

Acts reprinted pursuant to the Amendments Incorporation  
Act, 1937

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LOTTERY AND GAMING ACT, 1936-1956

WRONGS ACT, 1936-1959

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With notes of judicial decisions affecting sections of the reprinted Acts



## LOTTERY AND GAMING ACT, 1936-1956.

BEING

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

AS AMENDED BY

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

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

LOTTERY AND GAMING ACT AMENDMENT ACT (No. 2), 1939, No. 11  
OF 1939 [ASSENTED TO 19TH OCTOBER, 1939.]

LOTTERY AND GAMING ACT AMENDMENT ACT, 1939, No. 13 OF 1939  
[ASSENTED TO 9TH NOVEMBER, 1939.]

LOTTERY AND GAMING ACT AMENDMENT ACT, 1943, No. 11 OF 1943  
[ASSENTED TO 29TH OCTOBER, 1943.]

LOTTERY AND GAMING ACT AMENDMENT ACT, 1945, No. 42 OF 1945  
[ASSENTED TO 24TH JANUARY, 1946.]

LOTTERY AND GAMING ACT AMENDMENT ACT, 1947, No. 37 OF 1947  
[ASSENTED TO 11TH DECEMBER, 1947.]

LOTTERY AND GAMING ACT AMENDMENT ACT, 1948, No. 46 OF 1948  
[ASSENTED TO 22ND DECEMBER, 1948.]

LOTTERY AND GAMING ACT AMENDMENT ACT, 1949, No. 19 OF 1949  
[ASSENTED TO 27TH OCTOBER, 1949.]

LOTTERY AND GAMING ACT AMENDMENT ACT (No. 1), 1950, No. 36  
OF 1950 [ASSENTED TO 30TH NOVEMBER, 1950.]

LOTTERY AND GAMING ACT AMENDMENT ACT (No. 2), 1950, No. 57  
OF 1950 [ASSENTED TO 7TH DECEMBER, 1950.]

LOTTERY AND GAMING ACT AMENDMENT ACT (No. 3), 1950, No. 58  
OF 1950 [ASSENTED TO 7TH DECEMBER, 1950.]

LOTTERY AND GAMING ACT AMENDMENT ACT 1953, No. 43 OF 1953  
[ASSENTED TO 17TH DECEMBER, 1953.]

LOTTERY AND GAMING ACT AMENDMENT ACT 1954, No. 57 OF 1954  
[ASSENTED TO 23RD DECEMBER, 1954.]

LOTTERY AND GAMING ACT AMENDMENT ACT, 1955, No. 42 OF 1955  
[ASSENTED TO 8TH DECEMBER, 1955.]

AND

LOTTERY AND GAMING ACT AMENDMENT ACT, 1956, No. 42 OF 1956  
[ASSENTED TO 22ND NOVEMBER, 1956.]

## Lottery and Gaming Act, 1936-1956.

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

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

PART I.

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Lottery and Gaming Act, 1936-1956".

Division of Act.

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

PART I.—Preliminary.

PART II.—Lotteries.

PART III.—Totalizator.

PART IV.—Licensing of Bookmakers.

PART V.—Unlawful Gaming.

PART VI.—Common Gaming-houses.

PART VII.—Evidence.

PART VIII.—Procedure and Miscellaneous.

Repeal.

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

Interpretation.

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

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

"board" means the Betting Control Board:

"chairman" means the chairman of the board:

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

Amended by  
2417, 1938,  
s. 2.

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

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

(Definition of "public place.") REGINA v. BARNARD (1884) 18 S.A.L.R. 54; 6 A.L.J. 6; 9 Austn. Digest 506. Held that a part of a racecourse fenced by a picket fence 4ft. high, and to which access was granted only to members of certain clubs, was not a public place or a place to which the public had access whether on payment of money or otherwise within the meaning of Act 282, 1883.

SANDERSON v. ALLCHURCH (1922) S.A.S.R. 7; 9 Austn. Digest 506. The public lawns in front of the grandstand on a racecourse are a "public place" within the meaning of section 4.

O'SULLIVAN v. ARRIOLA AND OTHERS (1951) S.A.S.R. 108. Held that a pughole which was part of a brickyard was a factory within the meaning of section 4 and therefore a public place for the purposes of the Act.

“loiter” means to idle or linger about:

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

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

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

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

“public place” means—

- (a) every public place;
- (b) every place to which the public are permitted to have access tacitly or otherwise and whether upon payment of money or not;
- (c) any premises in respect of which a licence granted under the Licensing Act, 1932, is in force;
- (d) any shop, and any part of a building occupied in connection with, or for the purposes of, a shop;
- (e) any factory, and the appurtenances of any factory;
- (f) any building or place occupied by any club (whether a racing club or not), and the appurtenances thereof; and
- (g) any place commonly used by the public whether as trespassers or otherwise:

cf. U.K.  
6 Edw. 7,  
c. 43, s. 1 (4).

## Lottery and Gaming Act, 1936-1956.

“street” means every public street, thoroughfare, private street, or road commonly used by or to which the public are permitted to have access:

“sweepstakes” means every transaction, scheme, device, or arrangement (expressed or implied) whereby any money or valuable thing is paid, contributed, or subscribed by any persons for the purpose of payment to or division among any person or persons in any proportions on any event or contingency dependent on the result of any race, game, sport, or exercise, whether such race, game, sport, or exercise shall be within or outside the State:

“totalizator” means the machine or instrument known as “The Totalizator” and any other machine or instrument of a like nature and conducted on like principles:

“unlawful gaming” means—

(a) the playing at or in engaging in any game with cards or other instruments, or with money, in or as the result of which game any person or persons derives or is intended to derive (other than in his capacity as a player) any part or percentage of any money or thing played for, staked, or wagered, such part or percentage not being money received for deposit in any licensed totalizator; and

(b) any contravention of or failure to observe any provision of this Act, whether that provision relates to unlawful gaming as hereinbefore defined or not.

Cf. U.K.  
13 & 19  
Geo. 5, c. 41,  
s. 1 (3) (a).

PART II.

PART II.

LOTTERIES.

5. Every lottery is hereby declared to be a common nuisance and unlawful, and every sale or gift, disposal or distribution made by means or in pursuance thereof void.

Lotteries declared nuisances.  
1285, 1917, s. 5.  
U.K. 10 Will. 3, c. 23, s. 1;  
42 Geo. 3, c. 119, s. 1;  
24 & 25 Geo. 5, c. 58, s. 21.

6. (1) No person shall, either publicly or privately exercise, open, or show, to be played, thrown, or drawn at, any lottery.

Opening lotteries, and aiding and playing thereat.  
1285, 1917, s. 6.  
U.K. 10 Will. 3, c. 23, ss. 2, 3;  
12 Geo. 2, c. 28, s. 1;  
42 Geo. 3, c. 119, s. 2.

Penalty—One hundred pounds, or in default imprisonment for six months.

(2) No person shall employ, aid, or abet, any other person in publicly or privately exercising, opening, or showing to be played, thrown, or drawn at, any lottery.

Penalty—Fifty pounds, or in default imprisonment for three months.

(3) No person shall play, throw, or draw at any such lottery.

Penalty—Ten pounds, or in default imprisonment for one month.

7. No person shall promise or agree to—

(a) pay any sum of money; or

(b) deliver any goods; or

(c) do or forbear doing anything for the benefit of any person,

Promises to pay money or deliver goods, etc., on event of lottery.  
1285, 1917, s. 7.  
Of U.K. 8 Geo. 1, c. 2, s. 36 (part); 42 Geo. 3, c. 119, s. 5.

s. 5. O'SULLIVAN V. TANNER (1921) S.A.S.R. 248. Where a person invited the public to order suits of clothes and promised that one suit would be given free in every hundred orders received, held that the scheme was a lottery.

CHURCH, *vice* HORSEMAN V. NEWS LIMITED (1933) S.A.S.R. 70; 9 Austn. Digest 404. Held that a competition determined mainly by chance was a lottery, although some degree of skill was involved. If the element of skill involved in a competition preponderates or balances the element of chance the competition is not a lottery. [See also the cases noted under section 10.]

## Lottery and Gaming Act, 1936-1956.

whether with or without consideration, on any event or contingency relative or applicable to the drawing of any ticket or tickets, lot or lots, numbers, figures, or names in any lottery, or

- (d) publish any proposal for any of the purposes aforesaid.

Penalty—Fifty pounds, or in default imprisonment for three months.

Advertising  
lotteries.

1285, 1917,  
s. 8.  
Cf. U.K.  
9 Anne, c. 6,  
s. 57;  
6 & 7 Will.  
4, c. 60, s. 1;  
24 & 25  
Geo. 5, c. 58,  
s. 22.

**8.** No person shall print, exhibit, or publish, or cause to be printed, exhibited, or published, any placard, handbill, card, writing, sign, or advertisement of any lottery, or of any proposal for any lottery.

Penalty—Fifty pounds, or in default imprisonment for three months.

Exceptions  
from Act.

1285, 1917,  
s. 9.  
U.K. 9 & 10  
Vict., c. 48;  
24 & 25  
Geo. 5, c. 58,  
ss. 23-25.

**9.** Nothing in this Part of this Act shall extend to or affect—

- (a) any allotment of real or personal estate or interest which according to law is legally allottable, or may be allotted or held by, or by means of, any allotment or partition by lots:

- (b) any voluntary association or branch thereof formed or established in the State for the purchase of paintings, drawings, or other works of art to be afterwards allotted and distributed by chance or otherwise among the several members, subscribers, or contributors forming part of such association, or for raising sums of money by subscription or contribution, to be allotted and distributed by chance or otherwise as prizes amongst the members, subscribers, or contributors forming part of such association: Provided that—

- (i.) such sums of money so allotted and distributed are expended solely and entirely in the purchase of paintings, drawings, or other works of art; and

- (ii.) the proceedings of such association are carried on in good faith for the encouragement of the fine arts.

10. No person shall—

- (a) print, publish, or exhibit, or cause to be printed, published, or exhibited in any newspaper, or on any placard, handbill, circular, or card, any advertisement, sign, notice, or other information of or relating to the establishment, commencement, promotion, carrying on, or drawing, or intended establishment, commencement, promotion, carrying on, or drawing of any illegal lottery, whether wholly or partly established, commenced, carried on, promoted, or managed in the State or elsewhere; or
- (b) being registered as the proprietor, printer, or publisher of any newspaper, permit or suffer any such advertisement, sign, notice, or information to be printed or published in such newspaper; or
- (c) print any ticket or other thing entitling or intended to entitle any person or persons to any chance or share in any illegal lottery; or
- (d) sell, circulate, exhibit, or dispose of any newspaper printed in any part of the Commonwealth of Australia which contains any advertisement, sign, notice, or information relating to any illegal lottery, or the drawing, conduct, or management thereof.

Publication of information regarding lotteries.  
1285, 1917, s. 10.  
Cf. U.K. 8 Geo. 1, c. 2, s. 36 (part).  
Cf. 6 & 7 Will. 4, c. 66, s. 1;  
24 & 25 Geo. 5, c. 58, s. 22.

11. No person shall sell, or offer for sale, or deliver, or give, or buy, or pay for, or knowingly receive or accept any ticket, chance, or share in any illegal lottery.

Sale of lottery tickets.  
1285, 1917, s. 11.  
Cf. U.K. 8 Geo. 1, c. 2, s. 36 (part);  
4 Geo. 4, c. 60, s. 41.

s. 10. O'SULLIVAN v. TANNER (1921) S.A.S.R. 248; 9 Austn. Digest 426. A person causes an advertisement to be published if he hands a copy of it to the agent of a newspaper proprietor and asks that it be printed in a paper published by the proprietor. Proof of such a request satisfies the onus on the prosecutor as to *mens rea*. If the advertisement discloses a scheme for disposal of property by chance, that is sufficient evidence of an intended lottery without proof that the scheme was to be carried out.

KNEEBONE v. WHITTLE (1922) S.A.S.R. 257; 9 Austn. Digest 405. An advertisement relates to the establishment of an illegal lottery if—(a) the language used can only be reasonably interpreted as describing a scheme which is a scheme for distributing money by chance even if some other scheme is in fact intended to be carried out; or (b) if, though innocent on its face, the advertisement relates to a scheme which is, in fact, a lottery.

NEWS LIMITED v. HORSEMAN (1931) S.A.S.R. 278; 9 Austn. Digest 412. A lottery carried on in another State, though legal there, is an illegal lottery within the meaning of section 10 (a).

## PART II.

Placards  
relating to  
illegal  
lotteries.  
1285, 1917,  
s. 12.

12. (1) No person shall placard, post up, or exhibit, or permit or suffer to be placarded, posted up, or exhibited, or shall assist in placarding, posting up, or exhibiting in or on or about any land, building, hoarding, or premises any information or notice relating to any illegal lottery.

(2) Where any such information or notice is placarded, posted up, or exhibited on any land, building, or premises, it shall, unless the contrary is proved, be presumed to have been so placarded, posted up, or exhibited by or with the permission of the occupier of that land, building, hoarding, or premises.

Sending  
money to  
lotteries.  
1285, 1917,  
s. 13.  
Cf. U.K.  
9 Geo. 1,  
c. 19, s. 4;  
6 Geo. 2,  
c. 35, s. 29;  
24 & 25  
Geo. 5, c. 58,  
s. 22.

13. No person shall, for gain or otherwise, in any manner whatever directly or indirectly forward or partly forward, or give or receive for the purpose or intent that the same shall be so forwarded, any packet, or parcel, or money, cheque, draft, order for the payment of money, or valuable thing whatsoever to the promoters, managers, or conductors of any illegal lottery or sweepstakes conducted or drawn or intended to be conducted or drawn in any state, country, or place within or outside the State, and whether such lottery or sweepstakes is illegal according to the law of such state, country, or place, or otherwise.

Allegations  
*prima facie*  
proof.  
1285, 1917,  
s. 14.

14. The allegations in any complaint laid in relation to any alleged offence against the provisions of the next preceding section—

- (a) that any packet, parcel, money, cheque, draft, order for the payment of money or valuable thing specified in such complaint has been forwarded or partly forwarded, or has been given or received for the purpose or intent that the same should be forwarded (as the case may be):
- (b) that any person or persons, club, association, or company named in the complaint is the promoter, manager, or conductor (as the case may be) of any illegal lottery :
- (c) that any lottery named or described in the complaint is an illegal lottery,

shall be accepted by the court as proof of the truth of such allegations, unless the contrary is proved.

PART III.

PART III.

TOTALIZATOR.

15. (1) The Commissioner of Police may, upon application made to him for the purpose, and subject to the approval of the Chief Secretary, issue licences to the committees or other executive bodies of racing clubs authorizing the use of the totalizator upon the terms and conditions prescribed by the regulations in the second schedule to this Act.

Totalizator licences.  
1285, 1917, s. 15.  
1382, 1919, s. 3.  
1986, 1930, s. 2.  
Cf. U.K. 18 & 19 Geo. 5, c. 41.

(2) Every such application shall be made in writing in the form of the third schedule, or to the like effect, by the chairman or secretary of the club seeking to be licensed.

(3) Every licence so issued shall be in force from the day specified in the licence until the succeeding thirty-first day of December (both days inclusive), and shall entitle the club therein mentioned to use the totalizator upon the racecourse and upon the days specified in the licence, or upon such other day or days in place of any of the days so specified as the Chief Secretary may from time to time, in writing upon such licence, approve.

Cf. U.K. 24 & 25 Geo. 5, c. 58, s. 10.

(4) Not more than one licence shall be granted to any one club in respect of any one year.

(5) No licence shall be issued to authorize the use of the totalizator, except at horse racing.

(6) In granting any licences the Commissioner of Police shall give priority to the claims of any racing club owning or leasing a racecourse and to whom a licence was issued prior to the twentieth day of November, nineteen hundred and thirty.

16. No licence shall be issued for the use of the totalizator on any racecourse situated within twenty miles of Adelaide, except for the racecourses known as the Victoria Park, Morphettville, Cheltenham, and Onkaparinga racecourses, unless a resolution has been passed by both Houses of Parliament authorizing the issue of such a licence.

Restriction on licences in metropolitan area.  
1285, 1917, s. 20.  
Cf. U.K. 24 & 25 Geo. 5, c. 58, s. 1 (1).

17. (1) No licence shall be issued for the use of the totalizator on any racecourse situate within ten miles of any racecourse in respect of which a licence to use the totalizator has been or usually is issued, and where more applications

Restriction on other licences.  
1285, 1917, s. 21.  
1447, 1920, s. 4.

than one are simultaneously made for racecourses situate within twenty miles of each other, it shall be in the discretion of the Commissioner, subject to the approval of the Chief Secretary, to license which racecourse he thinks fit.

Amended by  
42, 1956, s. 3.

(2) This section shall not apply to the racecourses known as the Victoria Park, Morphetville, Cheltenham, and Onkaringa racecourses, nor to the racecourses used by James-town Jockey Club, the North-Western Jockey Club, the Quorn Jockey Club, Berri-Barmera Racing Club Limited and Renmark Racing Club Limited.

Conditions  
of issue  
of licence.  
1285, 1917,  
s. 16.

18. No licence shall be issued to any racing club unless the applicant proves to the satisfaction of the Commissioner of Police the following matters:—

(a) where the racing club uses a racecourse situated within ten miles of Adelaide—

i. that there are at least one hundred members of such club; and

ii. that the annual value of members' subscriptions of such club amounts to not less than two hundred pounds;

(b) where the racing club uses a racecourse situated a greater distance than ten miles from the City of Adelaide—

i. that there are at least fifty members of such club; and

ii. that the annual value of members' subscriptions amounts to not less than fifty pounds.

Number of  
times  
totalizator  
may be used.

1285, 1917,  
s. 22.  
1447, 1920,  
s. 5.  
1986, 1930,  
s. 2.  
2188, 1934,  
s. 3.

Amended by  
2417, 1938,  
s. 3, by 46,  
1948, s. 3, and  
by 42, 1955,  
s. 3 (1).

19. No licence granted under this Act shall sanction the use of any totalizator—

(a) on the Morphetville Racecourse for more than seventeen days in any one year or on any other racecourse within fifteen miles of the General Post Office, Adelaide, for more than sixteen days in any one year:

Provided that a licence granted to the South Australian Jockey Club, Limited, may sanction the use of the totalizator on the Morphetville racecourse on one additional day if the Commissioner

of Police is satisfied that on that day a race meeting will be held on that course by at least three racing clubs jointly, and that the net profits from that meeting will be devoted to charitable purposes:

Provided also—

- (i.) licences granted to the South Australian Jockey Club Limited may sanction the use of the totalizator on the Morphettville Racecourse on one additional day in the year nineteen hundred and forty-nine and in every third year thereafter:
- (ii.) licences granted to the Adelaide Racing Club Limited may sanction the use of the totalizator on the Victoria Park Racecourse on one additional day in the year nineteen hundred and fifty and in every third year thereafter:
- (iii.) licences granted to the Port Adelaide Racing Club Limited may sanction the use of the totalizator on the Cheltenham Racecourse on one additional day in the year nineteen hundred and fifty-one and in every third year thereafter:

but if any licence is granted to any club pursuant to this proviso the licence shall be granted on the condition that the net proceeds to the club of the race-meeting held by the club on the day for which the licence is granted shall be distributed by the club among such charitable institutions and in such proportions as the Governor directs.

- (a1) on racecourses south of the thirty-sixth parallel of south latitude for more than forty-eight days in the aggregate in any one year.
- (a2) on racecourses which are situated within fifty miles of the Post Office at Barmera for more days in the aggregate in any one year than a number calculated at the rate of eight days for each such club.
- (b) on any other racecourse for more than eight days in any one year:

Inserted by  
42, 1955, s. 3  
(2).

Inserted by  
42, 1955, s. 3  
(2).

Provided that on the application of the racing clubs concerned and the recommendation of the

Commissioner of Police, the Chief Secretary, if satisfied that reasonable cause exists for doing so, may direct that the number of days on which the totalizator may be used in any year on any racecourse to which this paragraph applies, shall be increased, on condition that a corresponding reduction shall be made in the number of days on which the totalizator may be used on some other racecourse to which this paragraph applies.

Totalizator  
on the flat.  
1447, 1920,  
s. 11.  
1494, 1921,  
s. 12.  
1877, 1928,  
s. 8.  
2188, 1935,  
s. 10.

20. (1) No licence to use the totalizator shall be granted to any club unless the Commissioner of Police is satisfied that that club provides or will provide facilities for the public to use the totalizator on those portions of the racecourse known as the "Grandstand," "Derby," and "Flat," on payment of either two shillings or two shillings and sixpence per ticket on every day on which the totalizator is used on any other portion of the racecourse: Provided that this section shall not apply in respect of any racecourse situated more than twenty miles from the General Post Office at Adelaide, nor in respect of the racecourse known as the Onkaparinga racecourse: Provided further that nothing in this section shall be deemed to prevent the committee or executive body of the club from issuing from any totalizator tickets for both the amounts aforesaid, nor from issuing tickets for any amount which is a multiple of either such amount.

(2) If, in the opinion of the Commissioner of Police, such facilities are not being provided, the Commissioner may at any time, after having given at least two months' notice in writing to the club concerned, revoke the said licence.

Permits for  
trotting races  
at horse race  
meetings.  
Inserted by  
57, 1950, s. 3.

20a. Notwithstanding any other provision of this Act a racing club which holds a licence for use of the totalizator at horse races and which conducts horse races on a racecourse situated more than one hundred miles from the General Post Office at Adelaide may conduct trotting races at any horse racing meeting lawfully held by the club, subject to the following provisions:—

- (a) a written permit shall be obtained from the Chief Secretary authorizing the club to conduct the trotting races:
- (b) the permit shall specify the days on which the trotting races may be held, and no day other

than a Saturday or public holiday (not being a Good Friday or Christmas Day) shall be so specified:

- (c) not more than three trotting races shall be held at any one horse racing meeting:
- (d) no permit shall be granted to authorize the holding of trotting races on a racecourse which is one hundred miles or less from the General Post Office, Adelaide:
- (e) a permit may contain any conditions which the Chief Secretary deems proper:
- (f) the Chief Secretary if satisfied that a racing club has contravened any term or condition of a permit may revoke it.

**21.** (1) Notwithstanding any provision of this Act, the Commissioner of Police may, upon application made to him for the purpose, and subject to the approval of the Chief Secretary, issue a licence to the committee or other executive body of any trotting club authorizing the use of the totalizator at any trotting race meeting or meetings for which a permit has been obtained under the next succeeding section.

Use of totalizator at trotting races.  
2188, 1934, s. 11.

(2) The licences granted under this section shall not authorize the use of the totalizator—

Amended by 2417, 1938, s. 4 and by 57, 1950, s. 4 (3).

(a) in the metropolitan area at more than thirty-five meetings in the aggregate in any year or at any meeting other than a night meeting;

(b) on Eyre Peninsula at more than twenty meetings in the aggregate in any year, or at any meeting other than a meeting held on a Saturday, or on a public holiday (not being Good Friday or Christmas Day);

Amended by 57, 1954, s. 3.

(c) in the South-East at more than twenty meetings in the aggregate in any year, or at any meeting other than a meeting held on a Saturday or public holiday (not being Good Friday or Christmas Day);

Substituted by 43, 1953, s. 3 (1).

(c1) in the Murray area at more than twenty meetings in the aggregate in any year or at any meeting other than a meeting held on a Saturday or public holiday (not being Good Friday or Christmas Day);

Inserted by 43, 1953, s. 3 (1).

## PART III.

Inserted by  
43, 1953, s. 3  
(1).

(c2) in areas other than the metropolitan area, Eyre Peninsula, the South-East and the Murray area at more than sixty meetings in the aggregate in any year or at more than fifty meetings held on days other than Saturdays or public holidays.

Para. (d)  
repealed by  
57, 1954, s. 3.

\* \* \* \* \*

The Commissioner of Police, if satisfied that the net proceeds of any trotting meeting will be devoted to charitable purposes, may, upon application made to him for the purpose and subject to the approval of the Chief Secretary, issue an additional licence for the use of the totalizator at such trotting meeting: Provided that licences additional to the number before mentioned in this section shall not be issued for more than two nights in the metropolitan area nor more than five days or nights outside the metropolitan area and, in the case of licences outside the metropolitan area, shall not be issued for more than one day or night for any trotting club.

Inserted by  
57, 1950,  
s. 4 (2).

(3) In this section unless the context otherwise requires—

“day meeting” means a trotting meeting the last race at which commences not later than six o’clock p.m.:

“Eyre Peninsula” means—

(a) that part of the State which lies west of the west coast of Spencer Gulf and south of a line joining the north-western corner of the municipality of Port Augusta to the north-eastern corner of the Government town of Penong;

(b) all land within five miles of the north-western corner of the municipality of Port Augusta and within five miles of the north-eastern corner of the Government town of Penong:

“metropolitan area” means the area within a radius of twenty miles from the General Post Office at Adelaide:

“meeting” means a day meeting or a night meeting:

“night meeting” means a trotting meeting the first race at which commences at or after six o’clock p.m.:

“the South-East” means the counties of Cardwell, Buckingham, Robe, McDonnell, and Grey:

Inserted by  
43, 1953, s. 3  
(2).

“the Murray area” means the counties of Albert, Alfred, and Chandos, and those portions of the counties of Young and Hamley, which are south of the thirty-fourth parallel of latitude.

Inserted by 43, 1953, s. 3 (2).

22. (1) No trotting race meeting at which the totalizator is used shall be held unless a permit, in writing, authorizing it to be held has been issued by the South Australian Trotting League Incorporated.

Permits to hold trotting races. 2188, 1934, s. 12.

(2) The said League may, with the consent of the Commissioner of Police, issue such permits for the holding of trotting race meetings as it thinks fit. Each permit shall be for one night only as regards a meeting to be held in the metropolitan area, and for either one day or one night as regards a meeting to be held outside the metropolitan area.

(3) If any trotting race meeting is held in contravention of this section, the person by or on whose behalf the trotting race meeting is held, or, if the meeting is held by an association of persons, each member of the committee or other executive body of the association, and any person acting at the meeting as steward, starter, or judge shall be guilty of an offence punishable on summary conviction.

Penalty—Twenty pounds.

(4) For the purpose of this Act no agricultural show shall be deemed to be a trotting race meeting.

(5) In this section “metropolitan area” means the area within a radius of twenty miles from the General Post Office at Adelaide.

Amended by 2394, 1938, s. 2, and by 57, 1950, s. 5.

22a. (1) Notwithstanding any law, or rule, regulation, or by-law of the South Australian Trotting League Incorporated (in this section called “the League”), the League shall be constituted in accordance with this section.

Constitution of South Australian Trotting League. Inserted by 2417, 1938, s. 5.

(2) On the thirty-first day of December, nineteen hundred and thirty-eight, all members of the League then in office shall retire and thereafter the League shall consist of one delegate from each trotting club affiliated with the League.

(3) During the month of December, nineteen hundred and thirty-eight, and in the month of December in each year thereafter each trotting club affiliated with the League shall nominate a delegate to the League by writing delivered to the secretary of the League.

Amended by 57, 1954, s. 4 (2).

If any trotting club fails to nominate a delegate the League may nominate one on its behalf. Every delegate so nominated shall be a member of the League as if he had been nominated by the trotting club.

Inserted by  
57, 1954, s. 4  
(1).

(3a) Any member of the League or of the Executive Committee of the League may authorize any person to act as his proxy at a meeting of the League or Executive Committee (as the case may be) and a person so authorized may do all things at the meeting which the member could do if he were present.

(4) The members of the League shall elect one of their number to be chairman of the League. If the chairman is not present at any meeting of the League at which a quorum is present the members of the League present at that meeting shall elect an acting chairman for the day. The chairman or acting chairman shall have a deliberative vote and if the vote on any question is equal the chairman or acting chairman shall also have a casting vote.

(5) A majority of the members of the League shall form a quorum thereof. At every meeting of the League every matter coming up for decision shall be decided by a majority of the votes cast by the members present.

(6) No proceeding of the League shall be invalid by reason only of a vacancy in the office of any member or any defect or irregularity in the nomination of any member.

Substituted  
by 57, 1954,  
s. 4 (1).

(7) Subject to any directions given by the League, the affairs of the League shall be managed and controlled, and permits under sections 22 and 48 of this Act shall be issued by an Executive Committee of the League consisting of nine members nominated as follows:—

- (a) Three shall be nominated by the Committee of the South Australian Trotting Club Incorporated;
- (b) Five shall be nominated at a meeting of representatives of the affiliated trotting clubs, other than the South Australian Trotting Club Incorporated. The Committee of each such trotting club shall be entitled to appoint one person to represent it at the meeting, and the five persons to be nominated shall be chosen by and from those attending the meeting;
- (c) One shall be nominated by the Committee of The South Australian Owners, Breeders, Trainers and Reinsmen's Association Incorporated.

(7a) The League may make rules prescribing—

Inserted by  
57, 1954, s. 4  
(1).

- (a) any matters necessary to be prescribed for carrying subsection (7) of this section into effect;
- (b) the procedure for filling casual vacancies on the Executive Committee of the League; and
- (c) any other matters which it is necessary or convenient to prescribe in connection with the appointment, functions and duties of the Executive Committee.

(7b) It shall be the duty of the League to ensure that an Executive Committee is appointed for the purposes of this section within three months after the passing of the Lottery and Gaming Act Amendment Act, 1954, and to make any rules necessary for that purpose.

Inserted by  
57, 1954, s. 4  
(1).

(7c) The Executive Committee of the League may appoint an appeal committee to hear and determine appeals against the decisions of trotting stewards.

Inserted by  
57, 1954, s. 4  
(1).

(8) Any affiliated club which is aggrieved by any decision of the League affecting such club may appeal to the board against that decision.

The appeal shall be commenced by written notice given to the board not later than two months after the decision appealed against was given.

The board shall decide the matter of every appeal in such manner as it deems just and its decision thereon shall be final.

(9) In this section “affiliated club” or “club affiliated with the League” means a club for the time being registered by the League pursuant to the constitution of the League.

Inserted by  
57, 1954, s. 4  
(1).

**22b.** (1) While any law, regulation, or order of the Commonwealth which prescribes the hours during which trotting races may be held or may not be held is in force, the Commissioner of Police may, in any case in which he could under section 21 of this Act issue a licence authorizing the use of the totalizator at a trotting race-meeting held by day or at night issue such a licence authorizing the use of the totalizator at a trotting race-meeting to be held during any hours, whether of the day or night, during which trotting races are permitted to be held by the law, regulation, or order of the Commonwealth.

Times for  
holding  
trotting race-  
meeting.  
Inserted by  
11, 1943, s. 3.

## Lottery and Gaming Act, 1936-1956.

(2) If the Commissioner of Police is of opinion that by reason of any law, regulation, or order of the Commonwealth, it is inconvenient or inexpedient to hold trotting race-meetings by day or by night as prescribed by section 21 of this Act, he may in any case in which he could under this Act issue a licence authorizing the use of the totalizator at a trotting race-meeting held by day or at night, issue a licence authorizing the use of the totalizator at a trotting race-meeting held during such hours, whether of the day or night, as he deems expedient.

(3) In any case where the Commissioner of Police has power under this section to issue a licence authorizing the use of the totalizator at a trotting race-meeting, the South Australian Trotting League Incorporated shall have power to issue a permit for the holding of that trotting race-meeting during the hours approved by the Commissioner of Police.

Application of Lottery and Gaming Act to totalizator at trotting races.  
2188, 1934, s. 13.

**23.** Sections 18, 25, the rules and regulations under section 26, sections 27, 28, 29, and 30 of this Act, and the provisions of the Stamp Duties Act, 1923, relating to totalizator duty shall apply, with the necessary modifications, in respect of the licensing, use, and receipts of the totalizator used at trotting race meetings, pursuant to this Act.

Transfer of racing day.  
Inserted by 11, 1939, s. 2.

**23a.** (1) If any licence is issued to the committee or executive body of any racing club or trotting club, authorizing the use of the totalizator upon any racecourse or trotting ground, and the Commissioner of Police is satisfied that on any day or night specified in the licence for the use of the totalizator (whether such day or night occurs before or after the passing of the Lottery and Gaming Act Amendment Act (No. 2), 1939) the racecourse or trotting ground was or will be used for any public purpose by or on behalf of the Government of the Commonwealth or the State, and that by reason of such use the totalizator has not or will not be used by the club upon such racecourse or trotting ground on such day or night, the Commissioner of Police, subject to the approval of the Chief Secretary, may, by notice in writing, authorize the club to use the totalizator on any racecourse or trotting ground other than the racecourse or trotting ground mentioned in the licence and either on any day or night specified in the licence or on any other day or night in place of any of the days or nights specified in the licence.

(2) The notice given by the Commissioner of Police may sanction the use of the totalizator on any racecourse notwithstanding that by so doing sanction will be given for the use of the totalizator on that racecourse for more days in any one year than the days specified in paragraph (a) or paragraph (b) of section 19.

24. Notwithstanding anything contained in this Act, no female shall be employed in any capacity in connection with the work in or about a totalizator. If any club fails to observe this provision, the chairman thereof shall be deemed to be guilty of an offence.

Employment of females in totalizator.  
1447, 1920, s. 12.

Penalty—Not less than ten pounds nor more than fifty pounds.

25. (1) Every licence under this Part shall be deemed to be issued subject to the condition that the racing club to which it is issued shall if the Commissioner of Police or any inspector or sub-inspector of police informs the club or the secretary or any official thereof that he believes that any person on the racecourse on any day when races are being held is an unlicensed bookmaker, or is on the racecourse for the purpose of unlawful gaming, take or cause to be taken all necessary and lawful steps to remove and exclude that person from the racecourse and keep him excluded therefrom.

Duty of racing clubs to prevent illegal betting.  
1285, 1917, s. 16a.  
1877, 1928, s. 3.

(2) If the Commissioner of Police is satisfied that any club has wilfully or negligently failed to comply with this section he may, with the approval of the Chief Secretary—

- (a) revoke the licence of that club:
- (b) suspend the said licence for such period as he thinks fit:
- (c) if the licence is revoked, direct that no further licence shall be issued to the club within such period, not exceeding twelve months, as he thinks fit.

26. The Governor may—

- (a) revoke or vary any of the rules and regulations set out in the second schedule hereto:
- (b) make new rules and regulations in addition to or in substitution for any of such rules and regulations:

Rules and regulations.  
1285, 1917, s. 17.  
1494, 1921, s. 4.

(c) make regulations—

- i. for regulating the manner of approaching to and departing from totalizators;
- ii. generally for regulating the conduct of persons in the vicinity of totalizators;
- iii. authorizing members of the police force to control and direct the conduct of persons in the vicinity of totalizators;
- iv. providing for the compliance by persons in the vicinity of totalizators with the reasonable directions of members of the police force; and
- v. imposing a penalty, not exceeding ten pounds, for the breach of any regulations made under the provisions of subdivision (c) of this section.

**27.** (1) No person under the age of twenty-one years shall bet by means of the totalizator.

Penalty—First offence, not less than one pound nor more than seventy pounds. Each subsequent offence, not less than five pounds nor more than fifty pounds.

(2) A clearly printed copy of this section shall be affixed over each door or opening in every totalizator.

(3) No licensee of any totalizator shall use that totalizator without having affixed such copies as aforesaid.

Penalty—Twenty pounds.

**28.** (1) Every club—

(a) shall deduct (for the purpose of being dealt with in accordance with this section) twelve and three-quarters per centum of the moneys paid into the totalizator in respect of each race;

(b) shall, after making such deduction, pay out by way of dividends all moneys paid into the totalizator, but so that it shall not be necessary—

(i.) in respect of a ticket issued on payment of any sum not exceeding five shillings, to pay out any smaller fraction of a shilling than three pence; and

Use of totalizator by minors.  
1285, 1917, ss. 18 & 19.  
Cf. U.K. 18 & 19 Geo. 5, c. 41, s. 4; 24 & 25 Geo. 5, c. 58, s. 15.

Mode of dealing with moneys paid into totalizator.  
1285, 1917, s. 23; 1494, 1921, s. 5; 1877, 1928, s. 5.  
Cf. U.K. 24 & 25 Geo. 5, c. 58, s. 18.

(ii.) in respect of a ticket issued on payment of any sum exceeding five shillings, but not exceeding ten shillings, to pay out any smaller fraction of a shilling than sixpence; and

(iii.) in respect of a ticket issued on payment of any other sum to pay out any fraction of a shilling.

(2) The amount remaining by reason of the non-payment of such fractions shall be paid by the club holding the same to such charitable purposes and in such amount as the committee of the club, with the approval of the Commissioner of Police, thinks fit.

(3) If approval for the payment of any such amount is not obtained, and payment made in accordance with such approval, within six months from the date of the race meeting in respect of which the amount accrued, the chairman of the club making default shall be guilty of an offence against this Act.

(4) Out of the moneys deducted in accordance with subsection (1) of this section the club shall pay to the Commissioner of Stamps the duty payable under the Stamp Duties Act, 1923, in respect of the gross takings of the totalizator from which takings the moneys were deducted, and the balance of the money so deducted may be retained by the club as commission for the use and benefit of the club.

29. (1) Within twenty-one days after every race meeting held on any day for which any licence is granted under this Act, every club so licensed shall deposit with the Commissioner of Police a full and true account under the hand of its secretary, or the hands of two members of its committee or executive body, showing—

Club to  
render  
account.  
1285, 1917,  
s. 24.  
1447, 1920,  
s. 6.  
1494, 1921,  
s. 6.

- (a) the sums received by the club through the totalizator on the occasion of the use thereof under the licence;
- (b) the amount paid in dividends through the totalizator on that occasion;
- (c) the amount of commission retained by the club;
- (d) the manner in which that commission has been expended; and
- (e) the amounts of dividends unclaimed by the persons entitled to receive them.

## Lottery and Gaming Act, 1936-1956.

(2) Within twenty-one days after the last day for which any licence is granted under this Act every club so licensed shall deposit with the Commissioner of Police a correct schedule of the names, addresses, and occupation of its members.

Amended by  
57, 1954, s. 5.

(3) The amount of all dividends unclaimed for a period of two months after they became payable by the persons entitled to receive them, shall be paid by the club holding those dividends to the Commissioner of Police, who shall pay them to the Treasurer of the State to be applied by him for the public uses of the State.

Where any person makes a claim to the Treasurer for payment of any such dividend within twelve months after the day when the dividend became payable, and the Treasurer is satisfied that that person is the holder of a totalizator ticket which would have entitled him to obtain payment of the dividend from the club if a claim had been made within two months after the day when the dividend became payable, the Treasurer may, out of moneys provided by Parliament for the purpose pay the amount of the dividend to the said person.

(4) If any club fails to observe any provision of this section, the chairman thereof shall be deemed to be guilty of an offence against this Act.

Penalty—Not less than twenty pounds nor more than fifty pounds.

(5) For the purpose of the recovery of the amount of any dividend which is payable under the provisions of subsection (3) hereof, that amount shall be deemed to be a debt due by the club to the Commissioner of Police, who may in his own name sue the club for the same in any court of competent jurisdiction. In any such proceedings the secretary of the club or any member of its committee or executive body may be named as defendant on behalf of the club, but no such person shall incur any personal liability by reason only of his having been so named.

(6) In any such proceedings a document purporting to be an account deposited by the defendant club under subsection (1) of this section or under subsection (1) of section 24 of the Lottery and Gaming Act, 1917, shall be admitted in evidence on its mere production from the custody of the Commissioner of Police, and, so far as its truth is not disproved by the defendant, shall be conclusive evidence of the truth of its contents.

PART III.

30. (1) The Commissioner of Police shall cause to be published in the *Government Gazette* in the month of January in each year particulars of all licences granted for that year, with the names of the clubs to which those licences have been granted, and the racecourses whereon and the dates upon which any such clubs are licensed to use the totalizator.

*Gazette*  
notice.  
685, 1897,  
s. 9.  
1285, 1917,  
s. 25.  
1382, 1919,  
s. 4.

(2) If any licence is granted after the publication of the particulars aforesaid, the Commissioner of Police shall, as soon as possible after the granting of the licence, cause to be published in the *Government Gazette* the same particulars with respect to the licence so granted.

31. (1) Every racing club licensed to use the totalizator shall provide such a detention room as hereinafter mentioned on every racecourse whereon it is licensed to use the totalizator during every day on which the club is licensed to use the totalizator thereon.

Detention  
rooms for use  
of police.  
1494, 1921,  
s. 15.

(2) The detention room shall be for the sole use of members of the police force on duty on the racecourse on that day in carrying out their duties, and shall be of such dimensions and so constructed and furnished and so situated as the Commissioner of Police thinks proper: Provided that, if the club is dissatisfied with any requisition made by the Commissioner under this section, it may appeal to the Minister against such requisition, and the Minister's decision on the matter shall be final.

(3) If, in the opinion of the Commissioner of Police, a racing club has not complied with the provisions of this section after one month's notice has been given to the secretary of the club requiring the club so to comply, the Commissioner of Police may revoke the licence to use the totalizator issued to the club which is for the time being in force.

PART IV.

LICENSING OF BOOKMAKERS.

32. In this Part, unless the context otherwise requires—

“country racing clubs” means the Balaklava Racing Club, Berri Racing Club Limited, Burra Racing Club, Clare Racing Club, Jamestown Racing Club Limited, Kadina and Wallaroo Jockey Club, Kalangadoo Racing Club, Laura Jockey Club Limited, Loxton Racing Club, Mannum Racing Club, Millicent Racing Club, Mount Gambier Racing Club, the

PART IV.

Cf. U.K.  
24 & 25  
Geo. 5, c. 58,  
ss. 2, 3.  
Interpreta-  
tion.  
1285, 1917,  
s. 25.  
2135, 1933,  
s. 4.  
2159, 1934,  
s. 4.  
Amended by  
2417, 1938,  
s. 6.

## Lottery and Gaming Act, 1936-1956.

Murray Bridge Racing Club Limited, Naracoorte Racing Club, Orroroo Jockey Club, Penola Racing Club Limited, Pinnaroo Racing Club Limited, Port Augusta Racing Club Limited, Port Lincoln Racing Club, Port Pirie Racing Club Limited, Quorn Jockey Club, Renmark Racing Club Limited, Snowtown Racing Club, Strathalbyn Racing Club, Streaky Bay Racing Club, Taillem Bend Racing Club, The Peterborough Racing Club Limited, the Waikerie Racing Club, and any other racing club included in this definition by proclamation made by the Governor:

“coursing meeting” means any meeting for the hunting or coursing of hares but does not include any kind of speed coursing or dog racing:

“metropolitan racing clubs” means the South Australian Jockey Club, Adelaide Racing Club Limited, Port Adelaide Racing Club Limited, Onkaparinga Racing Club, Gawler Jockey Club Limited, the Amateur Turf Club Incorporated, Adelaide Hunt Club, The S.A. Tattersalls Club Incorporated, the S.A. Licensed Victuallers Racing Club Limited, and any other racing club included in this definition by proclamation made by the Governor:

“licence” means a bookmaker’s, clerk’s, or agent’s licence for the time being in force under this Part:

“racecourse” means any land which is being used for holding a race meeting for horse races:

“racing club” means any metropolitan or country racing club:

“registered” means registered under this Part and “registration” has a corresponding meaning:

“rules” means rules made by the board under this Part:

“this Part” includes the rules made under this Part:

“trotting ground” means any land which is being used for holding a race meeting for trotting races:

“trotting club” means a club controlling a trotting ground for the time being.

**32a.** (1) The Governor may from time to time by proclamation declare any racing club to be a country racing club or a metropolitan racing club and may revoke any such proclamation.

(2) The Governor may from time to time by proclamation declare that any racing club described by section 32 as a country racing club or a metropolitan racing club shall cease to be a country racing club or metropolitan racing club, as the case may be.

(3) If at any time the Governor is satisfied that any country racing club or metropolitan racing club has not held a race meeting during a period of at least two years (whether the said period occurs before or after or partly before or after the commencement of the Lottery and Gaming Act Amendment Act (No. 2), 1938), and that the failure to hold a race meeting was without reasonable cause, the Governor shall by proclamation declare that the racing club shall cease to be a country racing club, or a metropolitan racing club, as the case may be.

33. (1) Notwithstanding any law to the contrary it shall be lawful to bet by way of wagering or gaming in accordance with this Part—

- (a) on any racecourse or trotting ground during the holding of a race meeting for horse races or trotting races thereon; or
- (b) at any place where a coursing meeting is being held; or
- (c) at or in any premises registered under this Part.

(2) Such betting shall not be a ground on which any premises or place shall be deemed or declared to be a common gaming house.

(3) It shall be a defence to any charge of an offence under this Act—

- (a) in a case where the defendant is the holder of a licence, that he was at all relevant times acting in accordance with this Part and the terms and conditions of his licence and of his permit or the registration of the premises in which he is operating;
- (b) in a case where the defendant is not a holder of a licence, that the matter proved was betting or offering to bet with a licensed bookmaker in any

Legalization of betting with bookmakers. 1285, 1917, s. 25b. 2135, 1933, s. 4. 2159, 1934, s. 4. Cf. U.K. 24 & 25 Geo. 5, c. 58, ss. 4, 12.

Amended by 2417, 1938, s. 8.

s. 33. KIRK V. MILLER (1936) S.A.S.R. 277. The words "purpose of betting" in paragraph (b) of subsection (3) means the purpose of betting in accordance with Part IV. of the Act.

SMITH V. MILLER (1938) S.A.S.R. 418. Where the defendant, an adult, telephoned bets, chiefly for himself but incidentally for others, from a licensed hotel to a licensed bookmaker but had no intention or knowledge of acting illegally, held that section 33 afforded a defence to a charge of being in a public place for the purposes of betting.

## Lottery and Gaming Act, 1936-1956.

place where the bookmaker was licensed to bet, or being in any such place for the purpose of betting, and that the defendant was over the age of twentyone years, and was not knowingly concerned in any breach of this Part or of the terms and conditions of the bookmaker's licence or permit, or of the registration of the premises in which the bookmaker was betting.

(4) Nothing in this Part shall affect section 50 of this Act.

Betting  
Control  
Board.  
Substituted  
by 2417,  
1938, s. 9.

**34.** (1) For the purpose of this Part there shall be constituted a board to be known as the Betting Control Board.

(2) The board is charged in the performance of its duties and exercise of its powers hereunder with the duty of controlling betting in such a manner as is reasonably consistent with the welfare of the public generally and the interests of persons and bodies liable to be affected thereby.

Inserted by  
42, 1945, s. 3.

In pursuance of this duty, the board shall so restrict the number of premises registered under this Part, and shall so regulate and control such premises, as to provide only such facilities for betting as are reasonably necessary in the public interest.

(3) Upon the passing of the Lottery and Gaming Act Amendment Act (No. 2), 1938, all the present members of the Betting Control Board shall retire, and henceforth the board shall consist of three members only.

(4) The Governor may without nomination fill the three vacancies on the board created by the operation of subsection (3) hereof by appointing thereto a chairman and two members.

(5) At the end of the third year of office one of the three members of the board provided for by this section, to be determined by lot, shall retire, and at the end of the fourth year of service on the board one of the two other original members of the board, to be determined by lot, shall retire. At the end of the fifth year the third original member shall retire. Thereafter every member of the board shall retire after he has held office for a term of three years from his appointment or re-appointment. A member appointed to fill any casual vacancy shall retire at the time that the member in whose place he has been appointed would have retired. Each retiring member shall be eligible for re-appointment.

(6) Neither the chairman nor any member of the board, nor any officer or servant of the board shall, as such, be subject to the Public Service Act, 1936-1938.

(7) Two members of the board shall form a quorum thereof.

(8) The board shall be a body corporate with perpetual succession and a common seal, and with power to hold real and personal property of all kinds.

(9) No act or decision of the board shall be invalid or defective on the ground that when such act was done or decision made a vacancy existed on the board, or on the ground of any defect in the appointment or nomination of any member of the board.

(10) Each of the present members of the Betting Control Board at the passing of the Lottery and Gaming Act Amendment Act (No. 2), 1938, who is not immediately after the said passing appointed as chairman or member of the board as constituted by this section shall be paid as compensation for loss of office such sum as the Governor in each case thinks fit.

**35.** (1) The board may pay to the chairman and members such salaries or fees as are approved by the Governor.

Remuneration of board.  
1285, 1917, s. 25d.  
2135, 1933, s. 4.

(2) The board may also pay to the chairman and any other member of the board any travelling or other expenses reasonably incurred by him in carrying out his duties under this Part.

**35a.** The money required by the board to defray the expenses incurred by it in the administration of this Act shall be paid—

Financial provision.  
Inserted by 36, 1950, s. 4.

(a) out of fees retained by the board pursuant to section 37a of this Act;

(b) to the extent to which those fees are insufficient, out of moneys voted by Parliament for the purpose.

**36.** The board may appoint officers, servants, or agents necessary for carrying this Part into effect and may prescribe their duties and fix their remuneration.

Officers of board.  
1285, 1917, s. 25e.  
2135, 1933, s. 4.

**36a.** Notwithstanding the provisions of any law relating to stamp duties, no stamp duty shall be payable upon any receipt given or cheque drawn by the board.

Exemption of board from stamp duties.  
Inserted by 2417, 1933, s. 10.

## PART IV.

Power of board to make rules as to bookmakers.

1285, 1917, s. 25f.  
2135, 1933, s. 4.  
Cf. U.K. 24 & 25 Geo. 5, c. 58, ss. 6, 9.

37. (1) The board may make rules as to all or any of the following matters:—

- (a) the licensing of bookmakers, bookmakers' clerks, and bookmakers' agents and the number and classes of licences to be issued:
- (b) the terms and conditions upon which licences may be obtained, and which are to be observed by the holders of licences:
- (c) the conduct of bookmakers and their clerks and agents:
- (d) the regulation and control of betting by and with bookmakers:
- (e) requiring licensed bookmakers to give security for the due observance of this Part and the rules, and of terms and conditions of their licences:
- (f) the registration of premises upon which licensed bookmakers may bet and the terms and conditions of registration and the duration, suspension, and cancellation thereof:
- (g) the suspension and cancellation of licences:
- (h) requiring bookmakers to keep accounts and records and to make the same available for the board's inspection from time to time and furnish to the board weekly, annual or other returns of their transactions, and prescribing the form of and all matters relevant to such accounts, records, and returns:
- (i) prohibiting or restricting advertising by bookmakers:
- (j) the general administration of this Part:
- (k) imposing fines recoverable summarily for breach of any rule:
- (l) the issue, renewal and transfer of bookmakers' licences:
- (m) appeals to the board under this Act and the procedure thereon:
- (n) prescribing fees with regard to any of the matters mentioned in the fifth schedule to be paid to the

Cf. U.K. 24 & 25 Geo. 5, c. 58, s. 16.

Amended by 2417, 1938, s. 11 (a).

Paras. (l) and (m) inserted by 2417, 1938, s. 11 (b).

Inserted by 13, 1939, s. 2 (1).

s. 37. Section 2 (4) of the Lottery and Gaming Act Amendment Act, 1939, provides for the validation of all rules providing for the payment of fees to the board and made before the passing of that Act.

board on any application for any licence, registration, or authority of any kind, or for the issue, transfer or renewal of any licence, registration, or authority of any kind granted or given by the board, or in respect of any other matter: Provided that no such fees relating to any of the matters mentioned in the fifth schedule shall exceed the fees set out in the said schedule with respect to the said matters.

37a. All fees received by the board shall be retained by the board and applied towards the costs of administration of this Part by the board.

Application of fees.  
 Inserted by 13, 1939, s. 2 (2).

38. (1) Every application for a licence or for the registration of premises under this Part or for the granting of any authority shall be made to and determined by the board. The board shall have an unfettered discretion to grant or refuse any application without assigning any reason.

Applications and effect of licences.  
 1285, 1917, s. 25g.  
 2135, 1933, s. 4.  
 2159, 1934, s. 5.  
 Cf. U.K. 24 & 25 Geo. 5, c. 58, s. 7.

\* \* \* \* \*

(3) A bookmaker's licence shall entitle the holder thereof to carry on the business of a bookmaker for the period between the day whereon it was granted and the next succeeding thirty-first day of July subject to this Part upon any racecourse or trotting ground or at any coursing meeting for which he holds a permit, or in any premises registered under this Part, but not otherwise.

Amended by 2417, 1938, s. 12, by 13, 1939, s. 3, and by 37, 1947, s. 3.

(4) A clerk's licence shall entitle the holder to act as a clerk of a bookmaker for the period between the day whereon it was granted and the next succeeding thirty-first day of July.

(5) An agents' licence shall entitle the holder to act as agent of a bookmaker within the area specified therein for the period between the day whereon it was granted and the next succeeding thirty-first day of July.

(6) No licence shall be granted to any person who holds any licence for the sale of liquor under the Licensing Act, 1932, or who is employed in selling liquor by retail either in premises in respect of which a publicans licence is in force, or in premises in respect of which a wine licence is in force and in which liquor is sold for consumption on those premises, nor to any person whose usual place of abode throughout the whole of the period of twelve months immediately before his application for a licence is made was not within the State.

## PART IV.

Permits to bet on racecourses. 1285, 1917, s. 25h, 2135, 1933, s. 4, 2150, 1934, s. 6. Cf. U.K. 24 & 25 Geo. 5, c. 58, s. 11.

39. (1) A licence shall not authorize a bookmaker to carry on business as such on any racecourse or trotting ground unless he has first obtained a permit from the committee of the club controlling the racecourse or trotting ground for the time being.

(2) A licence shall not authorize a bookmaker to carry on business as such at any coursing meeting unless he has first obtained a permit for that coursing meeting from the committee of the National Coursing Association of South Australia. No such permit shall be issued in respect of any coursing meeting unless the board consents to the issue of permits for that coursing meeting, and permits shall not be issued authorizing bookmakers to carry on business at more than sixty-five meetings in any year, nor at more than fifteen enclosed coursing meetings in any year, nor at more than fifty-one coursing meetings in any year.

(3) Any such committee may grant permits to licensed bookmakers subject to any conditions which it thinks fit.

Payment of commission on bets and returns.

1285, 1917, s. 25j, 2135, 1933, s. 4. Cf. U.K. 16 & 17 Geo. 5, c. 22, Part II.

Subsec. (1) substituted by 2417, 1938, s. 13, and amended by 11, 1943, s. 4, by 42, 1945, s. 4, and by 42, 1955, s. 4.

40. (1) Every bookmaker shall, not later than three o'clock p.m. on Thursday in every week, pay to the board—

(a) a sum by way of commission equal to one pound per centum of all moneys paid or payable contingently or otherwise to such bookmaker in respect of—

(i.) every bet made by him during the previous week on any racecourse in respect of any horse race whether held within or outside the State; and

(ii.) every bet made by him during the previous week in respect of any trotting or coursing event;

(b) a sum by way of commission equal to two pounds per centum of all moneys paid or payable contingently or otherwise to such bookmaker in respect of every bet made by him during the previous week in any registered premises in respect of any horse race whether held within or outside the State.

(2) If any bookmaker makes default in paying any commission required by this section to be paid by him, the board, in addition to any other powers conferred upon it by the rules, may recover the amount payable from the bookmaker upon complaint in a court of summary jurisdiction, or by action in any court of competent jurisdiction.

Amended by  
13, 1939, s. 4,  
and by 42,  
1955, s. 4.

(3) Every bookmaker shall not later than three o'clock p.m. on Thursday in every week forward to the board a return in the form fixed by the board from time to time—

- (a) setting forth a true and complete account of all moneys paid or payable to him contingently or otherwise in respect of all bets made by him during the previous week;
- (b) showing the races on which the bets were made, and the dates on which those races were held, and the name of the racing club promoting or controlling each such race;
- (c) showing the coursing events on which bets were made, and the dates on which those coursing events were held;
- (d) setting forth separately the bets made on race-courses or at coursing meetings, and the bets made elsewhere; and
- (e) containing any other matter prescribed by the rules.

(4) Where a bet is made upon the contingency of more races or coursing events than one it shall be deemed for the purpose of the return to relate only to the first of such races or coursing events.

(5) It shall not be necessary to include in any return—

- (a) any bet made in relation to a race or coursing event which is abandoned or any bet which is declared off; or
- (b) the name of any person with whom any bet was made.

41. (1) The board shall—

- (a) keep full and true accounts of all money received by it as commission under section 40;
- (b) forthwith upon the receipt of any such money pay it to the Treasurer to be held by him on behalf of the board until it is applied in accordance with this Act.

Application of  
commission.  
Substituted  
by 36, 1950,  
s. 5.

(2) The board shall apply the commission as follows:—

- (a) the commission on all bets made on races held outside the State shall be paid to the Treasurer in aid of the general revenue of the State:

- (b) out of the commission on bets made in registered premises on horse races held within the State the sum of five thousand pounds in each financial year shall be applied by the board, in such manner as it thinks fit, for the benefit of all or any of the country racing clubs: Provided that if the total commission on such bets made in any financial year is less than five thousand pounds the whole of that commission shall be so applied:
- (c) the balance of the commission on bets made in registered premises on horse races held within the State shall be paid to the Treasurer in aid of the general revenue of the State:
- (d) the commission on all bets made on racecourses on horse races held within the State shall be divided among the racing clubs in proportion to the amounts of such bets made at race meetings held by each club:
- (e) the commission on all bets made on trotting grounds (not being bets on horse races held outside the State) shall be divided among the trotting clubs in proportion to the amounts of the bets made at trotting meetings held by each club:
- (f) the commission on all bets made on coursing events shall be divided among the coursing clubs in proportion to the amounts of the bets made on coursing events held by each club:
- (g) all other commission shall be paid to the Treasurer in aid of the general revenue of the State.

(3) Payments under this section to the Treasurer and the racing clubs, trotting clubs, and coursing clubs shall be made monthly.

42. (1) Subject to this section the board may in accordance with the rules register any premises in which betting may be carried on by any licensed bookmaker in accordance with this Part and his licence.

(1a) The board shall not register under this section any premises within the metropolitan area.

(1b) Subject to subsection (1h) of this section the board shall not register under this section any premises situated in a municipality or district council district outside the metropolitan area unless—

Registration of premises.  
1285, 1917,  
s. 251.  
2135, 1933,  
s. 4.  
2188, 1934,  
s. 4.

Amended and  
subsecs. (1a)  
to (1i)  
inserted by  
42, 1945, s. 6  
(1) and (2).

- (a) the council of that municipality or district council district has agreed as to the site and suitability of such premises; and
- (b) the board has held a public inquiry in the town or locality where the premises are situated.

(1c) Before holding a public inquiry for the purposes of this section the board shall by advertisement in a newspaper circulating in the town or locality where the inquiry is to be held give not less than one month's notice of the time and place of the inquiry.

(1d) At the inquiry the board shall receive any evidence or information submitted to it concerning the proposal to register premises but may, in its discretion, refuse to receive any evidence or information if, in its opinion, that evidence or information is not relevant or is a repetition of matter already before the board, or is frivolous or vexatious.

(1e) For the purpose of conducting inquiries under this section the board shall be deemed to be a royal commission, and the Royal Commissions Act, 1917, shall apply in relation to that inquiry and the members of the board and witnesses and other persons concerned in the inquiry.

(1f) The board may give directions as to the practice and procedure to be followed on or in relation to inquiries and as to the submission of evidence and information to the board.

(1g) The registration of any premises under this section shall expire on the thirty-first day of January next after the registration becomes effective.

(1h) When premises have been registered pursuant to this section, the registration may be renewed without a further public inquiry.

(1i) In this section—

“council” includes the Whyalla Town Commission constituted by the Whyalla Town Commission Act, 1944;

“the metropolitan area” means—

- (a) the municipalities of Adelaide, Brighton, Burnside, Enfield, Glenelg, Henley and Grange, Hindmarsh, Kensington and Norwood, Marion, Mitcham, Payneham, Port Adelaide, Prospect, St. Peters, Thebarton, Unley, West Torrens, Walkerville, Woodville;

## Lottery and Gaming Act, 1936-1956.

- (b) the district council district of Campbelltown;
- (c) the Garden Suburb;

“municipality” includes the town of Whyalla as defined in the Whyalla Town Commission Act, 1944.

(2) No registration shall be effective until the board has published a notice thereof in the *Gazette*.

(3) Upon and after the publication of the notice it shall be lawful for any licensed bookmaker to carry on the business of bookmaking in such building or premises in accordance with this Part so long as the registration remains in force.

(4) If the board registers under this section any premises occupied by a club registered under the Licensing Act, 1932, and if that club has in each of the ten years prior to the registration of its premises by the board held a licence to use the totalizator at race meetings conducted by it, the fact that those premises are registered by the board and that betting takes place thereon in accordance with this Part, shall not be a ground of objection to the grant or renewal of the registration of the club under the Licensing Act, 1932, nor shall any betting carried on in the club premises in accordance with this Part, be a ground on which any person shall be convicted of any offence.

(5) If the board is satisfied that any provision of this Part as to registered premises or any term or condition of registration has not been observed, the board may as an administrative act cancel the registration of the premises by notice in the *Gazette*, and thereupon the registration shall cease to have effect.

(6) No person shall—

(a) carry on business as a bookmaker in registered premises;

(b) keep any registered premises open to the public, at any time on a day on which a race meeting is appointed to be held or is held at a racecourse within ten miles of those premises.

Penalty—A fine not exceeding one hundred pounds.

(7) On any day on which a race meeting is being held at Victoria Park Racecourse, Morphettville Racecourse or Cheltenham Park Racecourse no licensed bookmaker or any employee or agent of any licensed bookmaker shall, in any premises registered under this Part which are situate within a radius of twenty miles from the General Post Office,

Substituted  
by 42, 1945,  
s. 6 (3).

Inserted by  
2417, 1938,  
s. 15.

Adelaide, exhibit or otherwise make known, prior to the commencement of any horse race held at any race meeting, whether within or outside the State, any information relating to betting odds in any such race other than the contents of one reading of betting odds supplied to him by a press agency authorized by the board to supply such reading.

Penalty—Fifty pounds.

This subsection shall not apply to any race meeting held at any of the said racecourses where at the request of the racing club holding the race meeting, the board otherwise directs.

**42a.** (1) Any person who—

- (a) carries on business as a bookmaker; or
- (b) bets with a bookmaker on the result of any horse racing, trotting, or coursing event,

at any time, or at any place, except in accordance with this Part, shall be guilty of an offence.

Penalty—For a first offence, one hundred pounds. For a subsequent offence, imprisonment for not more than three months.

(2) For the purposes of this section “bookmaker” includes any person who acts as a bookmaker whether he holds a licence or not.

**43.** (1) Every bookmaker upon making a bet with any person shall issue and deliver to that person a betting ticket in respect of each bet made with that person.

(2) If the bookmaker and the bettor are in each other’s presence when the bet is made the ticket shall be delivered to the bettor forthwith.

If the bet is made by post or other indirect communication the bookmaker shall deliver the ticket or post it to the bettor within twenty-four hours after receiving the communication.

Unlawful betting.  
Inserted by 2417, 1938, s. 16.

Betting tickets.  
1285, 1917, s. 25m,  
2135, 1933, s. 4.

s. 42a. WYETT v. CRAFTER (1942) S.A.S.R. 103. Observations as to penalties to be imposed under the section.

WRIGHT v. O’SULLIVAN (1948) S.A.S.R. 307. The averment of the place of the offence is not an essential element in the description of an offence against section 42a.

THOMAS v. HANSBERRY (1958) S.A.S.R. 127. Where the defendant collected betting slips and money from fellow employees for the purpose of transmitting them to an unlawful bookmaker, held that he was an accessory to the offence of carrying on business as a bookmaker committed by the bookmaker and liable to be convicted, by reason of section 53 of the Justices Act, of that offence.

(3) If any bookmaker—

- (a) fails to issue and deliver any ticket as required by this section; or
- (b) issues or delivers to any person in respect of any bet a betting ticket previously used in respect of any other bet,

he shall be guilty of an offence.

Penalty—For the first offence, fifty pounds. For a subsequent offence, imprisonment for not more than three months.

(4) No person shall bet with a bookmaker without obtaining or demanding from such bookmaker a betting ticket in respect of every bet so made.

Penalty—Five pounds.

(5) No person with intent to evade any of the provisions of this Part, when making a bet with a bookmaker shall fail to obtain from such bookmaker a betting ticket in respect of such bet.

Penalty—For a first offence, a fine of twenty-five pounds. For any subsequent offence, a fine of fifty pounds.

Stamp duty on betting tickets.

1285, 1917, s. 25n.

2135, 1933,

s. 4.

2188, 1934,

s. 5.

Subsec. (1)

substituted

by 2417,

1938, s. 17.

44. (1) There shall be charged on every betting ticket issued by a bookmaker under this Part a stamp duty of one halfpenny.

(2) All moneys received by the Treasurer by way of stamp duty under this Part shall be paid into and form part of the general revenue of the State.

(3) The Governor may by regulation prescribe any matters necessary or convenient for securing payment of duty under this section and preventing fraud and evasion and may by any regulation prescribe penalties not exceeding twenty pounds, for breach of any regulation.

(4) If any bookmaker issues or delivers any betting ticket which is not stamped as required by this section he shall be guilty of an offence.

Penalty—For a first offence, fifty pounds. For a subsequent offence, imprisonment for six months.

Tax upon winning bets.

Inserted by

2417, 1938,

s. 18, and

substituted

by 36, 1950,

s. 6.

44a. (1) Subject as hereinafter provided, there shall be charged upon every payment made to any person by a licensed bookmaker in respect of any bet made with him by that person on any racecourse or trotting ground or on

any premises registered under this Part a tax at the rate fixed by subsection (2) of this section: Provided that no tax shall be paid on the amount of any money betted which is refunded in accordance with any rule of the board.

(2) The rate of tax shall be threepence for each ten shillings and threepence for each fractional part of ten shillings of the money chargeable with tax: Provided that where the payment in respect of a bet is less than five shillings, no tax shall be payable.

(3) Whether a bet is made upon credit or not, if any payment is made by a bookmaker in respect of that bet, the tax under this section shall be payable upon the amount of the winnings, plus the amount betted.

(4) If a bookmaker instead of making payment of any amount in respect of a bet sets off the whole or any part of that amount against any sum owing to the bookmaker, or credits the whole or any part of that amount to any person, the amount so set off or credited shall, for the purpose of determining the tax payable under this section, be deemed to be a payment made by the bookmaker at the time of the set off or credit.

(5) Every bookmaker shall deduct from every payment upon which tax is payable under this section the amount of the tax and shall not later than three o'clock p.m. on Thursday in every week pay to the board a sum equal to the amount of the deductions which during the previous week he was bound under this section to make.

Amended by  
42, 1955, s. 5.

(6) If any bookmaker—

(a) fails to make any deduction as required by this section; or

(b) fails to make any payment to the board as required by this section,

he shall be guilty of an offence.

Penalty—For a first offence, one hundred pounds. For a subsequent offence, imprisonment for six months.

(7) The board shall keep full and true accounts of all money received by it pursuant to this section and shall pay all such money to the Treasurer to be held by him on behalf of the board until it is applied in accordance with this Act.

## PART IV.

Application  
of winning  
bets tax.  
Inserted by  
36, 1950, s. 6.

**44b.** (1) The board shall apply the tax received under section 44a in accordance with this section.

(2) One-quarter of the tax received in respect of bets made at a meeting held by a racing club shall be paid to that club: Provided that where a racing club holds a meeting on a course owned by another club one-sixth of the tax on bets made at that meeting shall be paid to the club which held the meeting, and one-twelfth to the club owning the course.

(3) One-fifth of the tax received in respect of bets made at a meeting held by a trotting club shall be paid to that club.

(4) All tax received under section 44a and not payable to a racing club or trotting club pursuant to this section shall be paid to the Treasurer in aid of the general revenue of the State.

(5) Two-thirds of all amounts received by a metropolitan racing club under this section shall be used by that club for increasing stakes above the amount paid by the club on races held in the financial year ended on the thirtieth day of June, nineteen hundred and fifty: Provided that where a race meeting is held by a club at a course owned by another club the whole of the payments made to the club which held the meeting in respect of bets made at that meeting shall be used for increasing stakes as provided in this subsection.

(6) Five-sixths of the amount received by a trotting club in respect of bets made at a trotting meeting held within twenty miles of the General Post Office at Adelaide shall be used by that club for increasing stakes above the amount paid by the club on races held in the financial year ended on the thirtieth day of June, nineteen hundred and fifty.

(7) Every metropolitan racing club, and every trotting club which holds any trotting meeting within twenty miles of the General Post Office at Adelaide, shall—

(a) within two months after the enactment of this section furnish the board with particulars of the stakes paid by it during the period of twelve months ended on the thirtieth day of June, nineteen hundred and fifty;

(b) within two months after the end of each half-year furnish the board with particulars of the stakes paid by it during that half-year.

(8) If the Treasurer is satisfied that a club has not increased stakes as required by this section or has failed

to supply the board with information required under this section he may direct that any tax which would otherwise be payable to that club under this section shall not be paid.

(9) Payments under this section to the Treasurer and to the racing and trotting clubs shall be made monthly.

(10) In this section—

“owner” in relation to a course includes a club which is a lessee of the course and the word “own” includes to hold on lease:

“half-year” means period of six months ending on the thirtieth day of June or the thirty-first day of December in every year.

45. (1) No bookmaker shall bet with any person under the age of twenty-one years.

Penalty—For a first offence, five pounds. For a subsequent offence, twenty pounds.

(2) It shall be a defence to any charge under subsection (1) of this section if the defendant satisfies the court that he had reasonable grounds for believing the person with whom any bet is made to have been of or over the age of twenty-one years.

(3) If any person under twenty-one years of age is in or upon any premises registered under this Part whilst the premises are open to the public for the purpose of betting, that person shall be guilty of an offence.

Penalty—Ten pounds.

(4) If any person under twenty-one years of age is in or upon any premises registered under this Part whilst the premises are open to the public for the purpose of betting, the person in charge of those premises shall be guilty of an offence unless he shows that he could not, by the exercise of all reasonable precautions, have prevented that person from entering those premises.

Penalty—Ten pounds.

(5) Any member of the police force may remove from any registered premises any person who is on those premises in contravention of this section.

Betting with minors.  
1285, 1917, ss. 250 and 250a.  
2185, 1933, s. 4.  
2188, 1934, s. 6.  
Of U.K. 24 & 25  
Geo. 5, c. 58, s. 15.

s. 45. MILLER V. TASKER (1936) S.A.S.R. 256. To establish the defence allowed by section 45 (2) the defendant must show that he had an actual belief based on reasonable grounds. Where the defendant had not applied his mind to the age of the infant with whom he bet, held that he had no reasonable ground for believing him to be over 21.

## PART IV.

False returns.  
1285, 1917,  
s. 25s.  
2135, 1933,  
s. 4.

46. No bookmaker, with intent to defraud, shall—

- (a) furnish to the board any return which is false in any material particular:
- (b) fail to include in any such return any bet or other transaction or particular required to be included:
- (c) fail to record in accordance with the rules every bet made by him.

Penalty—Fifty pounds, or imprisonment for three months.

Cancellation  
of licences.  
1285, 1917,  
s. 25q.  
2135, 1933,  
s. 4.  
2188, 1934,  
s. 7.  
Amended by  
13, 1939, s. 6.

47. If the holder of any licence is convicted of any offence against this Part, or if the board is satisfied that the holder of any licence has failed to observe any provision of this Part or of the rules or any condition of his licence, or if the board is satisfied that the holder of any licence has been guilty of any conduct which in the opinion of the board renders him unfit to hold a licence, it may, as an administrative act, cancel the licence.

Control of  
trotting races.  
1285, 1917,  
s. 25r.  
2135, 1933,  
s. 4.

48. (1) No trotting race meeting at which bookmakers are permitted to operate shall be held unless a permit in writing authorizing it to be held has been issued by the South Australian Trotting League Incorporated.

(2) The said League may with the consent of the board issue such permits for the holding of trotting race meetings as it thinks fit.

(3) Each permit shall be for one night only as regards a meeting to be held in the metropolitan area and for either one day or one night as regards a meeting to be held outside the metropolitan area.

(4) If any trotting race meeting is held in contravention of this section the person by or on whose behalf the meeting was held, or if the meeting was held by an association, each member of the committee or other executive body of the association and any person acting at the meeting as steward, starter, or judge shall be guilty of an offence, punishable on summary conviction.

Penalty—Twenty pounds.

(5) For the purpose of this section—

- (a) an agricultural show shall not be deemed to be a trotting race meeting :
- (b) “metropolitan area” means the area within a radius of twenty-five miles from the General Post Office at Adelaide.

48a. Where any money which, under this Part or the rules is payable by the board to any person, has been held by the board for twelve months after that person first became entitled thereto, and during that period no claim has been made to that money by the person entitled thereto, the board shall pay that money to the Treasurer in aid of the general revenue of the State.

Unclaimed money.  
Inserted by 2417, 1938, s. 19.

This section shall apply to money received by the board whether before or after the enactment of this section.

48b. The accounts of the board shall, once at least in every year, be audited by the Auditor-General who shall, in respect of those accounts, have all the powers which may be exercised by him under the Audit Act, 1921-1936, and any Act for the time being in force relating to the audit of public accounts.

Audit by Auditor-General.  
Inserted by 13, 1939, s. 7.

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S. 48c inserted by 19, 1949, s. 3, and repealed by 36, 1950, s. 7.

PART V.

UNLAWFUL GAMING.

49. No person shall win from any other person any money or valuable thing by fraud or any other unlawful means—

Obtaining money etc., by cheating.  
1285, 1917, s. 26.  
Ct. U.K. 8 & 9 Vict., c. 109, s. 17.

- (a) in playing at, or with, cards, dice, tables or other games; or
- (b) in bearing a part in the stakes, wagers, or adventures, or in betting on the sides or hands of them that do play; or
- (c) in betting on the event of any game, sport, pastime, or exercise.

Penalty—Such fine as the court determines, or imprisonment for two years.

## PART V.

Avoidance  
of gaming  
contracts.

1285, 1917,  
s. 27.  
Cf. U.K.  
9 Anne c. 19;  
5 & 6 Will. 4,  
c. 41, s. 1;  
8 & 9 Vict.,  
c. 109, s. 18;  
55 & 56 Vict.,  
c. 9, s. 1.

**50.** (1) All contracts or agreements whether by parol or in writing by way of gaming or wagering shall be void.

(2) No action shall be brought or maintained in any court to recover any sum of money or valuable thing—

(a) alleged to be won upon any bet; or

(b) which has been deposited in the hands of any person to abide the event on which any bet has been made:

Provided that this section shall not apply to any subscription or contribution or agreement to subscribe or contribute for or to any plate, prize, or sum of money to be awarded to the winner of any race or lawful game.

Extending  
provisions to  
gaming with  
coin, etc.

1285, 1917,  
s. 28.

Amended by  
57, 1954, s. 6.

**51.** Any person who in any public place at or with any table or instrument of gaming, or any coin, card, token, or other article used as an instrument or means of wagering or gaming—

(a) plays at any game or pretended game of chance; or

(b) bets by way of wagering or gaming on any game or pretended game of chance,

shall be guilty of an offence.

Penalty—Fifty pounds.

Gambling,  
etc., in public  
places.

1285, 1917,  
s. 29.

**52.** No person shall in any public place—

(a) exhibit any implements or articles for unlawful gaming, in order to induce or entice any person to engage in any unlawful gaming; or

(b) by any fraudulent act or device, cheat any person.

Penalty—Imprisonment for three months, and also at the same time a sentence to repay any money, or restore any property which has been obtained by means of any such offence, and, failing the immediate payment or restoration, imprisonment for a further sixty days.

Betting with  
infants.

1285, 1917,  
s. 30.

**53.** No person shall make or shall offer to make a bet with any person who is under the age of twenty-one years.

Penalty—One hundred pounds, or imprisonment for six months.

s. 50. *MIDDLETON v. CAVANETT* (1923) S.A.S.R. 255; 9 *Autn. Digest* 396. A contract to act as agent in making bets is not necessarily illegal. The agent paying bets under such a contract can recover the amount paid from the principal under an implied contract of indemnity.

**54.** No person under the age of twenty-one years shall make or offer to make a bet with any other person.

Betting by infants.  
1285, 1917,  
s. 21.

Penalty—Twenty pounds.

**54a.** A person under the age of twenty-one years shall not be—

Minors in betting enclosures.  
Inserted by 42, 1945, s. 8, and amended by 19, 1949, s. 4.

(a) in a betting ring;

(b) within six feet of a bookmaker who is in a betting ring,

on a racecourse or trotting ground while a race meeting or trotting meeting is being held on it.

Penalty—Not exceeding five pounds for a first offence and not exceeding ten pounds for a second or subsequent offence.

**55.** No person shall either directly or indirectly receive from any person under the age of twenty-one years, whether for himself or on behalf of some other person, any money or any valuable thing upon the understanding or agreement, either expressed or implied, that such money or valuable thing shall be placed in or used either directly or indirectly for the purposes of any totalizator or sweepstakes, or betting.

Receiving money for gaming from infants.  
1285, 1917,  
s. 32.

Penalty—One hundred pounds, or imprisonment for six months.

**56.** No person shall, for fee, commission, or reward, share, or interest—

Promoting sweepstakes for reward.  
1285, 1917,  
s. 33.

(a) carry on any sweepstakes; or

(b) pay, deposit, or receive any money or valuable thing for or in respect of any such sweepstakes; or

(c) give or receive any card, ticket, paper, document, or other thing relating to or in connection with any such sweepstakes.

Penalty—One hundred pounds, or imprisonment for six months.

## PART V.

Soliciting  
totalizator  
investments.  
1285, 1917,  
s. 34.

**57.** No person shall upon any racecourse or in any other public place or street directly or indirectly invite or solicit any other person to give or entrust to him any money or valuable thing for the purpose or intent that such money or thing, or any part thereof respectively, shall be placed or invested in any totalizator (whether such totalizator is lawful or not).

Penalty—Twenty-five pounds, or imprisonment for two months.

Totalizator  
agents.  
1285, 1917,  
s. 35.  
Amended by  
2417, 1938,  
s. 20.

**58.** No person shall for fee, commission, reward, share, or interest of any kind whatever, or upon any understanding or agreement, either expressed or implied, for such fee, commission, reward, share, or interest—

- (a) receive from any other person any money for the purpose of investing the same in any totalizator licensed or otherwise or with a bookmaker; or
- (b) receive any money upon any such agreement, understanding, or intention that such money shall be so invested.

Penalty—One hundred pounds for a first offence, and for a subsequent offence imprisonment for not more than three months.

Proof of  
offence.  
Inserted by  
2417, 1938,  
s. 21.

**58a.** In any proceedings for an offence under section 57 or 58 the proof of the receipt by any person of any money for the purpose alleged in the complaint shall be *prima facie* evidence that it was invited or solicited by the recipient, and that it was received by him for fee, commission, reward, share, or interest, as the case may be.

Certain games  
unlawful.  
1285, 1917,  
s. 36.  
2494, 1921,  
s. 7.  
Cf. U.K.  
33 Hen. 8,  
c. 9; 12 Geo.  
2, c. 23, s. 2;  
13 Geo. 2,  
c. 19, s. 9.

**59.** The games, tricks, or devices commonly known as “the purse trick,” “the three card trick,” “thimble rig,” “faro,” “banker,” “fan tan,” “two up,” “pitch-and-toss,” “hazard,” and all other games played in the same way, or of a kindred nature, are hereby declared to be unlawful games.

s. 58. SUMNER v. SOLOMON (1908) S.A.L.R. 20; 9 Austr. Digest 396. Where the plaintiff employed the defendant to put money on the totalizator for him, and the defendant failed to do so, held that no action lay against the defendant for money had and received or for damages for breach of contract.

60. No person shall—

- (a) in any public place bet or offer to bet by way of wagering or gaming; or
- (b) in any public place get up or take part in any sweepstakes; or
- (c) publish or cause to be published in any public newspaper or by circular, any advertisement inviting the public to subscribe to or take part in any bet or sweepstakes.

Betting and inviting to subscribe to a bet or sweepstakes. 1285, 1917, s. 37. Cf. U.K. 6 Edw. 7, c. 43, s. 1.

Penalty—(1) Not less than two pounds nor more than one hundred pounds.

(2) For a second or subsequent offence the court may in lieu of imposing a fine order that the defendant be imprisoned for not more than six months.

Substituted by 57, 1954, s. 7.

61. (1) No person shall be guilty of unlawful gaming.

Penalty—One hundred pounds.

(2) No person shall play any unlawful game.

Penalty—One hundred pounds.

(3) No person shall—

- (a) be present at any unlawful gaming or at the playing of any unlawful game; or
- (b) be in any place in which any unlawful gaming is taking place, without lawful excuse (the proof of which excuse shall be upon him).

Unlawful gaming and playing of unlawful games. 1285, 1917, s. 38. 1494, 1921, s. 8. Cf. U.K. 12 Geo. 2, c. 28, s. 3; 18 Geo. 2, c. 84, s. 2.

Penalty—Twenty pounds.

s. 60. BEE V. JANZEN (1884) 18 S.A.L.R. 39; 9 Austn. Digest 510. Where a number of persons stake money on the result of a game played in a public place and in which they take no part, they are guilty of betting.

WHITTLE V. JENNINGS (1922) S.A.S.R. 394; 9 Austn. Digest 390. To constitute a bet it is essential that each party stands to win or lose.

O'SULLIVAN V. PETERS (1951) S.A.S.R. 54. Where a person in a public place places a bet with another person on a horse race and, unknown to either, the horse on which the bet was made was previously withdrawn from the race, both parties may be convicted of attempting to bet by way of wagering contrary to section 60.

s. 61. BURCHELL V. STYLES (1906) S.A.S.R. 11; 9 Austn. Digest 447. Held, under Act 812, 1902, section 7, which penalized "a person found in a place used for unlawful gaming, without lawful excuse," that the onus of proving lawful excuse was on the defendant.

Being in public place for betting.  
 1285, 1917, s. 39.  
 1447, 1920, s. 7.  
 1494, 1921, s. 11.  
 1877, 1928, s. 4.  
 2185, 1938, s. 5.  
 Cf. U.K. 24 & 25 Geo. 5, c. 58, ss. 2, 30.  
 Amended by 42, 1945, s. 9.

**62.** (1) No person shall be in or upon any street or public place for the purpose of betting except by means of a totalizator duly licensed under this Act.

Penalty—For a first offence, not more than fifty pounds: For a second offence, imprisonment for not less than three months nor more than six months: For a third or any subsequent offence, imprisonment for not less than six months nor more than twelve months.

(2) Notwithstanding the provisions of the Justices Act, 1921, or any other enactment, no court shall have power—

- (a) to impose on any person guilty of a second or third or subsequent offence under this section, any sentence lower than the minimum fixed by this section; or
- (b) to impose a fine in lieu of imprisonment under this section for any such second or third or subsequent offence.

- s. 62. **LAMPARD v. ALLCHURCH** (1924) S.A.S.R. 341; 9 Austn. Digest 510. Settling bets is not betting within the meaning of section 62. [But see now section 62 (3).] An offence against section 62 may be committed if the defendant forms the purpose of betting while in a public place, and remains there to give effect to that purpose.
- CONNELLY v. ALLCHURCH** (1925) S.A.S.R. 7; 9 Austn. Digest 543. Held that memorandum pads (on one of which the defendant was proved to have written), booklets, a settling book, a settling sheet, and a doubles book carried by the defendant on the relevant occasion were admissible in evidence to show the purpose of the defendant.
- ALLCHURCH v. BERESFORD** (1928) S.A.S.R. 450; 9 Austn. Digest 533. An acquittal of a charge under section 62 will not support a plea of *autrefois acquit* on a complaint under section 90 (3).
- THATCHER v. LENTHALL** (1933) S.A.S.R. 322; 12 Austn. Digest 635. In fixing the penalty for an offence under section 62 an important matter to be considered is whether the evidence discloses anything in the nature of a regular business of betting, and the size of the business.
- LANE v. GILES** (1934) S.A.S.R. 311. Held that the evidence did not prove that the appellant was in a public place for the purpose of betting. **LAMPARD v. ALLCHURCH** (*supra*) approved but distinguished.
- KIRK v. MILLER** (1936) S.A.S.R. 277. A person negotiates bets if he undertakes to make bets for other persons with a registered bookmaker in a betting shop.
- O'HALLORAN v. CRAFTY** (1940) S.A.S.R. 29. When a barman whilst acting as such conducted betting operations in the bar held that, notwithstanding that he was in the bar acting as barman, he was there for the purpose of betting and was properly convicted under section 62.
- KING v. McDONALD** (1943) S.A.S.R. 3. When the evidence did not show that the defendant made more than a single bet in a saloon bar, held that he should not be convicted of being in a public place for the purpose of betting. The proper inquiry is whether the evidence shows that the defendant had the purpose of making bets and went to or remained in the public place with a view to accomplishing that purpose.
- WILLIAMS v. BUTLER** (1947) S.A.S.R. 442. Where a person was in a hotel for the purpose of betting as a bookmaker and another person, acting as his agent, received a bet in the hotel and passed it on to him, held that the agent aided and abetted in the offence and was liable to conviction as a principal offender.
- MADDAFORD v. BROWN** (1953) S.A.S.R. 169. The words "negotiating bets," as used in subsection (3), mean making bets or arranging for bets by treaty or discussion.

In determining whether any offence is a second, third, or subsequent offence within the meaning of this section, the court shall have regard only to offences committed after the fifth day of December, nineteen hundred and thirty-three.

(3) In this section the term "betting" without limiting the meaning thereof includes negotiating bets, receiving or paying money in connection with bets, and settling bets, except the settling of bets made on a racecourse in accordance with Part IV. of this Act and the terms of a licence issued thereunder.

Cf. U.K.  
6 Edw. 7,  
c. 43, s. 1.

63. No person standing in any street shall refuse or neglect to move on when requested by a police constable so to do, or shall loiter (whether such loitering shall cause or tend to cause any obstruction to traffic or not) in any street or public place after a request having been made to him by any police constable not to so loiter.

Loitering  
in street.  
1285, 1917  
s. 40.

Penalty—Twenty pounds, or imprisonment for two months.

64. No person shall—

(a) print, exhibit, publish, sell, circulate, distribute, give away, or post up; or

(b) cause to be printed, exhibited, published, sold, circulated, distributed, given away, or posted up,

any newspaper or printed card or written document, list or card (whether published, written, or printed in the State or elsewhere), which contains or purports to contain any advertisement or notification by or on behalf of any person, club, or association, as to betting on any intended horse,

Betting  
information.  
1285, 1917,  
s. 41.  
2135, 1933,  
s. 6.

s. 63. *MATTIN v. CURRIE* (1927) S.A.S.R. 459; 9 Austn. Digest 521. Held that a person standing stationary in a street cannot be convicted of loitering. (This decision is inconsistent with *ROSEY v. REYNOLDS*, *JOHNS v. BERRY*, and *JOHNS v. DALTON*, *infra*.)

*ROSEY v. REYNOLDS* (1929) S.A.S.R. 408; 9 Austn. Digest 522. In making a request not to loiter, the constable must specify the place in which the person is to cease loitering. A request not to loiter may be made to a person moving.

*JOHNS v. BERRY*; *JOHNS v. DALTON* (1934) S.A.S.R. 111. A person may loiter although he is not moving about. Meaning of "loiter" discussed.

*PROVIS v. MEPSTEAD* (1935) S.A.S.R. 42. Where the defendant remained in the street for about 20 minutes after being requested by a constable not to loiter there, held that a *prima facie* case of loitering had been made out.

*MORLEY v. BOND* (1955) S.A.S.R. 198. *Seemle*, for a police constable's request to a person to move on, under section 63, to be a lawful request, the constable must be intending to act in the course of his duty as a constable, and for the purpose, for example, of preventing the commission of a crime or of ensuring that there shall not be a breach of the peace.

*MULLIKAN v. ROSEY* (1957) S.A.S.R. 97. Where the defendant on the street near a shop after being told to move on by a police constable walked into the shop, held that he had not committed an offence against section 63.

pony, trotting race or races, coursing event, or other sport or exercise whatever in any part of the Commonwealth, or as to betting odds on any such race or races.

Advertising  
by tipsters.  
1285, 1917,  
s. 42.  
Cf. U.K.  
37 & 38 Vict.,  
c. 15, s. 3.

65. No person shall print, write, exhibit, publish, sell, circulate, distribute, give away, or post up or cause to be printed, written, exhibited, published, sold, circulated, distributed, given away, or posted up any placard, handbill, card, writing, sign, advertisement, or notification (whether published, printed, or written in the State or elsewhere) whereby—

- (a) it is made to appear that that person or any other person will if required bet or give information or advice directly or indirectly, as to the probable result of any intended horse race or pony race or trotting race in any part of the Commonwealth, or as to the betting odds on any such race; or
- (b) any information or advice is given or purported to be given relating to the probable result of any such race or as to the betting thereon, or as to any unlawful game:

Provided that nothing contained in this section shall prohibit the publication in a newspaper by the printer or publisher thereof of a forecast of the probable result of any race, if such publication is not for money or gain.

Oral  
information  
as to racing.  
1285, 1917,  
s. 42A.  
2135, 1933,  
s. 7.  
2188, 1934,  
s. 8.

66. (1) Any person who for fee or reward gives any oral information or advice relating or purporting to relate to the probable result of any intended horse race, pony race, trotting race, coursing event, or any other sport or exercise whatever or as to the betting odds thereon, shall be guilty of an offence.

(2) In any proceedings for an offence against this section the allegation in the complaint that any information or advice was given for fee or reward shall be *prima facie* evidence of the facts so alleged.

(3) Nothing in this section shall apply to any information or advice given by or to a bookmaker licensed under this Act.

(4) In this section the expression "give oral information or advice" includes every method of communicating information by spoken words whether directly or through the medium of any apparatus for the reproduction of sound.

**67.** (1) The Betting Control Board may in writing grant to any person a general or limited authority to publish or communicate, in any manner specified by the board, oral or written information or advice, relating to any horse race, pony race, trotting race, or coursing event, or to the betting odds thereon.

Authorized information as to racing. 1285, 1917, s. 42B. 2188, 1934, s. 9.

(2) Such an authority may contain any conditions imposed by the board and shall be void if any condition thereof is not observed.

(3) No person shall be liable to any proceedings or penalty in consequence only of publishing or communicating information or advice pursuant to an authority under this section.

**67a.** If any race meeting, trotting meeting, or coursing meeting is held in the State no person shall at any time, prior to or during the time the race meeting, trotting meeting, or coursing meeting is being held, by means of any wireless broadcast, broadcast any information relating to the betting on any horse or dog taking part in any horse race, trotting race, or coursing event to be held or held at such meeting.

Prohibition of broadcasting certain betting particulars. Inserted by 2417, 1938, s. 22.

Penalty—Fifty pounds.

**68.** No person shall—

(a) placard, post up, or exhibit; or

(b) permit or suffer to be placarded, posted up, or exhibited; or

(c) assist in placarding, posting up, or exhibiting,

in or on or about any land, building, or premises, any information or notice or list, directly or indirectly relating to betting or any unlawful game.

Betting notices and placards. 1285, 1917, s. 43. Cf. U.K. 16 & 17 Vict., c. 119, s. 7.

**69.** (1) If any member of the police force has reasonable grounds for suspecting that on any place upon which any horse racing, foot racing, cycle racing, football match, cricket match, or any other sport of a kind usually attended by the public, is then being carried on, or on any other place any person is guilty of, or has on that day been guilty of, unlawful gaming, that member of the police force may, without warrant, arrest that person and remove him from that place.

Removal from racecourses of persons suspected of offences. 1285, 1917, s. 43. 1447, 1920, s. 8. 1494, 1921, s. 9. 2135, 1933, s. 8.

s. 69. JUNNER V. FARQUHAR AND OTHERS (1909) S.A.L.R. 116; 9 Austn. Digest 525. The expression "reasonable grounds for suspicion" refers to a suspicion which an observation of the plaintiff's conduct on the occasion in question would reasonably cause in the mind of a discreet and fair-minded person.

MORRIS V. ADAMSON (1921) S.A.S.R. 242; 9 Austn. Digest 525. Held, that a strip of land outside a racecourse and which was referred to as a road, and on which the public stood to buy tickets, but which gave no view of the races, was not a place where racing was carried on.

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(2) No person who has been so removed from any such place shall, during the day on which he was so removed, re-enter or be again upon that place, or any place contiguous thereto.

Penalty—Fifty pounds.

(3) No member of the police force who has acted *bona fide* in the intended exercise of the powers conferred on him by subsection (1) of this section shall be liable to any proceedings, civil or criminal, in consequence of his having so acted.

Power for racing clubs to revoke tickets and remove persons from racecourses. 1285, 1917, s. 44A, 1877, 1928, s. 6.

**70.** (1) The committee of any racing club, or the secretary or any other official of a racing club when authorized by the committee thereof, may do any of the following things, namely:—

- (a) at any time revoke either verbally or by writing any licence, right, or title which has been granted by or on behalf of the racing club or the committee thereof, whether to a member of the club or any other person, and which authorizes any person to enter, be, or remain upon any racecourse on any one or more occasions when horse races are being run thereon:
- (b) on any day when horse races are being held by the club, request any person who is upon or in the racecourse where the races are being held to leave the same:
- (c) use all reasonable and necessary force to eject from the racecourse any person who having been so requested to leave neglects or refuses forthwith to do so.

(2) Any member of the police force, at the request of the committee of any racing club or the secretary or any official of any racing club, shall eject or assist in ejecting from the racecourse any person who having been requested to leave as aforesaid neglects or refuses forthwith to do so.

(3) The committee of a racing club shall not be liable to pay any compensation or damages whatsoever to any person in respect of the revocation of any licence, right, or title under this section, or the ejecting of any person from a racecourse under this section, except the amount of any valuable consideration paid for the licence, right, or title.

(4) Except as mentioned in subsection (3) no member of the police force or other person, acting in good faith in the intended exercise of the powers conferred on him under this section, shall be liable to any proceedings, civil or criminal, in consequence of his having so acted.

(5) No person who has left a racecourse pursuant to a request under this section, or who has been removed from a racecourse under this section, shall, during the day on which he so left or was removed, re-enter or be again upon the racecourse.

Penalty—Fifty pounds.

(6) In this section, without limiting the meaning which the terms herein defined have elsewhere in this Act, the following terms shall have the following meaning, namely:—

“committee” means the committee, executive, or other controlling body or person by whatever name called of a racing club, and includes any member of a committee as so defined:

“racing club” means any association of persons corporate or unincorporate which promotes or carries on horse racing or trotting races:

“racecourse” includes the land and premises on which horse or trotting races are actually run, and all land and premises to which the public have access for the purposes of viewing the races and any other land or premises usually regarded as part of a racecourse or trotting ground.

71. (1) It shall be lawful for—

(a) any special magistrate or two justices of the peace, upon complaint or information upon oath before him or them that there is reason to suspect that unlawful gaming is or is about to be carried on in or upon any place; or

(b) the Commissioner of Police, upon receiving a report in writing from any superintendent or inspector of police that he suspects that unlawful gaming is or is about to be carried on in or upon any place,

to give to any member of the police force a warrant in the form of the fourth schedule to this Act, or to the like effect.

(2) A warrant so given shall authorize the member of the police force therein named with such assistance as may be necessary—

(a) to enter or re-enter into and upon and search the place therein named at any time and from time to time, and at all times during the day or night, within the space of three clear days from the date of the warrant:

Power of the  
police.  
1285, 1917,  
s. 45.  
1877, 1928,  
s. 7.  
2135, 1933,  
s. 9.  
Cf. U.K.  
42 Geo. 3,  
c. 119, s. 4  
(part);  
4 Geo. 4,  
c. 60, s. 59;  
8 & 9 Vict.,  
c. 109,  
ss. 6-7;  
16 & 17 Vict.,  
c. 119,  
ss. 11-12;  
24 & 25  
Geo. 5, c. 58,  
s. 27.

- (b) to remain in and upon that place during the whole or any part of the three days aforesaid:
- (c) to use force if necessary in making entry or re-entry, whether by breaking open doors or otherwise:
- (d) to arrest and bring before a special magistrate or two justices of the peace all persons found therein or thereupon:
- (e) to seize all dice, balls, counters, tables, or other instruments of gaming, money, lists, cards, papers, documents or things found therein or thereupon, or upon the said persons which may reasonably be supposed to have been used or designed for use in connection with or in relation to such suspected offence:
- (f) to detain the same until the owner or owners thereof appear before a special magistrate or two justices of the peace to claim the same, and satisfy the magistrate or justices how and for what use or purposes the same were intended.

Amended by  
57, 1954, s. 8.

(3) The special magistrate or justices may confiscate the dice, balls, counters, tables, or other instruments of gaming, money, lists, cards, papers, documents, and things, or otherwise dispose of them as he or they deem fit, if—

- (a) the said owner or owners do not appear before the magistrate or justices within twenty-one days after the seizure; or
- (b) if he or they do so appear, and do not show to the satisfaction of the magistrate or two justices after due examination, that the dice, balls, counters, tables, or other instruments of gaming, money, lists, cards, papers, documents, or other things, were not in any such house, office, room, or place, or upon the said persons for the purpose of being used in relation to, or in connection with, any matter made unlawful by this Act.

Obstructing  
constables in  
the execution  
of their duty.  
1285, 1917,  
s. 46.  
2135, 1933,  
s. 10.  
Cf. U.K.  
42 Geo. 3,  
c. 119, s. 4  
(part).

**72.** No person shall wilfully—

- (a) prevent any member of the police force or other person acting in his assistance under a warrant under this Act to enter any house, room, or place, from entering the same or part thereof; or

s. 72. O'SULLIVAN V. HARFORD (1956) S.A.S.R. 109. Held that the evidence in the case was sufficient to make out a case for the defendant to answer under a count under section 72 without it being necessary to have recourse to the provisions of section 105.

- (b) obstruct or delay any such member of the police force or person in so entering; or
- (c) by any bolt, bar, chain, or other contrivance secure any external or internal door of or means of access to any house, room, or place so authorized to be entered; or
- (d) use any means or contrivance whatsoever for the purpose of preventing, obstructing, or delaying the entry of any such member of the police force or person into any such house, room, or place or any part thereof.

Penalty—One hundred pounds, or imprisonment for six months.

73. (1) Upon receiving a report in writing from any police officer of or above the rank of sub-inspector that he is of opinion that unlawful gaming is or is about to be carried on in any place, the Commissioner of Police may give notice in writing addressed to the occupier of that place, or if the name of the occupier is unknown, then addressed to that particular place, ordering that all doors or other means of entrance on that place or leading to or from that place, both internal and external, shall be opened and kept open so as to admit of free ingress and egress of any member of the police force authorized in writing by the Commissioner of Police and any persons assisting him during the days and hours stated in the notice. The notice shall be served upon the occupier of the said place, or, if the occupier cannot be found, it shall be deemed a sufficient service if the notice is fastened in a conspicuous place on the outside of any door or other means of entrance to or leading to or from the said place.

Power of police as to premises where unlawful gaming is carried on. 1285, 1917, s. 46A. 2135, 1933, s. 11.

(2) After service of the notice the following provisions shall apply:—

- (a) any member of the police force authorized in writing by the Commissioner of Police and any persons assisting him may enter, re-enter, and remain in or upon the said place or any part thereof or any premises leading thereto during the days and hours stated in the notice for the purpose of observing the conduct of all persons in or upon the said place:
- (b) any occupier, or, in the absence of the occupier any other person present upon the said place who refuses or neglects immediately to open or keep

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open during the days and hours stated in the notice, any door or means of entrance mentioned in the notice, and any person who at any time during the said days and hours closes any such door or means of entrance shall be guilty of an offence:

Penalty—A fine not exceeding one hundred pounds.

- (c) any member of the police force authorized in writing by the Commissioner of Police and any member of the police force assisting him may use force if necessary in making entry or re-entry, whether by breaking doors or otherwise.

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PART VI.

### PART VI.

#### COMMON GAMING HOUSES.

Common gaming-houses.  
1285, 1917, ss. 47 & 48.  
1447, 1920, s. 9.  
Cf. U.K. 8 & 9 Vict., c. 109, s. 2; 16 & 17 Vict., c. 119, s. 2.

- 74.** (1) Any house, office, room, or place—
- (a) which is used for the playing therein of any unlawful game; or
- (b) which is used for the purpose of enabling any person or persons to bet with others or with one another, or to pay or receive money or valuable consideration in respect of any bet on events which have not happened, whether made in or at such house, office, room, or place, or elsewhere; or
- (c) which is occupied by any company or club having for its object or one of its objects the enabling of shareholders or members thereof to make bets or pay or receive money in respect of bets on events which have not happened, whether so made either amongst themselves or with other persons not necessarily being shareholders or members,

shall be deemed to be a common gaming-house.

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s. 74. *NATION v. KROGDAHL* (1923) S.A.S.R. 94; Austn. Digest 444. "User" may be established by proof of use on a single occasion. Where the evidence showed that on one occasion a game of hazard was played by a number of men, and a number of bets were made, held that the "carrying on" of an unlawful game was proved.

*LENTHALL v. MITCHELL* (1933) S.A.S.R. 231; 9 Austn. Digest 446. The acts, words, and conduct of persons using premises are relevant to show what its character is, regardless of whether there is an occupier in any other sense or not.

(2) A house, office, room, or place where an unlawful game is carried on shall be deemed to be a common gaming-house, notwithstanding that the same is open only for the use of subscribers or of members or shareholders of any particular club or company, and is not open to all persons desirous of using the same.

**75.** No person shall be the occupier of a common gaming-house.

Occupying common gaming-house. 1285, 1917, s. 48A. 1494, 1921, s. 10.

Penalty—Five hundred pounds, or imprisonment for twelve months.

**76.** No owner or agent acting on behalf of the owner and no occupier of any house, office, room, or other place shall allow or permit it to be used as a common gaming-house: Provided that an owner or agent who is not an occupier, and who was in ignorance of and had no reasonable grounds to suspect such use, or had taken all reasonable steps to prevent it, shall not be guilty of an offence.

Allowing use of premises as common gaming house. 1285, 1917, s. 49.

**77.** No owner or agent acting on behalf of the owner, and no occupier of any house, office, room, or place shall allow or permit or suffer it to be used as a means of access to or exit or escape from any house, office, room, or place used as a common gaming-house: Provided that if the owner, agent, or occupier was in ignorance of and had no reasonable grounds to suspect such use, or had taken all reasonable steps to prevent it, he shall not be guilty of an offence.

Allowing use of premises as access to a gaming-house. 1285, 1917, s. 50.

s. 75. **BOND v. BERRESFORD** (1931) S.A.S.R. 285; 9 Austn. Digest 444. On a charge under section 75, all facts (including the posting of a sentry to give warning of the approach of the police) showing the use of the premises may be proved.

**WELLS AND ANOTHER v. NOBLETT** (1933) S.A.S.R. 134; 9 Austn. Digest 442. Personal knowledge of the defendant as to the use of the premises on a particular occasion is not a necessary ingredient of an offence against section 75, but there must be some degree of knowledge or connivance on the part of the occupier as to the use of the premises.

**JOHNSON v. LENTHALL** (1934) S.A.S.R. 13. By reason of the definition of common gaming house in section 74 it is necessary for the prosecutor to prove that the owner or his agent either knows that the premises are used for betting and does not interfere, or purposely abstains from ascertaining whether betting is going on or not.

**SUTTER AND WIFE v. VIRGO** (1940) S.A.S.R. 113. Where husband and wife were charged in one complaint with keeping a common gaming house, held that they were rightly charged together and that separate convictions could be rightly made.

**MARSSON v. O'SULLIVAN** (1951) S.A.S.R. 244. To constitute the offence of being the occupier of a common gaming house, contrary to section 75, it is not necessary that all the persons concerned in the gaming alleged should be on the premises. The offence is committed if the premises are used for the purpose of enabling a person in the premises to make bets with persons communicating with him by telephone.

## PART VI.

Power to evict occupier of house used as gaming-house, etc.  
1285, 1917,  
s. 51.

78. (1) Any owner of any house, office, room, or place who has reasonable grounds to suspect that it is used—

(a) as a common gaming-house; or

(b) as a means of access to or of exit or escape from any house, office, room, or place used as a common gaming-house,

may serve on the tenant or occupier a notice to quit.

(2) The serving of such notice shall, subject to this Act, determine as from the seventh day after the date of service any tenancy under which the occupier holds as if the tenancy had expired by effluxion of time. The owner may thereupon, without any authority other than this Act, take legal proceedings to evict, and may evict, such occupier.

(3) The notice shall be served personally on the occupier, but if he cannot be found service may be effected by posting a copy of the notice on some conspicuous part of the said house, office, room, or place.

(4) Upon proof, to the satisfaction of the Registrar-General, that such a notice has been served on the tenant or occupier in manner aforesaid, he shall, at the expiry of seven days from the date of service, cause a memorial of the service and of the date thereof to be entered in respect of land under the provisions of The Real Property Act, 1886, in the Register Book of Titles kept pursuant to that Act, and in respect of land not under the provisions of that Act in the General Registry Office of Deeds for the said State.

Cancellation of notice to quit.  
1285, 1917,  
s. 52.

79. (1) Any such notice to quit may at any time be cancelled as from the date of such notice and relief be granted by the Supreme Court subject to such terms as the Court thinks fit on application being made to the Court by the occupier and on proof that he has not at any time used or allowed or permitted or suffered the house, office, room, or place to be used—

(a) as a common gaming-house; or

(b) as a means of access to or of exit or escape from any house, office, room, or place used as a common gaming-house.

(2) Notice of intention to make such application shall be served on the owner at least seventy-two hours before the hearing of the application, and on being so served shall operate until the determination of the application as a stay of any proceedings under the last preceding section to evict the occupier.

80. (1) On the affidavit of a commissioner, inspector, or sub-inspector of police, showing reasonable grounds for suspecting that any house, office, room, or place is used in contravention of this Act, a judge of the Supreme Court may declare such house, office, room, or place to be a common gaming-house.

Declaration that house a common gaming-house. 1285, 1917, s. 53.

(2) Every such declaration shall be in force until rescinded.

81. (1) Any such declaration may be rescinded by a judge of the Supreme Court, subject to such terms as he thinks fit, on application being made to him—

Rescission of declaration. 1285, 1917, s. 54.

(a) by the owner, tenant, or occupier of the house, office, room, or place the subject of the declaration, on proof that he has not at any time allowed the house, office, room, or place to be used in contravention of this Act; or

(b) by a commissioner, inspector, or sub-inspector of police, on proof that the house, office, room, or place is not used in contravention of this Act.

(2) Where the application is made by the owner, tenant, or occupier as aforesaid, notice in writing of intention to make the same shall be served on a commissioner, inspector, or sub-inspector of police two days at least before the hearing of the application.

(3) When any such declaration has been rescinded by a judge of the Supreme Court on terms, the owner, tenant or occupier of the house, office, room or place, the subject of the declaration, or a commissioner, inspector or sub-inspector of police, may apply to a judge of the Supreme Court for a variation of such terms on proof that circumstances existing at the time of fixing such terms have materially altered. On any such application the judge if satisfied that it is just or expedient to do so may modify, revoke, add to, or remit any of such terms:

Inserted by 42, 1945, s. 10.

Provided that the Commissioner of Police shall be given notice of any application by such owner, tenant or occupier and shall be entitled to be heard in opposition thereto.

82. (1) Notice of any such declaration, and of any rescission of the same, shall be published in the *Gazette*.

Publication of notice of declaration and rescission. 1285, 1917, s. 55.

(2) In any proceedings under this Act the production of a copy of the *Gazette* containing such notice shall be evidence

s. 80. In *re* TATTERSALLS CLUB (1942) S.A.S.R. 211. A declaration under section 80 may be made *ex parte*.

that the declaration or rescission therein notified was duly made.

Notice given  
of declaration.  
1285, 1917,  
s. 56.

**83.** (1) The Commissioner, or a superintendent, inspector, or sub-inspector of police, on such declaration being made with respect to any house, office, room, or place—

(a) shall cause to be published on two days in a newspaper circulating in the neighbourhood of the house, office, room, or place, a notice of the making of the declaration:

(b) shall cause such notice to be served on the owner and occupier of the house, office, room, or place. The service shall be personal, except when it cannot be promptly effected, in which case the notice may be served on the owner, tenant, and occupier aforesaid, by causing a copy thereof to be affixed at or near to the entrance to the house, office, room, or place.

(2) In any proceedings under this Act the production of a copy of a newspaper containing any such notice shall be evidence that that notice was duly published in that newspaper on the date appearing thereon.

Persons found  
in house  
declares a  
common  
gaming-house.  
1285, 1917,  
s. 57.

**84.** If after publication, in pursuance of paragraph (a) of the last preceding section, of notice of the making of a declaration with respect to a house, office, room, or place, and during the time that the declaration is in force, any person is found in or entering or leaving—

(a) that house, office, room, or place; or

(b) any land or building used as a means of access to, or of exit or escape from the same,

any member of the police force may, without warrant, arrest that person and take him before a court. That person, unless he proves that he was in, or on, or entering, or leaving as aforesaid, for a lawful purpose shall be liable to a penalty of fifty pounds, or to imprisonment for three months.

Penalty on  
owner of  
house used in  
contravention  
of Act.  
1285, 1917,  
s. 58.

**85.** If after service on an owner, in pursuance of paragraph (b) of section 83 of notice of the making of a declaration with respect to a house, office, room, or place and while the declaration is in force, that house, office, room, or place is used in contravention of this Act, the owner shall, unless he proves that he has taken all reasonable steps to evict the

occupier from the same, be liable to a penalty of not less than thirty and not more than one hundred pounds.

**86.** If after service on an occupier, in pursuance of paragraph (b) of section 83 of notice of the making of a declaration with respect to a house, office, room, or place, and while the declaration is in force, that house, office, room, or place is used in contravention of this Act, the said occupier shall be liable to a penalty not less than thirty and not exceeding three hundred pounds, unless he proves that he has taken reasonable steps to prevent such use.

Penalty on occupier.  
1285, 1917,  
s. 59.

**87.** While any such declaration is in force with respect to any house, office, room, or place, any member of the police force may, without warrant—

Entry by police.  
1285, 1917,  
s. 60.

- (a) enter the said house, office, room, or place:
- (b) enter any land or building which he has reasonable grounds to suspect is used as a means of access to or of exit or escape from the same:
- (c) pass through, from, over, and along any other land or building for the purpose of entering in pursuance of paragraph (a) or paragraph (b) aforesaid:
- (d) for any of the purposes aforesaid, break open doors, windows, and partitions, and do such other acts as are necessary:
- (e) seize any instruments of gaming and any instruments of betting and documents relating to betting, and any money and securities for money in any such house, office, room, or place.

**88.** No person shall—

- (a) obstruct;
- (b) aid in obstructing; or
- (c) solicit any other person to obstruct or aid in obstructing,

Obstructing the police.  
1285, 1917,  
s. 61.  
Amended by  
2417, 1938,  
s. 23.

a member of the police force in the exercise of any power conferred on him by this Act.

Penalty—For a first offence seventy-five pounds, and for a second or subsequent offence imprisonment for not more than six months.

Certain offences.

Inserted by 2417, 1938, s. 24.

88a. Any person who is in or near to any place whether a public place or not for the purpose of giving any warning to any person of the presence or approach of any member of the police force or for the purpose of preventing the detection of any offence against this Act shall be guilty of an offence.

Penalty—For a first offence, seventy-five pounds, and for a second or subsequent offence imprisonment for not more than six months.

Evidence of house being a gaming-house.

1285, 1917, s. 62.  
Cf. U.K. 17 & 18 Vict., c. 38, s. 2.

89. If—

- (a) any member of the police force or other person acting in his assistance authorized under this Act to enter any house, room, office, or place is wilfully prevented from or is obstructed or delayed in entering the same or any part thereof; or
- (b) any external or internal door of or means of access to any such house, office, room, or place so authorized to be entered is found to be fitted or provided with any bolt, bar, chain, or any means or contrivance for the purpose of preventing, delaying, or obstructing the entry into the same or any part thereof of any member of the police force authorized as aforesaid, or any person acting in his assistance, or for the purpose of giving an alarm in case of such entry; or
- (c) any such house, office, room, or place is found fitted or provided with any means or contrivance for unlawful gaming, or with any means or contrivance for concealing, removing, or destroying any instruments of gaming,

it shall be evidence, until the contrary is made to appear, that such house, office, room or place, is used as a common gaming-house, and that the persons found therein were playing an unlawful game therein.

s. 89. *JOHNS v. MILBURN* (1934) S.A.S.R. 317. Where the police were delayed in entering a house, but gave no notice to the occupier that they were armed with a warrant, held that such delay did not establish a *prima facie* case on complaints for being the occupier of a house used for unlawful gaming, and for being the occupier of a common gaming house.

90. (1) No house, office, room, or place shall be opened, kept, or used for the purpose of—

Keeping house for purpose of gaming.

(a) unlawful gaming:

1285, 1917, s. 63 (part). Cf. U.K. 18 Geo. 2, c. 34, s. 1; 8 & 9 Vict., c. 109, s. 4; 16 & 17 Vict., c. 119, s. 1; 17 & 18 Vict., c. 38, s. 4.

(b) the occupier betting with persons resorting thereto:

(c) any money or valuable thing being received by or on behalf of the occupier as or for the consideration for any assurance, undertaking, promise, or agreement, express or implied, to pay or give there-after any money or any valuable thing on any event or contingency of or relating to any race, fight, game, sport, or exercise, or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency.

Cf. U.K. 16 & 17 Vict., c. 119, s. 4.

(2) Every house, office, room, or place opened, kept, or used for any of the purposes aforesaid is hereby declared to be a common nuisance and unlawful.

- s. 90. ALLCHURCH v. BERESFORD (1928) S.A.S.R. 450; 9 Austr. Digest 533. An acquittal under section 62 will not support a plea of *autrefois acquit* on a complaint under section 90 (3).
- BOND v. JENNINGS (1930) S.A.S.R. 103; 9 Austr. Digest 480. Held that a "tipping" competition organized by proprietors of a newspaper was an undertaking to pay money on an event relating to a horse race.
- LENTHALL v. MITCHELL (1933) S.A.S.R. 231; 9 Austr. Digest 446. A place used for unlawful gaming includes a common gaming house. The acts, words, and conduct of persons using premises are relevant to show what its character is regardless of whether there is an occupier in any other sense or not.
- WADE v. TROTTER (1934) S.A.S.R. 62. Held that a fine of £100 or in default imprisonment for 12 months was an excessive penalty where it was not shown that the defendant had any interest in the betting being carried on in his hotel.
- BOND v. FORAN (1934) 53 C.L.R. 364; affirming FORAN v. BOND (1934) S.A.S.R. 323; 9 Austr. Digest 485. To prove an offence against section 90 (3) it is necessary to prove *mens rea* in the sense that the occupier of the premises or the person to whom the management of the premises was committed, knew or connived at the use to which the premises were put. In order that the premises may be "used" within the meaning of section 90 (3), it must be shown that the person carrying on the illegal business has so acted as to establish the premises as his business site.
- GROW v. LORD (1947) S.A.S.R. 451; 22 A.L.J. 94. A complaint under subsection (3) which alleges no other purpose than "unlawful gaming" is defective for want of particularity.
- HUDSON v. COX (1952) S.A.S.R. 168. Where a bookmaker took bets in a bar with the connivance of the barman in charge of the bar, held that the barman was guilty of an offence under section 90.
- O'SULLIVAN v. FRIEBE (1956) S.A.S.R. 89. Where the person charged with an offence against section 90 is a natural person, and is not in fact aware that the premises are being kept or used for unlawful gaming, the knowledge of his servant or agent of that use is not, by itself, sufficient to preclude the person charged from relying upon the ground of defence provided by subsection (4). Standard of diligence required to establish the defence afforded by subsection (4) considered.
- O'SULLIVAN v. HARFORD (1956) S.A.S.R. 109. Held that the evidence raised a reasonable suspicion that the house in question was being used by defendant as a place in which he was residing and, presumably, accepting offers to bet over the telephone.

(3) No person shall be the occupier of any such house, office, room, or place kept or used for any of the purposes aforesaid.

Penalty—Five hundred pounds, or imprisonment for twelve months.

Inserted by  
2417, 1938,  
s. 25.

(4) It shall not be necessary to prove that the occupier knew that the premises were kept or used for any of the purposes aforesaid, but such person shall not be convicted if he proves that he did not know and could not by the exercise of all reasonable diligence have known that the premises were being so kept or used.

Advancing  
money for  
the purpose  
of gaming.  
1285, 1917,  
s. 63 (part).

**91.** No person shall advance or furnish money for the purpose of gaming with persons frequenting any such house, room, or place.

Penalty—Five hundred pounds, or imprisonment for twelve months.

Receiving  
money for  
betting.  
1285, 1917,  
s. 64.  
Amended by  
42, 1945,  
s. 11.

**92.** (1) No occupier of any house, office, room, or place used for any of the purposes mentioned in section 90 shall receive, directly or indirectly, any money or valuable thing as a deposit on any bet on the happening of any event or contingency of or relating to any race, fight, game, sport, or exercise, or as or for the consideration for any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any such event or contingency.

Penalty—For a first offence, not more than fifty pounds; for a second or subsequent offence, not more than one hundred pounds or imprisonment for six months.

(2) No person shall, on the receipt of any money or valuable thing so paid or given as aforesaid, give any acknowledgment, note, security, or draft purporting or intending to entitle any other person to receive any money or valuable thing on the happening of any such event or contingency as aforesaid.

Penalty—For a first offence, not more than fifty pounds; for a second or subsequent offence, not more than one hundred pounds or imprisonment for six months.

(3) Any money or valuable thing received by any such person aforesaid as a deposit on any bet, or as or for the consideration for any such assurance, undertaking, promise, or agreement, as aforesaid, shall be deemed to have been received to or for the use of the person from whom it was

received, and that money or valuable thing, or the value thereof, may be recovered accordingly, with full costs of suit, in any court of competent jurisdiction.

**93. No person shall—**

- (a) print, exhibit, or publish, or cause to be printed, exhibited, or published any placard, handbill, card, writing, sign or advertisement from which it appears that any house, office, room, or place is opened, kept, or used for the purpose of making bets on any event or contingency of or relating to any race, fight, game, sport, or exercise, or for the purpose of exhibiting lists for betting, or with intent to induce any person to resort to such house, office, room, or place for the purpose of making such bets:
- (b) on behalf of the occupier of any such house, office, room, or place invite other persons to resort thereto, for the purpose of making such bets.

Exhibiting placards or advertising betting-houses.  
1285, 1917, s. 65.  
Amended by 42, 1945, s. 12.

Penalty—For a first offence, not more than thirty pounds; for a second or subsequent offence, not more than fifty pounds or imprisonment for two months.

**94. No person shall print, send, exhibit, publish, or shall cause to be printed, sent, exhibited, or published any letter, circular, telegram, placard, handbill, card, or advertisement or shall make or cause to be made any announcement by means of any wireless broadcast—**

Betting advertisements.  
1285, 1917, s. 66.  
Amended by 2417, 1938, s. 26.

- (a) from which it appears that any person, either in the State or elsewhere, will on application give information or advice for the purpose of or in respect to any bet on any event or contingency of or relating to any race, fight, game, sport, or exercise, or will make on behalf of any other person any such bet:
- (b) with intent to induce any person to apply to any house, office, room, or place, or to any person with a view to obtaining information or advice for the purpose of any such bet or with respect to any such event or contingency:
- (c) inviting any person to make or take any share in or in connection with any such bet.

Penalty—Thirty pounds, or imprisonment for two months.

## PART VI.

Giving false names or addresses.

1285, 1917, s. 67.  
Cf. U.K. 17 & 18 Vict., c. 38, s. 3.

95. No person found in any house, room, or place entered by any constable or person assisting him to enter the same, upon being arrested by such constable or person assisting, or upon being brought before any justices, on being required by such constable or person or by such justices to give his name and address, shall refuse, or neglect to give the same, or shall give any false name or address.

Penalty—Fifty pounds, or imprisonment for one month.

Entrance and nomination fees exempted.

1285, 1917, s. 68.  
Cf. U.K. 8 & 9 Vict., c. 109, s. 18 proviso, 16 & 17 Vict., c. 119, s. 6.

96. Nothing in this Act shall extend to the deposit, receipt, subscription, holding or payment of any money or valuable thing as entrance or nomination fees, in respect of any lawful race, game, sport or exercise, or as part of the prize or stakes therefor.

## PART VII.

## PART VII.

## EVIDENCE.

Immunity of police and other authorized persons.

1285, 1917, s. 69.  
1447, 1920, s. 10.

97. No member of the police force acting under the orders or instructions of any other member of the police force who is his superior in rank, and no other person acting under the lawful instructions of any member of the police force, shall be deemed to be an accomplice in the commission of any offence against this Act, nor shall the member giving such order or instructions, nor the member or other person who acts in pursuance or attempted pursuance thereof be liable to conviction or punishment for any act or matter done or committed by either of them in relation to or under such order or instructions, although, but for this section, such members or other person or any of them might have been deemed to be such accomplices or accomplice or have been liable to such conviction or punishment.

99. The allegation in any complaint laid in respect of any alleged offence or offences against this Act—

Allegations to be *prima facie* proof.

1285, 1917, s. 71.  
2135, 1933, s. 12.

(a) that any person, firm, company, or partnership (as the case may be) named in the complaint is the owner, user, or occupier (as the case may be) of any place, room, or premises mentioned in the complaint:

(b) that any horse race, trotting race, cycle race, or foot race, or coursing event (as the case may be) mentioned in the complaint was run at a place and on a date therein specified, and that any horse or horses, dog or dogs, or person or persons named in the complaint took part in any race or coursing event therein mentioned,

Amended by 57, 1954, s. 10.

shall be accepted by the court as evidence of the truth of such allegations unless the contrary is proved.

100. Any person, club, firm, company or partnership using or occupying any place, room, or premises for the purpose of unlawful gaming shall be deemed to be so using or occupying such place for such purpose with the knowledge and consent of the owner and the immediate landlord of such place or premises unless the contrary is proved.

Knowledge of owner as to occupancy of premises.

1285, 1917, s. 72.

101. In every complaint laid in respect of any offence relating to any illegal lottery alleged to have been or to be intended or about to be drawn or conducted elsewhere than in the State, the court may in its discretion receive and act upon such secondary or other evidence as may be adduced for the purpose of proving the existence, drawing, conduct, or intention to draw or conduct such lottery.

Secondary evidence relating to lotteries.

1285, 1917, s. 73.

102. (1) In any proceedings against any person for establishing, commencing, or being a partner in any illegal lottery, or managing, conducting or assisting to manage or conduct any illegal lottery, or selling or disposing or buying or accepting any ticket or thing purporting to be or usually

Evidence of illegal lottery.

1285, 1917, s. 74.

s. 99. LENTHALL V. MITCHELL (1933) S.A.S.R. 231; 9 Austr. Digest 441. A defendant alleged in a complaint to be the occupier of premises must satisfy the court on the balance of probabilities that he is not such an occupier.

KENNY V. O'SULLIVAN (1953) S.A.S.R. 45. Section 99 authorizes the insertion in a complaint for unlawful gaming of averments of any of the matters specified in the section, and those matters must be accepted by the court as evidence of the truth of the allegations unless the contrary is proved, notwithstanding that the matters averred may not form part of the actual charge.

known as a lottery ticket and relating to an illegal lottery, it shall, in default of or in addition to other evidence, be sufficient in support of the complaint to show that such ticket or thing was bought or accepted by the purchaser or acceptor under the belief by him that the possession and production of such ticket purporting to be a lottery ticket or other thing conveyed a right to the purchaser or any holder thereof to draw for, compete, or have an interest in an illegal lottery.

(2) The sale of a ticket or thing commonly known as a Chinese lottery ticket, whether marked or otherwise, shall be *prima facie* evidence of the existence of a lottery and of an undertaking, agreement, or promise, expressed or implied, to pay a sum of money to the purchaser or holder of such ticket on the happening of a certain event or contingency.

(3) In any proceedings it shall not be necessary to prove that any ticket purporting to be or usually known as a Chinese lottery ticket relates to any particular lottery, or that any lottery has been or will be drawn.

*Prima facie*  
evidence of  
unlawful  
gaming.  
1285, 1917,  
s. 75.  
Cf. U.K.  
8 & 9 Vict.,  
c. 109, s. 8.  
Amended by  
57, 1954,  
s. 11.

103. The discovery in any place or about the person of any of those found therein (under circumstances which, combined with such discovery, raise in the mind of the court a reasonable suspicion that the purpose and provisions of this Act have been contravened) of cards, dice, balls, counters, tables, or other instruments of gaming, or of lists, cards, papers, documents, or things relating to racing or betting, shall be *prima facie* evidence that such place is used for unlawful gaming.

Evidence as  
to offences.  
1285, 1917,  
s. 76.  
Cf. U.K.  
8 & 9 Vict.,  
c. 109, s. 5.

104. If on the hearing of any complaint for unlawful gaming the court is of opinion that any money or thing which has to its satisfaction been proved to have been given to, or received, or paid by the accused person, or given to, or received, or paid by any person or persons on his behalf, has been given in circumstances which, in the mind of the court, raise a reasonable suspicion that such money or thing was so given, received, or paid in contravention of the purposes and provisions of the Act, or any of them, such giving, receiving, or paying as aforesaid shall be deemed *prima facie* evidence of the commission by the accused person of the offence charged against him in the complaint.

s. 103. *JOHNS v. MILBURN* (1934) S.A.S.R. 317. Held, on the facts, that a *prima facie* case had not been established by virtue of section 103.

105. (1) If on the hearing of any complaint against any person for unlawful gaming, the evidence for the prosecution is such as to raise in the mind of the special magistrate or justices hearing the complaint a reasonable suspicion that that person is guilty of the offence charged against him in

Reasonable suspicion sufficient to set up a *prima facie* case.  
1494, 1921, s. 14.

- s. 105. SANDERSON v. ALLCHURCH (1922) S.A.S.R. 7; 9 Austn. Digest 511. Every offence against the Act is unlawful gaming within the meaning of section 105. Reasonable suspicion means a suspicion which a reasonable man could reasonably entertain on the evidence of the prosecution. On a charge of being in a public place for the purpose of illegal betting the following facts were held sufficient to raise a reasonable suspicion of guilt:—(a) The defendant, whilst standing in the front of the grandstand on a racecourse spoke to several men at intervals, made entries in a race book, and when approached by the police threw away the book and several slips of paper; (b) the defendant had £60 in notes in his pockets; (c) some of the slips had entries thereon requiring explanation.
- ALLCHURCH v. DENTON (1922) S.A.S.R. 91. On a charge of being in a public place for the purpose of illegal betting, *semble* a reasonable suspicion may be entertained against a bookmaker's clerk, although his employer has been acquitted on a similar charge relating to the same occasion.
- THOMPSON v. ALLCHURCH (1922) S.A.S.R. 217; 9 Austn. Digest 512. "Unlawful gaming" includes every offence against the Lottery and Gaming Act and a complaint may be for unlawful gaming although the words "unlawful gaming" are not used. On a charge of being in a public place for the purpose of betting the following facts were held sufficient to raise a reasonable suspicion of guilt:—(a) The acts of the defendant in a public place prior to his being spoken to by the police, which acts were such as would be done by a man making a bet, though capable of an innocent interpretation; (b) the conduct of the defendant after arrest, which was incapable of an innocent interpretation.
- NATION v. KROGDAHL (1923) S.A.S.R. 94; 9 Austn. Digest 444. On a charge of being the occupier of a common gaming house the following facts were held sufficient to raise a reasonable suspicion of guilt:—(a) That on one occasion a game of hazard was being played on the premises by a number of persons and that a considerable number of bets were made; (b) that the defendant was the occupier of the premises; (c) that he was familiarly addressed by some of the players; (d) that on the arrival of the police the lights were turned down, a warning cry was given, and the players dispersed.
- HOLMES v. ALLCHURCH (1926) S.A.S.R. 255; 8 Austn. Digest 470. Held that where the evidence for the prosecution raised a reasonable suspicion of guilt, but the mind of the special magistrate may have been influenced by evidence wrongly received, the conviction should be quashed.
- LAMPARD v. WEST (1926) S.A.S.R. 293; 9 Austn. Digest 536. Reasonable suspicion in the mind of the court leads inevitably to a conviction in absence of evidence for the defence if the reasonable suspicion is established on facts proved beyond reasonable doubt. Discussion of onus imposed on defendant by establishment of reasonable suspicion.
- MCLEAN v. DAWKINS (1930) S.A.S.R. 94; 9 Austn. Digest 541; reversing DAWKINS v. MCLEAN (1930) S.A.S.R. 7; 9 Austn. Digest 537. On a charge of being on licensed premises for the purpose of illegal betting, acts of the defendant consistent with making a bet, coupled with the absence of a denial or explanation of the suspicious circumstances were held sufficient to create a reasonable suspicion. Where magistrates hold a *prima facie* case exists by reason of section 105, they should say so.
- LENTHALL v. POWELL (1930) S.A.S.R. 185; 8 Austn. Digest 163, 468; 9 Austn. Digest 536, 546; affirmed by POWELL v. LENTHALL 44 C.L.R. 470; 4 A.L.J. 311; 9 Austn. Digest 542. Where the evidence on a charge for an offence against the Lottery and Gaming Act satisfies the judicial conscience that it is right to suspect the accused person, the court is bound to entertain the suspicion and hold that a *prima facie* case is made out.
- POWELL v. LENTHALL (1930) 44 C.L.R. 470; 4 A.L.J. 311; 9 Austn. Digest 542; affirming LENTHALL v. POWELL (1930) S.A.S.R. 185; 9 Austn. Digest 536, which reversed LENTHALL v. POWELL (1930) S.A.S.R. 13; 9 Austn. Digest 536. The Supreme Court on appeal may examine the whole adjudication of the magistrate under section 105 including both the question whether he had a suspicion and whether he ought to have had one.
- HINTON v. TROTTER (1931) S.A.S.R. 123; 5 Austn. Digest 716; 9 Austn. Digest 539. A *prima facie* case established by reasonable suspicion may be rebutted

the complaint, that evidence shall be deemed to be *prima facie* evidence that that person is guilty of that offence.

(2) The provisions of this section shall not limit the effect of any provisions of section 104 of this Act, and the provisions of that section shall not limit the effect of any provision of this section.

- s. 105. by disproving the facts on which the suspicion is founded, or by proving (cont'd.) facts which make it more likely than not that the defendant is innocent. It is not enough for the defence to disprove particular facts if the suspicion remains as a real suspicion reasonably based on the facts in evidence. Failure to explain suspicious circumstances at the relevant time may support an inference of guilt.
- BOND v. BERESFORD (1931) S.A.S.R. 285; 9 Austn. Digest 444. Where the evidence for the prosecution is equally consistent with guilt and innocence, section 105 does not apply. There must be some evidence which warrants an inference of guilt rather than of innocence.
- MOORE v. NOBLET (1932) S.A.S.R. 6. On a charge of unlawful betting in a billiard saloon the following facts were held to justify a reasonable suspicion of guilt:—(a) That the defendant was in possession of and attempted to conceal a betting book; (b) that he had knowledge of its contents; (c) that he refused to give an explanation as to his possession of or interest in the book when questioned by the police; (d) that he gave false evidence in the witness box.
- BLIGHT AND ANOTHER v. BOND (1932) S.A.S.R. 121; 9 Austn. Digest 544. On a joint charge against two defendants for unlawful betting in an hotel, conduct of the defendants in the hotel consistent with betting, the facts that one of the defendants had a large sum of money of different denominations distributed over a number of pockets, and the other defendant had betting slips in his possession, and both defendants falsely denied any knowledge of the slips, held sufficient to justify a reasonable suspicion.
- KING v. McDONALD (1943) S.A.S.R. 3. Section 105 requires the court to act on something less than the preponderance of probability, which would normally make out a *prima facie* case, but the evidence must approximate to a *prima facie* case.
- GILES v. DODD (1943) S.A.S.R. 132. Held on the evidence adduced that the evidence was sufficient to raise a reasonable suspicion that unlawful betting had taken place.
- JONES v. HARRIS (1946) S.A.S.R. 98. Where a person is charged with having carried on business as a bookmaker, documents containing memoranda from which betting transactions may be inferred and which are found either in his possession or under circumstances from which his previous possession may be reasonably inferred, are properly admissible to be used as circumstantial evidence to raise the suspicion that a bookmaking business has been carried on, although there may be no other evidence to prove possession or of bets having been made.
- PETTREY v. WILLIAMS (1946) S.A.S.R. 303. To found a reasonable suspicion under the section it is necessary to establish something approximating a *prima facie* case.
- RICHARDS v. GROW (1947) S.A.S.R. 125. If on the circumstances proved by the prosecution the inference of guilt is a reasonably possible explanation of the circumstances, the court is entitled to entertain a reasonable suspicion under the section, notwithstanding that there are other possible explanations which may be equally reasonable, but in finally deciding whether the court should entertain the suspicion the court should bear in mind the over-riding fact suggested in SANDERSON v. ALLCHURCH (*supra*) namely:—“Would a reasonable man reasonably suspect the defendant of the offence charged on the evidence for the prosecution.”
- O’SULLIVAN v. McMAHON (1947) S.A.S.R. 466. When the evidence for the prosecution on a charge for an offence under the Act raises in the mind of the court any real suspicion of the defendant’s guilt, there is *prima facie* evidence, under section 105, of the defendant’s guilt and he should be called upon to answer the charge. In general, it would be a sufficient answer if the defendant gives

106. The allegation in any complaint under section 114 of this Act that—

Certain allegations *prima facie* evidence. 1285, 1917, s. 77.

- (a) any person is the secretary of the company named in that complaint; or
- (b) any person is the manager of that company; or
- (c) any person is a director of that company; or
- (d) the premises named are or have been in the occupation or under the control of that company,

shall be *prima facie* evidence of the facts alleged.

107. Whenever in any proceedings under this Act it is material to show that any person was at any material time under the age of twenty-one years—

Proof of age. 1285, 1917, s. 77A. 2135, 1933, s. 13. Cf. U.K. 6 Edw. 7, c. 43, s. 1 (3); 18 & 19 Geo. 5, c. 41, s. 4 (2).

- (a) the opinion of the court on its own view of such person; or
- (b) the opinion of a police officer who has seen such person,

that such person was at the material time under the age of twenty-one years shall be *prima facie* evidence of that fact.

108. (1) If the name of any person is printed or published upon any placard, handbill, card, writing, sign, advertisement, circular, newspaper, or other notice or notification or document that fact may be accepted by the court as *prima facie* evidence that the said placard, handbill, card, writing, sign, advertisement, circular, newspaper, or other notice or notification or document was printed or, according to the nature of the charge, published by such person.

Proof of publication. 1285, 1917, s. 77B. 2135, 1933, s. 13.

(2) In this section “name” includes any name, or any designation whatever, used or assumed by any person or by

s. 105. a reasonable explanation, the honesty of which the court sees no reason to (contd.) doubt, from the circumstances which have aroused suspicion.

DIXON v. O’SULLIVAN (1951) S.A.S.R. 104. Observations as to the scope and effect of section 105.

CROWLEY v. O’SULLIVAN (1952) S.A.S.R. 260. In applying the provisions of section 105 upon the hearing of a complaint for unlawful gaming, it is not necessary that the court should be satisfied to the point of reasonable certainty that the defendant is guilty of the offence precisely as charged in the complaint, but the court should not convict unless satisfied of the defendant’s guilt, in the sense of content to draw the inference of guilt, bearing in mind the legislative relaxation of the burden of proof.

KENNY v. O’SULLIVAN (1953) S.A.S.R. 45. Observations on the effect of section 105.

MADDAFORD v. BROWN (1953) S.A.S.R. 169. Held the facts gave rise to a reasonable suspicion that the defendant was on licensed premises for the purpose of betting.

PART VII.

which any person is usually known or which is usually applied to any business or business premises of any person.

"Silent"  
telephone  
evidence of  
unlawful  
gaming.  
Inserted by  
2417, 1938,  
s. 27.

108a. If it is proved on the hearing of any complaint for unlawful gaming that on the premises where it is charged that such unlawful gaming has taken place there is installed a telephone instrument the number of which does not appear in the current telephone directory, such proof shall be *prima facie* evidence of the truth of such charge.

PART VIII.

PART VIII.

PROCEDURE AND MISCELLANEOUS.

Proceedings  
for offences.  
1285, 1917,  
s. 78.

109. (1) All proceedings under this Act shall be disposed of summarily.

(2) Penalties for any offence under this Act shall be recovered summarily.

General  
penalty for  
offences.  
1285, 1917,  
s. 79.  
Cf. U.K.  
24 & 25  
Geo. 5, c. 58,  
s. 30.

110. Unless otherwise specified in this Act, every person who commits any offence against this Act, shall be liable to a penalty not exceeding fifty pounds, or to imprisonment for not longer than three months.

S. 111  
repealed  
by 57, 1954,  
s. 12.

\* \* \* \* \*

Power to  
amend.  
1285, 1917,  
s. 81.

112. (1) It shall be held sufficient in any complaint under this Act if the complaint gives the accused a reasonably clear and intelligible statement of the offence with which he is charged.

(2) No conviction or warrant of commitment shall be held void, invalid, or quashed for any defect in substance or in form.

(3) The court shall amend every complaint which, in its opinion, is defective or ought to be amended upon such terms as to costs, adjournment, or otherwise as the court thinks fit.

(4) Any special magistrate may amend any conviction or warrant of commitment at any time after it has been signed and before it has been executed.

**113.** The Registrar of Companies shall not be required to register any club, association, or persons as a company under any Act relating to companies if, in his opinion, the purposes or objects, or any of them, of such club, association, or persons, are designed, or intended either directly or indirectly, or either wholly or in part, to contravene or evade in any way the provisions and purposes of this Act, or any of them.

Discretion of Registrar of Companies.  
1285, 1917,  
s. 82.

**114.** (1) On complaint being laid on oath before a special magistrate by any police constable stating that the constable has reasonable grounds of suspicion that the premises occupied by or under the control of any company registered under The Companies Act, 1892, or the Companies Act, 1934, are being or have been during their occupation or control by that company used for the purpose of unlawful gaming, the special magistrate may issue his summons to the manager, secretary, or directors of the company, or any of them, requiring him or them or any of them to appear before him, the said magistrate, at the place and time mentioned in the summons, to answer the matter of the complaint and to show cause why the registration of the company should not be cancelled.

Cancellation of registration of companies under certain circumstances.  
1285, 1917,  
s. 83.

(2) If the party or parties so summoned do not appear, or if upon the hearing of the complaint the party or parties so summoned fail to show to the satisfaction of the special magistrate that the premises in question were not used for the purpose of unlawful gaming, then the special magistrate may, by an order under his hand, declare the registration of the company named in such complaint to be cancelled.

(3) Upon such order being made, and immediately after it has been published in the *Government Gazette*, the company in respect of which the order has been made shall for all purposes of law be deemed to be unregistered.

**115.** (1) Any justice or any officer of the police force of rank not lower than sergeant or any member of the police force authorized in writing by any such officer may demand entrance at any time by day or night into—

Entry into shops, factories, and club premises.  
1494, 1921,  
s. 13.

- (a) any premises in respect of which a licence granted under the Licensing Act, 1932, is in force;
- (b) any shop or any part of a building occupied in connection with or for the purposes of a shop;

## Lottery and Gaming Act, 1936-1956.

- (c) any factory and the appurtenances of any factory;  
or
- (d) any building or place occupied by any club (whether a racing club or not) and the appurtenances thereof.

(2) If admittance is refused or delayed for such time as makes it appear that wilful delay was intended—

- (a) such justice, officer, or member may break into and employ force to enter such place; and
- (b) notwithstanding such breaking and entry, the occupier of such place and the person to whom such demand was made shall be guilty of an offence against this Act, and shall be liable to a penalty for the first offence of not less than five pounds and not more than twenty pounds, and for any subsequent offence of not less than ten pounds and not more than thirty pounds.

(3) The authority of a member of the police force, referred to in subsection (1) of this section, may be limited to one or more specified occasions, or one or more specified localities, or one or more specified places, or may authorize such member to act generally as in the subsection mentioned without limitation as to occasion, locality, or place, or may be limited in any manner deemed proper by the officer giving the authority.

Exemption of certain sweepstakes. 1285, 1917, s. 83A. 2185, 1933, s. 14. Cf. U.K. 24 & 25 Geo. 5, c. 58, ss. 23, 24.

**116.** Nothing in this Act shall apply to any sweepstake held upon a racecourse, or any place not being a public place, if—

- (a) the total contributions do not exceed five pounds;
- (b) no person contributes more than five shillings;
- (c) the promoter does not promote, and the individual subscribers do not contribute to, more than one sweepstake on any one race; and
- (d) the total sum contributed is paid to the winner without any deduction.

Half penalties to be paid to informer. 1285, 1917, s. 84.

**117.** One half part of every sum which shall be imposed as a penalty under sections 6, 7, 8, 49, 51, 52, 72, 90, 91, 92, 93, 94, and 95 of this Act shall be paid to the person on whose complaint the conviction has been obtained, unless the complaint was laid by or on behalf of a public officer.

118. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected.

Construction  
of Act.  
Inserted by  
2417, 1938,  
s. 28.

## SCHEDULES.

## THE FIRST SCHEDULE.

## ACTS REPEALED.

Number and Year of Act.	Title.	Extent of Repeal.
1285 of 1917 ..	Lottery and Gaming Act, 1917 . . . . .	The whole.
1382 of 1919 ..	Lottery and Gaming Act Amendment Act, 1919	The whole.
1447 of 1920 ..	Lottery and Gaming Act Amendment Act, 1920	The whole.
1494 of 1921 ..	Lottery and Gaming Act Amendment Act, 1921	The whole.
1877 of 1928 ..	Lottery and Gaming Act Amendment Act, 1928	The whole. except section 9.
1986 of 1930 ..	Lottery and Gaming Act, 1930 . . . . .	The whole.
2135 of 1933 ..	Lottery and Gaming and Licensing Acts Amendment Act, 1933	Part I.
2159 of 1934 ..	Lottery and Gaming Act Amendment Act, 1934	The whole.
2188 of 1934 ..	Lottery and Gaming Acts Amendment Act, 1934	The whole.
2245 of 1935 ..	Lottery and Gaming Acts Amendment Act, 1935	The whole.

## THE SECOND SCHEDULE.

## RULES AND REGULATIONS AS TO THE TOTALIZATOR.

Made in Executive Council, 26th May, 1937: *Government Gazette* 27th May, 1937, p. 1207.

*Licences to Use the Totalizator.*

1. The Commissioner of Police may, subject to the provisions of the Lottery and Gaming Act, 1936, and to the rules and regulations made thereunder, grant a licence for the use on any racecourse or trotting grounds of the totalizator. The totalizator, when used in accordance with such licence, and every office, room, or place upon the racecourse or trotting grounds used for the purpose of the totalizator, and every placard, advertisement, letter or circular referring to the same, shall be exempt from the provisions of the Police Act, 1936, the Lottery and Gaming Act, 1936, and every other Act, prohibiting gaming and wagering.

*Conditions to which Licences Subject.*

2. Any reference, in the conditions set out in regulation 3, to a club, unless the context or subject matter requires a different construction, includes a reference to—

(a) the chairman, the secretary, and every member of the committee or executive body of such club; and

(b) every person employed by such club.

3. Every licence for the use of the totalizator hereafter granted shall be subject to the following conditions, namely:—

- i. The club shall not permit or suffer any person to follow the occupation of a totalizator agent, or any similar occupation, or to carry on or engage in any unlawful gaming, on the racecourse or on any grounds used in connection with any race or trotting meeting at which the use of the totalizator is licensed.
- ii. The club shall cause to be removed from the racecourse and such grounds every person on such racecourse or grounds carrying on or attempting to carry on any such occupation or receiving, or offering as a totalizator agent, or in any similar manner, to receive money for investment in or in connection with the totalizator, whether gratuitously or otherwise, or carrying on or engaging in any unlawful gaming, and shall exclude such person from such racecourse and grounds throughout the remainder of the meeting.
- iii. The provisions of paragraphs i. and ii. hereof do not apply to the servants of the club within the totalizator receiving money from the public for investment in the totalizator in accordance with the provisions of the Lottery and Gaming Act, 1936.
- iv. No investment shall be received in any totalizator in respect of any race after such race has actually started.
- v. In all totalizators, except automatic totalizators, no person shall interfere with any totalizator ticket box or container except for the purpose of reading the number of the totalizator tickets in such tin or container, and the tickets therein shall be left facing the public for five minutes or such less time after the start of a race as the police supervisor may direct.
- vi. No person shall sell any totalizator ticket or pay any dividend on any totalizator ticket to any person inside the totalizator building.
- vii. The club shall cause a set of books to be accurately kept showing—
  - (a) the names of all horses starting in each race and the names of all non-starting horses in respect of which any investment has been made:
  - (b) the amount invested in the totalizator on each horse in each race:
  - (c) the total amount invested in the totalizator on each race:
  - (d) the amount of stamp duty payable to the Commissioner of Stamps in respect of the amount invested on each race:
  - (e) the amount of commission retained by the club, and how it is expended:
  - (f) the amount of dividends declared on the first horse and the total amount payable to investors thereon:
  - (g) the amount of dividends declared on the second horse and the total amount payable to investors thereon:
  - (h) the amount of dividends declared on the third horse and the total amount payable to investors thereon:
  - (i) the amount of dividends on each race unclaimed by the persons entitled to receive the same on the day of the race meeting:
  - (j) the amount of dividends on each race unclaimed for a period of two months after they become payable to the persons entitled to receive the same; the dividends on the first, second, and third horses to be shown separately;
  - (k) the amount of fractions held by the club in respect of each race.
- viii. The club shall during any race meeting permit any member of the police force, or any other person authorized in writing for the purpose by the Commissioner of Police, to enter all enclosures and buildings upon the

## Lottery and Gaming Act, 1936-1956.

- racecourse or trotting ground, and shall, on demand by such member or any such authorized person, produce to him any document, book, form, return, or record, or tickets relating to the working of the totalizator.
- ix. All books of account, vouchers, paid dividend tickets, documents, forms, returns, working sheets, or records of the club shall, on demand by the Commissioner of Police, or any member of the police force, or other person authorized by him in that behalf, be submitted by the club to any person nominated by the Commissioner of Police for audit and examination.
- x. The club shall cause to be delivered on demand to any member of the police force or other person authorized by the Commissioner of Police a carbon copy of the original readings of the totalizator taken after each race, showing the amount invested on each horse and the total amount invested on the race.
- xi. Prior to the beginning of each race or trotting meeting the club shall, on demand, cause to be delivered to any member of the police force or other person authorized by the Commissioner of Police in that behalf, a statutory declaration, made and declared by the chairman and secretary of the club, setting forth the number and amount of each denomination of totalizator tickets printed or prepared for issuing in respect of each horse entered to be run at such race or trotting meeting for each race in which such horse is so entered.
- xii. Forthwith after the result of each race run at a race or trotting meeting is declared by the judge, the club shall, on demand by any member of the police force or other person authorized by the Commissioner of Police in that behalf, cause all tickets prepared or printed for issuing to persons investing in the totalizator on each horse in such race in respect of which a dividend is, or is to be, declared, and also on all non-starting horses in respect of which any investment has been made, which are unissued, to be placed in a packet, and such packet to be securely fastened up and sealed by the officer in charge of such totalizator, and be delivered to such member of the police force.
- xiii. Forthwith after the expiration of two months from the date of the holding of each race or trotting meeting, the club shall cause every totalizator ticket issued at such race or trotting meeting upon which a dividend has been paid, or in case of a non-starting horse, upon which any money has been refunded, to be delivered to the Commissioner of Police or any member of the police force authorized by the Commissioner of Police in that behalf.
- xiv. Subdivisions XII and XIII shall apply only to clubs whose permanent office for the transaction of the business of the club is situated more than 10 miles in a direct line from the General Post Office at Adelaide.
- xv. No totalizator dividend shall be paid to any person unless the totalizator ticket representing the number of a horse upon which a dividend is declared is produced to the paying out officials at the totalizator on the day of race or trotting meeting or to the secretary of the racing or trotting club concerned within two months of the date of the race or trotting meeting being held.
- xvi. The club shall cause to be erected to the satisfaction of the Commissioner of Police a barrier in front of every window used in connection with the totalizator for supplying tickets or change, or paying dividends. Such barrier shall be so constructed as to provide separate places of entry and exit.
- xvii. The club shall cause every totalizator used by such club to be provided with separate windows for use exclusively by women: Provided that this condition shall not apply on any racecourse which is situate more than twenty miles in a direct line from the General Post Office, Adelaide, and in respect of which the Commissioner of Police has certified that in his opinion this condition is unnecessary: Provided further that any such certificate with respect to any racecourse or trotting grounds may at any time be revoked by the Commissioner of Police, whereupon this condition shall again apply on such racecourse or trotting grounds.

XVIII. On any default by any club in the observance of any of the above conditions in any respect, the licence shall be revocable by the Commissioner of Police, or by the chief officer of police on the racecourse or grounds, either immediately upon such default or at any time within 14 days thereafter.

XIX. The Commissioner of Police shall cause a member of the police force to supervise the working of every separate totalizator, including every doubles totalizator, at all times when it is being used by any club, and such club shall pay to the Commissioner of Police the sum of three pounds for each member of the police force so supervising at a race meeting or trotting race meeting held in the day time and the sum of three pounds ten shillings for each member of the police force so supervising at a race meeting or trotting meeting held in the evening.

Inserted by regulations "Government Gazette," 7th December, 1939, p. 1556, and amended by regulations "Government Gazette," 26th July, 1951, p. 212, and 18th February, 1960, p. 557.

*Form of Licence and Fees.*

4. Every licence shall be in the following form, or as near thereto as circumstances permit, and shall be granted to the committee or executive body of the club, or one or more members of such committee or executive body, on application by or on behalf of such club or the committee thereof, but only for the racecourse or trotting ground and the days named in such licence.

*Form of Licence.*

By virtue of the Lottery and Gaming Act, 1936, and subject thereto, and to all rules and regulations made thereunder, these are to license Mr....., being the chairman of, and the other members of the committee or executive body of the.....club called the....., to use the totalizator on the.....at....., during the .....day of.....the.....day of..... the.....day of..... the.....day of..... the.....day of..... the.....day of..... or upon such other day or days in place of any of the said days as the Chief Secretary may, from time to time, in writing upon this licence, approve. This licence shall be in force from the..... day of.....19...., to the succeeding 31st day of December (both days inclusive).

Given under my hand the.....day of.....19....  
Commissioner of Police.

5. Every club applying for a licence shall, on such application, pay to the Commissioner of Police a licence fee of one pound one shilling for every day for which such licence is applied for; and if the licence is not granted for as many days as are applied for, the Commissioner of Police shall return the said licence fee, or a proportional part thereof, as the case may be; or if any race or trotting meeting is subsequently abandoned the Commissioner of Police shall return the licence fee in respect of such day.

6. On application by any person, and on payment of a sum not exceeding one shilling for every folio of 72 words, the Commissioner of Police shall furnish two copies, certified under his hand as such, of any licence granted, and of any account deposited under the Lottery and Gaming Act, 1936, or under these rules and regulations.

*Control of Queues.*

7. (1) Persons approaching any window of a totalizator shall form up in a queue in single file extending away from such window.

(2) When any such queue has been formed, no person shall approach the window to which such queue leads except as a member of such queue.

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8. No person shall—

- (a) push into any such queue, or join the same except at the rear end thereof;
- (b) take precedence of any person who from his position has a prior right in any queue;
- (c) stand or walk between any queue so formed, or within four yards of either of the outside queues;
- (d) pass money or a ticket to any person in any queue.

9. Every person shall at all times observe and comply with any reasonable directions given by any member of the police force as to—

- (a) the manner of approaching to or departing from any totalizator;
- (b) the conduct of such person in the vicinity of any totalizator.

### *Penalties.*

10. Any person who contravenes any provision of regulation 7, 8, or 9 hereof, whether by omission or commission, shall be liable to a penalty not exceeding ten pounds for every breach of such provision.

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### THE THIRD SCHEDULE.

#### FORM OF APPLICATION FOR LICENCE.

To \_\_\_\_\_ Esq., Commissioner of Police.

I, the undersigned, being the

of the Racing Club, called \_\_\_\_\_, do hereby apply on behalf of such club for a licence under the Lottery and Gaming Act, 1936, for the said club to use the totalizator on the racecourse situate at \_\_\_\_\_ during the year \_\_\_\_\_ upon the days hereunder specified.

[Here specify dates.]

Dated the \_\_\_\_\_ day of \_\_\_\_\_

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### THE FOURTH SCHEDULE.

#### SEARCH WARRANT.

South [Royal Arms] Australia.

(To wit.)

To \_\_\_\_\_

Whereas it appears to me (or us) \_\_\_\_\_ [a Special Magistrate, the Commissioner of Police, or two Justices of the Peace], acting in and for the State of South Australia, that there is reason to suspect that unlawful





## WRONGS ACT, 1936-1959.

BEING

WRONGS ACT, 1936, No. 2267 OF 1936  
[ASSENTED TO 13<sup>TH</sup> AUGUST, 1936.]

AS AMENDED BY

WRONGS ACT AMENDMENT ACT, 1939, No. 18 OF 1939  
[ASSENTED TO 22<sup>ND</sup> NOVEMBER, 1939.]

WRONGS ACT AMENDMENT ACT, 1940, No. 48 OF 1940  
[ASSENTED TO 28<sup>TH</sup> NOVEMBER, 1940.]

WRONGS ACT AMENDMENT ACT, 1944, No. 14 OF 1944  
[ASSENTED TO 23<sup>RD</sup> NOVEMBER, 1944.]

WRONGS ACT AMENDMENT ACT, 1951, No. 50 OF 1951  
[ASSENTED TO 13<sup>TH</sup> DECEMBER, 1951.]

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

LIMITATION OF ACTIONS AND WRONGS ACTS AMENDMENT  
ACT, 1956, No. 17 OF 1956  
[ASSENTED TO 8<sup>TH</sup> NOVEMBER, 1956.]

WRONGS ACT AMENDMENT ACT, 1956, No. 49 OF 1956  
[ASSENTED TO 22<sup>ND</sup> NOVEMBER, 1956.]

WRONGS ACT AMENDMENT ACT, 1958, No. 58 OF 1958  
[ASSENTED TO 27<sup>TH</sup> NOVEMBER, 1958.]

AND

WRONGS ACT AMENDMENT ACT, 1959, No. 38 OF 1959  
[ASSENTED TO 10<sup>TH</sup> DECEMBER, 1959.]

An Act to consolidate certain Acts relating to wrongs.

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

Short title.

1. This Act may be cited as the "Wrongs Act, 1936-1959".

Repeal.

2. The following enactments are repealed, namely:—

U.K. 6 and 7 Vict., c. 96 (adopted in South Australia by 17, 1846)—An Act of the Parliament of the United

Kingdom, entitled "An Act to amend the Law respecting defamatory words and libel". (Sections 1, 2, 9, and 10.)

No. 1 of 1865-6—An Act for compensating the Families of Persons killed by Accident. (The whole.)

No. 7 of 1865—An Act to amend the Law of Slander. (The whole.)

No. 17 of 1874—An Act to provide for the recovery of damages caused by negligence on the part of persons employed by the Government of South Australia in certain cases. (Section 3.)

No. 646 of 1895—The Law of Libel Amendment Act, 1895. (The whole.)

3. The remainder of this Act is divided into Parts, as follows:— Division of Act.

PART I.—Defamation: Sections 4-17.

PART II.—Wrongful acts or neglect causing death: Sections 18-23.

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## PART I.

PART I.

### DEFAMATION.

4. In this Part, unless inconsistent with the context—

“newspaper” means any paper containing public news, intelligence, or occurrences, or any remarks or observations thereon, printed for sale and published in the State, periodically or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two such papers, parts, or numbers:

Interpretation.  
646, 1895,  
s. 2.  
U.K. 44 and  
45 Vict.  
c. 60, s. 1.

“proprietor” includes as well the sole proprietor of any newspaper as also, in the case of a divided proprietorship, the persons who, as partners or otherwise, represent and are responsible for any

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s. 3. In addition to the Parts mentioned in section 3, Part III (General Provisions), which was enacted by the Wrongs Act Amendment Act, 1939, is included in this reprint.

share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person.

Words imputing want of chastity to a woman.  
7, 1865, s. 2.  
U.K. 54 and 55 Vict.  
c. 51, s. 1.

5. Words spoken and published of any woman imputing to her a want of chastity, shall be and shall be deemed to be slander, and an action shall be sustainable for such words in the same manner and to the same extent as for words charging an indictable offence.

Privilege of newspaper reports of legal proceedings.  
646, 1895,  
s. 3.  
U.K. 51 and 52 Vict.  
c. 64, s. 3.

6. A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: Provided that nothing in this section shall authorize the publication of any blasphemous or indecent matter.

Privilege of newspaper reports of proceedings of public meetings and of certain bodies and persons.  
646, 1895,  
s. 4.  
U.K. 51 and 52 Vict.  
c. 64, s. 4.

7. (1) A fair and accurate report published in any newspaper of the proceedings of—

(a) a public meeting; or

(b) (except where neither the public nor any newspaper reporter is admitted) of any meeting of a municipal or district council, school board of advice, board of health, board or local authority formed or constituted under the provisions of any Act of Parliament, or of any committee appointed by any of the abovementioned bodies; or

(c) a meeting of any royal commission, select committee of either House of Parliament; or

(d) a meeting of shareholders in any bank or incorporated company,

and the publication at the request of any Government office or department, Minister of the Crown, or Commissioner of Police, of any notice or report issued by it or him for the information of the public, shall be privileged unless it is proved that the report or publication was published or made maliciously:

Provided that—

- (a) nothing in this section shall authorize the publication of any blasphemous or indecent matter:
- (b) the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it is proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of appeared a reasonable letter or statement by way of contradiction or explanation of such report or other publication and has refused or neglected to insert the same:
- (c) nothing in this section shall be deemed or construed to limit or abridge any privilege now by law existing or to protect the publication of any matter not of public concern and the publication of which is not for the public benefit.

(2) For the purposes of this section, “public meeting” means any meeting *bona fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

8. If any unfair and inaccurate report of any matter mentioned in either of the last two preceding sections is published in any newspaper, every person responsible for the publication of such newspaper shall be guilty of an offence against this Act, punishable on complaint of any person aggrieved, and on summary conviction, by a fine not exceeding ten pounds, or by imprisonment not exceeding three calendar months:

Penalties on unfair and inaccurate reports. 646, 1895, s. 5.

Provided that—

- (a) the punishment shall be by fine only if it is proved that the defendant, as soon as practicable after being informed of the unfairness and inaccuracy of the report, published in the newspaper a correction thereof, giving to the correction at least equal prominence to that which was given to the original report:
- (b) any person laying a complaint under this section shall be deemed to have waived all other remedies, both civil and criminal, against the same defendant in respect of the same report.

## PART I.

Offer of an apology.  
U.K. 6 & 7  
Vict. c. 96,  
s. 1, adopted  
in S.A. by  
17, 1846.

9. In any action for defamation, the defendant may, after notice in writing of his intention so to do, duly given to the plaintiff at the time of filing or delivering the defence in the action, given in evidence in mitigation of damages, that he made or offered an apology to the plaintiff for the defamation before the commencement of the action, or if the action was commenced before there was an opportunity of making or offering such an apology, as soon afterwards as he had an opportunity of doing so.

Defence in action against a newspaper for libel.  
U.K. 6 and 7  
Vict. c. 96,  
s. 2, adopted  
in S.A. by  
17, 1846.

10. (1) In an action for a libel contained in any public newspaper or other periodical publication, the defendant may plead that the libel was inserted in the newspaper or other periodical publication without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in the newspaper or other periodical publication, a full apology for the libel, or if the newspaper or periodical publication in which the libel appeared was ordinarily published at intervals exceeding one week, offered to publish such an apology in any newspaper or periodical publication to be selected by the plaintiff in the action.

(2) The defendant upon filing such defence may pay into court a sum of money by way of amends for the injury sustained by the publication of the libel.

(3) To such a defence the plaintiff may reply generally denying the whole of such defence.

Evidence in mitigation of damages.  
646, 1895,  
s. 9.  
U.K. 51 and  
52 Vict.  
c. 64, s. 6.

11. At the trial of an action for a libel contained in any newspaper, the defendant may give in evidence in mitigation of damages that the plaintiff has already recovered or has brought action for damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought.

Publishing Parliamentary reports.  
38, 1876,  
ss. 307, 308.  
Cf. U.K.  
3 & 4 Vict.  
c. 9.

12. (1) It shall be lawful for any defendant in any civil or criminal proceeding in respect of the publication of any report, paper, votes, or proceedings of Parliament, which either House of Parliament deems fit and necessary and has authorized to be published, to bring before the court, after giving twenty-four hours notice to the plaintiff or prosecutor of his intention so to do, a certificate under the hand of the President or Clerk of the Legislative Council, or the Speaker or Clerk of the House of Assembly, stating that the matter

in question was published by order or under the authority of the Legislative Council or House of Assembly, as the case may be, together with an affidavit verifying the said certificate, and the court shall thereupon stay the said proceeding, and the same and every writ and process therein shall thereupon be put an end to and superseded, by virtue of this Act.

(2) It shall be lawful for the defendant in any civil or criminal proceeding in respect of the publication of any copy of any such report, paper, votes, or proceedings, to lay before the court, at any stage of the proceeding, the said report, paper, votes, or proceedings, and the said copy together with an affidavit verifying the same and the correctness of the said copy, and the court shall thereupon stay the said proceeding, and the same and every writ and process therein shall thereupon be put an end to and superseded by virtue of this Act.

(3) It shall be a good defence to any civil or criminal proceeding in respect of the printing of any extract from or abstract of such report, paper, votes, or proceedings if the defendant proves that the said extract or abstract was published in good faith and without malice.

(4) The following persons, namely, the Government Printer and those members of the public service who are employed in the making of official reports of the debates and proceedings of Parliament are hereby authorized by each House of Parliament to publish reports of the debates and proceedings of that House:

Inserted by  
18, 1939 s. 3.

Provided that this subsection shall not absolve any such person from the duty to conform to any instructions lawfully given to him by any person in authority.

(5) For the purposes of this section the papers which set out the daily business of each House of Parliament and are commonly called "Notices and Orders of the Day" shall be papers of Parliament the publication of which has been authorized by the House concerned.

Inserted by  
18, 1939, s. 3.

**13.** (1) A judge or the court, upon an application by or on behalf of two or more defendants in actions to the same, or substantially the same libel, brought by the same person, may make an order for the consolidation of those actions, so that they shall be tried together.

Consolidation  
of actions.  
646, 1895,  
s. 7.  
U.K. 51 and  
52 Vict.  
c. 64, s. 5.

(2) After such an order has been made, and before the trial of the actions, the defendants in any new actions instituted in respect to the same or substantially the same

libel, shall also be entitled to be joined in a common action, upon a joint application being made by those new defendants and the defendants in the actions already consolidated.

Evidence as to publication, matters charged, etc.  
646, 1895,  
s. 8.  
U.K. 44 & 45,  
Vict. c. 60,  
s. 4.

14. A court of summary jurisdiction, upon the hearing of a charge against the proprietor, publisher, or editor, or any person responsible for the publication of a newspaper for a libel therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate and published without malice, and as to any matter which under this or any other Act or otherwise might be given in evidence by way of defence by the person charged on his trial on indictment; and the court, if of opinion after hearing such evidence that there is a strong or probable presumption that the jury at the trial would acquit the person charged, may dismiss the case.

Obscene matter.  
646, 1895,  
s. 10.

15. It shall not be necessary to set out in any indictment or other judicial proceeding instituted against the publisher of any obscene libel the obscene passage, but it shall be sufficient to deposit the book, newspaper, or other documents containing the alleged libel with the indictment or other judicial proceeding, together with particulars showing precisely by reference to pages, columns, and lines, in what part of the book, newspaper, or other document the alleged libel is to be found, and such particulars shall be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in the indictment or judicial proceeding.

Proof of publication of newspaper, book, or periodical.  
646, 1895,  
s. 11.

16. Upon the trial of an action or prosecution in respect of a libel contained in a newspaper or book, the production of such newspaper or book containing a printed statement that it is printed or published by or for the defendant shall be *prima facie* evidence of the publication of the said newspaper or book by the defendant.

Proof of copies of newspaper.  
646, 1895,  
s. 12.

17. Upon the trial of an action or prosecution in respect of a libel contained in a newspaper, after evidence sufficient in the opinion of the court has been given of the publication by the defendant of the newspaper containing the libel, other prints purporting to be other numbers or parts of the same newspaper formerly or subsequently published, and containing a printed statement that they were published by or for the defendant, shall be admissible in evidence on either side without further proof of publication of them.

PART II.

PART II.

WRONGFUL ACTS OR NEGLIGENCE CAUSING DEATH.

18. (1) In this Part, unless the context or subject matter otherwise requires—

Interpretation.

1, 1865, s. 5.

U.K. 9 and

10 Vict.

c. 93, s. 5.

U.K. 24 and

25 Geo. 5,

c. 41, s. 2

(1) and (2).

Amended by

48, 1940, s. 3.

“child” includes son, daughter, grandson, granddaughter, stepson and stepdaughter:

“parent” includes father, mother, grandfather, grandmother, stepfather and stepmother:

“person” includes bodies politic and corporate:

“brother” includes half-brother and step-brother:

“sister” includes half-sister and step-sister.

(2) For the purposes of this Part a person shall be deemed to be the parent or child of the deceased person notwithstanding that he was only related to him illegitimately or in consequence of adoption; and accordingly in deducing any relationship which under this Part is included within the meaning of the expressions “parent” and “child”, any illegitimate person and any adopted person shall be treated as being or as having been the legitimate offspring of his mother and reputed father or, as the case may be, of his adopters.

Inserted by

18, 1939, s. 4.

(3) In this section “adopted person” means a person who has been legally adopted, whether in the State or elsewhere, and whether before or after the passing of the Wrongs Act Amendment Act, 1939.

Inserted by

18, 1939, s. 4.

(4) Subsections (2) and (3) of this section shall not apply in relation to any action in respect of the death of any person before the passing of the Wrongs Act Amendment Act, 1939.

Inserted by

18, 1939 s. 4.

19. Whenever the death of a person is caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to felony.

Liability for death caused wrongfully.

1, 1865, s. 1.

U.K. 9 and

10 Vict.

c. 93, s. 1.

Effect of  
action and  
mode of  
bringing it.

1, 1865, s. 2.  
U.K. 9 and  
10 Vict.  
c. 93, s. 2.  
U.K. 24 and  
25 Geo. 5,  
c. 41, s. 2 (3).

Amended by  
18, 1939 s. 5.

Inserted by  
18, 1939 s. 5.

20. (1) Every such action shall be for the benefit of the wife, husband, parent, brother, sister, and child of the person whose death has been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased.

(2) In every such action the court may give such damages as it thinks proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit the action is brought.

(2a) In any such action in respect of the death of any person after the passing of the Wrongs Act Amendment Act, 1939, damages may be awarded in respect of any medical expenses incurred as a result of the injury causing the death and the funeral expenses of the deceased person if such

- s. 20. **GOODGER v. KNAPMAN** (1924) S.A.S.R. 347. In assessing the damages under section 20 any pecuniary benefit the dependants would have received if the deceased had remained alive must be included, but any pecuniary advantage received from the death (including voluntary benefits conferred in consequence of the death) must be deducted. Moneys payable under an insurance policy on the life of the deceased are not to be deducted, but the premiums the deceased would have had to pay if living are deducted from the assessment of his probable income. Moneys received by the widow from fellow-employees of the deceased are wholly deductible in assessing damages. But see subclause (2aa) enacted since this decision.
- BUTLER v. McLACHLAN** (1936) S.A.S.R. 152. In assessing damages under section 20 in favour of a widow, moneys payable under a policy of insurance on the life of the deceased, or to the widow under the Superannuation Act, 1926, cannot be deducted; but insurance premiums and contributions to the Superannuation Fund are deductible from the estimate of what the deceased would have earned, if living. But see subsection (2aa) enacted since this decision.
- MATTHEW v. FLOOD** (1939) S.A.S.R. 389. Observations upon circumstances to be taken into account in assessment of damages pursuant to section 20.
- ADELAIDE CHEMICAL AND FERTILIZER COMPANY LIMITED v. CARLYLE** (1940) 64 C.L.R. 514; 14 A.L.J. 334, affirming **CARLYLE v. ADELAIDE CHEMICAL AND FERTILIZER COMPANY LIMITED** (1939) S.A.S.R. 458. When a widow brought an action under Part II, proceedings on behalf of the only child of the marriage having been taken under the Workmen's Compensation Act, 1932, held that the widow's failure to sue on behalf of the child did not result in the action being improperly constituted.
- RAFFERTY v. BARCLAY AND ANOTHER** (1942) S.A.S.R. 147, appeal to the High Court dismissed, 66 C.L.R. 669 (note). Method of fixing damages under section 20 discussed.
- NOLAN v. MARTIN** (1946) S.A.S.R. 210. In estimating the damages payable to a dependant, the value of any voluntary benefit conferred on a dependant by any person in consequence of the death of the person killed is a proper matter to be taken into account in reduction of the claim for the loss sustained. But see subsection (2aa) enacted since this decision.
- TAVERNER AND ANOTHER v. SWANBURY** (1944) S.A.S.R. 194. Where under an arrangement morally binding but not binding in law the deceased child had agreed to work for his father for a certain period, the age of the father, the probability of the son continuing to work for him and the possibility of obtaining a suitable substitute for the child's labour, are to be taken into account in assessing damage under sections 19 and 20. *Semble*, the existence of a binding contract to work for his father would not deprive the father of the right to claim damages under sections 19 and 20.
- PUBLIC TRUSTEE v. ZOANETTI** (1945) 70 C.L.R. 266; 19 A.L.J. 232, affirming **ZOANETTI v. PUBLIC TRUSTEE** (1944) S.A.S.R. 150; 18 A.L.J. 255. In assessing damages under sections 19 and 20, an amount awarded under section 23b should not be deducted.
- SALVEMINI v. AUSTRALIAN BARLEY BOARD** (1950) S.A.S.R. 174. In a claim by a widow for damages in respect of the death of her husband caused by the wrongful act, neglect, or default of another, pension paid to the widow under

expenses have been incurred by the parties for whose benefit the action is brought.

(2aa) In assessing damages under this section in any action based on a death occurring after the passing of the Wrongs Act Amendment Act, 1956, there shall not be taken into account—

Inserted by 49, 1956, s. 3 and amended by 58, 1958 s. 3 (1).

(i) any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after the passing of the said Act.

(ii) any sum paid or payable consequent on the death of the deceased person as a gratuity to any person for whose benefit the action is brought.

Inserted by 58, 1958, s. 3.

(iii) any superannuation payments or benefits consequent upon the death of the deceased person.

Inserted by 58, 1958, s. 3.

(iv) any sum paid or payable consequent upon the death of the deceased person under any contributory medical hospital death or funeral benefit scheme.

Inserted by 58, 1958, s. 3.

(v) any sum paid or payable as a social service benefit or pension by the Governments of the Commonwealth of Australia, or the United Kingdom, or the State of South Australia to or in respect of any person for whose benefit the action is brought.

Inserted by 58, 1958, s. 3.

(2b) No action shall be brought for the benefit of an illegitimate child of a deceased person unless during the lifetime of that person—

Inserted by 18, 1939, s. 5.

(a) he has contributed maintenance for the child or signed an agreement for the support of the child; or

(b) a maintenance or pre-maternity order has been made against him in respect of the child.

s. 20. Commonwealth legislation, pending the hearing of the claim, is not deductible (contd.) from the damages to which she may be entitled.

PAPOWSKI V. THE COMMONWEALTH OF AUSTRALIA (1958) S.A.S.R. 293. Held, before the enactment of subsection (2aa) (ii), that a sum voluntarily collected for a widow of a workman fatally injured in a motor accident was not deductible from the damages to be awarded to the widow.

SCHOLEFIELD V. BATES AND OTHERS (1958) S.A.S.R. 317. The method of assessment of pecuniary loss to the family of a deceased person in claims for damage in respect of fatal accidents, and, in particular, the application of actuarial calculations as to expectation of life, and the allowance to be made for acceleration of succession to the estate of deceased person, considered and discussed.

PANNELL V. FISCHER (1959) S.A.S.R. 77. Method of assessing damage sustained by a widow and children in consequence of the death of the husband, and the factors to be taken into account, considered and discussed.

s. 20. (2aa) Section 6 of the Wrongs Act Amendment Act, 1958, provides that the amendment made to this subsection by section 3 of that Act shall apply only in relation to deaths occurring after 27th November, 1958.

(3) The amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the court finds and directs.

Restriction of actions and time of commencement.

1, 1865, s. 3.  
U.K. 9 and  
10 Vict.  
c. 93, s. 3.

Amended by  
17, 1956, s. 5.

**21.** Not more than one action shall lie under this Part for and in respect of the same subject matter of complaint; and every such action shall be commenced within three years after the death of the deceased person.

Particulars of the person for whom damages claimed.

1, 1865, s. 4.  
U.K. 9 and  
10 Vict.  
c. 93, s. 4.

**22.** In every such action the plaintiff shall be required to deliver to the defendant or his solicitor, full particulars of the person or persons for whom and on whose behalf the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

Provision where no executor or administrator or action not commenced within six months.

17, 1874, s. 3.  
U.K. 27 and  
28 Vict.  
c. 95, s. 1.

**23.** (1) In any case falling under section 19 of this Act, if there is no executor or administrator of the deceased person or, there being such an executor or administrator, no action is commenced under this Part within six months after the death of the deceased person, then an action may be brought by and in the name or names of the person or all or any of the persons for whose benefit an action could have been brought under this Part by an executor or administrator of the deceased person.

(2) Every action brought under this section shall be for the benefit of the same persons and shall be subject to the same regulations and procedure as nearly as may be as if brought by or in the name of an executor or administrator of the deceased person.

Liability to parents of person wrongfully killed.

Inserted by  
48, 1940, s. 5,  
and amended  
by 58, 1958,  
c. 4.

**23a.** (1) Whenever the death of an infant is caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the infant to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall notwithstanding the death of the infant and although it was caused under such circumstances

s. 21. Section 6 of the Limitations of Actions and Wrongs Acts Amendment Act, 1956, provides that the amendment made by section 5 of that Act to section 21 of this Act is to apply to any action under Part II of this Act commenced after 8th November, 1956, whether the cause of action arose before or after that day.

s. 23a. *GIGNEY AND ANOTHER v. DUFFY AND ANOTHER. CLARK v. DUFFY AND ANOTHER* (1942) S.A.S.R. 76, varied on appeal to the High Court, 66 C.L.R. 669 (note); (1942) S.A.S.R. XX (note); 16 A.L.J. 374. Consideration of amount of solatium to be awarded.

*RICHARDS AND ANOTHER v. BAKER* (1943) S.A.S.R. 245. Elements in assessing and apportioning solatium discussed. Held that the award of solatium is to be

as amount in law to felony, be liable to pay to the surviving parents or parent of the child such sum, not exceeding five hundred pounds in the aggregate, as the court thinks just by way of solatium for the suffering caused to the parents or parent by the death of the child.

(2) Where both parents bring an action to recover any sum of money payable under this section, the amount recovered after deducting the costs not recovered from the defendant, shall be divided between the parents in such shares as the court directs.

(3) Where both parents survive the child and either of them does not join in bringing an action under this section, the other may bring an action for such amount as he claims to be due to him or her.

(4) In this section "parent" means the father or mother of a legitimate child and the mother of an illegitimate child.

**23b.** Whenever the death of a person is caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled that person to maintain an action and recover damages in respect thereof, the person who would have been liable if death had

Liability to surviving husband or wife of person wrongfully killed.

Inserted by 48, 1940, s. 5, and amended by 58, 1958, s. 5.

s. 23a. regarded as compensation for the loss of the pleasure of the child's presence (contd.) in the family and the deprivation of the parents of his society, and that this solatium could be awarded notwithstanding that damages were given on other grounds.

TAVERNER AND ANOTHER v. SWANBURY (1944) S.A.S.R. 194. In assessing the amount of solatium to be awarded to parents under section 23a for the death of a child, the nature and circumstances of the act causing the death, the suffering experienced by the parents, the nature of the relations between the parents and the child, are all factors to be taken into account.

JEFFRIES v. THE COMMONWEALTH OF AUSTRALIA (1946) S.A.S.R. 106. Solatium gives a right to compensation for any loss or injury for which damages are not recoverable. Damages and solatium are complementary in the sense that, so far as the hopes and expectation of parents "sound in damages," they cannot enhance the solatium but, so far as they have no ascertainable monetary value, they may and should be taken into account in the assessment of solatium. A factor which must be taken into account is anything that may be incurred in the care or expenditure outlaid in such things as the education of the child. Section 6 of the Wrongs Act Amendment Act, 1958, provides that the amendment made to this section by section 4 of that Act shall apply only in relation to deaths occurring after 27th November, 1958.

s. 23b. SMITH v. CALDER AND BREEDING (1941) S.A.S.R. 263. Section 23b is not retrospective. Accordingly, when the death of a husband was caused by way of negligence prior to the coming into operation of the section, no payment by way of solatium could be awarded.

GIGNEY AND ANOTHER v. DUFFY AND ANOTHER. CLARK v. DUFFY AND ANOTHER (1942) S.A.S.R. 76, varied on appeal to the High Court, 66 C.L.R. 669 (note); (1942) S.A.S.R. XX (note); 16 A.L.J. 374. Consideration of amount of solatium to be awarded.

RAFFERTY v. BARCLAY AND ANOTHER (1942) S.A.S.R. 147, appeal to the High Court dismissed, 66 C.L.R. 669 (note). Principles on which solatium is to be awarded discussed. Section 6 of the Wrongs Act Amendment Act, 1958, provides that the amendment made to this section by section 5 of that Act shall apply only in relation to deaths occurring after 27th November, 1958.

not ensued, shall, notwithstanding the death of the person injured and although the death was caused in such circumstances as amount in law to felony, be liable to pay the surviving wife or husband of the deceased person such sum, not exceeding seven hundred pounds, as the court thinks just by way of solatium for the suffering caused to the wife or husband by such death.

Further provisions as to ss. 23a and 23b.

Inserted by 48, 1940, s. 5.

**23c.** (1) The rights conferred by sections 23a and 23b shall be in addition to and not in derogation of any rights conferred on the parent, husband or wife by any other provision of this Act.

(2) In an action brought to enforce any right given under section 23a or 23b of this Act the court may in its discretion refuse to order the payment of any sum by way of solatium if, having regard to the conduct of the plaintiff in relation to the deceased person, or to the relations which existed between the plaintiff and the deceased person, or for any other sufficient reason, it considers that no such payment should be made.

(3) Any cause of action conferred on any person by section 23a or 23b of this Act shall not, on the death of that person, survive for the benefit of his estate.

## GENERAL PROVISIONS.

*Proceedings against and Contributions between Tort-Feasors.*

Interpretation.

U.K. 25 and 26 Geo. 5, c. 30, s. 6 (3).  
Inserted by 18, 1939, s. 6.

**24.** In sections 25 to 27 inclusive—

“parent” and “child” have the same meaning as they have in and for the purposes of Part II. of this Act:

the reference to “the judgment first given” shall in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed, and in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.

s. 23c. PUBLIC TRUSTEE v. ZOANETTI (1945) 70 C.L.R. 266; 19 A.L.J. 232, affirming ZOANETTI v. PUBLIC TRUSTEE (1944) S.A.S.R. 150; 18 A.L.J. 255. In assessing damages under sections 19 and 20, an amount awarded under section 23b should not be deducted.

25. (1) Where damage is suffered by any person as a result of a tort (whether a crime or not)—

Proceedings against and contribution between joint and several tort-feasors. U.K. 25 and 26 Geo. 5, c. 30, s. 6 (1). Inserted by 18, 1939, s. 6.

(a) judgment recovered against any tort-feasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tort-feasor in respect of the same damage:

(b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the wife, husband, parent or child of that person against tort-feasors liable in respect of the damage (whether as joint tort-feasors or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action:

(c) any tort-feasor liable in respect of that damage may recover contribution from any other tort-feasor who is, or would at any time have been, liable in respect of the same damage, whether as a joint tort-feasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought:

Amended by 38, 1959, s. 3 (a).

(ca) a tort-feasor who, on or after the coming into operation of the Wrongs Act Amendment Act, 1959, becomes liable in respect of that damage may recover contribution from a third party as defined in subsection (2) of this section or commence proceedings for such recovery notwithstanding—

Inserted by 38, 1959, s. 3 (b).

(i) that judgment in an action founded on the tort has not been given determining the tort-feasor's liability in respect of that damage; or

(ii) that the plaintiff as defined in that subsection has released the third party from

s. 25. BONNETT v. COMMISSIONER OF HIGHWAYS (1956) S.A.S.R. 10. Section 25 (c) does not bind the Crown so as to subject the Commissioner of Highways, as an agent of the Crown, to the statutory liability created by the section. Meaning and effect of section 25 (c) considered and discussed. But see section 31 which was enacted since this decision.

## Wrongs Act, 1936-1959.

- his liability to the plaintiff for that or any part of that damage; or
- (iii) where such contribution is recoverable only if a notice relating to the plaintiff's claim or cause of action in respect of the damage has been given in accordance with any provision of law to such third party, that the plaintiff has not given such notice to the third party; but in such case the tort-feasor shall not be entitled to recover contribution from the third party unless—
- the tort-feasor has, as soon as reasonably practicable after receiving written notice of the plaintiff's claim in respect of the damage, given to the third party full particulars of that claim so far as are known to him including his own name and address and those of the plaintiff, the nature of the act, omission or circumstances alleged to have caused the damage and to have given rise to the cause of action and the date and place on and at which such act, omission or circumstances occurred;
- or, if the tort-feasor fails to give such particulars to the third party,
- the court is satisfied that such failure was due to the tort-feasor's absence from the State, or illness, or to other reasonable cause or that the third party has not been prejudiced by such failure;
- or
- (iv) that the time within which the plaintiff may commence action against the third party has expired: but in such case the tort-feasor shall not be entitled to recover contribution from the third party unless he commences proceedings for such contribution
- within one year after receiving written notice of the plaintiff's claim against him in respect of the damage or within one year after settlement by him of that claim, whichever is the earlier event;

or, if the court is satisfied that the tort-feasor was unable to commence the proceedings within one year after such event by reason of the tort-feasor's absence from the State, or illness or of other reasonable cause, or that the third party was not prejudiced by the tort-feasor's inability so to commence the proceedings, within such further time as the court may allow; or

(v) that the third party is the Crown or an instrumentality of the Crown:

(d) where the tort or torts causing the damage was or were committed by the husband or wife of the person suffering the damage and some other person, that other person may recover contribution as mentioned in paragraph (c) of this subsection from the husband or wife, as if the husband or wife had been liable to the person suffering the damage.

Amended by 38, 1959, s. 3 (c).

(2) In subsection (1) of this section, so far as the context admits or requires,

Inserted by 38, 1959, s. 3 (d).

“third party” means—

(i) a tort-feasor from whom any other tort-feasor is entitled to recover contribution under paragraph (c) of that subsection; and

(ii) the husband or wife of a person suffering the damage and from whom some other person is entitled to recover contribution under paragraph (d) of that subsection; and

“plaintiff” means the person suffering the damage referred to in that subsection whether or not that person has commenced an action for recovery of judgment in respect of the damage.

26. In any proceedings for contribution under the last preceding section the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable, having regard to the extent of that

Extent of contribution. U.K. 25 and 26, Geo. 5, c. 30, s. 6 (2). Inserted by 18, 1939, s. 6.

s. 26. *KERR v. FISHER AND HAMBLÉN* (1941) S.A.S.R. 213. Damages apportioned between wrongdoers guilty of joint negligence.

*BROKEN HILL PTY. Co. LTD. v. DUFFY* 16 A.L.J. 374; 66 C.L.R. 669 (note); (1942) S.A.S.R. XX (note), which varied *GIGNEY AND ANOTHER v. DUFFY AND ANOTHER*, *CLARK v. DUFFY AND ANOTHER* (1942) S.A.S.R. 76. Where it is impossible to assign the precise degree of fault, the responsibility should be apportioned equally.

*SMITH AND OTHERS v. DYER AND WILSON* (1949) S.A.S.R. 187. In determining the extent of contributions between joint tort-feasors, the contribution is to be assessed according to the extent of their respective responsibility for the damage.

person's responsibility for the damage; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

Insurers and nominal defendants under Road Traffic Act. Inserted by 50, 1951, s. 3, and amended by 38, 1959, s. 4.

**26a.** An insurer or nominal defendant who is referred to in section 70d of the Road Traffic Act, 1934-1950—

- (a) for the purposes of this Part shall be deemed to be a tort-feasor in relation to the relevant death or bodily injury if the insured person or (as the case may be) the driver of the motor vehicle the identity of which cannot be ascertained, was a tort-feasor in relation to that death or bodily injury:
- (b) for the purposes of section 26 of this Act shall be deemed to be responsible for the damage to the same extent as such insured person or driver would have been held to be responsible if sued.

Exemptions. U.K. 25 and 26 Geo. 5, c. 30, s. 6 (4). Inserted by 18, 1939, s. 6.

**27.** Nothing in section 24, 25 or 26 shall—

- (a) apply with respect to any tort committed before the passing of the Wrongs Act Amendment Act, 1939; or
- (b) affect any criminal proceedings against any person in respect of any wrongful act; or
- (c) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been passed.

*Apportionment of liability in cases of contributory negligence.*

Apportionment of liability in cases of contributory negligence.

Cf. U.K. 8 & 9 Geo. 6, c. 28, ss. 1-4.

Inserted by 50, 1951, s. 4.

**27a.** (1) In this section—

“court” means, in relation to any claim, the court or arbitrator by or before whom the claim falls to be determined:

“damage” includes loss of life, personal injury, and suffering for which a sum by way of solatium may be awarded under section 23a or 23b of this Act:

s. 27a. *TUCKER v. TUCKER; HAWKER, THIRD PARTY* (1956) S.A.S.R. 297. Held that, although he was negligent, a party was entitled to the full amount of his damage notwithstanding section 27a.

*KAIN AND SHELTON LIMITED AND ANOTHER v. VIRGO* (1956) 97 C.L.R. 230. Notwithstanding that the plaintiff suing for his own benefit was guilty of contributory negligence which at common law would have proved fatal, held that the claim fell within section 27a (3) and the damages awarded should be reduced to accord with the plaintiff's degree of responsibility for the injury sustained.

“damages” includes any such solatium as mentioned in section 23a or 23b of this Act but does not include any sum payable as compensation pursuant to the Workmen’s Compensation Act, 1932-1950:

“dependant” means any person for whose benefit an action could be brought under Part II of this Act:

“fault” means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this Act, give rise to the defence of contributory negligence.

(2) Every reference in this section to the fault of a person shall be deemed to include a reference to a fault for which that person is vicariously responsible and in a case where the claim arises out of the death of a person, a fault of the deceased shall be deemed to be a fault of the claimant.

Amended by  
42, 1952, s. 3.

(3) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant’s share in the responsibility for the damage: Provided that—

- (a) this subsection shall not operate to defeat any defence arising under a contract;
- (b) this subsection is subject to subsections (4) and (5) of this section.

(4) Where damages (not being a solatium) are recoverable by virtue of subsection (3), subject to such reduction as is therein mentioned, and a contract or enactment providing for a limitation of liability is applicable to the claim or the jurisdiction of the court is limited, the amount of the damages recoverable shall be arrived at as follows:—

- (a) the court shall find the total damages which would have been recoverable if the claimant had not been at fault and there had been no limitation of liability or of the jurisdiction of the court;
- (b) the total damages so found shall be reduced to such an extent as the court thinks just and equitable having regard to the claimant’s share in responsibility for the damage and the reduced amount shall, except as provided in paragraph (c) of this subsection, be the amount recoverable;

- (c) if the amount of damages as reduced under paragraph (b) of this subsection exceeds the limit provided for in the contract or enactment or the limit of the jurisdiction of the court the court shall award the maximum amount of damages permitted by the contract, enactment, or limit of the court's jurisdiction.

Subsec. (5)  
repealed by  
42, 1952, s. 3.

\* \* \* \* \*

(6) Where damages are recoverable by any person by virtue of subsection (3) subject to such reduction as is therein mentioned, the court shall in every case find and record the total damages which apart from any limitation of liability provided by contract or enactment, or any limitation of the jurisdiction of the court would have been recoverable if the claimant had not been at fault.

(7) Sections 24 to 27 (inclusive) of this Act (which relate to proceedings against, and contributions between, joint and several tort-feasors) shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (3) of this section in respect of the damage suffered by any person.

(8) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under the Survival of Causes of Action Act, 1940, the damages recoverable would be reduced under subsection (3) of this section, any damages recoverable in an action brought for the benefit of the dependants of that person under Part II of this Act and any amount recoverable by way of solatium under that Part shall be reduced to a proportionate extent.

(9) Where—

(a) a person (in this subsection called "the injured person") suffers damage as a result partly of his own fault and partly of the fault of any other person or persons; and

(b) by reason of the damage to the injured person a third person suffers damage (whether by way of the loss of the society or services of the injured person or otherwise),

then, in any claim by the third party for the damage so suffered by him the fault of the injured person shall be

taken into account under subsection (3) of this section for the purpose of reducing the damages recoverable by the third party as if the said fault were the fault of the third party.

(10) Where, in any case to which subsection (3) of this section applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading any enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contribution from that other person or representative by virtue of the said subsection.

(11) Where any case to which subsection (3) of this section applies is tried with a jury, the jury shall determine the total damages which apart from any limitation of liability provided by contract or enactment or any limitation of the jurisdiction of the court, would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.

**27b.** (1) Section 27a of this Act shall not apply to any claim to which section 111 of the Supreme Court Act, 1935-1947, applies and that section shall have effect as if section 27a of this Act had not been passed.

Savings.  
Inserted by  
50, 1951, s. 4.

(2) Section 27a of this Act shall not apply to any case where the acts or omissions giving rise to the claim occurred before the passing of the Wrongs Act Amendment Act, 1951.

*Mental or Nervous Shock.*

**28.** (1) In any action for injury to the person caused after the passing of the Wrongs Act Amendment Act, 1939, the plaintiff shall not be debarred from recovering damages merely because the injury complained of arose wholly or in part from mental or nervous shock.

Personal  
injury caused  
by mental or  
nervous shock.  
Inserted by  
18, 1939, s. 6.

(2) In determining any question of liability for injury to the person caused before the passing of the Wrongs Act Amendment Act, 1939, no regard shall be paid to the fact that this section has been enacted, or to the provisions hereof.

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s. 28. RICHARDS AND ANOTHER v. BAKER (1943) S.A.S.R. 245. Where the female plaintiff was walking on a highway with her infant son and, by negligence of the defendant, the child was run down and severely injured and died a short time after, held that damages could be recovered by the mother both for the injury caused by the initial shock caused by the sight of the injury to the boy and for the additional injury caused by the shock of his death, as these consequences flowed from the defendant's breach of duty to the female plaintiff.

*Remedies against Certain Shipowners.*

Remedy  
against  
shipowners  
and others  
for injuries.  
U.K. 5 Edw.  
7, c. 10.  
Inserted by  
18, 1939, s. 6.

29. (1) If it is alleged that the owners of any ship are liable to pay damages in respect of personal injuries, including fatal injuries, caused by the ship or sustained on, in, or about the ship, in any port or harbour in the State, in consequence of the wrongful act, neglect, or default of the owners of the ship, or the master or officers or crew thereof, or any other person in the employment of the owners of the ship, or of any defect in the ship or its apparel or equipment, and at any time that ship is found in any port or river in the State or in any water within three miles of the coast of the State, the Supreme Court or the local court of full jurisdiction nearest to the ship may, upon its being shown to the court by any person applying in accordance with rules of court that the owners are probably liable to pay damages in respect of such injuries and that none of the owners resides in the State, issue an order directed to any officer of the Supreme Court or of the said local 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 Supreme Court, or as the case may be, by a judge or magistrate of the said local court, to abide the event of any proceedings that may be instituted in respect of the injuries, and to pay all costs and damages that 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 in relation to such injuries as aforesaid, the person giving security may be made the defendant, and shall be stated to be the owner of the ship which has caused the injuries, and the production of the order of the judge or magistrate made in relation to the security shall in the said proceedings be conclusive evidence that the defendant is the owner of the ship.

(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 if it has an office in the 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 the officer detaining it, the master of the ship,

and also the owner, and any person who sends the ship to sea, if that owner or person is party or privy to the offence, shall be guilty of an offence and liable on summary conviction to a penalty not exceeding two hundred pounds.

(6) If the master proceeds to sea with the ship in contravention of subsection (5) of this section, and takes to sea any person authorized to detain the ship or any person assisting any person so authorized, the owner and master of the ship shall each be liable to pay all expenses of and incidental to the taking to sea of any such person, in addition to any penalty imposable under subsection (5).

(7) The words "person applying" in this section shall include an employer who has paid compensation, or against whom a claim for compensation has been made, under the Workmen's Compensation Act, 1932, if he shows the court that he probably is or will become entitled to be indemnified under that Act, and in such case this section shall apply as if the employer were a person claiming damages in respect of personal injuries.

(8) The jurisdiction of the Supreme Court under this section may be exercised by a single judge of that court sitting in chambers.

*Abolition of the rule of common employment.*

30. (1) Where any injury or damage is suffered by a servant by reason of the wrongful act, neglect or default of a fellow servant, the employer of those servants shall be liable in damages in respect of that injury or damage in the same manner and in the same cases as if those servants had not been engaged in a common employment.

Abolition of rule of common employment. Inserted by 14, 1944, s. 4.

(2) This section applies to any injury or damage arising from a wrongful act, neglect or default committed after the enactment of this section, whether the contract of employment was made before or is made after the enactment of this section.

(3) "Employer" in this section includes the Crown and instrumentalities of the Crown.

*Application of Parts II and III to the Crown.*

31. After the coming into operation of the Wrongs Act Amendment Act, 1959, Part II. and Part III. of this Act shall for all purposes be construed as applying to, and binding, the Crown and instrumentalities of the Crown.

Heading inserted by 38, 1959, s. 5. Application of Parts II and III to the Crown and Crown instrumentalities. Inserted by 38, 1959, s. 5.