

Acts reprinted pursuant to the Amendments Incorporation Act,
1937

BUSH FIRES ACT, 1933-42
MARRIAGE ACT, 1936-1944

With notes of judicial decisions affecting sections of the reprinted Acts

The Bush Fires Act, 1933-1952, including all amendments passed to the end of 1954 and notes of judicial decisions, is reprinted in the Annual Volume, 1954, at page 241.

The Bush Fires Act, 1933-1957, including all amendments passed to the end of 1957 and notes of judicial decisions, is reprinted in the Annual Volume, 1957, at page 179.

BUSH FIRES ACT, 1933-1957.

BEING

BUSH FIRES ACT, 1933, No. 2139 OF 1933 [ASSENTED TO 7TH DECEMBER, 1933.]

AS AMENDED BY

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

BUSH FIRES ACT AMENDMENT ACT, 1935, No. 2258 OF 1935 [ASSENTED TO 2ND JANUARY, 1936.]

BUSH FIRES ACT AMENDMENT ACT, 1939, No. 27 OF 1939 [ASSENTED TO 14TH DECEMBER, 1939.]

BUSH FIRES ACT AMENDMENT ACT, 1941, No. 24 OF 1941 [ASSENTED TO 13TH NOVEMBER, 1941.]

AND

BUSH FIRES ACT AMENDMENT ACT, 1942, No. 30 OF 1942 [ASSENTED TO 26TH NOVEMBER, 1942.]

An Act to make better provision for the prevention and control of bush fires and other fires, 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 "Bush Fires Act, 1933-1942." Short title.

2. The Acts mentioned in the schedule are hereby repealed. Repealing provision.

3. (1) In this Act, unless a contrary intention clearly appears— Interpretation.

"area" means a municipality or district council district: 1123, 1913, s. 2.

"council" means a municipal council or district council:

"producer gas" means gas which is produced by the incomplete combustion of solid fuel and whose active constituent is chiefly carbon monoxide, but Inserted by 24, 1941, s. 2.

does not include gas produced at a fixed station and distributed through mains for consumption at a distance from the place of production:

Inserted
by 24,
1941, s. 2.

“producer gas equipment” means equipment for the production of producer gas or for conducting producer gas to an engine:

“scrub” includes trees, bushes, plants, and undergrowth of all kinds and sizes, whether alive or dead, and whether standing or not standing, and also includes any parts of any trees, bushes, plants, or underwood, and whether severed therefrom or not so severed, but does not include trees of such kinds or sizes as the Governor, by proclamation, declares not to be scrub within the meaning of this Act:

“stubble” includes stubble, hay, straw, grass, and herbage, whether alive or not alive, and whether standing or not standing.

(2) Wherever in this Act a period between one specified date and another specified date is fixed, such period does not include either of the said specified dates.

Advisory
Committee.
Inserted by
27, 1939,
s. 2.

3a. (1) There shall be a committee to be called the “Bush Fires Advisory Committee”.

(2) There shall be seven members of the committee who shall from time to time be appointed by the Governor on the recommendation of the Minister. One of the said members shall from time to time be appointed by the Governor, on the said recommendation, as the chairman of the committee.

(3) The committee shall—

(a) report to the Minister from time to time as to the best means to be taken for preventing or extinguishing bush fires:

(b) perform and undertake such powers and duties as may be entrusted to it by the Minister:

(c) generally advise the Minister upon the administration of this Act.

(4) The Minister may pay to any member of the committee any travelling or other expenses incurred by the member in the exercise of his office.

4. (1) Subject to subsections (2), (3), and (4), no person shall, during the period between the fifteenth day of October and the first day of the following February, burn any stubble standing on any land, or light or maintain any fire with the intention of burning any stubble standing on any land.

Burning of stubble between 15th October and 1st February. 1123, 1913, s. 6. 1768, 1926, s. 2. 2023, 1931, s. 5.

(2) Where the stubble is burned or the fire is lighted and maintained only for the purpose of clearing strips of land to act as firebreaks for preventing the spread of fire, it shall not be deemed a contravention of this section, provided that all the following conditions are strictly observed, namely:—

- i. None of the strips shall be more than two chains in width at any part thereof:
- ii. Before the fire is lighted, the land immediately adjoining each strip shall, throughout the whole length of each side of such strip, either be ploughed to a width of at least six feet or be cleared of all scrub, stubble, and other inflammable material to a width of at least twelve feet:

Amended by 27, 1939, s. 3 (a).

- iii. Not less than six hours before the fire is lighted, notice of intention to burn the strips, stating the date and the probable time at which the fire is to be lighted, shall be given to the owner or occupier or person in charge of any land or building immediately adjoining the field or place wherein the strips are situated, who reside within five miles of such field or place. If notice as aforesaid cannot be given to any person to whom notice is required by this paragraph to be given, by reason of the absence of such person from his place of residence or for any other reasonable cause, notice as aforesaid shall in lieu thereof be given to the police constable stationed nearest to the land whereon the burning is to take place. Any land or building shall be deemed to be immediately adjoining a field or place as aforesaid notwithstanding that they are separated by a road:

Amended by 2258, 1935, s. 2 (a).

- iv. Notice as aforesaid shall also be given to the clerk of the area in which the land is situated, or to the nearest fire control officer of such area:

s. 4. ROBERTS v. WEBB (1887) 21 S.A.L.R. 96; 9 A.L.T. 59; 9 Austr. Digest 127. Notwithstanding compliance with the section a person lighting a fire does not escape liability for any injury occasioned by the fire.

VERRAN v. ROBERTS (1938) S.A.S.R. 256. Where the defendant omitted to give notice to an adjoining occupier but complied with the other requirements of subsection (2) held that, in the particular circumstances, the complaint was rightly dismissed on the ground of triviality.

Inserted by
27, 1939,
s. 7 (1).

iva. If the land upon which the fire is to be lighted is within one mile of a Government forest, notice as aforesaid shall also be given to the person in charge of the forest:

v. Four men at least shall be present at the fire, from the time it is lighted until it is thoroughly extinguished, to assist in keeping it under control and prevent it from spreading beyond the strips:

Amended by
27, 1939,
s. 3 (b).

vi. No such fire shall be lighted before twelve o'clock noon, and every such fire shall be thoroughly extinguished before nine o'clock in the evening of the same day:

Inserted by
27, 1939,
s. 3 (c).

vii. The fire shall be first lighted from the leeward side of the stubble to be burnt before the fire shall be lighted from the windward side of the stubble.

Amended by
27, 1939,
s. 3 (d) and
(e) and by
30, 1942,
s. 2.

(3) It shall not be deemed a contravention of this section if a council causes stubble to be burnt, or a fire lighted and maintained for the purpose of burning any stubble on any street, road, or reserve vested in or under the control of the council or (with the consent in writing of the Commissioner of Crown Lands) on any travelling stock reserve in any case where all the following conditions are strictly observed, namely:—

At least four men shall be present at the fire, from the time it is lighted until it is thoroughly extinguished, to assist in keeping it under control and prevent it from spreading beyond the land whereon the burning is to take place; and during the said time the council shall provide adequate fire fighting appliances and an adequate supply of water in order to prevent any spread of fire.

(4) It shall not be deemed a contravention of this section if a person burns stubble or lights or maintains a fire for the purpose of burning any stubble in or on any irrigation channel or lucerne field in any case where the consent of the council or body corporate exercising the powers of a council in the part of the State in which the land is situated is obtained to such burning and all the following conditions and all such further conditions as the said council or body corporate may prescribe are strictly observed, namely:—

i. Before the fire is lighted the land immediately adjoining on all sides the whole of the land on which the burning is to take place shall, throughout the whole length of every such side, either be ploughed to a width of at least six feet or be cleared of all scrub, stubble, and other inflammable material to a width of at least twelve feet:

ii. Not less than six hours before the fire is lighted, notice of intention to burn the stubble shall be given to the owner or occupier or person in charge of any land or building immediately adjoining the land whereon the burning is to take place, who resides within five miles of the last-mentioned land. If notice as aforesaid cannot be given to any person to whom notice is required by this paragraph to be given, by reason of the absence of such person from his place of residence or for any other reasonable cause, notice as aforesaid shall in lieu thereof be given to the police constable stationed nearest to the land whereon the burning is to take place. Any land or building shall be deemed to be immediately adjoining any land as aforesaid notwithstanding that they are separated by a road:

Amended by
2258, 1935,
s. 2 (b).

ii.a. If the land upon which the fire is to be lighted is within one mile of a Government forest, notice as aforesaid shall also be given to the person in charge of the forest:

Inserted by
27, 1939,
s. 7 (1).

iii. At least four men shall be present at the fire, from the time it is lighted until it is thoroughly extinguished, to assist in keeping it under control and prevent it from spreading beyond the land whereon the burning is to take place:

iv. No such fire shall be lighted before twelve o'clock noon, and every such fire shall be thoroughly extinguished before nine o'clock in the evening of the same day:

Amended by
27, 1939,
s. 3 (f).

v. The fire shall be first lighted from the leeward side of the stubble to be burnt before the fire shall be lighted from the windward side of the stubble.

Inserted by
27, 1939,
s. 3 (g).

(5) Any person who is guilty of any contravention of this section shall be guilty of an offence and liable to a penalty for a first offence of not less than two pounds nor more than twenty pounds, and for every subsequent offence of not less than five pounds nor more than fifty pounds.

5. (1) No person shall during the period between the thirty-first day of January and the fifteenth day of the following May, burn any stubble standing on any land, or light or maintain any fire with the intention of burning any stubble standing on any land, except subject to all the following conditions, namely:—

Burning of
stubble
between 31st
January and
15th May.
1123, 1913,
s. 7.
1768, 1926,
s. 3.

i. Before the fire is lighted, the land immediately adjoining on all sides the whole of the land on which the

burning is to take place shall, throughout the whole length of every such side, either be ploughed to a width of at least six feet or be cleared of all scrub, stubble, and other inflammable material to a width of at least twelve feet:

Amended by
2258, 1935,
s. 3.

II. Not less than six hours before the fire is lighted, notice of intention to burn the stubble, stating the date and the probable time at which the fire is to be lighted, shall be given to the owner or occupier or person in charge of any land or building immediately adjoining the land whereon the burning is to take place, who resides within five miles of the last-mentioned land. If notice as aforesaid cannot be given to any person to whom notice is required by this paragraph to be given, by reason of the absence of such person from his place of residence or for any other reasonable cause, notice as aforesaid shall in lieu thereof be given to the police constable stationed nearest to the land whereon the burning is to take place. Any land or building shall be deemed to be immediately adjoining any land as aforesaid notwithstanding that they are separated by a road:

III. Notice as aforesaid shall also be given to the clerk of the area in which the land is situated or to the nearest fire control officer of such area:

Inserted by
27, 1939,
s. 7 (2).

IIIA. If the land upon which the fire is to be lighted is within one mile of a Government forest, notice as aforesaid shall also be given to the person in charge of the forest:

IV. Four men at least shall be present at the fire, from the time it is lighted until it is thoroughly extinguished, to assist in keeping it under control and prevent it from spreading beyond the land whereon the burning is to take place:

Amended by
27, 1939,
s. 4 (a).

V. No such fire shall be lighted before twelve o'clock noon, and any such fire shall be thoroughly extinguished before nine o'clock in the evening of the same day:

Inserted by
27, 1939,
s. 4 (b).

VI. The fire shall be first lighted from the leeward side of the stubble to be burnt before the fire shall be lighted from the windward side of the stubble.

(2) Any person who is guilty of any contravention of this section shall be guilty of an offence and liable to a penalty

for a first offence of not less than two pounds nor more than twenty pounds, and for every subsequent offence of not less than five pounds nor more than fifty pounds.

5a. It shall not be deemed a contravention of section 4 or section 5 if any person burns any stubble on any land or lights or maintains any fire with the intention of burning any stubble or if any council causes stubble to be burnt or a fire lighted or maintained for the purpose of burning any stubble on any street, road or reserve vested in or under the control of the council if, prior to the stubble being burnt or the fire lighted or maintained, permission in writing is obtained from the Minister for the purpose, and if all conditions specified by the Minister are fully complied with. The permission of the Minister aforesaid may be given subject to such conditions as the Minister thinks sufficient or proper in the circumstances of the case. If application for permission as aforesaid is made by other than a council and if the land in respect of which the application is made is situated within an area, the Minister shall not give permission as aforesaid except upon the recommendation of the council of the area.

Power of Minister to authorize burning of stubble.
Inserted by 30, 1942, s. 3.

6. In any case where it is necessary to use a fire-rake in order to burn any stubble on any land, the occupier of such land may, with the consent of a fire control officer, burn such stubble during any period to which section 4 or section 5 applies, and in any such case the provisions of sections 4 and 5 shall not apply to any such burning: Provided that before the fire is lighted there is around the land upon which the fire is to be lighted a space cleared of all inflammable material to a width of twelve feet or a space ploughed to a width of six feet.

Burning of stubble without restriction under certain conditions.

7. (1) Any person who, during the period between the fifteenth day of October and the first day of the following February, burns any scrub on any land, or lights or maintains any fire with the intention of burning any scrub on any land, shall be guilty of an offence and liable to a penalty for a first offence of not less than five pounds nor more than twenty-five pounds, and for every subsequent offence, of not less than ten pounds nor more than fifty pounds.

Burning of scrub between 15th October and 1st February.
1123, 1913, s. 8.

(2) It shall not be deemed a contravention of this section if scrub is burnt on any land for the purpose of providing a firebreak if permission in writing is, prior to the burning, obtained from the Minister for the purpose and if all conditions specified by the Minister in the permission in writing are fully complied with.

Inserted by 27, 1939, s. 5.

Burning
of scrub
between end
of January
and 1st May.
1123, 1913,
s. 9.
1768, 1926,
s. 4.
2023, 1931,
s. 4.
Para. I.
amended by
27, 1939,
s. 6.

8. (1) No person shall, during the period between the last day of January and the first day of the following May, burn any scrub on any land, or light or maintain any fire with the intention of burning any scrub on any land, except subject to all the following conditions, namely:—

i. Before the fire is lighted, a space of at least fifteen feet in width immediately adjoining on all sides the whole of the land whereon such burning is to take place, and throughout the whole length of every such side, shall either be ploughed or be cleared of all scrub, stubble, and other inflammable material:

ii. Not less than six hours before the fire is lighted, notice of intention to burn the scrub, stating the date and the probable time at which the fire is to be lighted, shall be given to the owner or occupier or person in charge of any land or building immediately adjoining the land whereon such burning is to take place, who resides within five miles of the last-mentioned land. If notice as aforesaid cannot be given to any person to whom notice is required by this paragraph to be given, by reason of the absence of such person from his place of residence or for any other reasonable cause, notice as aforesaid shall in lieu thereof be given to the police constable stationed nearest to the land whereon the burning is to take place. Any land or building shall be deemed to be immediately adjoining any land as aforesaid notwithstanding that they are separated by a road:

iii. Notice as aforesaid shall also be given to the clerk of the area in which the land is situated, or to the nearest fire control officer of such area:

iiia. If the land upon which the fire is to be lighted is within one mile of a Government forest, notice as aforesaid shall also be given to the person in charge of the forest:

iv. Not less than fourteen days before a fire is lighted for the purpose of burning an area of scrub of more than five hundred acres, notice of intention to burn the scrub shall, if the land is situated within an area, be given to the council thereof:

v. Four men at least shall be present at the fire, from the time it is lighted until it is thoroughly extin-

Inserted by
27, 1939,
s. 7 (3).

Amended by
2258, 1935,
s. 4.

guished, to assist in keeping it under control and prevent it from spreading beyond the land whereon the burning is to take place:

In any case where notice is given to a council pursuant to paragraph iv., and the council or mayor or chairman thereof is of opinion that more than four men will be necessary in order to control the fire and prevent it from spreading as aforesaid, the council or mayor or chairman may not later than ten days after the giving of the notice as aforesaid, give notice to the person aforesaid directing him to have present at the fire such number of men (but not exceeding three) additional to those hereinbefore provided for as the council or mayor or chairman thinks fit:

- vi. The fire shall be first lighted from the leeward side of the scrub to be burnt before the fire shall be lighted from the windward side of such scrub:
- vii. No such fire shall be lighted before twelve o'clock noon.

(2) Any person who is guilty of any contravention of this section shall be guilty of an offence and liable to a penalty for a first offence of not less than five pounds nor more than twenty pounds, and for every subsequent offence of not less than ten pounds nor more than fifty pounds.

(3) It shall not be deemed a contravention of this section if any person burns any scrub on any land or lights or maintains any fire with the intention of burning any scrub if, prior to the scrub being burnt or the fire lighted or maintained, permission in writing is obtained from the Minister for the purpose and if all conditions specified by the Minister in the permission in writing are fully complied with. The permission of the Minister aforesaid may be given subject to such conditions as the Minister thinks sufficient or proper in the circumstances of the case.

Inserted by
30, 1942,
s. 4.

9. Any person who lights, uses, or maintains any fire in the open air for the purpose of making charcoal or lime during the period between the thirty-first day of October and the first day of the following May, unless either—

Fires for
charcoal
burning
between
31st October
and 1st May.
1123, 1913,
s. 11.
1768, 1926,
s. 5.

- (a) a space of ground immediately round the pit or place in which the fire is situated, of the width of fifty feet at least in all parts, has before the fire is lighted been cleared, and is until the fire is completely extinguished, kept clear, of all stubble, scrub, and other inflammable material; or

- (b) the fire is enclosed in a kiln of brick, iron, stone, or earth, so constructed as to prevent the escape of fire or any burning material therefrom,

shall be guilty of an offence and liable to a penalty for a first offence of not less than five pounds, nor more than twenty-five pounds; and for every subsequent offence, of not less than ten pounds nor more than fifty pounds.

Occupier of land *prima facie* liable for fire thereon.
1123, 1913, s. 12.

10. (1) Every occupier of any land whereon any offence under sections 4, 5, 7, 8, or 9 is committed shall be deemed guilty of such offence, unless he satisfies the court hearing the charge against him that the offence was not committed by him or by his authority.

(2) Nothing in this section shall be deemed to affect the liability of the actual perpetrator of the offence in respect of such offence.

Power to alter periods and hours for burning.
1123, 1913, s. 13.
1768, 1926, s. 6.
Subsec. (1) amended by 27, 1939, s. 8.

11. (1) With the approval in writing of the Minister the council of any area may, as regards such area or any portion thereof, and the Minister may, as regards any part of the State (defined in a notice under subsection (2) hereof) which is not within any area, alter the periods or the hours, or the distances, or of any of them, mentioned in sections 4, 5, 7, 8, 9, or 20, or any of those sections, and may by any such alteration fix earlier or later and longer or shorter periods or hours, or greater distances, or all or any of such altered periods and hours and distances.

The power conferred by this section shall include power to provide that stubble may be burnt as provided by section 5 during any period either before or after or both before and after any period during which section 4 applies, and to provide that scrub may be burnt as provided by section 8 during any period either before or after or both before and after any period during which section 7 applies.

(2) No such alteration shall have any force until notice thereof has been—

- (a) published once in the *Government Gazette*, and twice in some newspaper circulating in the area or defined part of the State; and
- (b) in the case of an alteration made by a council, affixed for at least thirty days on the front door or the notice board of the council making such alteration.

s. 10. McINNES v. WARDLE (1931) 45 C.L.R. 548; 38 A.L.R. 230; 9 Austr. Digest 131, affirming WARDLE v. McINNES (1930) S.A.S.R. 450. As to the civil liability of an occupier where an offence is committed by an independent contractor.

(3) Upon such publication and affixing, such alteration shall have the force of law within such area or portion thereof or defined part of the State, and shall therein have the same effect as if the periods and hours and distances fixed thereby were respectively fixed by such of the said sections 4, 5, 7, 8, 9, or 20, as is or are applicable.

Amended by
27, 1939,
s. 8 (d).

(4) In any case in which the Minister by reason of any special circumstances thinks fit, the Minister may in writing authorize any council to make any such alteration as aforesaid, and may direct that the notice required by paragraph (b) of subsection (2) shall be given for seven days only, but in any such case the alterations made by such notice shall continue only until such time as the Minister directs, which shall be stated in the notice.

(5) In the case of an alteration by a council, the clerk of the council shall, after the notices provided for in subsection (2) or (4) have been given, furnish to the Minister a certificate that such notices have been given.

Inserted by
27, 1939,
s. 8 (e).

12. Notwithstanding any provision of this Act, any person who under any conditions lights any fire at any time on any Sunday, for any of the purposes mentioned in sections 4, 5, 7, 8, or 9, shall be guilty of an offence and liable to a penalty for a first offence of not less than five pounds nor more than twenty-five pounds, and for every subsequent offence, of not less than ten pounds nor more than fifty pounds.

Fires not to
be lighted on
Sunday.
1123, 1913,
s. 14.

13. (1) Any person who, during the period between the thirty-first day of October and the first day of the following May—

Fires for
purposes
other than
those
mentioned in
sections
4 to 9.
1123, 1913,
s. 15.
1768, 1926,
s. 7.
2023, 1931,
s. 5.

(a) lights, uses, or maintains any fire in the open air for any purpose whatever, except those mentioned in sections 4, 5, 7, 8, and 9, unless a space of ground immediately around such fire of the width of twelve feet at least in all parts has been previously cleared of all stubble, scrub, and other inflammable material; or

(b) having lighted, used, or maintained any fire in the open air, neglects to completely extinguish such fire before leaving the same,

shall be guilty of an offence and liable to a penalty for a first offence of not less than two pounds, nor more than

s. 13. OPIE v. MOUNT (1942) S.A.S.R. 35. A fire lit out of doors in a tank having one open side and a hole in the top is a fire in the open air within the meaning of section 13.

twenty pounds, and for every subsequent offence of not less than five pounds nor more than fifty pounds.

Inserted by
27, 1939,
s. 9 (a).

(1a) The council may by resolution published in the *Government Gazette*, declare that within the part of the area defined in the resolution, the lighting of fires in the open during the period between the thirty-first day of October and the first day of the following May shall be prohibited except in a place or places to be specified in the resolution.

Any person who during the said period and within any such specified part of the area, lights any fire in the open in any place other than in a place specified in the resolution shall (notwithstanding compliance with paragraph (a) of subsection (1) of this section) be guilty of an offence and liable to a penalty for a first offence of not less than two pounds nor more than fifty pounds, and for any subsequent offence of not less than five pounds nor more than one hundred pounds.

(2) Nothing in this section shall be construed as varying any of the provisions of any of the sections mentioned in subsection (1).

Inserted by
27, 1939,
s. 9 (b).

(3) It shall be a defence to any proceedings under paragraph (a) of subsection (1) to show—

(a) that the fire was lighted in any orchard or vineyard for the purpose of smudging for insect pests or the prevention of damage by frost or any other purpose prescribed by regulation; and

(b) that at the time the fire was lighted, a space of ground immediately around the fire of the width of twelve feet was clear of all inflammable material, except fruit trees or vines or both.

Ignitable
wadding
prohibited
from 30th
September
to 1st May.
1123, 1913,
s. 16.
1768, 1926,
s. 8.

14. (1) Any person who, during the period between the thirtieth day of September and the first day of the following May, uses for the wadding of any gun, rifle, pistol, or other firearm used or carried by him, any paper, cotton, linen, or other ignitable substance, shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than ten pounds.

(2) If any person, within the period mentioned in subsection (1) hereof, uses or carries any gun, rifle, pistol, or other firearm upon or over the land of any other person, the owner or occupier of such land, or his servant or agent, or any member of the police force, may examine such gun, rifle, pistol, or other firearm, for the purpose of ascertaining the nature of the wadding used therein; and the person using or carrying such gun, rifle, pistol, or firearm who—

- (a) refuses to allow such examination; or
- (b) upon the occasion of such examination refuses to disclose his name and address, or either, to such owner or occupier, or servant or agent; or
- (c) gives a false name and address, or either,

shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than ten pounds.

15. (1) Every stationary steam engine (other than a steam engine enclosed on four sides with non-inflammable material) shall be placed so that the space of ground around the steam engine to the width of twelve feet at least is cleared of all stubble, scrub, and other inflammable material.

Penalty for using stationary steam engine or internal combustion engine in open.

(2) Every stationary internal combustion engine (other than an internal combustion engine enclosed on four sides with non-inflammable material) shall be placed so that the space of ground around the internal combustion engine to a width of twelve feet at least is cleared of all stubble, scrub, and other inflammable material.

(3) Any person who drives or uses any steam engine or internal combustion engine in any manner contrary to this section shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than twenty pounds.

15a. (1) Any person who, during the period between the thirtieth day of September and the first day of the following May, in the open air—

Use of producer gas equipment. Inserted by 24, 1941, s. 3.

- (a) lights any fire in any producer gas equipment; or
- (b) opens any entrance (other than any entrance used for the insertion of fuel) to any producer gas equipment which contains live coals, hot ashes, or any material from which sparks or fire may be emitted,

shall be guilty of an offence unless the space of ground immediately around the producer gas equipment and to a distance of twelve feet at least in all directions is clear of all stubble, scrub and other inflammable material.

s. 15a. TOLMER v. DARLING AND ANOTHER (1943) S.A.S.R. 81. Where a motor car fitted with a gas producer was driven along a public road and over a deep drain at a speed of about ten miles per hour and a bolt and other parts of the hopper of the producer in which the live charcoal was placed came in contact with a stone or other obstacle causing damage to the hopper door and the escape of the charcoal, *quaere* whether an offence against section 15a was committed.

(2) Any person who, during the period between the thirtieth day of September and the first day of the following May, whilst on any road outside of any municipality or township, empties from any gas producer equipment any live coals, hot ashes, or any material from which sparks or fire may be emitted, shall be guilty of an offence unless the live coals, hot ashes, or material is emptied into a receptacle containing water sufficient to extinguish completely the coals, ashes or material.

(3) Any person who, during the period between the thirtieth day of September and the first day of the following May, in the open air opens or empties or carries out any operation with respect to any part of any gas producer equipment so that there is emitted from the gas producer equipment any live coals, hot ashes or any material from which sparks or fire may be emitted, shall be guilty of an offence unless the live coals, hot ashes or other material is immediately and completely extinguished.

(4) Any person who, during the period between the thirtieth day of September and the first day of the following May, in the open air—

(a) operates any producer gas equipment which is not fitted and mounted so as to prevent effectively the escape of fire, sparks, grit, cinders, ashes, coals and burning gas; or

(b) operates any gas producer equipment which is so constructed that during the operation thereof any outside surface thereof is likely to reach a temperature sufficient to ignite any stubble, grass, leaves, wood, or other inflammable material which may come into contact therewith,

shall be guilty of an offence.

(5) Any person guilty of an offence against this section shall be liable to a penalty for a first offence of not less than two pounds nor more than twenty pounds, and for any subsequent offence of not less than five pounds nor more than fifty pounds.

Duty of
beekeepers to
clear space.

16. Any person who during the period between the thirty-first day of October and the following first day of May, lights or maintains any fire in any appliance which is used for the purpose of taking honey from any beehive or lights or maintains any fire in any honey-house shall be guilty of an offence and liable to a penalty of not less than two

pounds nor more than twenty pounds unless around the beehive or honey-house or around the apiary in which the beehive or honey-house is situated there is a space cleared of all inflammable material to a width of twelve feet or a space ploughed to a width of six feet.

17. (1) Any person who uses any internal combustion engine for the purpose of harvesting any inflammable crop shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than twenty pounds unless such internal combustion engine is fitted with an effective spark arrester.

Use of internal combustion engines in harvesting operations. Amended by 27, 1939, s. 10.

(2) Any person who uses any producer gas equipment for the purpose of reaping or cutting any inflammable crop shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than twenty pounds unless the whole of the area to be so reaped or cut is bounded by one or other of the following, namely:—

Inserted by 30, 1942, s. 5.

I. A strip of land ploughed to a width of at least twelve feet:

II. A strip of land cleared of all inflammable material to a width of at least twelve feet:

III. An irrigation or drainage channel containing water to the width of at least six feet.

(3) Any person who uses any producer gas equipment for the purpose of removing any inflammable crop from the place where the crop was reaped or cut, shall be guilty of an offence and liable to a penalty of not less than two pounds and not more than twenty pounds unless there is carried with the producer gas equipment a water spray of the knapsack pattern fully charged with water.

Inserted by 30, 1942, s. 5.

18. Any person who, during the period between the thirty-first day of October and the first day of the following May, smokes in the open air within twenty yards of any stable, or of any rick, stack, or field of hay, corn, straw, stubble, or other inflammable vegetable production, unless—

Smoking in the open air near stacks, etc., prohibited. 1123, 1913, s. 17. 1768, 1926, s. 9.

(a) within a town; or

(b) with a pipe properly covered,

shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than twenty pounds.

Penalty for throwing lighted cigarettes, etc., from vehicles.
Amended by 30, 1942, s. 6.

19. Any person who, while in any vehicle in any part of the State outside any municipality or town, during the period between the thirty-first day of October and the first day of the following May, throws out of such vehicle any lighted cigarette or cigar, shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than twenty pounds.

Prohibition on using rabbit fumigator during summer.
Of. 2023, 1931, s. 6.

20. Any person who, during the period between the thirtieth day of November and the fourteenth day of the following February lights or maintains any fire in any appliance which is used as a rabbit fumigator, shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than twenty pounds.

Trees not to be blasted between 31st October and 1st May except under conditions.
1123, 1913, s. 18.
1768, 1926, s. 10.

21. Any person who, during the period between the thirty-first day of October and the first day of the following May, employs gunpowder, or any other explosive substance, for the purpose of blasting any tree, wood, or timber, without having at least four persons present to prevent any fire from arising therefrom, shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than twenty pounds.

Prohibition of placing of substances on the ground.
1123, 1913, s. 19.

22. (1) The Governor may, by proclamation, prohibit the placing on the ground of the substance or substances specified in the proclamation—

- (a) either at any time or during the periods of the year or of the day specified in the proclamation;
- (b) either anywhere in the State or within areas so specified;
- (c) either for any purpose or for the purposes so specified; and
- (d) either absolutely or except under conditions so specified.

(2) The Governor may, by proclamation, rescind, amend, or vary any proclamation made under subsection (1) hereof.

(3) Any proclamation made under this section shall be published—

- (a) in the *Government Gazette*; and
- (b) if the proclamation is to have effect throughout the State, twice in a newspaper published in Adelaide, or if the proclamation is to have effect only within specified areas, twice in a newspaper circulating in such areas.

(4) Any person who, after the expiration of the period of fourteen days from the latest of the publications of any proclamation required by subsection (3) hereof, does anything contrary to the provisions of such proclamation, shall be guilty of an offence and liable to a penalty for a first offence of not less than one pound, nor more than five pounds; and for every subsequent offence of not less than two pounds nor more than twenty pounds.

23. (1) The Governor may, by proclamation, prohibit the sale, offering for sale, distribution, and use of any matches other than those made so as to strike only on a preparation affixed to the box containing the matches, or to a box containing matches of the same description—

Prohibition
of sale of
matches of
certain kinds.
1123, 1913,
s. 20.

(a) either anywhere in the State or within the areas specified in the proclamation:

(b) during the periods of the year so specified, being between the thirty-first day of October and the first day of the following May.

(2) The Governor may, by proclamation, rescind, amend, or vary any proclamation made under subsection (1) hereof.

(3) Any proclamation made under this section shall be published—

(a) in the *Government Gazette*; and

(b) if the proclamation is to have effect throughout the State, twice in a newspaper published in Adelaide, or, if the proclamation is to have effect only in specified areas, twice in a newspaper circulating in such areas.

(4) Any person who, after the expiration of the period of fourteen days from the latest of the publications of any proclamation required by subsection (3) hereof, does anything contrary to the provisions of such proclamation, shall be guilty of an offence and liable to a penalty for the first offence of not less than one pound, nor more than five pounds; and for every subsequent offence of not less than two pounds nor more than twenty pounds.

23a. Any member of the police force or any fire control officer, who has reasonable cause to suspect that any person has committed any offence against this Act, may demand that such person disclose his name and address. Any person who upon such demand fails to disclose his name and address or gives a false name or address shall be guilty of an offence and liable to a penalty of not more than five pounds.

Power to
demand name
and address.
Inserted by
27, 1939,
s. 11.

S. 24
repealed by
2252, 1935,
s. 4.

Damage by
fire to
dividing
fence.
1123, 1913,
s. 22.

* * * * *

25. (1) If the owner or occupier of any land clears the same of all inflammable materials for the space of at least twenty feet from any fence dividing such land from the land of any other owner or occupier; and

(a) such other owner or occupier does not clear his land contiguous to the said fence for the space of at least twenty feet; and

(b) any damage from fire happens to such dividing fence through his failing so to do;

such other owner or occupier shall, at his own costs and charges, repair or re-erect such fence within the period of one month from the day when the same is so damaged, or within such extended time as is allowed by a special magistrate, on application made to him in writing, of which application not less than seven days' notice in writing has been served on the owner or occupier who has cleared his land as aforesaid.

(2) If the owner or occupier who has so failed to clear his land fails to repair or re-erect such fence within such month or such extended time (if any), the owner or occupier of the first-mentioned land who has cleared the same as aforesaid may repair or re-erect such fence, and may recover the costs and expenses of so doing as money paid to the use of the owner or occupier so in default.

Power of
occupier to
clear portions
of road.

26. Where any land adjoins any road, the occupier of the land, with the consent of the council of the area in which the road is situated or of the Minister if the road is not situated within an area, may, for the purposes of providing a firebreak for the protection of any fences or other property on the said land, clear all scrub from the whole or any portion of that part of the road to the width of nine feet which adjoins the said land.

Coronial
inquiry into
certain fires.

27. In the event of any fire (other than a fire confined to any building or other premises) an inquest shall be held thereon in any case where a request in writing is made to the member of the police force in charge of the police station nearest to the fire within three days of the outbreak of the fire by—

(a) the council of the area in which the fire occurred:

(b) any owner or occupier of property who suffered loss by reason of the fire.

27a. (1) If the council is of opinion that the presence of the plant known as furze on any land within its area is or may be a source of danger from bush fires, the council may by notice in writing given to the occupier or the owner of the land, require him to destroy and remove all furze plants from the land specified in the notice within the time specified in the notice.

Power to order destruction of furze.
Inserted by 27, 1939, s. 12.

No such notice shall apply to any land distant more than one chain from any road or building.

(2) If any such occupier or owner fails to comply with any such notice within the time specified in the notice, any person authorized by the council may enter upon the land and destroy and remove all furze plants from the land specified in the notice. The costs of so doing may, in any court of competent jurisdiction, be recovered by the council as a debt due to the council by the person to whom the notice was given.

27b. (1) It shall be the duty of every council or other authority to remove from any road any inflammable debris or material which results from the carrying out of any work upon that road by the council or authority and which is likely to be a source of danger from bush fires.

Removal of debris from roads.
Inserted by 27, 1939, s. 12.

(2) If any council or authority fails to remove any such debris or material and the default continues for fourteen days or more, the Minister may cause the debris or material to be removed and may in any court of competent jurisdiction recover from the council or authority in default as a debt due to the Minister an amount equal to twice the amount of the expenses incurred by the Minister.

(3) The provisions of subsection (1) shall not impose on any council or authority any liability for damages which may result from any failure of the council or authority to comply with the provisions of subsection (1).

28. A council may expend any portion of its rates in paying for the clearing of any roads vested in it of stubble, scrub, and other inflammable material for the purpose of preventing the spread of fire or in the purchase of fire-preventing apparatus; and, subject to the provisions of this Act, may light, use, and maintain fires, or cause the same to be lighted, used, and maintained, for the purpose of such clearing; and may prevent the passing of vehicles of any kind, cattle, and beasts of draught or burden along any road whilst fire is being used for the purpose of such clearing.

Power for council to expend rates for prevention of fires.
1123, 1913, s. 23.

Provision of
fire-fighting
appliances
by council.

Enacted by
2258, 1935,
s. 5, but
repealed and
re-enacted by
27, 1939,
s. 13.

28a. (1) Every council shall provide adequate fire-fighting appliances for the purpose of preventing and controlling bush fires within its area.

(2) For the purpose of deciding what fire-fighting appliances are adequate for the said purpose, the council may take into regard any fire-fighting appliances within the area of any person other than the council which are available within the area generally for the purpose of preventing the spread of bush fires.

(3) A council may—

(a) contribute to the costs of any organization which is formed for the purpose of taking measures, and conducting operations for the control and extinguishing of bush fires, or may form such an organization:

(b) contribute to the cost of any fire-fighting appliances owned by any occupier of land within the area which the council is satisfied will be available within the area generally and are suitable for the control or extinguishing of bush fires.

(4) The council may expend any portion of its rates for the purposes of this section.

(5) If the Minister is of opinion that any council is neglecting to provide fire-fighting appliances as required by this section, he may from time to time give notice in writing to the council requiring the council to provide such fire-fighting appliances. If within one month after the giving of notice as aforesaid, the council neglects to provide fire-fighting appliances as required by this section, the council shall be guilty of an offence against this Act and liable to a penalty not exceeding ten pounds.

Appointment
of fire control
officers.

Substituted
by 27, 1939,
s. 14.

29. (1) Any council may, from time to time, appoint such persons (not exceeding fifteen in number) as it thinks proper to be its fire control officers under this Act, and may from time to time appoint as additional officers any persons (but not exceeding fifteen in number) who are officers under this Act appointed in respect of any adjoining area.

(2) If the Minister is satisfied that in order to meet the requirements of any area, it is desirable that the number of fire control officers should be greater than the number authorized to be appointed pursuant to subsection (1), the Minister may, by notice in writing, authorize the council to appoint an additional number of fire control officers fixed by the

Minister, but not exceeding fifteen, and the council may from time to time appoint additional fire control officers, but not exceeding the number so authorized. The authority of the Minister may be revoked by the Minister by notice in writing.

(3) No appointment of a fire control officer shall have effect unless notice of the appointment is published in the *Government Gazette*.

(4) If the Minister is satisfied that any council has not appointed fire control officers sufficient for its area, the Minister may appoint fire control officers for such area, and any person so appointed shall be deemed to have been appointed by the council. Notice of every such appointment shall be published in the *Government Gazette*.

(5) The general powers of the council with respect to other officers appointed by it, shall apply with respect to its fire control officers appointed under this section.

(6) Any fire control officer appointed by a council may be appointed subject to any conditions thought fit by the council, and if thought fit by the council, the council may allot the control of any part of its area to any fire control officer or officers.

(6a) Any councillor may be appointed as a fire control officer by any council or, in exercise of the powers conferred by subsection (4), by the Minister, if, under the conditions of the appointment, no payment is to be made to the councillor by any council as fees, salary, or wages for his services as fire control officer.

Inserted by
30, 1942,
s. 7.

Notwithstanding the provisions of the Local Government Act, 1934-1941, no such appointment shall disqualify any councillor so appointed from being or continuing a councillor.

In this subsection "councillor" means mayor, alderman, or councillor in any council.

(6b) If any person (whether a person such as is referred to in subsection (6a) or not) is appointed as a fire control officer by a council or by the Minister in exercise of the powers conferred by subsection (4), and, under the conditions of his appointment, no payment is to be made to the fire control officer as fees, salary, or wages for his services as fire control officer, then for the purposes of any Act relating to the liability of employers in respect of injury to or the death of workmen employed by them, the person so appointed

Inserted by
30, 1942,
s. 7.

shall not be deemed to be employed as a workman by the council by which he is appointed or, as the case may be, deemed to be appointed and the provisions of any such Act shall not apply upon the injury or death of any such person.

A council by which any such person is appointed or, as the case may be, is deemed to be appointed, shall obtain from an insurance office a policy of insurance under which the following benefits shall be payable to such person or his personal representatives on the death or total or partial incapacity of such person when such death or incapacity is brought about by accident arising out of and in the course of such person's duties as a fire control officer, namely:—

- (a) On the death or total incapacity of such person—
an amount not less than five hundred pounds:
- (b) On the partial incapacity of such person—an amount not less than two pounds per week to be payable during such partial incapacity for a period of at least six months:
- (c) If any such person suffers any of the injuries mentioned in the first column of the table in section 26 of the Workmen's Compensation Act, 1932-1941—
an amount being such ratio of the sum of five hundred pounds as is shown in the second column of the said table as being payable in respect of such injury: Provided that any amount payable in pursuance of paragraph (b) hereof shall be deducted from any amount payable under this paragraph.

(7) Every forester and assistant forester employed in the Woods and Forests Department of the State, and every foreman in charge of any Government forest, shall *ex officio* be deemed to be a fire control officer under this Act, and shall have and may exercise throughout the whole State all the powers of a fire control officer under this Act.

(8) The Minister may appoint any person to be a fire control officer for any portion of the State not comprised within an area, and any person so appointed shall have and may exercise within such portion of the State all the powers of an officer under this Act.

(9) The Governor may make regulations prescribing—

- (a) the duties and powers of fire control officers:
- (b) the form of badges to be issued to fire control officers:
- (c) any other necessary matters.

29a. In the month of August in every year every council shall forward to the Minister—

Annual return of fire control officers.

- (a) a statement of the names, addresses, and occupations of each fire control officer of the council:
- (b) a statement of the means of transport available to each such officer and a telephone number whereby he may be communicated with:
- (c) if any fire control officer or officers are by their appointment by the council appointed to control any part of the area of the council, a statement of the particulars of such part and any order of priority of control given to such officers:
- (d) a statement of the names and addresses of every occupier of land within the area who owns suitable fire-fighting appliances which are available within the area generally for the control or extinguishing of bush fires and of the telephone numbers whereby the said occupiers may be communicated with.

Inserted by 27, 1939, s. 14.

29b. (1) Any fire control officer shall, subject to such (if any) directions as are given by the council, and subject to anything prescribed by regulations, take any measures which appear to him to be necessary or expedient, and practicable, for—

Duties and powers of fire control officers.

- (a) preventing the outbreak of fire;
- (b) protecting life and property in the case of any such outbreak; and
- (c) controlling and extinguishing any fires or preventing the spread thereof.

Inserted by 27, 1939, s. 14.

(2) On the outbreak of any fire at any place within the area, any such officer shall proceed with all possible speed to such place, and, subject to anything prescribed by regulations, shall have control and the direction of the measures taken to control and extinguish such fire or to prevent it from spreading.

(2a) Notwithstanding any other provision of this Act, a fire control officer appointed for any area may on the outbreak of any fire at any place outside that area have control and the direction of the measures taken to control and extinguish such fire or to prevent its spreading as if he had been appointed a fire control officer for the area in which the outbreak of fire occurred; but the powers hereby given to any such fire control officer shall be exercised only until such time as a fire control officer appointed for the area in which the outbreak of fire occurred assumes the control and direction of the measures aforesaid.

Inserted by 30, 1942, s. 8.

(3) For the purpose of controlling or extinguishing any fire or preventing the spread thereof, a fire control officer may, after consulting with the occupier of the land if he is present, do all or any of the following things:—

- (a) exercise any of the appropriate powers of the Chief Officer of Fire Brigades under the Fire Brigades Act, 1936, in so far as the same may be necessary or expedient, for extinguishing a fire which is already burning or for preventing the spread or extension thereof:
- (b) enter any land or building whether private property or not:
- (c) pull down, cut, and remove fences on any land, whether private property or not, when in his opinion the same is necessary or expedient for the purpose of taking effective measures for extinguishing a fire which is already burning, or for preventing the spread or extension thereof:
- (d) cause firebreaks to be ploughed or cleared on any land, whether private land or not, and take any other appropriate measures on any such land as he may deem necessary for the purpose of controlling or extinguishing a fire which is already burning or for preventing the spread or extension thereof:
- (e) light any fire on any land, whether private land or not, for the purpose of clearing any strip of land to act as a firebreak for the purpose of controlling or extinguishing a fire which is already burning or for preventing the spread or extension thereof:
- (f) take and use water, other than that for use as an occupier's domestic supply contained in a tank at his dwelling house, and any other fire extinguishing material from any source whatever on any land, whether private property or not:
- (g) take charge of and give directions to any fire-fighting organization present at any fire with respect to its operations or activities in connection with the extinguishment or control of such fire, or the prevention of the spread or extension thereof:
- (h) any other thing which in his opinion is incidental to the exercise of any of the foregoing powers; and
- (i) employ any person or use the voluntary services of any person to assist him, subject to his directions, in the exercise of any of the foregoing powers.

(4) If any fire is within any Government forest and any forester or assistant forester or foreman in charge of a Government forest is present at the fire, the said powers and authorities shall not be exercised within the Government forest by any other fire control officer except with the approval of and subject to the directions of the forester or assistant forester or foreman, whilst he continues to be present at the fire.

(5) This section shall only apply to fires which—

- (a) have been lighted or are maintained unlawfully (whether in contravention of this Act or not); or
- (b) have occurred accidentally; or
- (c) have ceased to be under control or are not adequately controlled,

and to such other fires as are prescribed by regulation.

(6) This section shall not apply within any locality wherein the Fire Brigades Act, 1936, applies.

29c. A fire control officer may at any reasonable time enter any land, whether private property or not, for the purpose of examining any measures taken or proposed to be taken on the land for protection from fire.

Power of fire control officer to enter land.
Inserted by 27, 1939, s. 14.

29d. (1) Upon or after the outbreak of any fire any member of the police may give any direction to any person to prevent such person from driving or passing along any road near the fire.

Power of police to block traffic.
Inserted by 27, 1939, s. 14.

(2) Any person who fails to obey any such direction of any member of the police force shall be guilty of an offence and liable to a penalty of not more than five pounds.

30. Nothing in this Act shall be construed as taking away or affecting any right of action or other remedy, whether civil or criminal, which any person may have in respect of any loss or damage occasioned by fire, or for any trespass committed.

Act not to affect other remedies.
1123, 1913, s. 25.

31. (1) The Governor may make all such regulations as may be necessary or convenient for giving effect to the provisions of this Act or more fully carrying out its objects.

Regulations.
1123, 1913, s. 26.

s. 30. ROBERTS v. WEBB (1887) 21 S.A.L.R. 96; 9 A.L.T. 59; 9 Austn. Digest 127. Civil and criminal remedies are available against a person lighting a fire even if the fire is lighted in accordance with the provisions of this Act.

Inserted by
24, 1941,
s. 4.

(1a) Without limiting the effect of subsection (1), the Governor may, for the purpose of preventing the outbreak of fire, make regulations prescribing the conditions under and the manner in which producer gas equipment or any type of producer gas equipment may be used or operated or charged or emptied and prohibiting the use or operation or charging or emptying thereof except as prescribed in the regulations.

(2) Any regulation made under this Act may prescribe a penalty not exceeding twenty pounds in any case, for the breach of such regulation or of any other regulation under this Act.

Appropriation of
penalties.
1123, 1913,
s. 27.

32. (1) Subject to subsection (2) 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.

(2) Moneys received in respect of an offence committed within any area the complaint for which was laid by the council thereof or any officer of the council, shall be paid over to, and for the use of, the council.

Evidence in
proceedings.
1123, 1913,
s. 28.

33. (1) In any proceedings for an offence against this Act the allegation in the complaint—

- (a) that a fire was lighted or maintained with the intention or for the purpose mentioned in such complaint; or
- (b) that any stubble was not burned, or that any fire was not lighted, for the purpose mentioned in such complaint,

shall, if it is shown that the fire was lighted, or maintained, or that the stubble was burned (according to the nature of the charge), be taken to be proved, until the contrary is proved.

(2) In any proceedings for an alleged offence against this Act the burden of proving the observance of the conditions which would excuse the matter alleged in the complaint shall lie upon the defendant.

Inserted by
24, 1941,
s. 5.

(3) In any proceedings for an offence against this Act, the allegation in the complaint that any specified apparatus or equipment is producer gas equipment shall be taken to be proved, until the contrary is proved.

34. All proceedings in respect of any offence against this Act shall be disposed of summarily.

Procedure for offences.
1123, 1913, s. 29.
Amended by 27, 1939, s. 15.

35. Wherever in this Act there is a prohibition of the doing of anything, such prohibition shall be read as including a prohibition of the assisting in or in any way aiding or abetting the doing of such thing, and of the causing or suffering of the doing thereof, and of any attempt to do such thing, or cause it to be done, or to assist in or aid or abet the doing thereof.

Prohibition of any act to include assisting, etc., and attempts.
1123, 1913, s. 5.

36. Any notice required to be given to any person pursuant to this Act may be given in writing or orally to such person personally or may be given by leaving written notice thereof at the place of residence of such person.

Giving of notices.
Amended by 27, 1939, s. 16.

THE SCHEDULE.

No. of Act Repealed.	Title of Act Repealed.
No. 1123 of 1913	The Bush Fires Act, 1913.
No. 1768 of 1926	Bush Fires Act Amendment Act, 1926.
No. 2023 of 1931	Bush Fires Act Amendment Act, 1931.
No. 2027 of 1931	Bush Fires Act Amendment Act (No. 2), 1931.



MARRIAGE ACT, 1936-1944.

BEING

MARRIAGE ACT, 1936, No. 2325 OF 1936
[ASSENTED TO 26TH NOVEMBER, 1936.]

AS AMENDED BY

MARRIAGE ACT AMENDMENT ACT, 1941, No. 18 OF 1941
[ASSENTED TO 30TH OCTOBER, 1941.]

MATRIMONIAL CAUSES ACT AMENDMENT ACT, 1941, No. 51 OF 1941
[ROYAL ASSENT PROCLAIMED 26TH MARCH, 1942.]

AND

MARRIAGE ACT AMENDMENT ACT, 1944, No. 7 OF 1944
[ASSENTED TO 19TH OCTOBER, 1944.]

An Act to consolidate and amend the law relating to marriage.

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
and com-
mencement.

1. This Act may be cited as the "Marriage Act, 1936-1944," and shall come into operation on a day to be fixed by proclamation.

Repealing
provision.

2. The Acts mentioned in the first schedule are hereby repealed to the extent therein mentioned.

Arrangement.

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

PART I.—Preliminary.

PART II.—Qualifications of celebrants.

PART III.—Celebration of marriages.

PART IV.—Validity of marriages.

PART V.—Offences.

PART VI.—Miscellaneous.

4. In this Act, unless the context otherwise requires—
- “district registrar” means a district registrar of marriages:
- “deputy registrar” means the Deputy Registrar of Births, Deaths, and Marriages:
- “Minister” means the Minister of the Crown to whom the administration of this Act is for the time being committed by the Governor:
- “officiating minister” means a person enrolled as an officiating minister pursuant to this Act:
- “officiating registrar” means a person enrolled as an officiating registrar pursuant to this Act:
- “principal registrar” means the Principal Registrar of Births, Deaths, and Marriages:
- “recognized head,” when used with reference to any religious denomination, means—
- (a) when any part of South Australia is comprised within any diocese, the recognized head of the religious denomination within that diocese:
- (b) in every other case, the recognized head in South Australia of the religious denomination:
- “repealed Act” means any Act repealed by this Act or any other repealed Act relating to marriage.

5. (1) The office in the city of Adelaide at the commencement of this Act for keeping a general register of births, deaths, and marriages in South Australia shall continue to be the office in the city of Adelaide for keeping a general register of marriages.

Register.
15, 1867, s. 6.
Cf. U.K.
6 & 7 Will. 4
c. 85, s. 23.
Cf. U.K.
61 & 62
Vict. c. 58,
s. 7.

(2) The Minister may, by notice in the *Government Gazette*, appoint any other building in the city of Adelaide to be the office for keeping the general register of marriages.

6. (1) All districts which at the commencement of this Act are districts within the meaning of any Act relating to the registration of births and deaths and all such districts which are from time to time so constituted, shall be the districts of district registrars under this Act.

District
registrars.
15, 1867, s. 7.

(2) All district registrars of births and deaths appointed or acting under any such Act shall be district registrars of marriage under this Act for the respective districts for which they are appointed or act as aforesaid.

PART I.

Powers of
deputy
registrar.
Cf. 243,
1882, s. 4.

7. The deputy registrar may exercise such of the powers of the principal registrar as the Minister from time to time directs, and shall, in the exercise of those powers, be subject to the same liabilities, penalties, and forfeitures as the principal registrar.

PART II.

PART II.

QUALIFICATIONS OF CELEBRANTS.

Persons
authorized to
celebrate
marriages—
15, 1867,
s.15.

8. The following persons and none other, may celebrate marriages in South Australia—

- I. Any officiating minister duly registered under this Act:
- II. Any officiating registrar duly registered under this Act:
- III. The principal registrar and the deputy registrar:
- IV. Any district registrar within the district in respect of which he is appointed or acts.

Cf. U.K.
6 & 7 Will. 4
c. 85, s. 21.

Continuance
of certain
enrolments.

9. All officiating ministers and officiating registrars who at the commencement of this Act were enrolled as such pursuant to the provisions of any repealed Act shall, subject to this Act and without further or other authority than this Act, be and be deemed to be registered as officiating ministers or officiating registrars, as the case may be, who may celebrate marriages.

Application
for
registration
as officiating
minister.
Cf. Vic.
3726, 1928,
s. 8.

10. (1) Any minister of religion over the age of twenty-one years who exercises the function of a minister of religion in South Australia may make application in writing to the principal registrar for registration as an officiating minister under this Act.

(2) Every such application shall be signed by the applicant and by the recognized head of the religious denomination to which the applicant belongs.

(3) If there is no such recognized head, the application shall be signed by two officiating ministers who shall specify the religious denomination of which they are ministers of religion.

- (4) The application shall state—
- (a) the full name of the applicant:
 - (b) the date of his birth:
 - (c) the religious denomination to which he belongs:
 - (d) his designation:
 - (e) that he exercises in South Australia the function of a minister of religion of the said denomination:
 - (f) his usual place of residence:
 - (g) the church, chapel, or other place of worship or building in which he ordinarily officiates as a minister of religion in South Australia:
 - (h) whether or not he is a British subject:
 - (i) such other particulars as are prescribed by regulation.

(5) Any minister of religion living in any State contiguous to South Australia and who exercises the functions of a minister of religion in South Australia may make an application as aforesaid for registration as an officiating minister. Every such application shall be signed by the applicant and by the recognized head of the religious denomination to which the applicant belongs and shall in all other respects comply with this section.

11. (1) The principal registrar may require proof to his satisfaction of any application as aforesaid and, if he thinks fit, may require the same to be verified by declaration—

Verification of application and registration of applicants. Cf. Vic. 3726, 1928, s. 9.

- (a) that any person signing any application as the recognized head of any religious denomination is actually the recognized head of that denomination:
- (b) of any statement in the application:
- (c) of the authenticity of any signature in the application.

(2) The principal registrar may upon any such application recommend to the Governor that the applicant be registered as an officiating minister.

(3) Upon any such recommendation, the Governor may direct that the applicant be registered as an officiating minister and thereupon the principal registrar shall register the applicant as an officiating minister.

12. (1) Any person over the age of twenty-one years may make application in writing to the principal registrar for registration as an officiating registrar.

Officiating registrars. Cf. 15, 1867, s. 11.

- (2) The application shall state—
- (a) the full name of the applicant:
 - (b) his occupation:
 - (c) the date of his birth:
 - (d) if made in respect of a religious body or society to which the applicant belongs, the name of the religious body or society:
 - (e) his usual place of residence:
 - (f) whether or not he is a British subject:
 - (g) such other particulars as may be prescribed.

Verification
of application.

13. (1) The principal registrar may require proof to his satisfaction of any application under section 12 and, if he thinks fit, may require the same or any matter arising out of the same to be verified by declaration as to—

- (a) any statement in the application:
- (b) the authenticity of any signature in the application.

(2) The principal registrar may upon any such application recommend to the Governor that the applicant be registered as an officiating registrar.

(3) No such application shall be recommended by the principal registrar unless he is satisfied that there is not a minister of religion officiating as such in respect of the religious body or society or, if the application is not made in respect of a religious body or society, that there is no person authorized to celebrate marriages conveniently near the place of residence of the applicant and that in either case it is in the public interests that the applicant should be registered as an officiating registrar.

(4) Upon any such recommendation, the Governor may direct that the applicant be registered as an officiating registrar and thereupon the principal registrar shall register the applicant as an officiating registrar.

Registration
confined to
British
subjects.

14. No person other than a British subject shall be registered as an officiating minister or officiating registrar unless the Minister approves in writing of the registration.

Publication of
registration.
Cf. 15, 1867,
s. 10.

15. (1) Within one month after the registration of any person as an officiating minister or officiating registrar, the principal registrar shall publish notice of registration in the *Government Gazette*: Provided that failure to publish any such notice with respect to any registration shall not affect the validity of the registration.

(2) Publication as aforesaid shall be *prima facie* evidence in all courts and before all persons acting judicially that the person therein named is an officiating minister or officiating registrar, as the case may be, for the purposes of this Act.

16. (1) If any officiating minister—

- (a) dies or, except in a case provided for by subsection (5) of section 10, ceases to reside in South Australia; or
- (b) ceases to exercise in South Australia the functions of a minister of religion of the religious denomination in respect of which he is registered; or
- (c) is degraded or deprived of his authority as a minister of religion by his superior or by the recognized church court or tribunal of the religious denomination to which he belongs; or
- (d) is a minister of religion registered on a certificate from two or more ministers of religion and the certificate is at any time withdrawn by the ministers of religion who granted or signed the same,

Loss of qualification to be notified. Cf. Vic. 3726, 1928, s. 12.

a written notification of the fact of the death, departure, cessation of ministry, degradation, deprivation, or withdrawal shall within thirty days thereafter be given to the principal registrar by the recognized head of the denomination to which the minister belonged or by the said superior or church court or tribunal by whom he is so degraded or deprived of authority or by the ministers of religion so withdrawing their certificate. If in any religious denomination there is no such recognized head or superior or church court or tribunal or if the ministers of religion or one of them on whose certificate any officiating minister was registered are dead or out of South Australia, then any such notification may be so given by the surviving or remaining minister of religion or by any two ministers of religion of the denomination in respect of which the officiating minister is registered.

(2) On receipt of any such notification the Minister, on the recommendation of the principal registrar, and subject to section 17, may direct the principal registrar to remove the name of the officiating minister from the register of persons registered as officiating ministers.

(3) If within the said thirty days no notification is received by the principal registrar, it shall be the duty of the principal registrar to report to the Minister the fact of the death, departure, cessation of ministry, or degradation of any such officiating minister or the fact of any such

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withdrawal (if any such fact is known to the principal registrar) and thereupon the Minister on the recommendation of the principal registrar and subject to section 17, may direct the principal registrar to remove the name of the officiating minister from the register of persons registered as officiating ministers. For the purpose aforesaid the principal registrar may make any inquiries he may think fit.

Verification
of notification.
Cf. Vic.
3726, 1928,
s. 13.

17. (1) Before the name of any officiating minister is removed from the register on the notification of any person the principal registrar may require proof to his satisfaction, and if he thinks fit he may require the same to be verified by declaration—

(a) that any person signing any notification as the recognized head of any religious denomination is actually the recognized head of the religious denomination; or

(b) of any statement made in any notification.

(2) Before the name of any officiating minister (other than an officiating minister who has died or ceased to reside in South Australia) is removed from the register pursuant to section 16, the principal registrar shall give notice in writing to the officiating minister calling upon him within a time to be fixed in the notice to show cause why his name should not be so removed. The Minister shall consider any representations made by the officiating minister within the time fixed as aforesaid.

Annual list
of ministers
of each
denomination.
Cf. Vic.
3726, 1928,
s. 14.

18. In the month of January in every year the recognized head (if any) of every religious denomination shall make up and send to the principal registrar a full and complete list of the names of all ministers of religion of that denomination with their designations and residences registered for the time being by the principal registrar as officiating ministers for celebrating marriages in South Australia who are exercising the functions of ministers of religion in that denomination in South Australia and have not been degraded or deprived of their authority by their superior or the recognized church court or tribunal of the denomination.

Removal of
officiating
registrars
from register.

19. (1) If any officiating registrar—

(a) ceases to reside within the neighbourhood for the needs of which he was appointed: or

(b) ceases to be a member of the religious body or society in respect of which he was appointed, or if the Minister is satisfied that the need for the appoint-

ment of any person as an officiating registrar has ceased to exist, the Minister may direct the principal registrar to remove the name of the officiating registrar from the register of persons registered as officiating registrars.

(2) If any officiating registrar dies the principal registrar shall remove his name from the register of persons registered as officiating registrars.

(3) The principal registrar may make any inquiries he thinks fit for the purpose of ascertaining whether the name of any officiating registrar should be removed from the register.

(4) Before the name of any officiating registrar (other than an officiating registrar who has died or ceased to reside in South Australia) is removed from the register as aforesaid, the principal registrar shall give notice in writing to the officiating registrar calling upon him within a time to be fixed in the notice to show cause why his name should not be so removed. The Minister shall consider any representations made by the officiating registrar within the time fixed as aforesaid.

20. (1) The Minister may direct the principal registrar to remove from the register of persons registered as officiating ministers or officiating registrars the name of any officiating minister or officiating registrar who—

Power to prohibit persons from celebrating marriages if guilty of felony, etc.
Cf. Vic. 3726, 1928, s. 16.

- (a) before or after the commencement of this Act is convicted of any felony or indictable misdemeanour; or
- (b) before or after the commencement of this Act is guilty of any misconduct or wilful irregularity in the celebration of any marriage; or
- (c) before or after the commencement of this Act is guilty of such impropriety as to the mode, manner, or place of celebrating marriages as renders it inexpedient that he should continue to celebrate marriages; or
- (d) commits any breach of this Act.

(2) Before the name of any person is removed from the register on account of any such misconduct or irregularity or impropriety or breach as aforesaid, he shall be charged

by the principal registrar with the misconduct or irregularity or impropriety or breach and the Minister shall appoint a special magistrate to inquire as to the truth of the charge. The special magistrate shall have authority to hear, receive, and examine evidence on oath and shall after fully hearing the case in the presence of the person charged or in his absence if after due notice he has neglected to attend, report to the Minister his opinion thereon. In the case of a person who is convicted of any felony or indictable misdemeanour, no inquiry under this subsection shall be necessary.

Effect of making business of celebrating marriages.
Cf. Vic. 3726, 1928, s. 17.

21. (1) The name of any officiating minister who, in the opinion of the Minister, makes a business of celebrating marriages for the purpose of profit or gain irrespective of carrying out the ordinary duties of a minister of religion, may by order of the Minister on the report of the principal registrar be removed from the register of persons registered as officiating ministers.

(2) Before the name of any officiating minister is removed from the register as aforesaid, the principal registrar shall give notice in writing to the officiating minister calling upon him within a time to be fixed in the notice to show cause why his name should not be so removed. The Minister shall consider any representations made by the officiating minister within the time fixed as aforesaid.

Publication of notice of cancellation, etc., of registration.

22. (1) The principal registrar shall forthwith after the removal from the register of the name of any officiating minister or officiating registrar pursuant to this Act, publish in the *Government Gazette* notice of the removal.

(2) Publication as aforesaid shall be *prima facie* evidence in all courts and before all persons acting judicially that the person therein named has been removed from the register of persons authorized to celebrate marriages in South Australia and that the said person has ceased to possess the qualification to celebrate marriages.

Register.
Cf. 15, 1867, s. 13.

23. (1) The principal registrar shall keep a register of all persons registered or deemed, pursuant to section 9, to be registered as officiating ministers or officiating registrars.

(2) Upon the removal of the name of an officiating minister or officiating registrar from the register, the officiating minister or officiating registrar, as the case may be, shall cease to possess the qualifications to celebrate marriages.

24. (1) The principal registrar may whenever he thinks fit and shall at least once in every two years cause to be published in the *Government Gazette* the names of all persons for the time being registered as officiating ministers who may celebrate marriages, with their designations, denominations, and residences and the names of all persons for the time being registered as officiating registrars who may celebrate marriages, with their residences and particulars of the religious denomination or society, if any, in respect of which they are registered.

(2) Every such publication shall be *prima facie* evidence in all courts and before all persons acting judicially that the persons named therein were at the time of the publication registered as officiating ministers or officiating registrars, as the case may be, for the celebration of marriages in South Australia.

PART III.

PART III.

CELEBRATION OF MARRIAGES.

25. (1) No marriage shall be celebrated unless the parties to the marriage or one of them gives notice of the marriage in the form in the second schedule to the principal registrar or the deputy registrar or to a district registrar, officiating minister, or officiating registrar. Any such notice is in this Act referred to as a "marriage notice."

Marriage
notice.
Of. U.K.
19 & 20
Vict. c. 119,
s. 11.

(2) Forthwith after the receipt of any marriage notice by any district registrar, officiating minister, or officiating registrar, he shall forward the same to the principal registrar.

(3) Subject to subsections (4), (5), (6), and (7), no marriage shall be celebrated by or before any person until after the lapse of at least ten days after the marriage notice is given as provided by subsection (1).

s. 24. *Re* HARRIET WARREN (1870) 4 S.A.L.R. 25; 10 Austn. Digest 288. Held that where the name of a minister of religion was by mistake included in a list published in the *Gazette* pursuant to section 13 of The Marriage Act, 1867, the publication was conclusive evidence that he was authorized to celebrate marriages. (The said section 13 differs from section 24 of this Act in that under the said section 13 publication was provided to be "conclusive evidence.")

(4) In any case of emergency where the district registrar, officiating minister, or officiating registrar is of opinion that the marriage should be celebrated without delay, the district registrar, officiating minister, or officiating registrar may celebrate the marriage before the lapse of the said period of ten days, but in every such case he shall forthwith forward the marriage notice to the principal registrar and forthwith report the marriage to the principal registrar and the reasons for dispensing with compliance with subsection (3).

(5) If the marriage notice is delivered or forwarded to the principal registrar by the district registrar, officiating minister, or officiating registrar and the principal registrar indorses on the marriage notice a certificate that the statements therein contained have been examined and that such corrections (if any) as are necessary have been made thereto, or otherwise informs the district registrar, officiating minister, or officiating registrar that the statements therein contained have been examined as aforesaid (together with particulars of any such correction), the marriage may, subject to this Act, be celebrated before the lapse of the said period of ten days.

(6) If the Minister is of opinion that an officiating minister, in the exercise of his functions as a minister of religion, is ordinarily required to travel from place to place, the Minister may by notice in writing direct that the officiating minister may celebrate marriages at any time after the giving of a marriage notice and before the lapse of ten days from the giving of the notice. Any such direction may be for such period and subject to any conditions and restrictions thought fit by the Minister, and may be revoked at any time by the Minister. An officiating minister to which any such direction applies shall forward to the principal registrar the marriage notice as required by this section, but, if pursuant to any such direction, the officiating minister celebrates any marriage before the lapse of ten days after the giving of the marriage notice, he shall not be required to report the marriage to the principal registrar or the reasons for dispensing with compliance with subsection (3).

(7) Any marriage may, subject to this Act, be celebrated by the principal registrar or the deputy registrar before the lapse of the said period of ten days if he is satisfied that the statements contained in the marriage notice have been examined and that such corrections (if any) as are necessary have been made.

26. (1) If either party to a marriage, not having been previously married, is under the age of twenty-one years, the marriage shall not be celebrated without the production to the principal registrar, deputy registrar, district registrar, officiating minister, or officiating registrar, as the case may be, of the written consent of the parent or guardian of the said party, and the signature of any parent or guardian giving such consent shall be witnessed by the principal registrar or the deputy registrar or by a district registrar, officiating minister, officiating registrar, justice, or commissioner for taking affidavits in the Supreme Court.

Consent of parent or guardian.
 Cf. 15, 1867, s. 25.
 Cf. U.K. 6 & 7 Will. 4 c. 85, s. 10.
 Cf. U.K. 15 & 16 Geo. 5 c. 45, s. 9.
 Subsec. (1) amended by 18, 1941, s. 2.

(2) Any such consent may be in the form No. 3 in the third schedule or in any other form to the like effect.

(3) The consent shall be that of the person mentioned in the fourth schedule.

(4) If the person by whom a marriage is proposed to be celebrated is satisfied by documentary evidence that any parent or guardian whose consent to the marriage is required by this section has in fact consented to the marriage, he may celebrate the marriage without the production of the consent of that parent or guardian in the form required by this section. In every such case the person celebrating the marriage shall forthwith report the marriage to the principal registrar and the reasons for not complying with subsection (1).

Substituted by 7, 1944, s. 2.

(5) If the Minister is satisfied—

Inserted by 7, 1944, s. 2.

- (a) that there is no parent or guardian resident in South Australia by whom consent can be given as required by this section; or
- (b) that any parent or guardian by whom consent is required to be given by this section is incapable of giving consent or is absent from South Australia, and that, in any such case, it is not practicable to obtain the consent of that parent or guardian; or
- (c) that the place of residence of any parent or guardian of any party to the marriage and by whom consent is required to be given by this section is unknown to that party; or
- (d) that the consent of any parent or guardian by whom consent is required to be given by this section is being unreasonably withheld,

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the Minister, if of opinion that in the circumstances of the case it is desirable that the marriage should be celebrated, may, by notice in writing given on the recommendation of the principal registrar, authorize the celebration of the marriage without the consent of that parent or guardian.

Caveat
against
celebration
of marriage.
Cf. 15, 1867,
s. 26.
Cf. U.K.
4 Geo. 4
c. 76, s. 11.
Cf. U.K.
6 & 7 Will. 4
c. 85, s. 13.

27. (1) Any person may enter a caveat with the principal registrar, or any district registrar, officiating minister, or officiating registrar, against the celebration of the marriage of any person named therein. Every caveat shall be in writing signed by or on behalf of the person entering the caveat and shall state the place of residence of the said person and the ground on which the caveat is founded.

(2) If the caveat is entered with a district registrar, officiating minister, or officiating registrar, he shall forthwith give notice thereof in writing to the principal registrar. The principal registrar may give notice in writing of any caveat to any district registrar, officiating minister, or officiating registrar.

(3) If any caveat is entered with the principal registrar, or any district registrar, officiating minister, or officiating registrar, the caveat being duly signed by or on behalf of the person who enters the same, together with the place of residence of that person, and the ground of objection on which the caveat is founded, no marriage shall be celebrated by the person with whom the caveat is entered or by any other person to whom notice of the caveat is given by the principal registrar, until the principal registrar has examined into the matter of the caveat, and is satisfied that it ought not to obstruct the celebration of the marriage, or until the caveat is withdrawn by the party entering the same.

Liability of
persons
vexatiously
entering
caveat.
15, 1867,
s. 27.
Cf. U.K.
6 & 7 Will. 4
c. 85, s. 37.

28. Every person who vexatiously and without any reasonable or probable cause, enters a caveat against the marriage of any person, shall be liable for the costs of the proceedings, and for damages and costs as aforesaid to be recovered as a personal action in any court of competent jurisdiction by the party against whose marriage the caveat is entered.

Duration of
marriage
notice.
Cf. 15, 1867,
s. 30.
Cf. U.K.
6 & 7 Will. 4
c. 85, s. 15.

29. Unless within three months after the giving of the marriage notice pursuant to section 25, a marriage is celebrated between the parties described in the notice, the notice shall be void and no marriage shall be celebrated in pursuance thereof.

30. (1) A marriage shall be celebrated by or in the presence of the person to whom the marriage notice is given and who is named in the marriage notice as the person by or in the presence of whom the marriage is to be celebrated: Provided that the said person is a person authorized under this Act to celebrate marriages.

By whom marriage to be celebrated. Cf. 15, 1867, s. 28.

(2) In the case of death, illness, or absence of the person named in the marriage notice as the person by or in the presence of whom the marriage is to be celebrated, the marriage may be celebrated by any other person authorized under this Act to celebrate marriages: Provided that such other person shall not celebrate the marriage unless—

- (a) he is in possession of the marriage notice which has been indorsed by the principal registrar that the statements therein contained have been examined and that such corrections (if any) as are necessary have been made thereto; or
- (b) he is informed by the principal registrar or is satisfied that the principal registrar has informed the person to whom the marriage notice was given, that the statements therein contained have been examined and that such corrections (if any) as are necessary have been made thereto.

31. (1) A marriage shall not be celebrated unless and until each of the parties about to be married has made before the person celebrating the marriage a declaration in accordance with form No. 1 or form No. 2 in the third schedule indorsed upon one of the copies of the certificate of marriage or a declaration with such modifications as the circumstances may require. The declaration shall be signed by each of the parties about to be married and by the person celebrating the marriage.

Declaration. Cf. 243, 1882, s. 11 (part). Cf. U.K. 61 & 62, Vict. c. 58, s. 6.

(2) One of the copies of every certificate of marriage shall bear the following footnote printed in red ink:—

“NOTE.—The declaration on the back hereof must be duly made and signed, otherwise the person celebrating the marriage shall be guilty of an offence.”

(3) The principal registrar, deputy registrar, district registrar, officiating minister, or officiating registrar, as the case may be, is hereby authorized to take any such declaration.

PART III.

Method of celebration.

243, 1882, ss. 5 and 15

(part).

Cf. U.K.

4 Geo. 4

c. 76, ss. 2,

10.

Cf. U.K.

6 & 7 Will. 4

c. 85, s. 20.

Cf. U.K.

49 & 50

Vict. c. 14.

Cf. U.K.

24 & 25

Geo. 5 c. 13,

s. 1.

Cf. U.K.

4 Geo. 4

c. 76, s. 28.

Cf. U.K.

6 & 7 Will. 4

c. 85, s. 1.

32. (1) All marriages—

(a) shall be celebrated in the building and between the parties described in the marriage notice by or in the presence of the principal registrar, deputy registrar, district registrar, officiating minister, or officiating registrar according to such form or ceremony as the parties think fit to adopt:

(b) shall take place with open door:

(c) shall take place in the presence of at least two witnesses apparently of a mature age.

(2) Any marriage celebrated by an officiating minister may be celebrated according to the usage and forms of the religious denomination to which he belongs, and the signature of the officiating minister to the certificate of marriage in the form in the fifth schedule shall be conclusive evidence that the marriage was celebrated according to the said usage and forms.

(3) No officiating minister or officiating registrar shall be compelled to celebrate any marriage in any case where he has any conscientious objection to so doing.

(4) When any marriage is celebrated by the principal registrar or deputy registrar, or any district registrar or officiating registrar, in some part of the ceremony, in the presence of the principal registrar, deputy registrar, district registrar, or officiating registrar and the witnesses, each of the parties shall say unto the other:—"I call upon those persons here present to witness that I, A.B., do take thee, C.D., to be my lawful wedded wife (or husband)" or words to that effect.

(5) No person shall celebrate any marriage of any parties to the marriage of whom there is, in the knowledge of the said person, any lawful impediment.

Marriage certificates.

15, 1867,

s. 33.

Cf. U.K.

6 & 7 Will. 4

c. 85, s. 23.

Cf. U.K.

61 & 62

Vict. c. 58,

s. 7.

33. (1) The principal registrar, deputy registrar, and every district registrar, officiating minister, or officiating registrar, shall make out in triplicate a certificate according to the form contained in the fifth schedule of every marriage celebrated by or before him.

s. 32. THE QUEEN v. GREEN (1880) 14 S.A.L.R. 10; 10 Austn. Digest 292. Observations as to (a) the satisfaction of the requirements of subsection (4) by the marriage service of the Church of England; (b) the presumption that a clergyman is authorized to celebrate marriages; and (c) the probable validity of a marriage even if the requirements of the Act are not strictly complied with.

R. v. HAYWARD, 22nd February, 1894, S.A. *Advertiser* (newspr.); 10 Austn. Digest 291. As to the probable invalidity of a marriage celebrated in a church with closed doors.

(2) The parties contracting the marriage, and also the witnesses thereto, shall sign or attest their full names and places of abode on all the certificates.

(3) The principal registrar, deputy registrar, district registrar, officiating minister, or officiating registrar, shall also sign his name on all the certificates, and shall deliver one of the certificates immediately after the marriage to one of the parties thereto, and shall also within seven days forward another of the certificates to the district registrar of the district in which the marriage is celebrated, and the third copy of the certificate, together with the declarations signed by the parties to the marriage, and the written consent of the parent or guardian (if any), to the principal registrar.

(4) The principal registrar and every district registrar shall preserve all such certificates, numbering them in consecutive series according to their dates, and shall from time to time cause them, so arranged, to be bound up in convenient volumes to constitute respectively the general and district registers of marriages. The principal registrar shall also preserve amongst the records of his office all such notices and declarations forwarded to him as aforesaid.

(5) The principal registrar may destroy any marriage notices deposited with him pursuant to this Act and any licences deposited with him pursuant to any repealed Act after the lapse of such period as is from time to time fixed by the Minister.

34. Every district registrar, officiating minister, and officiating registrar shall within fourteen days after each of the first days of January, April, July, and October in every year, forward to the principal registrar a report authenticated by his signature of all marriages by him performed during the preceding three months, or a *nil* account if no marriages have been performed by him within that period.

Quarterly return of marriages. Cf. 15, 1867, s. 34.

35. If any ceremony of marriage is performed between two persons who are already married to each other and whose marriage has not been dissolved, the person performing the ceremony of marriage shall not, if he has knowledge of the former marriage—

Procedure on re-marriage. Cf. N.S.W. 1, 1925, s. 3.

(a) use the form of certificate of marriage in the fifth schedule; or

(b) certify that a marriage has been celebrated by him between the said persons without in any certifi-

PART III.

cate he may give making reference to the fact that the said persons have already been lawfully married.

Fees for marriages.
Cf. U.K. 6 & 7 Will. 4 c. 85, s. 22.
Cf. U.K. 61 & 62 Vict. c. 58, s. 9.

36. (1) There shall be payable for the giving of every marriage notice to and the celebration of every marriage by the principal registrar, the deputy registrar, or a district registrar the fees prescribed in the sixth schedule. No fee shall be payable to the principal registrar where a marriage notice is forwarded to him by a district registrar, officiating minister, or officiating registrar.

(2) Any charge or fee may be made or received by any officiating minister or officiating registrar for the celebration of any marriage and any such charge or fee may be retained by the officiating minister or officiating registrar.

PART IV.

PART IV.

VALIDITY OF MARRIAGES.

Celebration by person whose registration has been cancelled.
Vic. 3726, 1928, s. 29.

37. No marriage in fact shall be avoided by reason only of the same having been celebrated by a person whose registration has been cancelled pursuant to this Act if either of the parties to the marriage at the time *bona fide* believed that the said person was qualified to celebrate marriages.

Celebration of marriage by minister of religion who is not registered.
Vic. 3726, 1928, s. 31.

38. No marriage in fact celebrated by any minister of religion who is not registered as an officiating minister shall be avoided by reason only of such minister not being so registered if either of the parties to the marriage at the time *bona fide* believed that the minister was qualified to celebrate marriages.

Marriage celebrated without notice.
Vic. 3726, 1928, s. 32.
Cf. U.K. 4 Geo. 4 c. 76, s. 22.
Cf. U.K. 6 & 7 Will. 4 c. 85, s. 42.

39. No marriage in fact shall be avoided by reason of non-compliance with the provisions of section 25 or section 30, or by reason of non-compliance with the provisions of any repealed Act requiring the issue of a licence before the celebration of the marriage.

40. No marriage in fact (whether celebrated before or after the commencement of this Act) shall be avoided by reason of any mere defect or error in the declaration made respecting the same or by reason only of the fact that both or either of the parties to the marriage has not made the said declaration when the identity of the parties to the marriage is not in question.

Defect or error in declaration.
15, 1867, s. 37.
Cf. U.K. 19 & 20 Geo. 5, c. 36.

41. It shall not be necessary in support of any marriage to give any proof that either of the parties previous to the marriage resided within the district wherein the marriage was celebrated or of the consent of any person thereto whose consent is required by law, and no evidence shall be given to prove the contrary in any proceedings touching the validity of the marriage.

Residence of parties to marriage.
15, 1867, s. 37.
Cf. U.K. 3 & 4 Vict. c. 72, s. 2.

42. Every marriage in fact *bona fide* celebrated in South Australia before the first day of March, eighteen hundred and sixty-eight, shall be deemed a legal and valid marriage to all intents and purposes: Provided that no lawful impediment existed at the time of the marriage.

Validity of certain marriages.
15, 1867, s. 5.

43. All marriages between persons within the prohibited degrees of consanguinity or affinity shall be absolutely null and void to all intents and purposes whatsoever.

Marriages within prohibited degrees.
U.K. 5 & 6 Will. 4 c. 54, s. 2.

44. (1) The following and none other shall be the persons who shall be deemed to be within the prohibited degrees of consanguinity and affinity which shall affect at law the validity of a marriage in fact celebrated:—

Degrees of consanguinity and affinity.
U.K. 25 Hen. 8 c. 22.
U.K. 28 Hen. 8 c. 7, s. 7.
U.K. 32 Hen. 8 c. 38.
U.K. 2 & 3 Edw. 6 c. 23.
U.K. 1 Eliz. c. 1, s. 8.
U.K. 21 & 22 Geo. 5 c. 31, s. 1.

i. In relation to a man:—

- Any ancestor or descendant of his.
- His father's wife.
- His grandfather's wife.
- His wife's grandmother.
- His father's sister.
- His mother's sister.
- His wife's mother.
- His wife's daughter.
- His son's wife.
- His sister.
- His son's sons's wife.
- His daughter's son's wife.
- His wife's son's daughter.

His wife's daughter's daughter.

His brother's daughter.

His sister's daughter.

ii. In relation to a woman:—

Any ancestor or descendant of hers.

Her mother's husband.

Her grandmother's husband.

Her husband's grandfather.

Her father's brother.

Her mother's brother.

Her husband's father.

Her husband's son.

Her daughter's husband.

Her brother.

Her son's daughter's husband.

Her daughter's daughter's husband.

Her husband's son's son.

Her husband's daughter's son.

Her brother's son.

Her sister's son.

(2) For the purpose and in the construction of this section "wife" or "husband" means a person who has been a wife or husband (as the case may be) and there shall be no difference between relationship of the whole blood and of the half blood or between legitimate and illegitimate children.

Validity of
marriage with
deceased
wife's sister,
or the
daughter of
the sister.
21, 1870-71,
s. 1.
U.K. 7 Edw.
7 c.47, s. 1.

45. All marriages celebrated within South Australia (whether before or after the commencement of this Act) between any person and the sister of his deceased wife, or the daughter of the sister of his deceased wife, shall be deemed, and are hereby declared valid, and of full force and effect, any law or custom to the contrary notwithstanding: Provided that this section shall not render valid any such marriage in any case where either of the parties to the marriage have thereafter, before the seventh day of June, eighteen hundred and seventy-one, lawfully intermarried with any other person; nor shall the passing of this section, or the Act No. 21 of 1870-71, deprive or be held to have deprived any person of any property which that person may have lawfully inherited prior to the seventh day of June, eighteen hundred and seventy-one, or affect any *lis pendens* at the said date.

46. All marriages celebrated within South Australia (whether before or after the commencement of this Act) between any woman and her deceased husband's brother shall be deemed and are hereby declared valid and of full force and effect: Provided that this section shall not render valid any such marriage in any case where either of the parties to the marriage have thereafter, before the twelfth day of November, nineteen hundred and twenty-five, lawfully intermarried with any other person, nor shall this Act or the Deceased Husband's Brother's Marriage Act, 1925, deprive or be held to have deprived any person of any property which that person may have lawfully inherited before the twelfth day of November, nineteen hundred and twenty-five, or affect any *lis pendens* at the said date.

Validity of marriage with deceased husband's brother.
1672, 1925, s. 2.
U.K. 11 & 12 Geo. 5 c. 24, s. 1.

* * * * *

S. 47 repealed by 51, 1941, s. 12.

PART V.

PART V.

OFFENCES.

48. Any person who—

- (a) knowingly and wilfully makes any false declaration, or signs any false notice for the purpose of procuring any marriage; or
- (b) forges any signature to any document for the purpose of procuring any marriage; or
- (c) when entering a caveat pursuant to section 27 knowingly and wilfully makes or signs any false statement; or
- (d) falsely represents himself or herself to be a person whose consent to any marriage is necessary, knowing the representation to be false,

Penalty on making false declaration or statement.
Cf. 15, 1867, s. 39.
Cf. U.K. 1 & 2 Geo. 5 c. 6, s. 3 (1).

shall be guilty of felony and liable to imprisonment for any term not exceeding three years.

49. Any principal registrar, deputy registrar, or district registrar who knowingly and wilfully registers any marriage which has been celebrated in deliberate contravention of the provisions of this Act, and any principal registrar, deputy registrar, district registrar, officiating minister, or officiating

Registrar wilfully contravening the Act.
15, 1867, s. 41.

registrar who knowingly and wilfully celebrates any such marriage shall be guilty of felony and liable to imprisonment for any term not exceeding five years.

Furnishing false information to be inserted in certificate. 15, 1867, s. 43. Cf. U.K. 6 & 7 Will. 4 c. 85, s. 36.

50. (1) The principal registrar, deputy registrar, district registrar, officiating minister, or officiating registrar, to whom any marriage notice is given or before whom any marriage is celebrated according to the provisions of this Act, may ask the parties to be married the several particulars touching the marriage required to be entered in the marriage notice or certificate thereof, as in this Act provided.

(2) Any person who wilfully makes or causes to be made any false statement touching any of the particulars required to be known and entered as aforesaid shall be guilty of an offence and liable to a penalty not exceeding one hundred pounds.

Destruction or alteration or forgery of register. 15, 1867, s. 45. Cf. U.K. 6 & 7 Will. 4 c. 85, s. 40.

51. Any person who—

- (a) wilfully destroys or injures or causes to be destroyed or injured, any register book of marriages, or any part or certified copy of any part thereof; or
- (b) falsely makes or counterfeits or causes to be falsely made or counterfeited, any part of any such register book or certified copy thereof; or
- (c) wilfully inserts or causes to be inserted, in any such register book or certified copy thereof, any false entry of any marriage; or
- (d) wilfully gives any false certificate relating to a marriage; or
- (e) certifies any writing to be a copy or extract of any such register book, knowing the same to be false in any part thereof; or
- (f) forges or counterfeits the seal or signature of the principal registrar, the deputy registrar, or of any district registrar,

shall be guilty of felony and liable to imprisonment for any term not exceeding five years.

Persons wrongfully obtaining registration as ministers. Vic. 3726, 1928, s. 51.

52. Any person who on the ground that he is a minister of religion exercising the functions of such causes his name to be registered as an officiating minister, he knowing at the time that he is not a minister of religion exercising the

functions of such, shall be guilty of a misdemeanour and liable to imprisonment for any term not exceeding three years.

53. Any minister of religion or person officiating as such who celebrates any marriage, he then not being registered as an officiating minister, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Unregistered minister celebrating marriage.
Vic. 3726, 1928, s. 52.

54. Any person who celebrates a marriage purporting to act as an officiating registrar he then not being qualified to act, shall be guilty of an offence and liable to a penalty not exceeding one hundred pounds.

Pretended officiating registrar celebrating marriage.
Vic. 3726, 1928, s. 53.

55. Any person who celebrates a marriage under the false pretence that he is the principal registrar, the deputy registrar or is a district registrar, officiating minister, or officiating registrar, shall be guilty of a misdemeanour and liable to imprisonment for any term not exceeding three years.

Penalty for pretended principal registrar, etc.

56. Any person duly authorized under this Act to celebrate marriage, who knowingly and wilfully celebrates any marriage in South Australia—

Persons unduly celebrating marriage.

(a) in any place other than the building specified in the marriage notice given in respect thereof; or

15, 1867, s. 40.
Cf. U.K. 4 Geo. 4 c. 76, s. 21.
Cf. U.K. 6 & 7 Will. 4 c. 85, s. 39.

(b) after the expiration of three months from the giving of the marriage notice; or

(c) except in the circumstances mentioned in section 25, before the lapse of ten days after the giving of the marriage notice,

shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

57. Any person duly authorized under this Act to celebrate marriages who knowingly and wilfully celebrates or takes part in the celebration of any marriage in respect of which the marriage notice required by section 25 has not been given, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Penalty for celebrating marriage without marriage notice.

58. Any person duly authorized under this Act to celebrate marriages, who—

(a) knowingly and wilfully, without the written consent of any parent or guardian required to be given pursuant to section 26 (unless such consent has

Penalty for wilfully celebrating marriage without consent of parents or to which there is impediment.
15, 1867, s. 42.

been dispensed with as provided by section 26) celebrates or takes part in the celebration of any marriage wherein one or both of the parties has or have not attained the full age of twenty-one years; or

- (b) knowingly and wilfully purports to celebrate or to take part in the celebration of any marriage to which there is any lawful impediment,

shall be guilty of an offence and liable to a penalty of not less than fifty pounds and not more than five hundred pounds.

Penalty for neglecting to forward marriage notice or certificate.

59. Any district registrar, officiating minister, or officiating registrar, who—

- (a) neglects or refuses to forward to the principal registrar any marriage notice lodged with him, or any report required to be given pursuant to subsection (4) of section 25; or

- (b) neglects or refuses to forward to the principal registrar and district registrar the certificate of any marriage celebrated by him, as provided by this Act; or

- (c) neglects or refuses to furnish any statement required by section 34,

shall be guilty of an offence and liable to a penalty not exceeding ten pounds.

Penalty for not duly registering marriages and for losing registers.
15, 1867, s. 44.

60. Every district registrar who refuses or without reasonable cause omits to register any marriage certificate forwarded to him, and every person having the custody of any register book who loses or injures the same, or wilfully allows the same to be injured whilst in his keeping, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Penalty for celebrating marriage without declaration.
243, 1882, s. 11 (part).

61. Any principal registrar, deputy registrar, district registrar, officiating minister, or officiating registrar who celebrates any marriage without the declaration required by this Act having first been made and signed, shall be guilty of an offence and liable to a penalty not exceeding ten pounds.

Summary procedure for offences.
15, 1867, s. 49.

62. All proceedings for offences against this Act, not being felonies or misdemeanours, shall be disposed of summarily.

PART VI.

PART VI.

MISCELLANEOUS.

63. The principal registrar shall furnish to every district registrar, officiating minister, and officiating registrar, such printed forms as may be necessary to enable them to celebrate and register marriages in conformity with, and otherwise to observe, the provisions of this Act.

Forms to be furnished to registrars, etc.
Of. 15, 1867, s. 32.

64. (1) The principal registrar and every district registrar shall cause indexes of the registry books in his office to be made and kept with the other records of his office.

Index of register.
Of. 15, 1867, s. 32.

(2) Subject to subsection (3), every person shall be entitled at all reasonable hours to require the said indexes to be searched, and to have a certified copy of, or extract from, any entry or entries in the said register books under the hand of the principal registrar or district registrar on payment of the fees mentioned in the sixth schedule.

(3) The principal registrar or the district registrar may, in any case he thinks fit, require the person seeking to have any such search made to disclose the reasons for the search and any other relevant matters and if the principal registrar or district registrar is of opinion that the search is required for improper reasons or that the person requiring the search has no proper reason for making the search, he may refuse to allow the search or to issue any such certified copy or extract.

65. (1) All certified copies of entries purporting to be under the hand and seal of the principal registrar or of any district registrar as aforesaid shall be received as *prima facie* evidence in any court or before any person acting judicially of the marriage to which the same relates without any further or other proof of the entry.

Certified copies to be evidence.
15, 1867, s. 36.
243, 1882, s. 13.
Of. U.K. 6 & 7 Will. 4 c. 85, s. 38.
Of. U.K. 61 & 62 Vict. c. 58, s. 11.

(2) Upon a certificate being made by the principal registrar that the register of marriages for any specified period, and for any particular district is lost or destroyed, then and in all such cases the certificate of the principal registrar under his hand and seal, shall be received as evidence in any court or before any person acting judicially of the matter to which the same relates without further proof being required.

66. (1) If the principal registrar is satisfied by declaration, or in any other manner he thinks fit, that any particular

Correction of errors.

in any register of marriages is incorrect, he may correct the register, which correction shall be signed by him and marked with the date upon which it is made.

(2) If the principal registrar is satisfied that any person whose marriage is registered in any register of marriage is lawfully using a name other than the name by which he is described in the register, the principal registrar may upon payment of the fee mentioned in the sixth schedule cause to be entered in the register a notice of the name first mentioned, which shall be signed by him and marked with the date upon which the entry is made.

(3) Notice of any such correction or entry shall be given by the principal registrar to any district registrar having possession of any register in which the marriage is registered, and the district registrar shall indorse on the relative entry in the register a copy of the correction or entry made as aforesaid by the principal registrar.

(4) Subject to subsection (6) of section 67, if any certified copy or extract from any entry so corrected or altered is issued by the principal registrar or a district registrar, the copy shall be of the entry as so corrected or altered: Provided that in any case in which the principal registrar thinks fit the certified copy shall be a copy of the original entry showing all corrections and alterations made thereon pursuant to this Act or any repealed Act.

Notice of
dissolution of
marriage to
be entered in
marriage
register.
Cf. N.Z. 65,
1920, s. 3.

67. (1) The Master of the Supreme Court shall forward to the principal registrar a certificate of any order made by the Supreme Court whereby any marriage celebrated in South Australia has been finally dissolved or decreed a nullity.

Any number of such certificates may be included in a return to be made by the Master to the principal registrar. The said return shall be made from time to time as thought fit by the Master. The first such return shall include certificates in respect of all orders to which this section applies made after the commencement of this Act, and every subsequent return shall include certificates in respect of all such orders made after the next preceding return.

(2) Every such certificate shall specify the names of the parties and the date and place of marriage, the date of the order, and such other relevant particulars as may be required by the principal registrar.

(3) On receipt of any such certificate the principal registrar shall cause to be entered on the certificate of the

marriage filed in his office a memorandum of the particulars disclosed in the certificate.

(4) If notice in writing is received by the principal registrar from an officer of any competent court within any part of the British dominions other than South Australia or from any officer in whose charge is placed the keeping of any principal register of marriages in that part, that any marriage registered in South Australia has been finally dissolved or decreed a nullity by a competent court in that part, the principal registrar, if satisfied that the marriage has been so dissolved or decreed a nullity, may cause to be entered on the certificate of marriage a memorandum of the particulars disclosed in the notice.

(5) The principal registrar shall forthwith give notice of any entry made pursuant to this section to the district registrar having possession of any register in which the marriage is registered, and the district registrar shall indorse on the relative entry in the register a copy of the entry made as aforesaid by the principal registrar.

(6) Every certified copy of the entry relating to any marriage which has been dissolved or declared a nullity, issued after the receipt by the principal registrar of a certificate or notice under this section, shall contain the particulars in the certificate or notice.

68. Any notice required by this Act to be given by the principal registrar to any officiating minister or officiating registrar may be given by post addressed to the place of residence shown in the register of officiating ministers or officiating registrars, as the case may be, as the usual place of residence of the officiating minister or officiating registrar. Notice.

69. The Minister may from time to time by general or special direction, direct that the whole or any part of any fees paid to any district registrar pursuant to this Act may be retained by the district registrar. Any such direction may be revoked or varied by the Minister. Power to direct retention of fees.

70. The Governor may make regulations— Regulations.

(a) prescribing fees to be paid to the principal registrar or district registrars either in addition to or in substitution for any fees mentioned in the sixth schedule:

Marriage Act, 1936-1944.

- (b) prescribing any duties of officiating ministers and officiating registrars under this Act and requiring the furnishing of information to the principal registrar by officiating ministers or officiating registrars:
- (c) prescribing any forms necessary or convenient, either in addition to, or in substitution for, any forms contained in the schedules:
- (d) prescribing particulars to be furnished pursuant to section 10 or section 12:
- (e) prescribing any matters which may be necessary or convenient for carrying this Act into effect.

SCHEDULES.

THE FIRST SCHEDULE.

Acts Repealed.

Number and Year of Act.	Title or Short Title.	Extent of Repeal.
No. 15 of 1867 ..	The Marriage Act, 1867	The whole.
No. 5 of 1868-9 ..	An Act to amend "The Marriage Act, 1867"	The whole.
No. 21 of 1870-71 ..	An Act to legalize the Marriage of a Man with the Sister, or the Daughter of the Sister, of his Deceased Wife	The whole.
No. 243 of 1882 ..	The Marriage Act Further Amendment Act, 1882	The whole.
No. 929 of 1907 ..	Births, Marriages, and Deaths Registration Amendment Act, 1907	Section 2.
No. 1672 of 1925 .	Deceased Husband's Brother's Marriage Act, 1925	The whole.

THE SECOND SCHEDULE.

Marriage Notice.

To the Principal Registrar of Births, Deaths and Marriages, South Australia. I HEREBY give you notice that a marriage is intended to be celebrated between the parties herein named and described. The marriage is intended to be celebrated on.....the.....day of.....19....

Full Name and Surname of Parties.	Date of Birth.	Where Born.	Full Name and Surname of Fathers of Parties.	Church or Building where Marriage to be Celebrated.	Name and Designation of Person Intended to Celebrate Marriage.

Dated this.....day of.....19....

.....

.....Signature(s) of person or persons giving notice.

Signed before me this.....day of.....19....

.....Officiating Minister.

.....Officiating Registrar.

.....District Registrar.

.....Principal Registrar.

.....Deputy Registrar.

NOTE.—(1) This notice should be given at least 10 days before the wedding is celebrated, except in the circumstances outlined in subsections (4), (5), (6) or (7) of section 25.

(2) If the wedding is not celebrated within three calendar months after this notice is given, the notice becomes void and of no effect and a further notice must be given.

(3) This notice must be forthwith forwarded to the Principal Registrar of Births, Deaths, and Marriages by the person before whom the notice is signed.

THE THIRD SCHEDULE.

FORM No. 1.

Declaration (when parties are above the age of twenty-one years).

I, of in the State of South Australia, do solemnly and sincerely declare that, being about to contract marriage with one of, I believe that there is not any impediment of consanguinity or affinity, or other lawful hindrance, to the said marriage; and that I, the said and the said are both above the age of twenty-one years, and I make this solemn declaration conscientiously believing the same to be true.

Declared and subscribed by the above-named at, this day of, 19 before me,

(Principal Registrar, Deputy Registrar, District Registrar, Officiating Minister, or Officiating Registrar, as the case may be.)

I, the above-named, of declare that I conscientiously believe the above declaration to be true, and hereto subscribe my name.

Declared and subscribed by the above-named, at this day of, 19, before me,

(Principal Registrar, Deputy Registrar, District Registrar, Officiating Minister, or Officiating Registrar, as the case may be.)

Marriage Act, 1936-1944.

FORM No. 2.

Declaration (when one or both parties are under twenty-one years of age).

I, of , in the State of South Australia, do solemnly and sincerely declare that, being about to contract marriage with one of , I believe that there is not any impediment of consanguinity or affinity, or other lawful hindrance, to the said marriage; and that I, the said am* the age of twenty-one years, and the said is* the age of twenty-one years, but the written consent of whose consent to the said marriage is by law required, has been duly obtained. And I make this solemn declaration conscientiously believing the same to be true.

Declared and subscribed by the above-named at , this day of 19 , before me,

(Principal Registrar, Deputy Registrar, District Registrar, Officiating Minister, or Officiating Registrar, as the case may be).

I, the above-named , of declare that I conscientiously believe the above declaration to be true, and hereto subscribe my name.

Declared and subscribed by the above-named , at this day of 19 , before me,

(Principal Registrar, Deputy Registrar, District Registrar, Officiating Minister, or Officiating Registrar, as the case may be).

* Write in "under" or "above," as the case may be.

Amended by 18, 1941, s. 3.

FORM No. 3.

Consent of Parent or Guardian.

I, of do hereby give my full consent to the proposed marriage between and in virtue of my character as to the said who was born at on the day of 19 , and for whose marriage with my consent is by law required.

Dated this day of , 19 .

Signed before me this day of 19 .

-Officiating Minister.
.....Officiating Registrar.
.....District Registrar.
.....Principal Registrar.
.....Deputy Registrar.
.....Justice of the Peace.
.....Commissioner for taking affidavits in the Supreme Court.

NOTE.—Consent is required to the marriage of a person under twenty-one years of age who has not been previously married.

The consent is to be given by the following persons:—

I. Where the infant is legitimate—

Circumstances.	Person whose Consent is Required.
1. Where both parents are living— (a) if parents living together .. (b) if parents are divorced or separated by order of court or by agreement (c) if one parent has been deserted by the other (d) if one parent has been absent from South Australia for at least six months (e) if both parents have been deprived of custody of infant by order of court.	Both parents. The parent to whom the custody of the infant is committed by order of any court or by the agreement, or, if the custody of the infant is so committed to one parent during part of the year and to the other parent during the rest of the year, both parents. The parent who has been deserted. The other parent. The person to whose custody the infant is committed by order of the court.
2. Where there is one parent living— (a) if the infant is in the custody of the surviving parent (b) if the surviving parent has been deprived of the custody of infant by order of court (c) if the infant is in the custody of a guardian	The surviving parent. The person to whose custody the infant is committed by order of the court. The guardian of the infant.
3. Where both parents are dead . . .	The guardian of the infant.

II. Where the infant is illegitimate—

Circumstances.	Person whose Consent is Required.
If the mother of infant is alive . . .	The mother, or if she has by order of a court been deprived of the custody of the infant, the person to whom the custody of the infant has been committed by the order of the court.
If the mother of the infant is dead .	The guardian of the infant.

III. Where the infant has been adopted pursuant to the Adoption of Children Act, 1925—Where an infant, whether of legitimate or illegitimate birth, has been adopted pursuant to the Adoption of Children Act, 1925, the infant shall be deemed to be an infant as referred to in paragraph 1 of above and the adopting parent or parents shall be deemed to be a parent or parents, as the case may require, as referred to in the said paragraph I.

IV. For the purposes aforesaid “guardian” means any person appointed as guardian of an infant pursuant to any order of a court or pursuant to will or deed and any person appointed as, or deemed to be, the guardian of an infant pursuant to or under any Act.

V. “Infant” in the above means a person under the age of twenty-one years.

Marriage Act, 1936-1944.

THE FOURTH SCHEDULE.

Cf. U.K.
15 & 16
Geo. 5 c. 45.
(schedule).

Consents required to the marriage of an infant who has not been previously married—

I. Where the infant is legitimate—

Circumstances.	Person whose Consent is Required.
1. Where both parents are living—	
(a) if parents living together . .	Both parents.
(b) if parents are divorced or separated by order of court or by agreement	The parent to whom the custody of the infant is committed by order of any court or by the agreement, or, if the custody of the infant is so committed to one parent during part of the year and to the other parent during the rest of the year, both parents.
(c) if one parent has been deserted by the other	The parent who has been deserted.
(d) if one parent has been absent from South Australia for at least six months	The other parent.
(e) if both parents have been deprived of custody of infant by order of court	The person to whose custody the infant is committed by order of the court.
2. Where there is one parent living—	
(a) if the infant is in the custody of the surviving parent	The surviving parent.
(b) if the surviving parent has been deprived of the custody of infant by order of court	The person to whose custody the infant is committed by order of the court.
(c) if the infant is in the custody of a guardian	The guardian of the infant.
3. Where both parents are dead . . .	The guardian of the infant.

II. Where the infant is illegitimate—

Circumstances.	Person whose Consent is Required.
If the mother of infant is alive . . .	The mother, or if she has by order of a court been deprived of the custody of the infant, the person to whom the custody of the infant has been committed by the order of the court.
If the mother of the infant is dead . .	The guardian of the infant.

III. Where the infant has been adopted pursuant to the Adoption of Children Act, 1925—Where an infant, whether of legitimate or illegitimate birth, has been adopted pursuant to the Adoption of Children Act, 1925, the infant shall be deemed to be an infant as referred to in paragraph I. of this schedule and the adopting parent or parents shall be deemed to be a parent or parents, as the case may require, as referred to in the said paragraph I.

IV. For the purposes of section 26 and this schedule "guardian" means any person appointed as guardian of an infant pursuant to any order of a court or pursuant to will or deed and any person appointed as, or deemed to be, the guardian of an infant pursuant to or under any Act.

