c) Thirdly, in payment of the balance to the owner, or if, after reasonable enquiry, the owner cannot be found, to the Treasurer, in aid of the general revenue of the State.

151. (1) The Governor may by proclamation declare that any area in that part of any street which abuts on the site of either House of Parliament shall be a prohibited area within the meaning of this section and may revoke or amend any such proclamation.

Control of
parking out-
side Parlia-
ment House.

Inserted by
2332, 1936,
s. 35.

(2) If any person, whether holding any other licence, permit, or other authority or not, leaves any vehicle or animal stationary in any prohibited area proclaimed under this section, without the permission of the Commissioner of Public Works, he shall be guilty of an offence.

(3) This section shall take effect notwithstanding anything in the Local Government Act, 1934, or any other Act or any regulation or by-law.

(4) No prosecution for an offence against this section shall be commenced except with the authority of the Commissioner of Public Works. A document purporting to give such consent and purporting to be signed by the Commissioner of Public Works shall be *prima facie* evidence of such consent.

Power of police to examine and test vehicles and animals.

Inserted by 2332, 1936, s. 35.

152. (1) Any member of the police force may, if he has reasonable cause to suspect that any vehicle has been involved in an accident or has been driven on a road recklessly or at a speed or in a manner which is dangerous to the public or has been stolen or taken, without the consent of the owner and is on any land or premises, enter such land or premises and therein search for that vehicle and examine it if found.

(2) Any person who hinders any member of the police force, in the exercise of any power conferred upon him by this section, shall be guilty of an offence.

(3) If any member of the police force or any inspector appointed under Part II. of this Act has reasonable cause to suspect that any motor vehicle does not comply with any requirement of this Act he may—

- (a) require the owner or person in charge of the vehicle to produce the vehicle to him or to some person named by him for the purpose of being tested:
- (b) for that purpose remove the vehicle to the nearest convenient place where it can be tested:
- (c) detain the vehicle for such time as is necessary for testing it.

(4) If the owner or person in charge of any vehicle when so requested by a member of the police force or an inspector appointed under Part II. of this Act does not produce the vehicle, together with any key or other device necessary for starting the engine, in accordance with a request under subsection (3) of this section, he shall be guilty of an offence.

Closing roads for races and exemptions.

Cf. U.K. 20 & 21 Geo. 5 c. 43, ss. 13, 46.

Inserted by 2332, 1936, s. 35.

Para. (a) substituted by 2416, 1938, s. 43.

153. (1) Upon the application of any persons interested the Minister of Local Government may make either or both of the following orders:—

- (a) That any road or part of a road upon which any races or tests are to be held, and any other adjacent or adjoining road or part of any such road shall be closed to traffic on any day or days:

(b) That persons taking part in any races or tests be exempted from the duty to observe any enactment, regulation or by-law prescribing speed limits or other rules to be observed on roads by drivers and riders of vehicles.

(2) No order closing a road shall be made under this section except with the consent of every municipal or district council within whose area the road or part of a road is situated.

(3) At least two clear days before any road is to be closed or any exemption is to operate pursuant to an order under this section the Minister shall by advertisement in two newspapers, one of which shall be a daily newspaper, circulating generally in the State give notice of the intended closing of the road or exemption. The costs of every such advertisement shall be paid by the applicants.

(4) Any order made under this section shall be subject to any conditions which the Minister thinks fit to impose and upon breach of any condition shall cease to have any effect.

(5) An order under this section shall render lawful anything done in accordance therewith.

(6) If any person is requested by a member of the police force to depart from any road or part of a road closed under this section or to remove any vehicle of which he is in charge from any such road or part of a road and does not forthwith comply with that request he shall be guilty of an offence.

153a. If the Treasurer is satisfied that any vehicle is intended to be ridden or driven on roads solely for the purpose of taking part in a street procession or other like entertainment, he may in writing exempt the owner and driver of that vehicle from the obligation to comply with any specified provisions of this Act on any day or days.

Vehicles taking part in processions.

Inserted by 2416, 1938, s. 44.

154. (1) After a day to be fixed by the Governor by proclamation for the commencement of this section no person shall drive any vehicle or cause any vehicle to be driven for the purpose of carrying passengers for hire unless that vehicle has been inspected and certified to be safe for the carriage of passengers by an officer appointed by the Registrar of Motor Vehicles: Provided that this section shall not apply where a vehicle is driven pursuant to a licence under the Road and Railway Transport Act, 1930, or under any by-law of a local governing authority.

Vehicles used for carrying passengers for hire.

Inserted by 2332, 1936, s. 35.

(2) Every certificate granted under this section shall remain in force for twelve months from the date of the granting thereof unless revoked by any such officer as aforesaid before the expiration of that period on the ground that the vehicle is no longer safe for the carriage of passengers.

Inserted by
2416, 1938,
s. 45.

(3) Any certificate granted under this section may contain a condition prescribing the maximum number of passengers which may lawfully be carried upon the vehicle to which the certificate relates.

Any person who drives any vehicle carrying more than the maximum number of passengers prescribed in a certificate relating to such vehicle shall be guilty of an offence.

Inserted by
2416, 1938,
s. 45.

(4) An apparently genuine document produced by the prosecution and purporting to be signed by the Registrar of Motor Vehicles and to certify that any vehicle specified in the certificate has not during any period specified in the certificate been inspected and certified to be safe for the carriage of passengers as required by this section shall be *prima facie* evidence of the fact so certified.

Inserted by
2416, 1938,
s. 45.

(5) It shall lie on the defendant to prove that any vehicle in respect of which a complaint has been laid under this section was driven pursuant to a licence under the Road and Railway Transport Act, 1930, or under any by-law of a local governing authority.

Inserted by
2416, 1938,
s. 45.

(6) The Governor may make any regulations necessary or convenient for the due administration and enforcement of this section and may by regulations impose penalties recoverable summarily and not exceeding ten pounds for breach of any such regulation.

Dangerous
lights and
signs.

Inserted by
2332, 1936,
s. 35.

155. (1) If any light, or any sign showing a light, is on or over or adjacent to any footpath or road in any municipality or district council district or is affixed to the wall or roof or other external part of any building or verandah in any municipality or district council district, and the council of the municipality or district council district is satisfied that the light or sign is dangerous to traffic on any road, the council may give notice in writing to the owner of the light or sign requiring him to remove the light or sign within a reasonable time specified in the notice.

(2) If within the time specified in the notice that owner does not remove the light or sign, the council may remove it and recover the costs of so doing from that owner in any court of competent jurisdiction as a debt due to the council.

(3) Any notice under this section may be given by post addressed to the last known place of business or abode of the person to whom it is to be given, or by delivering it to that person.

156. When any regulation or any by-law is inconsistent with any provision of this Part, that provision shall prevail and the regulation or by-law shall, to the extent of the inconsistency, be invalid.

Inconsistency of this Part with regulations and by-laws.

Inserted by 2332, 1936, s. 35.

157. (1) The allegation in any complaint for an offence against this Act, or against any regulation under this Act, that any person was, at any time mentioned in the complaint, the rider or driver of any animal or vehicle shall be *prima facie* evidence of that fact.

Evidentiary Provisions.

Inserted by 2332, 1936, s. 35.

(2) In any complaint for an offence against this Act or against any regulation under this Act allegations as to all or any of the following matters—

Inserted by 2416, 1938, s. 46.

- (a) that any sign was lawfully placed on or near any road, or that any such sign was for any purpose specified in the complaint:
- (b) that any sign on a road was erected under or complied with any specified statutory provision:
- (c) that any sign on a road contained any specified words:
- (d) that any specified place was or was not on any specified date an authorised crossing place on any line of railway,

shall be *prima facie* evidence of the matters so alleged.

(3) An apparently genuine document produced by the prosecution and purporting to be signed by the Commissioner of Police or the superintendent or any inspector of police and to certify that any stop watch or speedometer specified therein had been tested and found correct on any date specified therein shall be *prima facie* evidence that that stop watch or speedometer was correct on each of the fourteen days following that date.

Inserted by 2416, 1938, s. 46.

158. Any person guilty of any offence against this Part, for which no other penalty is provided, shall be liable to a fine of not more than twenty pounds.

Penalty.

Inserted by 2332, 1936, s. 35.

PART VI.

Summary proceedings.

Inserted by 2332, 1936, s. 35.

159. Proceedings for offences against this Part shall be disposed of summarily.

S. 160 inserted by 2332, 1936, s. 35, and repealed by 2416, 1938, s. 47.

* * * * *

PART VII.

PART VII.

PROTECTION OF ROADS.

Interpretation.

Cf. U.K. 20 & 21 Geo. 5 c. 43, ss. 3, 24, 25.

Inserted by 2332, 1936, s. 35.

161. In this Part unless the context otherwise requires or some other meaning⁴ is clearly intended—

“commissioner” means the Commissioner of Highways appointed pursuant to the Highways Acts, 1926 to 1935:

“improved main road” means any main road within the meaning of the Highways Acts, 1926 to 1935, which has been formed, metalled, or gravelled, or which has any prepared surface, and includes the shoulders and drains thereof, and any bridge, culvert, guard fence, or post thereon:

“road authority” means the municipal or district council within whose area the road in question is situated, and includes the commissioner when exercising the powers of a council in respect of any work:

“shoulders”, when used in relation to a main road, means the protection work formed or constructed of any material whatsoever for strengthening, backing up, or protecting the edges of any improved main road:

“drain”, when used in relation to a main road, means any work formed or constructed of any material whatsoever, which is provided for the drainage of such road:

“motor lorry” means a motor vehicle constructed in such a manner as to be ordinarily used for the carriage of goods, wares, or merchandise, or for the conveyance of any kind of material used in any trade, business, or industry, or for use in any work whatsoever other than the conveyance of passengers:

“motor vehicle” means a motor vehicle as defined in Part II. of this Act:

“tractor” means a motor vehicle used for hauling other vehicles, but not built to carry passengers or loads other than fuel or water for its own consumption.

162. If any person drives or hauls over any improved main road any farm or other implement constructed in such a manner as to injure or damage any portion of the road when travelling thereon he shall be guilty of an offence.

Farm implements.
Inserted by 2332, 1936, s. 35.

163. If any person locks or prevents from revolving any wheel of any horse-drawn vehicle whilst such vehicle is proceeding along any improved main road, he shall be guilty of an offence.

Locking of wheels.
Inserted by 2332, 1936, s. 35.

164. If any person draws or drags any sledge, timber, tree, or other heavy material on any improved main road, he shall be guilty of an offence.

Drags.
Inserted by 2332, 1936, s. 35.

165. If any person, except in crossing a road, drives on or within six feet of any part of the metalled, gravelled, rubbled, tarred, or other prepared surface of any improved main road any motor vehicle having attached to the surface of any wheel or tire, which comes into contact with the road, any metal bar, spike, stud, grip, or other metal projection, he shall be guilty of an offence: Provided that this section shall not apply where the wheels or tires of the motor vehicle have no projection on the surface thereof which comes into contact with the road other than cross bars affixed thereto at an angle of not more than forty-five degrees with the edge of the wheel or tire, and each extending the full width of the wheel or tire, and being not less than three inches in width and not more than three-quarters of an inch in thickness, and being separated by a space of not more than three inches from the cross bar nearest to it on either side.

Wheels with bars, studs, &c.
Inserted by 2332, 1936, s. 35.

166. If any person, except in crossing a road, uses or drives on or within six feet of any part of the metalled, gravelled, or other prepared surface of any improved main road any tractor of the caterpillar type which has any metal bar, spike, stud, grip, or other metal projection on the track or belt of that tractor, he shall be guilty of an offence.

Caterpillar tractors.
Inserted by 2332, 1936, s. 35.

PART VII.

Stopping
vehicles on
bridges.

Inserted by
2332, 1936,
s. 35, and
amended by
2416, 1938,
s. 48.

167. (1) If any person stops a vehicle on any bridge or culvert on any road for any purpose whatever except in case of a breakdown or other unavoidable accident or the purpose of enabling any person to enter or alight from the vehicle, he shall be guilty of an offence.

(2) If the owner of any vehicle which has stopped on a bridge or culvert because of a breakdown or other unavoidable accident or the purpose of enabling any person to enter or alight from the vehicle, fails to remove the vehicle from that bridge or culvert without unnecessary delay, he shall be guilty of an offence.

Damage to
bridges.

Inserted by
2332, 1936,
s. 35.

168. If any person drives any vehicle on any main road in such a way as to damage any bridge, culvert, guard fence, or post on or appertaining to that main road, he shall be guilty of an offence.

Driving on
shoulders of
roads.

Inserted by
2332, 1936,
s. 35.

169. If any person drives any vehicle on the shoulders of any improved main road except for the purpose of passing another vehicle, or leaving the metalled, gravelled, rubbled, tarred, or other improved surface, he shall be guilty of an offence.

Actions likely
to cause
fire.

Inserted by
2332, 1936,
s. 35.

170. If any person discharges any ashes, cinders, or other refuse from a tractor or any motor vehicle upon or within twenty feet of a bridge or culvert upon a main road, or upon any main road within twenty feet of the centre of that road, and does not completely extinguish and spread out such ashes, cinders, or refuse, so as not to injure that road or any fence thereon or adjacent thereto, and so as not to interfere with the drainage, he shall be guilty of an offence.

Depositing
material on
roads.

Inserted by
2332, 1936,
s. 35.

171. If any person without the permission of the commissioner in writing stacks or deposits any wood, sand, stone, or material of any description on any main road or part of a main road which is in any way being maintained by the commissioner, he shall be guilty of an offence.

Use of wheel
chains.

Inserted by
2332, 1936,
s. 35.

172. If any person drives or hauls upon any improved main road any vehicle having solid rubber tires which are fitted with chains, or having metal studs or other metal projections inserted in the rubber thereof, he shall be guilty of an offence.

173. If any person drives on any improved main road any motor vehicle having any wheel shod with a rubber tire (not being a pneumatic tire) which has not rubber at least one inch thick over the whole of the outer surface of the wheel, or which is in any way defective, he shall be guilty of an offence.

Defective tires.

Inserted by 2332, 1936, s. 35.

174. If any person on any road drives any motor vehicle, which has all or any of its wheels fitted with rubber tires other than pneumatic tires, at a greater speed than that applicable thereto in the following table, he shall be guilty of an offence:—

Speed of lorries and tractors.

Of, U.K. 24 & 25 Geo. 5 c. 50, s. 2.

Inserted by 2332, 1936, s. 35.

	Miles per hour.
(a) If the weight of the vehicle unladen does not exceed three tons	20
(b) If the weight of the vehicle unladen exceeds three tons	16
(c) If a trailer which has all or any of its wheels fitted with rubber tires other than pneumatic tires is attached to the vehicle ...	16

175. If any person on any road which is not paved with bitumen, concrete, or wooden blocks drives at a greater speed than thirty miles per hour any motor vehicle which weighs more than two tons when unladen, he shall be guilty of an offence.

Speed of heavy motor vehicles on certain roads.

Inserted by 2332, 1936, s. 35.

176. (1) If any person on any improved main road drives any motor vehicle having one or more metal tires at a greater speed than six miles per hour he shall be guilty of an offence.

Vehicles with metal tires.

Inserted by 2332, 1936, s. 35.

(2) If any person on any improved main road drives any vehicle drawing a trailer having one or more metal tires he shall be guilty of an offence: Provided that if the commissioner of Highways is satisfied that any piece of heavy machinery or other merchandise cannot be taken apart without great expense or loss, he may issue to any person a permit (subject to any conditions specified therein) authorising that person to use a trailer with metal tires for transporting that piece of machinery or other merchandise along any main road specified in the permit.

177. (1) Every motor lorry (not being a buckboard) and every vehicle carrying passengers or goods for hire in actual use on any road shall have the name and address of the owner

Information to be painted on vehicles.

Inserted by 2332, 1936, s. 35.

thereof and the weight of the vehicle unladen painted on some conspicuous part of the off side of the vehicle in letters not less than two inches high and one inch wide.

For the purpose of this subsection:

“name” means—

- (a) in the case of a vehicle owned by an individual, the Christian names or the initials of the Christian names and the full surname of that individual; and
- (b) in the case of a vehicle owned by a firm, the registered name of the firm; and
- (c) in the case of a vehicle owned by a company or body corporate, the registered name of the company, or the full name of the body corporate:

“address” means either place of abode or place of business:

“buckboard” means a vehicle adapted partly for the carriage of goods and partly for the carriage of passengers and weighing when unladen less than thirty-two hundredweights.

(2) Every motor lorry or tractor (for whatever purpose used) having any tires which are not pneumatic tires shall have, in addition to any particulars required under subsection (1), its weight unladen, together with the speed at which the lorry or tractor may travel under section 174 clearly and distinctly painted on the off side of the lorry or tractor in figures not less than two inches high and one inch wide.

(3) If any person owns or drives on any road any vehicle not complying with this section he shall be guilty of an offence: Provided that where the owner and the driver are different persons, both shall not be punished in respect of the same non-compliance.

178. Any person who—

- (a) otherwise than by reasonable use thereof damages any road, bridge, or culvert; or
- (b) removes, damages, or interferes with any guard fence, post, traffic sign, direction sign, notice, mark, light, signal, barrier, lamp, or other thing erected or placed thereon by or with the consent of a road authority, or by the Royal Automobile Association of South Australia, Incorporated; or

(c) does any act or makes any omission of such a nature as to be likely to injure any such road or other thing,

shall be guilty of an offence, and in addition to being liable to a fine, shall pay to the road authority compensation for the damage done.

179. If the driver or person in charge of any vehicle causing damage to any improved main road does not forthwith give to the road authority in whose area the damage has been caused notice of that damage, with full particulars of any damage to the surface of the road or to bridges, culverts, guard fences, or posts on the road, he shall be guilty of an offence.

Notice of damage.

Inserted by 2332, 1936, s. 35.

180. Any person who commits an offence against this Part shall be liable, on summary conviction, to a penalty not exceeding twenty pounds.

Penalty.

Inserted by 2332, 1936, s. 35.

181. The commissioner may appoint any person to be an authorised officer for the purpose of this Part, and any municipal or district council may appoint any person to be an authorised officer for the purpose of this Part within the district of such district council or municipal corporation.

Appointment of authorised officers.

Inserted by 2332, 1936, s. 35.

182. This Part shall be binding on any person in the employ of the Government of the State.

Application to employees of Crown.

Inserted by 2332, 1936, s. 35.

Road Traffic Act, 1934-1938.

SCHEDULE.

ACTS REPEALED.

No. and Year of Act.	Title of Act.
No. 19 of 1853	An Act to provide for the regulation and licensing of Public Conveyances, and to prevent the wanton ill-treatment of Horses and Cattle.
No. 1 of 1854	An Act to amend "An Act to provide for the regulation and licensing of Public Conveyances, and to prevent the wanton ill-treatment of Horses and Cattle."
No. 1370 of 1919 (except sections 12, 13, and 14 thereof)	Lights on Vehicles Act, 1919.
No. 1609 of 1924	Lights on Vehicles Act Amendment Act, 1924.
No. 1858 of 1928	Lights on Vehicles Act Amendment Act, 1928.
No. 2019 of 1931	Lights on Vehicles Act Amendment Act, 1931.
No. 1480 of 1921	Motor Vehicles Act, 1921.
No. 1527 of 1922	Motor Vehicles Act Amendment Act, 1922.
No. 1645 of 1924	Motor Vehicles Act, 1924.
No. 1695 of 1925	Motor Vehicles Act Amendment Act, 1925.
No. 1760 of 1926	Motor Vehicles Act Amendment Act, 1926.
No. 1827 of 1927	Motor Vehicles Acts Amendment Act, 1927.
No. 1941 of 1929	Motor Vehicles Act, 1929.
No. 2095 of 1932	Motor Vehicles Act, 1932.
No. 2131 of 1933	Motor Vehicles Act, 1933.
No. 1580 of 1923	Width of Tires Act, 1923.
No. 1641 of 1924	Width of Tires Act Amendment Act, 1924.
No. 1714 of 1925	Width of Tires Act Amendment Act, 1925.
No. 1961 of 1930	Width of Tires Act, 1930.
No. 1699 of 1925	Vehicles (Licensing) Act, 1925.
No. 1823 of 1927	Vehicles (Licensing) Amendment Act, 1927.
No. 2169 of 1934	Lights on Vehicles Act Amendment Act, 1934.