

Acts reprinted pursuant to the Amendment Incorporation
Act, 1937

EVIDENCE ACT, 1929-1957

WORKMEN'S COMPENSATION ACT, 1932-1958

With notes of judicial decisions affecting sections of the reprinted Acts



EVIDENCE ACT, 1929-1957.

BEING

EVIDENCE ACT, 1929, No. 1907 OF 1929 [ASSENTED TO 30TH OCTOBER, 1929.]

AS AMENDED BY

EVIDENCE ACT AMENDMENT ACT, 1933, No. 2110 OF 1933 [ASSENTED TO 31ST AUGUST, 1933.]

EVIDENCE ACT AMENDMENT ACT, 1940, No. 40 OF 1940 [ASSENTED TO 28TH NOVEMBER, 1940.]

EVIDENCE ACT AMENDMENT ACT, 1941, No. 27 OF 1941 [ASSENTED TO 13TH NOVEMBER, 1941.]

EVIDENCE ACT AMENDMENT ACT, 1945, No. 29 OF 1945 [ASSENTED TO 3RD JANUARY, 1946.]

EVIDENCE ACT AMENDMENT ACT, 1947, No. 5 OF 1947 [ASSENTED TO 2ND OCTOBER, 1947.]

EVIDENCE ACT AMENDMENT ACT, 1949, No. 36 OF 1949 [ASSENTED TO 24TH NOVEMBER, 1949.]

STATUTE LAW REVISION ACT, 1952, No. 42 OF 1952 [ASSENTED TO 4TH DECEMBER, 1952.]

EVIDENCE ACT AMENDMENT ACT, 1955, No. 26 OF 1955 [ASSENTED TO 1ST DECEMBER, 1955.]

AND

EVIDENCE ACT AMENDMENT ACT, 1957, No. 36 OF 1957 [ASSENTED TO 14TH NOVEMBER, 1957.]

An Act to consolidate certain Acts relating to evidence.

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

PART I.

PART I.

PRELIMINARY.

1. This Act may be cited as the "Evidence Act, 1929-1957." Short title.

2. This Act is divided as follows:— Arrangement.

PART I.—Preliminary.

PART II.—Witnesses.

PART III.—Miscellaneous Rules of Evidence.

PART IV.—Public Acts and Documents.

PART V.—Banker's Books.

PART VI.—Telegraphic Messages.

PART VII.—General Provisions.

PART VIII.—Publication of Evidence.

PART I.

Consolidation
and repeal.

3. This Act is a consolidation of certain provisions contained in the Acts mentioned in the first schedule, and the said Acts are hereby repealed to the extent expressed in the said schedule.

Interpretation.
Cf. U.K.
42 & 43 Vict.
c. 11, ss. 9,
10.

4. In this Act, unless some other intention is expressed, or implied by the context—

“bank” and “banker” mean any person, partnership, or company carrying on the ordinary business of banking, and also any savings bank or banking institution established in South Australia under or pursuant to the statute law of the State or of the Commonwealth:

“banker’s book” includes any ledger, day book, cash book, diary, account book, or other book used in the ordinary business of the bank:

“court” includes any court, judge, magistrate, or justice, and any arbitrator or person having authority by law or by consent of parties to hear, receive, and examine evidence:

“judge” includes the member or members of any court having authority to admit evidence:

“legal proceeding” or “proceeding” includes any action, trial, inquiry, cause, or matter, whether civil or criminal, in which evidence is or may be given and includes an arbitration:

“electric telegraph” means any telegraphic line the property and under the control of the Commonwealth Government, and worked by electricity within the Commonwealth:

“telegraphic message” means any message or other communication transmitted, or intended for transmission, or purporting to have been transmitted, by electric telegraph:

“telegraph station” means any station appointed by the Commonwealth Government for the receipt and transmission of telegraphic messages.

5. The provisions of this Act, unless an intention to the contrary is expressed, or appears or is implied by the context—

(a) apply to every proceeding before any court whatever; and

Application
of Act
(*prima facie*)
to all courts
and enabling
only.

- (b) are in addition to, and not in derogation of, any rules of evidence, or power, or right, or duty in relation to procedure or evidence, whether existing at common law, or provided for by any law, at any time, in force in the State.

PART II.

PART II.

WITNESSES.

6. Subject to the provisions of this Act, and unless the person to whom an oath is administered requests that the oath be administered in some other manner, an oath, whether in judicial proceedings or otherwise, shall be administered and taken in the following manner, namely:—

Ordinary manner of taking oath. 1056, 1911, s. 3. Cf. U.K. 9 Edw. 7 c. 39, s. 2.

The person taking the oath shall, standing up, hold a copy of the Bible (New Testament or Old Testament) in his hand, and, after the oath has been tendered by the officer administering the same, shall utter the words "I swear":

Provided that no oath shall be deemed illegal or invalid by reason of any breach of this section.

7. Notwithstanding anything in this Act or any other Act or law—

Oaths may be taken in other forms. 1056, 1911, s. 4.

- i. An oath, whether in judicial proceedings or otherwise, may be administered and taken in any form and in any manner which would have been lawful if this Act had not been passed:
- ii. Every such oath shall be binding for all purposes if it is administered and taken in any form and in any manner which the person taking the same declares to be binding:
- iii. Where any such oath has been administered and taken, the fact that the person taking the same had at the time no religious belief shall not for any purpose affect the legality or validity of the oath.

Cf. U.K. 51 & 52 Vict. c. 46, s. 5.

8. (1) Every person upon objecting to be sworn, and stating, as the ground of such objection either—

Affirmation in lieu of oath. 1669, 1925, s. 4. Cf. U.K. 51 & 52 Vict. c. 46, s. 1.

- (a) that he has no religious belief; or
- (b) that the taking of an oath is contrary to his religious belief, or to his conscience,

shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is required by law.

(2) Every such affirmation shall be of the same force and effect as if the oath had been taken, and if any person making any such affirmation shall falsely affirm any matter or thing he shall be liable to prosecution, indictment, sentence, and punishment, as if he had taken the oath.

Of. U.K.
51 & 52 Vict.
c. 46, s. 2.

(3) Every such affirmation shall be as follows, or to the effect following:—

“I, A.B., do solemnly and truly declare and affirm”
and then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness.

Aborigines
may give
evidence with-
out oath in
certain cases.
3, 1848, ss. 2,
7, 10.

9. (1) Any aboriginal native of Australia, whether of full blood or half-caste, or mixed breed, who is uncivilised and appears on examination not to believe either in a God or a future state of reward or punishment, and who further appears not to understand the obligation of an oath, may give evidence without an oath and without any formality.

(2) Before the judge receives such testimony, he shall cause it to be explained to such uncivilised person that he is required to tell what he knows about the matter to which his testimony relates.

(3) The judge may receive the testimony of any such uncivilised person by means of the interpretation of another such uncivilised person without administering to him any oath duly to interpret such testimony: Provided that the judge shall be satisfied of the ability of the person offered as interpreter duly to interpret the same.

(4) The testimony of any such uncivilised person if reduced to writing and verified by the judge in like manner as testimony under section 11 is required to be verified shall be receivable as evidence if under the circumstances the written affidavit or deposition upon oath of any person might be lawfully read and received.

Complaint or
information
without oath
in like cases.
3, 1848, s. 4.

10. A justice may take the complaint or information of any such aboriginal without administering any form of oath, and without formality, and any complaint or information so taken shall be reduced to writing and verified by the signature of the justice, and all further acts and proceedings may be done and had thereupon as if it had been taken upon oath.

11. (1) The deposition of every aboriginal who gives unsworn testimony upon any proceeding in the nature of a preliminary inquiry shall be reduced into writing by or in the presence of the magistrate, justice, or coroner who shall verify such deposition by his certificate thereon according to the form in the second schedule.

Deposition of unsworn aboriginal.
3, 1848, ss. 3 and 5.

(2) Upon any trial or hearing (whether civil or criminal) the deposition, so verified, shall be receivable as evidence if, under the circumstances, the written affidavit or deposition upon oath of any person might be lawfully read or received.

12. In every prosecution for any offence where the testimony of a child under the age of ten years may be required, the judge shall receive such testimony without administering any form of oath, and without any formality, except that he shall, before receiving such testimony, explain to such child that he or she is required to truthfully tell what he or she knows about the matter to which his or her testimony relates; and the testimony so taken shall be available as evidence for all purposes whatsoever: Provided that if such testimony is taken by a coroner or justice of the peace, it shall be reduced to writing, and be certified under the hand of such coroner or justice.

Unsworn testimony of children may be received in certain cases.
38, 1876, s. 377.
1669, 1925, s. 6.
Cf. U.K. 8 Edw. 7 c. 67, ss. 28, 30.
Cf. U.K. 23 Geo. 5 c. 12, s. 38.

13. (1) Such weight and credibility shall be given to the unsworn evidence of an aboriginal or a child as ought to be attached thereto as evidence given without the sanction of an oath.

Effect of the evidence so given.
3, 1848, s. 6.
38, 1876, s. 378.

s. 12. THE QUEEN v. MONTANA (1885) 19 S.A.L.R. 4; 6 A.L.T. 232; 5 Austn. Digest 826. Where a child stated that she did not know the difference between truth and falsehood held that her evidence was not admissible.

SLAPE v. BYRNE (1918) S.A.L.R. 313; 5 Austn. Digest 827. "Misdemeanour" in section 377 of The Criminal Law Consolidation Act, 1876, construed to cover an offence punishable summarily.

R. v. YOUNG (1923) S.A.S.R. 35; 5 Austn. Digest 827; 8 Austn. Digest 479. On a trial for sodomy a boy was sworn and his evidence received after the trial judge had inspected the boy to ascertain his age and the boy had stated that he was ten years of age. On the hearing in the police court he had stated his age was nine years and nine months old. The trial judge treated these statements as evidence, but adopted the course which it was proper to follow on the assumption that the age had not been sufficiently proved by inquiring whether the boy understood the consequences of falsely swearing. The boy's answers being satisfactory he was allowed to give evidence on oath. Held, in the circumstances, that the course adopted by the trial judge was right.

SPOONER v. TAYLOR (1926) S.A.S.R. 396; 5 Austn. Digest 827. The absence of a certificate under section 12 does not in itself invalidate a conviction obtained on the evidence of young children. A child of ten in giving evidence said in cross-examination, "I know I have got to tell the truth. I know where you go when you don't tell the truth: to gaol." Held that this answer was not inconsistent with an understanding of the nature and quality of an oath, although showing no appreciation of reward and punishment in a future state, and that the evidence was admissible.

s. 13. R. v. FREDELLA (1957) S.A.S.R. 102. Held on the facts that the omission of the trial judge to direct the jury as to the requirement of subsection (2) of section

Subsec (2)
inserted by
26, 1955,
s. 3.

(2) Where the evidence of a child admitted by virtue of section 12 of this Act is given on behalf of the prosecution, and the accused denies the offence on oath, the accused shall not be convicted of the offence unless the evidence of the child is corroborated in some material particular by evidence implicating him.

Aboriginal
wilfully mak-
ing false state-
ment not on
oath.

3, 1848, s. 8.
Cf. U.K.
8 Edw. 7
c. 67, s. 30,
proviso (b).

14. If any uncivilised person mentioned in section 9 shall, in giving his information or testimony in manner in such section mentioned, wilfully make any false statement which if made upon oath would subject him to the penalties of perjury, he shall be deemed guilty of a misdemeanour, and be liable to be imprisoned for any term not exceeding two years, and further to be once, twice, or thrice publicly or privately whipped.

Witness not
disqualified by
interest or
crime.

Cf. U.K.
6 & 7 Vict.
c. 85, s. 1
(part).
2, 1852, s. 1.

15. No person shall be excluded from giving evidence on the ground—

(a) that he has or may have an interest in the matter in question or in the event of the proceeding, or

(b) that he has previously been convicted of any crime or offence.

Parties, their
wives and
husbands
competent and
compellable in
civil proceed-
ings.

2, 1852, s. 2.
3, 1867,
s. 57.
10, 1869-70,
s. 1.
Cf. U.K.
14 & 15 Vict.
c. 99, s. 2.
Cf. U.K.
16 & 17 Vict.
c. 83, s. 1.

16. In any proceeding not being a criminal proceeding the parties thereto and the persons on whose behalf such proceeding is brought or defended, and the husbands and wives of such parties or persons respectively, shall, subject to the provisions of this Act, be competent and compellable to give evidence on behalf of either or any of the parties to such proceeding.

S. 17
repealed by
26, 1955,
s. 4.

* * * * *

s. 13. 13 as to corroboration of a child's unsworn evidence might have had some influence in determining the jury to bring in a verdict of murder instead of manslaughter. (contd.)

s. 16. DEE v. DALL (1919) S.A.L.R. 167; 8 Austr. Digest 311. Communications made since marriage between husband and wife are not privileged from discovery.

18. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person: Provided as follows:—

- i. A person so charged shall not be called as a witness in pursuance of this Act except upon his own application:
- ii. The failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution:
- iii. The wife or husband of the person charged shall not, save as herein mentioned, be called as a witness in pursuance of this Act, except upon the application of the person so charged:
- iv. Nothing herein contained shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage:
- v. A person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged:
- vi. A person charged and called as a witness in pursuance of this Act shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence

Accused persons (and wife or husband) competent to give evidence upon application of accused.

1669, 1925, s. 12.
Cf. U.K. 14 & 15 Vict. c. 99, s. 3.
Cf. U.K. 61 & 62 Vict. c. 36, s. 1.

Cf. U.K. 16 & 17 Vict. c. 83, s. 3.

- s. 18. R. v. LYNCH (1919) S.A.L.R. 325; 5 Austr. Digest 840. As to comment upon the omission of prisoner to give evidence and as to warning to the jury that the prisoner is not to be assumed guilty because of the omission to give evidence. (Since this decision paragraph II. of section 18 above has been enacted and the proviso to section 1 of the Accused Persons Evidence Act, 1882, repealed.)
- R. v. PHILLIPS (1922) S.A.S.R. 276; 5 Austr. Digest 823. Where a wife was charged with wounding with intent to murder her husband, the husband was held to be a competent but not a compellable witness against the wife. As to the duty of the judge to caution the witness that he is not obliged to give evidence. Since this decision sections 18 and 21 have been enacted as above.
- s. 18. VI. LAMPARD v. WEST (1926) S.A.S.R. 293; 5 Austr. Digest 858. Questions proving the defendant to have been a bookmaker do not tend to show that he has committed or been convicted of or been charged with an offence or that he is of bad character.
- R. v. BAXTER (1927) S.A.S.R. 321; 5 Austr. Digest 858. Held that questions not directed to show an accused's bad character, but to prove his guilty knowledge,

Evidence Act, 1929-1957.

other than that wherewith he is then charged, or is of bad character, unless—

(a) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or

(b) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or

(c) he has given evidence against any other person charged with the same offence:

VII. Every person called as a witness in pursuance of this Act shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence:

VIII. Nothing herein contained shall affect the provisions of section 110 of the Justices Act, 1921, or any right of the person charged to make a statement without being sworn.

s. 18. which was one of the issues, were not inadmissible because they may also tend
(contd.) to show his bad character.

JOHNSON v. NOBLET (1929) S.A.S.R. 385; 5 Austn. Digest 858. There is ground for quashing a conviction where questions are asked about a previous conviction without a foundation being laid as required by paragraph VI.

HEWITT v. LENTHALL (1931) S.A.S.R. 314; 5 Austn. Digest 856. A statement by the defendant that witnesses for the prosecution had told lies does not amount to an imputation on the character of the witnesses for the prosecution.

R. v. TURNER (1947) S.A.S.R. 74. Special leave to appeal to the High Court refused 73 C.L.R. 775 (note). Upon a charge of an offence involving homosexuality, the question was whether the admitted association between the accused and a boy was innocent or guilty. Held (1) that the accused might be asked whether he had ever suffered from the temptation to indulge in homosexual practices but, (2) that questions could not be put tending to show that he had in the past been actually addicted to such practices.

R. v. HACKETT (1955) S.A.S.R. 137. Held that cross examination of the accused as to a shooting not connected with the charge tended to show that he was of bad character and was an infringement, although not a serious one, of the prohibition of such questions in section 18.

THE QUEEN v. LAMBERT AND HILL (1957) S.A.S.R. 341. Where the defendant absconded from bail and was cross examined on this subject, held that questions tending to show that an accused person is of bad character may be asked of him if they are relevant to the question whether or not he committed the offence charged or to test the veracity of his evidence in chief, and that cross examination of the defendant as to his reason for absconding from bail was not prohibited by section 18.

19. Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

Accused if only witness to be called on close of case for prosecution.

1669, 1925, s. 13.
U.K. 61 & 62
Vict. c. 36,
s. 2.

20. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

Evidence of accused not to give right of reply to prosecution.

1669, 1925, s. 14.
U.K. 61 & 62
Vict. c. 36,
s. 3.

21. (1) The wife or husband of a person charged with an offence under any enactment mentioned in the third schedule hereto may be called as a witness either for the prosecution or defence, and without the consent of the person charged and shall only as regards the age or relationship of any child of the husband or wife be compellable.

Wife or husband compellable in certain cases.

1669, 1925, s. 15.
U.K. 61 & 62
Vict. c. 36,
s. 4.

Amended by 2110, 1933, s. 2.

(2) Nothing herein contained shall affect the operation of any Statute or rule of law in a case where—

- (a) the person charged with an offence is compellable to give evidence by virtue of the provisions of any enactment specially applicable to the case; or
- (b) the wife or husband of a person charged with an offence may, either under any enactment specially applicable to the case, or at common law, be called as a witness without the consent of that person.

22. In any proceeding in any court, whether civil or criminal, the judge may disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious and not relevant to any matter proper to be inquired into in the proceeding.

Certain questions may be disallowed.
485, 1888,
s. 2.

- s. 19. R. v. MYLES FLYNN (1902) S.A.L.R. 57; 5 Austn. Digest 1153. Held that a prisoner defended by counsel had a right to make a statement, but not after the close of the Crown's case in rebuttal.
- R. v. GILLEN (1914) S.A.L.R. 195; 5 Austn. Digest 1153. Held that an accused person who is defended by counsel and intends to call witnesses, is entitled to make a statement to the jury but he must do so at the close of his counsel's opening, and before his witnesses are called. If a prisoner is defended by counsel but does not intend to call witnesses his statement should be made before counsel sum up to the jury.
- R. v. RICHARDS, McDONALD AND AUNGER (1918) S.A.L.R. 315; 5 Austn. Digest 1153. Where there are other witnesses for the defence, the accused may be called after they have given evidence, but it is desirable that the accused should be the first witness.
- s. 20. REX v. PETERSEN (1911) S.A.L.R. 30; 5 Austn. Digest 1153. Held under section 4 of the Accused Persons Evidence Act, 1882, that where the accused gave evidence and called evidence as to character, he did not lose his right of reply.

PART II.

Rules as to
relevancy.
435, 1888,
s. 3.

23. In deciding whether a question affecting the credibility of a witness is relevant, or ought to be allowed, the judge shall have regard to the following considerations:—

- i. Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies:
- ii. Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect only in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies:
- iii. Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

Disallowance
of certain
questions in
cross-
examination.
1669, 1925,
s. 17.
Cf. W.A. 28,
1906, s. 25
(1).

24. (1) If any question put to a witness upon cross-examination relates to a matter not relevant to the proceeding, except in so far as it affects the credit of the witness by injuring his character, it shall be the duty of the court to decide whether or not the witness shall be compelled to answer it, and the court may, if it thinks fit, inform the witness that he is not obliged to answer it.

(2) In exercising this discretion the court shall have regard to the considerations referred to in section 23.

Disallowance
of scandalous
and insulting
questions.
1669, 1925,
s. 18.
Cf. W.A. 28,
1906, s. 26.

25. The court may forbid any question it regards as—

- (a) indecent or scandalous, although the question may have some bearing on the case before the court, unless the question relates to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed; or
- (b) intended to insult or annoy, or needlessly offensive in form, notwithstanding that the question may be proper in itself.

Proof of
previous con-
viction of
witness may
be given.
24, 1855-6,
s. 19.
13, 1866-7,
s. 6.
Cf. U.K.
28 & 29 Vict.
c. 18, s. 6.

26. A witness may, subject to any other provisions of this Act, be questioned as to whether he has been convicted of any felony or misdemeanour, and upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, it shall be lawful for the cross-examining party to prove such conviction.

27. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but if the judge is of opinion that the witness is adverse, the party may—

- (a) contradict the witness by other evidence; or
 (b) by leave of the judge, prove that the witness has made, at any other time, a statement inconsistent with his present testimony: Provided that, before giving such last-mentioned proof, the circumstances of the supposed statement sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made the statement.

How far a party may discredit his own witness.
 24, 1855-6, s. 16.
 13, 1866-7, s. 3.
 U.K. 28 & 29 Vict. c. 18, s. 3.

28. If any witness, upon cross-examination as to a former statement made by him, relative to the subject matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made the statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made the statement.

Proof of contradictory statements of adverse witness.
 24, 1855-6, s. 17.
 13, 1866-7, s. 4.
 Cf. U.K. 28 & 29 Vict. c. 18, s. 4.

29. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without the writing being shown to him; but if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: Provided always, that the judge, at any time during the trial, may require the production of the writing for his inspection; and may thereupon make such use of it, for the purposes of the trial, as he thinks fit.

Cross-examination as to previous statements in writing.
 24, 1855-6, s. 18.
 13, 1866-7, s. 5.
 Cf. U.K. 28 & 29 Vict. c. 18, s. 5.

PART III.

PART III.

MISCELLANEOUS RULES OF EVIDENCE.

30. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court as evidence of the genuineness or otherwise of the writing in dispute.

As to comparison of disputed writing.
 24, 1855-6, s. 21.
 13, 1866-7, s. 8.
 U.K. 28 & 29 Vict. c. 18, s. 8.

PART III.

Attesting witness need not be called in certain cases.

24, 1855-6, s. 20.
13, 1866-7, s. 7.
U.K. 28 & 29 Vict. c. 18, s. 7.

Plaintiff's evidence of promise to marry requires corroboration.
10, 1869-70, s. 2.
U.K. 32 & 33 Vict. c. 68, s. 2.

Discoveries in actions for libel.
1669, 1925, s. 26.

Admissions by accused persons.

1669, 1925, s. 16.
Of U.K. 23 & 24 Geo. 5, c. 41, s. 20.

Proof of commission of offence.

Inserted by 29, 1945, s. 3.

31. It shall not be necessary to prove, by the attesting witness, any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto.

32. No plaintiff in any action for breach of promise of marriage shall recover a verdict unless his or her testimony shall be corroborated by some other material evidence in support of such promise.

33. In any action for damages arising out of the publication of any alleged libel and upon any application for discovery, as to any matter relating to the fact of publication as alleged, the defendant shall not be entitled to object to answer upon the ground of tendency to criminate, but shall be compellable to make discovery, unless it appears that there is a reasonable probability of criminal proceedings being instituted against him: Provided always that such discovery shall not be made use of as evidence or otherwise in any other action or proceedings against the defendant.

34. A person may admit on his trial any fact alleged or sought to be proved against him, and such admission shall be sufficient proof of the fact without other evidence: Provided that the admission shall be made by the accused either personally or by his counsel or solicitor in his presence, or, in the case of a body corporate, by its counsel or solicitor.

34a. Where a person has been convicted of an offence, and the commission of that offence is in issue or relevant to any issue in a civil proceeding, the conviction shall be evidence of the commission of that offence admissible against

s. 33. *BECKER v. SMITH'S NEWSPAPER LIMITED AND ANOTHER* (No. 1) (1931) S.A.S.R. 1. Affirmed by *BECKER v. SMITH'S NEWSPAPERS LIMITED* (No. 2) (1931) S.A.S.R. 137; 7 Austr. Digest 523. Held that section 33 is not merely declaratory of the law, but makes a uniform rule for all trials of libel, that the defendant cannot object to give discovery as regards any matter relating to the fact of publication unless there is a reasonable probability of criminal proceedings being instituted against him. "Application for discovery" means the application to the defendant which is implied when an order for discovery of documents or interrogatories for his examination is or are served upon him. A "reasonable probability" must be real and substantial likelihood that criminal proceedings will be instituted against the defendant. The onus of establishing that probability rests on the person objecting to give discovery. Evidence directed to establishing this probability need not necessarily be adduced; the nature of the libel, circumstances previously given in evidence, and arguments founded on these may establish the reasonable probability.

s. 34a. *HARTLEY v. HARTLEY* (1948) S.A.S.R. 39. Section 34a is not limited in its operation to convictions by South Australian courts, but applies also to convictions by courts outside South Australia.

the person convicted or those who claim through or under him but not otherwise: Provided that a conviction other than upon information in the Supreme Court shall not be admissible unless it appears to the court that the admission is in the interests of justice.

34b. Where in any proceedings in the Supreme Court in its matrimonial causes jurisdiction a person has been found guilty of adultery, the decree or order of the court reciting or based upon that finding shall be admissible in any subsequent proceedings in the Supreme Court in its matrimonial causes jurisdiction as evidence of the adultery as against that person, notwithstanding that the parties to the proceedings in which the finding is tendered are not the same as in the proceedings in which the decree or order was made.

Proof of adultery.
Inserted by
29, 1945,
s. 3.

34c. (1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say—

Admissibility of documentary evidence as to facts in issue.
Inserted by
36, 1949,
s. 3.

(i) if the maker of the statement either—

- (a) had personal knowledge of the matters dealt with by the statement; or
- (b) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and

(ii) if the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if

s. 34c. *MERICKA v. MERICKA* (1954) S.A.S.R. 74. Held that a declaration by a person that he had been present at a wedding in Czechoslovakia was admissible in evidence under section 34c but that a declaration by another person that he had seen an advertisement of the wedding was not admissible in evidence.

all reasonable efforts to find him have been made without success.

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) of this section shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence—

- (a) notwithstanding that the maker of the statement is available but is not called as a witness;
- (b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a legally qualified medical practitioner and when the proceedings are with a jury, the court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

34d. (1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

Weight to be attached to evidence.
Inserted by 36, 1949, s. 3.

(2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Act shall not be treated as corroboration of evidence given by the maker of the statement.

34e. Subject as hereinafter provided, in any proceedings, whether civil or criminal, an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive: Provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

Proof of instrument to validity of which attestation is necessary.
Inserted by 36, 1949, s. 3.

34f. In any proceedings, whether civil or criminal, there shall, in the case of a document proved, or purporting to be not less than twenty years old, be made any presumption which immediately before the commencement of this Act would have been made in the case of a document of like character proved, or purporting, to be not less than thirty years old.

Presumptions as to documents twenty years old.
Inserted by 36, 1949, s. 3.

34g. (1) In sections 34c to 34f (inclusive) of this Act—

Interpretation and savings.
Inserted by 36, 1949, s. 3.

“document” includes books, maps, plans, drawings and photographs:

“statement” includes any representation of fact, whether made in words or otherwise:

“proceedings” includes arbitration and references, and “court” shall be construed accordingly.

(2) Nothing in sections 34c to 34f (inclusive) of this Act shall—

(a) prejudice the admissibility of any evidence which would apart from the provisions of those sections be admissible; or

- (b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if those sections had not been enacted.

Evidence of access or non-access.

Inserted by 36, 1949, s. 3.

34h. In any proceedings a husband or wife may give evidence proving or tending to prove that he or she did or did not have sexual relations with his or her spouse, notwithstanding that any such evidence would prove or tend to prove that any child born to the wife during marriage was illegitimate.

PUBLIC ACTS AND DOCUMENTS.

Proof of act done by Governor or Minister.

1669, 1925, s. 19.

35. Where by any law at any time in force the Governor or a Minister of the Crown is authorised or empowered to do any act whatsoever, production of the *Government Gazette* purporting to contain a copy or notification of any such act shall be evidence of such act having been duly done.

Proof of votes and proceedings of Parliament.

1669, 1925, s. 9.
Of U.K.
45 & 46 Vict.
c. 9, s. 2.

36. All documents purporting to be copies of the votes and proceedings or journals or minutes of either House of Parliament, or of papers presented to either House of Parliament, if purporting to be printed by the Government Printer, shall on their mere production be admitted as evidence thereof.

Proof of orders-in-Council, etc.

Substituted by 36, 1957, s. 3.

37. (1) In this section "order-in-Council" means proclamation, commission, order, by-law, rule, or regulation issued or made by the Government or by or under the authority of a Minister.

(2) Evidence of the making and contents of an order-in-Council may be given by production of—

- (a) a document purporting to be a copy of the *Gazette* containing the order-in-Council; or
- (b) a document purporting to be a copy of the order-in-Council and purporting to be printed by the Government Printer or by the authority of the Government of the State; or

s. 35. *FOX v. ALLCHURCH* (1927) S.A.S.R. 328. Affirming *FOX v. ALLCHURCH* (1926) S.A.S.R. 384. Affirmed by *FOX v. ALLCHURCH* (1927) 40 C.L.R. 135. Section 35 applies only to acts of the Governor or a Minister of the Crown and not to an act of the Board of Governors of the Botanic Garden even though a Minister gives the notification of the act.

(c) a document purporting to be certified by the Secretary to the Attorney-General as a true copy of the order-in-Council.

(3) The date printed on a copy of the *Gazette* and apparently intended to indicate the date of the publication of the *Gazette* shall be evidence that any order-in-Council contained in such *Gazette* was published on that date.

(4) A statement in any such document as mentioned in paragraph (b) or (c) of subsection (2) of this section as to the date of publication of the order-in-Council set out therein shall be evidence that such order-in-Council was published on that date.

(5) This section shall also apply in relation to any act, matter or thing which is directed by any Act of Parliament to be notified or published in the *Gazette*, in the same way as it applies to orders-in-Council.

37a. The mere production of a paper purporting to be the *Gazette* shall in all courts be evidence that the paper is the *Gazette* and was published on the day on which it bears date.

Proof of
Gazette.
Inserted by
36, 1957,
s. 4.

37b. The mere production of a paper purporting to be printed by the Government Printer or by the authority of the Government of the State shall in all courts be evidence that the paper was printed by the Government Printer or by such authority.

Proof of
printing by
Government
Printer.
Inserted by
36, 1957,
s. 4.

38. (1) Evidence of any proclamation, treaty, or other act of State, of any foreign State, or in any part of His Majesty's Dominions outside the Commonwealth and other than the United Kingdom, may be given by the production of a document, purporting to be a copy thereof and—

Foreign and
Colonial Acts
of State,
judgments,
etc., provable
by copies.
2, 1852, s. 5.
1669, 1925,
s. 3.
Cf. U.K.
31 & 32 Vict.
c. 37, s. 2.
Cf. U.K.
23 Geo. 5,
s. 4.

(a) proved to be an examined copy thereof; or

(b) purporting to be sealed with the seal of the foreign State or of the said part of His Majesty's Dominions.

(2) Evidence of any judgment, decree, order or other judicial proceeding of any court of justice in the United Kingdom or in any foreign State or part of His Majesty's Dominions outside the Commonwealth and other than the United Kingdom (including any affidavit, pleading, or other legal document filed or deposited in the court) may be given by the production of a document purporting to be a copy thereof; and

- (a) proved to be an examined copy thereof; or
- (b) purports to be signed and certified as a true copy or
or
- (c) purporting to be signed by a judge of such court with
a statement in writing attached by him to his
signature that such court has no seal, and without
proof of his judicial character, or of the truth of
such statement.

(3) If any such document as aforesaid purports to be sealed or signed as aforesaid it shall be admissible without proof of the seal or of the signature as the case may be.

Public documents provable by examined or certified copy. 2, 1852, s. 8. U.K. 14 & 15 Vict. c. 99, s. 14.

39. (1) Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no Act exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence,

- (a) if it is proved to be an examined copy or extract; or
- (b) purports to be signed and certified as a true copy or
or extract by the officer to whose custody the
original is entrusted.

(2) Every such officer is hereby required to furnish such certified copy or extract to any person applying for the same at a reasonable time, upon payment of a reasonable sum for the same, not exceeding sixpence for every folio of ninety words.

Proof of documents by examined or certified copies. 2, 1852, s. 9. 1669, 1925, s. 3. U.K. 14 & 15 Vict. c. 99, s. 14. Cf. U.K. 23 Geo. 5, c. 4.

40. Whenever any book, or other document, in the United Kingdom, or in any part of His Majesty's Dominions outside the Commonwealth and other than the United Kingdom, is provable (according to the law of England, or of the said part of His Majesty's Dominions) by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence if it—

- (a) is proved to be an examined copy or extract; or
- (b) purports to be signed and certified as a true copy or
extract by some officer who shall further certify
that he is the officer to whose custody the original
is entrusted.

s. 39. PRICE V. PRICE (1889) 23 S.A.L.R. 121. Held that section 39 applies to documents registered under The Real Property Act, 1886. As to the form of certificate in such cases.

41. If any officer authorised or required by this Act to furnish any certified copy or extract shall wilfully certify any document as being a true copy or extract, knowing that the same is not a true copy or extract, as the case may be, he shall be guilty of a misdemeanour, and be liable, on conviction, to imprisonment with hard labour for any term not less than eighteen months or more than three years.

Certifying a false document a misdemeanour.
2, 1852, s. 10.
Cf. U.K.
14 & 15 Vict.
c. 99, s. 15.

42. (1) The information, trial, and conviction, or acquittal of any person for an indictable offence may be proved by a certificate purporting to be under the hand of the Chief Clerk of the Supreme Court or the associate or other officer having the custody of the records of the court where such conviction, or acquittal took place, or of the deputy of such associate or other officer.

Proof of conviction or acquittal of an indictable offence.
2, 1852, s. 7.
38, 1876,
s. 380.
791, 1902,
s. 3.
Cf. U.K.
28 & 29 Vict.
c. 18, s. 6
(part).
Cf. U.K.
14 & 15 Vict.
c. 99, s. 13.

(2) The certificate may set forth the substance and effect of the record omitting the formal parts thereof.

(3) A conviction for any offence committed in any other State or any Territory of the Commonwealth may be proved by a like certificate.

Amended by
40, 1940,
s. 3.

(4) No proof shall be required of the handwriting or official position of any person certifying in pursuance of this section.

(5) The mode of proof authorised by this section shall be in addition to and not to the exclusion of any other authorised mode of proof.

43. (1) Any conviction, order of dismissal or other order made by a court of summary jurisdiction may be proved in any court whatever by the production of a copy of such conviction, order of dismissal or other order, purporting to be certified by the clerk of the court by which such conviction, order of dismissal or other order was made, or by the deputy of such clerk.

Proof of convictions and orders of courts of summary jurisdiction.
1669, 1925,
s. 8.
Cf. U.K.
4 & 5 Geo. 5,
c. 58, s. 28.

(2) No proof shall be required of the signature or official character of the person appearing to have signed any such copy as aforesaid.

(3) This section shall apply to any conviction, order of dismissal or other order made before or after the commencement of this Act.

(4) In this section the expression "court of summary jurisdiction" shall mean any court, by whatever name called, which in any State or Territory of the Commonwealth has jurisdiction to try offences summarily.

Inserted by
40, 1940,
s. 4.

PART IV.

Proof of identity of person convicted in another State.
 Inserted by 40, 1940, s. 5.

43a. For the purpose of proving the identity of any person alleged to have been convicted in any other State, or any Territory of the Commonwealth, an affidavit substantially in the form of the fourth schedule shall be admissible in evidence in all courts and shall be *prima facie* evidence that the person whose finger-prints are exhibited thereto—

- (a) is the person who in any document exhibited to the said affidavit and purporting to be a certificate of conviction or a certified copy of conviction, is referred to as having been convicted:
- (b) has been convicted of the offences mentioned in the said affidavit.

Registers of British vessels and certificates of registry admissible as *prima facie* evidence of their contents.
 2, 1852, s. 6.

44. (1) Every register of vessels kept under any of the Acts of the Imperial Parliament relating to the registry of British vessels, may be proved either by the production of the original or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having the charge of the original.

(2) Every such register, or such copy of a register, and also every certificate of registry granted under any of the said Acts relating to the registry of British vessels, and purporting to be signed as required by law, shall be received in evidence as *prima facie* proof of all the matters contained or recited in such register when the register or such copy thereof as aforesaid is produced, and of all matters contained or recited in or endorsed on such certificate of registry when the said certificate is produced.

Proof of shipping documents and matters connected therewith.
 1669, 1925, s. 20.

45. (1) Any apparently genuine document which purports to be a bill of lading and to relate to any property which is, or has been, shipped shall be—

- (a) admissible in evidence on production without further proof; and
- (b) evidence that the ownership of the property referred to in the document is in the consignee named in the document or his assignee and of the particular facts stated or referred to in the bill of lading.

(2) Evidence of the description of any property which has been shipped, or of any writing, printing, or mark upon any such property, or on any package containing the same shall be receivable (without producing the original writing, printing, or mark, or requiring the production thereof by notice or otherwise) for the purpose of raising an inference as to the identity of such property with that referred to in any bill of lading.

(3) For the purposes of this section regard shall be had to any relevant circumstances including the source from which the bill of lading is produced, and the circumstances of its receipt or custody by the person producing it or by any person from whom it has been obtained for the purposes of production.

(4) In this section—

“bill of lading” includes manifest shipping receipt, consignment note, delivery order, or invoice, and any specification, schedule, or packing list annexed thereto or incorporated by reference therein:

“shipped” means shipped or carried or received for shipment or carriage by water or rail, to or from any port, railway station, or place in the Commonwealth.

PART V.

PART V.

BANKER'S BOOKS.

46. Subject to the provisions of this Part of this Act, a copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of such entry, and of the matters, transactions and accounts therein recorded.

Copy of entry in banker's book, *prima facie* evidence. 162, 1879, s. 2. U.K. 42 & 43 Vict. c. 11, s. 3.

47. (1) The copy of an entry in a banker's book shall not be received in evidence under this Part unless it is first proved—

Proof that entry is in a "banker's book." 162, 1879, s. 3. Cf. U.K. 42 & 43 Vict. c. 11, s. 4.

(a) that the book was, at the time of the making of the entry, one of the ordinary books of the bank; and

(b) that the entry was made in the usual and ordinary course of business; and

(c) that the book is in the custody or control of the bank.

(2) Such proof may be given by any partner or officer of the bank, and may be given orally or by an affidavit.

48. (1) The copy of an entry shall not be received in evidence under this Part unless it is further proved that the copy has been examined with the original entry and is correct.

Copy of entry to be examined. 162, 1879, s. 4. Cf. U.K. 42 & 43 Vict. c. 11, s. 5.

(2) Such proof may be given by any person who has examined the copy with the original entry, and may be given either orally or by an affidavit.

PART V.

Proof that a person has no banking account.

Inserted by 40, 1940, s. 6.

48a. An affidavit made by a partner or officer of a bank stating that any person named in the affidavit has no account at the bank or, as the case may be, at any branch thereof named in the affidavit, shall in all legal proceedings be *prima facie* evidence of the fact so stated.

Application of proceeding sections.

Inserted by 40, 1940, s. 6.

48b. Sections 46, 47, 48 and 48a of this Act shall apply to bankers' books and banks and branches of banks in any State or Territory of the Commonwealth.

Power under order of judge to inspect books and take copies.

162, 1879, ss. 6 and 9.
Cf. U.K. 42 & 43 Vict. c. 11, s. 7.

49. (1) On the application of any party to a legal proceeding a judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings.

(2) An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the judge otherwise directs. Any Sunday or public holiday shall be excluded from the computation of time under this section.

Banker not compellable to produce his books unless under order.

162, 1879, s. 5.
U.K. 42 & 43 Vict. c. 11, s. 6.

50. A banker or officer of a bank shall not in any legal proceeding to which the bank is not a party be compellable—

(a) to produce any banker's book, the contents of which can be proved under this Act; or

(b) to appear as a witness to prove the matters, transactions, and accounts recorded in a banker's book,

unless by order of a judge made for special cause.

Costs in discretion of court.

162, 1879, s. 7.
Cf. U.K. 42 & 43 Vict. c. 11, s. 8.

51. The costs of—

(a) any application to a judge, under or for the purposes of this Part of this Act; or

(b) anything done or to be done under an order of a judge made under or for the purposes of this Part of this Act,

shall be in the discretion of the judge, who may order the same or any part thereof to be paid to any party by the bank, where the same have been occasioned by any default or delay on the part of the bank.

(2) Any such order against a bank may be enforced as if the bank were a party to the proceedings in aid of which the application is made.

52. In this Part of this Act “judge” means—

- (a) Judge of the Supreme Court; and
- (b) any person who is authorised by law to exercise in relation to the proceeding in question the powers of a Judge of the Supreme Court with respect to the trial of any cause or matter or issue of fact; and
- (c) the Judge in Insolvency in relation to any cause or matter pending in the Court of Insolvency; and
- (d) any local court judge or special magistrate in relation to any proceedings pending before a local court or before justices.

Meaning of judge in this Part.
1669, 1925, s. 7 (b).
Of. U.K.
42 & 43 Vict. c. 11, s. 10.

PART VI.

TELEGRAPHIC MESSAGES.

53. (1) Any party to any legal proceedings other than criminal proceedings may at any time after the commencement thereof give notice to any other party that he proposes to adduce in evidence at the trial or hearing any telegraphic message that has been sent by electric telegraph from any station in the Commonwealth to any other station within the Commonwealth: Provided that the time between the giving of such notice and the day on which such evidence shall be tendered shall not in any case be less than two days.

Party may give notice of intention to adduce telegraphic message in evidence.
3, 1873, s. 1.
1669, 1925, s. 5.

(2) Every such notice shall specify the names of the sender and receiver of the message, the subject matter thereof, and the date as nearly as may be.

54. When such a notice has been given the production of any telegraphic message described in the notice, and purporting to have been sent by any person, together with evidence that the same was duly received from a telegraph station, shall be *prima facie* evidence that such message was signed and sent by the person so purporting to be the sender thereof to the person to whom the same shall be addressed without any further proof of the identity of the sender; but the party against whom any such message shall be given in evidence shall be at liberty, nevertheless, to prove that the same was not in fact sent by the person by whom it purports to have been sent.

And thereupon may produce message received with evidence that same received from telegraph station.
3, 1873, s. 2.
1669, 1925, s. 5.

PART VI.

After notice, sending a message may be proved by production of copy message and evidence of payment of fees for transmission.
3, 1873, s. 3.
1669, 1925,
s. 5.

55. In any legal proceedings other than criminal proceedings, the production of any telegraphic message, or of a machine copy or press copy thereof, or a copy thereof verified on oath together with evidence that such message was duly taken to a telegraph station, and that the fees (if any) for the transmission thereof were duly paid, shall be *prima facie* evidence that such message was duly delivered to the person named therein as the person to whom the same was to be transmitted; and the burden of proving that such message was not in fact received, shall be upon the person against whom such message shall be given in evidence: Provided that the party adducing the same in evidence shall give notice to the other party of his intention so to do in such manner and at such time as the practice of the court requires with respect to a notice to produce documents at the trial or hearing.

Certain documents may be transmitted by electric telegraph under restriction.
3, 1873, s. 4.

56. (1) The Governor, any Minister of the Crown, the President of the Legislative Council, the Speaker of the House of Assembly, a Judge of the Supreme Court, the Judge in Insolvency, any special magistrate, and any principal officer of Government, or solicitor, may cause to be transmitted by electric telegraph the contents of any writ, warrant, rule, order, authority, or other communication requiring signature or seal subject to the provisions following, that is to say—

- i. The original document shall be delivered at the telegraph station in the presence and under the inspection of some justice of the peace or notary public:
- ii. The person to whom the contents of any such document shall be so sent shall, forthwith and in the presence and under the supervision of a justice of the peace or notary public, cause to be sent back by electric telegraph, a copy of the message received by him; and in the event of any error appearing therein, the process shall be repeated under the like supervision, until it appears that a true copy of such document has been received by the person to whom it has been sent:
- iii. When it appears that such true copy has been so received, such first-mentioned justice, or notary public, shall endorse upon the original document a certificate that a true copy thereof has been sent, under the provisions of this Act, to the person to

whom the same has been so sent; and shall forthwith, by electric telegraph, inform such person that such certificate has been so endorsed:

- iv. The person so receiving such true copy shall, upon receiving information of such certificate, endorse upon the copy of the original document received by him a certificate that the same has been duly received, under the provisions of this Act, which certificate shall be signed by him and by the justice or notary public so supervising the receipt of such copy as hereinbefore provided.

(2) In this section "any principal officer of Government" includes the Auditor-General, the Under Secretary, the Under Treasurer, and the secretary to any department presided over by a Minister of the Crown, the Clerk of the Legislative Council, the Clerk of the House of Assembly, the Surveyor-General, the President of the Marine Board, the Registrar-General, the Sheriff, the Master of the Supreme Court, the Commissioner of Police, inspectors of police, the Returning Officer for the State; and for the purposes of returns to writs of election, but not otherwise, also includes any returning officer or deputy returning officer of an electoral district.

3, 1873, s. 11 (part).

57. (1) Every copy so endorsed and certified as aforesaid shall be as valid to all intents and purposes as the original, whereof it purports to be a copy, would have been, and shall be admissible in evidence in any case in which the original would have been so admissible; and any person by whom such copy has been received, or who is thereby authorised, instructed, or commanded, or who is lawfully charged with any duty in respect thereof, shall have and become liable to the same rights and duties in respect thereof as if he had received the original document duly signed and sealed, or signed or sealed, as the case may be.

Copies so transmitted to be as valid and effectual as originals.
3, 1873, s. 5.

(2) In the case of any document intended to be served, or the efficacy or use whereof depends upon service, every such copy shall for the purpose of such service be deemed to be the original document whereof it purports to be a copy.

58. Any justice or notary public who wilfully and falsely endorses upon any original document, delivered at a telegraph station for the purpose of being transmitted under the provisions of this Act, a certificate that a true copy thereof has been sent under this Act, or who by telegraph wilfully and falsely informs any person to whom such has been so sent that a certificate under the provisions of this Act has

Penalty for false certificate of sending message.
3, 1873, s. 9.

PART VI.

been endorsed thereon, shall forfeit a sum not exceeding one hundred pounds, which may be sued for and recovered by the first person who shall, for his own benefit and without collusion, sue for the same.

Signing false certificate upon copy to be a felony.
3, 1873, s. 10.

59. Any person by this Part of this Act required to sign a certificate upon any copy of a document that such copy has been duly received under the provisions of this Act, who shall wilfully sign such certificate, knowing the same to be false, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for any term not exceeding two years.

PART VII.

PART VII.

GENERAL PROVISIONS.

Sufficiency of notice of action.
435, 1888,
s. 8.

60. In any action, suit, or other proceeding in any court of justice in which notice of action is required, such notice shall be deemed sufficient if, in the opinion of the judge, commissioner, stipendiary or special magistrate, or justice of the peace presiding, such notice shall have given the defendant reasonable notice of the cause of such action, and the sufficiency of such notice shall be a question of fact and not of law; and no notice of action shall be held insufficient merely for want of form.

Proceedings to facilitate or dispense with proof of identity in cases of previous conviction in courts of summary jurisdiction.
1669, 1925,
s. 10.

61. (1) Whenever in a court of summary jurisdiction it becomes proper to inquire as to any previous conviction of the defendant, and the defendant does not appear in person, the court may—

- (a) allow evidence to be given of the previous conviction of any person, alleged by the prosecution to be identical with the defendant; and
- (b) (such evidence having been given) adjourn the further consideration of the case to a time and place specified by the court in order to enable the defendant to attend in person for the purpose of answering such allegation.

(2) If at the time and place so specified—

- (a) it is proved that the defendant has been personally served with notice in writing, requiring him to attend accordingly, and informing him of the purpose for which his personal attendance is required; and

- (b) the defendant fails to appear in person; and
- (c) no sufficient reason to the contrary is shown to the satisfaction of the court,

the allegation of the identity of the defendant with the person so convicted as aforesaid, shall be deemed to have been proved, and the court shall proceed accordingly: Provided that service of the notice aforesaid shall not be required if the defendant has been represented at the original hearing by any counsel or solicitor who has waived such service.

(3) The further hearing or consideration of the case may be adjourned from time to time as aforesaid to enable the defendant—

- (a) to be served as aforesaid; or
- (b) to attend in person if the court is satisfied that he intends to do so.

62. Whenever in any proceedings before justices, in respect of any offence, it is an essential ingredient of the offence that the place (where any fact or matter occurred or was done) should be a public place, an allegation, in the complaint or information, that the place (specified as that in which the fact or matter charged occurred or was done) was a public place, shall be *prima facie* evidence of that fact. But the court may, if it thinks fit, and at any stage of the proceedings, permit evidence to be called with respect to the said fact.

Proof of "public place" in certain cases.
1669, 1925, s. 11.

62a. (1) In any complaint or information an allegation that any place is within a municipality, district council district, town or township, shall be *prima facie* evidence of the fact so alleged.

Proof of place being within municipality, etc.

Inserted by 36, 1957, s. 5.

(2) In this section the word "place" shall include any place, public or private, however described in the complaint or information, including any street, road or other thoroughfare, or part thereof, and any building or structure or part thereof.

63. Printed books purporting to contain statutes, ordinances or other written laws in force in any country, although not purporting to have been printed or published by authority, and books purporting to contain reports of decisions of courts or judges in such country, and text books treating of the laws of such country, may be referred to by all courts for the purpose of ascertaining the laws in force in

Proof of foreign law.
1669, 1925, s. 21.
Cf. W.A. 28, 1906, s. 1.

such country; but such courts shall not be bound to accept or act on the statements in any such books as evidence of such laws.

Proof of matters of history, science, etc. 1669, 1925, s. 22. Cf. W.A. 28, 1906, s. 22.

64. All courts may, in matters of public history, literature, science, or art, refer, for the purposes of evidence, to such published books, calendars, maps, or charts as such courts consider to be of authority on the subjects to which they respectively relate: Provided that nothing herein contained shall be deemed to require any such court to accept or act upon any such evidence when tendered, unless it thinks fit.

Reference by court to books, etc., or official certificates in certain matters relating to post and telegraph, locality and distance. 1669, 1925, s. 23.

65. In any matter relating to—

- (a) the ordinary course of the post between any place within the Commonwealth and any other place, whether within or without the Commonwealth, or to the public business and transactions of the Post and Telegraph Department; or
- (b) the territorial limits of the area controlled by any municipal or district council or other local governing body, or of any other area designated or proclaimed or appointed by or under any statute or to the inclusion in any such area or the exclusion therefrom of any particular place; or
- (c) the distance between any two places in the State;

every court may refer to—

- (i) any such published book, map, chart, or document as the court considers to be of authority upon the subject to which it relates; or
- (ii) any certificate purporting to be signed by some person occupying any official position which, in the opinion of the court, qualifies him to certify to the fact in question:

Provided that nothing herein contained shall be deemed to require any such court to accept or act upon any such evidence when tendered unless it thinks fit.

Taking of affidavits out of the State. 1669, 1925, s. 24. Cf. U.K., 52 & 53 Vict. c. 10, s. 3.

66. (1) Any oath or affidavit required for the purpose of any court or matter in the State may be taken or made, in any place out of the State, before—

- (a) a commissioner for taking affidavits in the Supreme

- s. 64. *ARNOLD v. NORRIS* (1936) S.A.S.R. 287. Held that, under section 64, the court could refer to recognised tables setting out the expectation of life.
- s. 66. *PITT v. PITT* (1905) S.A.L.R. 130; 8 Austn. Digest 637. As to the necessity of proving the authority of the person administering an oath.

Court empowered and authorised to act in that place; or

(b) a British diplomatic or consular agent exercising his function in that place; or

Amended by 5, 1947, s. 3, and by 26, 1955, s. 5 (a).

(b1) any person appointed to hold or act in any of the following offices of the Commonwealth in that place:—

Inserted by 26, 1955, s. 5 (b).

- (i) ambassador:
- (ii) high commissioner:
- (iii) minister:
- (iv) head of mission:
- (v) commissioner:
- (vi) charge d'affaires:
- (vii) counsellor or secretary at an embassy, high commissioner's office, legation or other post:
- (viii) consul-general:
- (ix) consul:
- (x) vice-consul:
- (xi) trade commissioner:
- (xii) consular agent; or

(c) any person having authority to administer an oath in that place.

(2) Judicial and official notice may be taken—

Amended by 26, 1955, s. 5 (c).

(a) of the signature or seal of any such commissioner or agent or of any person appointed as aforesaid or of any person having authority as aforesaid if he purports to have such authority, otherwise than by the law of a foreign country not under the dominion of His Majesty; and

(b) of the fact that any particular place is under the dominion of His Majesty.

(3) In the case of a person purporting to have such authority by the law of a foreign country not under the dominion of His Majesty, such authority may be verified by any of the persons mentioned in paragraphs (a), (b) and (b1) of subsection (1) hereof, or by the certificate of the superior court of such place, and if such authority purports to be so verified the oath or affidavit may be admitted or received without further proof of the signature or seal, or of

Amended by 26, 1955, s. 5 (d).

the judicial, official, or other character of such first mentioned person.

(4) In this section—

“oath” includes affirmation and declaration:

“affidavit” includes any statutory or other declaration, acknowledgement, or examination:

“diplomatic agent” means ambassador, envoy, minister, charge d’affaires, or secretary of embassy or legation:

“consular agent” means consul-general, consul, vice-consul, or consular agent, or acting consul-general, acting consul, acting vice-consul, or acting consular agent.

Taking of affidavits out of the State by sailors, soldiers and airmen.
Inserted by 27, 1941, s. 3; and amended by 42, 1952, s. 3.

66a. (1) Any oath or affidavit required to be made by any member of a fighting force, for the purpose of any court or matter in the State, may be taken or made in any place out of the State before any officer of any naval, military or air force of any part of His Majesty’s dominions who holds a rank not below the following, namely:—

(a) in the case of a naval officer, lieutenant:

(b) in the case of a military officer, captain:

(c) in the case of an officer of an air force, flight-lieutenant,

or before any person having the authority to administer an oath in the State.

(2) An officer administering an oath or taking an affidavit by virtue of the powers conferred by this section shall state in the jurat or attestation to the oath or affidavit the following matters, namely:—

(a) the date on which the oath or affidavit is taken or sworn;

(b) the full name and rank of the officer.

(3) An apparently genuine signature purporting to be the signature of a person administering an oath or taking an affidavit, and purporting to be the signature of an officer of a naval, military or air force of any part of His Majesty’s dominions who holds a rank not below that specified in subsection (1) of this section, may be deemed to be the signature of such an officer unless the contrary is shown.

Subsec (4) repealed by 42, 1952, s. 3.

* * * * *

(5) In this section—

“affidavit” includes any statutory, or other declaration, acknowledgment, or examination;

“His Majesty’s dominions” includes the United Kingdom of Great Britain and Northern Ireland, and all self-governing dominions, dependencies, colonies, protectorates, protected states, and mandated territories of His Majesty;

“member of a fighting force” includes any man or woman who is a member of a naval, military or air force of any country, and any person who, as a representative or employee of any charitable, religious or other organization for promoting the welfare of members of any such force, is attached to any such force;

“oath” includes affirmation and declaration.

67. (1) The provisions of section 66 and 66a shall, as far as applicable, extend to every attestation, verification, acknowledgment, or signature in relation to any document required, authorised, or permitted by or under any statute or by custom or otherwise to be attested, verified, acknowledged, or signed, and to the doing of all notarial acts as if such provisions had been re-enacted in this section, excluding words relating to the administration of oaths and the taking of affidavits and substituting therefor words relating to attestation, verification, acknowledgment, or signature, as the case may be.

Extension of provisions relating to affidavits to attestation, etc., of other documents.

1669, 1925, s. 25.

Amended by 27, 1941, s. 4.

(2) “Notarial act” includes any act, matter, or thing which in South Australia or elsewhere a notary public can attest or verify or otherwise do by or under any Act of Parliament or custom or otherwise for the purpose of being used in the State.

(3) The provisions of this section apply to documents required, authorised, or permitted by or under The Real Property Act, 1886.

67a. Every document admissible in evidence for any purpose in any court of justice in England or Wales without proof of the seal, or stamp, or signature authenticating the document, or of the judicial or official character of the person appearing to have signed it, shall be admissible in evidence for the like purpose in any court of the State or before any person acting judicially under any law of the State, without proof of the seal, or stamp, or signature

Admissibility of documents without proof of seal, etc.

Inserted by 36, 1949, s. 4.

authenticating the document, or of the judicial or official character of the person appearing to have signed it.

PART VIII.

PUBLICATION OF EVIDENCE.

Interpretation.
1287, 1917,
s. 2.

68. In this Part "court" means the court, judge, or magistrate before whom any legal proceeding is held or taken, and also a justice sitting for the preliminary investigation of any matter, a coroner by or before whom an inquest is held, and any person acting judicially.

Court may prohibit publication of evidence and names of parties and witnesses.
1287, 1917,
s. 3.
Cf. U.K.
23 Geo. 5
c. 12, s. 37.

69. (1) Where it appears to any court—

- I. that the publication of any evidence given or used or intended to be given or used, in any proceedings before such court, is likely to offend against public decency; or
- II. that for the furtherance of, or otherwise in the interests of, the administration of justice it is desirable to prohibit the publication of the name of any party or intended party to, or witness or intended witness in, any such proceedings,

the court may, either before or during the course of the proceedings or thereafter, make an order—

- (a) directing that the persons specified (by name or otherwise) by such court, or that all persons except the persons so specified, shall absent themselves from the place wherein such court is being held while such evidence is being given; or
- (b) forbidding the publication of such evidence, or any specified part thereof, or of any report or account of such evidence, or any specified part thereof, either absolutely or subject to such conditions, or in such terms or form, or in such manner, or to such extent, as may be approved by such court; or
- (c) forbidding the publication of the name of such party or witness.

s. 69. REX v. BUTLER (1939) S.A.S.R. 265. Where on the preliminary examination an order had been made forbidding the publication of the name of the accused and his name was published in a newspaper in an announcement of the cause list of the criminal sittings for the Supreme Court, held that the order of the magistrate could not impair the jurisdiction of the Supreme Court and that the announcements were incidental to the trial.

(2) Where the court makes an order under paragraph (c) of subsection (1) hereof, the publication of any reference or allusion to any party or witness the name of whom is by such order forbidden to be published, shall, if such reference or allusion is, in the opinion of the magistrate or justices hearing the complaint for the alleged offence, intended or is sufficient to disclose the identity of such party or witness, be deemed to be a publication of the name of such party or witness.

Cf. U.K.
22 & 23
Geo. 5, c. 46,
s. 81;
23 Geo. 5,
c. 12, s. 39.

(3) When the court makes an order under paragraph (b) or paragraph (c) of subsection (1) hereof, forbidding the publication of any evidence or any report or account of any evidence, or the publication of any name, the court shall report the fact to the Attorney-General, and shall embody in its report a statement of—

- (a) the evidence or name (as the case may be) by such order forbidden to be published; and
- (b) the circumstances in which the order was made.

70. Where in the course of any proceedings before any court witnesses are ordered out of court and it appears to the court that for the furtherance or otherwise in the interests of the administration of justice it is desirable to prohibit for any period the publication of any evidence given or used in such proceedings the court may make an order forbidding, for such period as the court thinks fit, the publication of such evidence or any specified part thereof.

Power to temporarily prohibit publication of evidence where witnesses ordered out of court.
1287, 1917,
s. 4.

71. (1) Any person who disobeys an order under paragraph (a) of subsection (1) of section 69 or under section 70 shall be guilty of contempt of court, and shall be punishable accordingly in the same manner as for any other contempt of the court; and if the court has no power to punish for contempt, then the court may punish such contempt in manner provided by section 46 of the Justices Act, 1921, and the provisions of that section shall apply for the purposes of dealing with and punishing such contempt and enforcing the punishment.

Penalty for non-compliance with order.
1287, 1917,
s. 5.

(2) Any person who disobeys any order under paragraph (b) or paragraph (c) of subsection (1) of section 69 shall be liable to a penalty of not more than one hundred pounds, or to be imprisoned for any period not exceeding six months.

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

Proceedings for offences.

Evidence Act, 1929-1957.

SCHEDULES.

FIRST SCHEDULE.

Number and Year	Title of Act	Extent of Repeal
Imperial 6 and 7 Vic. c. 85 (adopted by Ordinance 17 of 1846)	An Act for Improving the Law of Evidence	The whole as the same is adopted and subsisting pursuant to Ordinance 17 of 1846.
3 of 1848	Ordinance to Facilitate the Admission of the unsworn Testimony of the Aboriginal Inhabitants of South Australia and the parts adjacent	The whole.
4 of 1849	Ordinance to amend Ordinance 3 of 1848	The whole.
2 of 1852	An Act to amend the Law of Evidence	The whole.
24 of 1855-6 . . .	The Supreme Court Procedure Act, 1855	Sections 16 to 21 inclusive.
13 of 1866-7 . . .	An Act for amending the Law of Evidence and practice on Criminal trials	Sections 3 to 8 inclusive.
3 of 1867	Matrimonial Causes Act, 1867 . . .	Section 57.
10 of 1869-70 . . .	Evidence Further Amendment Act, 1869	The whole.
9 of 1872	An Act for Shortening and Explaining the Language used in Acts of Parliament, and for other purposes	The whole as unrepealed by 1215 of 1915.
3 of 1873	The Telegraphic Messages Act, 1873	The whole.
38 of 1876	The Criminal Law Consolidation Act, 1876	Sections 377 and 378.
162 of 1879	The Bankers Books Evidence Act, 1879	The whole.
435 of 1888	Evidence Further Amendment Act, 1888	The whole.
1056 of 1911 . . .	The Oaths and Affirmations Act, 1911	The whole.
1287 of 1917 . . .	Evidence Publication Act, 1917 . . .	The whole.
1669 of 1925 . . .	Evidence Amendment Act, 1925 . . .	The whole.

SECOND SCHEDULE.

SOUTH AUSTRALIA, { The examination of [*state the name of witness*] an aboriginal
to wit. { and uncivilised native of South Australia, taken before
me, A.B. one of His Majesty's Justices of the Peace for the said State, the
day of _____, who in the presence and hearing of
[*state the name of the accused person*] charged before me, the said Justice, for
[*state the offence*] saith [*set forth for the examination*].

I certify that the above writing contains a true statement of the testimony of the above-named [*name of native witness*] on his examination before me this day.
Given under my hand this _____ day of _____

A.B.

Second schedule. The expression "Province" altered to "State" pursuant to the Amendments Incorporation Act, 1937.

THIRD SCHEDULE.

Provisions Referred to in Section 21.

Reference to Act	Title of Act	Enactments Referred to
No. 38 of 1876 ..	The Criminal Law Consolidation Act, 1876	Sections 37, 38, 54, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, 73, 74, and 77.
No. 300 of 1883-4	Married Women's Property Act, 1883-4	Sections 12, 16.
No. 358 of 1885 ..	The Criminal Law Consolidation Amendment Act, 1885	Sections 2, 3, 4, 6, 7, 10, 11.
No. 730 of 1899 ..	The Children's Protection Act, 1899	Sections 4, 10.
No. 931 of 1907 ..	The Suppression of Brothels Act, 1907	Section 3.
No. 1257 of 1916	Police Act, 1916	Section 67 (p).
No. 1334 of 1918	Children's Protection Act Amendment Act, 1918	Section 3.
No. 1442 of 1920	Venereal Diseases Act, 1920 .. .	Sections 5, 14, 17, 22.
No. 1780 of 1926	Maintenance Act, 1926	Sections 46, 50, 51, 75, 94, 105, 142, 188.

FOURTH SCHEDULE.

Inserted by
40, 1940,
s. 7.

South Australia

[In the Court]

The King v.
[or In the matter of a Complaint by
against
or as the case may be.]

Third schedule. Of the enactments mentioned in the schedule the following have been repealed and superseded by other enactments as follows:—

- (a) The sections of The Criminal Law Consolidation Act, 1876, mentioned in the schedule have been superseded respectively by sections 29, 30, 46, 48, 49, 62, 50, 51, 52, 56, 59, 60, 61, 69, 70, 72 (1), 72 (2), and 78 of the Criminal Law Consolidation Act, 1935.
- (b) The sections of the Married Women's Property Act, 1883-4, mentioned in the schedule have been superseded respectively by sections 101 and 102 of the Law of Property Act, 1936.
- (c) The sections of The Criminal Law Consolidation Amendment Act, 1885, mentioned in the schedule have been superseded respectively by sections 63, 64, 55, 65, 66, 68, and 53 of the Criminal Law Consolidation Act, 1935.
- (d) The sections of The Children's Protection Act, 1899, mentioned in the schedule have been superseded respectively by sections 5 and 11 of the Children's Protection Act, 1936.
- (e) Section 3 of The Suppression of Brothels Act, 1907, has been superseded by sections 27 and 28 of the Police Offences Act, 1953.
- (f) Section 67 (p) of the Police Act, 1916, has been superseded by section 86 (1) (p) of the Police Act, 1936, which was not re-enacted in the Police Offences Act, 1953.
- (g) Section 3 of the Children's Protection Act Amendment Act, 1918, has been superseded by section 12 of the Children's Protection Act, 1936.
- (h) The sections of the Venereal Diseases Act, 1920, mentioned in the schedule have been superseded by sections 14 and 17 of the Venereal Diseases Act, 1947.

Evidence Act, 1929-1957.

I, of
a fingerprint expert attached to the Police Department of the State [or
Territory] of.....make oath and say as follows:—

1. I have examined the fingerprint card now produced and shown to me marked "A". The fingerprints on the said card are identical with those on a fingerprint card portion of the records of the said Department, being the fingerprints of one.....(alias)
2. According to the said records, which I believe to be accurate, the saidhas been convicted in the said State [or Territory] of the offences set out below, namely:—
[Here insert description of offences, the Courts in which the convictions took place and the dates of the convictions.]
3. From an examination of the said records I believe that the person referred to as having been convicted, in the document(s) now shown to me and marked respectively "B" ["C", "D", etc.], is identical with the person whose fingerprints are on the said card marked "A".

SWORN at }
 this..... day of..... }
 19..... }
 Before me

.....
 A person having authority to take affidavits in the State [or Territory] in which the affidavit is sworn.



WORKMEN'S COMPENSATION ACT, 1932-1958.

BEING

WORKMEN'S COMPENSATION ACT, 1932, No. 2103 OF 1932
[ASSENTED TO 30TH NOVEMBER, 1932.]

AS AMENDED BY

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

- WORKMEN'S COMPENSATION ACT AMENDMENT ACT, 1938, No. 2427
OF 1938 [ASSENTED TO 22ND DECEMBER, 1938.]
- WORKMEN'S COMPENSATION ACT AMENDMENT ACT, 1940, No. 65
OF 1940 [ASSENTED TO 5TH DECEMBER, 1940.]
- WORKMEN'S COMPENSATION ACT AMENDMENT ACT, 1941, No. 50
OF 1941 [ASSENTED TO 27TH NOVEMBER, 1941.]
- WORKMEN'S COMPENSATION ACT AMENDMENT ACT, 1943, No. 39
OF 1943 [ASSENTED TO 23RD DECEMBER, 1943.]
- WORKMEN'S COMPENSATION ACT AMENDMENT ACT, 1944, No. 33
OF 1944 [ASSENTED TO 14TH DECEMBER, 1944.]
- WORKMEN'S COMPENSATION ACT AMENDMENT ACT, 1947, No. 52
OF 1947 [ASSENTED TO 11TH DECEMBER, 1947.]
- WORKMEN'S COMPENSATION ACT AMENDMENT ACT, 1950, No. 28
OF 1950 [ASSENTED TO 23RD NOVEMBER, 1950.]
- WORKMEN'S COMPENSATION ACT AMENDMENT ACT, 1951, No. 24
OF 1951 [ASSENTED TO 25TH OCTOBER, 1951.]
- WORKMEN'S COMPENSATION ACT AMENDMENT ACT, 1953, No. 38
OF 1953 [ASSENTED TO 17TH DECEMBER, 1953.]
- WORKMEN'S COMPENSATION ACT AMENDMENT ACT, 1954, No. 68
OF 1954 [ASSENTED TO 23RD DECEMBER, 1954.]
- WORKMEN'S COMPENSATION ACT AMENDMENT ACT, 1955, No. 49
OF 1955 [ASSENTED TO 8TH DECEMBER, 1955.]
- WORKMEN'S COMPENSATION ACT AMENDMENT ACT, 1956, No. 48
OF 1956 [ASSENTED TO 22ND NOVEMBER, 1956.]
- AND
- WORKMEN'S COMPENSATION ACT AMENDMENT ACT, 1958, No. 42
OF 1958 [ASSENTED TO 27TH NOVEMBER, 1958.]

An Act to consolidate certain statutes relating to compensation to workmen for injuries suffered in the course of their employment.

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

PART I.

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Workmen's Compensation Act, 1932-1958," and shall come into operation on a day to be fixed by proclamation.

Short title, commencement, and divisions of Act.

Workmen's Compensation Act, 1932-1958.

(2) This Act is divided into Parts as follows:—

PART I.—Preliminary: Sections 1 to 3.

PART II.—Right to compensation: Sections 4 to 15.

PART III.—Amount of compensation: Sections 16 to 28.

PART IV.—Conditions of compensation: Sections 29 to 37.

PART V.—Procedure for determining compensation and settling questions: Sections 38 to 68.

PART VI.—Payment and investment of compensation: Sections 61 to 68.

PART VII.—Alternative remedies: Sections 69 to 78.

PART VIII.—Application to special classes of persons: Sections 79 to 81.

PART IX.—Industrial diseases: Sections 82 to 94.

PART X.—Industrial diseases contracted at Port Pirie: Sections 95 to 104.

PART XI.—Administrative and miscellaneous provisions: Sections 105 to 114.

Repeal.

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

Interpretation.
1053, 1911,
s. 4.
1660, 1924,
s. 3 (a).

3. In this Act, unless inconsistent or repugnant to the context, or some other meaning is clearly intended—

“certifying medical practitioner” means a certifying medical practitioner appointed under this Act or any Act repealed by this Act:

Cf. U.K.
15 & 16,
Geo. 5, c. 84,
s. 5.

“employer” includes any body of persons, corporate or unincorporate, and the legal personal representative of a deceased employer:

Cf. U.K.
15 & 16,
Geo. 5, c. 84,
s. 4 (3).
Amended by
65, 1940,
s. 3.

“member of a family” means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, stepbrother, stepsister, half-brother, half-sister, child adopted by the workman under the Adoption of Children Act, 1925-1934, father's sister, mother's sister:

s. 1. (2) In addition to the Parts mentioned in subsection (2), Part IXA. (Silicosis), which was enacted by the Workmen's Compensation Act Amendment Act, 1938, is included in this reprint.

“outworker” means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale in his own home, or on other premises, not under the control or management of the person who gave out the materials or articles:

Cf. U.K.
15 & 16,
Geo. 5, c. 84,
s. 48.

“ship” means any ship, vessel, boat, or other craft: *Ibid.*

any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable:

the exercise and performance of the powers and duties of a municipal corporation or district council or tramways trust or other statutory body shall, for the purposes of this Act, be treated as the trade or business of such municipal corporation or district council or tramways trust or other statutory body.

In this Act the words “wife” and “widow” shall respectively include the husband or widower of a woman who is a workman within the meaning of this Act.

Inserted by
25, 1947,
s. 3.

PART II.

PART II.

RIGHT TO COMPENSATION.

4. (1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with this Act.

Liability of
employers to
workmen for
injuries.
1053, 1911,
s. 6 (1).
Cf. U.K.
15 & 16,
Geo. 5, c. 84,
s. 1.

s. 4. BROWN V. SOUTH AUSTRALIAN RAILWAYS COMMISSIONER (1914) S.A.L.R. 379. The court defined an accident as “an unlooked for mishap, an untoward event not expected or designed.”

In *re* an arbitration between POLLARD and the ADELAIDE ELECTRIC SUPPLY COMPANY LIMITED (1924) S.A.S.R. 396. Held, on the evidence, that an accident, caused by the deceased’s doing while on duty, an act which was not inconsistent with his duty, and which it was not unreasonable for him to do but which was not done in obedience to any duty owed to his employer, arose out of, and in the course of his employment.

HOLDING AND ANOTHER V. THE SOUTH AUSTRALIAN RAILWAYS COMMISSIONER (1925) S.A.S.R. 92. Held, that an accident to a workman going to work on a vehicle which was owned by the employer but which the employer had not authorized the workman to use, did not arise in the course of the workman’s employment.

HARSLETT V. TILLBROOK AND ANOTHER (1929) S.A.S.R. 330. Where a carrier’s labourer returning with an empty lorry, as required by his employer, stood up for an

PART II.

Subsec. (2)
inserted by
38, 1953,
s. 3.

(2) An accident shall be deemed to arise out of and in the course of the employment of a workman if it occurs—

- (a) while the workman in the course of a daily or other periodical journey of the workman between his place of abode and his place of employment (whether such journey is to or from work) is being conveyed by a means of transport provided either by the employer or by some other person pursuant to arrangements made with the employer;
- (b) on a journey taken by the workman during ordinary working hours between his place of employment and a trade technical or other training school which

s. 4. unknown purpose, without running any exceptional risk, and fell off the lorry
(contd.) and was killed, held that the accident arose out of and in the course of the employment.

CHAPLIN v. DUNSTAN LIMITED (1938) S.A.S.R. 245. Where the driver of a motor lorry diverted slightly from his route for the purpose of getting a drink from a hotel, held, in an action for negligence, that the act of obtaining a drink in the particular circumstances and of making a short detour to procure it, was reasonably incidental to the driver's employment.

SOUTH AUSTRALIAN STEVEDORING COMPANY LIMITED v. HOLBERTSON (1939) S.A.S.R. 257. Where a workman has acted reasonably in seeking medical treatment and, owing to the treatment falling in some degree below the standard of reasonable skill and care, the injury has been aggravated and the process of treating unduly prolonged, the mistake in treatment is to be regarded as a sequel of the injury and the employer continues liable to pay compensation.

STAFFORD v. DOMAN (1940) S.A.S.R. 72. Deceased was employed by a building contractor by the day and at a daily wage at Penola and was instructed to report next day on a job at Mount Gambier (where deceased had his home) there being no promise by the deceased to start such work. Deceased travelled back to Mount Gambier on the motor lorry of a friend and was killed on the journey. Held that the accident did not arise out of and in the course of the employment of the deceased.

ADELAIDE STEVEDORING COMPANY LIMITED v. FORST (1940) 64 C.L.R. 538; 14 A.L.J. 332. Where a waterside worker and winchman, after performing two tasks requiring muscular exertion, collapsed and shortly afterwards died, the death being due to coronary thrombosis, held that, having regard to the probabilities, the proper conclusion was that his exertion was in fact the cause of the thrombosis and that the death was the result of an injury by accident arising out of and in the course of his employment.

FERRES v. BUNGEY BROS. (1947) S.A.S.R. 138. When a driver unloaded goods from a trolley and after driving some distance had collapsed and died, and it was found that the driver had suffered from heart disease for some years, that the cause of death was coronary occlusion and that it had not been shown that the work of the deceased involved unusual strain or exertion or had resulted in or contributed to his death which probably would have occurred at the time in any event, held that the death was not the result of injury by accident arising out of and in the course of the employment.

LOKAN v. METROPOLITAN AND EXPORT ABATTOIRS BOARD (1950) S.A.S.R. 273. A workman found drunk before time to finish work, after being told by his foreman to get off the job and then left by the foreman, fell and suffered injuries causing death. On an application by his widow for compensation found that the deceased was in the course of his employment when left by the foreman but that the falls were due to his drunken condition and did not arise from his employment.

BACKLER AND OTHERS v. FORBES (1957) S.A.S.R. 298. Where the workman called no medical evidence as to the nature of the ailment from which he had suffered, held that he had not proved that he was entitled to compensation.

s. 4. (2) This subsection, which was enacted by section 3 of the Workmen's Compensation Act Amendment Act, 1953, applies only in relation to injury or death caused by an accident occurring after 17th December, 1953. See section 10 of that Act.

he is required by law to attend, or which he attends at the request of the employer.

This subsection shall not restrict the operation of subsection (1) of this section.

5. No compensation shall be payable in respect of any injury if the injury is consequent on or attributable to the serious and wilful misconduct of the workman unless the injury results in the death or permanent total incapacity of the workman.

Circumstances where liability does not exist.
1053, 1911, s. 6 (2).
(a) and (e).
1722, 1925, s. 3.
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 1, proviso.
Amended by 65, 1940, s. 4, and by 49, 1955, s. 3.

6. (1) The compensation shall be payable to or for the benefit of the workman or if death results from the injury to or for the benefit of his dependants as provided by this Act.

Persons entitled to compensation.
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 2.
1053, 1911, First Schedule, 8 (part).

(2) Where there are both total and partial dependants, nothing in this Act shall prevent the compensation being allotted partly to the total and partly to the partial dependants.

7. (1) In this Act unless the context otherwise requires—

“workman” means any person (including a domestic servant) who has entered into or works under a contract of service or apprenticeship or otherwise with an employer whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, or is oral or in writing.

Meaning of “workman.”
1660, 1924, s. 3 (b).
1053, 1911, s. 13 (4).
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 3.
Amended by 52, 1947, s. 4, by 24, 1951, s. 3, by 38, 1953, s. 4 (a), and by 49, 1955, s. 4.

The term does not include—

(a) a person whose average weekly earnings exceed thirty-five pounds; or

s. 5. The amendments made to this section by section 3 of the Workmen's Compensation Act Amendment Act, 1955, apply only in relation to injury or death caused by an accident occurring after 8th December, 1955. See section 10 of that Act.

s. 7. The amendments made to this section by section 4 of the Workmen's Compensation Act Amendment Act, 1947, by section 3 of the Workmen's Compensation Act Amendment Act, 1951, by section 4 of the Workmen's Compensation Act Amendment Act, 1953, and by section 4 of the Workmen's Compensation Act Amendment Act, 1955, apply only in relation to injury or death caused by an accident occurring, respectively, after 11th December, 1947, 25th October, 1951, 17th December, 1953 and 8th December, 1955. See section 13 of the 1947 Act, section 9 of the 1951 Act, section 10 of the 1953 Act, and section 10 of the 1955 Act.

COPAS & Co. v. CHIARA (1929) S.A.S.R. 374. Held on the facts that respondent's employment was casual, but was for the purpose of the appellant's business.

Workmen's Compensation Act, 1932-1958.

- (b) an outworker; or
- (c) a member of an employer's family (dwelling in his house); or
- (d) a person whose employment is of a casual nature, and is not for the purpose of the employer's trade or business; or
- (e) a seaman where the injury occurs outside the territorial jurisdiction of South Australia; or
- (f) a member of the crew of a fishing vessel remunerated by a share in the profits or the gross earnings of the working of such vessel.

Inserted by
50, 1941,
s. 3, and
amended by
52, 1947,
s. 4.

(2) In determining the average weekly earnings of any person for the purposes of this section there shall be excluded any wages allowances or other remuneration earned by him whether before or after the enactment of this section, for work done during overtime.

Inserted by
38, 1953,
s. 4 (b).

(3) For the purpose of determining whether a person employed by an employer is at any time a workman within the meaning of this section, his average weekly earnings shall be deemed to be his average weekly earnings in the employment of that employer—

- (a) during the twelve months preceding that time if he has been so long employed; or
- (b) if he has been employed for a shorter period than twelve months, during that shorter period:

Provided that where by reason of the shortness of the time during which the workman has been in the employment of the employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the relevant time to compute the rate of remuneration, regard may be had to the average weekly amount which during the twelve months before the relevant time was being earned by a person in the same grade employed at the same work by the same employer,

s. 7. In determining whether employment is for the purposes of the employer's trade or business the court should treat each case as a question of fact.

HAUPT v. HAUPT (1929) S.A.S.R. 393. An employee, engaged to cut wood on piece-work, with some right of control in the employer, held to be a workman.

SILVER TOP TAXI SERVICE PROPRIETARY LIMITED v. BATEY (1939) S.A.S.R. 403. Where a person by agreement with a company had the use of a taxi-cab subject to certain arrangements for payment of rent to the company from the receipts from passengers and subject to certain control from the company's office of the use for hire by passengers of the taxi-cab, held that the *de facto* relation of the parties was equivalent to the *de jure* relation of master and servant. The definition of workman in section 7 includes any person working under contract with an employer whether the contract is one of service, strictly so defined, or not.

or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district.

8. The dependants of a workman entitled to claim compensation under this Act where the injury results in death are such members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would, but for the incapacity due to the accident, have been so dependent, and where a workman, being the parent of an illegitimate child, dies leaving such child so dependent upon his earnings, or if an illegitimate child dies leaving the mother so dependent upon his earnings, such illegitimate child or mother shall be deemed a dependant of the workman.

Dependants entitled to compensation. 1053, 1911, s. 4.
 Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 4.
 Amended by 48, 1956, s. 3.

For the purpose of determining who are the dependants of a workman, a posthumous child of the workman shall be deemed to have been born before his death.

9. If the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall for the purposes of this Act be deemed to continue to be the employer of the workman while he is working for that other person, but shall be entitled to be indemnified by that other person to the extent of compensation paid under this Act by the employer in respect of any injury received by the workman while he is working for that other person.

Provision where services of employee are lent by employer. 1053, 1911, s. 4.
 Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 5.

10. (1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workmen employed in the execution of the work any compensation under this Act which he would

Sub-contracting. 1053, 1911, s. 9 (1) and (4).
 U.K. 15 & 16, Geo. 5, c. 84, s. 6 (1), (4).

s. 8. The amendments made to this section by section 3 of the Workmen's Compensation Act Amendment Act, 1956, apply only in relation to injury or death caused by an accident occurring after 22nd November, 1956. See section 7 of that Act.

s. 10. NELSON v. BANKIE (1924) S.A.S.R. 370. Held, on the evidence, that a carpenter erecting cottages for himself as an investment, had "undertaken" work within the meaning of subsection (1), although he was under no contractual duty to do it. Held also that in contracting with a sub-contractor to assist in building them, the carpenter had contracted in the course of his business.

PEPAS v. MILMAN (1935) S.A.S.R. 257. Where a farmer employed an independent contractor to clear his land for the purpose of extending his farming operations, held that the farmer had not "undertaken" the work within the meaning of section 10.

have been liable to pay if that workman had been immediately employed by him.

(2) Where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

(3) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

Indemnity
of principal.
1053, 1911,
s. 9 (2).
U.K. 15 & 16,
Geo. 5, c. 84,
s. 6 (2).

11. Where the principal is liable to pay compensation under the last preceding section he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of that section, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by arbitration under this Act.

Saving of
right to
recover from
contractor.
1053, 1911,
s. 9.
U.K. 15 & 16,
Geo. 5, c. 84,
s. 6 (3).

12. Nothing in this Act shall be construed as preventing a workman from recovering compensation under this Act from the contractor instead of the principal.

Provision as
to liability
of master
or agent of
ship.
Inserted by
50, 1941,
s. 4.

12a. (1) Where a ship belongs to or is chartered by a person whose principal place of business is out of Australia and the master of the ship or any person acting on behalf of the owner or charterer thereof employs any workman to do work in, on, or about the ship (including loading or unloading) that master or other person shall for all purposes of this Act be deemed to be the employer of the workman as if he had acted as principal in employing the workman.

(2) Where a workman has recovered compensation under this Act against a person who, by virtue of this section, was liable to pay such compensation, the owner or charterer of the ship on whose behalf the workman was employed shall indemnify that person for the amount of such compensation and any costs incurred by that person in relation to the recovery of the compensation.

(3) This section shall not confer any right to compensation on any person who, if this section had not been enacted, would not have had that right.

13. (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, and becomes insolvent, or makes a composition or arrangement with his creditors, or, being a company, has commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding any Act relating to insolvency or to the winding-up of companies, be transferred to and vest in the workman.

Provisions as to cases of insolvency of employer. 1053, 1911, s. 10 (1) and (2). U.K. 15 & 16, Geo. 5, c. 84, s. 7 (1), (2).

(2) Upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, but shall not be under any greater liability to the workman than they would have been under to the employer.

(3) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency or liquidation.

14. (1) There shall be included among the debts which, under section 279 of the Companies Act, 1934, in the distribution of the assets of a company being wound up are to be paid in priority to all other debts, the amount, not exceeding in any individual case one hundred pounds, due in respect of any compensation the liability wherefor accrued before the date of the commencement of the winding-up (as the case may be), and those Acts shall have effect accordingly.

Amount due for compensation to be a preferential debt. 1053, 1911, s. 10 (3) and (4). Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 7 (3). Amended by S.L.R. Act 1935.

(2) Where the compensation is a weekly payment the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under section 28 of this Act.

(3) The provisions of this section shall not apply where the company has entered into such a contract with insurers as mentioned in the last preceding section.

15. The last two preceding sections shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

Sections not to apply to voluntary winding-up for certain purposes. 1053, 1911, s. 10 (5). Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 7 (6).

PART III.

AMOUNT OF COMPENSATION.

Amount of compensation when workman dies leaving dependants. 1053, 1911, First Schedule (1) pt. 1660, 1924, s. 8. Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 8.

16. (1) Where a workman dies as the result of his injury and leaves dependants wholly dependent upon his earnings the amount of compensation shall, subject to the limits prescribed in this section, be a sum equal to his earnings in the employment of the same employer during the four years next preceding the injury, plus eighty pounds for each dependent child: Provided that the amount of compensation payable under this subsection shall be—

Subsec. (1) substituted by 52, 1947, s. 5 (1) and amended by 24, 1951, s. 4, by 38, 1953, s. 5 (a) and (b), by 68, 1954, s. 3 (a) and (b), by 49, 1955, s. 5 (a), and by 42, 1958, s. 3.

(a) not less than eight hundred pounds, plus eighty pounds for each dependent child;

(b) not more than two thousand five hundred pounds, plus eighty pounds for each dependent child.

(2) Where a workman dies as the result of his injury and leaves dependants in part dependent upon his earnings, the amount of compensation shall be such sum not exceeding the amount payable under subsection (1) as is agreed upon, or in default of agreement is determined by arbitration under this Act to be reasonable and proportionate to the injury to the dependants.

Substituted by 68, 1954, s. 3 (c).

(3) Amounts paid or payable before the death of the workman as weekly payments of compensation for total or partial incapacity for work resulting from the injury shall not

s. 16. The amendments made to this section by section 5 of the Workmen's Compensation Act Amendment Act, 1947, by section 4 of the Workmen's Compensation Act Amendment Act, 1951, by section 5 of the Workmen's Compensation Act Amendment Act, 1953, by section 3 of the Workmen's Compensation Act Amendment Act, 1954, by section 5 of the Workmen's Compensation Act Amendment Act, 1955, and by section 3 of the Workmen's Compensation Act Amendment Act, 1958, apply only in relation to injury or death caused by an accident occurring, respectively, after 11th December, 1947, 25th October, 1951, 17th December, 1953, 23rd December 1954, 8th December, 1955, and 27th November, 1958. See section 13 of the 1947 Act, section 9 of the 1951 Act, section 10 of the 1953 Act, section 10 of the 1954 Act, section 10 of the 1955 Act, and section 8 of the 1958 Act.

MANN V. ADELAIDE STEVEDORING COMPANY LIMITED (1935) S.A.S.R. 123. Held that the workman's mother who had a pension of £2 a week, and received from the workman occasional assistance, not capable of being valued in money, in the upkeep of the house, was not a dependant. Possible future benefits to the mother from contributions by a son are not to be taken into account in determining whether she is dependent on him.

HOWELL V. COCKINGS LTD. (1956) S.A.S.R. 134. Under subsection (2) the amount of compensation is required to be proportionate, not to the maximum allowance in the case of total dependency, but to the injury to the dependants.

be deducted from, but shall be payable in addition to, the compensation payable under subsection (1) or (2) of this section.

(4) If the period of the workman's employment by the said employer has been less than four years, the amount of his earnings during the said four years shall be deemed to be two hundred and eight times his average weekly earnings during the period of his actual employment under the said employer.

Amended by 52, 1947, s. 5 (3).

(4a) In addition to the compensation provided for by the other provisions of this section the dependants of the workman who have paid or are liable to pay the expenses of his burial shall be entitled to the amount so paid or payable, not exceeding seventy pounds.

Inserted by 49, 1955, s. 5 (b) and amended by 42, 1958, s. 3 (c).

(5) In this section "dependent child" means a child who was under the age of sixteen years at the time of the workman's death and who was at that time wholly dependent on the earnings of the workman.

Inserted by 52, 1947, s. 5 (4).

(6) In determining, for purposes of this section, whether or to what extent a child is dependent on the earnings of a workman, no regard shall be paid to any payments which have been or may be paid in respect of the child under the laws of the Commonwealth relating to child endowment.

Inserted by 56, 1947, s. 5 (4) and amended by 38, 1953, s. 5 (d).

17. Where a workman dies as the result of his injury and leaves no dependants the compensation shall be—

Amount of compensation where workman leaves no dependants. 1053, 1911, First Schedule (1) pt.

(a) the expenses specified in section 18a of this Act, and

(b) the reasonable expenses of his burial not exceeding seventy pounds.

Amended by 33, 1944, s. 3, by 24, 1951, s. 5, by 38, 1953, s. 6, by 68, 1954, s. 4, by 49, 1955, s. 6, and by 42, 1958, s. 4.

s. 17. The amendments made to this section by section 5 of the Workmen's Compensation Act Amendment Act, 1951, by section 6 of the Workmen's Compensation Act Amendment Act, 1953, by section 4 of the Workmen's Compensation Act Amendment Act, 1954, by section 6 of the Workmen's Compensation Act Amendment Act, 1955, and by section 4 of the Workmen's Compensation Act Amendment Act, 1958, apply only in relation to injury or death caused by an accident occurring, respectively, after 25th October, 1951, 17th December, 1953, 23rd December, 1954, 8th December, 1955, and 27th November, 1958. See section 9 of the 1951 Act, section 10 of the 1953 Act, section 10 of the 1954 Act, section 10 of the 1955 Act, and section 8 of the 1958 Act.

PART III.

Compensation for incapacity.

1053, 1911,
First
Schedule
(1) pt.
1660, 1924,
s. 9.
1746, 1926,
s. 2.
2081, 1932,
s. 2.
Cf. U.K.
15 & 16,
Geo. 5, c. 84,
s. 9.
Cf. U.K.
21 & 22,
Geo. 5, c. 18,
s. 1.
Amended by
65, 1940,
s. 6, by 39,
1943, s. 3,
by 52, 1947,
s. 6, by 28,
1950, s. 3, by
24, 1951, s. 6,
by 38, 1953,
s. 7, and by
68, 1954, s. 5.

Substituted by
24, 1951, s. 6
(c) and
amended by
38, 1953, s. 7
(c), by 68,
1954, s. 5 (c),
and by 42,
1958, s. 5
(a).

Inserted by
24, 1951, s. 6
(c) and
amended by
38, 1953,
s. 7 (d) and
by 42, 1958,
s. 5 (b).

Amended by
24, 1951,
s. 6 (d), by
38, 1953,
s. 7 (e), by
68, 1954,
s. 5 (d), by
49, 1955,
s. 7, and by
42, 1958,
s. 5 (c).

Substituted
by 52, 1947,
s. 6, and
amended by
42, 1958,
s. 5 (d).

18. (1) Where total or partial incapacity for work results from the injury, the amount of compensation shall be a weekly payment during the incapacity not exceeding a sum equal to three-quarters of the average weekly earnings of the workman during the previous twelve months if the workman has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, plus one pound per week for each child under the age of sixteen years totally or mainly dependent upon the earnings of the workman and, if the workman at the time of the accident had a wife totally or mainly dependent upon his earnings, an additional sum of two pounds ten shillings a week.

(2) The weekly payment to a workman having a wife or a child under the age of sixteen years totally or mainly dependent on his earnings shall not exceed thirteen pounds ten shillings a week or his average weekly earnings during the period aforesaid, whichever is lower.

(2a) The weekly payment to a workman not having a wife or a child under the age of sixteen years totally or mainly dependent on his earnings shall not exceed nine pounds five shillings a week.

(3) The total liability of the employer in respect of payments under this section shall not exceed two thousand seven hundred and fifty pounds.

(4) No workman shall receive during total incapacity a less sum per week than the following amount—

(a) if the workman is under twenty-one years of age

s. 18. The amendments made to this section by section 6 of the Workmen's Compensation Act Amendment Act, 1947, by section 6 of the Workmen's Compensation Act Amendment Act, 1951, by section 7 of the Workmen's Compensation Act Amendment Act, 1953, by section 5 of the Workmen's Compensation Act Amendment Act, 1954, by section 7 of the Workmen's Compensation Act Amendment Act, 1955, and by section 5 of the Workmen's Compensation Act Amendment Act, 1958, apply only in relation to injury or death caused by an accident occurring, respectively, after 11th December, 1947, 25th October, 1951, 17th December, 1953, 23rd December, 1954, 8th December, 1955, and 27th November, 1958. See section 13 of the 1947 Act, section 9 of the 1951 Act, section 10 of the 1953 Act, section 10 of the 1954 Act, section 10 of the 1955 Act, and section 8 of the 1958 Act.

GREEN CIRCLE PRODUCTS v. BOWERS (1936) S.A.S.R. 66. The period of time laid down in section 18 for computing average weekly earnings is not affected by section 20.

and has no wife or child totally or mainly dependent on his earnings, and his average weekly earnings during the period mentioned in subsection (1) of this section were less than four pounds—the amount of those weekly earnings;

(b) in any other case—four pounds.

The minimum amount of compensation prescribed by paragraph (b) of this subsection shall be payable notwithstanding that it exceeds the average weekly earnings of the workman during the period mentioned in subsection (1) of this section.

(5) Where a workman was at the time of the injury working under an award, determination, or industrial agreement fixing his wages, his average weekly earnings during the period mentioned in subsection (1) of this section shall be deemed to be not less than the weekly wage to which the workman was at the time of the injury entitled under that award, determination or agreement.

Substituted by 52, 1947, s. 6.

18a. (1) Where a workman is entitled to compensation under the other provisions of this Act or by reason of subsection (6) of this section, the employer shall be liable to pay as compensation to the workman the reasonable expenses incurred by the workman for such medical, hospital, nursing and ambulance services as are reasonably necessary as a result of his injury.

Additional compensation in respect of medical expenses.

Inserted by 33, 1944, s. 5, and amended by 52, 1947, s. 7, by 28, 1950, s. 4, by 24, 1951, s. 7, by 33, 1953, s. 8 (1), and by 68, 1954, s. 6.

Subsection (1) substituted by 42, 1958, s. 6.

(2) In this section—

“ambulance services” means transport by a vehicle to a hospital or other place for medical examination or medical treatment:

Substituted by 42, 1958, s. 6.

s. 18a. The amendments made to this section by section 7 of the Workmen's Compensation Act Amendment Act, 1947, by section 7 of the Workmen's Compensation Act Amendment Act, 1951, by section 8 of the Workmen's Compensation Act Amendment Act, 1953, by section 6 of the Workmen's Compensation Act Amendment Act, 1954, and by section 6 of the Workmen's Compensation Act Amendment Act, 1958, apply only in relation to injury or death caused by an accident occurring, respectively, after 11th December, 1947, 25th October, 1951, 17th December, 1953, 23rd December, 1954, and 27th November, 1958. See section 13 of the 1947 Act, section 9 of the 1951 Act, section 10 of the 1953 Act, section 10 of the 1954 Act, and section 8 of the 1958 Act.

HALL V. METROPOLITAN ABATTOIRS BOARD (1945) S.A.S.R. 193. Held that a workman who is entitled to compensation under the Act was entitled to the benefit of the section and to expenses thereby authorized and incurred subsequent to its enactment, notwithstanding that the section came into operation after the date of the accident.

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“hospital services” means—

- (a) maintenance, attendance and treatment in a hospital; and
- (b) the provision by a hospital of medical and nursing services, medical, surgical and other curative materials, appliances and apparatus: and
- (c) other usual and necessary hospital services:

“medical services” means—

- (a) treatment administered by a legally qualified medical practitioner, by a registered dentist, or by a registered physiotherapist on the prescription of a legally qualified medical practitioner;
- (b) the supply of medicines, skiagrams, artificial limbs, eyes or teeth, crutches, splints, spectacles, and other medical and surgical aids and curative appliances or apparatus:

“nursing services” means nursing services rendered by a registered nurse otherwise than as a member of the nursing staff of a hospital.

Substituted
by 42, 1958,
s. 6.

(3) Where a person or authority has rendered to or provided for a workman any medical, hospital, nursing or ambulance services for the cost of which the employer is required to compensate the workman pursuant to this section, and has not been paid the full amount to which he or it is entitled for those services, the employer may pay to the said person or authority the whole or any part of the amount owing to him or it. Such a payment shall, to the extent of the amount paid, be a discharge of the liability of the employer to the workman under this section and of the liability of the workman to such person or authority for the services.

Substituted
by 42, 1958,
s. 6.

(4) The Governor may by regulation prescribe the maximum amounts which may be charged and recovered for any medical, hospital, nursing or ambulance services the cost of which is payable as compensation under this section.

Inserted
by 42, 1958,
s. 6.

(4a) The compensation payable under this section shall be in addition to all other compensation payable to the workman, and the fact that a workman is entitled to compen-

sation under this section shall not restrict the compensation payable to him under any other provision of this Act.

(5) The Minister may, by writing, exempt from this section any employer who proves to the satisfaction of the Minister that he has made adequate arrangements to provide gratuitous ambulance transport and medical and surgical treatment for any workman in his employment who becomes entitled to compensation under this Act.

Any such exemption shall be subject to such conditions and remain in force for such period as the Minister specifies and may be revoked by the Minister if in his opinion just cause exists for doing so.

(6) Where in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, and the injury does not disable the workman for at least one day from earning full wages at his work, this section shall apply to the same extent as if the workman were so disabled for at least one day.

Inserted by
28, 1950,
s. 4 (f).

* * * * *

s. 19 repealed
by 52, 1947,
s. 8.

20. Average weekly earnings on which the amount of any compensation is fixed shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated; Provided that where, by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district.

Computation
of "earnings"
and "average
weekly
earnings."
1053, 1911,
First
Schedule
(2) pt.
Cf. U.K.
15 & 16,
Geo. 5, c. 84,
s. 10 (i).

s. 19. The repeal of this section by section 8 of the Workmen's Compensation Act Amendment Act, 1947, has relation only to injury or death caused by an accident occurring after 11th December, 1947. See section 13 of that Act.

s. 20. GREEN CIRCLE PRODUCTS v. BOWERS (1936) S.A.S.R. 66. The period of time laid down in section 18 for computing average weekly earnings is not affected by section 20.

PART III.

Average weekly earnings where workmen employed by more than one employer. 1053, 1911, First Schedule (2) pt. Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 10 (ii).

Meaning of employment by the same employer. 1053, 1911, First Schedule (2) pt. Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 10 (iii).

Special allowances. 1053, 1911, First Schedule (2) pt. Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 10 (iv).

Computation of average weekly earnings when workman under twenty-one or improver is permanently incapacitated. 1053, 1911, First Schedule (2) pt. 1660, 1924, s. 10.

Partial incapacity to be treated as total. Inserted by 43, 1956, s. 4.

21. Where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident.

22. Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident uninterrupted by the absence from work due to illness or any other unavoidable cause.

23. Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

24. When a workman is at the time of the accident under the age of twenty-one years, or is an indentured apprentice, or an apprentice or improver under an award, determination, or industrial agreement, and his incapacity, whether total or partial, is permanent his average weekly earnings at the time of the accident shall be deemed to be the weekly sum which he would probably have been able to earn if he had then attained the age of twenty-one years, or had completed his apprenticeship, or had ceased to be an improver, as the case may be, being in no case less than three pounds per week; and the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or able to earn in some suitable employment or business after the accident, shall be deemed to be the difference between the weekly sum aforesaid and the amount which the workman will probably be able to earn after attaining the age of twenty-one years, or after the expiration of the time when the apprenticeship would in the ordinary course of events have come to an end, or the workman would have ceased to be an improver, as the case may be.

24a. If—

- (a) a workman has so far recovered from an injury as to be fit for some employment: and

s. 24a. This section applies only in relation to injury occurring after 22nd November, 1956. See section 7 of the Workmen's Compensation Act Amendment Act, 1956.

(b) he has taken all reasonable steps to obtain, and has failed to obtain, employment: and

(c) it appears to the arbitrator that such failure to obtain employment is a consequence wholly or mainly of the injury,

the arbitrator shall order that the workman's incapacity shall be treated as total incapacity resulting from the injury for such period and subject to such conditions as are provided by the order, but without prejudice to the right of review conferred by this Act.

25. (1) Subject to section 34a in fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity.

Regard to be had to payments, allowances, etc., to workman. 1053, 1911, First Schedule (3) pt. Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 9 (3). Amended by 65, 1940, s. 8.

(2) In the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

(3) A pension received by a workman on retirement from his employment shall not be regarded as a payment, allowance or benefit within the meaning of subsection (1) of this section.

Inserted by 39, 1943, s. 5.

26. (1) Notwithstanding anything in this Act the compensation payable for the injuries mentioned in the first column of the table hereinafter set forth shall be assessed in the manner indicated in the second column of that table unless the workman by notice in writing given to the employer or his insurer before the amount of the compensation is settled by agreement or arbitration states that he does not desire to have the compensation assessed under this section. If the workman duly gives such a notice, the compensation shall be assessed as if this section had not been enacted.

Fixed rates of compensation for certain injuries. 1660, 1924, s. 12, and schedule. 1722, 1925, ss. 5 and 6. Subsection (1) amended by 49, 1955, s. 8 (a).

s. 25. BROWN v. COMMISSIONER OF RAILWAYS (1942) S.A.S.R. 91. The Government's contribution to the pension payable to an employee of the South Australian Railways Commissioner under the provisions of the Superannuation Act, 1926, is a payment, allowance, or benefit within the meaning of subsection (1). *But see* subsection (3).

s. 26. The amendments made to this section by section 9 of the Workmen's Compensation Act Amendment Act, 1947, by section 8 of the Workmen's Compensation Act Amendment Act, 1951, by section 9 of the Workmen's Compensation Act Amendment Act, 1953, by section 7 of the Workmen's Compensation Act Amendment Act, 1954, by section 8 of the Workmen's Compensation Act Amendment Act, 1955, by section

PART III.

Subsection
(2) amended
by 68, 1954,
s. 7 (a).

(2) Nothing in the said table shall limit the amount of compensation payable for any such injury during any period of total incapacity resulting from that injury, and any sum so paid shall be in addition to the compensation payable in accordance with the said table.

(3) Section 28 of this Act shall not apply to any payment made under this section: Provided that any such payment may by agreement or by order of a special magistrate be invested or otherwise applied for the benefit of the person entitled thereto.

(4) For the purposes of this section an eye or foot or other member shall be deemed to be lost if it is rendered permanently and wholly useless, and a finger shall be deemed to be lost if two joints thereof are severed from the hand or rendered permanently and wholly useless.

Inserted by
52, 1947,
s. 9 (a).

(4a) Where a workman suffers injury to any limb, member, or faculty mentioned in the said table so that the workman permanently has less than the full efficient use thereof, the workman shall be entitled to a percentage of the compensation payable under this section for the total loss of that limb, member or faculty, equal to the percentage of the full efficient use thereof lost by the workman.

Amended by
65, 1940,
s. 9 (a), by
52, 1947,
s. 9 (b), by
24, 1951,
s. 8 (a), by
38, 1953,
s. 9, by 68,
1954, s. 7
(c) and (d),
by 49, 1955,
s. 8 (b), and
by 42, 1958,
s. 7 (a).

(5) Where a workman suffers by the same accident from more than one of the injuries mentioned in the said table, he shall not be entitled in any case to receive in respect of fixed sums mentioned in the said table more than two thousand seven hundred and fifty pounds.

(6) The Governor may by proclamation add to the said table by assigning specified amounts of compensation as pay-

s. 26.
(contd.)

5 of the Workmen's Compensation Act Amendment Act, 1956, and by section 7 of the Workmen's Compensation Act Amendment Act, 1958, apply only in relation to injury or death caused by an accident occurring, respectively, after 11th December, 1947, 25th October, 1951, 17th December, 1953, 23rd December, 1954, 8th December, 1955, 22nd November, 1956, and 27th November, 1958. See section 13 of the 1947 Act, section 9 of the 1951 Act, section 10 of the 1953 Act, section 10 of the 1954 Act, section 10 of the 1955 Act, section 7 of the 1956 Act, and section 8 of the 1958 Act.

GATES v. WILLIAMS (1928) S.A.S.R. 252. Proof that two fingers of a hand are useless for a particular trade is not sufficient to show that they are permanently and wholly useless.

COPAS & Co. v. CHIARA (1929) S.A.S.R. 374. The amounts specified in subsection (6) are not maxima, but an arbitrary assessment of the workmen's pecuniary loss.

POOL v. SOUTH AUSTRALIAN RAILWAYS COMMISSIONER (1945) S.A.S.R. 22. Where a workman entered into an agreement under section 19 (since repealed) limiting the amount of compensation in any event, held that, notwithstanding the agreement, the scale of compensation under section 26 applied.

HALL v. METROPOLITAN ABATTOIRS BOARD (1945) S.A.S.R. 193. Where a workman sustained an injury by accident whereby in the first instance the nail was torn off the big toe of his right foot and subsequently gangrene set in and the leg was amputated 5in. above the knee joint, held that he was entitled to compensation on the basis of the total loss of a leg.

able for additional specified injuries; and the table in force for the time being as so added to shall be deemed to be the table referred to in this section.

* * * * *

Subsection (7) inserted by 65, 1940, s. 9 (b) and repealed by 48, 1956, s. 5 (2).

TABLE.

Nature of Injury.	Ratio which the fixed sum payable as compensation under this section bears to two thousand seven hundred and fifty pounds. Per centum.	Amended by 65, 1940, s. 9 (a), by 52, 1947, s. 9 (b), by 24, 1951, s. 8 (b), by 63, 1954, s. 7 (e), by 49, 1955, s. 8 (c), by 48, 1956, s. 5 (1), and by 42, 1958, s. 7 (b).
Loss of both eyes	100	
Loss of an only eye	100	
Loss of both hands	100	
Loss of both feet	100	
Loss of a hand and foot	100	
Total and incurable loss of mental powers involving inability to work	100	
Total and incurable paralysis of the limbs or of mental powers	100	
Total loss of either arm or of the greater part of either arm	80	
Total loss of either hand or of five fingers of either hand or of the lower part of either arm	70	
Total loss of a leg	75	
Total loss of a foot or the lower part of the leg	60	
Total loss of the sight of one eye, together with the serious diminution of the sight of the other eye	80	
Total loss of hearing	60	
Complete deafness of one ear	10	
Total loss of sight of one eye	40	
Total loss of either thumb	30	
Total loss of the forefinger of either hand	20	
Total loss of a joint of the thumb	15	
Total loss of the little finger of the hand	12	
Total loss of the middle finger or ring finger of the hand	10	
Total loss of the great toe of either foot	20	
Total loss of a joint of the great toe of either foot	10	
Total loss of any other toe or of a joint of a finger	7½	

27. Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review, which in default of agreement shall be by way of arbitration under this Act, may be ended, diminished, or increased subject to the maximum above provided, as from such date as the arbitrator, having regard to the past or present condition of the workman, may see fit.

Review of weekly payment. 1053, 1911, First Schedule (17). Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 11 (1).

PART III.

Lump sum in redemption of weekly payments. 1053, 1911, First Schedule (18). Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 13.

23. Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of either the workman or the employer, be redeemed by the payment of a lump sum to be settled, in default of agreement, by arbitration under this Act, and such lump sum may be ordered by the arbitrator or special magistrate to be invested or otherwise applied as abovementioned:

Provided that nothing in this section shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

PART IV.

PART IV.

CONDITIONS OF COMPENSATION.

Notice of accident. 1053, 1911, s. 7 (part), 1660, 1924, s. 5. Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 14.

29. (1) Proceedings for the recovery under this Act of compensation for any injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof:

Provided that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is adjudged in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing, postponed, be prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the State of South Australia, or other reasonable cause.

s. 28. ANSTEY V. ADELAIDE ELECTRIC SUPPLY COMPANY LIMITED (1938) S.A.S.R. 338.

Where the appellant workman was totally incapacitated by accident from work for intermittent periods and wholly incapacitated from a limited class of work and, during the intermittent periods, no one of which was for more than six months, he was paid half his average weekly earnings, and during the other periods he was employed by the respondent at work of various kinds, and where, after two years after the accident and whilst the workman was still in the employ of the respondent, the respondent applied for redemption of the weekly payments, held—(a) that there had not been in fact continuous weekly payments for six months and accordingly there was not, in the circumstances, any jurisdiction to order redemption; and (b) in the circumstances, that there was no absolute right to redemption and the arbitrator had properly refused to order redemption.

s. 29. CARSWELL V. JANNSEN (1912) S.A.L.R. 217. Where the injured workman failed to give notice as required by the section until after he had left the employer's service because he did not discover until after his employment ended that his injury was serious, held that the failure was an excusable mistake.

NELSON V. BANKIE (1924) S.A.S.R. 370. Where failure to give notice was due to mistake on the part of the workman as to the person liable, held that the omission was excused by the proviso to paragraph (1).

(2) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date and place at which the accident happened, and shall be served on the employer, or if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same at or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to, the employer at the office, or if there is more than one office, any one of the offices of such body.

(5) Where the employer is the Crown, notice shall be served on the Crown Solicitor, at Adelaide, or the manager of the work upon which the workman was employed at the time of the accident.

30. Proceedings for the recovery under this Act of compensation for any injury shall not be maintained unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or in the case of death, within six months from the time of death: Provided that the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the State of South Australia, or other reasonable cause.

Time for
claiming
compensation.
1053, 1911,
s. 7 (pt.).

31. (1) If a workman receiving a weekly payment ceases to reside in the Commonwealth, he shall thereupon cease to be entitled to receive any weekly payment, unless a medical referee, on a reference made in accordance with rules of court, certifies that the incapacity resulting from the injury is likely to be of a permanent nature.

Workman
ceasing to
reside in the
Common-
wealth.
1053, 1911,
First Sch.
(19).
U.K. 15 & 16,
Geo. 5, c. 84,
s. 16.

(2) If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

Amended by
65, 1940,
s. 10.

PART IV.

Medical examination prior to compensation. 1053, 1911, First Sch. (4). U.K. 15 & 16, Geo. 5, c. 84, s. 17.

32. Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation shall be suspended until such examination has taken place.

Periodical medical examination during period of compensation. 1053, 1911, First Schedule (14). U.K. 15 & 16, Geo. 5, c. 84, s. 18.

33. Any workman receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid for by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

Regulations as to such examinations. 1053, 1911, First Sch. (16).

34. A workman shall not be required to submit himself for examination by a medical practitioner under section 32 or 33 otherwise than in accordance with regulations made by the Governor, nor at more frequent intervals than are prescribed by those regulations.

Cost of medical and surgical treatment. Inserted by 65, 1940, s. 11.

34a. If, during the period of his incapacity, a workman at the request of the employer, receives medical or surgical treatment, the cost of and incidental to such treatment shall not be a payment, allowance, or benefit within the meaning of subsection (1) of section 25 of this Act.

Reference to medical referee. 1053, 1911, First Schedule (16). Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 19.

35. (1) Where a workman has submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the clerk of a local court, on application being made to the court by both parties may, on payment by the applicants of such fee, not exceeding two pounds, as is prescribed by any rule of court, refer the matter to a medical referee.

(2) The medical referee to whom the matter is so referred, shall, in accordance with regulations made by the Governor, give a certificate as to the condition of the workman and his fitness for employment specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

(3) Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this section shall, subject to any regulations made by the Governor, apply as if the question were a question as to the condition of the workman.

(4) If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceedings under this Act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment, shall be suspended until such examination has taken place.

(5) Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this section and for the forms to be used for those purposes, and as to the fee to be paid under this section.

36. A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same, nor shall any deduction be made from any such payment or sum for the purpose of paying hospital, medical, ambulance, or other expenses, pursuant to the Hospitals Act, 1934.

Payments not assignable. 1053, 1911, First Schedule (20). Amended by S.L.R. Act, 1935, and by 50, 1941, s. 6.

37. Where under this Act a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

Suspension of payment. 1053, 1911, First Schedule (21). U.K. 15 & 16, Geo. 5, c. 84, s. 20.

PART V.

PART V.

PROCEDURE FOR DETERMINING COMPENSATION AND SETTLING QUESTIONS.

38. If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the person injured is a workman to whom this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of this Act, be settled by arbitration, in accordance with this Act.

Settlement of questions as to compensation. 1053, 1911, s. 6 (3). U.K. 15 & 16, Geo. 5, c. 84, s. 21 (1).

PART V.

Questions as to dependants. 1053, 1911, First Sch. (8) (part). Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 21 (2).

39. Any question as to who is a dependant shall, in default of agreement, be settled by arbitration under this Act, or, if not so settled before payment into court under this Act, shall be settled by the special magistrate whose duty, for the time being, it is to preside over the local court where the sum is; and the amount payable to each dependant shall be settled by arbitration under this Act, or, if not so settled before payment into court, by the special magistrate whose duty, for the time being, it is to preside over the local court where the sum is.

Arbitration by a single arbitrator. 1053, 1911, Second Sch. (1) and (4). Cf. U.K. 15 & 16, Geo. 5, c. 84, First Sch., 1, 2, 3, 4.

40. (1) Subject to subsection (2) of this section every matter which is to be settled by arbitration shall be settled by a single arbitrator agreed on by the parties.

(2) If a single arbitrator is not agreed on by the parties within one month after the making of the claim, the matter shall be settled by the special magistrate according to the procedure prescribed by rules of court.

(3) "The Arbitration Act, 1891," shall not apply to any arbitration under this Act.

(4) The arbitrator may, if he thinks fit, submit any question of law for the decision of the special magistrate.

Appeal. 1053, 1911, Second Sch. (5) and (6). Cf. U.K. 15 & 16, Geo. 5, c. 84, First Sch. 4 (part).

41. (1) Either party may appeal, on a question of law or facts or both, to the Supreme Court within the time and in accordance with the conditions prescribed by rules of the Supreme Court, and such appeal may be in the nature of a re-hearing.

(2) In case of such an appeal the Supreme Court shall decide the matter of the appeal, and may either dismiss the appeal or reverse or vary the decision or order appealed from or refer the case back to the arbitrator or the same or some other special magistrate for further hearing or re-hearing or reconsideration and may make such order as to the costs of the appeal and of the arbitration or proceedings before the arbitrator or special magistrate, or both, as the Court thinks proper; and any decision or order of the Court under this paragraph shall be final.

Amended by 65, 1940, s. 12.

s. 39. **MANN V. ADELAIDE STEVEDORING COMPANY LIMITED** (1935) S.A.S.R. 123. Held that the workman's mother who had a pension of £2 a week and received occasional assistance, not capable of being valued in money, from the workman in the upkeep of the house, was not a dependant. Possible future benefits to the mother from contributions by the son are not to be taken into account in determining whether she was dependent.

s. 41. **ROSS V. SMITH TIMMS & Co.** (1909) S.A.L.R. 128; 8 Austn. Digest 93. Payments by an employer, amounting to an admission that the Workmen's Compensation Acts applied to an injury to an employee, do not prevent the employer from

41a. (1) The arbitrator or special magistrate may at his discretion state a special case for the opinion of the Supreme Court on any question of law.

Power to state special case. Inserted by 65, 1940, s. 13.

(2) The Supreme Court shall deal with every such special case according to the practice of the Supreme Court on special cases and may make such order thereon as to the Supreme Court seems just.

(3) The Supreme Court may send any such special case back for amendment, or may itself amend the same.

(4) The arbitrator or special magistrate shall give his decision in accordance with the opinion of the Supreme Court.

42. The arbitrator or special magistrate shall for the purposes of proceedings under this Act, have the same powers of procuring the attendances of and administering oaths and affirmations to witnesses, and of procuring the production of documents, as if the proceedings were an action in the local court.

Powers of arbitrators and magistrates as to witnesses and documents. 1053, 1911, Second Schedule (7). Cf. U.K. 15 & 16, Geo. 5, c. 84, First Sch. (4) (part).

s. 41. contending on appeal that the Workmen's Compensation Acts do not apply to (contd.) the case.

BROKEN HILL ASSOCIATED SMELTERS PROPRIETARY LIMITED v. VELLA (1927) S.A.S.R. 49. On an appeal, the Supreme Court has no power to remit a case to the arbitrator with a view to its being re-heard on a new certificate to be obtained from a certifying medical practitioner in lieu of a defective certificate under section 82.

GATES v. WILLIAMS (1932) S.A.S.R. 252. The appellate court will not grant leave to take further evidence, if the evidence was available and not taken at the hearing of the arbitration.

FREER v. BABIDGE & SONS (1933) S.A.S.R. 46. Where the arbitrator had based his award on a finding of fact the court on appeal gave leave to take further evidence on the special ground that the finding of malingering by the arbitrator was unsatisfactory. The court directed that the evidence should be taken by a special magistrate rather than the Master of the Court on the ground of the familiarity of local courts with matters arising under the Workmen's Compensation Act.

FISCHER v. ADELAIDE STEVEDORING COMPANY LIMITED (1935) S.A.S.R. 268. Held that an order of the Supreme Court declaring that from one specified date to another the appellant had not suffered from incapacity, was not a bar to a claim in respect of incapacity during a subsequent period.

THE COLONIAL SUGAR REFINING COMPANY LIMITED v. JAMIESON (1941) S.A.S.R. 38. Where on arbitration it was found that a workman was not entitled to any award of compensation and an appeal to the Supreme Court was dismissed and where several years later a second request for arbitration was filed claiming compensation in respect of the same injury and the arbitrator held that the proceedings were not bound by the previous dismissal, held that, on its true interpretation, the first award was a final settlement of the workman's right to compensation and that there was nothing in the award leaving it open to him to make a further application in respect of the same injury and that the matter was *res judicata* and that the second application should have been dismissed.

s. 41a. LEWIS AND ANOTHER v. COMMERCIAL MOTOR VEHICLES LIMITED (1939) S.A.S.R. 385. Held, before the enactment of section 41a, that a special magistrate sitting as an arbitrator had no power to state a case for the opinion of the Supreme Court on questions of law arising in the arbitration.

PART V.

Magistrate may summon medical referee as assessor.

1053, 1911, Second Sch. (8) (part).

Cf. U.K. 15 & 16, Geo. 5, c. 84, First Sch. (5).

Report of medical referee.

1053, 1911, Second Sch. (8) (part).

43. The special magistrate may, if he thinks fit, summon a medical referee to sit with him as an assessor, but such assessor shall not take part in the decision.

44. The arbitrator or special magistrate may, subject to regulations made by the Governor, appoint a medical referee to report to him on any matter which seems material to any question arising in the arbitration.

Representation of parties.

1053, 1911, Second Schedule (9).

Cf. U.K. 15 & 16, Geo. 5, c. 84, First Sch. (6) (part).

45. Rules of court may make provision for the appearance in an arbitration under this Act of any party by some other person.

Costs.

1053, 1911, Second Sch. (10).

Cf. U.K. 15 & 16, Geo. 5, c. 84, First Sch. (7).

46. Subject to section 41 and to any rules of court, the cost of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the arbitrator or special magistrate. The costs ordered by the arbitrator or special magistrate may be a lump sum, and shall not exceed the limit prescribed by rules of court, and shall if necessary, be taxed in manner prescribed by those rules; and such taxation may be reviewed by the special magistrate.

Failure of arbitrator to act.

1053, 1911, Second Sch. (11).

Cf. U.K. 15 & 16, Geo. 5, c. 84, 1st. Sch. (8).

47. In the case of the death, or refusal or inability to act, of an arbitrator, the special magistrate may, on the application of any party, settle the matter.

Registration of memorandum of agreement or arbitrator's decision.

1053, 1911, Second Sch. (12) (part).

Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 23.

48. (1) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the arbitrator, or by any party interested to the clerk of the local court, who shall, subject to such rules, on being satisfied as to its genuineness, record the memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a local court judgment.

s. 48. PERRY v. WOOLCOCK (1917) S.A.L.R. 216; 8 Austn. Digest 64. Held, on the facts, that the employer and workman were not *ad idem* and there was no registrable agreement.

(2) No such memorandum shall be recorded before seven days after the dispatch by the clerk of the court of notice to the parties interested.

(3) Notwithstanding section 54 of this Act a memorandum of agreement required by this section to be sent to the clerk of a local court, shall be sent to the clerk of that local court (being one of the local courts prescribed by rules of court as courts to which memoranda of agreements may be sent under this section) which is nearest to the place where the party sending the memorandum resides.

Inserted by
50, 1941,
s. 7.

49. Where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the special magistrate, under the circumstances, may think just.

Recording of
memorandum
where work-
man returns
to work at
same wages.
1053, 1911,
Second
Schedule
(1), pt.
Of. U.K.
15 & 16,
Geo. 5, c. 84,
s. 23, (1).

50. The special magistrate may at any time rectify the register.

Rectification
of register.
1053, 1911,
Second Sch.
(12) (part).
Of. U.K.
15 & 16,
Geo. 5, c. 84,
s. 23 (2).

51. Where it appears to the clerk of the court on any information which he considers sufficient, that an agreement as the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and in that case shall refer the matter to the special magistrate, who shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

Power of clerk
to refuse to
record
agreement in
certain cases.
1053, 1911,
Second Sch.
(12) (part).
Of. U.K.
15 & 16,
Geo. 5, c. 84,
s. 23 (3).

51a. (1) The clerk of the local court may before recording any agreement sent to him under section 48 of this Act, require either party to the agreement to furnish to him a copy of any report given by a medical practitioner as to

Powers of
clerk in
relation to
agreements.
Inserted by
50, 1941,
s. 8.

the result of any medical examination of the workman made for the purpose of ascertaining the disability, if any, from which the workman is suffering, and any other information relevant to the question whether the agreement should be recorded.

(2) At any inquiry held by a special magistrate into a refusal by the clerk of a local court to record an agreement the clerk may be present and examine witnesses.

De-registration of agreement in some cases.
1053, 1911, Second Sch. (12) (part).
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 25 (5).

52. The special magistrate may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

Effect of non-registration of agreement.
1053, 1911, Second Sch. (13).
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 25 (1).

53. An agreement as to the redemption of a weekly payment by a lump sum, if not registered in accordance with this Act shall not, nor shall the payment of the sum payable under the agreement exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment; and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the payment of the sum payable under the agreement exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

What court or special magistrate to have jurisdiction.
1053, 1911, Second Sch. (14).
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 27 (1).
Amended by 50, 1941, s. 9.

54. (1) Where any matter under this Act is to be done in a local court, then, unless the contrary intention appears, the same shall, subject to rules of court and to subsection (3) of section 48, be done in the local court of full jurisdiction nearest to which the party applying resides, or to which the matter is transferred in manner and in the circumstances prescribed by rules of court.

(2) Where in this Act a special magistrate or a clerk of a local court is referred to, such magistrate or clerk shall,

unless the context shows a different intention, be the special magistrate whose duty, for the time being, it is to preside at the local court prescribed by subsection (1) of this section and the clerk of such court respectively.

55. The duties of a special magistrate under this Act shall, subject to rules of court, be part of the duties of local courts, and the officers of the court shall act accordingly.

Duties to be part of duties of local courts.
1053, 1911, Second Schedule (15).
Of U.K. 15 & 16, Geo. 5, c. 84, s. 27 (2).

56. No court fee, except such as may be prescribed under section 35, shall be payable by any party in respect of any proceedings by or against a workman under this Act in the court prior to the award.

Fees.
1053, 1911, Second Sch. (16).
Of U.K. 15 & 16, Geo. 5, c. 84, First Sch. (12).

57. (1) Any sum awarded as compensation shall, unless paid into court under this Act, be paid on the receipt of the person to whom it is payable under any agreement or award.

Payment to be made to persons entitled.
1053, 1911, Second Sch. (17).
Of U.K. 15 & 16, Geo. 5, c. 84, First Sch. (10) (part).

(2) An acknowledgment or receipt in writing of money payable under this Act shall not be invalid merely on the ground that any person was under the age of twenty-one years at the time of his signing or giving the same.

Receipt sufficient discharge.
1053, 1911, Second Sch. (20).

58. No solicitor and no agent of a person claiming compensation under this Act shall be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the arbitrator or special magistrate, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent; and any such sum, unless it is a lump sum, shall be awarded subject to taxation and to the scale of costs prescribed by rules of court.

Costs to be taxed.
Of U.K. 15 & 16, Geo. 5, c. 84, First Sch. (10) (part).

58a. (1) Where—

(a) a workman has been in receipt of weekly payments under this Act; and

Costs where dispute not submitted to arbitration.
Inserted by 39, 1943, s. 6.

Workmen's Compensation Act, 1932-1958.

- (b) a dispute arises between the workman and the employer in relation to the continuance or amount of such payments; and
- (c) the workman reasonably employs a legal or medical practitioner or both to assist him in such dispute: and
- (d) the employer subsequently makes the weekly payment claimed by the workman without the matter being submitted to arbitration,

then the employer shall be liable to pay to the workman such amount (if any) of the costs or fees paid or payable by the workman to the legal or medical practitioner or both as the Master of the Supreme Court shall on taxation allow as being fair and reasonable: Provided that the amount so allowed in any case shall not exceed fifteen pounds.

(2) The sum so allowed on taxation shall be recoverable by the workman from the employer as a debt and the certificate of the Master shall be conclusive evidence that the amount mentioned therein is due to the person named therein.

Persons under disability need not be represented. 1053, 1911, Second Sch. (18).

59. Unless so directed by the arbitrator or special magistrate, it shall not be necessary upon any arbitration, or any application connected therewith, for dependants who are married women, infants, or persons of unsound mind or under any legal disability, to be represented.

Directions for representation of such persons. 1053, 1911, Second Schedule (19).

60. The arbitrator or special magistrate shall, in all cases where he thinks it necessary, direct the manner in which dependants who are married women, infants, or persons of unsound mind or under any legal disability, shall be represented, and may make any direction which he deems proper for the representation of any class of dependants by a member of such class or otherwise.

PART VI.

PART VI.

PAYMENT AND INVESTMENT OF COMPENSATION.

61. (1) The payment in case of death shall, unless otherwise ordered as hereinafter provided, be paid into the court. The receipt of the clerk of the court shall be a sufficient discharge in respect of the amount paid into the court.

Investment of payment in case of death.
1053, 1911, First Schedule (5).

(2) The special magistrate whose duty for the time being it is to preside over the court in which the sum is, may invest, apply, or otherwise deal with any sum so paid into the court in such manner as he, in his discretion, thinks fit for the benefit of the persons entitled thereto under this Act or may pay the sum or direct it to be paid to the Public Trustee whose receipt shall be a sufficient discharge in respect of the amount paid to him and the Public Trustee may invest the sum as he thinks proper.

Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 26 (1) and Second Schedule. Amended by 39, 1943, s. 7.

(3) If so agreed the payment in case of death shall if the workman leaves no dependants be made to his legal personal representative or if he has no such representative to the person to whom the expenses of medical attendance and burial are due.

62. Rules of court may provide for the transfer of money paid into court under this Act from one court to another.

Transfer of money from one court to another.
1053, 1911, First Sch. (6).
Cf. U.K. 15 & 16, Geo. 5, c. 84, Second Sch. (3).

63. Where a weekly payment is payable under this Act to a person under any legal disability, a special magistrate may, on application being made in accordance with rules of court, order that the weekly payment be paid during the disability into court, and the provisions of this Act with respect to sums required by this Act to be paid into court shall apply to sums paid into court in pursuance of any such order.

Payment of weekly sum due to person under disability.
1053, 1911, First Sch. (7).
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 26 (2).

64. Where, on application being made in accordance with rules of court, it appears to a special magistrate that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order of a

Power to vary order or award.
1053, 1911, First Sch. (9).
Cf. U.K. 15, 16, Geo. 5, c. 84, s. 22.

special magistrate or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependent is to be invested, applied, or otherwise dealt with, ought to be varied, the special magistrate hearing the application may make such order for the variation of the former order or the award as in the circumstances of the case he may think just.

Investment
in insurance
society.
1903, 1911,
First Sch.
(10).
Cf. U.K.
15 & 16,
Geo. 5, c. 84,
Second Sch.
(5) (part).

65. Any sum which under this Act is ordered to be invested may be invested in the purchase of an annuity from any life insurance society approved by the special magistrate or the Public Trustee investing such sum.

Deposit in
Savings
Bank.
1053, 1911,
First
Schedule
(11).
Cf. U.K.
15 & 16,
Geo. 5, c. 84,
Second Sch.
(5) (part).

66. Any sum to be so invested may be accepted by the Savings Bank of South Australia as a deposit in the name of the clerk of the local court.

Limits as to
deposits and
interest not
to apply.
1053, 1911,
First Sch.
(12).
Cf. U.K.
15 & 16,
Geo. 5, c. 84,
Second Sch.
(5) (part).

67. The provisions of any Act or regulations as to the limits of deposits in the Savings Bank shall not apply in respect of sums which under this Act are ordered to be invested. And the whole amount of any sum deposited in the said bank under this Act shall, notwithstanding the provision of any Act or regulations limiting the interest bearing amount of deposits or otherwise, bear interest at the rate allowed to ordinary depositors in the said bank.

Payment out
of bank.
1053, 1911,
First Sch.
(13).
Cf. U.K.
15 & 16,
Geo. 5, c. 84,
Second Sch.
(6).

68. No part of any money deposited in the name of the clerk of a local court in the Savings Bank under this Act shall be paid out except upon an order drawn on the Savings Bank and signed by a special magistrate or the clerk of the local court. Such order shall be a sufficient discharge to the bank in respect of the money paid out pursuant thereto.

PART VII.

PART VII.

ALTERNATIVE REMEDIES.

69. (1) Except as expressly provided in this Act, nothing in this Act shall affect any liability which exists independently of this Act.

Liability independently of this Act. Cf. U.K. 15 & 16, Geo. 5, c.84, s. 29 (1). Substituted by 52, 1947, s. 10.

(2) Where a workman has received compensation under this Act in respect of an accident, he shall not bring an action against the employer for damages in respect of the same accident—

(a) except within twelve months after he received compensation, or if more than one payment of compensation was made, within twelve months after he received the first such payment:

(b) unless within six months after he received compensation, or if more than one payment of compensation was made, within six months after he received the first such payment, he gave the employer written notice of his intention to bring that action: Provided that failure to give notice within the said period shall not be a bar to the maintenance of the action if the court finds that the failure was occasioned by mistake, absence from the State, or other reasonable cause.

Amended by 49, 1955, s. 9.

s. 69. The amendments made by the repeal and re-enactment of this section by section 9 of the Workmen's Compensation Act Amendment Act, 1947, apply only in relation to injury or death caused by an accident occurring after 11th December, 1947. See section 13 of that Act.

PERRY v. WOOLCOCK (1917) S.A.L.R. 216; 8 Aust. Digest 35. A general verdict in favour of the employer in an action by a workman based on common law negligence, in which action the employer pleaded an agreement on the part of the workman to accept compensation under the Workmen's Compensation Act, does not make the question whether there was such an agreement *res judicata*.

BENNETT v. WALLAROO-MOUNT LYELL FERTILIZERS LIMITED (1925) S.A.S.R. 132. Where the jury found that the employer had paid moneys to the workman intending that they should be paid and received as weekly payments under the Workmen's Compensation Act, and the workman received the moneys paid and intended to receive them under the Act, but that the workman had not exercised his option of claiming under the Act, held that the finding of the jury that the plaintiff had not exercised his option was consistent with its two previous findings.

KNILL v. CLARKE (1924) S.A.S.R. 59. Knowledge of the remedies open to him is *prima facie* to be imputed to a workman injured by the negligence of his employer. Held, on the evidence, that the workman had elected to take compensation under the Workmen's Compensation Acts.

CANNIZARRO v. BIDE AND ANOTHER (1942) S.A.S.R. 82. Held that, as the plaintiff was an infant, a claim for compensation under the Workmen's Compensation Act and the payment of compensation was not a bar to the bringing of a subsequent action for negligence.

DAVIES v. ADELAIDE CHEMICAL AND FERTILIZER COMPANY LIMITED (1946) S.A.S.R. 1. Held that in the particular circumstances, the defendant company had not discharged the onus on it of proving that the workman had made an election under section 69 as previously enacted.

Workmen's Compensation Act, 1932-1958.

(3) When a workman has recovered judgment against an employer independently of this Act for damages in respect of an accident, he shall not commence or continue any proceedings for or in relation to compensation under this Act in respect of the same accident.

(4) A workman shall not commence or continue any proceedings against his employer for damages independently of this Act in respect of any injury by accident—

(a) after he has obtained a final award against his employer under which his employer is liable to pay compensation under this Act in respect of the same injury;

(b) after a memorandum of an agreement has been recorded under section 48 of this Act, by which the amount of compensation payable to the workman in respect of the same injury has been agreed upon and the workman has expressly agreed not to bring any proceedings against the employer in respect of such injury independently of this Act.

(5) Any sum received by a workman from an employer by way of damages in respect of an accident shall be deducted from the sum recoverable by the workman from the employer by way of compensation under this Act in respect of the same accident.

(6) Any sum received by a workman from an employer by way of compensation under this Act in respect of an accident shall be deducted from the sum recoverable by the workman from the employer by way of damages in respect of the same accident.

Where action brought for injury for which compensation is payable under this Act.

1953, 1911, s. 6 (4).
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 29 (2).

70. (1) If within the time in this Act limited for taking proceedings an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so chooses, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

(2) In any proceedings under this section, when the court assesses the compensation it shall give a certificate of the

compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

71. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer (which other person is hereinafter called "the third party") to pay damages in respect thereof the following provisions shall apply:—

Remedies against employer and stranger. Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 30. Substituted by 52, 1947, s. 11.

- (1) The workman may take proceedings both against the third party to recover damages and against the employer for compensation.
- (2) A workman who receives any money from a third party in respect of an accident and compensation under this Act shall repay to the employer such amount of that compensation as does not exceed the amount recovered from the third party.
- (3) Upon notice to the third party, the employer shall have a first charge on moneys payable by the third party to the workman, to the extent of any compensation which the employer has paid to the workman.
- (4) If the workman has received compensation under this Act, but no damages or less than the full amount of the damages to which he is entitled, the third party shall be liable to indemnify the employer against so much of the compensation paid to the workman as does not exceed the damages for which the third party is still liable.
- (5) Payment of money by a third party to the employer pursuant to subsection (4) of this section shall, to the extent of the amount paid, be a satisfaction of the liability of the third party to the workman.

72. If a claim for compensation has already been made by the claimant in respect of the injury under any law of the United Kingdom or of any other part of His Majesty's dominions, compensation under this Act shall not be allowed

Where claim exists elsewhere as well as in this State. 1053, 1911, s. 6 (2) (d).

s. 71. The amendments made by the repeal and re-enactment of this section by section 11 of the Workmen's Compensation Act Amendment Act, 1947, apply only in relation to injury or death caused by an accident occurring after 11th December, 1947. See section 13 of that Act.

CHAPPELL v. ADELAIDE ELECTRIC SUPPLY COMPANY LIMITED (1943) S.A.S.R. 349. Held that an injury to a workman of the plaintiff was not caused under circumstances which created a legal liability in the defendant to pay damages in respect thereof and accordingly, that the sum paid to the widow of the workman as compensation could not, under section 71 (as previously enacted), be recovered from the defendant.

Workmen's Compensation Act, 1932-1958.

to the claimant, nor shall any person having such a claim under any such law claim under this Act unless he declares in writing that he has not claimed, and will not claim, compensation for the injury under any such law.

Contracting
out.
1053, 1911,
s. 8 (1)-(3).
Cf. U.K.
15 & 16,
Geo. 5, c. 84,
s. 31 (1),
(2), (3).

73. (1) Except as mentioned in this section this Act shall apply notwithstanding any contract to the contrary made after the commencement of the Workmen's Compensation Act, 1911.

(2) If the Public Actuary, after taking steps to ascertain the views of the employer and workmen, certifies—

(a) that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment (whether or not such scheme includes other employers and their workmen) provides scales of compensation not less favourable to the workmen and their dependants than the corresponding scales contained in this Act; and

(b) that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this Act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favour of such scheme,

the employer may, while the certificate is in force, contract with any workman employed by him that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall, with respect to such workman and his dependants, be liable only in accordance with the scheme.

(3) The Public Actuary may give a certificate to expire at the end of a limited period of not more than five years, and may from time to time renew, with or without modifications, such certificate so as to expire at the end of the period for which it is renewed.

(4) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.

74. (1) If complaint is made to the Public Actuary by or on behalf of the workmen of any employer—

Revocation of certificate and winding-up of scheme.
1053, 1911, s. 8 (4)-(6).
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 31 (5), (6), (7).

- (a) that the benefits conferred by any scheme no longer conform to the conditions stated in the last preceding section; or
- (b) that the provisions of such scheme are being violated; or
- (c) that the scheme is not being fairly administered; or
- (d) that satisfactory reasons exist for revoking the certificate,

the Public Actuary shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(2) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen or as may be determined by the Public Actuary in the event of a difference of opinion.

(3) Whenever a scheme has been certified as aforesaid it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required from time to time by the Public Actuary.

75. The Public Actuary shall include in his annual report the particulars of his proceedings under this Act.

Public Actuary's report.
1053, 1911, s. 8 (7).
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 31 (9).

76. The Governor may make regulations for the purpose of carrying sections 73 and 74 into effect.

Regulations.
1053, 1911, s. 8 (8).
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 31 (10).

77. (1) Every scheme under section 8 of "The Workmen's Compensation Act, 1911," in force at the commencement of this Act, shall be deemed to be a scheme certified under section 73 of this Act.

Continuance of existing schemes.

(2) The mention of particular matters in this section shall not affect the applicability to this Act of the Acts Interpretation Act, 1915.

PART VII.

Penalties
not affected.
1053, 1911,
s. 6 (5).
U.K. 15 & 16,
Geo. 5, c. 84,
s. 32.

78. Nothing in this Act shall affect any proceeding for a fine or penalty under the enactments relating to mines, factories, or workshops, or the application of any such fine or penalty.

PART VIII.

PART VIII.

APPLICATION TO SPECIAL CLASSES OF PERSONS.

Application
to workmen
in employment
of Crown.
1053, 1911,
s. 5.
Cf. U.K.
15 & 16,
Geo. 5, c. 84,
s. 34.

79. (1) This Act does not apply to persons in the naval or military service of the Crown, but otherwise applies to workmen employed by or under the Crown to whom this Act would apply if the employer were a private person.

(2) All moneys payable under this Act by or on behalf of the Crown shall be paid out of moneys to be provided by Parliament.

(3) The Minister may, notwithstanding anything in this Act, frame schemes for Government departments with a view to their being certified by the Public Actuary under section 73.

(4) In all claims against the Crown, whether arising out of injuries to workmen employed by or under the Crown, or in respect of any other claim under this Act, by any other person, proceedings may be taken and prosecuted under this Act by suit against the Attorney-General as representing the Crown in his representative capacity and without imposing any personal liability upon the occupant of the office of Attorney-General.

Act to apply
as to
accidents
to persons
employed
on "South
Australian
ships."
1053, 1911,
s. 13 (1)
and (2).
1600, 1924,
s. 7.
Cf. U.K.
15 & 16,
Geo. 5, c. 84,
s. 35 (part).

80. (1) This Act applies in respect of an accident happening to a workman employed on a South Australian ship, as defined in this section, if the accident happens in the course of his employment: Provided that it happens within the State or within the jurisdiction of this State.

(2) In this Act the term "South Australian ship" means any ship which—

(a) is registered in the State; or

(b) is owned by a body corporate established under the laws of the State or having its principal office or place of business in the State or is in the possession of any such body corporate by virtue of a charter; or

- (c) is owned by any person or body corporate whose chief office or place of business in respect of the management of such ship is in the State, or is in the possession of any such person or body corporate by virtue of a charter; or
- (d) is owned by the Crown in respect of the Government of the State, or is in the possession of the Crown in that respect by virtue of a charter.

81. The application of this Act in respect to an accident happening to a workman employed on a South Australian ship, as provided by this section, shall be subject to the following modifications:—

Modifications of Act in case of accidents to seamen.
1053, 1911, s. 13 (3).
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 35 (part).

- (a) the notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master of a ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident:
- (b) in the case of the death of the workman, the claim for compensation shall be made within six months after news of the death has been received by the claimant:
- (c) in the case of the death of a workman leaving no dependants, no compensation shall be payable if the owner of the ship is under the "Marine Board and Navigation Act, 1881," or any Act amending or substituted for that Act, liable to pay the expense of a burial:
- (d) the weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the "Marine Board and Navigation Act, 1881," or any Act amending or substituted for that Act, liable to defray the expenses of maintenance of the injured workman:
- (e) any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section 503 of the "Merchant Shipping Act, 1894" (which relates to the limitation of a ship-owner's liability in certain cases of loss of life, injury, or damage),

s. 81. The Marine Board and Navigation Act, 1881, has been repealed and superseded by the Marine Act, 1936.

but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity, under the section of this Act relating to remedies both against employer and stranger, as if the indemnity were damages for loss of life or personal injury:

- (f) section 95 of the "Marine Board and Navigation Act, 1881" (which relates to the recovery of wages of seamen lost with their ship), shall apply with respect to proceedings for the recovery of compensation by the dependants of a workman lost with his ship as they apply with respect to proceedings for the recovery of wages due to seaman and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands.

PART IX.

PART IX.

INDUSTRIAL DISEASES.

82. Where—

- i. any certifying medical practitioner certifies that a workman is suffering from a disease and is thereby disabled from earning full wages at the work at which he was employed; or
- ii. the death of a workman is caused by any such disease,

and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement, whether under one or more employers, the workman or his dependants shall be entitled to compensation under this Act as if the disease were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:—

- (a) the disablement shall be treated as the happening of the accident:

s. 82. The amendments made to this section by section 6 of the Workmen's Compensation Act Amendment Act, 1956, apply only in relation to injury or death occurring after 25th November, 1956. See section 7 of that Act.

BROKEN HILL ASSOCIATED SMELTERS PROPRIETARY LIMITED v. VELLA (1927) S.A.S.R. 49. Where the certifying medical practitioner's certificate certified that the workman suffered from industrial disease and was disabled, but omitted the word "thereby," held that the certificate would not support a claim for compensation.

Application of Act to industrial diseases. 1053, 1911, s. 12 (1), (part). Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 43 (1). Amended by 48, 1956, s. 6.

(b) if it is proved that the workman at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable:

(c) the compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due.

For the purpose of this Part a disease shall not be regarded as being due to the nature of the employment in which a workman was employed, unless it was caused by the nature of the work which he was employed to do.

83. The workman or his dependants claiming compensation under the last preceding section shall, if so required, furnish the employer from whom the compensation is recoverable with such information as to the names and addresses of all the other employers who employed him in the employment during the twelve months prior to the date of the disablement as he or they may possess, and if such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following section, that employer upon proving that the disease was not contracted whilst the workman was in his employment shall not be liable to pay compensation.

Workman to furnish information as to previous employers.
1053, 1911, s. 12 (1) (part).
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 43, (1) (c) (i).

84. If the employer from whom compensation is claimed alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer, and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved, that other employer shall be the employer from whom the compensation is to be recoverable.

Where disease contracted during previous employment.
1053, 1911 (part), s. 12 (1).
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 43 (1) (c) (ii).

85. If the disease is of such a nature as to be contracted by a gradual process, any other employers who during the twelve months prior to the date of the disablement employed the workman in the employment to the nature of which the disease was due, shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in the arbitration under this Act for setting the amount of the compensation.

Contributions in case disease contracted gradually.
1053, 1911, s. 12 (1) (part).
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 43 (1) (c) (iii).

PART IX.

How amount of compensation calculated.

1053, 1911, s. 12 (1) (part).

Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 43 (1) (d).

86. The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable.

Employer to whom notice to be given.

1053, 1911, s. 12 (1) (part).

Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 43 (1) (c).

87. The employer to whom notice of the death or disablement is to be given shall be the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left his employment.

Reference to medical referee.

1053, 1911, s. 12 (1) (part).

Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 43 (1) (f).

88. If an employer or a workman is aggrieved by the action of a certifying medical practitioner in giving or refusing to give a certificate of disablement for the purpose of section 82, the matter shall, upon request in writing by such employer or workman, be referred by the Minister to a medical referee, whose decision shall be final.

Certain diseases deemed to be due to nature of employment unless contrary certified.

1053, 1911, s. 12 (2).

Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 44 (1).

89. If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of the second schedule, and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease, except where the certifying medical practitioner certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.

Date of disablement, how ascertained.

1053, 1911, s. 12 (4).

Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 43 (2).

90. For the purposes of this Part the date of disablement shall be such date as the certifying medical practitioner certifies as the date on which such disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given:

Provided that—

- (a) where the medical referee allows an appeal against a refusal by a certifying medical practitioner to give a certificate of disablement, the date of disablement shall be such date as the medical referee determines:
- (b) where a workman dies without having obtained a certificate of disablement, or is at the time of death not in receipt of a weekly payment on account of disablement, the date of death shall be deemed to be the date of disablement.

91. (1) The Governor may, by proclamation published in the *Gazette*, from time to time extend the provisions of this Part to diseases and processes other than those mentioned in the second schedule, and to injuries due to the nature of any employment specified in the proclamation not being injuries by accident, either without modification or subject to such modifications as may be contained in the proclamation.

Extension of Part to other diseases and processes.
1053, 1911, s. 12 (6).
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 43 (3).

(2) Every such proclamation shall, upon publication and while in force, have the same effect as if the diseases and processes mentioned therein were inserted in the second schedule.

92. In such cases, and subject to such conditions as the Minister may direct, any medical practitioner appointed by the Minister for the purpose shall have the powers and duties of a certifying medical practitioner under this Part, and this Part shall be construed accordingly.

Appointment of practitioner to act under the section.
1053, 1911, s. 12 (5).

93. The Governor may make regulations as to the duties and fees of certifying medical practitioners and medical referees under this Part.

Regulations as to duties of practitioners and referees.
1053, 1911, s. 12 (3).

94. Nothing in this Part shall affect the rights of a workman to recover compensation in respect of a disease to which this section does not apply, if the disease is a personal injury by accident within the meaning of this Act.

Claims in respect of other diseases not affected.
1053, 1911, s. 12 (7).
Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 43 (4).

PART IXA.

PART IXA.

SILICOSIS.

94a. In this Part—

“silicosis” includes fibroid phthisis or silicosis of the lungs, or that disease accompanied by tuberculosis, or any other disease of the pulmonary or respiratory organs caused by the exposure to silica dust.

Definition.
Inserted by 2427, 1938, s. 3.

94b. The Minister shall by scheme provide for the payment of compensation by the employers to workmen in any specified industry or process or group of industries or processes involving exposure to silica dust—

Schemes for payment of compensation.
Inserted by 2427, 1938, s. 3.

(a) who are certified in such manner as may be prescribed by the scheme to have suffered death or total disablement from silicosis; or

(b) who, though not totally disabled, are certified in like manner to be suffering from silicosis and are thereby disabled to such a degree as to make it dangerous to continue work in any such industry or process and are for that reason suspended from employment.

To whom compensation payable.
Inserted by 2427, 1938, s. 3.

94c. The compensation shall be payable to or for the benefit of the workman or, in the event of his death, to or for the benefit of his dependants.

Conditions of compensation.
Inserted by 2427, 1938, s. 3, and substituted by 68, 1954, s. 8 (1).

94d. No compensation shall be payable under this Part on the disablement or death of a workman unless such death or disablement was caused by silicosis wholly or mainly attributable to his employment in South Australia in an industry or process specified in the scheme.

Amount of compensation.
Inserted by 2427, 1938, s. 3.

94e. The amount of compensation payable upon the disablement or death of any workman to whom any scheme under this Part applies shall be the same as that which would be payable pursuant to the provisions of this Act if such disablement or death resulted from personal injury by accident arising out of and in the course of the employment of such workman.

Interpretation of dependants
Inserted by 2427, 1938, s. 3.

94f. The dependants entitled to compensation upon the death of any workman to whom any scheme under this Part applies shall be those persons who would be entitled to compensation under this Act if such death resulted from personal injury by accident arising out of and in the course of the employment of such workman.

Contents of schemes
Inserted by 2427, 1938, s. 3.

94g. (1) Any scheme under this Part may provide—

- (a) for the establishment of a general compensation fund to be administered in such manner as may be provided by the scheme;
- (b) for the payment of subscriptions by employers to such fund and for the recovery of such subscriptions and for the payment and recovery out of such fund of any compensation payable under the

s. 94d. Section 94d was repealed and the new section above enacted in lieu thereof by section 8 of the Workmen's Compensation Act Amendment Act, 1954. Subsection (2) of section 8 provides as follows:—

(2) The amendment of the law effected by this section shall apply to compensation for which an application is under consideration at the time of the passing of the Workmen's Compensation Act Amendment Act, 1954, and to compensation for which an application is first made after the passing of the said Act.

scheme and of any expenses of and incidental to the administration and management of the scheme;

- (b1) for enabling the Minister to reduce, to such extent as he deems just in each case, the rate of subscription payable by an employer if—

Inserted by
68, 1954,
s. 9 (1).

(i) the works or premises of such employer are constructed, to the satisfaction of the Minister so as to reduce the risk of his employees contracting silicosis; or

(ii) if the silicosis content of the materials used or handled at the works of such employer is in the opinion of the Minister unusually low:

- (b2) for empowering the committee to require any employer who fails to pay a subscription under the scheme within one month after the prescribed time for payment, to pay an additional amount not exceeding ten per cent of the subscription:

Inserted by
68, 1954,
s. 9 (1).

- (c) for the settlement of claims and other matters arising under the scheme by committees representative of both employers and workmen with independent chairmen and for the appointment of and the procedure to be adopted before such committees;

- (d) for the appointment and remuneration of medical officers, medical boards and advisory medical bodies and for their duties and powers in connection with the scheme;

- (e) for workmen to whom the scheme applies—

(I) to submit themselves to periodical medical examinations; and

(II) to furnish information with respect to their previous employment or medical history;

- (f) for making the right to compensation of any workman to whom the scheme applies conditional upon compliance with any requirement on his part contained in the scheme;

- (g) for the suspension from employment in any industry or process specified in the scheme of any workman who is found at any time to be suffering from silicosis or who, when first medically examined in pursuance of the scheme, fails to

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satisfy such requirements with respect to physique as may be prescribed by the scheme; and

- (h) for the application either with or without modification of any of the provisions of this Act and for defining the industries or processes to which the scheme applies and generally for such further or supplemental matters including provisions for the settlement of disputes arising between employers and the authority administering the fund as appear necessary or desirable for giving full effect to the scheme.

Inserted by
68, 1954,
s. 9 (2).

(2) A scheme may provide that a contravention of or failure to comply with a provision or requirement thereof shall be an offence.

Inserted by
68, 1954,
s. 9 (2).

(3) An offence against a provision of a scheme shall be punishable on summary conviction by a fine not exceeding one hundred pounds.

Variation
and effect
of schemes

Inserted by
2427, 1938,
s. 3, and
amended by
65, 1940,
s. 14.

94h. The provisions of any scheme under this Part may be extended or varied by any subsequent scheme made in like manner and shall be effectual for all purposes as if enacted in this Part. Such subsequent scheme need only set out the extensions or variations of the scheme which it extends or varies.

Publication
of schemes
and disallow-
ance by
Parliament

Inserted by
2427, 1938,
s. 3.

94i. (1) Any scheme under this Part shall—

- (i) be published in the *Government Gazette*;
- (ii) take effect from the date of publication or from a later date to be specified in such scheme; and
- (iii) be laid before both Houses of Parliament within fourteen days after publication, if Parliament is then in session, and if not, then within fourteen days of the commencement of the session next after such publication.

(2) If either House of Parliament passes a resolution of which notice has been given at any time within fourteen sitting days after such scheme has been laid before such House, disallowing the scheme or any part thereof, such scheme or part shall thereupon cease to have effect.

Exemption
from duty
to insure

Inserted by
2427, 1938,
s. 3.

94j. Notwithstanding any other provision of this Act no employer to whom any scheme under this Part applies shall be obliged to insure against liability for any compensation payable to a workman under any such scheme.

PART X.

PART X.

INDUSTRIAL DISEASES CONTRACTED AT PORT PIRIE.

95. In this Part, unless inconsistent with or repugnant to the context, or some other meaning is clearly intended—

Interpretation
1834, 1927,
s. 3

“board” means the Medical Board constituted under this Part:

“disease” means any disease mentioned in the second schedule, and any disease to which Part IX of this Act is extended by proclamation:

“smelters” means the works at Port Pirie in the State known at the time of the passing of this Act as the Broken Hill Associated Smelters, and any addition thereto or extension thereof:

“Smelting Company” means the Broken Hill Associated Smelters Proprietary, Limited:

“workman” means any workman as defined in this Act who is or was at the date of disablement employed in or upon the smelters by the Smelting Company.

96. (1) A Medical Board is hereby constituted consisting of three legally qualified medical practitioners residing and practising in the municipality of Port Pirie who shall be appointed by the Governor.

Establishment of
Medical
Board.
1834, 1927,
s. 4.

(2) No medical practitioner who holds any appointment as medical officer for the Smelting Company or to any trade union consisting wholly or partially of workmen employed by the Smelting Company shall be appointed to or hold office on the board.

(3) Every member of the board shall hold office for a period of two years, and shall, upon the expiration of his term of office, be eligible for re-appointment.

(4) The decision of any two members of the board on any matter shall be deemed to be the decision of the whole board.

(5) There shall be a secretary to the board who shall be the person for the time being holding the office of secretary of the Public Hospital at Port Pirie aforesaid, and the secretary shall, when so instructed by any member of the board, convene meetings of the board, and when so authorized by the board shall issue certificates as prescribed by the regulations for and on behalf of the board.

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(6) The members of the board and the secretary thereof shall be paid such fees and allowances as are prescribed.

(7) Any fees and allowances payable to members of the board and to the secretary, and any expenses incurred by the board shall, subject to any regulations made by the Governor, be paid out of the general revenue of the State which to the necessary extent is hereby appropriated.

(8) One-half of the said fees, allowances, and expenses paid out of the said general revenue in each year shall be a debt due by the Smelting Company to the Treasurer, and shall be payable by the company within one month after the Treasurer notifies the Smelting Company in writing of the amount due, and may be recovered by the Treasurer by action in the name of the Treasurer in any court of competent jurisdiction in like manner as if the Treasurer were a private individual.

Powers of
the board.
1934, 1927,
s. 5.
Amended by
39, 1943,
s. 8.

97. (1) Subject to section 97a, the board shall from a date to be notified by the Governor in the *Gazette* exclusively exercise the powers and perform the functions of a certifying medical practitioner and of a medical referee under this Act, in respect of workmen disabled or alleged to be disabled by a disease, and who were at the time of contracting such disease employed by the Smelting Company in or upon the smelters.

(2) Subject to the provisions of subsection (1) of this section, and notwithstanding section 106, it shall be lawful for any member of the board to do or join with the other members of the board in doing any act or thing which he or the board is authorized, required, or permitted by this Part to do in respect of any workman although such member has been employed as a medical practitioner in connection with such workman's case by or on behalf of the Smelting Company, the workman, or any insurers interested.

Reference of
decision of
board to
referees.
Inserted by
39, 1943,
s. 9, and
substituted
by 33, 1944,
s. 7.

97a. (1) If a workman or the Smelting Company is aggrieved by a decision of the board to give or refuse to give a certificate, or by any other decision of the board, the workman or company may request the Minister to refer the matter to a board of review under this section.

(2) Every such request shall be made within fourteen days after the giving of the decision by the board.

(3) The Minister shall upon receipt of such a request forthwith constitute a board of review consisting of three medical practitioners selected from the panel provided for in this section and shall refer the case to that board.

(4) The board of review shall inquire into the case and may either affirm, vary, or reverse the decision of the board. The inquiry shall be commenced not later than fourteen days after the case is referred to the board of review.

(5) The decision of the board of review on any such reference shall be final.

(6) The decision of any two members of a board of review shall be deemed to be the decision of the whole board.

(7) For the purposes of this section the Governor, on the nomination of the Council of the South Australian Branch of the British Medical Association, shall appoint not less than six legally qualified medical practitioners to be a panel of medical referees from whom boards of review under this section shall be constituted as required from time to time.

The persons so nominated shall be persons who, in the opinion of the said Council, are qualified to diagnose industrial diseases.

(8) Every person so appointed shall hold office as a medical referee for three years, unless during that period the Governor decides that just cause exists for removing that person's name from the panel, and directs accordingly.

The Governor shall from time to time make appointments to fill casual vacancies on the panel. A person appointed to a casual vacancy on the panel shall hold office for the balance only of the term of the person in whose place he was appointed.

(9) If on a reference to a board of review under this section the decision is in favour of the workman, the workman shall be entitled to be paid by the Smelting Company the amount of any fares and travelling expenses, not exceeding ten pounds, reasonably incurred by the workman for the purpose of appearing before the board of review.

98. (1) Any workman who has been certified by the board as suffering from a disease may, if he so desires, and shall, if the Smelting Company so requires, submit himself for examination by the board, and if he refuses to submit himself for such examination when required to do so by the Smelting Company, or in any way obstructs the same, his right to further compensation shall be suspended until such examination has taken place.

Periodical
medical
examination
of workmen
by the board.
1884, 1927,
s. 6.

(2) When the board issues a certificate of fitness for employment the workman's right to compensation shall thereupon terminate.

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(3) A workman shall not be required by the Smelting Company to submit himself for examination under this section otherwise than in accordance with regulations made by the Governor.

(4) The provisions of section 32, 33, 34, and 35 of this Act shall not apply as regards any workman to whom this section applies.

(5) A workman who has been certified by the board as suffering from a disease shall from time to time at the request of the board present himself to the board to be medically examined.

(6) If a workman refuses to present himself for medical examination when so requested by the board, or in any way obstructs such examination, his right to compensation and to take or prosecute any proceedings to recover compensation under this Act, shall be suspended until he undergoes such examination.

(7) If the board after examination certifies that the workman who has been disabled by a disease has recovered therefrom, his right to compensation shall thereupon be terminated notwithstanding any other provision of this Act.

Application
of Act to
industrial
diseases.
1934, 1927,
s. 7.

99. Notwithstanding any other provision of this Act relating to the time for taking proceedings, proceedings for the recovery of compensation in respect of a disease shall not be maintainable unless the claim for compensation has been made within twelve months from the time the workman voluntarily or otherwise left the employ of the Smelting Company.

Medical
examination.
1834, 1927,
s. 8.

100. (1) Any workman in receipt of weekly payments of compensation shall from time to time when required by the Smelting Company submit himself for medical examination by a medical practitioner, provided and paid by the Smelting Company.

(2) If any workman refuses to submit himself to medical examination, as provided in subsection (1) of this section, or in any way obstructs the same, his right to compensation and to take or prosecute any proceedings under this Act shall be suspended until such examination has taken place.

Notification
to the board
of cases
of lead
poisoning.
1834, 1927,
s. 9.

101. (1) Any medical practitioner attending any workman employed by the Smelting Company whom he has reasonable grounds for believing to be suffering from a disease contracted in or upon the smelters shall forthwith give notice thereof in writing to the board.

(2) The board may require any workman as to whom a notice mentioned in subsection (1) of this section is given to present himself to the board, and the workman shall so present himself and submit to medical examination.

(3) The board shall furnish to the workman a certificate as to the result of the examination and shall forward to the Smelting Company a copy of such certificate.

(4) Any person who fails to comply with any requirement of this section shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding twenty pounds.

102. If the smelters are at any time worked by any person, firm, or company other than the Smelting Company, then this Part shall so long as the smelters are so worked apply to such other person, firm, or company and his or its workmen in the same way as it now applies to the Smelting Company and its workmen.

Application of Act to assignees of the Smelting Company. 1834, 1927, s. 10.

103. Where under this Part a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

Suspension of payments. 1834, 1927, s. 11.

104. The Governor may make any such regulations as are necessary or convenient for carrying out the provisions of this Part, and may by such regulations impose any penalty not exceeding fifty pounds for any breach thereof.

Regulations. 1834, 1927, s. 13.

PART XI.

PART XI.

ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS.

105. The Minister may appoint such legally qualified medical practitioners to be medical referees and certifying medical practitioners respectively for the purposes of this Act as he may determine; and the remuneration of, and expenses incurred by, medical referees and certifying medical practitioners under this Act shall, subject to regulations made by the Governor, be paid out of moneys provided by Parliament.

Appointment and remuneration of medical referees and practitioners. 1053, 1911, s. 14 (1). Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 38 (1) (part).

Referee not to act if previously employed. 1053, 1911, s. 14 (2). Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 38 (1) (part).

106. Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as medical referee in that case.

Order for detention of ship. 1053, 1911, s. 17. Cf. U.K. 15 & 16, Geo. 5, c. 84, s. 39.

107. (1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port or river in the State or in any water within the territorial jurisdiction of the State, a Judge of the Supreme Court may, upon its being shown to him by any person applying summarily that the owners are probably liable as such to pay such compensation, and that none of the owners reside in this State, issue an order directed to any officer of the said court, or of the South Australian Harbors Board, or of any authority exercising the powers vested in the said board, named in the order, requiring such officer to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by a Judge of the said court, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon.

(2) The officer to whom the order is directed may detain the ship in accordance with the order.

(3) In any legal proceedings to recover such compensation, the person giving security may be made the defendant, and the production of the order of the Judge made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

(4) If the owner of a ship is a corporation, such corporation shall, for the purpose of this section, be deemed to reside in the State of South Australia if it has an office in the said State at which service of process can be effected.

(5) If a ship after detention in pursuance of this section, or after service on the master of any notice of an order for detention under this section, proceeds to sea before the ship is released by competent authority, the master of the ship, and also the owner, and any person who sends the ship to sea, if that owner or party is party or privy to the offence, shall be liable to a penalty not exceeding one hundred pounds.

(6) If the master proceeds to sea with the ship in contravention of this section, and takes to sea any person required

to detain the ship, the owner and the master thereof shall each be liable to pay a further penalty at the rate of ten pounds for every day until such person returns to the place from which he was taken, or until the expiration of such time as would enable him after leaving the ship to return to such place.

108. (1) No employer shall employ any workman unless he has obtained from an insurance office a policy of insurance for the full amount of his liability to pay compensation under this Act to all workmen employed by him.

Compulsory insurance. 1660, 1924, ss. 13 and 14. Cf. U.K. 24 & 25, Geo. 5, c. 23, s. 1.

(2) Any employer who fails to comply with this section shall be liable to a penalty not exceeding five pounds in respect of each uninsured workman employed by him; and after the date of any conviction for a contravention of this section, he shall from time to time be liable to further penalties not exceeding twenty pounds for every week during which he fails to comply with this section.

(3) This section shall not apply to—

- (a) any employer who has established a scheme under section 73 of this Act or section 8 of "The Workmen's Compensation Act, 1911," in respect of which scheme a certificate given by the Public Actuary is for the time being in force;
- (b) the Crown;
- (c) the South Australian Railways Commissioner; or
- (d) any employer who, in the opinion of the Minister, has adequate financial resources to meet all probable claims under this Act, and who obtains a certificate of exemption from the provisions of this section under the hand of the Minister.

(4) No prosecution for a contravention of this section shall be instituted without the consent of the Minister. Such consent may be proved by the production of a document purporting to be signed by the Minister and giving consent to the prosecution.

109. Except pursuant to a scheme certified under section 73, no employer, insurer, or other person on behalf of any employer or insurer shall directly or indirectly take or receive any money from any workman, whether by way of

Deductions towards compensation not lawful. 1053, 1911, s. 16.

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deduction from wages or otherwise howsoever, in respect of any liability of an employer to pay compensation under this Act. All money so taken or received as aforesaid from any workman, whether with the consent of such workman or not, may be recovered in any court of competent jurisdiction as a debt due to him by the employer, insurer, or person who took or received it.

Regulations.
1053, 1911,
s. 19, pt.

110. (1) The Governor may make regulations for any purpose for which this Act authorizes regulations to be made, or for which it is by this Act contemplated that regulations may or will be made, and generally such regulations as may be necessary or convenient for carrying out or giving effect to the provisions of this Act.

Inserted by
52, 1947,
s. 12.

(1a) The power conferred by subsection (1) shall include power to make regulations—

- (a) prescribing the amounts or rates of the premiums chargeable for policies of insurance against liability to pay compensation under this Act:
- (b) providing for the appointment of an Advisory Committee to make recommendations as to the amounts or rates of premiums to be so prescribed:
- (c) prescribing any matters necessary or convenient to be prescribed for ensuring that the prescribed amounts or rates of premiums are charged.

(2) Any such regulations may prescribe penalties for any breach thereof, or of other regulations, not exceeding ten pounds for any such breach.

Rules of
Supreme
Court.
1053, 1911,
s. 20.

111. Rules of court may be made under the "Supreme Court Act, 1878," for the regulation of all matters relating to the practice and procedure of the Supreme Court on appeals thereto under this Act, and generally as to all matters connected with such appeals, or for the regulation of any other matter in which the Supreme Court or a Judge thereof has jurisdiction under this Act; and such rules may also prescribe such forms and such scales of fees, costs, and expenses as may be necessary or convenient for the purposes of this Act.

s. 111. The Supreme Court Act, 1878, has been repealed and superseded by the Supreme Court Act, 1935.

112. Rules of court may be made under the "Local Courts Act, 1926," for any purpose for which this Act authorizes rules of court (not being rules of the Supreme Court) to be made and also generally for regulating the practice of local courts, special magistrates, and officers of local courts under this Act, and for carrying into effect this Act so far as it affects or relates to such courts or magistrates or officers, and to proceedings in local courts or before special magistrates; and such rules may also prescribe such forms and such scales of fees, costs, and expenses as may be necessary or convenient for the purposes of this Act.

Rules of local courts. 1053, 1911, s. 21.

113. Any agreement in writing and any memorandum of agreement (whether under seal or not) as to any matter under this Act, or any Act hereby repealed, and any receipt given for or upon the payment of any money payable under this Act, or any Act hereby repealed, or under any such agreement aforesaid, shall be exempt from any stamp duties chargeable under the "Stamp Duties Act, 1923," or any Act amending or substituted for that Act.

Agreements and receipts under the Act exempt from stamp duty. 1053, 1911, s. 18.

114. All proceedings in respect of offences against this Act shall be dealt with summarily.

Summary proceedings. 1053, 1911, s. 22, 1834, 1927, s. 12.

SCHEDULES.

THE FIRST SCHEDULE.

ACTS REPEALED.

Number and Year of Act.	Title of Act.
1053 of 1911 . . .	The Workmen's Compensation Act, 1911.
1351 of 1918 . . .	Workmen's Compensation Act Amendment Act 1918.
1379 of 1919 . . .	Workmen's Compensation Act Further Amendment Act, 1919.
1437 of 1920 . . .	Workmen's Compensation Act Further Amendment Act, 1920.
1525 of 1922 . . .	Workmen's Compensation Act Further Amendment Act, 1922.
1660 of 1924 . . .	Workmen's Compensation Act Further Amendment Act, 1924.
1722 of 1925 . . .	Workmen's Compensation Act Amendment Act, 1925.
1746 of 1926 . . .	Workmen's Compensation Act Amendment Act, 1926.
1834 of 1927 . . .	Workmen's Compensation Act Amendment Act, 1927.
2081 of 1932 . . .	Workmen's Compensation Act, 1932.

Workmen's Compensation Act, 1932-1958.

THE SECOND SCHEDULE.

Amended by
proclamations
"Gazette,"
14th July,
1938, p. 49,
19th Decem-
ber, 1940,
p. 1551, and
12th January,
1950, p. 41.

Description of Disease.	Description of Process.
Anthrax	Handling of wool, hair bristles, hides, and skins.
Lead poisoning or its <i>sequelae</i> ..	Any process involving the use of lead or its preparation or compounds.
Mercury poisoning or its <i>sequelae</i>	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its <i>sequelae</i>	Any process involving the use of phosphorus or its preparations or compounds
Arsenic poisoning or its <i>sequelae</i>	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis	Mining.
Antimony poisoning or its <i>sequelae</i>	Any process involving the use of antimony or its preparations or compounds.
Asthma or asthmatic attacks . . .	Any process involving working in contact with or the inhalation of the dust of red pine or blackwood.
Carbon monoxide poisoning or its <i>sequelae</i>	Any process involving working in contact with, or the inhalation of flour or flour dust.
Dermatitis	Any process involving working in contact with or the inhalation of carbon monoxide gas.
Nitrous fumes poisoning and its <i>sequelae</i>	Any process involving exposure to or working in contact with the dust of blackwood.
Copper poisoning or its <i>sequelae</i>	Any process involving exposure to, or working in contact with sulphuric acid, flour or flour dust.
Zinc poisoning or its <i>sequelae</i> ..	Any process involving working in contact with nitric acid or the inhalation of nitrous fumes.
Chrome ulceration or its <i>sequelae</i>	Any process involving the use or handling of copper or its preparations or compounds.
Septic poisoning or its <i>sequelae</i> .	Any process involving the use of zinc or its preparations or compounds.
"Q" fever, an infectious disease in which the presence or the activity of the micro-organism <i>rickettsia burnet</i> has been demonstrated by approved laboratory methods.	Any process involving the use of chromic acid or bichromate or ammonium potassium or sodium or their preparations.
	Any work involving the handling of meat or the manufacture of meat products or animal by-products in connection with the trade of butcher or slaughterman.
	Any employment at, in, about, or in connection with any meat works or involving the handling of meat, hides, skins, or carcasses.