Acts reprinted pursuant to the Amendments Incorporation Act, 1937.

ABORIGINES ACT, 1934-1939

BUSH FIRES ACT, 1933-1939

CROWN LANDS ACT, 1929-1939

ROAD TRAFFIC ACT, 1934-1939

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

ABORIGINES ACT, 1934-1939.

BEING

ABORIGINES ACT, 1934, No. 2154 OF 1934

[ASSENTED TO 18TH OCTOBER, 1934.]

AS AMENDED BY

ABORIGINES ACT AMENDMENT ACT, 1939, No. 14 OF 1939

[ASSENTED TO 22ND NOVEMBER, 1939.]

An Act to consolidate certain Acts relating to the protection and control of the aboriginal and half-caste inhabitants of South Australia.

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 and commencement.

1. This Act may be cited as the " Aborigines Act, 1934-1939 ", and shall come into operation on a day to be fixed by proclamation.

Acts consolidated and repealed.

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 This Act is a consolidation of the Acts mentioned in the first schedule, and the said Acts are hereby repealed.

Interpretation.

Interpretation. 1048, 1911, s. 3.

3. In this Act, unless inconsistent with the context or subject matter—

Amended by 14, 1939, ss. 4, 6, 42.

" aboriginal institution " means any mission station, reformatory, orphanage, school, home, reserve, or other institution for the benefit, care, or protection of the aboriginal inhabitants of the State :

" board " means the Aborigines Protection Board :

" chairman " means the chairman of the board :

" contagious disease " means venereal disease, including gonorrhoea :

" department " means the Aborigines Department :

" district " means a district declared under this Act :

Commencement : The Aborigines Act, 1934, was proclaimed to commence on 1st April, 1937 (*Gazette* 11th February, 1937, p. 285) and the Aborigines Act Amendment Act, 1939, was proclaimed to commence on 1st February, 1940 (*Gazette* 25th January, 1940, p. 117).

"lock-hospital" means a hospital or other institution, or the part of a hospital or other institution, declared a lock-hospital for the purposes of this Act:

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

"protector" means a protector of aborigines appointed under this Act:

"reserve" means a reserve for aborigines declared under this Act:

"secretary" means the secretary to the board:

"superintendent" means a superintendent appointed under this Act for a reserve.

Definition of aborigine.
Cf. W.A. 43, 1936, s. 2.
Substituted by 14, 1939, s. 5.

4. (1) Every person—

(*a*) who is of the full blood descended from the original inhabitants of Australia; or

(*b*) who being of less than full blood is descended from the original inhabitants of Australia,

shall, unless exempted pursuant to section 11a, be deemed to be an aborigine within the meaning of this Act.

(2) In this Act "aboriginal" means appertaining or relating to an aborigine.

Aborigines Protection Board.

Constitution of board.
Inserted by 14, 1939, s. 7.

4a. (1) There is hereby constituted, for the purposes of this Act, a board to be called the "Aborigines Protection Board".

(2) The board shall be a body corporate, and by the name aforesaid shall have perpetual succession and a common seal.

Judicial notice of seal.
Inserted by 14, 1939, s. 7.

4b. Judicial notice shall be taken of the incorporation and of the common seal of the board; and the production of any deed, instrument, or writing, if sealed with the said seal, shall be sufficient evidence of the due making and execution of that deed, instrument, or writing.

Membership of board.
Inserted by 14, 1939, s. 7.

4c. The board shall consist of—

(*a*) the Minister; and

(*b*) six other members appointed by the Governor.

Two of the members shall be women.

Term of office.

Inserted by, 14, 1939, s. 7.

4d. (1) Three members of the board first appointed by the Governor pursuant to this Act shall, subject to this Act, hold office for two years.

(2) The other three members of the board first appointed by the Governor pursuant to this Act, and all other members of the board appointed by the Governor shall, subject to this Act, hold office for four years.

(3) At the time of the first appointment of members of the board by the Governor, the Governor shall nominate which of the members first appointed by the Governor shall hold office for the term provided by subsection (1).

(4) Any member of the board may from time to time, at the expiration of his term of office, be re-appointed for a further term of four years.

(5) Whenever a vacancy occurs in the office of a member of the board whether by expiration of the member's term of office or otherwise, the Governor shall appoint a person to fill the vacancy: Provided that the person appointed to fill the vacancy caused otherwise than by the expiration of the term of office of a member shall hold office only for the unexpired portion of the term of office of the member in whose place he is appointed, and that any retiring member whose term of office expires by effluxion of time shall hold office until his successor is appointed.

(6) The provisions of the Public Service Act, 1936-1938, shall not apply to any member of the board by virtue only of his appointment as a member.

Casual vacancies.

Inserted by 14, 1939, s. 7.

4e. In addition to the retirement of members of the board by the expiration of their terms of office, the seat of a member (other than the Minister) shall become vacant on—

(*a*) his death, lunacy, or bankruptcy, or his executing a statutory deed of assignment for the benefit of his creditors, or compounding with his creditors for less than twenty shillings in the pound, or his being convicted of an indictable offence; or

(*b*) his resignation by notice in writing posted or delivered to the Minister; or

(*c*) his absence from three consecutive meetings of the board without the leave of the board.

Expenses of members.

Inserted by 14, 1939, s. 7.

4f. A member of the board shall, at the discretion of the Minister, be reimbursed any expenses incurred in the exercise of his office.

Effect of defects in appointment of members of board.

Inserted by 14, 1939, s. 7.

4g. (1) No act or proceeding of the board shall be invalid or illegal in consequence only of the number of the members of the board not being complete at the time of the act or proceeding.

(2) All acts and proceedings of the board shall, notwithstanding the discovery of any defect in the appointment of any member, or that any member was disqualified or disentitled to act, be as valid as if the member had been duly appointed and was qualified and entitled to be and to act, and had acted, as a member, and as if the board had been properly and fully constituted.

Secretary and officers.

Inserted by 14, 1939, s. 7.

4h. (1) The Governor may appoint a secretary to the board, and any other necessary officers and servants.

(2) Any person so appointed shall be appointed pursuant and be subject to the Public Service Act, 1936-1938.

Chairman.

Inserted by 14, 1939. s. 7.

4i (1) The Minister shall be the chairman of the board.

(2) The Minister may appoint any member of the board to be the deputy chairman of the board.

Meetings and quorum.

Inserted by 14, 1939, s. 7.

4j. (1) At any meeting of the board, the chairman, if present, shall preside and, in the absence of the chairman, the deputy chairman shall preside. If at any meeting both the chairman and deputy chairman are absent, the members present shall elect a member to preside at the meeting.

(2) The person presiding at any meeting of the board shall have both a deliberative and a casting vote.

(3) Any four members of the board shall constitute a quorum of the board.

Reports by board.

Inserted by 14, 1939, s. 7.

4k. (1) The board shall, on or before the first day of October in every year, report to the Governor on the working of this Act during the preceding financial year, and shall in any such report set out a summary of the receipts and expenditure during the said period and any other particulars which the board may from time to time consider fit to be included in the report.

(2) All such reports shall be laid before Parliament.

Administration.

Duty of board.

Substituted by 14, 1939, s. 8.

5. The board shall be charged with the duty of controlling and promoting the welfare of aborigines.

Funds to be provided by Parliament.
1048, 1911, s. 6
Amended by 14, 1939, s. 9

6. The Treasurer of the State shall, in every year, place at the disposal of the board such sums as are provided by Parliament, to be applied to the purposes of the board.

Duties of board.
1048, 1911, s. 7.
Amended by 14, 1939, ss. 10, 42.

7. It shall be the duty of the board—

(*a*) to apportion, distribute, and apply, as seems most fit, the moneys at the disposal of the board :

(*b*) in its discretion, to apply part of the moneys at its disposal in the purchase of stock and implements to be loaned to aborigines to whom land has been allotted under section 18, and may supply the same accordingly either without payment or on such terms as are approved by the board, and no person shall, except with the approval of the board, acquire any title to any goods or chattels so loaned as aforesaid :

(*c*) to distribute blankets, clothing, provisions, and other relief or assistance to the aborigines :

(*d*) to provide, as far as practicable, for the supply of food, medical attendance, medicines, and shelter for the sick, aged, and infirm aborigines :

(*e*) to provide, when possible, for the custody, maintenance and education of the children of aborigines :

(*f*) to manage and regulate the use of all reserves for aborigines :

(*g*) to exercise a general supervision and care over all matters affecting the welfare of the aborigines, and to protect them against injustice, imposition, and fraud.

Appointment of protector.
Substituted by 14, 1939, s. 11.

8. (1) Upon the recommendation of the board, the Minister may from time to time appoint such persons as he deems proper to be protectors of aborigines, who shall, within the districts respectively assigned to them, have and exercise the powers and duties given or imposed by this Act.

(2) Every protector of aborigines at the commencement of the Aborigines Act Amendment Act, 1939, shall, without any further appointment, continue to be a protector of aborigines within the district assigned to him at the said commencement.

(3) Every member of the board shall, without any further appointment, be a protector of aborigines for the whole of the State.

(4) The secretary shall, without any further appointment, be a protector of aborigines for the whole of the State.

Permanent head.

Substituted by 14, 1939, s. 12

9. The secretary of the board shall be the permanent head of the department and shall be responsible for the administration of the department.

Legal guardian.

1048, 1911, s. 10.

Amended by 14, 1939, ss. 6, 13.

10. (1) The board shall be the legal guardian of every aboriginal child, notwithstanding that any such child has a parent or other relative living, until such child attains the age of twenty-one years, except whilst such child is a State child within the meaning of the Maintenance Act, 1926.

(2) Every protector shall, within his district, be the local guardian of every such child within his district.

(3) Such local guardian shall have and exercise the powers and duties prescribed.

Districts.

1048, 1911, s. 11.

11. The Governor may, by proclamation—

(*a*) declare any portion of the State to be a district for the purposes of this Act, and shall by such proclamation assign a name to such district :

(*b*) alter the boundaries of any district :

(*c*) abolish any district.

Exemptions from Act.

Exemption of aborigine from operation of Act.

Inserted by 14, 1939, s. 14.

11a. (1) In any case where the board is of opinion that any aborigine by reason of his character and standard of intelligence and development should be exempted from the provisions of this Act, the board may, by notice in writing, declare that the aborigine shall cease to be an aborigine for the purposes of this Act. Any such declaration may be made by the board whether or not an application is made by the person to whom the declaration refers.

(2) Any such declaration may be made unconditionally by the board and any unconditional declaration shall not be revocable. The board may, in any case it thinks fit, make a limited declaration subject to such conditions as are thought fit by the board. If any such limited declaration is made and the board is subsequently of opinion that the person referred to in the declaration is not of the character or standard of intelligence or development to justify the continuance of the declaration, the board may, by notice in writing, revoke the limited declaration. If during the period of three years

after the making of a limited declaration, the board does not revoke the limited declaration, the board shall, at the expiration of the said period, make an unconditional declaration in respect of the person referred to in the limited declaration. The board may, if it thinks fit, at any time prior to the expiration of the said period of three years, make an unconditional declaration.

(3) During the time any such unconditional or limited declaration is in force the person to whom it refers shall not be deemed to be an aborigine for the purpose of this Act or any other Act. If any unconditional declaration is made in respect of any person, the descendants of that person who are born after the making of the declaration, shall not be deemed to be aborigines for the purpose of this or any other Act by reason of their relationship to the person in respect of whom the declaration is made.

In any proceedings before any court under this or any other Act where it is material for any purpose to prove whether or not a person is an aborigine and the court could, apart from this section, infer by reason of evidence before the court or otherwise that the said person was an aborigine, the onus of proving that a declaration was, at the relevant time, in force as regards the said person or any ancestor of the said person, as the case may require, shall be upon the party to the proceedings seeking to prove that the said person was not an aborigine.

This subsection shall have application with respect to any provision in any other Act where reference is made to a person (however described in such provision) who is included within the definition of " aborigine " as defined by subsection (1) of section 4 of this Act.

(4) If, on the application of any aborigine, the board refuses to make a declaration under this section, or if the board revokes any such declaration, the applicant or, as the case may be, the person referred to in the declaration may appeal to a special magistrate who may make such order on the appeal as appears to him just. Every such appeal shall be made within the time and in the manner prescribed. The special magistrate by such order may make any declaration which the board could make and subsections (2) and (3) shall apply to any such declaration.

Removal of Aborigines.

Heading amended by 14, 1939, s. 42.

12. (1) Any person who, without the authority in writing of the board, removes or causes to be removed any aborigine, from one district to another, or to any place beyond the State, shall be guilty of an offence against this Act.

Unlawfully removing aborigine from district. 1048, 1911, s. 12. Amended by 14, 1939, ss. 6, 15, 42.

(2) This section shall not apply to the removal by any person of any child, of whatever age, of such person.

Recognizance before, removal.
1048, 1911, s. 13.
Amended by 14, 1939, ss. 6, 16 (a), 42.

13. (1) Before authority is given under section 12 the person desiring the removal shall enter into a recognizance, with such surety or sureties as the board approves, in a sum which the board considers sufficient to defray the expense of the return of the aborigine to the place from which he is to be removed.

Subsec. (2) substituted by 14, 1939, s. 16 (b).

(2) Every such recognizance shall be in the prescribed form, and shall be taken in duplicate by a member of the board, the secretary to the board, a protector, or a member of the police force. One part shall be forthwith forwarded to the board.

A recognizance may be renewed from time to time, at the discretion of the board.

Subsec. (3) substituted by 14, 1939, s. 16 (c)

(3) The board may, in its discretion, dispense with any such recognizance.

Reserves and Institutions.

Reserves for aborigines.
1048, 1911, s. 14.
Amended by 14, 1939, ss. 17, 42.

14. The Governor may by proclamation—

(*a*) declare any Crown lands to be a reserve for aborigines :

(*b*) alter the boundaries of any reserve :

(*c*) abolish any reserve.

Superintendents of reserves.
1048, 1911, s. 15.

15. The Governor may appoint such person as he deems proper to be the superintendent of a reserve.

Leases to institutions.
1048, 1911, s. 16.
Amended by 14, 1939, ss. 6, 18, 42.

16. (1) The Governor may grant leases of any Crown lands to any mission or other aboriginal institution for any term not exceeding twenty-one years, at such rent and on such terms as he thinks fit, in blocks not exceeding in any case one thousand square miles.

(2) Every such lease may grant a right of renewal : Provided it can be shown to the satisfaction of the Minister that the lands therein described are required for and applied to the use and entirely for the benefit of aborigines.

Power to remove aborigines to reserves.
1048, 1911, s. 17.
Amended by 14, 1939, ss. 6, 19, 42.

17. (1) The board may cause any aborigine to be kept within the boundaries of any reserve or aboriginal institution, or to be removed to and kept within the boundaries of any reserve or aboriginal institution, or to be removed from one reserve or aboriginal institution to another reserve or aboriginal institution, and to be kept therein.

(2) No aborigine shall be kept within the boundaries of an aboriginal institution or removed from any such institution without the consent of the governing body of the institution concerned.

(3) Any aborigine who refuses to be so removed, or resists such removal, or who refuses to remain within or attempts to depart from any reserve or institution to which he has been so removed, or within which he is being kept as aforesaid, shall be guilty of an offence against this Act.

Power of Minister to allot or purchase land.
1048, 1911, s. 18.
Amended by 14, 1939, ss. 19, 20, 42.

18. The Minister may on the recommendation of the board and Surveyor-General allot to any aborigine any Crown lands available for settlement, or may, on such recommendation as aforesaid, purchase land for occupation by aborigines, and allot the same, and any such allotment shall be upon such terms and subject to such conditions as may be prescribed by regulation.

Exemptions from liability to removal to reserve.
1048, 1911, s. 19.
Amended by 14, 1939, ss. 19, 42.

19. Every aborigine—

(*a*) who is lawfully employed by any person ; or

(*b*) who is the holder of a permit to be absent from the reserve in question ; or

(*c*) who is a female lawfully married to and residing with a husband who is not himself an aborigine ; or

(*d*) for whom, in the opinion of the board, satisfactory provision is otherwise made,

shall be exempt from the provisions of section 17.

Unlawfully entering reserve or institution.
1048, 1911, s. 20.
Amended by 14, 1939, ss. 21, 42.

20. Any person, who, without valid and reasonable excuse, enters or remains or is within the boundaries of a reserve or aboriginal institution, unless he is—

(*a*) an aborigine ; or

(*b*) the Minister ; or

(*b*1) a member or secretary of the board ; or

(*c*) a protector, or superintendent, or member of the police force ; or

(*d*) a person authorised in that behalf by the Minister or by the board, or by a protector, or by the superintendent of the reserve or institution in question ; or

(*e*) a person authorised in that behalf by or under the regulations,

shall be guilty of an offence against this Act.

Unlawfully removing or enticing aborigine from reserve.
1048, 1911, s. 21.
Amended by 14, 1939, ss. 22, 42.

21. Any person who removes an aborigine, or causes, assists, entices, or persuades an aborigine to remove, from a reserve or aboriginal institution, unless such person is—

(*a*) the Minister ; or

(*a*1) a member or secretary of the board ; or

(*b*) a protector ; or

(*c*) the superintendent of such reserve or institution ; or

(*d*) a person authorised in that behalf by the Minister or by the board or by a protector or by the superintendent of the reserve or institution in question ; or

(*e*) a person authorised in that behalf by or under the regulations,

shall be guilty of an offence against this Act.

Onus of proof of authority.
1048, 1911, s. 22.
1565, 1923, s. 3.

22. In any proceedings in respect of an offence under section 20 or section 21 the onus of proving that the person charged was authorised as mentioned in paragraphs (*d*) or (*e*) of either of the said sections shall be upon such person.

Mining on reserves.
1048, 1911, s. 23.
Amended by 14, 1939, ss. 23 (a), 42.

23. (1) Notwithstanding the provisions of the Mining on Private Property Act, 1909, and the Mining Act, 1930, or either of the said Acts, no holder of a miner's right shall be entitled to enter, or remain, or be within the limits of any reserve for aborigines except under the written permit of the board.

Subsec. (2) repealed by 14, 1939, s. 23 (b)

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(3) Any such holder who, without such permit, the proof of which shall lie upon him, is found on any such reserve shall be guilty of an offence against this Act.

Hospital Accommodation.

Power to establish hospitals for aborigines.
1048, 1911, s. 24.
Amended by 14, 1939, ss. 6, 42.

24. The Governor may establish and maintain hospitals in such places as he deems proper for the purpose of treating the sick, diseased, and infirm aborigines, and may appropriate any parts of any public hospitals for the said purpose, and may cause such aborigines to be treated therein.

Provisions for Treating Contagious Diseases.

Proclamation of lock-hospitals.
1048, 1911, s. 25.

25. (1) The Governor may, by proclamation, declare that any public hospital or other institution, or any part of any public hospital or other institution, shall be a lock-hospital for the purposes of this Act.

(2) The Governor may, in like manner, vary any proclamation made under subsection (1) of this section, or close any lock-hospital; and may direct the removal of the patients in any lock-hospital so closed to any other lock-hospital, and the Governor's direction shall be sufficient authority for the removal of the patients as directed.

(3) The Governor may appoint any legally qualified medical practitioner to be the surgeon in charge of any lock-hospital: Provided that if it has been declared a lock-hospital for the purpose of any other Act, the surgeon in charge thereof under that Act shall also be the surgeon in charge thereof under this Act, unless some other person is appointed to that office under this Act.

Detention in lock-hospitals of aborigines. 1048, 1911, s. 26. Amended by 14, 1939, ss. 6, 24, 42.

26. (1) The board by notice in writing may authorise any legally qualified medical practitioner therein named to medically examine any aborigine.

(2) Such writing shall be sufficient authority to the practitioner to enter any premises where such aborigine is, or is suspected to be, and to medically examine such aborigine in such manner as the practitioner deems necessary.

(3) If the practitioner on such examination finds that the aborigine is suffering from a contagious disease he may, by order signed by him, direct that such aborigine be removed to and detained in a lock-hospital until discharged therefrom as hereinafter provided.

(4) Such order concerning any aborigine shall be sufficient authority for any protector or any member of the police force to take and remove such aborigine to any lock-hospital, and to the surgeon thereof to receive, detain, and treat such aborigine therein until discharged as hereinafter provided.

(5) It shall be the duty of the surgeon in charge of a lock-hospital, as soon as any aborigine detained therein under this section is free from contagious disease, to report that fact to the board, whereupon the board may, by notice in writing, discharge such aborigine from the lock-hospital.

(6) Any aborigine who refuses to be examined or to be taken or removed as aforesaid, or to enter, remain, or be treated in any lock-hospital after order made as aforesaid, or attempts to depart from any lock-hospital until discharged as aforesaid, shall be guilty of an offence against this Act.

Heading amended by 14, 1939, s. 42.

Employment of Aborigines.

Inspection by protector, etc. 1048, 1911, s. 27. Amended by 14, 1939, ss. 6, 25, 42.

27. Every person shall allow any member of the board, protector, or member of the police force to have access to any aborigine employed by such person, and to enter any house, vessel, boat, or premises where such aborigine is or is employed, at all reasonable times, for the purposes of inspection and inquiry.

Enticing to leave employment. 1048, 1911, s. 28. Amended by 14, 1939, ss. 6, 42.

28. Any person who entices or persuades any aborigine to leave his or her lawful employment shall be guilty of an offence against this Act.

Death in employment. 1048, 1911, s. 29. Amended by 14, 1939, ss. 6, 26, 42.

29. If an aborigine dies whilst in the service of any person, such person shall forthwith, after the death, or, if the deceased was employed on any vessel or boat, forthwith after the arrival of such vessel or boat at any port in the State, transmit to the nearest protector, if practicable, or, if not, then to the board, notice of the death in writing signed by such person; and shall forward to such protector or to the board any wages due to the deceased, and any moneys in the possession of the deceased at the time of his death.

Heading amended by 14, 1939, s. 42.

Blankets, Etc., supplied to Aborigines.

Property in blankets, etc., issued to aborigines. 1048, 1911, s. 30. Amended by 14, 1939, ss. 27, 42.

30. (1) All blankets, bedding, clothing, and other articles or property issued by or under the direction of the board to any aborigine or aborigines shall be and remain the property of His Majesty.

(2) Any aborigine receiving any such blanket or other article or property who sells or otherwise disposes of the same without the sanction of the board, and any person who, without such sanction, takes, whether by purchase or otherwise, or is found in possession of, any such blanket or other article or property, shall be guilty of an offence against this Act.

Aboriginal Camps and Prohibited Areas.

Aborigines camping in townships. 1048, 1911, s. 31. Amended by 14, 1939, ss. 6, 28, 42.

31. (1) If at any time the board or a protector thinks it necessary so to do, the board or protector may order and cause any aborigines who are camped, or are about to camp, within the limits of or near any municipality, town, or township, to remove their camp or proposed camp to such distance from such municipality, town, or township as the board or protector directs; and all members of the police force shall assist the board or protector in carrying out the provision of this section.

(2) Any aborigine who neglects or refuses to obey such order shall be guilty of an offence against this Act.

Loitering in townships. 1048, 1911, s. 32. Amended by 14, 1939, ss. 6, 42.

32. (1) Any justice or member of the police force may order any aborigine found loitering in any municipality, town, or township, or being therein and not decently clothed, forthwith to leave such municipality, town, or township.

(2) Any aborigine who neglects or refuses to obey such order shall be guilty of an offence against this Act.

Prohibited areas. 1048, 1911, s. 33. Subsec. (1) amended by 14, 1939, ss. 6, 42. Inserted by 14, 1939, s. 29 (a). Amended by 14, 1939, ss. 29 (b), 42.

33. (1) The Governor may by proclamation, whenever in the interest of aborigines he thinks fit, declare any municipality, town, township, or other place to be an area in which it shall not be lawful for aborigines, not in lawful employment, to be or remain.

(1a) The Governor may by proclamation revoke or vary any such proclamation.

(2) Every aborigine who, after warning, given in writing or verbally, enters or is found within such area without the permission in writing of a member of the board, protector or member of the police force shall be guilty of an offence against this Act.

Female Aborigines in Male Attire.

Heading amended by 14, 1939, s. 42. Female aborigines in male attire. 1048, 1911, s. 34. Amended by 14, 1939, ss. 6, 42.

34. If any female aborigine is found dressed in male attire and in the company of any male person other than an aborigine, she and the person in whose company she is so found shall each be guilty of an offence against this Act.

Offences against Female Aborigines.

Penalties for offences against female aborigines. Inserted by 14, 1939, s. 30.

34a. Any male person, other than an aborigine, who, not being lawfully married to the female aborigine (proof whereof shall lie upon the person charged)—

(*a*) habitually consorts with a female aborigine ; or

(*b*) keeps a female aborigine as his mistress ; or

(*c*) has carnal knowledge of a female aborigine,

shall be guilty of an offence against this Act.

Curatorship of Aborigines' Estates

Heading amended by 14, 1939, s. 42. Appointment of board as curator of aborigines' estates. 1048, 1911, s. 35. Amended by 14, 1939, ss. 6, 31, 42.

35. (1) The board may undertake the general care, protection, and management of the property of any aborigine, and may—

(*a*) take possession of, retain, sell, or dispose of any such property, whether real or personal, and on any sale or disposition as aforesaid a valid title to the property shall pass :

(*b*) in its corporate name sue for, recover, or receive any money or other property due or belonging to or held in trust for the benefit of any aborigine, or damages for any conversion of or injury to any such property :

(*c*) exercise, in the name of any aborigine, any power which the aborigine might exercise for his own benefit :

(*d*) in the name and on behalf of an aborigine, appoint any person to act as attorney or agent for any purpose connected with the property of such aborigine :

Provided that the powers conferred by this section shall not be exercised without the consent of the aborigine or unless upon the order of a special magistrate, which order a special magistrate may make in any case in which he is of opinion that for the protection of or to conserve the interests of the aborigine the order should be made.

(2) The board shall keep proper records and accounts of all moneys and other property, and the proceeds thereof, received or dealt with by the board under the provisions of this section ; and such accounts shall be audited by the Auditor-General who shall have and exercise, in respect of such records, accounts, moneys, and other property, and the persons dealing therewith, the same powers as are vested in the Auditor-General in respect of the public revenue by the Audit Act, 1921.

Heading amended by 14, 1939, s. 6.

Maintenance of Aboriginal Children.

Contribution to maintenance of aboriginal child.

1048, 1911, s. 36.

Amended by 14, 1939, ss. 6, 32.

36. (1) Whenever an aboriginal child who is not of the full blood descended from the original inhabitants of Australia and whose age does not exceed eighteen years is being maintained at any aboriginal institution, or at the cost of the Government of the State, the secretary or a protector may apply to a justice for a summons to be served on the alleged father of such child to show cause why he should not contribute towards the support of such child.

(2) On the return of such summons any court of summary jurisdiction shall proceed to hear the matter of the complaint, and if the paternity of the defendent and his ability to contribute to the support of the child are proved to the satisfaction of the court, the court may order the defendant to pay such weekly sum, not exceeding ten shillings, for the maintenance of such child as the court think fit : Provided that no person shall be taken to be the father of such child unless the evidence of the mother be corroborated in some material particular.

(3) Any court of summary jurisdiction, on the complaint of any such father or of the secretary or a protector, while the first or any subsequent order continues in force, may make further inquiry into such father's ability to contribute as aforesaid, and may remit or lessen the amount of the weekly payment that has been adjudged by the last preceding order, or may increase the same if they see cause to do so, but so that the amount shall not in any case exceed the weekly sum of ten shillings.

(4) Whenever, after the making of such order as aforesaid, it is made to appear to any justice, by a complaint in writing and upon oath, that any weekly sum or sums to be paid in pursuance of such order has or have not been paid, or that the father named in such order is about to leave the State, or to remove from his usual place of residence, without having first notified his intention to the protector for the district in which such usual place of residence is situated, or to the board, or without having made due provision for the payment of such weekly sums, such justice may, by warrant under his hand, cause such father to be brought before a court of summary jurisdiction to answer the complaint.

(5) On the return of such warrant the court shall proceed to hear the matter of the complaint, and, if the same is to the satisfaction of the court shown to be true, shall proceed to levy or enforce payment of the weekly sums then due by distress or imprisonment for any term not exceeding three months, and may also order such father to make such provision for the payment of all such weekly sums thereafter to become due as the court deems sufficient.

(6) If after such order to make provision has been made such father leaves, or attempts to leave the State, or removes, or attempts to remove, from his usual place of residence, without having made such provision, he shall be guilty of an offence against this Act.

(7) All contributions and enforced payments under this section towards the support of an aboriginal child shall be paid and expended as the Treasurer of the State directs.

Training and Control of Aboriginal Children.

Application of sections 38 to 40 to children. Substituted by 14, 1939, s. 6.

37. In the next three succeeding sections "aboriginal child" means every person who is under the age of eighteen years, and who—

(*a*) is an aborigine ; and

(*b*) in the opinion of the board, ought to be dealt with under the next three succeeding sections.

Power of board to place aboriginal child under control of Children's Welfare and Public Relief Board.
1565, 1923, s. 6.
Amended by 14, 1939, s. 33.

38. (1) The board may, with the approval of the Children's Welfare and Public Relief Board constituted under the Maintenance Act, 1926, commit any aboriginal child to any institution within the meaning of the Maintenance Act, 1926, under the control of the Children's Welfare and Public Relief Board, to be there detained or otherwise dealt with under the said Act until such child attains the age of eighteen years.

(2) Such approval and commitment shall be in writing in the form of the transfer of control contained in the second schedule, or in a form to the like effect.

Effect of execution of transfer of control.
1565, 1923, s. 7.
Amended by 14, 1939, s. 34.

39. (1) Upon the execution of the said transfer of control with respect to any aboriginal child, such child shall become a State child within the meaning of the Maintenance Act, 1926, and all the provisions of the said Act shall apply to and in respect of such child as if such child were a neglected child committed under the said Act to the institution specified in the said transfer, and as if the said transfer were the mandate issued under the said Act for the taking of such child to such institution and for the detention of such child until such child attains the age of eighteen years, subject to the said Act.

(2) Nothing in this Act shall be so construed as to derogate from the power of the Governor, upon the recommendation of the Children's Welfare and Public Relief Board, to order that the period of supervision of any female aboriginal child shall be extended until such child attains the age of twenty-one years, or for any shorter period.

Condition before transfer.
1565, 1923, s. 8
Amended by 14, 1939, s. 35.

40. Unless the board otherwise directs with respect to any particular aboriginal child, the provisions of sections 37, 38, and 39 shall apply only to—

(*a*) legitimate aboriginal children who have either—

(i.) obtained a qualifying certificate within the meaning of the Education Act, 1915; or

(ii.) attained the age of fourteen years; and

(*b*) illegitimate aboriginal children who, irrespective of their age are, in the opinion of the board and the Children's Welfare and Public Relief Board, neglected or otherwise proper persons to be dealt with under this Act.

Attendance at school.
Inserted by 14, 1939, s. 36.

40a. (1) This section shall apply to every aboriginal child above the age of fourteen years and under the age of sixteen years, who resides at any aboriginal institution.

(2) The parent of every child to whom this section applies who fails to cause the child to attend at a school on every occasion when the school is open for instruction shall be guilty of an offence against this Act and liable to a penalty not exceeding five shillings unless the superintendent of the institution certifies in writing that—

(*a*) the child had obtained suitable employment and was engaged in that employment during the occasion when the child was absent; or

(*b*) the child failed to attend because of sickness, infirmity, or any other similar reason; or

(*c*) the child's absence was justified by any other reason; or

(*d*) the child was absent with the consent of the superintendent.

(3) The provisions of this section are in addition to and not in substitution for any provisions of the Education Act, 1915-1935.

Accounts of Department.

Accounts of the board and audit. 1048, 1911, s. 37. Amended by 14, 1939, s. 37.

41. (1) The secretary shall cause accounts to be kept of all moneys received and expended by, and all assets and liabilities of the board, and such other accounts and records (if any) as are prescribed.

(2) The accounts of the board shall once at least in every year, and also whenever the Governor directs, be audited by the Auditor-General.

(3) The Auditor-General shall, in respect of such accounts and audit, have all the powers conferred on him by the Audit Act, 1921.

Regulations.

Power of Governor to make regulations. 1048, 1911, s. 38. Amended by 14, 1939, ss. 6, 38, 42.

42. (1) The Governor may on the recommendation of the board make regulations, not inconsistent with this Act, prescribing all matters and things which by this Act are contemplated, required, or permitted to be prescribed, or which may be necessary or convenient to be prescribed for the effectual carrying out of this Act, including regulations for the following, amongst other purposes:—

1. Prescribing the duties of protectors and superintendents, and any other persons appointed or employed under this Act:

S. 42. BRAY v. MILERA (1935) S.A.S.R. 210. Regulations empowering the chief protector, in certain cases, to prohibit an aborigine from being within an institution held valid.

Paras. Ia. and Ib. inserted by 14, 1939, s. 38 (b).

Ia. Regulating the meetings and proceedings of the board :

Ib. Prescribing the time and manner of making appeals under section 11a. and any other matter relating to such appeals :

II. Providing for the care, custody, and education of the children of aborigines :

III. Enabling any aboriginal child to be sent to and detained in an aboriginal institution or industrial school :

IV. For the control, care, and education of aborigines in aboriginal institutions and for the supervision of such institutions :

V. Prescribing the conditions on which aboriginal children may be apprenticed to or placed in service with suitable people :

VI. Prohibiting the apprenticing or placing in service of aboriginal children to or with persons of specified trades, or businesses, or races :

VII. Prescribing the conditions on which any aboriginal prisoner may be placed under the custody of any officer or servant of the State, and for the employment of aboriginal prisoners undergoing sentences of imprisonment, with or without hard labour :

VIII. Providing for the control of aborigines residing upon a reserve, and for apportioning amongst them, or for their benefit, the net produce of their labour :

IX. For the maintenance of discipline and good order upon a reserve :

X. Authorising entry upon a reserve by specified persons or classes of persons for specified objects, and the conditions under which such persons may enter or remain on a reserve, and providing for the revocation of such authority in any cases :

XI. For the control of the receipt and payment of money, the keeping of accounts and records, expenditure of money, and all matters pertaining to the accounts and records of the board :

XII. Regulating the exercise and discharge of all or any of the powers, duties, and functions of the board :

XIII. Imposing, and authorising a protector to inflict, summary punishment by way of imprisonment, not exceeding fourteen days, upon aborigines living upon a reserve or within the district under his

charge, who, in the judgment of such protector, are guilty of any crime, serious misconduct, neglect of duty, gross insubordination, or wilful breach of any regulation.

(2) Regulations so made may impose penalties for the breach of the same or other regulations, not exceeding for any one offence the sum of twenty-five pounds, or imprisonment for any term not exceeding three months.

Obstructing Officers.

43. Any person who obstructs or hinders any member of the board, the secretary, any protector, superintendent, member of the police force, medical practitioner, surgeon in charge of a lock-hospital, or other person in the exercise or execution of any power or duty under this Act, or in carrying out any provision of this Act, shall be guilty of an offence against this Act.

Obstructing officers. 1048, 1911, s. 40. **Amended by 14, 1939, s. 39.**

Legal Proceedings and Penalties.

44. Any member of the police force may arrest without warrant any person whom he has just cause to suspect of having committed or being about to commit any offence against this Act.

Arrest. 1048, 1911, s. 41.

45. It shall not be obligatory upon any member of the police force to serve any summons, or to execute any warrant of arrest, against an aborigine in respect of any offence against this Act beyond a distance of fifty miles from the place where such summons or warrant was issued, except when specially so directed by a special magistrate.

Service of summons, etc. 1048, 1911, s. 42. **Amended by 14, 1939, ss. 6, 42.**

46. At the hearing of any proceedings in respect of an offence against this Act the court may permit any person to address the court and examine and cross-examine witnesses on behalf of any aborigine.

Person appearing on behalf of aborigines. 1048, 1911, s. 43. **Amended by 14, 1939, ss. 6, 42.**

47. In any proceedings for an offence against this Act, the allegation in the complaint that any person named or referred to therein is an aborigine, or is of or under an age specified therein, or the reference in the complaint to such person as an aborigine, or as being of or under an age specified therein, shall be sufficient evidence of the truth of such allegation or reference, unless the contrary is shown to the satisfaction of the court.

Presumption as to person being aborigine. 1048, 1911, s. 44. **Amended by 14, 1939, ss. 6, 42.**

Power of tribunal to determine on own opinion whether aborigine, and as to age.
1048, 1911, s. 45.
Amended by 14, 1939, ss. 6, 42.

48. In any legal proceedings or inquiry, whether under this Act or otherwise, if the court, judge, coroner, special magistrate, justice, or justices do not consider that there is sufficient evidence to determine the question whether a person concerned in or in any way connected with the proceedings or inquiry is or is not an aborigine, or whether, being or being determined to be an aborigine, such person is or is not of or under a specified age, such court, judge, coroner, special magistrate, justice, or justices, having seen such person, may determine the question according to his or their own opinion.

Penalty for offences against Act.
1048, 1911, s. 46.

49. Any person who in any way contravenes any provision of this Act, whether by act or omission, shall be guilty of an offence against this Act, and any person convicted of an offence against this Act shall, except in cases where a different penalty is specifically provided, be liable to a penalty not exceeding fifty pounds, or to imprisonment for any period not exceeding six months.

Proceedings for offences.
1048, 1911, s. 47.

50. All proceedings for offences against this Act shall be disposed of summarily.

Moneys to be provided by Parliament.
1048, 1911, s. 50.

51. The moneys required for any purpose of this Act shall be paid out of moneys provided by Parliament for the purposes of this Act.

Repeal of regulations.
Inserted by 14, 1939, s. 40.

52. The regulations relating to the Advisory Council of Aborigines made under The Aborigines Act, 1911, on the twenty-fourth day of January, nineteen hundred and eighteen, the sixth day of May, ninteen hundred and twenty-five, and the eighth day of March, nineteen hundred and thirty-three, are hereby repealed.

s. 48. AMESBURY v. COPELAND (1928) S.A.S.R. 485. Person determined by the court to be an aborigine upon examination by the court.

THE FIRST SCHEDULE.

Section 2.

Acts Repealed.

Number of Act.	Short Title.
No. 1048 of 1911	The Aborigines Act, 1911
No. 1565 of 1923	Aborigines (Training of Children) Act, 1923

THE SECOND SCHEDULE.

Section 38.
Amended by 14, 1939, s. 41.

TRANSFER OF CONTROL OF ABORIGINAL CHILD FROM THE ABORIGINES PROTECTION BOARD TO THE CHILDREN'S WELFARE AND PUBLIC RELIEF BOARD.

To , Esquire, Commissioner of Police, and all constables in the State of South Australia, and to the Superintendent (*or* Matron) of the Industrial School at Magill [*or other institution, as the case may be*], in the said State :

Whereas the Aborigines Protection Board is desirous of committing , a child of whom he is the legal guardian, to the institution hereafter mentioned, being an institution under the control of the Children's Welfare and Public Relief Board, constituted under the Maintenance Act, 1926, to be there detained or otherwise dealt with as a neglected child under the said Act, until the said child attains the age of eighteen years : And whereas the Children's Welfare and Public Relief Board has approved of the said child being committed as aforesaid, and whereas the said child is of the age of years and months, and of the religion : Now therefore the Aborigines Protection Board with the approval of the said Children's Welfare and Public Relief Board (which approval the said board hereby gives) do hereby commit the said child to the Industrial School at Magill [*or other institution*], to be there detained or otherwise dealt with as a neglected child under the Maintenance Act, 1926, until he (*or* she) attains the age of eighteen years :

These are therefore to require you, to whom this transfer of control is directed, to take the said child to the said institution and there to deliver him (*or* her) to the Superintendent (*or* Matron) thereof, together with the duplicate of this transfer, and the said Superintendent (*or* Matron) is hereby required to receive the said child into the said school, there to be detained or otherwise dealt with as if such child were a neglected child under the Maintenance Act, 1926, until he (*or* she) attains the age of eighteen years, unless he (*or* she) shall in the meantime be discharged in due course of law.

In witness whereof the seal of the Aborigines Protection Board has been hereunto affixed and the seal of the Children's Welfare and Public Relief Board has been hereunto affixed.

The seal of the Aborigines Protection Board was hereunto affixed on the day of 193 in the presence of (L.S.)

.....Chairman (or Deputy Chairman).

.....Member of the Board.

The seal of the Children's Welfare and Public Relief Board was hereunto affixed on the day of 193 in the presence of (L.S.)

.....Chairman.

.....Member of the Board.

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

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

BUSH FIRES ACT, 1933-1939.

BEING

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

AS AMENDED BY

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

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

AND

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

An Act to make better provision for the prevention and control of bush fires and other fires, and for other purposes.

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

Short title.

1. This Act may be cited as the "Bush Fires Act, 1933-1939".

Repealing provision.

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

Interpretation.
1123, 1913, s. 2.

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

"area" means a municipality or district council district:

"council" means a municipal council or district council:

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

Criminal Law Consolidation Act, 1935: This Act came into operation on 2nd January, 1936: *Gazette* 2nd January, 1936, p. 1.

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

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

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

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

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

(3) The committee shall—

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

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

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

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

Burning of stubble between 15th October and 1st February. 1123, 1913, s. 6. 1768, 1926, s. 2. 2023, 1931, s. 3.

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

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

1. None of the strips shall be more than two chains in width at any part thereof:

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

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

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

II. Before the fire is lighted, the land immediately adjoining each strip shall, throughout the whole length of each side of such strip, either be ploughed to a width of at least six feet or be cleared of all scrub, stubble, and other inflammable material to a width of at least twelve feet:

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

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

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

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

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

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

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

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

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

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

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

(3) It shall not be deemed a contravention of this section if a council causes stubble to be burnt, or a fire lighted and maintained for the purpose of burning any stubble on any

street, road, or reserve vested in or under the control of the council in any case where all the following conditions are strictly observed, namely:—

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

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

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

II. Not less than six hours before the fire is lighted, notice of intention to burn the stubble shall be given to the owner or occupier or person in charge of any land or building immediately adjoining the land whereon the burning is to take place, who resides within five miles of the last-mentioned land. If notice as aforesaid cannot be given to any person to whom notice is required by this paragraph to be given, by reason of the absence of such person from his place of residence or for any other reasonable cause, notice as aforesaid shall in lieu thereof be given to the police constable stationed nearest to the land whereon the burning is to take place. Any land or building shall be deemed to be immediately adjoining any land as aforesaid notwithstanding that they are separated by a road: Amended by 2258, 1935, s. 2 (b).

IIa. If the land upon which the fire is to be lighted is within one mile of a Government forest, notice as aforesaid shall also be given to the person in charge of the forest: Inserted by 27, 1939, s. 7 (1).

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

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

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

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

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

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

Burning of stubble between 31st January and 15th May.

1123, 1913, s. 7.
1768, 1926, s. 3.

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

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

Amended by 2258, 1935, s. 3.

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

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

IIIa. If the land upon which the fire is to be lighted is within one mile of a Government forest, notice as aforesaid shall also be given to the person in charge of the forest: Inserted by 27, 1939, s. 7 (2).

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

V. No such fire shall be lighted before twelve o'clock noon, and any such fire shall be thoroughly extinguished before nine o'clock in the evening of the same day: Amended by 27, 1939, s. 4 (a).

VI. The fire shall be first lighted from the leeward side of the stubble to be burnt before the fire shall be lighted from the windward side of the stubble. Inserted by 27, 1939, s. 4 (b).

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

6. In any case where it is necessary to use a fire-rake in order to burn any stubble on any land, the occupier of such land may, with the consent of a fire control officer, burn such stubble during any period to which section 4 or section 5 applies, and in any such case the provisions of sections 4 and 5 shall not apply to any such burning: Provided that before the fire is lighted there is around the land upon which the fire is to be lighted a space cleared of all inflammable material to a width of twelve feet or a space ploughed to a width of six feet. Burning of stubble without restriction under certain conditions.

7. (1) Any person who, during the period between the fifteenth day of October and the first day of the following February, burns any scrub on any land, or lights or maintains any fire with the intention of burning any scrub on any land, shall be guilty of an offence and liable to a penalty for a first offence of not less than five pounds nor more than twenty-five pounds, and for every subsequent offence, of not less than ten pounds nor more than fifty pounds. Burning of scrub between 15th October and 1st February. 1123, 1913, s. 8.

Inserted by 27, 1939, s. 5.

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

Burning of scrub between end of January and 1st May.
1123, 1913, s. 9.
1768, 1926, s. 4.
2023, 1931, s. 4.

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

Para. I. amended by 27, 1939, s. 6.

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

Amended by 2258, 1935, s. 4.

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

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

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

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

IV. Not less than fourteen days before a fire is lighted for the purpose of burning an area of scrub of more

than five hundred acres, notice of intention to burn the scrub shall, if the land is situated within an area, be given to the council thereof:

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

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

vi. The fire shall be first lighted from the leeward side of the scrub to be burnt before the fire shall be lighted from the windward side of such scrub:

vii. No such fire shall be lighted before twelve o'clock noon.

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

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

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

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

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

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

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

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

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

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

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

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

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

(*a*) published once in the *Government Gazette*, and twice in some newspaper circulating in the area or defined part of the State; and

(*b*) in the case of an alteration made by a council, affixed for at least thirty days on the front door or the notice board of the council making such alteration.

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

(3) Upon such publication and affixing, such alteration shall have the force of law within such area or portion thereof or defined part of the State, and shall therein have the same

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

effect as if the periods and hours and distances fixed thereby were respectively fixed by such of the said sections 4, 5, 7, 8, 9, or 20, as is or are applicable.

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

(5) In the case of an alteration by a council, the clerk of the council shall, after the notices provided for in subsection (2) or (4) have been given, furnish to the Minister a certificate that such notices have been given. Inserted by 27, 1939, s. 8 (e).

12. Notwithstanding any provision of this Act, any person who under any conditions, lights any fire at any time on any Sunday, for any of the purposes mentioned in sections 4, 5, 7, 8, or 9, shall be guilty of an offence and liable to a penalty for a first offence of not less than five pounds nor more than twenty-five pounds, and for every subsequent offence, of not less than ten pounds, nor more than fifty pounds. Fires not to be lighted on Sunday. 1123, 1913, s. 14.

13. (1) Any person who, during the period between the thirty-first day of October and the first day of the following May— Fires for purposes other than those mentioned in sections 4 to 9. 1123, 1913, s. 15. 1768, 1926, s. 7. 2023, 1931, s. 5.

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

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

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

(1a) The council may by resolution published in the *Government Gazette*, declare that within the part of the area defined in the resolution, the lighting of fires in the open Inserted by 27, 1939, s. 9 (a).

during the period between the thirty-first day of October and the first day of the following May shall be prohibited except in a place or places to be specified in the resolution.

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

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

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

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

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

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

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

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

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

(*a*) refuses to allow such examination; or

(*b*) upon the occasion of such examination refuses to disclose his name and address, or either, to such owner or occupier, or servant or agent; or

(*c*) gives a false name and address, or either,

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

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

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

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

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

Duty of beekeepers to clear space.

16. Any person who during the period between the thirty-first day of October and the following first day of May, lights or maintains any fire in any appliance which is used for the purpose of taking honey from any beehive or lights or maintains any fire in any honey-house shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than twenty pounds unless around the beehive or honey-house or around the apiary in which the beehive or honey-house is situated there is a space cleared of all inflammable material to a width of twelve feet or a space ploughed to a width of six feet.

Use of internal combustion engines in harvesting operations.

Amended by 27, 1939, s. 10.

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

Smoking in the open air near stacks, etc., prohibited.

1123, 1913, s. 17.
1768, 1926, s. 9.

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

(*a*) within a town; or

(*b*) with a pipe properly covered,

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

Penalty for throwing lighted cigarettes, etc., from vehicles.

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

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

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

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

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

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

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

(*a*) either at any time or during the periods of the year or of the day specified in the proclamation;

(*b*) either anywhere in the State or within areas so specified;

(*c*) either for any purpose or for the purposes so specified; and

(*d*) either absolutely or except under conditions so specified.

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

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

(*a*) in the *Government Gazette,* and

(*b*) if the proclamation is to have effect throughout the State, twice in a newspaper published in Adelaide,

or if the proclamation is to have effect only within specified areas, twice in a newspaper circulating in such areas.

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

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

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

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

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

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

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

(*a*) in the *Government Gazette*; and

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

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

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

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

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

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

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

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

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

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

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

Power of occupier to clear portions of road.

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

Coronial inquiry into certain fires.

27. In the event of any fire (other than a fire confined to any building or other premises) an inquest shall be held thereon in any case where a request in writing is made to

the member of the police force in charge of the police station nearest to the fire within three days of the outbreak of the fire by—

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

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

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

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

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

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

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

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

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

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

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

28. A council may expend any portion of its rates in paying for the clearing of any roads vested in it of stubble, scrub, and other inflammable material for the purpose of preventing the spread of fire or in the purchase of fire-

preventing apparatus; and, subject to the provisions of this Act, may light, use, and maintain fires, or cause the same to be lighted, used, and maintained, for the purpose of such clearing; and may prevent the passing of vehicles of any kind, cattle, and beasts of draught or burden along any road whilst fire is being used for the purpose of such clearing.

Provision of fire-fighting appliances by council.
Enacted by 2258, 1935, s. 5, but repealed and re-enacted by 27, 1939, s. 13.

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

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

(3) A council may—

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

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

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

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

Appointment of fire control officers.
Substituted by 27, 1939, s. 14.

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

(2) If the Minister is satisfied that in order to meet the requirements of any area, it is desirable that the number of fire control officers should be greater than the number authorized to be appointed pursuant to subsection (1), the Minister may by notice in writing, authorize the council to appoint an additional number of fire control officers fixed by the Minister, but not exceeding fifteen, and the council may from time to time appoint additional fire control officers, but not exceeding the number so authorized. The authority of the Minister may be revoked by the Minister by notice in writing.

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

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

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

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

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

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

(9) The Governor may make regulations prescribing—

(*a*) the duties and powers of fire control officers:

(*b*) the form of badges to be issued to fire control officers:

(*c*) any other necessary matters.

Annual return of fire control officers. Inserted by 27, 1939, s. 14.

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

(*a*) a statement of the names, addresses, and occupations of each fire control officer of the council:

(*b*) a statement of the means of transport available to each such officer and a telephone number whereby he may be communicated with:

(*c*) if any fire control officer or officers are by their appointment by the council appointed to control any part of the area of the council, a statement of the particulars of such part and any order of priority of control given to such officers:

(*d*) a statement of the names and addresses of every occupier of land within the area who owns suitable fire-fighting appliances which are available within the area generally for the control or extinguishing of bush fires and of the telephone numbers whereby the said occupiers may be communicated with.

Duties and powers of fire control officers. Inserted by 27, 1939, s. 14.

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

(*a*) preventing the outbreak of fire;

(*b*) protecting life and property in the case of any such outbreak; and

(*c*) controlling and extinguishing any fires or preventing the spread thereof.

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

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

(*a*) exercise any of the appropriate powers of the Chief Officer of Fire Brigades under the Fire Brigades Act, 1936, in so far as the same may be necessary or expedient, for extinguishing a fire which is already burning or for preventing the spread or extension thereof:

(*b*) enter any land or building whether private property or not:

(*c*) pull down, cut, and remove fences on any land, whether private property or not, when in his opinion the same is necessary or expedient for the purpose of taking effective measures for extinguishing a fire which is already burning, or for preventing the spread or extension thereof:

(*d*) cause firebreaks to be ploughed or cleared on any land, whether private land or not, and take any other appropriate measures on any such land as he may deem necessary for the purpose of controlling or extinguishing a fire which is already burning or for preventing the spread or extension thereof:

(*e*) light any fire on any land, whether private land or not, for the purpose of clearing any strip of land to act as a firebreak for the purpose of controlling or extinguishing a fire which is already burning or for preventing the spread or extension thereof:

(*f*) take and use water, other than that for use as an occupier's domestic supply contained in a tank at his dwelling house, and any other fire extinguishing material from any source whatever on any land, whether private property or not:

(*g*) take charge of and give directions to any fire-fighting organization present at any fire with respect to its operations or activities in connection with the extinguishment or control of such fire, or the prevention of the spread or extension thereof:

(*h*) any other thing which in his opinion is incidental to the exercise of any of the foregoing powers; and

(*i*) employ any person or use the voluntary services of any person to assist him, subject to his directions, in the exercise of any of the foregoing powers.

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

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

(*a*) have been lighted or are maintained unlawfully (whether in contravention of this Act or not); or

(*b*) have occurred accidentally; or

(*c*) have ceased to be under control or are not adequately controlled,

and to such other fires as are prescribed by regulation.

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

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

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

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

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

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

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

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

Regulations. 1123, 1913, s. 26.

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

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

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

32. (1) Subject to subsection (2) all moneys received for or on account of penalties imposed for offences against this Act, shall be paid to the Treasurer for the public uses of the State.

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

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

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

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

(*a*) that a fire was lighted or maintained with the intention or for the purpose mentioned in such complaint; or

(*b*) that any stubble was not burned, or that any fire was not lighted, for the purpose mentioned in such complaint,

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

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

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

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

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

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

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

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

THE SCHEDULE.

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

CROWN LANDS ACT, 1929-1939.

BEING

CROWN LANDS ACT, 1929, No. 1923 OF 1929 [ASSENTED TO 4TH DECEMBER, 1929.]

AS AMENDED BY

CROWN LANDS (ADMINISTRATION) ACT, 1930, No. 1990 OF 1930 [ASSENTED TO 20TH NOVEMBER, 1930.]

CROWN LANDS AMENDMENT ACT, 1931, No. 2060 OF 1931 [ASSENTED TO 9TH DECEMBER, 1931.]

CROWN LANDS ACT AMENDMENT ACT, 1933, No. 2120 OF 1933 [ASSENTED TO 2ND NOVEMBER, 1933.]

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

CROWN LANDS ACT AMENDMENT ACT, 1935, No. 2256 OF 1935 [ASSENTED TO 21ST DECEMBER, 1935.]

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

CROWN LANDS ACT AMENDMENT ACT, 1936, No. 2299 OF 1936 [ASSENTED TO 5TH NOVEMBER, 1936.]

CROWN LANDS ACT AMENDMENT ACT, 1937, No. 2363 OF 1937 [ASSENTED TO 1ST DECEMBER, 1937.]

CROWN LANDS ACT AMENDMENT ACT, 1938, No. 2408 OF 1938 [ASSENTED TO 1ST DECEMBER, 1938.]

CROWN LANDS ACT AMENDMENT ACT, 1939, No. 3 OF 1939 [ASSENTED TO 7TH SEPTEMBER, 1939.]

AND

CROWN LANDS ACT AMENDMENT ACT (No. 2), 1939, No. 40 OF 1939 [ASSENTED TO 21ST DECEMBER, 1939.]

An Act to consolidate certain Acts relating to Crown lands.

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

PART I.

PART I.

PRELIMINARY.

Short title.
Cf. U.K. 16 & 17 Geo. 5 c. 23.

1. This Act may be cited as the "Crown Lands Act, 1929-1939."

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

PART I.—Preliminary (Sections 1-4).

PART II.—Powers of the Governor (Sections 5-8A). Amended by S.L.R. Act, 1935.

PART III.—Powers of the Commissioner (Section 9).

PART IV.—The Land Board (Sections 10-21)—

DIVISION I.—Constitution:

DIVISION II.—Powers in addition to all other powers.

PART V.—Perpetual Leases and Agreements (Sections 22-46)—

DIVISION I.—The Offering of Crown Lands:

DIVISION II.—Classification of Lands, and Applications:

DIVISION III.—Perpetual Leases:

DIVISION IV.—Agreements (under this Part).

PART VI.—Provisions applicable to Perpetual Leases and Agreements (Sections 47-66).

PART VII.—Leases other than Perpetual (Sections 67-81)—

DIVISION I.—Leases with Right of Purchase Granted under Repealed Acts:

DIVISION II.—Miscellaneous:

DIVISION III.—Various.

PART VIII.—The Lyrup Village Settlement (Sections 82-116)—

DIVISION I.—Interpretation and Application:

DIVISION II.—Constitution of the Lyrup Village Association:

DIVISION III.—Valuations:

DIVISION IV.—Leases:

DIVISION V.—Irrigation Works:

DIVISION VI.—Management of the Association.

PART IX.—Homestead Blocks (Sections 117-143)—

DIVISION I.—Acquirement and Re-offering of Lands:

DIVISION II.—Leases and Agreements:

DIVISION III.—Protected Homestead Blocks:

DIVISION IV.—Special Provisions:

DIVISION V.—Agreement or Lease on Surrender:

DIVISION VI.—Loans to Blockholders.

PART X.—Closer Settlement (Sections 144-204A)— Amended by S.L.R. Act, 1935.

DIVISION I.—Power to Acquire Lands:

DIVISION II.—Compulsory Acquisition of Lands:

s. 2. In addition to the Parts and Divisions mentioned in section 2, Division IIIA. of Part V. (perpetual leases of town lands in Whyalla), which was enacted by the Crown Lands Act Amendment Act, 1939, is included in this reprint.

DIVISION III.—Purchase of Land by Arrangement:
DIVISION IV.—How Acquired Lands to be Dealt with:
DIVISION V.—Agreements for Sale and Purchase:
DIVISION VI.—The Collection and Recovery of Rents:
Amended by 2060, 1931, s. 2.
DIVISION VII.—Special Provisions with Regard to Closer Settlement Lands.

Amended by S.L.R. Act, 1935.
PART XI.—Surrenders (Sections 204B-224).

PART XII.—Transfers (Sections 225-227).

PART XIII.—Sales of Lands—Exchange of Lands—Granting of Sites for Buildings (Sections 228-243)—
DIVISION I.—Sales of Lands:
DIVISION II.—Exchange of Lands:
DIVISION III.—Granting of Sites for Buildings.

PART XIV.—Licences (Sections 244-246).

PART XV.—Special Provisions as to Lands Outside Goyder's Line of Rainfall (Sections 247-248).

PART XVI.—Miscellaneous (Sections 249-271).

PART XVII.—Offences and Penalties (Sections 272-277).

PART XVIII.—Regulations (Section 288).

PART XIX.—Arbitration—Evidence—Legal Procedure, Etc. (Sections 289-297).

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

Interpretation.
1199, 1915, s. 4.
1405, 1919, s. 6.
4. In this Act, except where the subject matter or context or some other provision requires a different construction—

"agreement" means an agreement containing a covenant to purchase land made since the fourteenth day of November, nineteen hundred and two, but does not include any lease with a right of purchase:

"block" or "block of land" includes two or more pieces of land contiguous to each other, or separated from each other only by a road or roads:

"blockholder" includes the transferee, devisee, or personal representatives of the lessee to whom a perpetual lease, or a lease with right of purchase, of a homestead block has been granted pursuant to Part

VII. of the Crown Lands Act, 1888, and the Acts incorporated therewith, or of the lessee or purchaser to whom a lease or agreement has been granted under Part IX. of the Crown Lands Act, 1903, or under Part IX. of the Crown Lands Act, 1915, or of the lessee or purchaser to whom a lease or agreement is granted under Part IX. of this Act, as well as the lessee or purchaser:

"board" means the Land Board:

"cattle" means camels, horses, geldings, mares, asses, mules, bulls, bullocks, and cows, and foals and calves over six months old:

"Commissioner" means the Commissioner of Crown Lands for the time being:

"Crown lands" means all lands in the State, except—

(*a*) lands reserved for or dedicated to any public purpose:

(*b*) lands lawfully granted, or contracted to be granted, in fee simple by or on behalf of the Crown:

(*c*) lands subject to any agreement, lease, or licence lawfully granted by or on behalf of the Crown:

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

"Crown Lands Acts" means this Act and all the repealed Acts:

"dedicated lands" means all lands dedicated for any purpose by proclamation under any of the Crown Lands Acts:

"fixed rate" means the annual rate of interest fixed by the Treasurer under section 190 which is in force at the time when the block in question is offered for sale:

s. 4. HUMPHRIS v. FOOT (1934) S.A.S.R. 25. Meaning of "land dedicated to any public purpose" in the definition of Crown lands discussed.

"lease" includes any credit agreement granted before the eighth day of December, eighteen hundred and eighty-eight:

"lessee" includes the assignee or transferee of a lease from the Crown, and the devisee or personal representatives of the original lessee or of such assignee or transferee, as well as the original lessee:

"park lands" means lands adjacent to a town and reserved or dedicated for the use, benefit, or recreation of the inhabitants of that town:

"public map" means map prepared under the direction of and officially certified by the Surveyor-General or the Deputy Surveyor-General, and delineating any of the lands of the Crown:

"purchaser" includes the person entitled to or holding lands under an agreement:

"receiver" means the Receiver of Rents under Part X.:

"repealed Act" means any Act repealed by this Act or by any Act heretofore repealed, which dealt with Crown lands or with closer settlement:

"repurchased lands" means lands acquired by the Crown under Part X. of this Act or under the corresponding provisions of any repealed Act, and whether acquired pursuant to agreement or compulsorily:

"reserved lands" means all lands reserved for any purpose by proclamation under any of the Crown Lands Acts:

"sheep" means rams, goats, wethers, and ewes, and lambs over six months old:

"suburban lands" means all Crown lands surveyed in sections of not greater area than twenty acres each situated within two miles of any town lands or park lands, or any lands set apart under paragraph (*h*) of section 5:

"swamp lands" means all lands which, in the opinion of the Commissioner, are liable to be wholly or partially flooded by overflow of a river or otherwise:

"town lands" means all Crown lands set apart, surveyed, or laid out in lots as the site for a town:

"unimproved value" means the actual value of any land less the amount of the value of all improvements (if any) on the land:

"vermin" means wallabies and all other marsupials (except kangaroos and rock wallabies), dingoes (or native dogs), dogs run wild, dogs at large, foxes, rabbits, hares, and any other animals which the Governor, by proclamation, declares to be vermin; but does not include any animal which, for the time being and on the particular land, is protected by the Animals and Birds Protection Act, 1919.

PART II.

PART II.

POWERS OF THE GOVERNOR.

Governor's powers. 1199, 1915, s. 5. 1882, 1928, s. 3.

5. The Governor may, subject to the provisions of this Act, from time to time—

(*a*) in the name and on behalf of the Crown, grant, lease, or otherwise alienate any Crown lands:

(*b*) for the public use or benefit—

i. exchange any Crown lands for any other lands in the State:

ii. accept the surrender of or resume any lands granted after dedication for any public purpose:

iii. authorise the exchange of any lands granted after dedication for other lands so granted:

(*c*) lease to any aboriginal native, or the descendant of any aboriginal native, any Crown lands not exceeding one hundred and sixty acres in area, for any term of years, upon such terms and conditions as he thinks fit:

(*d*) by proclamation dedicate any Crown lands for any of the following purposes:—

i. for the preservation of water supply:

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s. 5. (*a*). THE QUEEN v. HUGHES AND STIRLING (1865) L.R. 1 P.C. 81; 1 S.A.L.R. 143; 6 Austn. Digest 134. Held that leases granted under The Waste Lands Act (No. 5 of 1857) were not in themselves records and, though bad on the face of them, could not be annulled by a writ of *scire facias*.

II. for public roads or other internal communications, whether by land or water. The delineation of any public road in a public map shall be in itself a dedication of that road to the public use:

III. for quays, wharves, or landing-places:

IV. for public reservoirs, aqueducts, or watercourses:

V. for hospitals, asylums, or cemeteries:

VI. for market places or abattoirs:

VII. for institutions for public instruction or amusement:

VIII. for public buildings and schools not intended for ecclesiastical or denominational purposes:

IX. for park lands or places for the recreation and amusement of the inhabitants of any city, town, or place:

X. for any purpose of public safety, convenience, health, or enjoyment:

XI. for any other public purpose that he may think fit, whether similar to any of those above mentioned or not;

and may, at any time after dedication, grant the fee-simple of any such lands (except foreshores and the lands mentioned in subdivision III. of this paragraph, which are hereby declared to be inalienable in fee-simple from the Crown) to secure the use thereof for the purpose for which the same were dedicated, and may, at any time before the grant of the fee-simple of any such lands, resume the same wholly or in part by proclamation:

(*e*) by proclamation cancel the grant of and resume any dedicated lands used, held, or dealt with for other than the purpose for which the same were dedicated, or which are not used or required for the dedicated purpose:

(*f*) by proclamation reserve any Crown lands for any of the following purposes:—

I. for the use and benefit of the aboriginal inhabitants of the State:

II. for the purposes of military defence:

III. for forest reserves:

IV. for travelling stock reserves:

V. for places for the recreation or amusement of the public:

VI. for tramways, railways, or railway stations. For the purposes of this paragraph such a proclamation shall thereby vest such lands as are proclaimed for railways or railway stations in the South Australian Railways Commissioner or other legally appointed head of the Railway Department in the State:

VIA. for aviation stations or landing grounds established or to be established by any municipal or district council: Inserted by 2363, 1937, s. 2.

VII. for park lands:

VIII. for any other purpose that he may think fit;

and may by proclamation resume the whole or any portion of the lands so reserved. A statement setting forth the reasons for any such resumption shall be laid before Parliament within thirty days after the proclamation, if Parliament is then sitting, and, if Parliament is not then sitting, then within thirty days after the next sitting of Parliament:

(*g*) by proclamation—

I. constitute and define the boundaries of new counties, hundreds, and towns, and distinguish each by a name:

II. declare that any county, hundred, or town shall cease to exist as such, and that all or any of the roads in any town so ceasing to exist shall be closed:

III. extend or diminish the area of any county, hundred, or town and declare that all or any of the roads in any land by which the area of a town is so diminished shall be closed:

IV. alter the boundaries, or name of any county, hundred, or town:

IVA. distinguish by a name or alter the name of any place, whether a county, hundred, or town, or any other place whatsoever: Inserted by S.L.R. Act, 1935.

V. add the area taken away from one county or hundred to any adjacent county or hundred:

vi. divide any county or hundred into two or more counties or hundreds, and give each a distinguishing name:

Every such proclamation shall state the day from which the same is to take effect, and no proclamation constituting any new counties or hundreds shall be published unless a list and plans of the counties or hundreds intended to be constituted have been laid before Parliament for thirty days:

(*h*) by proclamation set apart any Crown lands as town lands or suburban lands:

Inserted by 40, 1939, s. 3 (a).

(*hh*) by proclamation declare that any lands which have been set apart as town lands or suburban lands and which have not been alienated from the Crown or which have reverted to the Crown, or any allotments of any such lands shall cease to be town lands or suburban lands:

(*i*) by proclamation except any suburban lands from being dealt with by the board, either altogether or for such period as he determines:

Inserted by 40, 1939, s. 3 (b).

(*ii*) by proclamation declare that any suburban lands which have been excepted from being dealt with by the board and have either not been alienated from the Crown or have reverted to the Crown, or any allotments of any such lands may be dealt with by the board:

(*j*) by proclamation, divide the State into land districts and alter or vary the boundaries of any land districts, whether defined before or after the passing of this Act. Every such proclamation shall define the boundaries of every land district thereby constituted, and give a distinguishing name thereto.

Form of grants, leases, etc. 1199, 1915, s. 6.

6. All grants, leases, and other alienations, and all reservations and dedications under this Act, shall be made in such form as the Governor thinks fit.

Form of grants. Cf. 19, 1858, ss. 1 and 3. Inserted by S.L.R. Act, 1935.

6a. (1) Land grants shall be valid if signed by the Governor, the Commissioner, and the Registrar-General and also, if any monetary consideration is paid prior to the issue of the grant, by the Treasurer or the Under-Treasurer.

(2) The seal of the State shall be affixed to every land grant but any land grant issued before the first day of January, nineteen hundred and thirty-five, shall be valid notwithstanding that the seal of the State is not affixed thereto.

Power to exchange lands granted after dedication.
1199, 1915, s. 7.

7. Any lands granted in fee-simple for any public purpose after dedication may, with the consent of the Governor, be exchanged for other lands granted for any such purpose, or may be surrendered to the Crown freed from any trust, express or implied, or subject to such trusts as the Governor approves.

Revocation of certain reservations in grants.
7, 1849, s. 1.
Inserted by S.L.R. Act, 1936.

7a. If in any deed of grant or conveyance of any lands of the Crown made or issued on or before the sixteenth day of August, eighteen hundred and forty-eight, pursuant to regulations for the sale of waste lands belonging to the Crown in South Australia made on the third day of March, eighteen hundred and forty-six, there was inserted any provision or reservation for securing royalty or seignorage as provided by the said regulations, the said deed of grant or conveyance shall be construed as if no such provision or reservation was therein contained or expressed.

Grant of land to reserve gold, silver, and other metals, etc.
1199, 1915, s. 8.
Amended by S.L.R. Act, 1936.

8. The grant in fee-simple of land granted after the thirty-first day of January, eighteen hundred and eighty-nine (except grants in pursuance of any agreement for sale made before the seventeenth day of November, eighteen hundred and eighty-six), shall not be construed to include or to convey property in gold, silver, copper, tin, or other metals, ores or other substances containing metals, or minerals, or gems or precious stones, coal, or mineral oil upon, in, or under the said land, the same being reserved by the Crown: Provided that stone ordinarily used for building or road purposes shall be exempted from the said reservation.

Director of Lands and Assistant Director of Lands.
Inserted by 1990, 1930, s. 2, and amended by S.L.R. Act, 1935.

8a. (1) The Governor may appoint a Director of Lands and an Assistant Director of Lands.

(2) Every person appointed as aforesaid shall be appointed under and be subject to the provisions of any Act relating to the public service.

PART III.

POWERS OF THE COMMISSIONER.

Special powers of the Commissioner. 1199, 1915, s. 9. 1882, 1928, s. 4.

9. The Commissioner, in addition to, but without limiting, any other right, power, or authority vested in him under this Act, may—

(*a*) cause auctions to be held at such times and places as he thinks fit, and appoint persons to preside over and regulate the same, after notifying in the *Government Gazette* the times and places and the lands to be offered thereat:

(*b*) authorise any person to conduct any sale without that person having an auctioneer's licence, or incurring any liability in connection therewith:

(*c*) withdraw from sale or lease any Crown lands, and re-offer any such lands for sale or lease after advertisement for one month in the *Government Gazette* notifying such re-offer for sale or lease:

(*d*) decline, notwithstanding anything contained in this Act, any application for the purchase or lease of lands containing or supposed to contain minerals, or which he deems it desirable to reserve for public purposes:

(*e*) receive, except where otherwise provided in this Act, any purchase-money, rent, instalment, or interest, or any notice after the time appointed for the payment or receiving of the same, and, where moneys are paid or notice is given as herein provided, the same shall be deemed to have been paid or given in due time:

(*f*) wholly or partially remit, except where otherwise provided, all or any of the covenants, agreements, or conditions contained in any lease or agreement, where, owing to special circumstances, compliance therewith would be impossible or would inflict great hardship upon the purchaser or lessee. A return of all such remissions, with the reasons therefor, shall be annually laid before Parliament within one month after the opening of Parliament for the dispatch of business:

(*g*) extend, except as otherwise provided, the time to the purchaser or lessee for performing the conditions contained in any agreement or lease liable to revocation for such period, and upon such terms and conditions, as he thinks fit; and the period,

terms, and conditions so extended shall be deemed to be inserted in the agreement or lease, and shall be binding upon the purchaser or lessee and all transferees, mortgagees, assignees, and other persons claiming through or under him:

(*h*) levy or recover any amounts due under any leases or agreements, except leases or agreements of repurchased lands, in like manner as any rent or fine is leviable or recoverable by law, and his written order shall be a sufficient authority to distrain where such rent is levied by distress:

(*i*) by himself, or any person authorised by him, enter leased lands to search for water, sink wells, construct dams, reservoirs, and embankments, and to do all acts necessary to search for and conserve water:

(*j*) authorise charges to be made for water supplied to any person or animal by the lessee of lands resumed by the Governor whereon water has been found or conserved:

(*k*) do all acts necessary to reclaim swamp lands and to construct public watering places thereon for cattle and sheep:

(*l*) cause any reclaimed land to be surveyed in such blocks and offered on lease on such terms and conditions as he determines, subject to the rent being fixed and the allotment being decided by the board:

(*m*) authorise any person to take possession of lands, messuages, or tenements belonging to the Crown whereon any person is in unauthorised possession or occupation, and to forcibly eject every person therefrom:

(*n*) give permission to any person to erect gates on any road or way, not being a main road or way, vested in His Majesty, and not being within any municipality or district council district; and may let the right of depasturing thereon:

s. 9 (*m*). LAFFER v. GILLEN (1927) A.C. 886; 40 C.L.R. 86; 6 Austn. Digest 923, reversing GILLEN v. LAFFER (1925) 37 C.L.R. 210, and affirming LAFFER v. GILLEN (1924) S.A.S.R. 514, which reversed GILLEN v. LAFFER (1924) S.A.S.R. 170. Held that an entry in the register under section 94 of The Real Property Act, 1886, upon notice from the Commissioner that an agreement under the Discharged Soldiers Settlement Acts, 1917 and 1919, had been lawfully determined, operated under that section as a determination, although, when the notice was given and the entry made, the only purported determination was unlawful, and that the respondent was in unauthorised possession of the land comprised in the agreement.

(*o*) consent to a mortgage, transfer, or subletting of lands now or hereafter held under any Crown Lands Act:

(*p*) correct, at the cost of the lessee, any clerical error, name wrongly spelt, or any incorrect or defective plan attached to any lease; and may attach a corrected plan to any such lease having his signature thereon, and, in every such case, the description of the parcels in the lease shall be taken to refer to the corrected plan, which shall form part of the lease:

(*q*) charge any person the fees prescribed under this Act, or if no fees are prescribed in relation to any matter under this Act, such fees as he fixes for that matter:

(*r*) appoint a sufficient number of persons to be Crown lands inspectors and rangers:

(*s*) forfeit any agreement, lease, or licence obtained by any false declaration or statement:

(*t*) notwithstanding the forfeiture of any agreement or lease under any of the Crown Lands Acts, or the Educational Lands Act, 1881, rescind or annul any such forfeiture, upon such terms as he thinks fit:

(*u*) lease aboriginal reserves on such terms and conditions as he deems advisable.

PART IV.

PART IV.

THE LAND BOARD.

DIVISION I.

DIVISION I.—CONSTITUTION.

Continuance of the Land Board.
1199, 1915, s. 10.

10. The Land Board constituted under the repealed Acts and existing at the passing of this Act is hereby continued, under the name of "The Land Board," subject to the provisions of this Act; and the members of the said board in office at the said passing are hereby continued in office, subject as aforesaid.

s. 9 (*t*). The Educational Lands Act, 1881, was repealed by the Statute Law Revision Act, 1936.

Constitution of the board. 1199, 1915, s. 11. Proviso added 2299, 1936, s. 2.

11. The board shall consist of not less than three and not more than four members: Provided that the Governor may appoint any member or members of the Pastoral Board constituted under the Pastoral Act, 1936, to be an additional member or additional members of the board for any period during which he may be a member of the Pastoral Board, and the person or persons so appointed shall, whilst holding office under that appointment, have all the powers, duties and functions of ordinary members of the board.

Appointment of members. 1199, 1915, s. 12.

12. The Governor may from time to time appoint members of the board.

Term of office. Ibid., s. 13. Amended by 2299, 1936, s. 3.

13. Every member shall hold office for not exceeding five years from the date of his appointment, and shall be eligible for re-appointment.

Appointment of chairman by Commissioner. 1199, 1915, s. 14.

14. The Commissioner shall nominate the chairman of the board, but the members present shall elect one of their number to be chairman for any meeting where the nominated chairman is absent.

Quorum. Ibid., s. 15.

15. Any two members shall form a quorum, and may exercise all the powers and authorities vested in the board. The chairman shall have a casting as well as a deliberative vote.

Meetings of board. Ibid., s. 16.

16. The board shall meet whenever required by the Commissioner.

Member of board not to be interested in application. Ibid., s. 17.

17. (1) No person whilst a member of the board shall be eligible as an applicant, or be interested in any application, for a lease or agreement.

(2) No member of the board shall hear or deal with any application in which any partner or relative of that member is interested.

(3) If any member of the board acts contrary to any provision of this section he shall be guilty of an offence against this Act, and liable to a penalty not exceeding fifty pounds.

(4) Any allotment of land made or application granted contrary to any provision of this section shall be absolutely void, except as against any purchaser who is not a partner or relative of the member offending against the said provision, and who has purchased *bona fide* for value without notice of the offence having been committed.

s. 11. The expression "Pastoral Acts, 1904 to 1935," altered to "Pastoral Act, 1936," pursuant to the Amendments Incorporation Act, 1937.

DIVISION II.

DIVISION II.—POWERS OF BOARD IN ADDITION TO ALL OTHER POWERS.

General powers of the board.
1199, 1915, s. 18.
1882, 1928, s. 5.

18. (1) The board, in addition to and without prejudice to any other powers vested in it, shall—

(*a*) decide, except in the case of town lands, upon the area to be included in each separate block and the area to be held by any one person, and the area of land included in each separate block which is to be cleared so as to render the same available for cultivation or so as to improve the grazing capacity thereof:

(*b*) fix the price or annual rent under any agreement or lease:

(*c*) consider, decide, and, if necessary, accept or reject applications, and thereupon report its decision to the Commissioner:

(*d*) require the personal attendance of and, when necessary, examine all applicants, objectors, and necessary witnesses:

(*e*) subdivide or alter the boundaries of any block where there is one or more than one applicant, and adjust the rentals or purchase-money:

(*f*) deal with all other matters referred to it by the Commissioner.

(2) Every such decision of the board, except when made pursuant to paragraph (*c*) or paragraph (*d*) of subsection (1) hereof, shall be subject to the approval of the Commissioner.

Power of board to enter lands.
1199, 1915, s. 19.

19. The board, any member thereof, or any person authorised by the board, may enter upon any lands leased or held under any agreement.

Valuation made by chairman or member to be effectual when confirmed by the board.
Ibid., s. 20.

20. Any valuation made by the chairman of the board or by any member thereof authorised by the board shall, when confirmed by the board, be deemed to be a valuation by the board.

Powers of board to require evidence to be on oath.
Ibid., s. 21.

21. (1) The board may require evidence given before it to be on oath or affirmation.

(2) Notwithstanding the provisions of any Act to the contrary, the chairman of the board, or any member or members thereof nominated by the board, are hereby authorised and empowered when obtaining evidence preliminary to the allotment or transfer of any lands to administer the prescribed oath or affirmation to any person.

(3) The evidence given by any such person shall be taken down in writing, and shall be signed by him, and be countersigned by the chairman or member taking the same.

(4) The oath may be in the following form:—"The evidence which you shall give before this board shall be the truth, the whole truth, and nothing but the truth—so help you God."

(5) Where any witness conscientiously objects to take an oath he may make the following affirmation:—"I, A.B., do declare and affirm that I will state the truth, the whole truth, and nothing but the truth to all questions that may be asked me." And the same shall be of the same effect as an oath taken in the form hereinbefore provided.

PART V.

PART V.

PERPETUAL LEASES AND AGREEMENTS.

DIVISION I.—THE OFFERING OF CROWN LANDS.

DIVISION I.

22. All Crown lands (except town lands) mentioned in the second schedule may be offered on perpetual lease or agreement, provided—

Offering of Crown lands, perpetual leases, or agreements.
1199, 1915, s. 22.

I. the said lands have been previously surveyed; or

II. the boundaries of the said lands have been delineated in the public maps.

DIVISION II.—CLASSIFICATION OF LANDS, AND APPLICATIONS.

DIVISION II.

23. The Commissioner, after approving the area, price, and rent recommended by the board of any Crown lands, may, by notice in the *Government Gazette*, specifying—

Notice of land being open.
Ibid., s. 23.
1882, 1928, s. 6.

(*a*) the land;

(*b*) the area thereof which is to be cleared so as to render the same available for cultivation or so as to improve the grazing capacity thereof; and

(*c*) the payments to be made,

declare that the said lands may be applied for on perpetual lease or agreement.

Arrangements for clearing and preparing land.
Inserted by 2408, 1938, s. 3.

23a. (1) Where the Director of Agriculture has certified that any Crown land could by clearing and cultivation be made suitable for pasture, and the board has recommended that that land should be allotted on the terms prescribed by this section, the Commissioner, by the notice declaring that the land is open for application, may also declare that the lease or agreement on which the land is allotted will contain, in addition to any other terms and covenants prescribed by or under this Act, terms, covenants, and conditions to the following effect:—

(*a*) that the Commissioner will prepare the said land or any part or area thereof specified in the notice for pasture:

(*b*) that such preparation shall include such of the following operations namely, clearing, cultivating, sowing, applying fertilisers, and doing any other work, as are specified in the notice, but the total cost of all such preparation shall not exceed one thousand pounds:

(*c*) that the lessee or purchaser shall, before the commencement of the work, pay to the Commissioner one quarter of the cost (as estimated by the Commissioner) of the said preparation of the land:

(*d*) that the balance of the cost of the said preparation will be deemed to be a loan made by the Commissioner to the lessee or purchaser and that the lessee or purchaser will repay that balance to the Commissioner with interest at the fixed rate in equal instalments payable at the times and during the period specified in the notice:

(*e*) that the Commissioner may, if he believes that the land comprised in the lease or agreement is being neglected and is thereby deteriorating in value, assume the general control and management of the land, and do anything necessary to prevent such deterioration: and that the expense incurred by the Commissioner in so doing shall be a charge on the land and shall be payable by the lessee or purchaser or the occupier for the time being, and recoverable by the Commissioner by action in any court of competent jurisdiction:

(*f*) such other terms, covenants, and conditions as are specified in the notice, for the purpose of ensuring the proper working of the land, and for preventing any cleared parts thereof from reverting to scrub.

(2) Any lease or agreement granted pursuant to any such notice may contain any such terms and covenants as aforesaid.

(3) No land shall be allotted under a lease or agreement containing the terms and covenants prescribed by this section, unless the Land Board is satisfied that the proposed allottee has sufficient capital, over and above the amounts to be expended under this section on preparing the land, to enable him to work the land successfully.

Power of Commissioner to prepare land. Inserted by 2408, 1938, s. 3.

23b. (1) Subject to subsection (2) of this section the Commissioner may do all things necessary to carry out the obligations imposed on him by the terms, covenants, and conditions of any lease or agreement entered into pursuant to section 23a.

(2) All work required to be done by the Commissioner in connection with the clearing and cultivation of land comprised in any such lease or agreement shall be done under contracts made between the Commissioner and independent contractors, and before entering into any such contract the Commissioner shall by advertisement in a daily newspaper call for tenders for the work to be done.

(3) The cost of any such work shall be defrayed out of moneys to be provided by Parliament for the purpose.

Applications. 1199, 1915, s. 24.

24. Every application for any such land shall be made to the Commissioner in writing, giving the name, address, and occupation of the applicant, and specifying the land applied for.

Deposit. Ibid., s. 25. 1882, 1928, s. 7.

25. (1) Every application for a perpetual lease shall be accompanied by an amount equal to twenty per centum of the first year's rent (if any), as notified in the *Government Gazette*: Provided that if twenty per centum of the said first year's rent is less than one pound no amount need be forwarded with the application.

(2) Every application for an agreement shall be accompanied by an amount equal to the first half-yearly instalment payable under the agreement whether of principal, interest, or both.

(3) If no rent or instalment of interest or principal is payable for the first four years of the lease or agreement applied for the application shall be accompanied by a deposit equal to the prescribed fee for the lease or agreement.

PART V. DIVISION II.

Reference of all applications to the board.
1199, 1915, s. 26.

26. All applications shall forthwith be referred by the Commisioner to the board, unless the land is withdrawn from leasing or sale.

Simultaneous applications.
Ibid., s. 27.

27. (1) All applications for the same land received up to and on the date named for receiving the same shall be dealt with as simultaneous applications. After that date all applications received on one and the same day for land not before applied for shall be considered and dealt with in like manner.

(2) Simultaneous applications may be decided by lot by the chairman of the board where any difficulty arises in deciding the successful applicant.

(3) Subject to the provisions of section 28 as to personal residence, whenever the number of simultaneous applications for the same lands is not more than three, or is reduced by the board to not more than three, and the qualifications and claims of the applicants are in the opinion of the board equal, then the applications shall be publicly decided by the chairman of the board by lot.

Lessee or purchaser to covenant to reside on land.
Ibid., s. 28.

28. The board shall, unless there is in their opinion good cause to the contrary, give preference to the applicant who agrees to take the block on condition of personal residence, and every lease or agreement granted to him shall contain a covenant to reside on the land for nine months in every year. Where the preference is given to an applicant who does not intend to reside on the block the reasons of the board for allotting the land shall be given.

Board to report and successful applicants to be gazetted.
Ibid., s. 29.

29. The Commissioner, upon receipt thereof, shall cause to be published in the *Government Gazette* the names of the successful applicants, the particulars of the lands allotted to them, and the rent or price payable in each case.

Power of Commissioner to offer lands not taken up on reduced terms.
Ibid., s. 30.

30. If no application is made within three months from the date on and after which any lands were last declared to be open under this Part, or if all applications received before the lands are again offered on lease or agreement as herein provided are rejected or refused, the Commissioner may offer the lands at such reduced rent or purchase-money as he, with the advice of the board, deems proper.

Limitation of holdings.
Ibid., s. 31.
1882, 1928, s. 8.

31. (1) No lease or agreement for Crown lands shall be granted to any person—

(*a*) of lands the unimproved value of which exceeds five thousand pounds; or

(*b*) so that the lessee or purchaser would hold lands under any tenure (except pastoral leases and miscellaneous leases and except lands within the limits of any city or town) the aggregate unimproved value whereof would, in the opinion of the board, exceed five thousand pounds,

except where the land to be included in the perpetual lease or agreement is, in the opinion of the Commissioner, suitable only for pastoral purposes; and in that case the lease or agreement shall not be granted if the carrying capacity of the lands unimproved and of all other lands held by the lessee or purchaser under any tenure would altogether exceed five thousand sheep, or, if the land is outside Goyder's line of rainfall, ten thousand sheep.

Inserted by 2363, 1937, s. 3.

(2) In any case where the Commissioner is of opinion that in the special circumstances it is desirable so to do, he may, on the recommendation of the board, direct that a lease or agreement for Crown lands may be granted to a lessee or purchaser who holds or would then hold lands in excess of the unimproved value aforesaid, but in no case shall the unimproved value of the land included in any lease or agreement so granted, or, if more than one such lease or agreement is granted, in all such leases and agreements, exceed five hundred pounds.

Power of corporations and district councils to apply. 1199, 1915, s. 32.

32. Any municipal corporation or district council may apply for and obtain lands under lease or agreement under this Part.

DIVISION III.

DIVISION III.—PERPETUAL LEASES.

Rent under perpetual leases. Ibid., s. 33.

33. The board, in fixing the rents to be paid under any perpetual lease except—

I. a lease to which the Commissioner directs that section 48 shall apply; or

II. a lease granted by virtue of section 199; or

III. a lease granted under any provision of Part XI.; or

IV. in any case where the Commissioner directs to the contrary,

shall, as nearly as practicable and subject to section 47, fix the same for the first three years according to the following scale:—

For the first year, one-fifth of the amount which but for this section would be payable annually;

for the second year, one-third of the said amount; and

for the third year, two-thirds of the said amount.

S. 34 repealed by 40, 1939, s. 4.

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Form and effect of perpetual lease.
1199, 1915, s. 35.

35. A perpetual lease shall vest the land leased in the lessee in perpetuity, and shall contain the provisions for rent and the reservations, covenants, and conditions set forth in the third schedule, subject to such modifications thereof or additions thereto as are required for giving effect to the provisions of this Act, or as the Governor thinks fit, and shall also contain such other provisions as the Governor thinks fit, together with a right of re-entry, and shall be read and construed as if any reservations, covenants, and conditions in the form in the third schedule had been expressed in the extended form in the fourth schedule, and the lessee and all persons entitled to any benefit of the lease shall be bound thereby.

Power of Commissioner to determine whether covenant to clear complied with.
Ibid., s. 36.
1882, 1928, s. 9.

36. (1) The Commissioner shall determine whether the covenant to clear land contained in a lease, as the meaning of that covenant is set forth in the fourth schedule, has been complied with in any case, and if his decision is disputed by the lessee the matter shall be determined by arbitration in manner provided by section 289.

(2) Land shall be deemed to have been cleared for cultivation or so as to improve the grazing capacity thereof only when it has been rendered free from substantially the whole of the scrub growth thereon.

Liability to land tax of perpetual leases not subject to revaluation.
1199, 1915, s. 37.

37. All perpetual leases not subject to revaluation of rent shall be liable to the land tax, and the rent originally reserved shall be payable during the whole of the term.

Fixing of subsequent rent.
Ibid., s. 38.

38. The rent for each period of fourteen years (except the first such period) of a perpetual lease, subject to revaluation, shall be fixed by the board at least twelve months before the expiration of the next preceding period of fourteen years thereof.

Improvements not to be considered on revaluation.
Ibid., s. 39.

39. In revaluations of rent under perpetual leases the value of the improvements made by the lessee shall not be considered.

Notice of revaluation to be given.
Ibid., s. 40.

40. Notice of the amount of revaluation shall forthwith be given by the Commissioner to the lessee.

Lessee not accepting revaluation to forfeit at expiry of then current fourteen years of his lease. 1199, 1915, s. 41.

41. (1) In case the lessee does not, within the period of six months after notice of any revaluation, signify to the Commissioner his willingness to pay the same, his lease shall determine at the expiration of the then current period of fourteen years of his lease, subject however to the provisions of subsections (3), (4), and (5) hereof.

(2) In case the lease is to determine under subsection (1) hereof, then after the expiration of the said period of six months the land comprised in the lease shall be offered in one or more blocks under this Part at the rental fixed by the board; and the improvements made by the outgoing lessee shall be paid for by the incoming tenant to the Commissioner at a price to be fixed by the board; and the amount so paid shall be paid by the Commissioner to the outgoing lessee, less any amount that may be due by him under the determined lease.

(3) If the land comprised in the lease, or any part of that land, has not been taken on perpetual lease or agreement when offered pursuant to subsection (2) hereof, the Commissioner may receive the lessee's signification of his willingness to pay the rent fixed under section 38 at any time not being later than two months from the determination of the lease.

(4) Any lease in respect of which the Commissioner exercises the power conferred by subsection (3) hereof shall, notwithstanding its previous determination, be deemed to have continued without interruption of the term thereof.

(5) Where part of the land has been taken when offered as mentioned in subsection (3) hereof, subsections (3) and (4) hereof shall apply only in respect of the part not so taken.

DIVISION IIIA.

DIVISION IIIA.—PERPETUAL LEASES OF TOWN LANDS IN WHYALLA.

Offering of Whyalla land on perpetual lease. Inserted by 3, 1939, s. 3.

41a. (1) The Commissioner may, by notice in the *Gazette*, offer any specified blocks of town land in the town of Whyalla on perpetual lease.

(2) The Commissioner shall not give notice as aforesaid in respect of any blocks unless the board recommends that it is desirable that those blocks should be used as sites for dwelling-houses.

(3) The notice shall set forth—

(*a*) the blocks to be leased:

(*b*) the rent of each block as fixed by the board, which rent shall not be subject to revaluation:

(*c*) any obligations, duties, or restrictions to be imposed on the lessee in relation to the use of the land, the erection of buildings or carrying out of other improvements thereon, or personal residence on the land by the lessee:

(*d*) a day, not earlier than one month after the publication of the notice in the *Government Gazette* before which applications for the blocks mentioned in the notice must be made.

Applications and allotments. Inserted by 3, 1939, s. 3.

41b. The provisions of sections 24 to 30 inclusive of this Act shall apply to applications for and the allotment of town lands under this Division.

Form and conditions of leases. Inserted by 3, 1939, s. 3.

41c. (1) Subject to this section every perpetual lease of town land in the town of Whyalla shall be in such form and contain such terms, covenants, and conditions as the Commissioner approves on the recommendation of the board.

(2) Without restricting the generality of subsection (1) of this section, it is declared that such covenants and conditions may provide—

(*a*) that the lessee shall, during such time as is specified in the lease, personally reside upon the land comprised in the lease:

(*b*) that the lessee shall, within such time as is specified in the lease, erect a dwelling-house on the said land in accordance with plans and specifications to be approved by the Commissioner, and that the lessee will not without the consent in writing of the Commissioner erect on the said land any other premises:

(*c*) that the lessee shall not transfer, mortgage, sublet, or otherwise dispose of the said land except in accordance with such conditions as are set out in the lease.

(3) The Commissioner may, on the recommendation of the board, and if he thinks that special circumstances exist which justify him in so doing, exempt a lessee from the obligation to comply with any such covenant as mentioned in subsection (2).

Purchase of fee simple of Whyalla town lands. Inserted by 3, 1939, s. 3.

41d. (1) Any lessee holding town land in the town of Whyalla under perpetual lease may apply to the Commissioner for the right to surrender to the Crown the whole or any part of that land and to purchase the fee simple of the land so surrendered.

(2) If the Commissioner is satisfied that the covenants and conditions of the lease have been complied with, or that, although the covenants and conditions have not been complied with it is expedient to absolve the lessee from compliance therewith, either upon conditions or otherwise, the Commissioner shall refer the application to the board.

(3) If the board considers that the application should be granted it shall fix the price at which the fee simple of the land may be purchased; and the lessee may thereupon surrender the land and purchase the fee simple thereof at the price fixed by the board.

(4) The Governor shall, upon payment of the said price, issue to the purchaser a grant of the fee simple of the surrendered land.

Application of other provisions to leases of town lands.
Inserted by 3, 1939, s. 3.

41e. The following sections of this Act shall apply *mutatis mutandis* to perpetual leases of town lands in the town of Whyalla in the same way as they apply to perpetual leases of other lands, namely, sections 32, 34, 37, 47, 52, 53, 54 to 64 inclusive, 66, 204b, 205, 206, 208a, 217, 218, 219, 222, 223, 224.

DIVISION IV.

DIVISION IV.—AGREEMENTS (UNDER THIS PART).

Agreement to contain covenant to purchase by instalments.
1199, 1915, s. 42.
1882, 1928, s. 10.

42. (1) In every agreement under this Part the purchaser shall covenant—

(*a*) to purchase his block at the price fixed by the board; and

(*b*) except in a case where section 48 applies, to pay the purchase-money and interest for land and improvements, if any, at not less than the rate of two pounds per centum per annum by sixty equal half-yearly instalments, which instalments shall be paid in advance: Provided that if the Commissioner on the recommendation of the board so approves, the covenant for payment of purchase-money and interest may be as follows:—

(i.) For the first four years the purchaser shall pay in advance half-yearly instalments of interest only on the purchase-money, but no instalments of principal, and that interest shall be at the following rates:—

For the first year at one-fifth of the full rate of interest provided for in the agreement:

For the second year at one-third of the said full rate:

For the third year at two-thirds of the said full rate:

For the fourth year at the said full rate.

(ii.) During the subsequent thirty years the purchaser shall pay the purchase-money with interest thereon at the full annual rate provided for in the agreement in sixty equal half-yearly instalments of principal and interest, and the instalments shall be payable in advance.

(2) Notwithstanding subsection (1) hereof or anything contained in the agreement, the purchaser, having complied with the terms and conditions of his agreement, shall have the option of completing the purchase of his block at any time after the expiration of six years on paying the balance of the purchase-money and all interest due up to the time of purchase.

Personal residence. 1199, 1915, s. 43.

43. Where land is allotted on personal residence the agreement shall contain a covenant for personal residence by the purchaser on the lands purchased for nine months in every year.

Form of agreement. Ibid., s. 44. 1882, 1928, s. 11.

44. (1) The agreement shall contain all the conditions, covenants, and provisions set forth in the fifth schedule, subject to such modifications thereof or additions thereto as are required for giving effect to the provisions of this Act.

(2) In filling up the blank spaces in the form of covenant to clear land contained in the fifth schedule, the following directions shall be followed:—In the first, second, and third spaces there shall be inserted an area equal to one-eighth of the area which is to be cleared, as specified in the notice in the *Government Gazette* declaring that the lands in question may be applied for on agreement. In the fourth space there shall be inserted an area equal to the total area to be cleared.

Commissioner to determine whether covenant to clear complied with. 1199, 1915, s. 45. 1882, 1928, s. 12.

45. (1) The Commissioner shall determine whether the covenant to clear land contained in an agreement has been complied with in any case, and if his decision is disputed by the purchaser, the matter shall be determined by arbitration in manner provided by section 289.

(2) Land shall be deemed to have been cleared for cultivation or so as to improve the grazing capacity thereof only when it has been rendered free from substantially the whole of the scrub growth thereon.

Agreement liable to forfeiture for breach of covenant. 1199, 1915, s. 46.

46. (1) An agreement shall be liable to forfeiture if any instalment thereunder is in arrear for six months, the purchaser having had at least three months previous notice in writing demanding its payment, or if any breach is made of the terms and conditions of the agreement.

(2) Upon any such forfeiture the right, interest, or claim, either at law or in equity, of the purchaser in and to the lands included in the forfeited agreement, and to any moneys paid on account of his purchase, shall be absolutely determined, and the lands may be dealt with as the Commissioner may determine.

PART VI.

PROVISIONS APPLICABLE TO PERPETUAL LEASES AND AGREEMENTS.

Rent or instalment of purchase-money not to be less than 5s. 1199, 1915, s. 48. 1882, 1928, s. 13.

47. (1) Notwithstanding anything in this Act, the annual rent under a perpetual lease, or a half-yearly instalment under an agreement, shall in no case be less than five shillings.

(2) In no case shall the purchase-money under an agreement be increased by reason of subsection (1) hereof, and where necessary in order that this subsection and the said subsection (1) may be complied with, the number of instalments shall be reduced; and notwithstanding that all the instalments of purchase-money may have been paid before the expiration of the period of six years fixed by section 42, section 48, or section 174, the purchase shall not be completed before the expiration of that period.

Rates of instalments and rent under agreements and leases, where Commissioner directs that this section shall apply. 1199, 1915, s. 49. 1405, 1919, s. 3. 1882, 1928, s. 14.

48. (1) The following provisions shall apply to every agreement (except an agreement under Part X.) and perpetual lease to which the Commissioner directs that this section shall apply, namely:—

I. No instalment or rent shall be payable for the first four years of the term:

II. From the end of the fourth to the end of the tenth year of the term, instalments or rents shall be paid, and the said instalments or rents shall be at the rate of two per centum per annum on the value of the land as stated in the advertisement in the *Government Gazette* declaring the land open for application. In the case of an agreement the instalments paid for the years mentioned in this subdivision shall be regarded as interest only, and not as part of the purchase-money:

III. From the end of the tenth year of the term, the interest included in the instalments, or the rent (as the case may be), shall be at the rate of four per centum per annum on the value stated as mentioned in subdivision II. hereof.

IV. The agreement shall be for a term of forty years, and the purchase-money shall be paid by sixty half-yearly instalments, at the rate of two pounds sixteen shillings and five pence for every one hundred pounds of the purchase-money, payable during the last thirty years thereof; so that from the end of the tenth year of the term the instalments shall include purchase-money in addition to interest as provided by subdivision III. of this subsection:

V. All instalments or rents shall be payable in advance:

VI. The purchaser under the agreement, having complied with the terms and conditions of his agreement, shall have the option of completing the purchase at any time after the expiration of the first six years of the term, on payment of the purchase-money, or the balance thereof, with interest, at the rate or rates charged by the agreement, on the purchase-money or on the balances thereof from time to time remaining unpaid, from the commencement of the term to the date of payment:

VII. Notwithstanding anything in this section, if the purchaser or lessee transfers his agreement or lease before the end of the tenth year of the term, instalments or rent shall, if the Commissioner on the recommendation of the board so directs, be paid as from the time of the allotment of the land or any subsequent time not later than the time when the transfer takes effect; and, in the case of an agreement, the instalments shall be at the rate of four per centum per annum on the value stated as mentioned in subdivision II. hereof until the end of the said tenth year, and, in the case of a lease, the rent shall be as provided by subdivision III. hereof.

(2) In the case of any agreement or perpetual lease to which the Commissioner has directed that this section shall apply, where, in the opinion of the Commissioner, the enforcement of the provisions of the agreement or lease as to payment of instalments or rent would inflict great hardship upon the holder of the agreement or lease, the Commissioner may, by notice given to the holder, extend the period during which, under the agreement or lease, no instalment or rent is to be payable, for such further period, not exceeding four years, as he thinks fit.

(3) Upon the giving of any notice of extension, as mentioned in subsection (2) hereof, the said period shall be extended in accordance with the said notice, and all dates and periods mentioned in the agreement or lease shall be postponed and, in the case of an agreement, the term shall be extended, according to the period of the extension. The agreement or lease shall be construed so as to give effect to this subsection, and shall be binding on the parties as so construed.

Power in certain cases to surrender existing agreement or lease for agreement or lease under section 48. 1199, 1915, s. 51.

49. (1) Subject to subsection (6) hereof, in the case of any agreement (except an agreement under Part X. of the Crown Lands Act, 1903) or perpetual lease, entered into or granted before the nineteenth day of November, nineteen hundred and fourteen, to which the Commissioner, on the recommendation of the Surveyor-General, directs that this section shall apply, the board shall revalue the land comprised in the agreement or lease, and fix the purchase-money or annual rent for the purposes of an agreement or lease to be entered into or granted pursuant to this section.

(2) When the board has fixed the purchase-money or annual rent pursuant to subsection (1) hereof, the purchaser or lessee may surrender his agreement or lease in exchange for an agreement or perpetual lease to be entered into or granted in accordance with the provisions of section 48 of this Act at the purchase price or annual rent fixed as aforesaid: Provided that—

I. the surrender shall have no effect unless or until accepted by the Commissioner, who may, in his discretion, accept or reject the surrender in the name and on behalf of His Majesty:

II. only an agreement may be obtained in exchange for a surrendered agreement, and only a lease may be obtained in exchange for a surrendered lease.

(3) The term of the new agreement or the new lease shall commence on the date of the commencement of the term of the surrendered agreement or lease.

(4) When an agreement or lease has been obtained pursuant to this section, the amount of the instalments or rents (as the case may be) theretofore paid under the surrendered agreement or lease shall be credited against the instalments or rents (as the case may be) which have already fallen due in accordance with the new agreement or lease; and if there is any surplus, it shall be credited against the future instalments or rents.

(5) If the agreement or lease to be surrendered is subject to a mortgage, the provisions of section 224 shall apply.

(6) This section shall not apply to any agreement or lease of land situate within any of the following hundreds, namely, the Hundreds of Pygery, McLachlan, Wannamana, Wudinna, and Yaninee, and such other hundreds as the Commissioner directs.

Power to reduce purchase money or rent under certain agreements and leases. 1199, 1915, s. 53. 1311, 1917, s. 3. 1882, 1928, s. 15.

50. (1) In the case of any agreement (except an agreement under Part X. of the Crown Lands Act, 1903, Part X. of the Crown Lands Act, 1915, or Part X. of this Act) or perpetual lease, or lease with right of purchase, the Commissioner may, if he is satisfied that the purchase-money or rent (as the case may be) is too high, make such (if any) reduction thereof as, after reference by the Commissioner to the board, is recommended by the board.

(2) Every reduction of purchase-money or rent under this section shall take effect from such date as the Commissioner in each case determines and every reduction of rent may be for such period as the Commissioner in each case determines.

(3) The Commissioner may also in his discretion and for such period as he thinks fit reduce the interest payable under any agreement (except an agreement under Part X. of the Crown Lands Act, 1903, Part X. of the Crown Lands Act, 1915, or Part X. of this Act).

(4) Notice in writing of any such reduction shall be given to the purchaser or lessee who may, within two months after the giving of the notice, appeal in writing to the Commissioner for a further reduction; whereupon the Commissioner may make such (if any) further reduction as is recommended by the board.

(5) Notice in writing of the Commissioner's decision on the said appeal shall be given to the purchaser or lessee.

(6) If no appeal is made in the manner and within the time prescribed by subsection (4) hereof, then from the expiration of the said time, or if any appeal is so made, then from the day whereon the notice required by subsection (5) hereof is given—

(*a*) the agreement or lease shall be construed so as to give effect to the reduction, or further reduction (as the case may be) made as aforesaid, and shall be binding on the parties accordingly; and

(*b*) the instalments or rents fixed by the agreement or lease shall be adjusted as may be necessary to give effect to the reduction, or further reduction (as the case may be) and any amounts shown, as the result of the adjustment, to have been overpaid shall be credited against the liability to future payments.

(7) The powers of the Commissioner under this section may, in the case of any such agreement or lease as is hereinbefore referred to, be exercised from time to time as the Commissioner thinks fit, notwithstanding that one or more reductions have already been made by the Commissioner in respect of the same agreement or lease and notwithstanding that no appeal for a further reduction has been made to him.

Power to extend agreement. Inserted by 2120, 1933, s. 2.

50a. (1) In any case of an agreement (except an agreement under Part X. of the Crown Lands Act, 1903, Part X. of the Crown Lands Act, 1915, or Part X. of this Act) the Commissioner may direct the board to consider whether an extension of the term of the agreement should or should not be granted under this section.

(2) The board shall thereupon consider the matter, and—

(*a*) may recommend that the term be extended for such period (if any) as the board thinks fit, but not so as to extend it beyond sixty-five years from the commencement thereof as fixed by the agreement:

(*b*) for the purpose of fixing the amounts of the instalments under paragraph (*c*) hereof may capitalize, and add to the purchase-money, the whole or any part of such amounts of any instalments then in arrear as represent interest:

(*c*) if the board recommends an extension, shall fix the instalments of purchase-money to be paid during the remainder of the term (as so extended) and for such purpose may fix the instalments so that the balance of the purchase-money and any arrears of interest capitalized as aforesaid, together with interest thereon, shall be paid in equal instalments throughout the balance of the said term so extended, or may fix the instalments at such amount as would be necessary to pay the purchase-money and interest thereon in equal instalments if the instalments were spread over the whole term of the agreement as so extended from the time when instalments of principal were first payable.

(3) If the Commissioner approves of the recommendations of the board he may grant the extension on the terms recommended, and from the time when notice in writing stating the period of the said extension and the terms on which it is granted is given to the purchaser, the agreement shall be construed so as to give effect to the said extension and terms, and shall be binding on the parties as so construed.

(4) Except so far as may be necessary to give effect to this section, the agreement shall not be affected by anything in or done under this section; and the terms, covenants, conditions, and provisions thereof shall continue in force subject to any variations which may be necessary to give effect to this section.

Lands suitable for pastoral purposes only. 1199, 1915, s. 54.

51. In respect of any lands which, on account of deficiency of rainfall, are, in the opinion of the board, only suitable for pastoral purposes, the rent shall be fixed at pastoral rates; and, in fixing the said rents, the board shall have regard to the rates of rental of pastoral lands under similar conditions of soil and climate.

Preparation and execution of lease or agreement. **Substituted by 40, 1939, s. 5.**

52. (1) As soon as conveniently may be after land offered on lease or agreement is allotted to any person under any provision of this Act, or any other Act incorporated with this Act, or any person becomes entitled to a lease or agreement pursuant to any surrender which has been accepted, the Commissioner shall cause a lease or agreement, as the case may be, to be prepared in triplicate, and shall forward it to that person or his agent.

(2) The said person shall within twenty-eight days after receipt of the lease or agreement or within such further time as the Commissioner allows, execute the lease or agreement and return it to the Commissioner, together with the first year's rent or instalment (if any), and the prescribed fees or the unpaid balances thereof.

(3) If any person fails to comply with subsection (2) of this section, the Commissioner may by notice in writing, served on him personally or by post, declare that he has forfeited all moneys paid by him and his right to a lease or agreement, and the Commissioner may thereafter re-offer or deal with the land comprised in the lease or agreement as unallotted Crown lands.

Power to resume land for roads, tramways, railways, mining, or public purposes. 1199, 1915, s. 56.

53. (1) The Commissioner, on giving three months notice to any lessee or purchaser, may resume lands included in the lease or agreement for roads, railways, tramways, sites for towns, park lands, mining purposes, or for any public purpose whatsoever.

s. 53. R. v. SOUTH-EASTERN LAND BOARD; *ex relatione* BOWMAN, 4th December, 1893, S.A. *Register* (newspr.); 6 Austn. Digest 935. As to the construction of a lease, where a condition for resumption therein included does not coincide with the provisions of the Act. As to the proper proceedings to prevent the Commissioner from resuming land. Construction of "purpose of public utility."

(2) The lessee or purchaser shall be entitled to compensation for any loss sustained by the said resumption. As to leases granted before the twenty-third day of December, eighteen hundred and ninety-three, the compensation shall, in case of dispute, be determined by the board, or, at the option of the lessee, as provided by section 289 of this Act. As to other leases and as to agreements, the compensation shall, in case of dispute, be determined by the board, or, at the option of the Commissioner, or of the lessee or purchaser, as provided by the said section 289.

(3) Nothing in this section shall affect or apply to the exercise of any power given to the Governor by the Mining Act, 1930. Amended by S.L.R. Act, 1935.

54. Every lease and every agreement shall contain a reservation to the Crown of all gold, silver, copper, tin, and other metals, all ores and other substances containing metals, all minerals, and all gems and precious stones, coal, and mineral oil upon, in, or under the lands comprised in the lease or agreement. Reservation of minerals, precious stones, etc. 1199, 1915, s. 57. Amended by S.L.R. Act, 1936.

55. The Commissioner and his authorised agents may at all times enter upon lands comprised in any grant, agreement, or lease to search and mine for minerals on the said lands and remove therefrom any minerals or other things reserved and belonging to the Crown. Commissioner may search for minerals. 1199, 1915, s. 58.

56. (1) Where damage is sustained by the owner, lessee, or purchaser of any lands, through the holder of a mining lease or licence, or his agent or servant, searching for, mining, or removing minerals, compensation shall be made to the said owner, lessee, or purchaser by the said holder for the damage so sustained. Mining lessee or licensee to compensate for damage done in searching for, mining, or removing minerals. Ibid., s. 59.

(2) If the amount of the compensation claimed at any one time—

(*a*) does not exceed twenty pounds the compensation shall be recoverable in a summary way before a court of summary jurisdiction, which shall assess the amount of compensation on the hearing of the complaint;

(*b*) exceeds twenty pounds, the claim shall be submitted in writing to the board, and the amount of compensation shall be assessed by the board,

or, in either case, the amount of compensation may be assessed in manner provided in section 289: Provided that the mining lessee or licensee shall, if the amount is to be

assessed in the last-mentioned manner, nominate one arbitrator in lieu of the Commissioner nominating one as provided in the said section.

Subletting.
1/199, 1915, s. 61.

57. Any person who has a lease or agreement, may, with the consent of the Commissioner, at the end of six years from the date of his lease or agreement, sublet the whole or any part of the land included in his lease or agreement for a period not exceeding three years, and on such terms as he may think fit, within the terms of the lease or agreement.

Fines on non-payment under lease or agreement.
Ibid., s. 62.

58. If the rent or any principal instalment or interest, payable under any lease or under any agreement for the sale of Crown lands granted or made under the authority of any Crown Lands Act, is not paid—

(*a*) on or before the day appointed for payment thereof, a penalty of five per centum may be added to the said rent, instalment, or interest:

(*b*) within one month after the day appointed for the payment thereof, together with any penalty added under subdivision (*a*) hereof, a further penalty of ten per centum may be added:

(*c*) within one month after the month mentioned in subdivision (*b*) hereof, the same, together with such penalty as aforesaid, shall be recoverable by the Commissioner by action in his own name in any court of competent jurisdiction.

Amendment Act 28/40

58 1/5. Interpretation of "

Crown lease or agreement may be forfeited if rent or instalment in arrear for six months, or covenant broken.
Ibid., s. 63.

59. (1) Where the rent of any lands or any money due under any agreement or loan agreement is in arrear for six months after the same is due, the lessee or purchaser (as the case may be) having had at least three months previous notice in writing demanding its payment, or where there has been a breach of any of the covenants or conditions contained in or implied by any such lease or agreement, the Commissioner may cancel the lease or agreement, and may thereupon insert a notice in the *Government Gazette* declaring the lease or agreement to be forfeited.

(2) Every such notice shall be taken to be *prima facie* evidence that the lease or agreement therein mentioned was legally cancelled and forfeited.

(3) The land comprised in any such lease or agreement may be dealt with in all respects as if the lease or agreement had never been granted.

s. 59. LAFFER v. GILLEN (1924) S.A.S.R. 514, reversing GILLEN v. LAFFER (1924) S.A.S.R. 170. Held that the section is of general application and not limited to agreements under Part V. and that it applies to agreements under the Discharged Soldiers Settlement Act, 1934-1935. As to the form of demand and burden of showing that an agreement is not legally cancelled.

Instead of forfeiture, a penalty may be imposed. 1199, 1915, s. 64.

60. (1) In any case in which the Commissioner has power, under section 59, to cancel a lease or agreement, he may, instead of exercising that power, by notice in writing to the lessee or purchaser, impose a penalty of such sum as is fixed by the board in the particular case.

(2) Any penalty imposed under this section shall be recoverable in the same manner as rents or instalments under the lease or agreement (as the case may be) are recoverable when in arrear.

Defaulting purchaser's or lessee's interest in land may be sold by auction. Ibid., s. 65. 1405, 1919, s. 5.

61. (1) In lieu of the forfeiture under section 59 of any agreement or lease, the Commissioner may, after two weeks' notice in the *Government Gazette,* offer the defaulting purchaser's or lessee's interest in the agreement or lease for sale by auction.

(2) If at the said offering the said interest is not sold, then the agreement or lease (as the case may be) may at any time thereafter be transferred by the Commissioner to any applicant at the upset price or rental fixed at the sale; and if there are more applicants than one, the transferee shall be decided by lot.

(3) Out of any premium paid at the sale, or for the transfer (as the case may be), after deducting therefrom all expenses attending the sale or offering, and all moneys then due by the defaulting purchaser or lessee to the Crown, the defaulting purchaser or lessee may be paid the value of any substantial improvements, consisting of buildings, fencing, dams, tanks, wells, clearing, cultivating, and planting, made by him on the land, which permanently increase the capital value thereof, and also all purchase-money paid by him, apart from interest, excepting thereout the first instalment.

(4) After notice has been given under subsection (1) hereof, the defaulting purchaser's or lessee's interest shall not be withdrawn from sale unless the said purchaser or lessee has paid to the Commissioner such penalty as is imposed by the Commissioner, in addition to the upset price at which his said interest was, or was to be, offered.

(5) The Commissioner may, in exercising the power to sell or transfer a defaulting purchaser's or lessee's interest in any agreement or lease conferred by this section, exercise any such power with respect to the whole or, from time to time, with respect to any part or parts of the land comprised in the agreement or lease, as he thinks fit.

(6) All the provisions of this Act with respect to the sale or transfer of the defaulting purchaser's or lessee's interest in the agreement or lease shall, *mutatis mutandis,* apply to the sale or transfer of his interest in part only of the land comprised in the agreement or lease.

(7) In case of the sale or transfer of the defaulting purchaser's or lessee's interest in part only of the land comprised in the agreement or lease, the Commissioner may cancel the agreement or lease as to the whole of the said land or as to any part thereof so sold, and may prepare and issue to the purchaser of such part a new agreement or lease therefor, and the new agreement or lease shall be effectual for all purposes as a transfer to the purchaser of the right, title, and interest of the defaulting purchaser or lessee in the part of the said land comprised in the new agreement or lease.

Liability of purchaser for future defaults.
1199, 1915, s. 66.

62. When a defaulting purchaser's or lessee's interest in an agreement or lease, or any part thereof, has been sold under section 61, the purchaser at the sale shall be liable for the payment of all instalments or rents (as the case may be) and other (if any) moneys falling due under the agreement or lease after the date of the sale in respect of the whole or of the part thereof sold (as the case may require), and from that date shall be bound by and subject to all the terms, covenants, conditions, and provisions of the agreement or lease.

Power to execute transfer of interests sold.
Ibid., s. 67.

63. (1) When the sale of any interest under an agreement or lease has been effected by the Commissioner, he may transfer all the right, title, and interest of the defaulting purchaser or lessee to the purchaser at the sale; and the Registrar-General shall, when requested and on payment of the necessary fees, register the transfer, whereupon the same shall be effectual for all purposes as if the purchaser or lessee to whom the transfer is made were the original purchaser or lessee of the lands described and comprised in the agreement or lease.

(2) If the agreement or lease cannot be obtained by the Commissioner, he may cancel the same and prepare a new agreement or lease in lieu thereof for the purchaser at the sale.

Service of notices.
Ibid., s. 68.

64. Any notice to be given to any lessee or purchaser shall be deemed to have been duly given if the same has been sent through the post office enclosed in an envelope addressed to the lessee or purchaser at—

(*a*) any address stated in any recent application, letter, or document received from the lessee or purchaser;

(*b*) the lessee's or purchaser's usual or last known place of abode in the State; or

(*c*) the care of any solicitor, attorney, or agent acting in the lessee's or purchaser's behalf in the particular matter in respect whereof the notice is given,

and notice as aforesaid shall be deemed to have been given on, and time shall run from, the day of the posting thereof.

65. No lessee or purchaser shall be entitled to impound any cattle or sheep trespassing on leased land or land under agreement forming portion of or adjoining a travelling stock reserve unless the said land is enclosed with a fence which is sufficiently substantial and close to ordinarily resist the trespass of cattle or sheep, as the case may be.

Duty of lessees and purchasers not to impound in certain cases. 1199, 1915, s. 69.

66. No statute of limitation shall bar or affect any action or remedy for the recovery of any principal, rent, interest, or instalments due under any lease or agreement.

Statute of limitation no bar to action. Ibid., s. 70.

Amendment Act 25 of 66a (1) Where any lessee

PART VII.

PART VII.

LEASES OTHER THAN PERPETUAL.

DIVISION I.—LEASES WITH RIGHT OF PURCHASE GRANTED UNDER REPEALED ACTS.

DIVISION I.

67. In the case of a lease with a right of purchase and right of renewal, granted under a repealed Act, the rent for the term of any renewed lease shall be fixed by the board by revaluation at least twelve months before the expiration of the original lease.

Rent. 1199, 1915, s. 71.

68. The renewed lease shall contain a right of purchase (subject to the provisions of section 265) at a price to be fixed by the board, exercisable at any time during the term of the renewed lease.

Price of purchase. Ibid., s. 72.

69. In fixing the purchase-money and rent for a renewed lease the board, in cases of revalution, shall not consider the value of the improvements made.

Improvements not to be considered on revaluation. Ibid., s. 73.

70. Notice of the amount of every revaluation shall forthwith be given by the Commissioner to the lessee.

Notice of revaluation of rent. Ibid., s. 74.

71. In case the lessee does not within the period of six months after the giving of the notice of revaluation accept or refuse the revaluation, he shall forfeit his right to a renewal, subject, however, to the provisions of section 73.

Lessee not accepting to forfeit right to renewal of lease. Ibid., s. 75.

PART VII. DIVISION I.

On refusal to accept land to be offered at rent fixed by board. 1199, 1915, s. 76.

72. In case the right to renewal of a lease is forfeited under section 71, then after the expiration of the period of six months therein mentioned, the land shall be offered in one or more blocks under Part V., at the rental and price fixed by the board; and the improvements made by the outgoing lessee shall be paid for by the incoming tenant or purchaser to the Commissioner at a price to be fixed by the board; and the amount so paid shall be paid by the Commissioner to the outgoing lessee, less any amount that may be due by him under the expired lease.

Terms fixed on re-valuation may be accepted if land not taken when offered. Ibid., s 77.

73. (1) If the land comprised in a lease, or any part of that land, has not been taken on perpetual lease or agreement, when offered pursuant to section 72, the Commissioner may receive the lessee's acceptance of the revaluation under sections 67 and 68 at any time not being later than two months from the determination of the lease.

(2) Any lease in respect of which the Commissioner exercises the power hereby conferred shall, notwithstanding its previous determination, be deemed to have continued without interruption of the term thereof.

(3) Where part of the land has been taken when offered as mentioned in subsection (1) hereof this section shall apply only in respect of the part not so taken.

Extension of certain right of purchase leases. Inserted by 2060, 1931, s. 3. Subsec. (2) substituted by 2256, 1935, s. 2.

73a. (1) The Commissioner may on the recommendation of the board extend the term of any lease with a right of purchase granted under a repealed Act.

(2) Any such extension may be given from time to time on the recommendation aforesaid, but every such extension shall expire not later than five years after the passing of the Crown Lands Act Amendment Act, 1935.

(3) All the provisions, covenants, and conditions (including the right of purchase) of the lease shall be deemed to apply during such extended term.

DIVISION II.

DIVISION II.—MISCELLANEOUS LEASES.

Leases to discoverers. 1199, 1915, s. 80.

74. (1) Leases, on such terms and conditions as the Governor thinks fit, or as are prescribed, may be granted to any *bona fide* discoverer of any guano or other valuable substance or deposit (not being a metal, or metalliferous ore, or coal, or petroleum, or other mineral oil) of any Crown lands or other lands belonging to or vested in the Crown on which the discovery has been made.

(2) No person shall hold under such leases at one and the same time more than six hundred and forty acres.

Power of Commissioner to resume place when water found, and one square mile contiguous. 1199, 1915, s. 81.

75. (1) The Commissioner may resume possession of any well or other place where water has been found or conserved, and also of not more than one square mile of land contiguous thereto, without prejudice to any other power of resumption. Where water so found or conserved is artesian the area resumed may be five square miles or less. The lessee of the land previous to resumption shall have a preferential right to any proposed lease of the said land.

(2) Compensation for resumption shall be payable as provided by subsection (2) of section 53, except in respect of any well or other improvement made by the Commissioner.

Leases of resumed lands. Ibid., s. 82.

76. (1) The Governor may offer a lease of any such land by private contract or by public auction.

(2) Every such lease shall contain the conditions, on the part of the lessee, set forth in the sixth schedule, and such other covenants, terms, and conditions as the Governor thinks fit.

Miscellaneous leases. Ibid., s. 83. 1882, 1928, s. 16.

77. (1) Leases may be granted of any Government buildings not required for Government purposes, or of any Crown lands, or other lands belonging to or vested in the Crown, for any term not exceeding twenty-one years from the date thereof, at such rent, and upon such terms and conditions as the Commissioner thinks fit, for any of the following purposes, that is to say—

I. For obtaining and removing therefrom guano or other manure:

II. For obtaining and removing therefrom stone and clay, or other earth:

III. For sites for inns, stores, smithies, bakeries, or other buildings for business purposes which the Commissioner approves in thinly-populated districts:

IV. For sites for bathing-houses, bathing-places, mail stations, toll or punt houses:

V. For sites for tanneries, factories, sawmills, or paper-mills:

VI. For sites for wharves, quays, jetties, or landing places, and for sites for the depositing of materials or produce:

VII. For sites for ship or boat building, or repairing:

s. 77. R. v. SOUTH-EASTERN LAND BOARD; *ex relatione* BOWMAN, 4th December, 1893, S.A. *Register* (newspr.). As to the validity of miscellaneous leases for grazing purposes granted in 1884. The purposes referred to in paragraph X. are not restricted to the same class of subject matter as the previous paragraphs.

VIII. For any purposes for which licences may be granted under this Act:

IX. For grazing and cultivation, or for grazing only, to be allotted by the board:

X. For any other purpose approved by the Commissioner, whether similar to any of the above-mentioned purposes or not:

Provided that only Crown lands shall be leased under subdivision IX. of this section.

Inserted by 40, 1939, s. 6.

(2) Any lease granted under this section may provide that the rent thereunder shall be payable either quarterly or half-yearly or annually.

Leases to be offered at auction.
1199, 1915, s. 84.

78. Every lease granted under section 77 shall—

(*a*) except in the case of a lease granted under subdivision IX. thereof, be offered for sale by auction to the highest bidder, at such time and place, and at such upset rental, as is fixed by the Commissioner by notice published in the *Government Gazette* not less than four weeks before the day of auction:

(*b*) contain, in addition to other covenants, a covenant by the lessee to use the land *bona fide* solely for the purpose for which it is leased:

(*c*) contain a provision for forfeiture upon breach of any covenant.

Lands so offered by auction and not sold may be leased at the upset rental fixed by the Commissioner, and in the case of more than one applicant the lessee shall be decided by lot.

Power to reduce rent under miscellaneous lease.
Inserted by 2060, 1931, s. 4.

78a. (1) The Commissioner, if he is satisfied that the rent payable under any miscellaneous lease is too high, may make such (if any) reduction thereof as, after reference by the Commissioner to the board, is recommended by the board.

(2) Every reduction of rent under this section shall take effect from such date as the Commissioner in every case determines and every reduction of rent may be for such period as the Commissioner in every case determines.

(3) The powers of the Commissioner under this section may, in the case of any such lease, be exercised from time to time as the Commissioner thinks fit, notwithstanding that one or more reductions have already been made by the Commissioner in respect of the same lease.

DIVISION III.—VARIOUS.

DIVISION III.

Education lands to be dealt with by board. 1199, 1915, s. 85.

79. All leases of lands vested in the Commissioner of Educational Lands from and after the eighth day of December, eighteen hundred and eighty-eight, shall continue to be perpetual leases or agreements. All such lands which have not heretofore been dealt with shall hereafter be dealt with by the board under Part V.

Forest leases to be adjudicated upon by board. Ibid., s. 86.

80. Notwithstanding anything contained in the Woods and Forests Act, 1882, leases of lands comprised in any forest reserve under that Act (which leases may be for any term not exceeding forty-two years) shall, subject to the approval of the Commissioner of Forest Lands, be allotted, and the rent shall be fixed by the board in the same manner as lands within hundreds under Part V. of this Act.

Power of lessees of certain forest lands to surrender lease for perpetual lease or agreement. Ibid., s. 87

81. (1) The lessee of any land held under a lease for grazing and cultivation or for grazing granted under Part V. of the Woods and Forests Act, 1882, may, with the consent of the Commissioner, surrender his lease, or portion thereof, for a perpetual lease or an agreement: Provided that this section shall not apply to any of the lands described in the seventh schedule to this Act, or to any lands which have been since the first day of January, nineteen hundred and four, or after the passing of this Act are proclaimed as forest reserves in the *Government Gazette*, and none of any such lands shall be dealt with by the Commissioner except by resolution of Parliament.

(2) Upon any such surrender and perpetual lease or agreement being executed as to lands vested in the Commissioner of Forest Lands, the lands affected shall revert to the Crown, and cease to be vested in the said Commissioner.

PART VIII.

PART VIII.

THE LYRUP VILLAGE SETTLEMENT.

DIVISION I.—INTERPRETATION AND APPLICATION.

DIVISION I.

Interpretation. 1199, 1915, s. 88.

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

"association" means the Lyrup Village Association mentioned in Division II. of this Part:

"district" means district of the association:

"improvements" means substantial and permanent improvements, consisting of buildings, fencing, dams, tanks, wells, drainage and irrigation works, clearing, grading, cultivating, planting with fruit trees, vines, grasses, or cereals:

"inspector" means the Inspector of Village Settlements:

"irrigation works" means all channels, watercourses, machinery, and other property and improvements constructed or erected in the district of the association for irrigation purposes, and belonging to the association:

"reserved lands" means the land reserved for or occupied by the association or by the members thereof:

"rules" means the rules prescribed for the management of the association:

"trustees" means the trustees for the time being of the association.

This Part to apply so far as repealed Acts not exhausted. 1199, 1915, s. 89.

83. The provisions of this Part shall apply, in and with respect to the district, only to the extent to which the operation of the corresponding provisions of the repealed Acts has not been exhausted, with respect to the district, before the passing of this Act.

Passing of this Act not to affect operation of Irrigation Act. Ibid., s. 90. Amended by S.L.R. Act, 1935.

84. In case any of the provisions of this Part are inconsistent with anything lawfully done before the passing of this Act, or with the power to do anything after the said passing, in or with respect to the district or any lands in the district, under the Irrigation Act, 1930, the Irrigation Act, 1922, or any Act thereby repealed, the passing of this Act shall not be held to affect the validity of any such thing or to affect any such power.

DIVISION II.

DIVISION II.—CONSTITUTION OF THE LYRUP VILLAGE ASSOCIATION.

Continuance of Lyrup Village Association. 1199, 1915, s. 91.

85. The constitution and registration of The Lyrup Village Association are hereby further confirmed, and the association shall continue a body corporate, having perpetual succession and a common seal (of which the corporate name of the association shall form part) and the right and liability to sue and be sued, and shall have and be subject to the rights, authorities, duties, and liabilities hereinafter appearing.

Companies Act not to apply. 1199, 1915, s. 92. Amended by S.L.R. Act, 1935.

86. The Companies Act, 1934, shall not apply to the association.

Lands to be set apart and subdivided. 1199, 1915, s. 93.

87. (1) Out of the reserved lands the Commissioner shall set apart for the purposes of this Part—

(*a*) such land as he considers fit for horticultural purposes, hereinafter termed "horticultural lands";

(*b*) such land as he considers fit for agricultural purposes, hereinafter termed "commonage lands"; and

(*c*) land whereon any irrigation works are situated.

(2) The Commissioner shall cause the lands so set apart to be subdivided as follows:—

I. The horticultural lands into blocks of as nearly as practicable equal unimproved value, and of about ten acres in extent; and

II. The commonage lands into one or more blocks of such area as he determines.

District of association. Ibid., s. 94.

88. The lands set apart shall form the district of the association.

Horticultural blocks. 1488, 1921, ss. 4, 5, 14 and 16. 1934, 1929, s. 4. 2120, 1933, s. 13. Inserted by S.L.R. Act, 1935.

88a. (1) The land described in the tenth schedule is hereby declared to be added to the district of the association.

(2) Out of the said land the Commissioner shall set apart for the purposes of this Part—

(*a*) such land as he thinks fit for horticultural purposes; and

(*b*) such land as he thinks fit for the purpose of the construction of irrigation works.

(3) The Commissioner shall cause the lands so set apart to be subdivided into nine blocks (hereinafter in this section referred to as "horticultural blocks") of as nearly as practicable equal unimproved value.

(4) The Commissioner may lease any horticultural block set apart under this section to any person who is eligible for membership of the association, and thereupon that person shall be deemed for all purposes to become a member of the association.

(5) Notice shall be given in the *Government Gazette* that any unleased blocks are open to application. The notice shall contain such particulars as the Commissioner thinks proper.

(6) The blocks shall be allotted by the board.

(7) The provisions of subsection (6) of section 94 shall not apply to any such block.

(8) The Commissioner may, on granting a lease, obtain from the lessee such premium (if any), not exceeding the sum of ten pounds, as he thinks fit, and such premium shall be the property of the association.

(9) All unleased horticultural blocks shall be under the control of the association, and the association shall keep all improvements thereon in good repair.

(10) All the provisions of this Part shall, *mutatis mutandis*, so far as they are not inconsistent with this section, apply to and in respect of the land referred to in this section as if the said land had formed part of the reserved lands referred to in this Part.

Determination of district and leases.
1199, 1915, s. 95.
Amended by S.L.R. Act, 1935.

89. The Governor may, by proclamation, rescind the proclamation of the district, and determine any lease granted under this Part, under the Lyrup Village Association (District Extension) Act, 1921, under Part VIII. of the Crown Lands Act, 1915, or under Part VIII. of the Crown Lands Act, 1903, if the conditions of the lease are not well and faithfully observed and performed to the satisfaction of the Commissioner.

DIVISION III.

DIVISION III.—VALUATIONS.

Valuations.
1199, 1915, s. 96.

90. (1) Upon a subdivision under Division II. of this Part, separate valuations shall be made of—

(*a*) the irrigation works in the district;

(*b*) the improvements (if any) on each of the horticultural blocks in the district;

(*c*) the improvements (if any) on each of the blocks of the commonage land in the district;

(*d*) all the personal estate belonging to the association.

(2) If the Commissioner and the association do not forthwith after such a subdivision agree as to valuation, the amount thereof shall be decided by arbitration, pursuant to the Arbitration Act, 1891; one arbitrator being appointed by the Commissioner and the other by the trustees, or, if no unanimous nomination is made then by a majority of the trustees.

Basis of valuation. 1199, 1915, s. 97.

91. No improvement shall be valued at a sum in excess of the value thereof considered solely in connection with its worth to the association or to the members thereof at the time of valuation.

Excess of debts over valuations to be written off. Ibid., s. 98.

92. The amount of the valuations in respect of the district of the association determined as aforesaid shall be deemed to be the total indebtedness of the association to the Commissioner, and the excess (if any) over the valuation due by the association to the Commissioner shall be deemed to be written off.

Sums so written off to be provided in estimates. Ibid., s. 99.

93. The aggregate amount of the sums written off, and also the total indebtedness of any settlement which is closed, shall be provided for in seven equal parts by the Treasurer on the Estimates during the seven years next following the year in which the decision of the arbitrators or umpire is given.

DIVISION IV.—LEASES.

DIVISION IV.

Determination of occupation. Ibid., s. 100.

94. (1) When the valuation in the district is agreed or fixed, the Governor may, by proclamation, determine the occupancy by any person or the association of the reserved land in the district, and the said land shall thereupon revert to the Crown free from encumbrance.

(2) The Commissioner shall forthwith lease such of the horticultural blocks in the district of the association whose occupation has been so determined as he thinks fit, to individual members of the association on perpetual lease, subject as hereinafter appears.

(3) The Commissioner may lease any of such blocks to a person not a member of the association, and thereupon that person shall be deemed for all purposes to become a member of the association.

(4) Notice shall be given in the *Government Gazette* that any unleased blocks are open to application, and the notice shall contain such particulars as the Commissioner thinks proper.

(5) The blocks shall be allotted by the board.

(6) No person shall hold more than two blocks, and every lessee shall hold his block for his individual use and enjoyment.

(7) The Commissioner may, on granting a lease, obtain from the lessee such premium (if any) as he may think fit, and the said premium shall be the property of the association.

(8) Commonage lands shall be leased to and held by the association on perpetual lease, subject as hereinafter appears.

(9) All unleased horticultural blocks shall be under the control of the association, and the association shall keep all improvements thereon in good repair, and shall pay to the Commissioner interest at the rate of five per centum per annum on the amount of the agreed valuation.

Power to transfer leases of commonage lands.
1803, 1927, s. 3.

95. The association may, subject to the consent of the Commissioner, transfer the whole or any part of any commonage lands held on lease as mentioned in section 94.

Rent of horticultural and commonage lands.
1199, 1915, s. 101.

96. The annual rent to be reserved by any lease, whether of horticultural blocks or commonage lands, shall be fixed by the board, and shall commence at a date to be fixed by the Commissioner.

Payment of value of improvements on each horticultural block, and interest thereon.
Ibid., s. 102.

97. The amount of the valuation of the improvements, which shall be valued separately on each horticultural block, together with interest on that amount at the rate of four pounds ten shillings per centum per annum (all hereinafter included in the term "the members' debt") shall be a first charge upon the blocks, and shall be deemed a debt due by the lessee thereof for the time being, and shall be paid to the Commissioner by the lessee by forty-two annual instalments to be calculated at the rate of five pounds six shillings and tenpence for each hundred pounds of the amount and interest, the first of such payments to be made at the expiration of twelve months from the date of commencement of the lease: Provided that the lessee may pay the whole or any portion of the balance due at any time.

Payment of value of irrigation works and of improvements on commonage lands and interest.
Ibid., s. 103.

98. (1) The amount of the valuation of the irrigation works, the improvements on the commonage lands, and the personal estate as aforesaid of or in the district of the association, together with interest on the said amount at the rate of four pounds ten shillings per centum per annum (all hereinafter included in the term "the association's debt") shall be a first charge upon all the property of and shall be deemed a debt due by the association; and the said amount and interest shall be paid to the Commissioner by the association by forty-two annual payments, to be calculated at the rate of five pounds six shillings and tenpence for each hundred pounds of such amount and interest; the first payment to be made at the expiration of twelve months from the date of commencement of the lease.

(2) If and so often as the association fails to duly make the said annual payment, the same shall be recoverable from the members of the association, every member being liable to pay a proportion thereof, such proportion to be ascertained by dividing the amount of such annual payment (or the unpaid balance thereof) by the number of members of the association at the time when the default occurred; and the said proportion shall also be a charge upon the block of every such member, subject only to the charge created by section 97: Provided that the lessee may pay the whole or any portion of the said moneys at any earlier times than specified herein.

Provisions respecting lease of horticultural and commonage lands. 1199, 1915, s. 104.

99. Every lease of a horticultural block and of commonage lands shall be prepared by the Commissioner, and shall contain such covenants, conditions, and reservations as the Commissioner determines; and every lease of horticultural land shall contain the right to assign or sublet the same with the consent of the Commissioner.

Execution of leases. Ibid., s. 105. 1803, 1927, s. 4.

100. The leases shall be executed within the time and in the manner prescribed, and in the case of—

I. horticultural land, by the lessee:

II. commonage land, by the association,

or where the commonage land has been transferred, by the transferee thereof.

Power to forfeit lessee's interest. 1199, 1915, s. 106.

101. If the lessee fails to comply in any respect with the provisions of this Act or of his lease, the Commissioner may forfeit the interest of the lessee in the block, and cause that interest to be sold by auction or disposed of to any person qualified to become a member of the association, on such terms as he thinks fit. Any person so acquiring any such block shall be deemed to stand in the position of the original lessee, and, if not already a member, shall be deemed to be one.

DIVISION V.—IRRIGATION WORKS.

DIVISION V.

Vesting of irrigation works in Commissioner. 1199, 1915, s. 107.

102. (1) The property in all irrigation works is vested in the Commissioner for the purposes of this Act.

(2) When the charges imposed by sections 97 and 98 have been satisfied in respect of all the land in the district the Governor shall, by proclamation, vest in the association the irrigation works therein for the purposes of this Act, and the said irrigation works and the association shall no longer be subject to control by the Commissioner.

PART VIII. DIVISION V.

Vesting of water in irrigation works in association. 1199, 1915, s. 108.

103. All water in the said irrigation works shall be the property of the association, and shall be used by the association for the purposes of this Act.

Duty of association to manage irrigation works subject to Commissioner. Ibid., s. 109.

104. (1) The control of the irrigation works, including all alterations and additions thereto, and the collection and distribution of the water, shall belong to the association, but subject to the direction of the Commissioner, who may assume the control thereof, to the exclusion of the association.

(2) The association shall keep the irrigation works within its district in thorough repair and maintain and renew the same as occasion requires, to the satisfaction of the Commissioner.

(3) The expenses incurred by the association or by the Commissioner in such control, management, maintenance, renewal, and repair (hereinafter termed the "irrigation expenses") shall be payable by the members of the association equally, as and when the Commissioner determines. In the event of dispute, the decision of the Commissioner as to the proportion of expenses to be paid by each member shall be final.

DIVISION VI.

DIVISION VI.—MANAGEMENT OF THE ASSOCIATION.

Management. Ibid., s. 110.

105. The business and affairs of the association shall, subject in all things to the approval of the Commissioner and to this Act and to rules, be managed by a board to be appointed in manner prescribed.

Powers of Commissioner. Ibid., s. 111.

106. The Commissioner shall have the following powers with respect to the association whilst the whole or any part of the debts or amounts referred to in sections 97 and 98 remains unpaid:—

1. He may expel any member from the association, and may summarily eject and remove any such member from the district of the association: Provided that this power shall only be exercised in cases where notice has been given by the Commissioner to the trustees requiring the expulsion of the member under the rules, and default has been made in such expulsion for at least fourteen days after the giving of the said notice. If the association appeals against the decision of the Commissioner it shall be entitled to nominate an arbitrator, who, with one to be appointed by the Commissioner, shall have power to reconsider and may reverse the decision of the Commissioner. If they fail to agree, the arbitrators shall nominate an umpire, whose decision shall be final:

II. He may control and direct the expenditure of any moneys by the association:

III. He may call upon any trustee of the association to retire from office in any case where he deems it desirable for the welfare of the association that the trustee should so retire, and the trustee shall retire accordingly:

IV. He may require the association to increase the number of members, and if the said requisition is not complied with within six calendar months after the date of service of the requisition upon the association, may cancel the lease to the association:

V. He may make, amend, and repeal rules for the management of the association, and for the regulation, maintenance, and control of the irrigation works, and for the supply of water for irrigation and other purposes, and for the payment of all expenses incident thereto, and generally for the better carrying out of the purposes of this Part.

Restriction of further advance to association. 1199, 1915, s. 114.

107. No advances or allowances shall hereafter be made by the Commissioner to the association.

Duties of lessees not to remove, destroy, or injure improvements while moneys owing. Ibid., s. 115.

108. (1) While the debts or amounts referred to in sections 97 and 98, or any part thereof, remain unpaid the lessee of any horticultural block shall not—

(*a*) pull down or remove from the land whereon the same are; or

(*b*) knowingly suffer to be pulled down or removed; or

(*c*) wilfully or knowingly destroy, damage, or injure, or suffer to be destroyed, damaged, or injured,

any permanent building, erection, or irrigation work erected or made upon the land in the district of the association, without first obtaining the written consent of the Commissioner.

(2) Any person offending against any provision of this section shall forfeit his lease, and shall be guilty of a misdemeanour, and be punishable, on conviction, by imprisonment for any term not exceeding two years.

Appointment of inspector. Ibid., s. 116.

109. The Governor may appoint an officer, to be styled "The Inspector of Village Settlements," to assist the Commissioner in the execution of this Act.

Management of commonage lands.
1199, 1915, s. 117.
1740, 1926, s. 38.
1803, 1927, s. 5.

110. (1) The commonage lands to be leased to the association shall be under the control of the association, but subject to the direction of the Commissioner, and shall be worked by the association for the common good and benefit of the members thereof upon the principles of co-operation and equitable division, and the said lands may be sublet or transferred by the association in whole or in part: Provided that the consent of the Commissioner to the subletting or transferring shall be obtained in accordance with section 225 of this Act.

(2) Every member of the association shall provide or contribute, towards the maintenance and working of the irrigation works and the care and cultivation of the commonage lands of the association whereof he is a member, such labour (not being less than thirty-six days during every successive period of six months while he is a member) as the Commissioner requires, or such sum in cash as the Commissioner considers the equivalent of such labour; and every such member shall be entitled to credit in the books of the association for the value of the said work as the said value is assessed by the Commissioner, or for the said cash, as the case may be: Provided that the Commissioner may by notice in writing to the association—

(*a*) suspend the operation of this subsection either for a definite period fixed by the notice, or until the giving of a further notice removing the suspension; or

(*b*) postpone the time for making any payment under this section for such period as is fixed by the notice.

A notice given under this proviso may suspend the operation of this subsection as regards all or any of the members of the association according to the tenor thereof.

Commonage lands. accounts.
1199, 1915, s. 118.

111. (1) The association shall cause an account to be prepared once in every year of the working of the commonage lands, showing therein all expenditure and income in connection therewith, including the amount of the assessed value of the members' labour, and after making provision to the satisfaction of the Commissioner for rent, working expenses of the commonage lands (including a proportion of the irrigation expenses), and for depreciation and renewal of the plant, tools, and live stock of, and the irrigation works in the district of the association, the surplus (if any), after deducting twenty-five per centum therefrom for a sinking fund for renewal of plant, *et cetera,* may be divided amongst those persons who are then members of the association, in proportion to the amount of their respective credits in the books of the association for earnings since the thirty-first day of December, nineteen hundred and three.

(2) A copy of every account, certified by the trustees, shall be forwarded to the Commissioner.

112. All disputes of a civil nature between members arising out of the affairs of the association shall be settled by arbitration and umpirage of any three or more members, not parties to the disputes, in manner provided by the rules, and the parties thereto shall not be entitled to maintain any action in respect of the disputes except for the amounts determined by the award. The decision of a majority of such members shall be valid and effectual.

Arbitration. 1199, 1915, s. 119.

113. Any process or document served upon a trustee of the association shall be deemed to have been served upon the association.

Service of proceedings on association. Ibid., s. 120.

114. The proportion of irrigation expenses, and the annual instalments of the association's debts and of the members' debts payable by the association or by any member of the association, shall, amongst other ways, be recoverable by distress and sale of the goods and chattels of the association or person in default, together with such charges as are prescribed.

Annual instalments of charge and irrigation expenses recoverable by distress. Ibid., s. 121.

115. Notwithstanding the charges imposed by sections 97 and 98, the association, with the prior consent, in writing, of the Commissioner (which he is hereby authorised to give on such terms as he thinks fit), may, in the ordinary course of business, sell or dispose of any of the goods, chattels, and effects of the association free from the said charges.

Power of association, with Commissioner's consent, to dispose of goods, etc., notwithstanding charge thereon. Ibid., s. 122.

116. A copy of the rules of the association, and all the accounts of the association rendered to the Commissioner, shall be open to public inspection on payment of the sum of two shillings for every such inspection.

Public inspection of documents furnished to Commissioner. Ibid., s. 123.

PART IX.

PART IX.

HOMESTEAD BLOCKS.

DIVISION I.

DIVISION I.—ACQUIREMENT AND RE-OFFERING OF LANDS.

Lands may be acquired for blocks. 1199, 1915, s. 124.

117. The Commissioner may cause any Crown lands or lands reserved for the use of the aboriginal inhabitants of the State, except such lands as are reserved for the use and occupation of aboriginals at Point McLeay and Point Pearce, to be surveyed and offered as homestead blocks on perpetual lease or agreement; and may, subject to the approval of Parliament, by purchase, exchange, or otherwise, acquire lands suitable for homestead blocks, and cause the same to be surveyed and offered as homestead blocks on perpetual lease or agreement, as provided under Part V.: Provided that any lands so acquired shall not be sold for a sum less than the sum paid therefor by the Government, together with the cost of offering the same.

Value of blocks. Ibid., s. 125. 1882, 1928, s. 17.

118. Homestead blocks may be surveyed, offered, transferred, and held in any area.

Who may hold a block. 1199, 1915, s. 126.

119. A homestead block shall be held only by a person gaining his livelihood by his own labour.

Terms and conditions of lease. Ibid., s. 127.

120. Every such lease or agreement of a homestead block or blocks shall bind the lessee or purchaser to personally reside on the land for nine months in every year of the term, and shall contain such other terms and conditions as the Commissioner thinks fit.

Land not taken up as homestead blocks may be let on lease or sold. Ibid., s. 128.

121. If any land acquired for the purpose of homestead blocks remains unallotted for one year after first being offered, the same may be let on miscellaneous lease, or, if the board so recommends, such lands may, with the approval of the Commissioner, be sold by public auction for cash.

DIVISION II.

DIVISION II.—LEASES AND AGREEMENTS.

Lease or agreement may be granted of more than one block. Ibid., s. 129. 1882, 1928, s. 18.

122. A lease or agreement may include one or more block or blocks of land.

Receipts for rent or instalments to constitute holding title. 1199, 1915, s. 130.

123. The receipts for current rent or instalments shall be a sufficient holding title so long as the lessee or purchaser continues to reside on his land, but in case of transfer or mortgage a lease or agreement shall be taken out.

DIVISION III.—PROTECTED HOMESTEAD BLOCKS.

Commissioner may, at blockholder's request, make certain indorsement on lease or agreement, and land grant. 1199, 1915, s. 131.

124. If before or after the issue of his lease or agreement any blockholder, by notice in writing to the Commissioner, requests that the same be indorsed with the words "Protected homestead block" the Commissioner may, after causing notice of the request to be published twice, at least, in the *Government Gazette*, at the cost of the blockholder, cause the same to be so indorsed, and shall sign the same, and may also issue the land grant with the said indorsement thereon.

Effect of indorsement. Ibid., s. 132. 1311, 1917, s. 4. 1882, 1928, s. 19.

125. The effect of every such indorsement shall be—

(*a*) that no subsequent encumbrance by the blockholder of the land or his estate or interest therein, or of any part thereof respectively, except the loan agreement provided for in Division VI. of this Part. shall have any validity;

(*b*) that the land, or any part thereof, or the estate or interest of the blockholder therein, or any part thereof, shall not be liable to be seized or taken in execution for debt under process of any court, except for the payment of rates and taxes; and shall not vest in the trustee of his estate, in case of the blockholder's insolvency, or unless otherwise expressly provided by the will of the blockholder, become, on his death, assets for the payment of debts: Provided that this subdivision shall not apply to the recovery of any such debt incurred by the blockholder prior to the date of indorsement, or to any legal proceedings that may be taken in respect thereof.

And the land, and the blockholder's interest or estate therein, shall, notwithstanding subsequent transfer, continue to be so protected unless before registration of the transfer the transferee subscribes upon the transfer a request that the protection may be removed, or unless the blockholder forwards to the Commissioner a request in writing that the protection may be removed; in either of which cases the Commissioner shall cancel the indorsement before the lease, agreement, land grant, or certificate of title, as the case may be, is issued or returned to the transferee or blockholder, and the protection shall cease to operate accordingly as from the date of the cancellation.

DIVISION IV.—SPECIAL PROVISIONS.

DIVISION IV.

Allowance if block cultivated. 1199, 1915, s. 133.

126. If half of any block leased pursuant to Part VII. of the Crown Lands Act, 1888, is cultivated for seven years with vines or fruit trees, in manner prescribed and to the satisfaction of the Commissioner, the holder of the block shall be allowed two pounds for every acre so cultivated off his

purchase-money. No such allowance shall in any case exceed one-half of the purchase-money of the said block; but where the land is held on perpetual lease a reduction in the annual rent shall be made of two shillings for each acre cultivated: Provided that no such reduction shall be made in excess of an amount equal to one-half of the annual rental.

Husband and wife. 1199, 1915, s. 134.

127. Either husband or wife may hold a homestead block, but both husband and wife shall not hold a homestead block at the same time.

Performance of personal residence condition. Ibid., s. 135.

128. Personal residence by any member of the family of the blockholder shall be considered personal residence for the purposes of section 120.

When blockholder may assign or sublet. Ibid., s. 136.

129. When the Commissioner is satisfied that the blockholder is unable to continue in occupation of his block, he may allow him to assign or sublet his block, together with the improvements thereon.

DIVISION V.

DIVISION V.—AGREEMENT OR LEASE ON SURRENDER.

Homestead lease may be surrendered for agreement. Ibid., s. 137.

130. The lessee of any homestead lease, having complied with the provisions contained in his lease, and repaid all moneys due under his loan agreement, may make written application to surrender the lease under Part XI., and to obtain in lieu thereof an agreement or perpetual lease.

DIVISION VI.

DIVISION VI.—LOANS TO BLOCKHOLDERS.

Interpretation. Ibid., s. 138. 1703, 1925, s. 72.

131. In this Division—

"permanent building" means a dwelling-house, workshop, or stable:

"the bank" means the State Bank of South Australia established by the State Bank Act, 1925:

"the fund" means the Blockholders' Loan Fund under this Act mentioned in section 132.

Constitution of "Blockholders' Loan Fund." 1199, 1915, s. 139. 1703, 1925, s. 72.

132. (1) The Blockholders' Loan Fund, as constituted under the Crown Lands Act, 1915, is hereby continued.

(2) The Treasurer shall set apart for the purposes of the fund, out of moneys to be provided by Parliament for the purpose, a sum or sums not exceeding, with the amount of the fund at the passing of this Act, the sum of ten thousand pounds.

(3) The Blockholders' Loan Fund under this Act shall be under the control of the bank.

Principal moneys repaid to form part of fund, but interest to be paid into the revenue. 1199, 1915, s. 140. 1703, 1925, s. 72.

133. All moneys received by the bank in repayment of any advances under this Part shall be placed to the credit of the fund, and form part thereof. Moneys received as interest shall be paid to the Treasurer in aid of the general revenue of the State.

Accounts. 1199, 1915, s. 141. 1703, 1925, s. 72.

134. The bank shall keep accounts showing all operations on the fund, as well as all moneys paid to and received from every blockholder to whom any advances are made under this Part.

Advances. 1199, 1915, s. 142. 1703, 1925, s. 72.

135. (1) Advances may be made by the bank out of the fund to assist blockholders who observe and perform the covenants and conditions of their leases or agreements to the satisfaction of the bank—

(*a*) in erecting or completing permanent buildings and making permanent improvements on their blocks:

(*b*) in the making of improvements which permanently increase the capital value of the land.

(2) Such last-mentioned improvements may consist of clearing the land or fencing the same, erecting or making thereon permanent water improvements, such as dams, wells, tanks, water-courses, windmills, and the like.

Conditions of advances. 1199, 1915, s. 143. 1703, 1925, s. 72.

136. (1) Advances under paragraph (*a*) of section 135 shall not exceed one-half of the cost to the blockholder of the permanent buildings and other permanent improvements (if any) which are then subsisting, in good repair and condition, on his block.

(2) Advances under paragraph (*b*) of section 135 shall not exceed one-half of the value of the improvements.

(3) The amount owing to the bank by any blockholder for moneys advanced under section 135, with interest, shall not at any time exceed in the whole fifty pounds.

Applications. 1199, 1915, s. 144. 1703, 1925, s. 72.

137. Every application for an advance shall be made in writing to the bank, and shall—

(*a*) be in a form prescribed by the bank; and

(*b*) be supported by—

I. the report of an inspector or other authorised officer;

II. vouchers, statutory declarations, and other evidence showing the cost of and condition of the permanent buildings and other permanent improvements (if any); and

III. such other evidence as the bank may require and to its satisfaction.

In computing the cost the labour of the blockholder may be taken into account.

Agreement to be executed by blockholder. 1199, 1915, s. 145. 1703, 1925, s. 72.

138. Every blockholder, on obtaining an advance under section 135, shall enter into a loan agreement with the bank in the form in the eighth schedule, and the loan agreement may contain such additional terms and conditions as the bank thinks necessary.

Repayment of moneys. 1199, 1915, s. 146. 1703, 1925, s. 72.

139. All moneys advanced to any blockholder shall be repaid to the bank, together with interest at the rate of four per centum per annum, by twenty equal instalments, to be calculated at the rate of seven pounds seven shillings and twopence per centum of the amount advanced, the first instalment to be paid at the expiration of twelve months from the date of the advance: Provided that the blockholder may pay the whole or any portion of the amount advanced at any time prior to the expiration of the time agreed for payment.

Breach of agreement to render holding liable to forfeiture. 1199, 1915, s. 147.

140. Any breach by the blockholder of any of the terms or conditions of his loan agreement shall be deemed a breach of the conditions of the lease or agreement, and shall render the lease or agreement liable to be cancelled and forfeited in the same manner as Crown leases or agreements where rent is in arrear. No grant shall issue for any land until all advances have been repaid.

Extension of time for repayment. Ibid., s. 149. 1703, 1925, s. 72.

141. In cases of hardship the bank may extend the time for making any payment on account of any loan under this Part: Provided that the deferred payments shall bear interest at the rate of five pounds per centum per annum.

Duties of blockholders not to remove, destroy, or injure improvements while moneys owing in respect of advances. 1199, 1915, s. 150. 1703, 1925, s. 72.

142. (1) While any principal or interest moneys remain owing by any blockholder in respect of advances made, the blockholder shall not pull down or remove, or knowingly suffer to be pulled down or removed, or wilfully or knowingly destroy, damage, or injure, or suffer to be destroyed, damaged, or injured, any permanent building, erection, or water improvement erected or made upon the block: Provided that the bank may give its consent in writing for the removal of any structure.

(2) Any person offending against the provisions of this section shall forfeit his lease or agreement and shall be guilty of a misdemeanour, and be punishable, on conviction, by imprisonment for any term not exceeding two years.

PART IX. DIVISION VI.

Voiding of mortgages, etc., subject to advances. 1199, 1915, s. 151.

143. If any blockholder obtains an advance under this Part no sublease, mortgage, or other encumbrance (except the agreement provided for in the eighth schedule) subsequently executed by him shall have any validity until the advance and all interest in respect thereof have been fully repaid and satisfied.

PART X.

Cf. U.K., 21 & 22, Geo. 5, c. 41.

PART X.

CLOSER SETTLEMENT.

DIVISION I.

DIVISION I.—POWER TO ACQUIRE LANDS.

Acquisition of land by repurchase. 1199, 1915, s. 153.

144. The Commissioner may, by repurchase, acquire land for the purposes of this Part at a cost not exceeding six hundred thousand pounds in any period of two financial years (reckoning the first of such periods to have commenced on the first day of July, nineteen hundred and ten), subject to the following conditions, namely:—

I. That the repurchase is recommended and the improvements are valued by the board and the Surveyor-General:

II. That within thirty days after any repurchase, if Parliament is then in session, or if Parliament is not then in session, then within thirty days after the commencement of the next session, there shall be laid before both Houses copies of all recommendations and valuations pursuant to which the purchase has been made, and full particulars of—

(*a*) the locality, area, and quality of the land repurchased, and of the improvements thereon;

(*b*) the names of the vendors and of all persons interested in the sale; and

(*c*) the price paid and the land tax assessment.

Acquisition of land compulsorily. Ibid., s. 154. 1231, 1915, s. 3. 1546, 1922, s. 123. Amended by 1990, 1930, s. 3.

145. The Commissioner may also acquire land for the purposes of this Part, as provided by Division II. of this Part.

The provisions of section 144, *mutatis mutandis,* shall apply in respect of the land so acquired, and the cost limited by that section shall include the cost of that land: Provided that—

I. with regard to—

(*a*) land acquired as being land adjacent to the River Murray suitable for reclamation or irrigation (and not as being a large estate or part thereof); and

(*b*) land acquired pursuant to section 153 or 154,

the condition imposed by subdivision I. of section 144 shall, for the purposes of this section, be read as a condition that the acquisition shall be recommended by the Surveyor-General and the Director of Lands; and

II. with regard to land acquired pursuant to section 155, the said condition shall, for the said purposes, be read as a condition that the acquisition shall be recommended by the Surveyor-General and the Engineer-in-Chief.

Registrar-General to make necessary entries and cancel certificates of title. 1199, 1915, s. 155. Amended by S.L.R. Act, 1935.

146. (1) Upon the transfer or conveyance of any land acquired under this Part pursuant to agreement being lodged with the Registrar-General, or upon the Commissioner furnishing the Registrar-General with a copy of the proclamation under section 163 as to any land, the Registrar-General shall make any entry in the register-book or other book at the Lands Titles Registration Office or General Registry Office necessary or proper to evidence the vesting of the land in His Majesty.

(2) If any of such land is under the provisions of The Real Property Act, 1886, the Registrar-General shall, upon the lodging of the transfer with him, or receiving the said copy of the proclamation (as the case may be), make an entry on the folium relating thereto in the register-book as follows:—"Cancelled, the land (*or* part of the land) having been acquired by the Crown," and shall sign the entry. Thereafter the land referred to in this subsection shall, for the purposes of The Real Property Act, 1886, and until again alienated from the Crown, be dealt with and regarded in all respects as if it had never been alienated from the Crown.

(3) Upon receiving the grant, certificate of title, or other muniment or muniments of title of the land referred to in the next preceding subsection the Registrar-General shall cancel the same by indorsing thereon the words—"Cancelled, the within land (*or* part of the within land) having been acquired by the Crown," and shall sign the indorsement.

DIVISION II.

DIVISION II.—COMPULSORY ACQUISITION OF LANDS.

Interpretation. 1199, 1915, s. 156. 1231, 1915, s. 4.

147. In this Division—

"Crown lease" means—

(*a*) any agreement under any of the Crown Lands Acts containing a covenant to purchase; and

(*b*) any lease or agreement for a lease, and any licence, permit, right to occupy or use, or

similar right or interest, or agreement thereof, whether the same is in perpetuity or for a term of years or otherwise, and whether containing or not containing a right to purchase, and under whatever Act or other authority the same may have been granted or made,

before or after the passing of this Act granted or made by or on behalf of the Crown, or by or on behalf of any person or authority holding lands belonging to the Crown, or in whom or which lands belonging to the Crown were or are vested:

"large estate" means the whole or any part or parts of the land, not being situated within the boundaries of any city, town, or township, owned in fee simple by the same owner or owners in a case in which the unimproved value of the aggregate of all the land so owned by the said owner or owners exceeds twenty thousand pounds, and of which land the owner is not at the time of the preliminary notice under section 156, according to the certificate of the Surveyor-General, cultivating annually at least one-third of the arable land:

"owner," when used with reference to—

(*a*) a large estate, means the owner of a freehold estate in possession:

(*b*) other land, means the owner of a freehold estate in possession, except where the land is comprised in a Crown lease, in which case it means the lessee thereof:

"purchase-money" or "price" includes compensation for the resumption of a Crown lease or consideration to be paid for the surrender thereof:

"River Murray" includes every tributary, affluent, effluent, creek, ana-branch, or extension of, and every lake or lagoon connected with, the River Murray:

"sale" includes surrender of a Crown lease:

"transfer" includes surrender of a Crown lease.

148. Subject to subsection (5) of section 153, in administering this Division lands shall not be deemed not to adjoin other lands merely because they are separated therefrom by a public or other road or by a stream or water-course.

What lands to be deemed to be adjoining lands.
1199, 1915, s. 157.

149. The provisions of this Division shall apply notwithstanding anything contained in The Real Property Act, 1886.

Act to apply notwithstanding Real Property Act, 1886.
Ibid., s. 158.

PART X. DIVISION II.

Incorporation of the Compulsory Acquisition of Land Act, 1925.
1199, 1915, s. 159.

150. The provisions of sections 10, 35, 36, 37, 40, 41, 55 to 63, both inclusive, 78, and subsection (11) of section 29 of the Compulsory Acquisition of Land Act, 1925, so far as applicable and not inconsistent with the provisions of this Division, are incorporated with and shall form part of this Division, and, for the purposes of this Division, the following expressions when used in the said Act shall have the following meanings, namely:—"promoters" shall mean the Commissioner of Crown Lands: and "special Act" shall mean this Division.

Power to acquire lands (other than large estates) which are subject to Crown leases.
Ibid., s. 160.

151. (1) When any land—

(*a*) is comprised in a Crown lease; and

(*b*) might, if it were held for a freehold estate, be acquired under the provisions of this Division otherwise than as being a large estate,

the said land may be acquired by the Commissioner under the provisions of this Division; and for the purpose of carrying out the acquisition thereof the Governor may accept the surrender of the said lease or resume the land comprised therein.

(2) Every reference in this Division to the acquiring or acquisition of land, other than a large estate, shall be read as including a reference to the acceptance on surrender of a Crown lease, or the resumption of the land comprised therein; and, for the purposes of anything to be done under this Division, in a case where the land is comprised in a Crown lease, the provisions of this Division shall be read as varied in such a manner as may be appropriate for dealing with land comprised in a Crown lease.

(3) For the purposes of sections 159, 160, and 162, land comprised in a Crown lease shall be regarded as land under The Real Property Act, 1886.

Acquisition of large estates and lands adjacent to River Murray.
Ibid., s. 161.
1311, 1917, s. 5 (1).
1546, 1922, s. 123.
Amended by 1990, 1930, s. 3.

152. (1) Large estates may be acquired by the Commissioner for the purposes of extension of agriculture and closer settlement in manner prescribed by this Division; and large estates and any lands adjacent to the River Murray suitable for reclamation or irrigation may be acquired by the Commissioner for the purposes of extension of agriculture and closer settlement in manner prescribed by this Division.

(2) A certificate signed by the Surveyor-General stating that any land therein specified is adjacent to the River Murray, and a certificate signed by the Director of Lands stating that any land therein specified is suitable for reclamation or irrigation, shall be conclusive as to the matters so stated.

(3) No land shall be acquired under this Division, as being land adjacent to the River Murray suitable for reclamation or irrigation, except on the written recommendation of the Surveyor-General and the Director of Lands: Provided that this subsection shall not apply to the acquisition of any land as being a large estate or part thereof.

Acquisition of lands required for working lands adjacent to River Murray.
1199, 1915, s. 162.
1311, 1917, s. 5 (2).
1546, 1922, s. 123.
Amended by 1990, 1930, s. 3.

153. (1) Subject to subsection (2) of this section, any land of any kind which adjoins land adjacent to the River Murray and suitable for reclamation or irrigation, may be acquired by the Commissioner under the provisions of this Division.

(2) No land shall be so acquired by virtue of the power conferred by this section unless—

(*a*) the land which it adjoins as aforesaid is at the same time or has previously been so acquired, or is otherwise vested in His Majesty the King or in some person on behalf of His Majesty;

(*b*) the Surveyor-General has signed a certificate stating that the land adjoins lands adjacent to the River Murray and the Director of Lands has signed a certificate stating that the lands are suitable for reclamation or irrigation;

(*c*) the Director of Lands has signed a certificate stating that the land is required for the convenient or better working or use of the said land which it adjoins;

(*d*) the Surveyor-General and the Director of Lands have recommended in writing that the land be so acquired; and

(*e*) the Commissioner has offered the occupier of the land the right to select a block of swamp or reclaimed or irrigable land and an area of other land in conjunction therewith.

(3) Any such certificate of the Surveyor-General or the Director of Lands shall be conclusive as to the matters stated therein.

(4) All the provisions of this Division as to lands adjacent to the River Murray suitable for reclamation or irrigation shall apply to land to be acquired, or land which has been acquired, by virtue of the power conferred by this section.

(5) Notwithstanding anything in this Division contained, no land shall, for the purposes of this section, be deemed to adjoin land from which it is separated by the main stream of

the River Murray, and not merely by a creek, affluent, effluent, ana-branch, or extension of, or lagoon connected with, the said river.

Land irrigable by waters from the River Murray. 1231, 1915, s. 5 (part). 1546, 1922, s. 123. Amended by 1990, 1930, s. 3.

154. (1) Subject to subsection (2) of this section, any land which, by means of irrigation with water from the River Murray, is capable of being rendered suitable for closer settlement may be acquired by the Commissioner in manner prescribed by this Division, for the purposes of extension of agriculture and closer settlement, notwithstanding that the said land is neither adjacent to the River Murray nor adjoining land adjacent to that river, as mentioned in sections 152 and 153.

(2) No land shall be so acquired by virtue of the power conferred by this section, unless the Director of Lands has certified in writing that, by means of irrigation with water from the River Murray, the land is capable of being rendered suitable for closer settlement, and the Surveyor-General and the Director of Lands have recommended in writing that the land be so acquired.

(3) The certificates of the Surveyor-General and Director of Lands shall, for the purposes of this Division, be conclusive as to the matters stated therein.

(4) All the provisions of this Division as to lands adjacent to the River Murray suitable for reclamation or irrigation shall apply to the land to be acquired or acquired by virtue of the powers conferred by this section.

Land requiring drainage. 1231, 1915, s. 5 (part).

155. (1) Subject to subsection (2) of this section, any land which, by means of drainage works, is capable of being rendered suitable for closer settlement may be acquired by the Commissioner in manner prescribed by this Division, for the purposes of extension of agriculture and closer settlement.

(2) No land shall be so acquired by virtue of the power conferred by this section unless the Surveyor-General and the Engineer-in-Chief have certified in writing that, by means of drainage works, the land is capable of being rendered suitable for closer settlement, and have recommended in writing that the land be so acquired.

(3) The certificate of the Surveyor-General and the Engineer-in-Chief shall, for the purposes of this Division, be conclusive as to the matters stated therein.

(4) All the provisions of this Division as to lands adjacent to the River Murray suitable for reclamation or irrigation shall apply to land to be acquired or acquired by virtue of the power conferred by this section.

Preliminary notice of intention to inspect.
1199, 1915, s. 163.

156. (1) When the Commissioner considers it advisable to acquire any large estate or other land under this Division he may direct an inspection thereof to be made; and he shall, not less than four weeks prior to the date of the proposed inspection of the land, give a preliminary notice in writing to the owner thereof of his intention to inspect and of the date when an inspection of the land will be made.

(2) The notice shall specify the acreage, description, and boundaries of the land so far as the same are known to the Commissioner.

Power to enter land for inspection.
Ibid., s. 164.

157. After notice under section 156 has been given as to any large estate or other land, the Commissioner or any person authorised by him may enter at any time or times upon the large estate or other land and inspect the same and the improvements thereon, and may remain thereon for any reasonable time to acquire all necessary information for the purpose of making an inspection of the land and improvements.

Notice of intention to acquire.
Ibid., s. 165.

158. (1) When the Commissioner intends to acquire any large estate as to which a preliminary notice has been given under section 156, he shall send to the owner a further notice, stating that at the expiration of two years from the date of the last-mentioned notice it is the Commissioner's intention to acquire the land, and what price he is prepared to give for it.

(2) When the Commissioner intends to acquire any land adjacent to the River Murray, as to which land a preliminary notice has been given under section 156, he shall send to the owner a further notice, stating that at the expiration of one year from the date of the last-mentioned notice it is the Commissioner's intention to acquire the land and what price he is prepared to pay for it.

Duties of Registrar-General to note in register book.
Ibid., s. 166.
Amended by S.L.R. Act, 1935.

159. After notice under section 158 as to any land has been given, the Commissioner may send a copy of the notice to the Registrar-General, at the Lands Titles Registration Office, and the Registrar-General shall thereupon note the same in the register-book if the land is under The Real Property Act, 1886, and if the land is not under The Real Property Act, 1886, the Registrar-General shall register a memorial of the said notice in the General Registry Office for Deeds.

Effect of notice to bind all persons interested.
1199, 1915 s. 167.

160. As regards land under The Real Property Act, 1886, when a notice under section 158 has been noted as provided by section 159, and as regards land not under that Act, when

a memorial of a notice given under section 158 has been registered as provided by section 159, the said notice shall be deemed to have been duly given to all persons—

(*a*) at the time of the noting or registration, as the case may be; or

(*b*) after the said time and within a period of two years, as regards a large estate, or one year as regards other land, after the giving of the preliminary notice under section 156,

having any right, estate, or interest in the land; and the Commissioner may, at any time within six months after the expiration of the said period of two years or one year, as the case may be, acquire the land under this Division, notwithstanding any disposition of the land or any part thereof, or of any right, estate, or interest in or over the land or any part thereof, or any other dealing with or in any way affecting the land or any part thereof, and notwithstanding the noting in the register-book or registration in the General Registry Office for Deeds of any such disposition or dealing.

Rights of owner to reserve land not exceeding twenty thousand pounds in value.
1199, 1915, s. 168.
1231, 1915, s. 6.

161. (1) At any time before the expiration of the notice given under section 158 as to any large estate, the owner thereof, unless he has in the meantime agreed in writing with the Commissioner for the sale thereof, shall have the right, by notice in writing given to the Commissioner, to select and retain out of the large estate, for the purpose of his residence or business, or both, land in one block where possible, and if land of the value of twenty thousand pounds cannot be retained in one block, then in not more than two blocks specified in the notice: Provided that in no case shall the value of the lands selected and retained, exclusive of the value of the improvements thereon, exceed in the aggregate twenty thousand pounds.

(2) When a notice in accordance with subsection (1) of this section has been given, the land properly comprised in the notice shall cease to be affected by the notice given under section 158.

(3) This section shall not apply to any land on or adjacent to the River Murray suitable for reclamation, whether the land is or is not a large estate or part thereof.

Rights of owner to require whole estate to be taken.
1199, 1915, s. 169.

162. (1) At any time before the expiration of the notice given under section 158 as to any large estate or other land, the owner thereof, unless he has in the meantime agreed in writing with the Commissioner for the sale thereof, may, by notice in writing given to the Commissioner, require him to

take all lands specified in the last-mentioned notice of which he is the owner, and which adjoin and are occupied together with the land comprised in the said notice under section 158.

(2) After a notice in accordance with subsection (1) of this section has been given, the land comprised in the said notice under section 158 shall not, without the consent in writing of the owner thereof, be acquired under this Act, unless the land properly comprised in the said notice under subsection (1) of this section is also acquired, nor shall the last-mentioned land be so acquired without the said consent, unless the land comprised in the said notice under section 158 is also so acquired.

(3) When a notice under subsection (1) of this section has been given as to any land the Commissioner shall, except for the purposes of section 161, be deemed to have duly given a notice under section 158 of his intention to acquire that land. The Commissioner may send to the Registrar-General a notice in writing of his intention to acquire that land, and the said notice shall be noted in the register-book if the land is under The Real Property Act, 1886. Upon such noting, if the land is under the said Act, or upon the giving of the notice by the owner to the Commissioner, if the land is not under the said Act, the provisions of section 160 shall apply to the said land.

Mode of acquiring the land.
1199, 1915, s. 170.
1231, 1915, s. 7.
1311, 1917, s. 6.

163. (1) Subject to sections 161 and 162, at any time within six months after the expiration of the period of two years, as regards a large estate, or one year as regards other land, from the giving of the preliminary notice under section 156 if—

(*a*) the amount of the purchase-money to be paid therefor has been agreed between the Commissioner and the owner or has been ascertained by arbitration as mentioned in section 165; and

(*b*) the amount of the said purchase-money has been paid or tendered; and

(*c*) the owner of the large estate or other land, as the case may be, has refused or failed to sign a conveyance or transfer thereof to His Majesty the King,

it shall be lawful for the Governor, by proclamation published in the *Government Gazette,* to declare that the provisions of this Division shall apply to the land comprised in the notice, and that the same is thereby compulsorily taken and acquired.

(2) On and after the date of the publication of the proclamation in the *Government Gazette* the land therein specified shall, without further or other authority than this

Act, become and be absolutely vested in His Majesty the King, free and discharged from all leases, licences, contracts, trusts, obligations, estates, interests, charges, rates, and easements, whatsoever.

Amended by 1990, 1930, s. 3.

(3) For the purposes of this section, the tender of an order on the Treasurer of the State, signed by the Director of Lands, the Assistant Director of Lands, or the Surveyor-General for the amount of the purchase-money to be paid for a large estate or other land, shall be deemed to be a tender of the amount of the said purchase-money.

Copy of proclamation to be furnished to Registrar-General.
1199, 1915, s. 171.

164. When a proclamation has been made under section 163 as to any land the Commissioner shall furnish the Registrar-General with a copy of the proclamation.

Price to be determined by arbitration failing agreement.
Ibid., s. 172.

165. Where any land is acquired under this Division, the price to be paid for the same and the improvements thereon shall, failing agreement between the Commissioner and the owner within one month after notice in writing given by one party to the other of the price which he is willing to pay or accept in settlement, be determined by the arbitration of three arbitrators, one of whom shall be a Judge of the Supreme Court, who shall act as president and umpire, and one of whom shall be appointed by the Commissioner and one by the owner: Provided that if either party fails to appoint an arbitrator within one month after notice in writing by the other of the appointment of his arbitrator, the matter shall be determined by the Judge and the arbitrator already appointed.

Price.
Ibid., s. 173.

166. (1) The price to be paid for any land and improvements acquired by proclamation under this Division, if the price is fixed by arbitration, shall not, where the owner acquired the land by purchase for a money consideration, be less than that money consideration.

(2) Subject to subsection (1) hereof, where money has, prior to the twelfth day of January, nineteen hundred and eleven, been *bona fide* lent on the sole security by way of mortgage or other encumbrance of land acquired under this Division, no less sum shall, without the consent of the mortgagee or encumbrancee, be paid as the price of the land than the amount of the money so lent and unpaid at the time of so acquiring the land, together with any interest thereon due and unpaid at the time of the said acquisition.

Award of arbitrators.
Ibid., s. 174.

167. (1) Either party to the arbitration shall have the right to appeal to the Supreme Court, but only on a question of

law, and the said court may, on any such appeal, make such order as it deems proper, and the arbitrators shall give effect to the order; but otherwise the decision of the arbitrators shall be final and not subject to any appeal.

(2) Where an arbitrator has misconducted himself he may be removed by the Supreme Court or a Judge thereof.

(3) Where an award has been improperly procured the said court or a Judge thereof may set the award aside.

(4) The award may be made an order of the Supreme Court on the application of the Commissioner or the owner, and may thereafter be enforced accordingly.

(5) The arbitrators or, on appeal, the Supreme Court, may make such award and directions as to the costs of any parties concerned in the arbitration as he or they deem just.

Service of notices. 1199, 1915, s. 175.

168. All notices required to be given under this Division to any owner shall be deemed to be duly given when posted to or left at his usual or last known place of abode or business.

This Division not to apply to town lands. Ibid., s. 176.

169. This Division shall not apply to any land within the boundaries of any city, town, or township.

DIVISION III.

DIVISION III.—PURCHASE OF LAND BY ARRANGEMENT.

Purchase of land by arrangement with intending settlers. 1900, 1929, s. 2.

170. (1) If—

(*a*) the owner of any land suitable for subdivision into two or more blocks makes an offer in writing to the Commissioner offering to sell the said land to the Commissioner at a price named in the offer; and

(*b*) two or more persons (according to the number of blocks into which the land is suitable for subdivision) in writing request the Commissioner to purchase the land for the purpose of subdividing it into blocks for allotment to the said persons under agreement for sale and purchase, containing such terms and conditions as agreements under Division V. of this Part contain and submit to the Commissioner a scheme for subdividing and allotting the land in blocks,

the Commissioner may cause the said land to be valued by the board and the Surveyor-General with a view to purchasing the same as hereinafter mentioned.

(2) If—

(*a*) the values placed on the land by the board and the Surveyor-General are equal to or greater than the price required by the owner of the land and the applicants are willing to pay to the Commissioner a sum equal to one-tenth of the said price; or

(*b*) either or both of the values placed on the land by the board and the Surveyor-General are less than the price required by the owner of the land, but the applicants are willing to pay to the Commissioner a sum equal to one-tenth of the said values or if the said values are different, one-tenth of the lower value, and also the difference between the said values, or if the said values are different, the lower value and the said price, and the Commissioner consents thereto; and

(*c*) the value placed on the land by the board and the Surveyor-General is such that when the land is subdivided into the required number of blocks and allotted to the applicants no block (exclusive of the improvements thereon) will exceed in value the limit of value provided by this Act; and

(*d*) the board is satisfied that the applicants are eligible and suitable persons to hold the said land; and

(*e*) the Commissioner, on the recommendation of the board and the Surveyor-General, approves of the scheme for subdividing and allotting the land; and

(*f*) the applicants pay in every case where the said values are both equal to or greater than the price required by the owner, a sum equal to one-tenth of the said price and in any case where either of the said values is less than the said price, one-tenth of the said values, or if the said values are different one-tenth of the lower value and also the difference between the said values and the said price or if the said values are different, the difference between the lower of the said values and the said price, and make a deposit of the prescribed amount and severally agree—

I. to pay to the Commissioner each his due proportion of the cost of inspecting, surveying, and subdividing the land; and

II. to purchase the land from the Commissioner in blocks according to the scheme submitted, and comply with any conditions prescribed or imposed by the Commissioner,

the Commissioner may purchase the said land and, when purchased, the land shall be allotted to the applicants in accordance with the scheme, without any notice being published in the *Gazette*, as required by section 171.

The provisions of Divisions V. and VI. of this Part shall, with the necessary modifications, apply to land allotted and agreements issued under this section.

(3) In this section "land" includes land held for any estate of freehold, or under a Crown lease or agreement; and "owner" includes the lessee under a Crown lease or the purchaser under an agreement.

Inserted by 40, 1939, s. 7.

Purchase of land for allotment to one settler.

Inserted by 40, 1939, s. 8.

170a. (1) Subject to this section, where any person holds under lease or agreement any land which is not a living area, the Commissioner may out of moneys provided by Parliament, purchase other land for allotment to that person under lease or agreement for the purpose of increasing his holding to a living area: Provided that no land shall be purchased under this section unless—

(*a*) it forms part of an existing holding which in the opinion of the Commissioner is more than a living area; or

(*b*) it forms the whole of an existing holding which in the opinion of the Commissioner is less than a living area.

(2) The person desiring land to be purchased for allotment to him under this section shall submit to the Commissioner the following particulars:—

(*a*) a description of the land to be purchased and, if that land is part of an existing holding, of the balance of the holding from which it will be severed:

(*b*) the price at which the owner of the land offers to sell it:

(*c*) the area of the other land intended to be worked as one holding in conjunction with the land to be purchased:

(*d*) the estimated value of the land to be purchased and, if that land is part of an existing holding, of the balance of the holding from which it will be severed.

(3) The Commissioner may, if he thinks fit, cause the land sought to be purchased to be valued by the board and the Surveyor-General.

(4) No land shall be purchased—

(*a*) at a price in excess of the value placed upon it by the board and the Surveyor-General; or

(*b*) where the values placed upon the land by the board and the Surveyor-General differ, at a price in excess of the lower of those values.

(5) No land shall be allotted to any applicant unless—

(*a*) the board is satisfied that he is a suitable person to hold a block:

(*b*) he has first paid to the Commissioner one-tenth of the price paid by the Commissioner for the land in addition to any moneys payable on or in respect of the granting of the agreement.

(6) No land shall be allotted under this section to any person if the effect of the allotment will be that that person will hold land, the unimproved value of the fee simple of which exceeds seven thousand pounds, or which is capable of carrying more than ten thousand sheep.

(7) The provisions of Divisions V. and VI. of this Part shall, with necessary modifications, apply to land allotted, and agreements issued under this section.

(8) In this section the expression "living area" means an area which in the Commissioner's opinion is sufficiently large to provide a reasonable living for one family.

Loans for schemes of closer settlement. Inserted by 40, 1939, s. 8.

170b. (1) Subject to this section, the Commissioner may out of moneys provided by Parliament, make loans for the purpose of—

(*a*) enabling any two or more intending settlers to buy any existing holding which in the Commissioner's opinion is capable of being subdivided so as to provide a living area for each settler; or

(*b*) enabling any settler whose holding is less than a living area to purchase for the purpose of increasing his holding to a living area, any land which—

(i.) forms part of an existing holding which, in the opinion of the Commissioner, is more than a living area; or

(ii.) forms the whole of an existing holding which, in the opinion of the Commissioner is less than a living area.

(2) The person or persons desiring such a loan shall submit to the Commissioner the following particulars:—

(*a*) the price at which the owner of the land intended to be purchased offers to sell it:

(*b*) where any land is to be purchased for subdivision the proposed mode of subdivision and the persons who will hold the blocks into which the land is to be subdivided and the estimated value of each block:

(*c*) where part of an existing holding is being purchased, the estimated value of the remainder of the holding:

(*d*) particulars of any other land held by the person or persons desiring the loan.

(3) The Commissioner may, if he thinks fit, cause any land sought to be purchased to be valued by the board and the Surveyor-General.

(4) No loan made in respect of any block shall exceed—

(*a*) nine-tenths of the value placed upon that block by the board and the Surveyor-General; or

(*b*) if the values placed on the block by the board and the Surveyor-General differ, nine-tenths of the lower of those values.

(5) No loan shall be made to any applicant unless—

(*a*) the board is satisfied that he is a suitable person to hold a block:

(*b*) the applicant executes a first mortgage of his block to the Commissioner, such mortgage to be in such form and containing such terms, covenants and conditions as the Commissioner approves, and gives the Commissioner such other security (if any) for the loan as the Commissioner requires.

(6) No loan shall be made under this section to enable any person to purchase any land, if the effect of the purchase will be that that person will hold land, the unimproved value of the fee simple of which exceeds seven thousand pounds, or land which is capable of carrying more than ten thousand sheep.

(7) The Commissioner may under this section make loans upon the security of land held for any estate of freehold or under a perpetual lease from the Crown or an agreement granted by the Crown.

(8) No stamp duty shall be payable on any transfer or mortgage executed to carry out any transaction under this section.

(9) In this section the expression "living area" means an area which in the Commissioner's opinion is sufficiently large to provide a reasonable living for one family.

DIVISION IV.

DIVISION IV.—HOW ACQUIRED LANDS TO BE DEALT WITH.

Land acquired, how dealt with.
1199, 1915, s. 177.
1231, 1915, s. 8 (2).
1882, 1928, s. 20.
1900, 1929, s. 3.

171. Subject to sections 170, 172 and 173, all land acquired under this Part, or under the provisions of any repealed Act dealing with closer settlement, shall be dealt with as follows:—

I. Town lands may be sold by auction for cash, and reserves may be dedicated by proclamation in like manner as Crown lands are dedicated:

Inserted by 40, 1939, s. 9.

IA. Any town lands offered for sale by auction and not sold by auction may, on the recommendation of the board, be sold by private contract for cash at any price not less than the upset price at which the lands were last offered at auction:

II. The land, except such portions as may be required for town lands or for dedication or reservation for public purposes, shall be cut up into blocks, none of which shall, except as provided by paragraph III. hereof, exceed seven thousand pounds in unimproved value:

III. Where in cutting up the land improvements to a large value will necessarily be included in one or more blocks, and the value of the said improvements would be out of proportion to the value of the said block or blocks if the limitation of seven thousand pounds were not exceeded, the block or blocks may exceed the said limitation in unimproved value:

IV. When the board considers there are more improvements on any block than are required for working the block, then only the value of such improvements shall be added to the price of the block as, in the opinion of the board, are reasonable, having regard to the size and situation of the block; and the balance of the value of the said improvements shall be added to the price which has been paid for the whole estate of which the said block forms a part:

V. Before the blocks are offered the board, subject to the approval of the Commissioner, shall fix the value of every block and of the improvements thereon, including the reasonable cost of any work effected by the Government: Provided that the price so fixed shall not in the aggregate be less than the amount paid for the land, together with the cost of necessary accommodation works, and of offering the same for sale:

VI. Notice shall be given in the *Government Gazette* that the blocks are open to be purchased, and the notice shall contain particulars of the area of every block and the value of the improvements thereon, the area to be cleared so as to render the same available for cultivation or so as to improve the grazing capacity thereof, the annual instalments of principal and interest to be paid in respect of the purchase-money of the block and improvements, and such other particulars as the Commissioner thinks proper:

VII. The blocks shall be allotted by the board.

Power to postpone allotment of closer settlement lands.
1199, 1915, s. 178.

172. (1) Any lands acquired for the purposes of closer settlement, as to which a resolution of both Houses of Parliament has been passed, whether before or after the acquisition thereof, to the effect that this section shall apply, may, until such time as the Governor by proclamation declares that they shall be used for closer settlement, be dealt with as provided by subsection (2) hereof as if they were Crown lands not acquired for the purposes of closer settlement.

(2) Any such land may be let on miscellaneous lease for any term not exceeding twenty-one years, subject, however, to a condition that after the publication in the *Government Gazette* of a proclamation under this section as to the said land, or as to the said land and any other land, the term of the said lease shall be determinable by the Commissioner by not less than six months' notice in writing to the lessee.

Occupation or lease of lands acquired, pending execution of drainage or other improvements.
1231, 1915, s. 8 (1).
1311, 1917, s. 7.

173. (1) When any land has been acquired for the purposes of closer settlement, but it is necessary or desirable for drainage, irrigation, or other works or improvements to be carried out, in order to render the land suitable or more suitable for closer settlement, the Commissioner may permit the person who, prior to the acquisition of the land, was the owner thereof, to remain in occupation thereof for such time, and, upon such terms and conditions as are agreed between the parties.

(2) If in such a case as mentioned in subsection (1) of this section the person therein referred to does not, within one month after the land is acquired, apply in writing to the Commissioner to be allowed to continue in occupation, or, if in any case no arrangement is made under the said subsection within two months after the land is acquired, the land may be let in one block or in such blocks as the Commissioner thinks proper, to such persons and for such terms and on such terms and conditions as the Commissioner thinks proper.

DIVISION V. DIVISION V.—AGREEMENTS FOR SALE AND PURCHASE.

Covenants to be contained in the agreement. 1199, 1915, s. 179. 1405, 1919, s. 8. 1882, 1928, ss. 21 and 22.

174. (1) The blocks shall be offered for sale, and, subject to section 175, the purchaser shall enter into an agreement for the term of thirty-five years for sale and purchase (hereinafter called the "agreement") as follows:—

I. To purchase his block and the improvements (if any) thereon at the price fixed by the board, and to pay the purchase-money and interest thereon by the following half-yearly instalments, to be paid in advance, namely:—The first ten half-yearly instalments shall be equal and shall be calculated at the fixed rate on the price fixed as aforesaid, and each of the subsequent sixty half-yearly instalments shall be equal and shall be calculated at a rate sufficient to repay during the said term of thirty-five years the price fixed as aforesaid together with interest at the fixed rate on the balance thereof from time to time remaining unpaid: Provided that the purchaser—

(*a*) shall have the option of completing the purchase of his block at any time after the expiration of six years from the date of the agreement on paying the balance of the purchase-money under the agreement and all interest due at the time of the completion of his purchase, and complying with all the terms, covenants, conditions, and provisions of the agreement:

(*b*) may, on the date appointed by the agreement for the payment of any of the half-yearly instalments, pay in advance any part (being the sum of fifty pounds or a multiple thereof) of the purchase-money under the agreement, whereupon interest on the amount so paid shall cease, and the amounts of the instalments subsequently falling due shall be decreased ratably to the amount so paid:

(*c*) may pay the whole or any part of the purchase-money for improvements at any time:

II. To spend on his block during every year of the first five years a sum equal to three pounds for every one hundred pounds of his purchase-money in substantial improvements, consisting of buildings, fencing, or water improvements: Provided that—

(*a*) the amount so spent by the purchaser in excess of the amount required to be expended in any one year shall be set off against the expenditure required in the next or following years; and

(*b*) so much of any amount of the purchase-money paid by him as was paid on account of improvements may be deducted from the amount to be expended under this section:

III. To clear so as to render available for cultivation or so as to improve the grazing capacity thereof, the area specified in that behalf in the notice in the *Government Gazette* declaring that the blocks are open to be purchased. Any money spent on clearing land under this paragraph shall be deemed to be money spent on substantial improvements within the meaning of the last preceding paragraph.

(2) The provisions of section 47 apply to an agreement under this Part.

(3) In filling up the blank spaces in the form of the covenant in the ninth schedule which binds the purchaser to clear land so as to render the same available for cultivation or so as to improve the grazing capacity thereof, the following directions shall be followed:—In the first, second, and third spaces there shall be inserted an area equal to one-eighth of the area so specified in the notice in the *Government Gazette,* and in the fourth space an area equal to the full area so specified.

(4) The Commissioner shall determine whether the said covenant to clear has been complied with in any case, and if his decision is disputed by the purchaser the matter shall be determined by arbitration in manner provided by section 289. Land shall be deemed to have been cleared for cultivation or so as to improve the grazing capacity thereof only when it has been rendered free from substantially the whole of the scrub growth thereon.

Provision in case of undeveloped land. Inserted by 2363, 1937, s. 4.

174a. (1) In any case where the Commissioner is of opinion that, by reason of the undeveloped condition of any block, this section should apply to the agreement in respect of the block, the Commissioner may direct that this section shall apply. In any such case the term of the agreement shall be for fifty-nine years and the purchase-money and the interest thereon shall be payable by the following instalments, namely:—

I. Five per centum of the purchase-money shall be paid at the time of the application to purchase:

II. For the first four years of the term of the agreement no instalments of principal or interest shall be payable:

III. During the next five years of the said term no portion of the purchase-money shall be payable, and interest only at the fixed rate on the balance of the purchase-money shall be payable in half-yearly instalments:

IV. Thereafter the balance of the purchase-money and interest thereon at the fixed rate (including the amount of interest accruing during the first four years of the said term) over the whole term of the agreement shall be payable in such equal half-yearly instalments as will pay the full amount of the balance of the purchase-money and interest as aforesaid during the said term.

(2) Except as provided by paragraph I. of subsection (1), every instalment shall be paid at the end of the period in respect of which it is payable, and not in advance.

(3) The provisions of section 180 shall not apply to any such agreement.

(4) If any application is made to the Commissioner for the transfer of any such agreement the Commissioner may, before giving his consent to the transfer, require the applicant to pay the whole or any part of the interest which has accrued during the first four years of the term of the agreement. If any such amount is paid, the amount of the half-yearly instalments subsequently falling due shall be decreased ratably to the amount so paid.

(5) In a case in which this section applies, the agreement shall contain the terms, covenants, conditions, and provisions provided for by section 174: Provided that the purchaser shall have the option of completing the purchase at any time after the expiration of six years from the date of the agreement, on paying the purchase-money, or the balance thereof, with interest at the fixed rate on the purchase-money, or on the balances thereof, from time to time remaining unpaid, from the date of the agreement to the date of completion, and complying with all the terms, covenants, conditions, and provisions of the agreement.

Terms and covenants in certain cases. 1199, 1915, s. 180. 1405, 1919, s. 9. 1900, 1929, s. 4.

175. (1) In the case of an agreement to which the Commissioner directs that this section shall apply, the term shall be either fifty-five years or sixty-four years, as the Commissioner

directs, and the purchase-money and the interest thereon shall be payable by the following half-yearly instalments, namely:—

I. During the first two and one-half years of the term of the agreement no portion of the purchase-money shall be payable, and only one-half of the interest at the fixed rate on the purchase-money shall be payable:

II. During the next two and one-half years of the said term no portion of the purchase-money shall be payable, and interest only at the fixed rate shall be payable:

III. Thereafter the purchase-money and interest thereon at the fixed rate (including the amounts of interest accruing during the first two and one-half years of the said term) over the whole of the term of the agreement shall be payable in such equal half-yearly instalments as will pay the full amount of the purchase-money and interest as aforesaid during the said term.

(2) The first of the said instalments shall be paid at the time of the application to purchase (as provided by section 180), and every subsequent instalment shall be paid at the close of the period in respect of which it is payable, and not in advance.

(3) In a case in which this section applies, the agreement shall contain the terms, covenants, conditions, and provisions provided for by section 174: Provided that the purchaser shall have the option of completing the purchase at any time after the expiration of six years from the date of the agreement, on paying the purchase-money, or the balance thereof, with interest at the fixed rate on the purchase-money or on the balances thereof from time to time remaining unpaid, from the date of the agreement to the date of completion, and complying with all the terms, covenants, conditions, and provisions of the agreement.

Extension of period for payment of certain limited instalments.
Inserted by 2060, 1931, s. 5.

175a. (1) In the case of any agreement to which section 180 of the Crown Lands Act, 1915 (as enacted before the passing of the Crown Lands Act Amendment Act, 1929) applies, the Commissioner may direct that the number of instalments payable at the rate specified in paragraph I. of subsection (1) of the said section shall be increased from sixteen to such number, not exceeding twenty-six, as the Commissioner thinks fit.

(2) If the number of any such instalments payable as aforesaid is increased, the subsequent instalments payable under the agreement shall be re-calculated so as to provide that each of the subsequent instalments shall be equal and calculated at a rate sufficient to repay during the term of sixty-four years the price fixed by the board, together with interest on the balance thereof at the fixed rate for the whole of the said term.

Power to extend existing agreements to term not exceeding sixty-four years on recommendation of board.
1199, 1915, s. 181. 1900, 1929, s. 5.

176. (1) In the case of an agreement under Part X. of the Crown Lands Act, 1903, Part X. of the Crown Lands Act, 1915, or Part X. of this Act, the Commissioner may direct the board to consider whether an extension of the term of the agreement should or should not be granted under this section.

(2) The board shall thereupon consider the matter, and—

(*a*) may recommend that the term be extended for such period (if any) as they think fit, but not so as to extend it beyond sixty-four years from the commencement thereof, as fixed by the agreement:

(*b*) if the board recommends an extension, shall fix the amount of the instalments of purchase-money to be paid during the remainder of the term (as so extended), and may, if the board thinks proper, recommend that the said term be subdivided into periods of any lengths respectively, fixing for the several periods different amounts of instalments of purchase-money, and, if the board thinks proper, different rates of interest to be included in the instalments:

Amended by 2120, 1933, s. 3.

(*c*) for the purpose of fixing the amounts of the instalments, may, in any case it thinks fit, assume that the provisions of subsection (1) of section 175 applied to the agreement at the time of the making thereof, and that the instalments payable during the first five years of the term of the agreement were as provided in the said subsection; and in any case to which this paragraph applies the amounts of the instalments fixed pursuant to this section shall be fixed accordingly:

(*d*) for the purpose of fixing the amounts of the instalments, may capitalize, and add to the purchase-money, the whole or any part of such amounts of any instalments then in arrear as represent interest.

(3) If the Commissioner approves of the recommendations of the board he may grant the extension on the terms recommended, and, from the time when notice in writing stating the

period of the said extension and the terms on which it is granted is given to the purchaser, the agreement shall be construed so as to give effect to the said extension and terms, and shall be binding on the parties as so construed.

(4) Except so far as may be necessary to give effect to this section, the agreement shall not be affected by anything in or done under this section; and the terms, covenants, conditions, and provisions thereof shall continue in force subject to any variations which may be necessary to give effect to this section.

176a. (1) In the case of any agreement under Part X. of the Crown Lands Act, 1903, Part X. of the Crown Lands Act, 1915, or Part X. of this Act, the board may capitalize the whole or any part of such amounts of any instalments then in arrear as represent interest.

Power of board to capitalize arrears of interest on agreement. Inserted by 2060, 1931, s. 6.

(2) Any amount so capitalized shall be added to the purchase-money, and shall be payable at the times the instalments of the said purchase-money are payable. Each of such payments thereof shall be equal, and shall be calculated to repay during the period the said instalments are payable, the said capitalized amount together with interest at the fixed rate on the balance thereof from time to time remaining unpaid.

177. Where the land is allotted on personal residence the agreement shall contain a provision that the purchaser shall personally reside on the land for nine months in every year.

Personal residence. 1199, 1915, s. 182.

178. Every agreement shall contain the terms, provisions, and conditions stated in the ninth schedule (subject to such modifications thereof or additions thereto as are required for giving effect to the provisions of this Act), which terms, provisions, and conditions shall be in the form set forth in the said schedule, or in a form to the like effect.

Form of agreement. Ibid., s. 183.

179. Every agreement shall be forwarded and executed in manner provided by section 52.

Execution of agreement. Ibid., s. 184.

180. Every application to purchase shall be accompanied by an amount equal to the first half-yearly instalment of the purchase-money of the land and improvements.

Application to be accompanied by instalment. Ibid., s. 185.

181. (1) No agreement shall be made under this Part with any person who is already the holder of repurchased land of the unimproved value of seven thousand pounds, or who would thereby become the holder of repurchased land exceeding that value, except under the conditions provided in paragraph III. of section 171.

Limitation of value of holdings under agreement or by transfer or subletting. Ibid., s. 186. 1900, 1929, s. 6.

(2) No transfer of any agreement under this Part, and no subletting of any land comprised in any such agreement, shall be permitted except with the consent of the Commissioner, and on the recommendation of the board. No such consent shall be given to any transfer or subletting in favour of any lessee or owner of land who would thereby become the holder of repurchased land exceeding seven thousand pounds of unimproved value, except under the circumstances and conditions mentioned in paragraph III. of section 171.

(3) Provided the limit fixed by this section is not exceeded as to repurchased land, nothing in this section shall be deemed to prevent any person from holding repurchased and other lands up to the unimproved value of seven thousand pounds.

Lands unallotted may be let.
1199, 1915, s. 187.
1405, 1919, s. 10.
1740, 1926, s. 4.

182. (1) When any block or blocks remain unallotted for one year after being first offered, as mentioned in section 174, the same may be let on miscellaneous lease at a rental and on terms to be fixed by the board, subject to the approval of the Commissioner; or if the board so recommends, the land may, with the approval of the Commissioner, be sold by public auction, a reserve price being fixed by the board, on the following terms, namely:—Twenty-five per centum of the purchase-money in cash, and the balance in five yearly instalments, bearing interest at the fixed rate on the amount paid for the land; or, with the like recommendation and approval, the land may be offered for sale under section 174 at a reduced price fixed by the board.

Inserted by 40, 1939, s. 10.

(2) Any such land so offered for sale by auction and not sold at auction may, on the recommendation of the board, be sold by private contract at any price not less than the upset price at which the land was last offered for sale by auction and on the other terms and conditions on which it was so offered.

Power of lessees of certain perpetual leases to surrender for agreement under this Act.
1199, 1915, s. 188.

183. (1) The lessee of any perpetual lease of repurchased land granted under the provisions of any repealed Act, passed before the Crown Lands Act, 1903, dealing with closer settlement may, having fulfilled all the covenants and conditions contained in his lease, and given three months notice of his intention so to do, surrender the said lease, and obtain in lieu thereof an agreement under this Act.

(2) The purchase-money to be paid under any such agreement shall be the value of the block and improvements as fixed by the *Government Gazette* notice when the block was last allotted, after deducting therefrom all moneys paid on account of improvements thereon up to the date of the surrender of

the lease; or, if the *Gazette* notice contains no value, then at a price to be fixed by the board, and approved by the Commissioner, but so that the price fixed shall not be less than the original price paid for the land and the cost of offering.

Power to surrender miscellaneous lease. 1882, 1928, s. 23. Amended by 2256, 1935, s. 3.

184. (1) The lessee of any lease of repurchased land granted under the provisions of this Act or the Crown Lands Act, 1903, or any repealed Act passed after the latter Act, and the lessee of any miscellaneous lease of repurchased land may, having fulfilled all the covenants and conditions contained in his lease, apply in writing to surrender the lease and obtain in lieu thereof an agreement under this Part at a price to be fixed by the board, and approved by the Commissioner.

(2) The provisions of section 211, *mutatis mutandis,* shall apply to and in respect of the said application and surrender.

Power to surrender agreement as to lands purchased after 18th December, 1902. 1199, 1915, s. 189.

185. (1) The holder under agreement of any lands purchased by the Crown since the eighteenth day of December, nineteen hundred and two, may surrender his agreement for an agreement in terms of section 174, and the new agreement when executed shall be dated as and from the date of the surrendered agreement.

(2) The moneys (if any) remaining to the credit of the holder under the surrendered agreement shall, after deducting therefrom all interest, charges, and costs due in respect of the said land by the holder, be applied towards payment for the lands held by him under the new agreement: Provided that all moneys paid for improvements under the surrendered agreement shall be accepted as payment on account of those improvements under the new agreement.

Power of holder of existing agreement to pay part of purchase-money in advance. Ibid., s. 190.

186. Notwithstanding anything in any of the Crown Lands Acts, the provisions of proviso (*b*) to subdivision I. of subsection (1), of section 174 shall also apply to agreements which have been made under Part X. of the Crown Lands Act, 1903.

Reservations as to growing timber. Ibid., s. 191. 1882, 1928, s. 24.

187. No growing timber shall be cut or otherwise injured or destroyed during the first five years of the term of any agreement under this Part or under the corresponding provision of any repealed Act, except for the purposes of improvement on the land or for cultivation, and then only with the written consent of the Commissioner: Provided that this section shall not apply as regards cutting, injuring, or destroying any growing timber in accordance with any covenant which is contained in an agreement and requires the purchaser to clear any land.

PART X. DIVISION V.

Application of payments. 1199, 1915, s. 192.

188. All moneys received by the Commissioner from either lessees or purchasers of any repurchased lands shall be dealt with as follows:—

I. Moneys repaid on account of principal, whether for land or improvements, shall be paid to the credit of the Land Repurchase Loan Fund, and shall be used for the redemption of stock, or for the purchase of land under this Act:

II. Moneys paid as interest or rent, whether on the price of improvements or on the price of land, shall be paid into the general revenue.

Statement to be laid before Parliament. Ibid., s. 193. 1311, 1917, s. 8. Amended by 1990, 1930. s 3.

189. The Director of Lands shall, in the month of July in every year, prepare a statement containing the following particulars in connection with repurchased lands for the financial year ending on the thirtieth day of June immediately preceding the said month:—

I. The amount advanced from the loan fund and the amount of interest paid thereon:

II. The amount received as principal and interest from purchasers holding land under agreement:

III. The amount of arrears of principal and interest, if any.

Every such statement shall be laid before both Houses of Parliament, if Parliament is then sitting, and if Parliament is not then sitting, then within thirty days after the beginning of the next session of Parliament.

Power to fix annual rate of interest on closer settlement lands. 1405, 1919, s. 7.

190. (1) The Treasurer may, from time to time, by notice published in the *Government Gazette*, fix the annual rate of interest to be paid on the purchase price of blocks offered for sale under this Part, and may, in the same manner, annul any rate so fixed.

(2) Any rate so fixed shall come into force on the fourteenth day after the date of the *Government Gazette* in which the same is published, and shall continue in force until the fourteenth day after the date of the *Government Gazette* in which the notice annulling the same is published.

DIVISION VI.

DIVISION VI.—THE COLLECTION AND RECOVERY OF RENTS.

Receiver of rents. 1199, 1915, s. 194.

191. The collection of rents, instalments, and interest payable under the provisions of this Part, or under the provisions of any repealed Act dealing with closer settlement, shall be under the control, direction, and management of an officer employed in the Crown Lands Department, appointed by the Governor, and to be styled the "Receiver of Rents."

Action may be maintained in the name of the receiver.
1199, 1915, s. 195.

192. (1) If any rent, instalment, or interest is in arrear the receiver, without prejudice to his right to recover in any other way, may sue for the same, together with interest at the rate of five per centum per annum, and the costs attendant thereon, in any court of competent jurisdiction as a debt due to the receiver.

(2) Any such action may be maintained in the name of the receiver without specifying the name of the person holding the office, and shall not be liable to be abated by any vacancy or change in the office of the receiver or otherwise.

Extension of time for payment.
Ibid., s. 196.
Proviso added by 2120, 1933, s. 4.

193. The receiver may extend the time for payment of any amounts due under an agreement: Provided that on all such extensions interest shall be charged on the said amounts at the rate of five per centum per annum: Provided, further, that in any case of hardship the receiver may remit the whole or any part of such interest, whether chargeable before or after the passing of the Crown Lands Act Amendment Act, 1933.

Power of Commissioner to extend time for payment for improvements in certain cases.
1199, 1915, s. 197.

194. Where the board certifies that the improvements on any block allotted under the Closer Settlement Act, 1897, are greater than are required for working the block, or that the instalments payable for improvements under the said Act are in the opinion of the board too high, the Commissioner may extend the time allowed by the said Act for payment for the said improvements for any period not longer than ten years, and the yearly instalments payable by the allottee shall be readjusted accordingly.

Forfeiture.
Ibid., s. 198.

195. (1) An agreement shall be liable to forfeiture if any instalment thereunder is in arrear for six months, the purchaser having had at least three months previous notice in writing demanding its payment.

(2) Upon any such forfeiture all moneys paid to the State by the intending purchaser shall immediately and absolutely be the property of the State Government.

Power to cancel lease or agreement liable to forfeiture.
Ibid., s. 199.
1405, 1919, s. 5.

196. (1) Where—

(*a*) any lease or agreement is liable to forfeiture; or

(*b*) any instalment under any agreement is in arrear as mentioned in section 195; or

(*c*) there has been a breach of any of the covenants or conditions contained in or implied by any lease or agreement,

the Commissioner may, on the recommendation of the receiver, by notice in the *Government Gazette,* cancel the lease or agreement.

(2) The Registrar-General, at the request of the receiver, shall make the necessary entries in the register book for giving effect to the cancellation.

(3) Upon any such cancellation the purchaser shall have no further interest or title, either at law or in equity, in the land included in the lease or agreement, or in or to any money which may have been paid thereunder.

(4) The land included in the cancelled lease or agreement shall thereafter be dealt with as if it were a block newly offered under this Part: Provided that the Commissioner may, at the request of the receiver, offer the interest of any defaulting purchaser or lessee in the land held by him for sale, in manner provided by section 61, and execute a transfer as provided by section 63: Provided further that the Commissioner may in any case in which, on the recommendation of the board, he thinks fit, dispose of the land or any part thereof included in the cancelled lease or agreement in any manner provided in section 182 notwithstanding that the land has not remained unallotted for one year after being first offered.

Proviso added by 2120, 1933, s. 5.

(5) The Commissioner may, in exercising the power to sell or transfer a defaulting purchaser's or lessee's interest in any agreement or lease conferred by this section exercise any such power with respect to the whole or, from time to time, with respect to any part or parts of the land comprised in the agreement or lease, as he thinks fit.

(6) All the provisions of this Act with respect to the sale or transfer of the defaulting purchaser's or lessee's interest in the agreement or lease shall, *mutatis mutandis,* apply to the sale or transfer of his interest in part only of the land comprised in the agreement or lease.

(7) In case of the sale or transfer of the defaulting purchaser's or lessee's interest in part only of the land comprised in the agreement or lease, the Commissioner may cancel the agreement or lease as to the whole of the said land or as to any part thereof so sold, and may prepare and issue to the purchaser of that part a new agreement or lease therefor, and the new agreement or lease shall be effectual for all purposes as a transfer to the purchaser of the right, title, and interest of the defaulting purchaser or lessee in the part of the said land comprised in the new agreement or lease.

Returns of cancellations to be placed before Parliament. 1199, 1915, s. 200.

197. The receiver shall cause a return of all cancellations, setting forth the reasons therefor, to be annually placed before Parliament before the first day of September.

DIVISION VII.—SPECIAL PROVISIONS WITH REGARD TO CLOSER SETTLEMENT LANDS. DIVISION VII.

Heading amended by 2060, 1931, s. 7.

* * * * * * * * * * * S. 198 repealed by 2060, 1931, s. 8.

199. (1) The holder of any block under an agreement entered into under Part X. of the Crown Lands Act, 1903, Part X. of the Crown Lands Act, 1915, or Part X. of this Act, may, with the consent of the Commissioner, surrender the agreement for a perpetual lease of the said block. Surrender of agreement for perpetual lease. 1199, 1915, s. 202. Subsec. (1) amended by 2060, 1931, s. 9.

(2) Upon an application being made under this section the board, subject to the approval of the Commissioner, shall fix— Substituted by 2256, 1935, s. 4.

(*a*) the annual rent at which the lease may be obtained in perpetuity; and

(*b*) the annual rent at which the lease may be obtained for the first ten years after which the rent shall be fixed in perpetuity as hereinafter provided.

In fixing the rents pursuant to this section the board shall take into consideration any amount of purchase price paid on or before the date from which the lease issued in lieu of the surrendered agreement is granted or deemed to be granted.

(3) The applicant may at his option obtain a perpetual lease at the rent fixed pursuant to paragraph (*a*) of subsection (2), or a perpetual lease of which the rent for the first ten years shall be as fixed pursuant to paragraph (*b*) of subsection (2) and of which the rent from the end of the first ten years shall be such amount as is fixed at the expiration of the said period by the board, subject to the approval of the Commissioner. Substituted by 2256, 1935, s. 4.

(3A) The rent to be fixed under any such lease shall in no case exceed an amount equal to interest on the price at which the applicant could have completed purchase at the time of the surrender of the agreement, calculated for one year at the rate of interest provided for in the agreement. Inserted by 2256, 1935, s. 4.

(3B) Any lease granted pursuant to this section may be granted as from any period not exceeding five years before the date of the approval to the surrender, and any lease so granted shall be deemed to have taken effect from the commencement of such period. The said period shall be fixed by the board subject to the approval of the Commissioner. Any amounts paid during any such period in respect of instalments under the agreement surrendered as aforesaid, Inserted by 2256, 1935, s. 4.

which became due during the said period, shall be deemed to have been paid in pursuance of the covenants of the lease and shall be appropriated accordingly and, except for that purpose, the agreement shall be deemed to have been determined from the commencement of the said period.

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

(4) The provisions of subsections (2), (3), and (4) of section 211, *mutatis mutandis*, shall apply to and in respect of any such application and surrender.

Inserted by 2120, 1933, s. 6 (b), and amended by 40, 1939, s. 11.

(5) The holder of the block surrendered as aforesaid may at the time of making the application for surrender make application for the insertion in the perpetual lease of a provision for the purchase of the block. In any such case there shall be inserted in the perpetual lease a provision giving the lessee a right to purchase the fee simple of the land comprised in the lease at any time during that portion of the term of the surrendered agreement which was unexpired at the time of the surrender, at the price at which the lessee could have completed purchase at the time of the surrender.

Reduction of purchase money under agreement instead of surrendering for perpetual lease.
1199, 1915, s. 203.
1311, 1917, s. 9.

200. (1) The holder of any block under an agreement entered into under Part X. of the Crown Lands Act, 1903, Part X. of the Crown Lands Act, 1915, or Part X. of this Act may, instead of applying under section 199, apply to the Commissioner for a reduction of the purchase-money payable under his agreement.

Subsec. (1) amended by 2060, 1931, s. 10.

(2) Any such application shall be referred by the Commissioner to the Surveyor-General and the board for inquiry and report and to recommend what (if any) reduction of purchase-money should be made.

Amended by 2256, 1935, s. 5.

(3) If the Surveyor-General and the board report that it is proved to their satisfaction—

(*a*) that the purchase-money payable under the agreement is too high; and

(*b*) that the enforcement of the agreement would inflict hardship upon the holder,

the Commissioner may grant a reduction of the purchase-money, not exceeding the reduction recommended by the Surveyor-General and the board. Every such reduction shall take effect from such date as the Commissioner in each case determines.

(4) In any case where a reduction is granted under this section the Commissioner shall adjust the amounts of the instalments of purchase-money and interest payable under the agreement so as to give effect to the reduction; and the adjustment so made shall be binding on the holder, and the agreement shall be read so as to give effect thereto.

(5) If any holder of an agreement, the interest under which has been reduced under section 7 of the Crown Lands Act Amendment Act, 1910, obtains a reduction under this section, the reduction under the said section 7 and the adjustments consequent thereon shall cease as from the date when the reduction made under this section begins to run.

Power to grant privileges under sections 199 and 200 may be granted though rent or instalments in arrear.

1199, 1915, s. 204.

201. (1) An application under section 199 to surrender an agreement for a perpetual lease, or under section 200 for a reduction of the purchase-money payable under an agreement, may be granted, notwithstanding that instalments payable under the agreement are in arrear.

Subsec. (2) amended by 2120, 1933, s. 7.

(2) When in any such case the application is granted, the full amount of the arrears of interest shall be paid, together with interest on the said amount, at such rate not exceeding five pounds per centum per annum, in such instalments, and at such times, as are determined by the board when fixing the rents or by the Surveyor-General and the board when recommending a reduction of the purchase-money (according to the nature of the case), and shall be payable and recoverable in the same manner as the rents or instalments to become due and the payment of the said instalments of arrears of interest shall be deemed to be a covenant implied by the agreement, or, as the case may be, by the lease issued in place of the surrendered agreement.

Amended by 2060, 1931, s. 11, as amended by 2120, 1933, s. 14.

(3) When in any case the application is not granted, the Commissioner may, nevertheless, agree to accept payment of the arrears in such instalments, and at such times, as are recommended by the Surveyor-General and the board; and the instalments of arrears which the Commissioner so agrees to accept shall be payable and recoverable in the same manner as the instalments to become due.

Option of other relief where that provided by section 199 or 200 not obtainable.

1199, 1915, s. 205.

Amended by 2060, 1931, s. 12 (a).

202. (1) In any case of an agreement entered into under Part X. of the Crown Lands Act, 1903, Part X. of the Crown Lands Act, 1915, or Part X. of this Act, the Commissioner may, if he is satisfied that the strict enforcement of the agreement would inflict hardship upon the holder, refer the matter to the board to make such (if any) recommendation as they deem proper under this section.

(2) The board may recommend—

(*a*) such (if any) temporary reduction of the interest payable under the agreement as they think reasonable, and the period during which, in their opinion, the reduction should operate; and

* * * * * * * * * * *

Para. (b) repealed by 2060, 1931, s. 12 (b).

(3) The Commissioner may cause notice in writing of the recommendation (if any) of the board to be given to the applicant.

(4) If the applicant, within one month after the giving of the said notice, gives the Commissioner notice in writing of his desire to accept the recommendation, the Commissioner shall cause an adjustment to be made in the amounts of the instalments, and, in case of postponement as aforesaid, of the times of payment thereof, so as to give effect to the recommendation.

(5) Notice in writing of the terms of the adjustment shall be given to the applicant, and the same shall thereafter be binding upon the holder of the agreement, which shall be construed so as to give effect to the adjustment.

Power to re-sell surrendered lands.
Inserted by 40, 1939, s. 12.

202a. (1) When any lease or agreement issued under this Part has been absolutely surrendered to the Crown the land included therein may, according as the board recommends—

(*a*) be offered for sale under section 174 at a price fixed by the board; or

(*b*) be let on miscellaneous lease at a rental and on terms to be fixed by the board with the approval of the Commissioner; or

(*c*) be sold by public auction, a reserve price being fixed by the board, on the following terms, namely:—

Twenty-five per centum of the purchase-money to be paid in cash and the balance of the purchase-money together with interest at the fixed rate on the amount for the time being outstanding, to be paid in five equal yearly instalments.

(2) Any such land so offered for sale by auction and not sold at auction may, on the recommendation of the board, be sold by private contract at any price not less than the upset price at which the land was last offered for sale by auction, and on the other terms and conditions on which it was so offered.

Conditional increase of limit of holding under Part X.
1199, 1915, s. 206.
Amended by 2060, 1931, s. 13.

203. An agreement may, notwithstanding subsection (1) of section 181, be made under Part X. with any person provided that he will not thereby become the holder of land exceeding eight thousand pounds in unimproved value, if, in the opinion of the Surveyor-General and the board, such an agreement is expedient to secure the beneficial allotment of any repurchased land.

Conditional increase of limit of holding by transfer.
1199, 1915, s. 207.
Amended by 2060, 1931, s. 13.

204. The Commissioner may, notwithstanding subsection (2) of section 181, consent to the transfer of any agreement under Part X. of the Crown Lands Act, 1903, Part X. of the Crown Lands Act, 1915, or Part X. of this Act, or to the subletting of land comprised in any such agreement, in favour of any lessee or owner of land who would thereby become the holder of land not exceeding eight thousand pounds in unimproved value if, in the opinion of the board, it would inflict a hardship on the holder of the agreement if such consent were refused in accordance with the provisions of the said subsection (2).

Application of sections 203 and 204.
Inserted by 2060, 1931, s. 14.

204a. Sections 203 and 204 shall apply only to—

(*a*) lands which are situated in the estates known or formerly known as Yallum, Binnum, Hynam, and Kybybolite;

(*b*) lands which are comprised in the estate known or formerly known as Mount Schank Estate, in the Hundred of Kongorong, and which were held under agreement on the nineteenth day of December, nineteen hundred and twelve; and

(*c*) such other lands as are by proclamation declared to be subject to the said provisions after a resolution by both Houses of Parliament approving of the making of the proclamation.

PART XI.

SURRENDERS.

Acceptance of surrenders.
Inserted by 2120, 1933, s. 8.

204b. (1) No surrender under this Part of any lease or agreement shall be of any effect unless and until accepted by the Commissioner.

(2) The Commissioner is hereby authorised to accept any such surrender in the name and on behalf of His Majesty.

(3) Any surrender shall be in the prescribed form and be made and executed in the prescribed manner.

Power of lessee to surrender his lease.
1199, 1915, s. 208.

205. (1) Any lessee may surrender his lease.

* * * * * * * * * * *

Amended by and subsecs. (2) and (3) repealed by 2120, 1933, s. 9.

Surrender for new lease. 1199, 1915, s. 209. Amended by 2256, 1935, s. 6.

206. (1) A lessee may surrender his lease or any part or parts thereof and the Governor may grant a lease or leases of the land so surrendered to such person or persons as are nominated in that behalf by the lessee surrendering: Provided that the transfers to the person or persons nominated have been approved in the usual manner.

(2) Every such new lease shall be granted for the unexpired period of the term of, and for the same purposes, terms, and conditions as the lease so surrendered.

Power to surrender agreement. 1882, 1928, s. 25 (part).

207. The purchaser under any agreement may surrender his agreement in the same manner and subject to the same provisions as are set forth in section 205 with reference to the surrender of a lease.

Power to deal with surrendered lands. Inserted by 40, 1939, s. 13.

207a. The land comprised in any lease or agreement (not being a lease or agreement issued under Part X. of this Act) which has been absolutely surrendered may be dealt with in all respects as if the lease or agreement had never been granted.

Surrender of agreement for new agreement. Substituted by 2256, 1935, s. 7.

208. (1) The purchaser under an agreement may surrender his agreement, or any part or parts thereof, and the Commissioner may grant an agreement or agreements of the land so surrendered to the person or persons nominated in that behalf by the purchaser surrendering: Provided that the transfers to the person or persons nominated have been approved in the usual manner.

(2) If the agreement is wholly surrendered, and only one new agreement is granted in lieu of the surrendered agreement, it shall be granted for the unexpired period of the term of the surrendered agreement and for the balance unpaid of the purchase money thereof, but in other respects shall be subject to the same terms and conditions as the agreement surrendered.

(3) If the agreement is partially surrendered or if the agreement is surrendered in whole and two or more agreements are granted in lieu thereof each new agreement granted in lieu of the surrendered agreement or part thereof shall be granted for the unexpired period of the term of the surrendered agreement, and the balance unpaid of the purchase money mentioned in the original agreement shall be apportioned between each of the new agreements and the balance not surrendered, if any, by the Commissioner on the recommendation of the board. In other respects each such agreement shall be subject to the same terms and conditions as the agreement surrendered or partially surrendered.

Provisions on surrender. Inserted by 2256, 1935, s. 7.

208aa. (1) Any surrender under section 206 or 207 may be accepted, notwithstanding that any rent payable under the lease or any instalment or part thereof payable under the agreement is in arrear. In any case where the lease or agreement is partially surrendered or where the lease or agreement is surrendered in whole and two or more leases or agreements are granted in lieu thereof, the amount of the said arrears shall be apportioned between each of the new leases or agreements, as the case may be, and the balance not surrendered, if any, by the Commissioner on the recommendation of the board. If the lease or agreement is wholly surrendered and only one lease or agreement is granted in lieu thereof, the whole of the amount of the arrears shall be payable in respect of the new lease or agreement. The amount of the said arrears or, as the case may be, the amount of arrears apportioned as aforesaid, together with interest thereon at such rate of interest not exceeding five pounds per centum per annum as is fixed by the board, subject to the approval of the Commissioner, shall be paid in such instalments, and at such times and within such period as is fixed by the board, subject to approval of the Commissioner and shall be payable and recoverable in the same manner as the said rent or instalments to become due. The payment of the said instalments of arrears shall be deemed to be a covenant implied in the leases or agreements issued in place of the surrendered or partially surrendered lease or agreement and in the leases or agreements, if any, partially surrendered.

(2) If any such surrender comprises part only of any such lease or agreement, the lease or agreement shall upon registration of the surrender be deemed to be cancelled so far as regards the land comprised in the surrendered part, and the preceding sections of this Part so far as they relate to the term and conditions of the lease or agreement so partially cancelled, and to the fixing of the rent or purchase price thereunder shall, *mutatis mutandis,* be deemed to apply to the lease or agreement so partially cancelled.

Rights of surrender of mortgagees, etc. Inserted by 2120, 1933, s. 10.

208a. (1) Any mortgagee or encumbrancee under any mortgage or encumbrance registered under The Real Property Act, 1886, of any lease or agreement who in the exercise of any power under the mortgage or encumbrance or the said Act, sells the lease or agreement or any part thereof may, for the purpose of giving effect to any such sale, exercise all the powers of surrender under the preceding sections in this Part which the mortgagor or encumbrancer could exercise or could have exercised.

(2) Notwithstanding the provisions of The Real Property Act, 1886, or section 224 of this Act, upon the registration, under The Real Property Act, 1886, of any surrender aforesaid, the estate or interest of the mortgagor or encumbrancer therein described shall pass to and vest in the person nominated in the surrender, freed and discharged from any liability in respect of the mortgage or encumbrance or of any mortgage or encumbrance registered subsequent thereto. Any lease or agreement issued consequent upon such surrender shall be issued free of the said mortgage or encumbrance and of any mortgage or encumbrance registered subsequent thereto but shall be issued and be subject to any mortgage or encumbrance registered prior to the said mortgage or encumbrance, and such prior mortgage or encumbrance shall be noted on the lease or agreement so issued and shall be of the same force and effect and be construed as if it were a mortgage or encumbrance of the lease or agreement so issued.

(3) If any such surrender comprises part only of any such lease or agreement, the lease or agreement comprised in the mortgage shall, upon registration of the surrender as aforesaid, be deemed to be cancelled so far as regards the land comprised in the surrendered part, and the preceding sections of this Part so far as they relate to the term and conditions of the lease or agreement so partially cancelled, and to the fixing of the rent or purchase-price thereunder shall, *mutatis mutandis,* be deemed to apply to the lease or agreement so partially cancelled.

(4) Nothing in this section shall be deemed to authorise any mortgagee or encumbrancee to sell or transfer any lease or agreement or any part thereof except subject to the provisions of this Act.

Lands under any tenure may be surrendered. 1199, 1915, s. 210. Amended by S.L.R. Act, 1936.

209. Any person holding land under any tenure may surrender any portion of the said land on such terms as the board recommends subject to the consent of the Commissioner.

Power of lessee to surrender for perpetual lease or agreement. 1199, 1915, s. 212.

210. Any lessee under any Crown lease granted under any of the Crown Lands Acts, except Agricultural College endowed lands, may apply in writing to surrender his lease for a perpetual lease or an agreement under Part V.: Provided that this section shall apply only to any lease which—

(*a*) is solely used for pastoral or agricultural purposes, or both; or

(*b*) in the opinion of the Commissioner may not be required for subdivision or for public purposes.

Mode of obtaining perpetual lease or agreement. 1199, 1915, s. 213. 1882, 1928, s. 26.

211. (1) Upon an application being made under section 210, the board, subject to the approval of the Commissioner, shall fix the annual rent or purchase-money at which the perpetual lease or agreement may be obtained: Provided that—

I. the price fixed for repurchased lands under an agreement shall not be less than the cost of the same to the State, together with the cost of offering the same:

II. the interest to be fixed under an agreement to be issued in lieu of a perpetual lease (not subject to revaluation) shall not exceed the rent then payable under the perpetual lease, except where the rent is equal to less than two pounds per centum per annum on the purchase-money, in which case the interest shall be at the said rate of two pounds per centum per annum.

Inserted by 2120, 1933, s. 11, and amended by S.L.R. Act, 1935.

(1A) Any application as aforesaid may be granted notwithstanding that any rent payable under the lease is in arrear. When in any such case the application is granted, the full amount of the said arrears of rent, together with interest thereon at such rate of interest not exceeding five pounds per centum per annum as is fixed by the board, subject to the approval of the Commissioner, shall be paid in such instalments, and at such times, as are fixed by the board, subject to the approval of the Commissioner, when fixing the annual rent or purchase-money as aforesaid, and shall be payable and recoverable in the same manner as the said rent or purchase money to become due, and the payment of the said instalments shall be deemed to be a covenant implied in the perpetual lease or agreement issued in place of the surrendered Crown lease.

(2) Upon the annual rent or purchase-money being so fixed, notice in writing of the amount thereof shall be given to the applicant, and the applicant, upon surrendering the lease, may, subject to the approval of the Commissioner and subject to subsection (3) hereof, obtain a perpetual lease or agreement at the said rent or purchase-money.

(3) The applicant shall, within three months after the giving of notice under subsection (2) hereof, accept or refuse the terms offered; and in the event of his agreeing to purchase, he shall forward with the notification of his acceptance an amount equal to the first half-yearly instalment of purchase-money.

Amended by 2256, 1935, s. 8 (a).

(4) The Commissioner shall forthwith cancel the lease surrendered as aforesaid, so far as regards the land for which a perpetual lease or agreement has been granted, and the applicant shall, within the time and in manner prescribed, execute a new lease or agreement pursuant to Part V.

Inserted by 2256, 1935, s. 8 (b), and amended by 40, 1939, s. 14.

(5) Where a lease with a right of purchase is surrendered for a perpetual lease, the lessee may at the time of making the application for surrender, make application for the insertion in the perpetual lease of a provision for the purchase of the land. In any such case there shall be inserted in the perpetual lease a provision giving the lessee a right to purchase the fee simple of the land comprised in the lease at any time during that portion of the term of the surrendered lease which was unexpired at the time of the surrender, at the price at which the lessee could have completed purchase at the time of the surrender.

Power for lessee to purchase leased land. 1882, 1928, s. 27.

212. (1) The lessee under any Crown lease granted under any of the Crown Lands Acts, except a lease of Agricultural College endowed lands, may apply in writing to surrender his lease and purchase the fee simple thereof: Provided that this section shall apply only to any lease of land which—

(*a*) is solely used for pastoral or agricultural purposes, or both; or

(*b*) in the opinion of the Commissioner will not be required for subdivision or for public purposes.

(2) Upon an application being made under this section the board shall, subject to the approval of the Commissioner, fix the sum at which the fee simple of the land may be purchased and shall give notice thereof in writing to the applicant.

(3) The applicant shall, within three months after the giving of the notice under subsection (2) of this section, notify the Commissioner whether he accepts or refuses the terms offered. If he accepts, and if within one month after the Commissioner receives notice of his acceptance he surrenders his lease and pays the purchase-money and all proper fees he shall be entitled to receive a land grant for the land: Provided that the Commissioner may extend the time for surrender and payment.

(4) No lessee shall be entitled to purchase any land under this section until after the expiration of six years from the time when that land was originally leased to him or to his predecessor in title, nor unless the Commissioner is satisfied either that all the conditions of the lease have been fulfilled, or that the lessee has made such permanent improvements on the land that strict compliance with the conditions of the lease should be dispensed with.

(5) No person shall be entitled under this section to purchase the fee simple of any land of greater value than the maximum amount of land which could lawfully be included in an agreement granted to that person and to which section 220 applies.

Annual statement of surrenders disallowed. 1199, 1915, s. 214.

213. The Commissioner shall once in every year lay before Parliament a statement of all cases in which he has declined to allow a surrender under sections 210, 211, or 212, stating in every case the reasons for the refusal.

Power of lessee under Agricultural College Endowment Act, 1886, to surrender lease for perpetual lease. Ibid., s. 215.

214. (1) The lessee under any lease granted under the provisions of the Agricultural College Endowment Act, 1886, may, with the consent of the Commissioner and if all the covenants and conditions thereof have been complied with, surrender the lease for a perpetual lease under this Act.

(2) The application to surrender shall be in writing, and the provisions of section 211, *mutatis mutandis,* shall apply to and in respect of every such application and the surrender.

(3) The rent received in respect of any perpetual lease granted in any such case shall be deemed to be rent received in respect of a lease granted under the authority of the Agricultural College Endowment Act, 1886, within the meaning of section 7 of that Act.

Conditions of agreement or lease obtained in lieu of homestead lease. Ibid., s. 216.

215. Where any lessee of a homestead lease heretofore has surrendered the same pursuant to section 174 of the Crown Lands Act, 1903, or section 212 of the Crown Lands Act, 1915, or hereafter surrenders the same pursuant to section 210 of this Act, and has obtained or obtains a perpetual lease or agreement in lieu thereof, the said perpetual lease or agreement shall, notwithstanding, be and remain subject to all the conditions relating to homestead leases, and the lessee or purchaser shall be and remain bound by all the covenants and provisions relating to those leases.

Allocation of moneys paid under scrub lease. Ibid., s. 217.

216. Any person who surrenders lands under a scrub lease for an agreement shall be credited as against the instalments of purchase-money payable under the agreement with the whole amount paid by him to the Crown in respect of the purchase-money thereunder.

Powers of trustees and executors. Ibid., s. 218. Amended by S.L.R. Act, 1936.

217. If any person having a right to surrender a lease in exchange for a lease or agreement dies, or is adjudicated bankrupt, or executes a statutory deed of assignment for the benefit of his creditors, his executors or administrators, or the trustee or other person in whom the lease or agreement vests under his will, or by virtue of the bankruptcy or assignment, may exercise all powers of surrender and exchange, and powers incidental thereto, which the said person could have exercised.

s. 214. The Agricultural College Endowment Act, 1886, has been repealed and superseded by the Agricultural College Act, 1936. Section 7 of the former Act has been superseded by section 10 of the latter Act.

Appeal from first decision of board.
1199, 1915, s. 219.

218. (1) Any person surrendering his lease for a lease or agreement under this Act shall have a right of appeal to the Commissioner against the decision of the board fixing the amount of rent and purchase-money, or either, as the case may be.

(2) The appeal shall be made within three months from the notification to the intending lessee or purchaser of the amount of the rent or purchase-money.

(3) The Commissioner shall refer the appeal to the board for reconsideration and a report thereon, and may, after receiving the report from the board, reduce the rent and purchase-money, or either: Provided that the purchase-money of any repurchased lands shall not be less than the cost of the same to the State, together with the costs of offering the same.

(4) The appellant shall, within three months after the decision of the appeal, accept or refuse the payment of the rent or purchase-money as fixed by the Commissioner in deciding the appeal.

Power of lessee to apply to surrender from time to time.
Ibid., s. 220.

219. If a lessee does not accept, or if he refuses, the terms offered, or the payment of the rent or purchase-money, as provided by subsection (3) of section 211, or subsection (4) of section 218 (according to the nature of the case), the said lessee may make a fresh application under section 210, and may, in similar circumstances, if he so desires, make fresh applications under that section from time to time.

Conditions of surrender.
Ibid., s. 221, 1900, 1929, s. 7.

220. (1) Any lease surrendered for a perpetual lease, or for an agreement other than for repurchased lands, is surrendered subject to the following conditions:—

Para. I. substituted by 2363, 1937, s. 5 (a).

I. If the lease so surrendered is other than a miscellaneous lease or a perpetual lease subject to revaluation, the unimproved value of the land to be included in the perpetual lease or agreement, and the unimproved value of all other lands held by the lessee or purchaser under any tenure, shall not altogether exceed seven thousand pounds, except where the land to be included in the perpetual lease or agreement is, in the opinion of the Commissioner, suitable only for pastoral purposes:

Inserted by 2363, 1937, s. 5 (a).

Ia. If the lease so surrendered is a miscellaneous lease or a perpetual lease subject to revaluation, the unimproved value of the land to be included in the perpetual lease or agreement, and the unimproved value of all other lands held by the lessee or purchaser under

any tenure, shall not altogether exceed five thousand pounds, except where the land to be included in the perpetual lease or agreement is, in the opinion of the Commissioner, suitable only for pastoral purposes:

II. If the land so to be included is, in the opinion of the Commissioner, suitable only for pastoral purposes, the carrying capacity thereof unimproved and of all other lands held by the lessee or purchaser under any tenure, shall not altogether exceed five thousand sheep, or if the land is outside Goyder's line of rainfall, ten thousand sheep: Provided that in making any computation as to carrying capacity, lands held under a lease granted under the Pastoral Act, 1936, or any Act repealed by that Act, shall not be included. Amended by 2363, 1937, s. 5 (b).

(2) For the purpose of paragraph I. of subsection (1) hereof the unimproved value of the land shall be determined by the board, subject to the approval of the Commissioner, according to the actual value, irrespective of the amount of the purchase-money mentioned in any right of purchase lease granted in respect thereof.

(3) For the purposes of subsection (1) hereof, account shall not be taken of the value of lands within the limits of any city or town held by the lessee or purchaser nor of the value of lands held by him under any miscellaneous lease or under lease under the Pastoral Act, 1936, or any Act repealed by that Act. Inserted by 2363, 1937, s. 5 (c).

221. (1) The purchaser under any agreement (except an agreement under Part X. of the Crown Lands Act, 1903, Part X. of the Crown Lands Act, 1915, or Part X. of this Act) may apply in writing to surrender his agreement for a perpetual lease of the land comprised therein. Surrender of agreement for lease. 1199, 1915, s. 222. 1882, 1928, s. 28.

(2) Upon an application being made under this section the board, subject to the approval of the Commissioner, shall fix— Substituted by 2256, 1935, s. 9.

(*a*) the annual rent at which the lease may be obtained in perpetuity; and

(*b*) the annual rent at which the lease may be obtained for the first ten years after which the rent shall be fixed in perpetuity as hereinafter provided.

In fixing the rents pursuant to this section the board shall take into consideration any amount of purchase price paid on or before the date from which the lease issued in lieu of the surrendered agreement is granted or deemed to be granted.

Inserted by 2256, 1935, s. 9.

(2AA) The applicant may at his option obtain a perpetual lease at the rent fixed pursuant to paragraph (*a*) of subsection (2), or a perpetual lease of which the rent for the first ten years shall be as fixed pursuant to paragraph (*b*) of subsection (2) and of which the rent from the end of the first ten years shall be such amount as is fixed at the expiration of the said period by the board, subject to the approval of the Commissioner.

Inserted by 2256, 1935, s. 9.

(2AB) The rent to be fixed under any such lease shall in no case exceed an amount equal to interest on the price at which the applicant could have completed purchase at the time of the surrender of the agreement calculated for one year at the rate of interest provided for in the agreement.

Inserted by 2256, 1935, s. 9.

(2AC) Any lease granted pursuant to this section may be granted as from any period not exceeding five years before the date of the approval to the surrender, and any lease so granted shall be deemed to have taken effect from the commencement of such period. The said period shall be fixed by the board subject to the approval of the Commissioner. Any amounts paid during any such period in respect of instalments under the agreement surrendered as aforesaid, which became due during the said period, shall be deemed to have been paid in pursuance of the covenants of the lease and shall be appropriated accordingly and, except for that purpose, the agreement shall be deemed to have been determined from the commencement of the said period.

Inserted by 2120, 1933, s. 12 (a).

(2A) Any application under this section may be granted notwithstanding that the instalments payable under the agreement are in arrear. When in any such case the application is granted, the full amount of the arrears of interest payable under the agreement, together with interest thereon at such rate not exceeding five pounds per centum per annum, as is fixed by the board, shall be paid in such instalments, and at such times, as are determined by the board, subject to the approval of the Commissioner, when fixing the rent, and shall be payable and recoverable in the same manner as the rents to become due, and the payment of the said instalments shall be deemed to be a covenant implied by the lease issued in place of the surrendered agreement.

(3) The provisions of subsections (2), (3), and (4) of section 211, *mutatis mutandis,* shall apply to and in respect of any such application and surrender.

Inserted by 2120, 1933, s. 12 (b), and amended by 40, 1939, s. 15.

(4) The purchaser under any agreement surrendered as aforesaid may at the time of making the application for surrender make application for the insertion in the perpetual lease of a provision for the purchase of the land. In any such

case there shall be inserted in the perpetual lease a provision giving the lessee a right to purchase the fee simple of the land comprised in the lease at any time during that portion of the term of the surrendered agreement which was unexpired at the time of the surrender, at the price at which the lessee could have completed purchase at the time of the surrender.

Surrender of agreement or lease of a small estate of a deceased person. 1199, 1915, s. 223.

222. (1) The Commissioner may, upon the application—

(*a*) of the executor of any deceased lessee or purchaser under any Crown lease or agreement, who has left a will, or of any person entitled to obtain letters of administration of the estate of such deceased lessee or purchaser or of any part of such estate left unadministered; or

(*b*) of the widow, widower, or next of kin of any deceased lessee or purchaser under any Crown lease or agreement, who has died intestate,

permit the surrender of the lease or agreement by the said executor, person, widow, widower, or next of kin, in the name of the deceased lessee or purchaser without probate of his will or letters of administration of his estate or of any part thereof left unadministered having been granted, if the Commissioner is satified that—

I. the applicant is the person entitled to prove the will of the deceased, or to obtain letters of administration of his estate, or of the part thereof left unadministered;

II. the whole of the estate of the deceased does not exceed in value the sum of two hundred pounds;

III. all the lawful debts and funeral expenses of the deceased have been paid;

IV. all succession duties (if any) have been paid in respect of the deceased's estate; and

V. the will (if any) of the deceased has been filed in the Supreme Court;

and the Commissioner may accept the surrender, and the Governor may issue a new lease or agreement, of the same kind and subject to the same terms and conditions as the surrendered lease or agreement, to the applicant or to any person named by him: Provided that no such application shall be allowed until after notice thereof has been published for two weeks in the *Government Gazette,* nor until after the expiration of two months from the time of the death of the deceased.

(2) The Registrar-General shall register every such surrender without the production of any probate, or letters of administration, or requiring any transmission to any executor or administrator.

(3) Every such new lease or agreement shall be held, but so as not to affect the indefeasibility of a Real Property Act title, subject to the dispositions of the will or rights arising on intestacy as if probate or letters of administration, as the case may be, had been granted.

Surrender of several leases or agreements for one lease or agreement of the same class.
1199, 1915, s. 224.

223. (1) When a lessee or purchaser holds land under one lease or agreement, and also holds land under one or more other leases or agreements, and—

(*a*) the said leases or agreements are all of the same class, and all contain substantially the same covenants, conditions, and reservations; and

(*b*) the terms of the said leases and agreements all end on the same date, or within one period of twelve months,

the lessee or purchaser may apply in writing for leave to surrender the leases or agreements for one lease or agreement comprising the whole of the said lands.

(2) If the Commissioner approves of the application, the lessee or purchaser may tender a surrender of the leases or agreements in the prescribed form and executed in the prescribed manner; and the Commissioner may, if he thinks proper, accept the surrender in the name and on behalf of His Majesty.

(3) If the surrender is accepted, one lease or agreement shall be issued to the lessee or purchaser; and that lease or agreement shall—

(*a*) be of the same class as;

(*b*) comprise the whole of the lands comprised in; and

(*c*) contain substantially the same covenants, conditions, and reservations as are contained in,

the surrendered leases or agreements, and shall be for a term ending on the same date as the terms of those leases or agreements, or as such of those terms as ends on the latest date.

Saving of estates and interests in surrendered lands.
Substituted by 40, 1939, s. 16.

224. (1) No lease or agreement which is subject to any estate, interest, or caveat registered or noted on such lease or agreement shall be surrendered, as regards either the whole or any part of the land therein comprised, unless the person entitled to that estate or interest or, as the case may be, the person who lodged the caveat has consented in writing to the proposed surrender.

(2) Unless the person entitled to any such estate or interest or, as the case may be, the person who lodged the caveat, otherwise directs by notice to the Commissioner, any new lease or agreement of the surrendered land or any part thereof shall be subject to the said estate, interest, or caveat, and that estate, interest, or caveat shall be registered or noted on the new lease or agreement and shall be of the same force and effect and be construed as if the new lease or agreement were subject to such estate, interest, or caveat.

(3) Where the surrender of a lease or agreement, whether as regards the whole or any part of the land comprised therein, is expressed to be an absolute surrender, and a person who is entitled to any estate or interest registered or noted on the lease or agreement or who has lodged a caveat so noted, consents to the surrender by writing indorsed thereon, that person shall be deemed to have directed by notice to the Commissioner that any new lease or agreement of the surrendered land or any part thereof shall not be subject to his estate interest or caveat and that such estate interest or caveat need not be noted on the new lease or agreement.

PART XII.

TRANSFERS.

225. (1) Subject to the provisions of subsections (7) and (8) of this section, no transfer of any lease or of any agreement, and no subletting of any land comprised in any lease or agreement, shall have any effect unless the consent of the Commissioner has been previously obtained in the following manner:—

In what circumstances transfers may be allowed. 1199, 1915, s. 227. 1882, 1928, s. 30.

1. Application for the transfer or subletting shall be made in writing to the Commissioner:

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s. 225. In the matter of the Act to abolish forfeitures for Treason and Felony, 1874, and the Crown Lands Consolidation Act, 1877, and of the convict Christopher Wilton (1880) 14 S.A.L.R. 27; 6 Austn. Digest 932. As to the vesting of a lease or agreement of a convict in the Public Trustee pursuant to the Treason and Felony Forfeiture Act, 1874 (now Part X. of the Criminal Law Consolidation Act, 1935).

HENSLEY v. RESCHKE (1914) 18 C.L.R. 452; 6 Austn. Digest 930. As to the power of a lessee to enter into an executory contract for the sale of a lease and to deliver possession in anticipation of the Commissioner's consent. Since this decision section 227 has been enacted.

LANG v. CASTLE AND ANOTHER (1924) S.A.S.R. 255; 6 Austn. Digest 927, 931. "Subletting" includes leasing. The consent must be to the material terms of the contract and to the real disposition and the Commissioner is entitled to be informed of the proposed *terminus a quo* and *terminus ad quem*, and also as to

II. Except in the case of transfers by executors or administrators to devisees under the wills under which they act, or transfers by the trustees of a settlement to the *cestuis que trustent* thereunder the consent shall not be granted until after notice of the application has been published for two weeks in the *Government Gazette*:

III. The application shall be referred by the Commissioner to the board:

IV. If any person places before the Commissioner or the board any objection to the granting of the application, the board shall give the objector an opportunity of attending personally before the board to substantiate his objection. The board shall not uphold any such objection unless it has first given the applicant and the intended transferee or sublessee an opportunity of answering the objection either in writing or by appearing personally before the board:

V. If the board recommends the granting of the application, but not otherwise, the Commissioner may, if he thinks proper, by writing signed by him, consent to the transfer or subletting.

(2) Subject to subsections (3) and (4) of this section, no recommendation or consent shall be given under this section of or to any transfer or subletting, if the effect thereof will be to increase the holding of the proposed transferee or sublessee, under any tenure, to land the unimproved value of the fee simple of which exceeds seven thousand pounds. If at the time when the application for consent is being dealt with by the board the proposed transferee or sublessee does not hold any land and is not entitled to any land under a transfer or sublease to which the Minister has given his consent, the board may recommend and the Commissioner may give his consent to the transfer or subletting although the unimproved value of the fee simple of the land proposed to be transferred or sublet exceeds the said amount.

(3) For the purposes of subsection (2) of this section, account shall not be taken of the value of lands within the limits of any city or town held by, or proposed to be

s. 225. (*contd.*) all the relevant terms of the proposed transaction. Observations as to the nullity of consent where it is given upon misrepresentations by a party and upon a fictitious set of circumstances.

MAY v. DALY (1927) S.A.S.R. 428; 6 Austn. Digest 931. Where an agreement is not expressed as being subject to the Commissioner's consent but is an unconditional agreement for transfer, the duty of the transferor is to obtain that consent and, on consent being given, to transfer. An agreement to further the obtaining of the Commissioner's consent or to obtain such consent contrary to subsection (2) or (6) is an agreement for an illegal purpose and void.

s. 225. (3). The Pastoral Act, 1904, has been repealed and superseded by the Pastoral Act, 1936.

transferred or sublet to, the proposed transferee or sublessee, nor of the value of lands held by him under any miscellaneous lease or under any lease granted under the Pastoral Act, 1904.

(4) Notwithstanding anything in this section, the board may recommend, and the Commissioner may consent to, the transfer or subletting of any lands suitable only for pastoral purposes, if the effect thereof will not be to increase the holding of the proposed transferee or sublessee, under any tenure, to land which is capable of carrying more than five thousand sheep, or, if the land is situated wholly or partly outside Goyder's line of rainfall, more than ten thousand sheep: Provided that, in making any computation for the purposes of this subsection, lands held under a lease granted under the Pastoral Act, 1904, shall not be included.

(5) Notwithstanding anything in this section the board may recommend and the Commissioner may consent to the transfer or subletting of any land if owing to special circumstances it is in the opinion of the board and the Commissioner just and reasonable that the transfer or subletting should be permitted.

(6) Consent shall not be given to a transfer or subletting to take effect within the period of five years from the date of the lease or agreement, which period shall, in case the lease or agreement has been obtained on the surrender of another lease or agreement, be computed from the date of the original lease or agreement: Provided that this subsection shall not—

I. apply to transfers by executors or administrators to devisees under the wills under which they act:

II. prevent consent being given in any case where it is proved to the satisfaction of the Commissioner that the refusal thereof would inflict great hardship upon the person proposing to transfer or sublet.

(7) The provisions of this section shall not apply to—

(*a*) the transfer of, or the subletting of land comprised in any existing lease granted under any Act which was repealed by the Crown Lands Act, 1903, or granted under any earlier Crown Lands Act, provided that the said Act contained express provision contrary to the provisions of this section and applicable to the said lease:

(*b*) any subletting with the consent of the Commissioner pursuant to section 57.

s. 225. (4). The Pastoral Act, 1904, has been repealed and superseded by the Pastoral Act, 1936.

(8) The provisions of this section other than subsections (1) and (6) do not apply to transfers of agreements under Part X. of the Crown Lands Act, 1903, Part X. of the Crown Lands Act, 1915, or Part X. of this Act, nor to the subletting of land comprised in those agreements. All such transfers and sublettings are regulated by subsection (2) of section 181.

(9) The Commissioner shall not capriciously withhold his consent to any proposed transfer or subletting.

Non-validity of certain agreements. 1199, 1915, s. 228.

226. Except in any cases as to which it is otherwise expressly provided by this Act no agreement, whether verbal or in writing, for the sale, transfer or subletting of—

(*a*) any perpetual lease;

(*b*) any lease with right of purchase;

(*c*) any other lease, where the agreement cannot be given effect to without the Commissioner's consent;

(*d*) any agreement for sale;

(*e*) any interest in any such lease or agreement as hereinbefore mentioned; or

(*f*) the land or any interest in the land comprised in any such lease or agreement as hereinbefore mentioned,

shall be of any validity or have any force or effect after the expiration of one year from the making of the agreement, unless before the said expiration the consent in writing of the Commissioner to the proposed dealing has been obtained: Provided that this section shall not apply to any agreement which was in existence on the seventh day of December, nineteen hundred and ten, nor to any agreement thereafter made in pursuance of any agreement which was in existence on that day and for the purpose of giving effect to that agreement.

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s. 226. LANG v. CASTLE AND ANOTHER (1924) S.A.S.R. 255; 6 Austn. Digest 931. Construction of "proposed dealing." The term is a compendious expression synonymous with "sale, transfer, or subletting."

MAY v. DALY (1927) S.A.S.R. 428. If a breach of the agreement for sale, etc. occurs within the year during which the consent of the Commissioner may be obtained a right of action for damages is not lost or determined upon the expiry of the year.

JERICHO v. GUGLIELMIN (1938) S.A.S.R. 292. Where an application for consent was considered by the Commissioner and a minute of approval given and a letter was sent by the Department intimating that formal consent would be issued after payment of certain mortgage moneys (which was not made) and it was the practice of the Department when such a requisition had been complied with to issue the formal consent without reference to the Commissioner, held that consent had been given when the letter was written.

Prohibition against transferring or subletting without consent to extend to every form of alienation without consent.
1311, 1917, s. 12.

227. (1) Notwithstanding any law or usage to the contrary, it is hereby declared that any prohibition, express or implied, contained in this Act, or in any lease or agreement issued under this Act or any repealed Act, against the transferring, assignment, or subletting of land comprised in any such lease or agreement without the consent of the Commissioner first had in each case, shall be construed to extend to and to include the prohibition of—

(*a*) every form of alienation, or attempted alienation, without such consent as aforesaid, of the land comprised in the lease or agreement; and

(*b*) the mere parting, before such consent is actually obtained, with the possession of the land, or any part thereof, in pursuance of any agreement for the alienation thereof, whether the said agreement is executory or otherwise and whether the same is or is not enforceable in law, and whether or not the said alienation is thereby agreed to be made subject to such consent,

and upon any breach of any such prohibition as hereby extended the Commissioner shall have the same powers of re-entry and forfeiture as in the case of a breach of any such prohibition as hereinbefore first mentioned.

(2) Any person who gives or takes possession of any land, or any part of any land, comprised in any such lease or agreement contrary to such prohibition as aforesaid as hereby extended shall be liable to a penalty not exceeding fifty pounds, and in addition the lease or agreement comprising the land or part shall be liable to be absolutely forfeited without any compensation being payable to the holder thereof.

(3) In the case of any person transferring, assigning, or subletting contrary to such prohibition as hereby extended without such consent as aforesaid, any deed, written instrument, or other agreement whereby the transfer, sublease, or assignment is made, or for the occupation of any land so transferred, assigned, or sublet, shall be wholly null and void for all purposes whatsoever.

s. 227. LANG v. CASTLE AND ANOTHER (1924) S.A.S.R. 255; 6 Austn. Digest 927. "Every form of alienation" is not limited to the disposition of a registered estate and means the act of an owner in disposing of an interest in the property. An executory contract for the alienation of a Crown lease cannot pass the beneficial ownership until the consent of the Commissioner is obtained. *Semble*, the condition precedent of consent to a contract for alienation is to be taken as implied unless excluded by the language of the contract.

HABEL v. TILLER (1929) S.A.S.R. 170; 6 Austn. Digest 930. "Agreement" means agreement *de facto* and includes any illegal arrangement which is not merely unenforceable but is actually prohibited under penalty in subsection (2) and nullified by subsection (3). "In pursuance of" or "pursuant to" an agreement is capable of a wide meaning, which includes acts done in intended or substituted performance, as well as acts done strictly in performance of the contract.

HILL v. O'BRIEN (1938) 61 C.L.R. 96; 12 A.L.J. 270, reversing O'BRIEN v. HILL (1938) S.A.S.R. 61. Held, in the circumstances of the case, that, under the share-farming agreement in question, the lessee did not part with the possession of the land to the share-farmer.

PART XIII.

PART XIII.

SALES OF LANDS, EXCHANGE OF LANDS, GRANTING OF SITES FOR BUILDINGS.

DIVISION I.

DIVISION I.—SALES OF LANDS.

What lands may be sold.
1199, 1915, s. 229.

228. The following lands may be sold by auction for cash:—

I. Special blocks: Any single section of Crown lands which is surrounded by lands sold or contracted to be sold under any of the Crown Lands Acts, and has been withdrawn from sale or lease; also any section or block of land belonging to or vested in the Crown (not exceeding one hundred acres in area) which may be required for the establishment of any industry, trade, or business, or for any other purpose approved by the Governor:

II. Crown lands within hundreds which have been offered for lease under Part V. of the Crown Lands Act, 1903, Part V. of the Crown Lands Act, 1915, or Part V. of this Act, and have not been taken up within two years from the day when they were first open to be taken up:

III. Town lands:

IV. Suburban lands which the Governor, by proclamation, excepts from being dealt with by the board.

Power of Commissioner to fix upset prices.
Ibid., s. 230.

229. The Commissioner may fix an upset price at which any such lands may be offered at auction, and may raise or lower any such upset price.

Lands to be gazetted before auction.
Ibid., s. 231.

230. A statement setting forth the lands, the upset price, and the time and place of auction shall, prior to any sale, be published for not less than four consecutive weeks in the *Government Gazette*.

Purchase money of lands sold for cash, how payable.
Ibid., s. 232.

231. No Crown lands shall be sold for cash at public auction unless on condition that the purchaser shall, at the sale, pay in ready cash a deposit of at least twenty per centum of the purchase-money, and shall pay the residue within one month thereafter, or within such extended time as the Commissioner may allow.

Unselected or unsold Crown lands within hundreds to remain open.
Ibid., s. 233.

232. (1) All Crown lands, except town or suburban lands, proposed to be offered for sale may nevertheless be taken up on lease or agreement not less than thirty days prior to the auction; and lands so offered and not sold shall remain open for leasing or sale under agreement or may be sold by private contract for cash at the upset price at which the same were last offered.

(2) Town and suburban lands offered for sale and not sold may be sold by private contract for cash at any price not less than the upset price at which the same were last offered.

Inserted by 2060, 1931, s. 15.

Town lands at Whyalla.

Inserted by 3, 1939, s. 4.

232a. (1) The Commissioner, by notice in the *Government Gazette*—

(*a*) may declare that estates in fee simple in any specified blocks of town land in the town of Whyalla may be applied for in writing:

(*b*) shall declare the price of every such block in accordance with the recommendation of the board made in that behalf:

(*c*) shall set out the terms of payment of the purchase money and any conditions to which any blocks will be subject, pursuant to section 232h, 234, or 235, of this Act, and any other conditions or stipulations binding on the purchaser:

(*d*) shall fix a day, not earlier than one month after the publication of the notice in the *Government Gazette* before which applications for the blocks mentioned in the notice must be made.

(2) The Commissioner shall not give any notice as aforesaid in respect of any blocks unless the board recommends that it is desirable that the blocks should be used as sites for dwelling-houses.

Deposit and payment.

Inserted by 3, 1939, s. 4.

232b. (1) Every application made pursuant to the last preceding section shall be made to the Commissioner in writing, giving the name, address and occupation of the applicant, and specifying the land applied for.

(2) Every such application shall be accompanied by an amount equal to twenty per centum of the price, as notified in the *Government Gazette,* of the land applied for: Provided that if twenty per centum of that price is less than one pound no amount need be forwarded with the application.

(3) The successful applicant for any land offered under the last preceding section shall pay the balance of the purchase-money within one month after notice of the allotment of the land to him is published in the *Government Gazette,* or within such extended time as the Commissioner may allow.

(4) Any amount deposited under subsection (1) of this section by an applicant whose application is refused, shall be refunded to that applicant.

Reference of applications to the board. Inserted by 3, 1939, s. 4.

232c. All applications pursuant to section 232a of this Act shall forthwith after the receipt thereof be referred by the Commissioner to the board unless the land is withdrawn from sale; and the board shall consider all the applications and allot the land in such manner as it deems just and expedient.

Simultaneous applications. Inserted by 3, 1939, s. 4.

232d. (1) All applications made pursuant to section 232a of this Act and received prior to or on the day specified in the *Government Gazette* as the last day for receiving such applications, shall be dealt with as simultaneous applications.

(2) Simultaneous applications may be decided by lot by the chairman of the board where any difficulty arises in deciding the successful applicant.

Gazettal of successful applicants. Inserted by 3, 1939, s. 4.

232e. The Commissioner, upon being informed by the board of the names of the successful applicants for town land within the town of Whyalla shall cause those names to be published in the *Government Gazette,* with the particulars of the lands allotted to them and the price payable.

Board may re-offer land not taken up. Inserted by 3, 1939, s. 4.

232f. If no application for a block offered by notice under section 232a of this Act is made within the time fixed by that notice, the Commissioner may again offer that block in accordance with the last five preceding sections at such reduced price as the board recommends.

Sales by auction of blocks not allotted. Inserted by 3, 1939, s. 4.

232g. Any block not allotted after being offered by notice under section 232a of this Act may be sold by auction as if it had never been so offered.

Conditions. Inserted by 3, 1939, s. 4.

232h. (1) Whenever any town land in the town of Whyalla is sold under any provision of this Part that land may, if the Commissioner so directs, be sold subject to all or any of the following conditions, namely:—

(*a*) that the purchaser or his successor in title shall, during any periods specified in the condition personally reside upon the land:

(*b*) that the purchaser or his successor in title shall, within such time as is specified in the condition, erect on the land in accordance with plans and specifications to be approved by the Commissioner, such premises, being either a dwelling-house, business premises, or other premises, as are mentioned in the condition, and that the purchaser and his successor in title shall not, without the consent in writing of the Commissioner, erect on the land any other premises:

(*c*) conditions regulating or restricting, in such manner as is specified in the conditions, the purposes for which the land may be used.

(2) Any such condition, if imposed, shall be expressed in the receipt for the purchase-money and in the land grant.

(3) When a certificate of title is issued in respect of any land comprised in any land grant in which any such condition is expressed the Registrar-General shall cause a statement to be inserted in or indorsed on the certificate to the effect that the land is subject to the said condition, and setting forth terms of the condition.

(4) Upon any breach of the said condition in respect of any land the Governor may, by notice published in the *Government Gazette,* cancel the sale of the said land; whereupon the said sale shall become absolutely void, and the said land shall be forfeited to the Crown.

(5) Upon the filing in the Lands Titles Registration Office by the Commissioner of a copy of the *Government Gazette* containing any such notice, the Registrar-General shall make and sign an indorsement on the receipt for the purchase-money of the land, if it has been filed in his office, or on any land grant or certificate of title which has been issued in respect of the land, or any part thereof, to the effect that the said receipt, land grant, or certificate is cancelled to the extent that it applies to such land or such part, the same having been forfeited to the Crown. The receipt, land grant, or certificate shall thereupon be cancelled to the said extent, and the said land shall thereafter, for the purposes of this Act and The Real Property Act, 1886-1936, be dealt with and regarded as if it had never been alienated from the Crown. The Registrar-General shall also call in and indorse in the same manner the duplicate of the land grant or certificate, which shall thereupon be cancelled to the said extent.

(6) The Commissioner may, on the recommendation of the Land Board, and if he thinks that special circumstances exist, which justify him in so doing, exempt any person from the obligation to comply with any such condition as mentioned in subsection (1) of this section.

(7) If a condition to which any land is subject under this section has been complied with to the satisfaction of the Commissioner, or has been waived by the Commissioner, he may give a certificate to the owner of the land or any other person having any estate or interest therein, stating that the said condition has been complied with or waived, as the case may be. The Registrar-General, upon production to him of

the said certificate, and upon payment of a fee of five shillings, shall indorse on the relevant receipt, land grant, or certificate of title a note of the certificate and upon such indorsement being made, the land and all persons having any estate or interest therein shall be discharged from the condition.

(8) The provisions of this section shall take effect notwithstanding anything in The Real Property Act, 1886-1936, or any other Act or law to the contrary.

Allotment of blocks to employers for employees' dwellings. Inserted by 3, 1939, s. 4.

232i. (1) Notwithstanding any other provision of this Part, when the Commissioner has by notice in the *Gazette* declared that estates in fee simple in any blocks of town land in the town of Whyalla may be applied for, any employer may apply for any of those blocks which he requires for the purpose of providing dwelling-houses for his employees.

(2) If the board is satisfied that the employer intends in good faith to erect dwelling-houses on the blocks applied for, and to sell, lease or let those houses to his employees, or to grant to his employees the right to use and occupy them, and that if any such house is sold by the employer to any employee, the price will not exceed the cost to the employer of that house and the site thereof, the board may allot to the employer such of the blocks applied for as the board deems proper.

(3) Section 235 of this Act shall not apply in relation to any blocks allotted under this section.

Application of other sections of this Act. Inserted by 3, 1939, s. 4.

232j. Nothing in sections 232a to 232i. inclusive, shall affect the application to land within the town of Whyalla of any other provision of this Act, except to the extent that such other provision is inconsistent with the said sections.

Purchase moneys to be applied primarily to payment of public liabilities. 1199, 1915, s. 234.

233. Purchase-moneys from the sale of lands under this Division shall form a fund primarily applicable to the payment of such portion of the public liabilities as since the first day of January, nineteen hundred and four, has been specially charged thereon or as after the passing of this Act is specially so charged.

Town land may be sold subject to condition against alienation for six years. Ibid., s. 235.

234. (1) Whenever any town land is sold under any of the provisions of this Act, that land may, if the Commissioner so directs, be sold subject to the condition that it is not to be transferred, mortgaged, or otherwise dealt with, within six years from the date of the sale thereof without the consent in writing of the Commissioner, and that upon any breach of the

said condition the sale may be cancelled; and in such case the said condition, including the date when the same is to terminate, shall be expressed in the receipt for the purchase-money and in the land grant.

(2) When a certificate of title is issued in respect of any land comprised in any land grant in which the said condition is expressed, the Registrar-General shall cause a statement to be inserted in or indorsed on the certificate to the effect that the land is subject to the said condition, and setting forth the terms of the condition and the date when it will terminate.

(3) Upon any breach of the said condition in respect of any land the Governor may, by notice published in the *Government Gazette,* cancel the sale of the said land; whereupon the said sale shall become absolutely void, and the said land shall be forfeited to the Crown.

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

(4) Upon the filing in the Lands Titles Registration Office by the Commissioner of a copy of the *Government Gazette* containing any such notice, the Registrar-General shall make and sign an indorsement on the receipt for the purchase-money of the land filed in his office (if the same has been so filed) or on the land grant of the land (if the same has been issued), or on any certificate of title which may have been issued in respect of the land, or any part thereof, to the effect that the said receipt or land grant or certificate is cancelled to the extent that it applies to such land or such part, the same having been forfeited to the Crown. The receipt or land grant or certificate shall thereupon be cancelled to the said extent, and the said land shall thereafter, for the purposes of The Real Property Act, 1886, be dealt with and regarded as if it had never been alienated from the Crown. The Registrar-General shall also call in and indorse in the same manner the duplicate of the land grant or certificate, which shall thereupon be cancelled to the said extent.

(5) The provisions of this section shall take effect notwithstanding anything in The Real Property Act, 1886, or any other Act or law to the contrary.

Limitation of number of town allotments that may be purchased. 1199, 1915, s. 236.

235. (1) Whenever any town lands are sold by auction, under any of the provisions of this Act, it may, if the Commissioner so directs, be made a condition of the sale that not more than a specified number of allotments thereof shall be purchased by or on behalf of any person.

(2) Where town lands are sold by auction subject to the said condition, and it is shown to the satisfaction of the Commissioner that more than the specified number of allotments thereof has been purchased by or on behalf of any

person, the Governor may, by notice published in the *Government Gazette,* cancel the sale of all or any of the allotments purchased by or on behalf of that person (hereinafter called "the cancelled allotments"); whereupon the sale of the cancelled allotments shall become absolutely void, and the cancelled allotments shall be forfeited to the Crown.

(3) Upon the filing in the Lands Titles Registration Office by the Commissioner of a copy of the *Government Gazette* containing any such notice, the Registrar-General shall make and sign an indorsement on the receipts for the purchase-money of the cancelled allotments filed in his office (if the same has so been filed) or on the land grant of the cancelled allotments (if the same has been issued), or on any certificate of title which may have been issued in respect of the cancelled allotments or any of them, to the effect that that receipt or land grant or certificate is cancelled to the extent that it applies to the cancelled allotments or any of them, the same having been forfeited to the Crown. The receipt or land grant or certificate shall thereupon be cancelled to the said extent, and the cancelled allotments shall thereafter, for the purpose of The Real Property Act, 1886, be dealt with as if they had never been alienated from the Crown. The Registrar-General shall also call in and indorse in the same manner the duplicate of the said land grant or certificate, which shall thereupon be cancelled to the said extent.

(4) The provisions of this section shall take effect notwithstanding anything in The Real Property Act, 1886, or any other Act or law to the contrary.

Agreement preventing fair competition at auction to be void.
1199, 1915, s. 237.

236. Every agreement, whether in writing or otherwise, whereby any person promises or agrees, either directly or indirectly, to give or allow any sum of money, reward, benefit, or thing to any other person, in consideration of that other person not bidding at any auction under this Act, or of his not competing at any such auction, or in consideration of his bidding to a limited amount only, or of his withdrawing from competition at any such auction, or in consideration of his doing any other act or thing which in any way might tend to prevent free and open competition at any such auction, shall be wholly illegal and void.

Agreement to pay commission of more than two and a half per centum void.
Ibid., s. 238.

237. Any agreement by any person to pay more than two and a half per centum on the purchase-money to any other person for bidding or acting for the said first-mentioned person at any auction under this Act shall be absolutely illegal and void.

DIVISION II.—EXCHANGE OF LANDS.

DIVISION II.

Powers of the Government to make exchange of land.
1199, 1915, s. 239.

238. Any Crown lands, or, subject to section 128 of the Pastoral Act, 1904, any lands set apart, dedicated, or reserved for any of the purposes mentioned in section 5 (except lands dedicated under subdivision (*d*) of the said section 5, under subdivision (*d*) of section 5 of the Crown Lands Act, 1915, or under subdivision (*d*) of section 7 of the Crown Lands Act, 1903), or held under lease or agreement, may, notwithstanding any lease or agreement thereof, be exchanged for any other lands in the State, subject to the following provisions:—

I. The Commissioner shall cause plans and a valuation to be made of the lands proposed to be given and of the lands proposed to be taken in exchange:

II. The board shall report on the proposed exchange:

III. The said plans, valuation, and report, together with a statement of the terms of exchange, shall be laid before both Houses of Parliament for fourteen days, and resolutions approving of the exchange shall be adopted.

After such adoption as aforesaid the lands proposed to be given in exchange may be granted for an estate in fee simple, a perpetual lease or agreement, or such lesser estate as may have been agreed upon.

Leased lands may be exchanged.
Ibid., s. 240.

239. The land given in exchange may be sold or let by the Commissioner to the original lessee of the land exchanged for the unexpired term of his original lease, on terms to be agreed upon, and on the lessee or purchaser surrendering his original lease or agreement.

Lands acquired by the Government to be dedicated for same purposes (if any) as lands alienated.
Ibid., s. 241.

240. The lands taken in exchange shall be set apart, dedicated, or reserved (as the case may be) for the same purposes as those for which the lands given in exchange were set apart, dedicated, or reserved.

DIVISION III.—GRANTING OF SITES.

DIVISION III.

Power to grant sites for public and charitable purposes.
Ibid., s. 242.
1900, 1929, s. 8.

241. (1) The Governor may at any time, on the application in writing of the purchaser or lessee under any of the Crown Lands Acts, grant any of the land comprised in his agreement or lease—

(*a*) to any corporation or to trustees, to be used as a site for a school, church, chapel, institute, or hospital, or for any other public or charitable purpose whatsoever: Provided that the land granted for any one of the said purposes does not exceed two acres:

s. 238. The Pastoral Act, 1904, has been repealed and superseded by the Pastoral Act, 1936. Section 128 of the former Act has been superseded by section 136 of the latter Act.

(*b*) to the holder, or lessee, or his nominee, to be used as a site for a blacksmith's shop, carpenter's shop, mill, store, or post office, or for any other purpose approved by the Governor: Provided that—

I. the land granted for any one of the said purposes does not exceed one acre;

II. the land is not situated within five miles of town lands; and

III. such security is given to the Governor as he thinks proper that the land will be used for one of the said purposes.

Amended by 2060, 1931, s. 16.

(2) Any lands granted pursuant to subsection (1) hereof may, with the consent of the Governor, be exchanged for other lands granted for the purpose for which the lands first mentioned were granted, or may be surrendered to the Crown freed from any trust, express or implied, or subject to such trusts as the Governor approves.

Purchase money for site to be paid on application.
1199, 1915, s. 243.
Amended by 40, 1939, s. 17.

242. The purchaser or lessee shall, at or before making his application, pay to the Treasurer the purchase-money for the land, fixed (if the land is subject to a contract for a lease with right of purchase or to an agreement) at the rate per acre at which he has agreed to purchase or has the right to purchase the land; or (in other cases) by the Commissioner on the recommendation of the board.

Lease or agreement to be read as excepting the granted land.
1199, 1915, s. 244.

243. After the grant the lease or agreement shall be read as if the land comprised in the grant had been expressly excepted from the operation of the lease or agreement.

PART XIV.

PART XIV.

LICENCES.

Licences may be granted.
1199, 1915, s. 245.

244. The Commissioner or any person authorised by him may grant licences, as provided by this section, to persons to enter upon and occupy the lands described in the licences for the objects and purposes hereunder expressed:—

I. With respect to any Crown lands or any other lands belonging to or vested in the Crown (not being lands let on perpetual lease within hundreds, or on lease with right of purchase, or lands under agreement to

s. 244. The Pastoral Act, 1904, has been repealed and superseded by the Pastoral Act, 1936.

purchase), or leased for miscellaneous purposes, or comprised in leases under the Pastoral Act, 1904, licences may be granted for the purpose of cutting, obtaining, and taking away any live or dead timber, gravel, stone, clay, earth, guano, manure, shell, or seaweed:

II. With respect to any Crown lands, dedicated or reserved lands, or lands leased for pastoral purposes, licences may be granted for—

(*a*) fishermen's residences and drying grounds:

(*b*) manufactories, fellmongering establishments, slaughter-houses, brick or lime kilns, or sawmills:

(*c*) except in the case of lands leased for pastoral purposes, depasturing the lands with cattle, sheep, or other animals:

(*d*) any other purpose approved by the Commissioner, whether similar to any of the above-mentioned purposes or not.

Commissioner may limit licences. 1199, 1915, s. 246.

245. The Commissioner may, by notice in the *Government Gazette,* prohibit any licensed or unlicensed person from exercising, on any lands described in the notice, any one or more of the powers conferred by licence or other authority for any of the purposes mentioned in paragraph I. of section 244; and any person who commits any act in contravention of any such notice shall forfeit his licence.

Conditions of licences. 1199, 1915, s. 247.

246. Every licence shall continue in force for a period not exceeding one year from the date of issue, and shall be subject to the payment of such fee, and to such restrictions and conditions as are imposed by the Commissioner.

PART XV.

PART XV.

SPECIAL PROVISIONS AS TO LANDS OUTSIDE GOYDER'S LINE OF RAINFALL.

Transfer of leases outside Goyder's line. 1199, 1915, s. 248.

247. Notwithstanding anything contained in this Act, when the Commissioner consents to the transfer of any lease (not being a lease under the Pastoral Act, 1904), of land suitable only for grazing purposes, situate outside Goyder's line of

s. 247. The Pastoral Act, 1904, has been repealed and superseded by the Pastoral Act, 1936.

rainfall, he may permit any rent then owing by the transferring lessee, together with interest at the rate of four per centum per annum, to be paid by the transferee by instalments extending over any period not exceeding five years.

Allotment in case of holdings outside Goyder's line. 1199, 1915, s. 249.

248. (1) Any lessee who has transferred a lease such as mentioned in section 247, and any lessee of any land suitable only for grazing purposes situated outside Goyder's line of rainfall, whose rent is in arrear and unpaid, and who is unable to transfer his lease, may, on application to and approval by the Commissioner, be allotted by the board any Crown lands within the said line of rainfall which are available; and in such case, notwithstanding anything contained in this Act, the allottee may, subject to the payment by him of interest, at the rate of four per centum per annum, on the rent or instalments (as the case may be) becoming due in respect of the land so allotted for the first three years of the lease or agreement, be allowed three years wherein to pay the rents or instalments (as the case may be) so becoming due for the said first three years.

(2) The lease or agreement shall not be issued, nor shall any transfer be permitted, in respect of the land so allotted, until the moneys due thereon have been paid.

PART XVI.

PART XVI.

MISCELLANEOUS.

Powers of forfeiture, acceptance of surrender, and resumption of agreements and leases to be exercised by Commissioner. 1199, 1915, s. 250. Amended by 40, 1939, s. 18.

249. Wherever by any provision of this Act or of any lease or agreement made under this Act or any repealed Act power is given—

(*a*) to cancel or forfeit an agreement or lease; or

(*b*) to accept the surrender of an agreement or lease; or

(*c*) to resume lands comprised in an agreement or lease,

that provision shall be read as conferring the said power upon the Commissioner, and not upon the Governor, unless the contrary is expressly provided.

Act 39/1939 s. 249a Where pursuant to an application &c

Commissioner to have care and control of reserved and dedicated lands. 1199, 1915, s. 251.

250. (1) The care, control, and management of all lands reserved or dedicated by the Governor for or to any public purpose shall, in the interim between the reservation or dedication of the lands and the grant thereof in fee, be vested in the Commissioner.

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s. 250. FOX v. ALLCHURCH (1927) 40 C.L.R. 135; 3 Austn. Digest 525, affirming FOX v. ALLCHURCH (1927) S.A.S.R. 328, which reversed in part FOX v. ALLCHURCH (1926) S.A.S.R. 384. Observations as to the construction of section 250 with respect to land dedicated for the purposes of the Botanic Garden.

(2) The said lands shall during the said interim be deemed Crown lands, except for the purpose of sale, or for the purpose of leasing under Part V.

(3) Nothing in this section shall affect any lands the care, control, and management of which have already been or are hereafter placed in a municipal corporation or district council.

Right of commonage. 1199, 1915, s. 252.

251. All Crown lands within hundreds, and not within any municipality or district council district, shall be subject to such rights of commonage as, with the consent of the Commissioner, are from time to time prescribed.

Disability of persons under eighteen to hold agreement, lease, or licence. Ibid., s. 253.

252. (1) No person under the age of eighteen years shall be entitled to hold, directly or otherwise, any lands comprised in any agreement, lease, or licence under this Act, unless that person becomes entitled to the agreement, lease, or licence as the personal representative of a purchaser, lessee, or licensee.

Amended by 2256, 1935, s. 10.

(2) All covenants and conditions contained in or imposed by any agreement, lease, or licence granted, transferred or transmitted to any minor of the age of eighteen years or upwards shall be as binding upon the minor as if he were of full age. 252a Where a lease or agreement is made to

Duties of Crown lands ranger. 1199, 1915, s. 254.

253. Every Crown lands ranger shall do all acts for preventing intrusion, encroachment, and trespass on lands belonging to or vested in the Crown, and for taking possession of any such lands in case of forfeiture, and for such other purposes as the Commissioner generally or specially directs or authorises.

Powers of district council rangers. Ibid., s. 255. Amended by S.L.R. Act, 1935.

254. (1) The powers conferred upon Crown lands rangers by this Act, may be exercised within a district council district by any district council ranger appointed by the council thereof, in respect of Crown lands, roads, or reserves under the control of the council.

(2) All penalties incurred within the district, and recovered under this Part, shall be paid to the council.

Crown lands ranger may make claim or entry. 1199, 1915, s. 256.

255. (1) Any Crown lands ranger may give any notice, make any claim, and make, or authorise any person to make, any entry which is requisite to be given or made by the Crown.

(2) Every such notice or claim made in writing under the hand of any Crown lands ranger, and every such entry made by any Crown lands ranger or person authorised by him, shall be valid for all purposes whatsoever as if the same were respectively given or made by the Crown.

Power to impound cattle trespassing and to destroy pigs.
1199, 1915, s 257.

256. (1) Cattle or sheep unlawfully trespassing upon Crown lands, or lands reserved for or dedicated to the public use, may be impounded by a Crown lands ranger or by any person authorised by the Commissioner or ranger.

(2) All pigs trespassing on Crown lands, or reserves or dedicated lands, may be destroyed by a Crown lands ranger, or by any person authorised by a Crown lands ranger, without compensation to the owner.

Unbranded wild cattle belong to the Crown.
Ibid., s. 258.
1882, 1928, s. 31.

257. (1) All unbranded wild cattle above the age of twelve months being on Crown lands, and having no apparent owner, shall be the property of the Crown.

(2) The Commissioner may cause any such cattle to be sold by public auction, or by tender, provided that the object, time, and place of the auction, or the time up to which such tender is to be made, is notified in the *Government Gazette* at least one month next preceding the time of auction or tender.

(3) The purchaser, on obtaining the written authority of the Commissioner, may enter with proper assistance upon the Crown lands where the cattle are and take possession of the same.

(4) If no bid is obtained at public auction or no tender received for any cattle offered for sale those cattle may be destroyed by any Crown lands ranger authorised by the Commissioner to do so.

Exemption of agreements from stamp duty.
1199, 1915, s. 259.

258. Notwithstanding the provisions of any Act to the contrary, every agreement made under this Act shall be exempt from any charge for stamp duty.

Annual payment of rent.
Ibid., s. 260.

259. All rent payable in respect of any lands leased under this Act or any Act hereby repealed shall, except as otherwise provided herein, be paid annually in advance.

Power of Commissioner to acquire lands for towns.
Ibid., s. 262.

260. (1) The Commissioner may, with the consent of the Governor, acquire, for an estate in fee simple, lands in any part of the State which in his opinion may conveniently be set apart as sites for towns and for purposes incidental thereto.

(2) Any such lands may be acquired either pursuant to agreement or compulsorily, and if the same are acquired compulsorily the provisions of Division II. of Part X. shall, *mutatis mutandis,* apply with respect to the acquisition thereof and all things incidental thereto or consequent thereon.

(3) All lands taken and acquired under this section shall thereupon for all purposes be Crown lands, and may by proclamation be set apart and dedicated as town lands or

suburban lands under subdivision (*h*) of section 5, and for any of the purposes mentioned or referred to in subdivision (*d*) of that section.

Power of Commissioner to resume land set apart as site for town. 1199, 1915, s. 263. 1882, 1928, s. 32.

261. (1) When any land has been set apart as a site for a town or for purposes incidental thereto, and part of that land has been laid out as roads or park lands, or roads and park lands, and the balance has been subdivided into allotments, some or all of which allotments have been alienated from the Crown, but no town has, in the opinion of the Commissioner been erected on the land, and the land is, in the opinion of the Commissioner, no longer required as a site for a town—

(*a*) the Commissioner may, with the consent of the Governor, acquire for an estate in fee simple all or any of the said allotments which have been alienated from the Crown; and

(*b*) the Governor may by proclamation declare the said roads to be closed, and cancel, wholly or partially, the proclamation (if any) setting apart such land as aforesaid,

and thereupon the whole of the said land shall be deemed for all purposes to be Crown lands, and may be dealt with accordingly under Part X. or any other provisions of this Act.

(2) The said allotments may be acquired, either pursuant to agreement or compulsorily, and if the same are acquired compulsorily the provisions of Division II. of Part X. shall, *mutatis mutandis,* apply with respect to the acquisition thereof and all things incidental thereto or consequent thereon.

Provision of moneys for purposes of sections 260 and 261. 1199, 1915, s. 264.

262. The moneys required by the Commissioner for the purposes of sections 260 and 261 shall be supplied to him by the Treasurer out of moneys provided by Parliament for those purposes.

Power to dispose of surplus lands. Cf. 1346, 1918, s. 19. Inserted by 2256, 1935, s. 11, and amended by 2363, 1937, s. 6.

262a. (1) Where it appears to the Governor that any land acquired for any purpose which after such acquisition has become Crown lands, is not suitable for, or is not required for the said purpose and is not required for any purpose of the Government of the State, he may—

(*a*) sell the land, or any estate, right, or interest therein, either by public auction or private contract; or

(*b*) exchange the land, or any estate, right, or interest therein, for any other land or property, or any estate, right, or interest therein; or

(*c*) dispose in any other way of the land, or any estate, right, or interest therein,

for such price or other consideration as may be recommended by the board and the Governor deems sufficient, and upon such (if any) terms and conditions as the board recommends and he deems proper.

(2) For the purpose of carrying out any such transaction as mentioned in subsection (1) of this section, the Governor may execute any and every assurance, deed, instrument, and writing, and do all such other things as may be deemed necessary or expedient.

(3) The Commissioner's receipt shall be a sufficient discharge for any moneys to be paid in pursuance of any such transaction, and it shall not be necessary for the person paying any such moneys to inquire whether or not a proper case has arisen for the exercise of any power conferred by this section.

(4) Nothing in this section shall be deemed to derogate from any other power vested in the Governor or any other person by this Act.

Provision for preservation of timber.
1199, 1915, s. 265.
1882, 1928, s. 33.

263. (1) Subject to subsection (2) of this section, it shall be a condition of every lease or agreement granted or entered into, after the eighteenth day of December, nineteen hundred and twelve, that at least five acres of every two hundred and fifty acres of the land comprised therein shall be set apart and reserved for the growth of timber, and that no timber trees growing thereon shall be destroyed.

(2) The Commissioner may, when he deems it advisable so to do, grant an exemption in whole or in part from compliance with the said condition.

(3) This section shall not apply—

(*a*) to any lease or agreement granted or entered into under Part XI. of the Crown Lands Act, 1903, Part XI. of the Crown Lands Act, 1915, or Part XI. of this Act, unless the surrendered lease or agreement in lieu of which the lease or agreement first mentioned was granted, contained the condition mentioned in subsection (1) of this section, or unless that surrendered lease was a miscellaneous lease:

(*b*) to any lease or agreement which comprises a less area than two hundred and fifty acres.

Provision for soil conservation reserves.
Inserted by 40, 1939, s. 19.

263a. (1) Subject to subsection (2) of this section, it shall be a condition of every perpetual lease (other than a perpetual lease of town lands) or agreement, granted or entered into after the passing of the Crown Lands Act Amendment Act (No. 2), 1939, that the lessee or purchaser will set apart and

keep reserved for the purpose of preventing soil erosion such areas of the land comprised in the lease or agreement, being areas covered with natural scrub growth, as the Commissioner or his servants shall notify to the lessee or purchaser, and will not destroy or permit to be destroyed any natural scrub growth growing on the said areas; the said areas to be of the respective sizes and in the respective positions notified to the lessee or purchaser by the Commissioner or his servants:

Provided that the total area of the said areas shall not exceed one-tenth of the area of the land comprised in the lease or agreement.

(2) The Commissioner may wherever he deems it advisable to do so, grant an exemption in whole or in part from compliance with the said condition.

(3) The land to be set apart and kept reserved pursuant to this section shall be in addition to any land required to be set apart and reserved pursuant to section 263 of this Act.

264. Any person holding any land from the Crown under a lease with right of purchase, or (subject to anything contained in Part X.) under an agreement obtained on a surrender, may complete his purchase at the expiration of six years from the time when the land was originally taken up by the said person or his predecessors in title, or at any time thereafter during the currency of his lease or agreement; and shall, on payment of the purchase-money or the balance thereof then unpaid, and of the prescribed fee for the grant be entitled to the land in fee simple: Provided that the Commissioner may, in any case, prevent the exercise of the right herein expressed until he is satisfied that the conditions of the lease or agreement have been *bona fide* fulfilled.

Completion of purchase under lease with right of purchase or agreement obtained on surrender.
1199, 1915, s. 266.

265. No person holding a lease with a right of purchase or an agreement, whenever granted, shall be entitled to complete the purchase unless the conditions of the lease or agreement have been fully complied with, or the Commissioner is satisfied that the lessee or purchaser has made such permanent improvements on the land that strict compliance with the conditions of the lease or agreement should be dispensed with.

Right of purchase not exercisable until conditions have been complied with or equivalent improvements made.
Ibid., s. 267.

265a. Notwithstanding anything contained in this or any other Act or anything contained in any lease or agreement under this Act or any other Act relating to Crown lands, if the person who is the lessee or purchaser under any such lease or agreement (whether the lease or agreement was issued before or after the passing of this Act) intimates, whether verbally

Cancellation of lease or agreement where holder abandons land.
Cf. 1581, 1923, s. 3.
Inserted by 2256, 1935, s. 12.

or by writing, to the Commissioner or any officer of the Department of Lands that he has abandoned the land comprised in the lease or agreement, or makes any intimation to the like effect, the Commissioner may, by writing under his hand, without notice to the said person, and without re-entry, forthwith determine the lease or agreement and thereupon the interest of the said person in the said land shall absolutely cease and determine.

Repeated notice of breach not necessary before forfeiture.
1199, 1915, s. 268.

266. Notwithstanding anything in any of the Crown Lands Acts or in any agreement or lease made or granted under any of the repealed Acts, if notice is given to the purchaser or lessee (as the case may be) of any breach of a covenant contained in or implied by such agreement or lease, no notice of any future breach of the same covenant, or of the continuance of the same breach thereof, shall be necessary before the exercise of the powers of forfeiture or cancellation expressed in or implied by the agreement or lease, whether so implied by such Acts as aforesaid, or any of them, or otherwise.

Land grant to be noted as subject to interest.
Substituted by 40, 1939, s. 20.

267. Where any agreement or lease is subject to any estate, interest, or caveat noted or registered thereon, and the purchaser or lessee completes the purchase of the fee simple of the land comprised in the agreement or lease, pursuant to any right conferred on him by this Act or the agreement or lease, and a land grant is issued, that land grant shall unless the person entitled to any such estate, interest, or as the case may be, the person who lodged the caveat otherwise directs by notice to the Commissioner, be subject to that estate, interest, or caveat, and particulars of that estate, interest or caveat, shall be noted on the land grant.

Cancellation of muniments of title when grant cancelled or land reverts to Crown.
1199, 1915, s. 270.
1405, 1919, s. 11.

268. (1) The Commissioner may from time to time, and upon the alienation of any of the lands hereinafter mentioned shall, forward to the Registrar-General, or other proper officer, the certificate, grant, or other muniment or muniments of title to all or any lands—

(*a*) the grant of which has been cancelled by the Governor under the Crown Lands Act, 1903, the Crown Lands Act, 1915, or this Act; or

(*b*) which, having been lawfully held by any person for any estate or interest, have been or are lawfully forfeited to or resumed by, or by any means whatsoever have reverted to or revert to or have been or are acquired by, the Crown,

and request the said Registrar-General or officer, in writing to forthwith cancel the said certificate, grant, or other muniment or muniments of title, either wholly or partially.

(2) The said Registrar-General, or other officer, shall thereupon enter on the folium relating to the land in the register-book and on the certificate, grant, or other muniment or muniments, a memorandum cancelling the same, either wholly or partially as the said writing may require, and shall sign the said memorandum. Thereafter the land in respect of which the certificate, grant, or other muniment or muniments of title have been cancelled may, until again alienated from the Crown, be dealt with in all respects as if it had never been alienated from the Crown.

Registrar-General to make necessary entries in registers.
1199, 1915, s. 271.

269. The Registrar-General shall, at the request of the Commissioner, make all entries in all register-books necessary or proper to be made for the purpose of giving effect to this Act.

Registrar-General may issue certified copy of lease or agreement.
Ibid., s. 272.

270. The Registrar-General shall, at the request of the Commissioner, on being satisfied that any Crown lease or agreement has either been lost or destroyed, issue a provisional copy of the lease or agreement at the cost of the applicant, which shall be valid and effectual for all purposes as if it were the original lease or agreement.

Proclamation valid for all purposes.
Ibid., s. 273.

271. No proclamation shall be invalid by reason of anything required as preliminary thereto not having been done, or not having been duly done.

PART XVII.

PART XVII.

OFFENCES AND PENALTIES.

Unauthorised occupation of Crown property.
1199, 1915, s. 275.

272. Any person who unlawfully occupies land belonging to or vested in the Crown, in any manner whatsoever, shall be liable to a penalty of not more than fifty pounds.

Delaying with travelling stock.
Ibid., s. 276.

273. (1) The owner or person in charge of cattle or sheep which—

(*a*) are found upon Crown lands, or dedicated or reserved lands; and

s. 272. DAVIS v. BAMBRICK (1875) 9 S.A.L.R. 156; 6 Austn. Digest 936. Held that the plaintiff, not being a Crown lands ranger, was not entitled to lay the complaint. See also section 294.

s. 273. HUMPHRIS v. FOOT (1934) S.A.S.R. 25. Meaning of the words "dedicated lands" discussed.

(*b*) are not *bona fide* travelling either to the station of the owner or to market, or, if travelling *bona fide,* do not travel at least five miles a day in a direct line,

shall be liable to a penalty of two shillings per head for every head of cattle, and one pound for every hundred sheep or part of every hundred sheep so found upon the said lands.

(2) Upon the hearing of the complaint the onus of proving that the cattle or sheep were so *bona fide* travelling, or that they *bona fide* travelled at least five miles a day, shall be upon the owner or person in charge of the cattle or sheep.

Depasturing cattle, etc.
1199, 1915, s. 277.

274. Whoever—

(*a*) depastures cattle, sheep, goats, or pigs upon Crown lands, or reserved or dedicated lands, or lands vested in the Commissioner of Educational Lands without licence or other lawful authority; or

(*b*) depastures on any such lands more cattle or sheep than authorised by his licence or authority,

shall be liable to a penalty of not more than one hundred pounds; and, in addition thereto, for every offence to a further penalty of three pence per head for every head of sheep, goats, or pigs, and one shilling and six pence for every head of cattle, so unlawfully depastured.

Injuring or removing timber, metals, etc., without licence.
Ibid., s. 278, 1882, 1928, s. 34.

275. (1) Any person who—

(*a*) injures or destroys any tree or sapling, or cuts, saws, removes, or sells any timber being on Crown lands, or lands leased or reserved under any of the Crown Lands Acts, or the Pastoral Act, 1904, or any Act incorporated therewith, without a licence or other valid authority, except on land so leased by him and for the purpose of making improvements on the said land; or

(*b*) unlawfully removes, or severs, excavates, quarries, or digs for, with intent to remove, any metal, or ore containing metal, or any stone, sand, gravel, or other material from any such lands, without a licence or other authority,

shall be liable to forfeit and pay, in addition to the value of the tree, sapling, timber, metal, or other material, a penalty of not less than two pounds nor more than five pounds or to be imprisoned for any period not exceeding two months.

S. 275. The Pastoral Act, 1904, has been repealed and superseded by the Pastoral Act, 1936.
BIRKS v. TAYLOR (1914) S.A.L.R. 148; 6 Austn. Digest 936. Where a perpetual lease does not reserve timber, the lease vests in the lessee the general property in the timber on the demised land.

(2) Any person found committing an offence against this section may be forthwith apprehended and taken before any justice of the peace by a Crown lands ranger, police constable, or person authorised by the ranger.

276. Whoever wilfully and unlawfully defaces, injures, destroys, removes, or obliterates any survey-picket or other land mark erected or being on any lands belonging to or vested in the Crown, shall be liable to a penalty of not more than fifty pounds.

Injuring or removing landmarks. 1199, 1915, s. 279.

277. Whoever wilfully defaces, injures, destroys, removes, cuts, scratches, or carves upon any monument, pedestal, carving, writing, ornamentation, or record placed, erected, or being upon any lands belonging to or vested in the Crown, or being dedicated or reserved lands, shall be liable to a penalty of not more than fifty pounds or to imprisonment for any period not exceeding six months.

Injuring monuments, records, etc., on Crown lands. Ibid., s. 280

278. (1) Whoever, by materials of any kind, except by gates approved by the Commissioner, wilfully obstructs or injures any road or way vested in the Crown, not being within the limits of any district council district, so as to hinder the free passage of any carriage thereon, shall be liable to a penalty of not less than two pounds nor more than ten pounds, in addition to the expense of removal.

Obstructing roads and ways. Ibid., s. 281.

(2) It shall be lawful for any Crown lands ranger or any person authorised in writing without any warrant, to forthwith summarily remove and prevent every such obstruction, at the cost of the party causing the same.

279. Any person who injures or destroys any gate or opening erected by the authority of the Commissioner on any road or way, or does not close the same, shall for every such offence be liable to a fine of not more than fifty pounds, or to imprisonment for any period not exceeding six months.

Leaving gates open. Ibid., s. 282.

280. Any person who wilfully obstructs or hinders any member of the board, or any Crown lands ranger, or other authorised person, in the exercise of any right under this Act shall be liable to a penalty not exceeding fifty pounds, or to be imprisoned for any period not exceeding six months.

Obstructing authorised persons from carrying out powers. Ibid., s. 283.

281. (1) Every person who directly or indirectly takes or receives any sum of money, or any thing whatsoever, in pursuance of any agreement hereinbefore declared to be void, or in consideration of any act on his part which would be illegal if agreed to be done, shall forfeit that sum of money or other thing.

Any money or reward received under any illegal agreement to be forfeited, and recoverable by anyone suing for the same. Ibid., s. 284.

(2) The said sum shall be recoverable by any person who sues for the same within twelve months from the time when the same was received.

Making illegal agreement.
1199, 1915, s. 285.

282. (1) Whenever any person—

(*a*) offers to any person, not being the principal for whom he is acting, intending purchaser, or lessee, to bid or not to bid at any auction except in some particular manner, or to bid for certain lands or leases only, in consideration of an intending purchaser or lessee bidding or not bidding for any land or lease to be offered for sale at the auction; or

(*b*) offers to enter into any agreement which would be illegal under this Act,

the first-mentioned person shall forfeit the full value of the lands or of the lease forming the subject of the agreement, or a sum of one hundred pounds, whichever is the higher in amount.

(2) The amount so forfeited may be sued for and recovered by any person who sues for the same within twelve months from the time of the offer or proposal.

Offering to enter into void agreements, etc.
Ibid., s. 286.

283. (1) Whenever any person—

(*a*) offers to any intending purchaser or lessee at any auction to enter into any agreement which would be void under this Act; or

(*b*) offers to make any agreement or arrangement for making which any forfeiture or penalty is provided; or

(*c*) makes any such offer as mentioned in section 282,

by means of threats or representations respecting the future biddings, purchases, or competition, or respecting any particular course of proceeding of such person at any such auction, he shall forfeit twice the full value of the lands or lease which formed the subject of the offer, proposal, or illegal agreement, or a sum of two hundred pounds, whichever is the higher in amount.

(2) The amount so forfeited may be sued for and recovered by any person who sues for the same within twelve months from the time of the offer or proposal.

s. 282. HAILES v. WHITE (1876) 10 S.A.L.R. 146; 6 Austn. Digest 926. As to the interests in land to which section 282 applies.

s. 283. HAILES v. WHITE (1876) 10 S.A.L.R. 146; 6 Austn. Digest 926. As to the interests in land to which section 283 applies.

False statement as to commonage. 1199, 1915, s. 287.

284. Any person who knowingly makes any false statement with regard to commonage in hundreds shall be liable to a penalty of not more than fifty pounds.

Forgery and uttering a felony. Ibid., s. 288.

285. Whoever—

(*a*) forges, counterfeits, or alters, with intent to defraud; or

(*b*) with a like intent, utters, or makes use of, knowing the same to be forged, counterfeited, or altered,

any writing or document authorised to be made, issued, or granted under this Act and relating to any Crown lands, shall be guilty of a felony, and shall be liable to be imprisoned for any term not exceeding eight years.

Perjury. Ibid., s. 289.

286. Any person who wilfully makes a false declaration, or who, upon oath or affirmation taken or made under the provisions of this Act, wilfully and corruptly gives any false evidence before the board, or any member thereof, shall be guilty of perjury, and may be imprisoned for any term not exceeding four years.

Fraud or false representation. Ibid., s. 290.

287. Any person who—

(*a*) by any manner of fraud or wilful misrepresentation, obtains or attempts to obtain any advance or loan under this Act from the Commissioner or the State Bank of South Australia; or

(*b*) by any false representation attempts to account for the expenditure of any moneys advanced as aforesaid,

shall be guilty of a misdemeanour, and shall be liable to be imprisoned for any term not exceeding twelve months.

PART XVIII.

PART XVIII.

REGULATIONS.

Regulations. 1199, 1915, s. 291.

288. (1) The Governor may make regulations for fully and effectually carrying out and giving force and effect to the various objects, purposes, rights, powers, and authorities of this Act, including regulations for fees, and for penalties not exceeding twenty pounds for any one offence.

(2) All such regulations shall be published in the *Government Gazette,* and shall be laid before both Houses of Parliament within fourteen days after the publication thereof, if Parliament is then sitting, and if not, then within fourteen days after the next session of Parliament begins; and if within sixty days of the laying before Parliament of any such regulations either House of Parliament passes a resolution objecting thereto, the same shall (so far as so objected to) thenceforth cease to have the force of law, and notice of every such resolution shall forthwith be published by the Commissioner in the *Government Gazette.*

(3) Subject to subsection (2) hereof, all such regulations shall have full force of law from the first date of publication thereof.

(4) The *Government Gazette* containing any such regulations purporting to be made by the Governor by virtue of this Act, shall be conclusive evidence of the making thereof; and the *Government Gazette* containing a notice of a resolution being passed by either House of Parliament objecting to any such regulation shall be conclusive evidence of the passing of that resolution.

PART XIX.

PART XIX.

ARBITRATION, EVIDENCE, LEGAL PROCEDURE, ETC.

Valuation for compensation to be determined by arbitration.
1199, 1915, s. 292.

289. (1) All valuations under any of the Crown Lands Acts (except valuations of rents and improvements to be made by the board), and valuations of improvements on resumed miscellaneous leased lands, shall be determined, in case of dispute, by two arbitrators, of whom one shall be nominated by the Commissioner, and the other by the person or persons entitled to compensation or payment; or, in case the arbitrators are not able to agree, by an umpire to be appointed by them before entering upon the consideration of the amount of compensation or payment.

(2) In case either of the parties entitled to nominate an arbitrator neglects so to do for fourteen days next after a notice in writing has been given him by the other party, or names an arbitrator who refuses or neglects to act, the arbitrator named by the other party may make a final decision alone.

Declarations, how to be made.
Ibid., s. 293.

290. All declarations required by this Act to be made by any person may be made before a member of the board, a justice of the peace, a notary public, or a commissioner for taking affidavits in the Supreme Court.

Parties compellable to give evidence, but not to be prosecuted in certain cases.
1199, 1915, s. 294.

291. (1) In any proceedings under Part XVII. all parties to any agreement such as mentioned in section 236 or 237, made in connection with an auction, and all persons making or receiving any offer, with or without threats, to enter into such an agreement, shall be compellable to give evidence upon all matters relating to the agreement or offer.

(2) No information shall be maintained against any person for conspiracy in consequence of any such agreement or offer, if the said person being summoned as a witness, answers all questions that may be asked of him concerning the matters in question; nor shall he be convicted of conspiracy if he at any time previous to any information being laid has fully disclosed such act on oath, under the compulsory process of any court, in any action or proceeding instituted under Part XVII. of this Act, Part XVII. of the Crown Lands Act, 1915, or Part XVII. of the Crown Lands Act, 1903.

Gazette evidence of facts stated therein.
Ibid., s. 295.

292. The production of the *Government Gazette* containing any publication required to be published shall be conclusive evidence of the facts stated, recited, or assumed therein.

Burden of proof.
Ibid., s. 296.
1311, 1917, s. 11.

293. In any action, suit, or proceeding under any of the Crown Lands Acts—

(*a*) the averment that any lands are Crown lands, dedicated lands, reserved lands, or lands belonging to or vested in the Crown, or that any person is a Crown lands ranger, or other person authorized to take any proceedings, or perform any duty, or sue for the recovery of any penalties or other moneys under any of the said Acts, shall be sufficient proof of that fact, unless the defendant proves the contrary:

(*b*) where the authority of the defendant to do any act is in question, the proof thereof shall lie upon the defendant:

(*c*) all licences, certificates, maps, plans, and office copies, purporting to be certified as true under the hand of the Director of Lands, the Assistant Director of Lands, or the Surveyor-General or the Deputy Surveyor-General of the State, shall be sufficient evidence without production of original records, and without the personal attendance of those officers, or proof of their signatures.

Amended by 1990, 1930, s. 3, and by 40, 1939, s. 21.

Who may lay complaint, and hearing of same.
1199, 1915, s. 297.

294. (1) All proceedings may be had and taken and all complaints may be laid for any offence against this Act at the instance of the Commissioner, or any person authorized

by him, or any Crown lands ranger; and all complaints shall be heard and determined, and all moneys, costs, and expenses shall be recovered, in a summary way.

(2) The court of summary jurisdiction may also, in case any penalty is imposed, order the defendant, in default of payment thereof, to be imprisoned for any period not exceeding six months.

Penalties. 1199, 1915, s. 298.

295. Except when otherwise provided, all penalties shall, when recovered, be paid to the Treasurer of the State.

Appropriation of payments. Inserted by 40, 1939, s. 22.

295a. Where money is paid to the Commissioner or to the receiver of rents in respect of any amounts of rent, purchase-money, or interest which became due at different times, the Commissioner or receiver may, notwithstanding any direction to the contrary, apply the money for or towards payment of those amounts in the order in which they became due, or in any other order which appears to the Commissioner or receiver to be convenient.

Treasurer may provide for costs of officers. 1199, 1915, s. 302.

296. The Treasurer may cause to be paid out of the Public Treasury the costs or charges of any action brought by or against any justice, Crown lands ranger, constable, or other person acting under the authority and in the execution of this Act.

Protection to persons acting in execution of this Act. Ibid., s. 303.

297. (1) All actions for anything done under any of the Crown Lands Acts shall be commenced within six months after the cause of action has arisen, and not afterwards.

(2) Notice in writing of every such action, and the cause thereof, shall be given to the defendant one month at least before the commencement of the action.

(3) In every such action the defendant may plead the general issue, and give this Act, or any Act hereby repealed, and the special matter in evidence at any trial to be had thereupon.

(4) No plaintiff shall recover in any such action if tender of sufficient amends has been made before action brought, or if a sufficient sum of money has been paid into court by or on behalf of the defendant after action brought, together with the costs incurred up to that time.

SCHEDULES.

THE FIRST SCHEDULE.

ACTS REPEALED.

Reference to Act.	Short Title.	Extent of Repeal.
No. 1199 of 1915.....	Crown Lands Act, 1915	The whole
No. 1206 of 1915.....	Crown Lands Act Suspensory Act, 1915	The whole
No. 1231 of 1915.....	Crown Lands Act Amendment Act, 1915	The whole
No. 1311 of 1917.....	Crown Lands Act Amendment Act, 1917	The whole
No. 1405 of 1919.....	Crown Lands Act Further Amendment Act, 1919	The whole
No. 1703 of 1925.....	State Bank Act, 1925.....	Section 72 and the Seventh Schedule
No. 1740 of 1926.....	Crown Lands Act Amendment Act, 1926	The whole
No. 1803 of 1927.....	Crown Lands Act Amendment Act, 1927	The whole
No. 1882 of 1928.....	Crown Lands Act Amendment Act, 1928	The whole
No. 1900 of 1929.....	Crown Lands Act Amendment Act, 1929	The whole

THE SECOND SCHEDULE.

Section 22. 1199, 1915, Second Schedule.

1. Land within any hundred.

2. Land situate within an average of twenty miles from the eastern boundaries of the hundreds of King, Rees, Tomkinson, Ketchowla, Hardy, Nackara, Paratoo, or Waroonee; or within ten miles from the northern boundaries of the hundreds of Waroonee, Minburra, and part of the hundred of Yalpara; or within the counties of Buccleuch and Chandos.

3. Land situate on either side of the line of railway between Coonalpyn and the eastern boundary of the State, and being not more than seven miles distant from that line.

4. Land situate upon Thistle Island, Flinders Island, Spilsby Island, Wedge Island, St. Peter's Island, Eba Island, and Eyre's Island.

Section 35.
1199, 1915, Third Schedule.
1405, 1919, s. 4.
1882, 1928, s. 35.

THE THIRD SCHEDULE.

South [Royal Arms] Australia.

CROWN LEASE (PERPETUAL).

His Majesty the King doth hereby lease to A.B., of [*address and occupation*] all that [*here describe land leased*] to be held in perpetuity at the following yearly rents namely:—[*here set out the rents in accordance with the appropriate section of the Act*], each of which yearly rents is to be paid in advance on the day of , with such penalties as are provided for by the Crown Lands Act, 1929, added thereto in case any of such rents is in arrear, and subject to the reservations, covenants, and conditions shortly stated below, and which are more fully set out in the Crown Lands Act, 1929.

Reservations.

1. There are reserved to the Crown all gold, silver, copper, tin, and other metals, all ores and other substances containing metals, all minerals, and all gems and precious stones, coal, and mineral oils, with incidental powers of search and mining.

Covenants.

2. The lessee must—

I. Enclose the land with a cattle-proof fence before the end of the fifth year of the lease;

II. Keep in good repair all Crown improvements (if any) on the land;

III. Clear so as to render available for cultivation, or so as to improve the grazing capacity thereof,.....acres of the land;

IV. Forthwith commence to destroy and to keep the land free from vermin to the satisfaction of the Commissioner of Crown Lands during the lease;

V. Insure and keep insured in the full insurable value thereof all buildings the property of the Crown upon the leased land in the joint names of the Commissioner and the lessee, in some insurance office to be approved of by the Commissioner, and forthwith lodge the policy of such insurance in the office of the Commissioner, and forward to the Commissioner the receipts for the premiums payable in respect of such policy within seven days after the same shall become due, with a power for the Commissioner to insure on default by the lessee, and to recover the amount paid for such insurance in like manner as the rent is recoverable.

And the lessee must not—

VI. Transfer, sublet, encumber, or mortgage without the written consent of the Commissioner first had in each case;

VII. Erect brush fence or suffer or permit the same to be erected or to remain on the land.

Conditions.

3. The lease shall be liable to forfeiture in the following cases and no others:—

I. If default be made in payment of any rent in arrear for six months after the same falls due, the lessee having had at least three months' previous notice in writing demanding its payment;

II. If default be made in the performance of any covenant; or

III. If the land shall be transferred, sublet, or mortgaged without the written consent of the Commissioner first had in each case.

4. The land may be resumed by the Crown for mining or for any public work or purposes, full compensation being made to the lessee for his loss.

THE FOURTH SCHEDULE.

Section 35. 1199, 1915, Fourth Schedule. 1405, 1919, s. 4. 1882, 1928, s. 36.

Reference to the Form in the Third Schedule.	Extended Meaning.
1. Reservations ..	Except and reserved out of this lease all gold, silver, copper, tin, and other metals, all ores and other substances containing metals, all minerals, and all gems and precious stones, coal, and mineral oils upon, in, or under the said land to His Majesty the King, His heirs and successors, and all persons lawfully claiming under or authorised by Him or them. And the Commissioner of Crown Lands and all persons lawfully claiming under or authorised by them, or either of them, shall have full and free liberty of access, ingress, egress, and regress, with or without horses, cattle, carts, drays, carriages, engines, and all other necessary implements and things, into, upon and from the said premises for all reasonable purposes, and to cut, dig, sink, try, search, work, remove and dispose of all or any of the said excepted and reserved things, full compensation being made to the lessee for any loss or damage sustained by him.
2. (I.) Covenant to fence	The lessee will during the first five years substantially fence the boundaries of the said land with a fence or wall ordinarily capable of resisting the trespass of cattle, and during the term of the lease maintain such fence or wall in good and substantial repair.
2. (II.) Covenant to keep Crown improvements in repair	The lessee will at his own cost during the said term, keep and maintain in good and tenantable repair and condition all improvements (if any) the property of the Crown on the land hereby leased.
2. (III.) Covenant to clear	The lessee will during the first two years clear so as to render available for cultivation or so as to improve the grazing capacity thereof not less than one-eighth of the area specified in that behalf in the lease, and will during the second two years clear as aforesaid not less than one-eighth of the area so specified, and will during each succeeding year clear as aforesaid not less than one-eighth of the area so specified until the whole of the area so specified has been cleared, and will at all times keep available for cultivation or grazing, as the case may be, the land so cleared.
3. Condition of forfeiture	Provided always, and this lease is upon this express condition, that if default shall be made in payment of any rent in arrear for six months after the same falls due, the lessee having had at least three months' previous notice in writing demanding its payment, or if default shall be made in the performance of any covenant on the part of the lessee; or if the lessee shall, without the written consent of the Commissioner first had and obtained, transfer, mortgage, encumber, or sublet the premises, or any part thereof, His Majesty or the Commissioner, after three months' written notice, may re-enter and take possession of the said lands; and it shall be lawful for the Commissioner, before or after re-entry, to cancel and determine this lease, and the Commissioner may thereupon insert a notice in the *Government Gazette* declaring this lease to be forfeited, and such notice appearing in the *Government Gazette* as having been published by the authority of the Commissioner shall, in all courts and elsewhere, and under all circumstances, be taken to be conclusive evidence that such lease has been legally cancelled and forfeited: Provided, however, that the Commissioner shall not (except in the case of rent being in arrear as aforesaid, or of the transfer, mortgage, encumbrance, or subletting of the premises without such consent as aforesaid) exercise the powers expressed in this clause in the case of default in the

THE FOURTH SCHEDULE—*continued.*

Reference to the Form in the Third Schedule.	Extended Meaning.
	performance of a covenant before the expiration of the period of three months after notice has been given to the lessee of such default and requiring the performance of the covenant: Provided nevertheless that if notice has been given to the lessee of any default in the performance of a covenant, no notice of any future default in the performance of the same covenant, or of the continuance of the same default, shall be necessary before the exercise of such powers.
4. Condition of resumption	Provided also, and it is expressly agreed, that the King shall, and may, at any time, or from time to time hereafter resume possession of all or any part of the said land hereby demised for roads, railways, tramways, or for sites for towns or for park lands, or for mining purposes, or for any public work or purpose upon the Commissioner giving three calendar months' notice to the lessee by publication in the *Government Gazette* of such intended resumption; and that immediately from and after the expiration of three calendar months after such notice shall have been given as aforesaid this lease and the demise hereby made shall cease, determine, and be void as to all or such parts of the said lands as shall be mentioned and described in such notice, anything in this lease to the contrary notwithstanding: Provided that, on any resumption, the lessee shall be paid compensation for the loss the lessee shall sustain thereby; and, in case of dispute, the amount of such compensation shall be determined by the Land Board, or, at the option of the Commissioner or the lessee, in the manner provided by section 289 of the Crown Lands Act, 1929.

Amended by 2060, 1931, s. 17.

THE FIFTH SCHEDULE.

Section 44. 1199, 1915, Fifth Schedule. 1405, 1919, s. 4. 1882, 1928, s. 37.

TERMS AND CONDITIONS IN AGREEMENT.

1. The vendor agrees to sell and the purchaser agrees to purchase for the sum of pounds being the price fixed by the Land Board all section of land situated in the Hundred of County of containing acres or thereabouts numbered and the improvements thereon except and reserved all gold, silver, copper, tin, and other metals, all ores and other substances containing metals, all minerals, and all gems and precious stones, coal, and mineral oils upon in or under the said land to the vendor and all persons lawfully claiming under or authorised by him with full and free liberty of access ingress egress and regress with or without horses cattle carts drays carriages engines and all necessary implements and things into upon and from the said land for all reasonable purposes and to cut dig sink try search work remove and dispose of all or any of the said excepted and reserved things.

2. The purchaser shall pay the purchase-money together with interest thereon at the rate of per centum per annum in sixty half-yearly instalments of payable in advance on the day of and the day of in each year until the whole of the purchase-money and interest shall be paid: Provided that the purchaser may complete the purchase of the said land at any time after six years from the time when such land was originally taken up on payment of the balance of the purchase-money and interest to the date of completion of the purchase.

3. The purchaser will pay and discharge all rates taxes assessments impositions and outgoings which shall become payable in respect of the said land.

4. The purchaser shall and will during the first five years from the date of this agreement substantially fence the boundaries of the said land with a fence or wall ordinarily capable of resisting the trespass of cattle and will until the completion of the purchase of the said land maintain and uphold such fence in good and substantial repair.

5. The purchaser will during this agreement keep and maintain in good and tenantable repair and condition all improvements on the said land.

6. The purchaser will during the first two years from the date of this agreement clear so as to render available for cultivation or so as to improve the grazing capacity thereof not less than acres of the said land and will during the second two years clear as aforesaid not less than acres of the said land and will during each succeeding year clear as aforesaid not less than acres of the said land until acres of the said land have been cleared, and will at all times keep available for cultivation or grazing, as the case may be, the land so cleared.

7. The purchaser will not without the consent of the vendor being first had and obtained transfer sublet encumber or mortgage the said land.

8. The purchaser will subject to the regulations in force for the time being under the Mining Act, 1930, or any other Act authorising the making of regulations permit every gold or mineral lessee or licensee holding a lease or licence under the Mining Act, 1930, or any other Act for the time being authorising the granting of gold or mineral leases or licences of or respecting any of the said land and all persons authorised by such lessee or licensee to have free and unrestricted access to and egress from the said land comprised in such gold or mineral lease or licence.

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9. It shall be lawful for the vendor and all persons authorised by him at all times unrestrictedly to enter into and upon the said land before completion of the purchase thereof.

10. The vendor reserves unto himself and all persons and bodies authorised by him full right and liberty without any payment to the purchaser by way of compensation from time to time and at all times hereafter with or without beasts of draught or burden or any vehicles whatever to enter into and upon the said land for the purpose of laying pipes or a pipe track in, along, over, or under the said land, and to view the condition of and to cleanse, relay, repair, and maintain the said pipes or pipe track, and to allow water to be in and to flow through the said pipes or pipe track, and to construct drains and pipe tracks, and to lay pipes where required in, along, over, or under the said land, and to view the condition of and cleanse, relay, repair, and maintain the said drains and pipe tracks and pipes, and to allow water to be in and to flow through the said drains, pipe tracks, and pipes.

11. The purchaser will insure and during this agreement keep insured in the full insurable value thereof in some insurance office in Adelaide to be approved by the vendor all buildings and erections the property of the vendor upon the said land or which may thereafter be thereupon against loss or damage by fire such insurance to be in the joint names of the purchaser and the vendor and will forthwith lodge the policy of every such insurance in the office of the vendor and will forward to the vendor the receipts for the premiums payable in respect of every such policy within seven days after the same shall become due and if the foregoing covenant shall not be duly observed then the vendor shall be at liberty to insure the said improvements in manner aforesaid and it is agreed that all sums of money received under any such insurance shall be laid out in reinstating the premises in respect of which the same shall have been received.

12. The purchaser will destroy all rabbits on the said land and fill up their burrows to the satisfaction of the vendor and will forthwith commence to destroy all such other vermin on the said land as are by or under the Vermin Act, 1931, or by or under any other Act for the time being in force in the said State declared to be vermin and will keep the said land free of all vermin to the satisfaction of the vendor during this agreement and will destroy Bathurst burr and all other noxious weeds growing upon the said land and upon the half width of Government roads adjacent thereto.

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and keep the land free from all Weeds which are declared by the Governor by regulation under the Weeds Act 1956 to be dangerous or noxious weeds.

13. The purchaser will neither allow to remain if now existing nor erect nor suffer the erection of any brush fence upon the said land.

14. And it is hereby declared that if any of the instalments hereby reserved shall be unpaid and in arrear for more than six months after the day whereon the same is hereby made payable the purchaser having had at least three months' previous notice in writing demanding its payment, or if the vendor shall be satisfied that there has been a breach in the performance of any of the covenants herein contained or that this agreement is liable to forfeiture the vendor may re-enter and take possession of the said land and it shall be lawful for the Commissioner of Crown Lands before or after re-entry to cancel and determine this agreement and the said Commissioner may thereupon insert a

notice in the *Government Gazette* declaring this agreement to be forfeited and such notice appearing in the *Government Gazette* shall in all courts and elsewhere and under all circumstances be taken to be conclusive evidence that this agreement has been legally cancelled and forfeited: Provided that the vendor or the said Commissioner shall not (except in the case of an instalment being unpaid and in arrear as aforesaid or of a breach of clause 7 hereof) exercise the powers expressed in this clause in case of a breach of covenant before the expiration of the period of three months after notice has been given to the purchaser of such breach and requiring the performance of the covenant: Provided nevertheless that if notice has been given to the purchaser of any breach of a covenant no notice of any future breach of the same covenant or of the continuance of the same breach thereof shall be necessary before the exercise of such powers.

15. And it is hereby expressly agreed that the said Commissioner may at any time or from time to time hereafter resume possession of all or any part of the said land for roads railways or tramways or for sites for towns or park lands or for mining purposes or for any public purpose whatsoever after the expiration of three calendar months from the giving by the said Commissioner to the purchaser of notice in writing of the intended resumption and that immediately upon the giving of such notice the right of the purchaser to complete the purchase shall cease and determine and be void as to all or such of the said lands as shall be specified in such notice and that immediately after the expiration of the said three calendar months this agreement and the right of the purchaser to possession shall cease and determine and be void as to all or such part of the said lands as shall be specified in such notice anything in this agreement to the contrary notwithstanding: Provided that on any resumption the purchaser shall be paid compensation for the loss the purchaser shall sustain thereby and in case of dispute the amount of such compensation shall be determined by the Land Board or at the option of the said Commissioner or the purchaser in the manner provided by section 289 of the Crown Lands Act, 1929.

Amended by 2060, 1931, s. 18.

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

16. And it is hereby expressly declared that any notice to be served or given to the purchaser under this agreement shall be deemed to have been duly served or given if the same be sent through the post office enclosed in an envelope addressed to the purchaser at any address stated in any recent application letter or document received from him or at his usual or last known place of abode in the said State or to the care of any solicitor attorney or agent acting in the purchaser's behalf in the particular matter in respect whereof such notice is given and such notice shall be deemed to have been served or given on and time shall run from the day of the posting thereof as aforesaid.

Section 76.
1199, 1915, Sixth Schedule.

THE SIXTH SCHEDULE.

CONDITIONS ON LEASE OF LANDS RESUMED FOR WATER.

(*a*) To pay the rent and taxes;

(*b*) To maintain in good order and tenantable condition and repair all buildings, wells, dams, reservoirs, embankments, erections, ditches, and watercourses upon the leased land;

(*c*) To erect, to the approval of the Commissioner, and maintain upon the land during the currency of the lease, a house of public accommodation, and therein afford accommodation to the public; and if the lessee shall obtain a licence in respect of the said house under any laws for the time being relating to licensed victuallers, to keep and conduct the licensed premises in a proper and orderly manner, so as to afford no just or reasonable cause for withholding or withdrawing the licence and from time to time without intermission to renew and keep such licence in force: Provided that this covenant shall not be inserted in any lease where the Commissioner shall determine that a house of accommodation is not required;

(*d*) To construct appliances for watering stock, either by shallow sinking, deep-seated sinking with surface appliances, or surface reservoirs; and

(*e*) Whenever thereunto reasonably required, to supply all cattle, sheep, and other stock with water.

THE SEVENTH SCHEDULE.

SCHEDULE OF LANDS TO BE RESERVED FOR FOREST PURPOSES.

Section 81. 1199, 1915, Seventh Schedule.

Hundreds.	Forest Reserves.	Acres.	
Belalie, Yangya, and Bundaleer ..	No. 1	7,798	Res. H.A. and L.C. 16/10/23; *Gov. Gaz.*, 13/12/23, p. 1368.
Howe	No. 2	1,969	Res. H.A. and L.C., 7/12/05; *Gov. Gaz.*, 31/12/08, p. 1315. Res. H.A. 7/10/20, and L.C. 20/10/20; *Gov. Gaz.*, 17/12/25, p. 1605.
Darling	No. 2	13,054	
Riddoch	No. 6	9,083	
Hindmarsh	No. 6	4,258	
Glen Roy	No. 8	8,064	
Joanna and Jessie	No. 11	5,493	Res. H.A. and L.C. 10/11/16; *Gov. Gaz.* 1/3/17, p. 368.
Nangwarry	No. 14	6,505	
Penola	No. 14	1,690	
Woolundunga	No. 16	3,893	*Gov. Gaz.* 24/9/25, p. 740; *Gov. Gaz.* 7/1/26, p. 2.
Riddoch	No. 17	326	Res. H.A. and L.C. 19/12/11; Res. H.A. 3/12/12, and L.C. 10/12/12.
Mount Muirhead	No. 18	485	
Finniss	No. 24	16	
Kanmantoo and Macclesfield	No. 26	235	
Adelaide	No. 28	10	
Gregory	No. 32	12,172	
Stirling	No. 33	8,098	Res. H.A. 13/12/27, and L.C. 21/12/27; *Gov. Gaz.* 26/1/28, p. 149.
Wanilla	No. 36	744	
Barunga	No. 44	234	*Gov. Gaz.* 19/6/24, p. 1360.
Walloway	No. 45	48	
Kuitpo	Nos. 46, 47, 48, 57 ..	4,376	
Redhill	No. 54	86½	*Gov. Gaz.* 4/6/25, p. 1086.
Crystal Brook	No. 55	20	
Murtho	No. 58	5,050	

NOTE.—Lands proclaimed since the first day of January, nineteen hundred and four, as forest reserves are also reserved for forest purposes.

Section 138. 1199, 1915, Eighth Schedule, 1703, 1925, s. 72.

THE EIGHTH SCHEDULE.

AGREEMENT BY BLOCKHOLDER OBTAINING ADVANCE.

I, , of being the holder under Homestead lease (*or* agreement) No. of [*describe land as in lease or agreement*], in consideration of the sum of £ now advanced to me by the State Bank of South Australia (the receipt of which sum I do hereby acknowledge) do hereby agree with the said bank, that I or other the blockholder for the time being of the said land shall well and truly repay to the said bank the said sum, together with interest thereon at four per centum per annum, by twenty equal annual instalments of £ each on the day of , 19 , and on the like day in every year thereafter until the said sum of £ and interest shall be fully paid and satisfied; and will within three months from the date hereof well and truly expend the said sum so advanced as aforesaid in or towards the erection or completion of the building or buildings (*or* in or towards making the improvements) mentioned in that behalf in my application dated the day of , 19 , and will not expend or employ the said sum or any part thereof for any other purpose whatsoever; and will, immediately upon the completion of the said building or buildings (*or* improvements) furnish to the said bank full and true details and particulars of the expenditure of the moneys advanced, with the original receipts and vouchers for all payments made; and will insure and keep insured, in the full insurable value thereof, all buildings and erections on the said block, whether the property of the Crown or otherwise, such insurance to be in the joint names of the said bank and the blockholder, in some office to be approved by the said bank, or such insurance to be effected in manner provided by section 78 of the State Bank Act, 1925; receipts for the premiums payable in respect of such policy to be forwarded to the said bank within seven days after the same shall become due.

On default by the blockholder the said bank shall have power to insure, and to recover the amount paid for such insurance in like manner as amounts due under the said lease or agreement are recoverable.

[*Add here such other conditions (if any) as the said bank shall think necessary.*]

And that if I, or the blockholder for the time being, shall make default in the observance or performance of these conditions, or any of them, such default shall for all purposes be deemed a breach of the covenants of the lease (*or* agreement) under which the block is held, and shall render such lease (*or* agreement) liable to forfeiture under section 59 of the Crown Lands Act, 1929.

As witness my hand this day of , 19 .

Witness—

Section 178. 1199, 1915, Ninth Schedule, 1405, 1919, s. 4. 1882, 1928, s. 38.

THE NINTH SCHEDULE.

TERMS AND CONDITIONS TO BE CONTAINED IN AGREEMENT.

1. The vendor agrees to sell and the purchaser agrees to purchase for the sum of pounds being the price fixed by the Land Board all section of land situated in the Hundred of County of containing acres or thereabouts numbered and the improvements thereon except and reserved all gold, silver, copper, tin, and other metals, all ores and other substances containing metals, all minerals, and all gems and precious stones, coal, and mineral oils, upon in or under the said land to the vendor and all persons lawfully claiming under or authorised by him with full and free liberty of access ingress egress and regress with or without horses cattle carts drays carriages engines and all necessary implements and things into upon and from the said land for all reasonable purposes and to cut dig sink try search work remove and dispose of all or any of the said excepted and reserved things.

2. The purchaser shall until the whole of the purchase-money and interest shall be paid pay the purchase-money together with interest thereon in seventy half-yearly instalments as follows:—The first ten half-yearly instalments shall each be the sum of and the subsequent sixty half-yearly instalments shall each be the sum of all of which instalments shall be payable in advance on the day of and the day of in each year: Provided that the purchaser may complete the purchase of the said land at any time after six years from the date of this agreement on payment of the balance of the purchase-money and interest to the date of completion of the purchase and complying with all the terms covenants conditions and provisions of this agreement. And provided that on any of the said days the purchaser may pay in advance any part (being the sum of fifty

pounds or a multiple thereof) of the purchase-money whereupon interest on the amount so paid shall cease and the amounts of the instalments subsequently falling due shall be decreased ratably to the amount so paid.

3. The purchaser will pay and discharge all rates taxes assessments impositions and outgoings which shall become payable in respect of the said land.

4. The purchaser shall personally reside on the said land for nine months at least in every year of this agreement.

5. The purchaser shall spend on the said land during each of the first five years from the date of this agreement a sum of money equal to three pounds for every one hundred pounds of the value of the said land as fixed by the Land Board in substantial improvements consisting of buildings fencing or water improvements being the sum of Provided that the amount so expended by the purchaser in excess of the amount required to be expended as aforesaid in one year shall be set off against the amount required to be expended in the next or following years: Provided also that so much of any amount of the purchase-money paid by the purchaser as shall have been paid on account of improvements on the said land may be deducted from the amount to be expended by the purchaser on improvements on the said land.

6. The purchaser shall and will during the first five years from the date of this agreement substantially fence the boundaries of the said land with a fence or wall ordinarily capable of resisting the trespass of cattle and will until the completion of the purchase of the said land maintain and uphold such fence in good and substantial repair.

7. The purchaser will during this agreement keep and maintain in good and tenantable repair and condition all improvements on the said land.

8. The purchaser will during the first two years from the date of this agreement clear so as to render available for cultivation or so as to improve the grazing capacity thereof not less than acres of the said land and will during the second two years clear as aforesaid not less than acres of the said land and will during each succeeding year clear as aforesaid not less than acres of the said land until acres of the said land have been cleared, and will at all times keep available for cultivation or grazing, as the case may be, the land so cleared.

9. The purchaser will not without the consent of the vendor being first had and obtained transfer sublet encumber or mortgage the said land.

10. The purchaser will subject to the regulations in force for the time being under the Mining Act, 1930, or any other Act authorising the making of regulations permit every gold or mineral lessee or licensee holding a lease or licence under the Mining Act, 1930, or any other Act for the time being authorising the granting of gold or mineral leases or licences of or respecting any of the said land and all persons authorised by such lessee or licensee to have free and unrestricted access to and egress from the said land comprised in such gold or mineral lease or licence. **Amended by S.L.R. Act, 1935.**

11. It shall be lawful for the vendor and all persons authorised by him at all times unrestrictedly to enter into and upon the said land before completion of the purchase thereof.

12. The vendor reserves unto himself and all persons and bodies authorised by him full right and liberty without any payment to the purchaser by way of compensation from time to time and at all times hereafter, with or without beasts of draught or burden or any vehicles whatever to enter into and upon the said land for the purpose of laying pipes or a pipe track in, along, over or under the said land, and to view the condition of and to cleanse, relay, repair, and maintain the said pipes or pipe track, and to allow water to be in and flow through the said pipes or pipe track, and to construct drains and pipe tracks, and to lay pipes where required in, along, over or under the said land, and to view the condition of and cleanse, relay, repair, and maintain the said drains and pipe tracks and pipes, and to allow water to be in and to flow through the said drains, pipe tracks, and pipes.

13. The purchaser will insure and during this agreement keep insured in the full insurable value thereof in some insurance office in Adelaide to be approved by the vendor all buildings and erections the property of the vendor upon the said land or which may thereafter be thereupon against loss or damage by fire such insurance to be in the joint names of the purchaser and the vendor and will forthwith lodge the policy of every such insurance in the office of the vendor and will forward to the vendor the receipts for the premiums payable in respect of every such policy within seven days after the same shall become due and if the foregoing covenant shall not be duly observed then the vendor shall be at liberty to insure the said improvements in manner aforesaid and it is agreed that all sums of money received under any such insurance shall be laid out in reinstating the premises in respect of which the same shall have been received.

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

14. The purchaser will destroy all rabbits on the said land and fill up their burrows to the satisfaction of the vendor and will forthwith commence to destroy all such other vermin on the said land as are by or under the Vermin Act, 1931, or by or under any other Act for the time being in force in the said State declared to be vermin and will keep the said land free from all vermin to the satisfaction of the vendor during this agreement and will destroy Bathurst burr and all other noxious weeds growing upon the said land and upon the half width of Government roads adjacent thereto.

15. The purchaser will neither allow to remain if now existing nor erect nor suffer the erection of any brush fence upon the said land.

16. And it is hereby declared that if any of the instalments hereby reserved shall be unpaid and in arrear for more than six months after the day whereon the same is hereby made payable the purchaser having had at least three months' previous notice in writing demanding its payment, this agreement may be cancelled by the Commissioner of Crown Lands or if the vendor shall be satisfied that there has been a breach in the performance of any other of the covenants herein contained or that this agreement is liable to forfeiture the vendor may re-enter and take possession of the said land and it shall be lawful for the said Commissioner before or after re-entry to cancel and determine this agreement and the said Commissioner may thereupon insert a notice in the *Government Gazette* declaring this agreement to be forfeited and such notice appearing in the *Government Gazette* shall in all courts and elsewhere and under all circumstances be taken to be conclusive evidence that this agreement has been legally cancelled and forfeited: Provided that the vendor or the said Commissioner shall not (except in the case of an instalment being unpaid and in arrears as aforesaid or of a breach of clause 9 hereof) exercise the powers expressed in this clause in the case of a breach of covenant before the expiration of the period of three months after notice has been given to the purchaser of such breach and requiring the performance of the covenant: Provided nevertheless that if notice has been given to the purchaser of any breach of a covenant no notice of any future breach of the same covenant or of the continuance of the same breach thereof shall be necessary before the exercise of such powers.

17. And it is hereby expressly agreed that the said Commissioner may at any time or from time to time hereafter resume possession of all or any part of the said land for roads railways or tramways or for sites for towns or park lands or for mining purposes or for any public purposes whatsoever after the expiration of three calendar months from the giving by the said Commissioner to the purchaser of notice in writing of the intended resumption and that immediately upon the giving of such notice the right of the purchaser to complete the purchase shall cease and determine and be void as to all or such of the said lands as shall be specified in such notice and that immediately after the expiration of the said three calendar months this agreement and the right of the purchaser to possession shall cease and determine and be void as to all or such part of the said lands as shall be specified in such notice anything in this agreement to the contrary notwithstanding: Provided that on any resumption the purchaser shall be paid compensation for the loss the purchaser shall sustain thereby and in case of dispute the amount of such compensation shall be determined by the Land Board or at the option of the said Commissioner or the purchaser in the manner provided by section 289 of the Crown Lands Act, 1929.

Amended by 2060, 1931, s. 19.

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

18. And it is hereby expressly declared that any notice to be served or given to the purchaser under this agreement shall be deemed to have been duly served or given if the same be sent through the post office enclosed in an envelope addressed to the purchaser at any address stated in any recent application letter or document received from him or at his usual or last known place of abode in the said State or to the care of any solicitor attorney or agent acting in the purchaser's behalf in the particular matter in respect whereof such notice is given and such notice shall be deemed to have been served or given on and time shall run from the day of the posting thereof as aforesaid.

Section 88A.

THE TENTH SCHEDULE.

Land added to the Lyrup Village Association District.

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

Comprising all that portion of the hundred of Paringa bounded as follows:—Commencing at the northern corner of block 47, thence south-easterly along the north-eastern boundary of the said block and production to the eastern side of road east of said block; thence south-south-westerly and south-westerly along the eastern and south-eastern sides of road east and south-east of said block; westerly along the southern side of road south of blocks 47, 46 and portion of block 44, south-south-westerly along the south-eastern side of road south-east of

block 43, west-north-westerly and north-westerly along the south-western side of road south-west of block 43, generally northerly along the western side of road west of said block 43, blocks 42 and 40, north-easterly along the north-western side of road north-west of blocks 40 and 39, south-easterly along the north-eastern side of road north-east of block 39 to the north-western boundary of channel reserve, thence north-easterly and south-easterly along the north-west and north-eastern boundaries of said channel reserve to the western side of road west of block 33, thence generally south-westerly along said side of road and production to the northern corner of block 146, thence south-south-easterly along the eastern boundaries of blocks 146 and 45, south-easterly along the north-eastern boundaries of blocks 45 and 46 to the point of commencement.

The Road Traffic Act, 1934-1954, including all amendments passed to the end of 1954 and notes of judicial decisions, is reprinted in the Annual Volume, 1954, at page 274.

ROAD TRAFFIC ACT, 1934-1939.

BEING

ROAD TRAFFIC ACT, 1934, No. 2183 OF 1934 [ASSENTED TO 29TH NOVEMBER, 1934.]

AS AMENDED BY

ROAD TRAFFIC ACT AMENDMENT ACT, 1936, No. 2332 OF 1936 [ASSENTED TO 3RD DECEMBER, 1936.]

ROAD TRAFFIC ACT AMENDMENT ACT, 1938, No. 2416 OF 1938 [ASSENTED TO 15TH DECEMBER, 1938.]

ROAD TRAFFIC ACT AMENDMENT ACT, 1939, No. 23 OF 1939 [ASSENTED TO 30TH NOVEMBER, 1939.]

ROAD TRAFFIC ACT AMENDMENT ACT (No. 2), 1939, No. 34 OF 1939 [ASSENTED TO 14TH DECEMBER, 1939.]

AND

ROAD TRAFFIC ACT AMENDMENT ACT (No. 3), 1939, No. 45 OF 1939 [ASSENTED TO 21ST DECEMBER, 1939.]

An Act to consolidate certain Acts relating to road traffic.

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

PART I.

PART I.

PRELIMINARY MATTERS.

Short title, commencement, and division of Act.

1. (1) This Act may be cited as the "Road Traffic Act, 1934-1939," and shall come into operation on a day to be fixed by proclamation.

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s. 1. (1) **Commencement of Acts:—**
Commencement of the Road Traffic Act, 1934 (except section 110): 2nd January, 1935; *Gazette* 20th December, 1934, p. 1217.
Commencement of section 110 of the Road Traffic Act, 1934: 1st March, 1935; *Gazette* 20th December, 1934, p. 1217.
Commencement of the Road Traffic Act Amendment Act, 1936 (except sections 153 and 154): 1st April, 1937; *Gazette* 18th March, 1937, p. 585.
Commencement of section 153 of the Road Traffic Act Amendment Act, 1936: 3rd December, 1936; *Gazette* 3rd December, 1936, p. 1193.
Commencement of section 154 of the Road Traffic Act Amendment Act, 1936: 1st December, 1937; *Gazette* 18th November, 1937, p. 1345.

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

PART I.—Preliminary matters.

PART II.—Motor vehicles.

PART III.—Vehicles other than motor vehicles.

PART IV.—Width of tires.

PART V.—Lights on vehicles other than motor vehicles.

2. The Acts mentioned in the schedule are repealed. Repeal.

3. (1) The Governor may by proclamation commit the administration of any Part of this Act to any Minister, and may from time to time revoke or alter any such proclamation. Administration of Act.

(2) In this Act the term "Minister" means the Minister for the time being administering the Part of this Act in which the term Minister occurs.

PART II.

PART II.

MOTOR VEHICLES.

4. (1) In this Part, unless inconsistent with the context, or some other meaning is clearly intended— Interpretation. 1480, 1921, s. 4. 1695, 1925, ss. 3, 15. 1941, 1929, s. 4. Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 1.

"commercial motor vehicle" means any motor vehicle wholly or mainly adapted for the carriage of goods, and includes a motor vehicle of the type commonly called "buckboard":

"court" means the court (whether the Supreme Court or any other court) having jurisdiction to deal with matters arising under the provision of this Act in which the term occurs: Definition of "court" substituted by 45, 1939, s. 3 (a).

"driver" means any person driving a motor vehicle or a motor cycle, and as regards a trailer means a person driving the motor vehicle by which the trailer is being drawn:

"licence" means licence under this Part:

s. 1. (2) In addition to the Parts mentioned in subsection (2), Part IIA. (insurance against third party risks arising out of the use of motor vehicles), Part VI. (general rules to be observed by traffic), and Part VII (protection of roads), which were enacted by the Road Traffic Act Amendment Act, 1936, are included in this reprint.

Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 2. Amended by 45, 1939, s. 3 (b).

"motor vehicle" includes any motor car, motor carriage, automobile, motor cycle, tractor, or other vehicle or carriage driven or propelled, or ordinarily capable of being driven or propelled, either partly or wholly, by any volatile spirit, steam, or electricity, or by means other than animal power, and includes a trailer at any time attached to a motor vehicle; but does not include any vehicle run upon a railway or tramway, or any farm tractor which is not used on a public road:

"number" includes a number combined with one or more letters of the alphabet:

"owner" includes the holder under a hire purchase agreement:

"registrar" means the Registrar of Motor Vehicles appointed under this Act or the Acts hereby repealed:

"road" includes every public road, street, terrace, thoroughfare, or other public place, and every private road or street commonly used by the public, or to which the public are permitted to have access:

Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 2 (3). Amended by 45, 1939, s. 3 (c).

"trailer" means any vehicle without motive power constructed or adapted for being drawn by a motor vehicle: Provided that a vehicle without motive power constructed or adapted for being drawn by a motor vehicle shall not be deemed a trailer, but shall be deemed part of the motor vehicle by which it is drawn if—

* * * * * * * * * * *

(*b*) it is constructed or adapted for attachment to a motor vehicle by means of a turntable and kingpin; and

(*c*) a substantial part of its weight and of the weight of its load rests upon the motor vehicle by which it is drawn.

(2) For the purpose of this Part the person driving any motor vehicle to which a trailer is attached shall be deemed to be the driver of the trailer and the trailer shall be deemed to be driven by that person.

Registrar and inspectors of motor vehicles. 1480, 1921, s. 5. 1760, 1926, s. 3.

5. (1) The Governor may, for the purposes of this Part, appoint a Registrar of Motor Vehicles, and such deputy registrars of motor vehicles and inspectors of motor vehicles as he considers necessary.

(2) Every inspector appointed under this Part shall have the same powers, functions, and duties as are conferred by this Part upon members of the police force.

(3) Every reference in this Part to a member of the police force shall be deemed to include a reference to such an inspector, and every reference in this Part to the registrar shall be deemed to include a reference to any deputy registrar appointed under this Part.

Registrar to keep register of motor vehicles. 1480, 1921, s. 6. 2095, 1932, s. 3.

6. (1) The registrar shall keep a register for the registration of motor vehicles. Such register shall be called the "Register of Motor Vehicles."

(2) The prescribed forms of application received by the registrar from the persons applying to register motor vehicles shall be bound or otherwise assembled by the registrar and arranged in order as the registrar determines, and shall constitute the Register of Motor Vehicles within the meaning of this Part: Provided that the regulations may provide that the register shall be constituted and kept in any other way.

Duty to register. 1480, 1921, s. 7. 1941, 1929, s. 5. 2095, 1932, s. 4.

Amended by by 2416, 1938, s. 3, and 45, 1939, s. 4.

7. (1) No person shall drive any motor vehicle on any road unless that vehicle has been registered under this Part and the registration thereof is for the time being in force: Provided that this subsection shall not apply if the motor vehicle is driven on a road bearing trader's plates issued under section 27 and for the time being in operation: Provided further that this subsection shall not apply if the motor vehicle is driven on any road whilst carrying persons or fire-fighting appliances to or from any fire.

(2) Any person who drives a motor vehicle in contravention of this section shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(3) If any person other than the owner drives a motor vehicle in contravention of this section, the owner thereof shall also be guilty of an offence and shall be liable to a penalty not exceeding fifty pounds. It shall be a defence to a charge under this subsection that the motor vehicle was so driven without the knowledge or against the instructions of the owner.

(4) Whenever any person, whether the owner of the motor vehicle or not, is convicted for an offence under this section the court may, in addition to imposing a penalty, summarily order that person to pay to the registrar the amount payable under this Part for registration for a full year of the motor vehicle in respect of which the offence was committed.

(5) A motor tractor shall not be deemed to be driven on any road so as to require registration under this Part by reason only of the fact—

(*a*) that it is driven on any road for the purpose of carrying out any contract made with a municipal or district council for scarifying, grading, and/or rolling any roads or streets:

(*b*) that it is driven on any road for the purpose of drawing farm implements or machinery from one farm to another.

Permits to use certain tractors and other vehicles without registration.

Inserted by 2416, 1938, s. 4.

7a. (1) The registrar may at his discretion without fee grant to any primary producer who owns a tractor or unregistered motor vehicle a permit to drive that tractor or motor vehicle along any route specified in the permit for the purpose only of enabling the tractor or motor vehicle to be used in connection with the working of two or more separate parcels of land worked in conjunction with each other by that primary producer. Any such permit shall be subject to such conditions as the registrar thinks proper. The registrar shall not grant a permit for a tractor under this section, unless the tractor is equipped with pneumatic tyres or other tyres which, in the registrar's opinion, will not cause undue damage to roads.

(2) Any such tractor or motor vehicle may be driven in accordance with the terms of a permit granted under this section without registration.

(3) If any tractor or motor vehicle for which a permit is in force under this section is driven on any road otherwise than in accordance with the terms and conditions of the permit the person driving the tractor or motor vehicle shall be guilty of an offence and liable to a penalty not exceeding twenty-five pounds.

Permits to drive vehicles pending registration.

Inserted by 34, 1939, s. 3.

7b. If the owner of any motor vehicle not previously registered in the name of such owner—

(*a*) satisfies the member of the police force in charge of any police station situated more than fifty miles by a direct line from the General Post Office at Adelaide that an application in the proper form for the registration of the motor vehicle has been sent to the registrar by or on behalf of the said owner, together with the proper fee for the registration of the vehicle for a period of six months or twelve months commencing on a day not later than the issue of the permit hereinafter mentioned; and

(*b*) produces to the said member of the police force a certificate given by or on behalf of an approved insurer certifying the matters mentioned in section 8c of this Act—

the said member of the police force may issue to that owner without fee a permit permitting the motor vehicle to be driven on roads, without registration and without carrying a registration card or number plates, during the period of operation of the permit.

(2) A permit granted under this section shall remain in operation until the expiration of ten days after the issue thereof.

(3) A permit granted under this section shall not be of any force or validity except while it is affixed to the windscreen of the vehicle to which it relates in the position prescribed for the carrying of a registration card.

Provisions as to registration. 1480, 1921, s. 8. 1941, 1929, s. 5.

8. (1) Every application to register a motor vehicle shall be made to the registrar by or on behalf of the owner of the motor vehicle in accordance with the regulations, and at the time of making the application for registration a fee calculated in the manner set forth in the next succeeding section shall be paid to the registrar.

Amended by 2332, 1936, s. 4.

(2) Upon application duly made and payment of the fee as required by subsection (1) the registrar shall register the motor vehicle in the register of motor vehicles for a period of either six months or twelve months, at the option of the person applying for registration, and shall assign a number to the vehicle.

(3) If a motor vehicle registered under this section has been previously registered by the same owner the registrar shall, if the owner requests, assign to the motor vehicle on registration under this section the number assigned to the vehicle on the previous registration: Provided that the registrar may refuse so to assign the latter number if more than three months have elapsed between the expiration of the previous registration and the new application for registration.

(4) The plates bearing any registration number assigned under this section shall be black and the number thereon shall be white.

(5) The registrar shall, on payment of the prescribed fee, furnish the owner of any registered motor vehicle with a copy of the entries in the register relating to that motor vehicle.

Refusal to register unfit vehicles.

Inserted by 2332, 1936, s. 8.

8a. If a court has ordered that a vehicle shall not be registered until some condition is complied with, the registrar shall not register that vehicle until he is satisfied that that condition has been complied with.

Statements in application as to insurance.

Inserted by 2332, 1936, s. 8.

8b. After the day proclaimed as the day on which Part IIA. of this Act shall come into operation, the registrar shall not register any vehicle unless the application contains a statement by the owner of the vehicle or by the person applying for registration on behalf of the owner that a policy of insurance complying with this Act is in force in relation to the vehicle and a statement of the name of the insurer who has issued the policy.

Certificates of insurance.

Inserted by 2416, 1938, s. 5.

8c. After the thirty-first day of March, nineteen hundred and thirty-nine, the registrar shall not register any motor vehicle unless, when the application for registration is made, there is produced to him a certificate given by or on behalf of an approved insurer, certifying that a policy of insurance has been issued by that insurer in relation to the motor vehicle, and that the policy complies with Part IIA. of this Act, and will unless lawfully cancelled remain in operation throughout the period for which registration is applied for.

Mode of computing registration fee.

1480, 1921, s. 8K. 1941, 1929, s. 5, and the schedule. 2095, 1932, ss. 17-20. Cf. U.K. 23 & 24 Geo. 5 c. 19, s. 25, 7th Sch.

9. The registration fee for a motor vehicle shall be calculated according to the following provisions:—

(1) (*a*) The power-weight (indicated in this section by the letters P.W.) of a motor vehicle shall be ascertained by adding the weight in hundredweights of the vehicle to the horsepower calculated as hereinafter mentioned.

(*b*) The horsepower of a motor vehicle propelled by any volatile spirit shall be determined by squaring the measurement in inches of the internal diameter of the cylinder of the engine and multiplying the number so found by the number of cylinders and dividing the product by 2.5.

The horsepower of a motor vehicle driven by steam shall be calculated by dividing the number of the square inches of area of the fire grate of the boiler of such vehicle by 25.

The horsepower of a vehicle driven by electricity shall be ascertained by dividing the number of watts of electrical energy consumed by the power unit of the vehicle when the vehicle is running under full load at normal speed by 746.

(*c*) The weight of a vehicle in hundredweights and the horsepower of a vehicle shall be calculated to the nearest whole number.

(2) The registration fee for a motor bicycle shall be as follows:—

	£	s.	d.
If the bicycle has not a side-car attached thereto	1	10	0
If the bicycle has a side-car attached thereto	2	0	0

(3) The registration fee for a motor tricycle or motor trivan shall be as follows:—

	£	s.	d.
If the tricycle or trivan does not exceed 10 P.W.	2	0	0
If the tricycle or trivan does exceed 10 P.W.	4	0	0

(4) The registration fee for a motor vehicle (other than a motor bicycle, motor tricycle, trailer, or motor trivan) fitted with pneumatic tires shall be:—

	£	s.	d.
If the vehicle does not exceed 25 P.W.	4	0	0
If the vehicle exceeds 25 P.W. but does not exceed 30 P.W.	5	0	0
If the vehicle exceeds 30 P.W. but does not exceed 35 P.W.	6	0	0
If the vehicle exceeds 35 P.W. but does not exceed 40 P.W.	7	0	0
If the vehicle exceeds 40 P.W. but does not exceed 45 P.W.	8	0	0
If the vehicle exceeds 45 P.W. but does not exceed 50 P.W.	9	0	0
If the vehicle exceeds 50 P.W. but does not exceed 55 P.W.	10	0	0
If the vehicle exceeds 55 P.W. but does not exceed 60 P.W.	11	0	0
If the vehicle exceeds 60 P.W. but does not exceed 65 P.W.	12	0	0
If the vehicle exceeds 65 P.W. but does not exceed 70 P.W.	13	0	0
If the vehicle exceeds 70 P.W. but does not exceed 75 P.W.	14	0	0
If the vehicle exceeds 75 P.W. but does not exceed 80 P.W.	15	0	0
If the vehicle exceeds 80 P.W. but does not exceed 85 P.W.	17	0	0
If the vehicle exceeds 85 P.W. but does not exceed 90 P.W.	18	0	0
If the vehicle exceeds 90 P.W. but does not exceed 95 P.W.	19	0	0
If the vehicle exceeds 95 P.W. but does not exceed 100 P.W.	20	0	0

	£	s.	d.
If the vehicle exceeds 100 P.W. but does not exceed 110 P.W.	23	0	0
If the vehicle exceeds 110 P.W. but does not exceed 120 P.W.	26	0	0
If the vehicle exceeds 120 P.W. but does not exceed 130 P.W.	29	0	0
If the vehicle exceeds 130 P.W. but does not exceed 140 P.W.	32	0	0
If the vehicle exceeds 140 P.W. but does not exceed 150 P.W.	35	0	0
If the vehicle exceeds 150 P.W. but does not exceed 160 P.W.	38	0	0
For every additional P.W.	0	5	0

If the motor vehicle has all or any of its wheels fitted with rubber tires other than pneumatic tires the fee shall be at such one of the above rates as is applicable, plus 50 per cent. thereof.

If the motor vehicle has all or any of its wheels fitted with metal tires the fee shall be at such one of the above rates as is applicable, plus 100 per cent. thereof.

(5) The registration fee for a trailer fitted with pneumatic tires shall be:—

	£	s.	d.
If the weight of the trailer unladen does not exceed 1 ton	1	10	0
If the weight of the trailer unladen exceeds 1 ton, but does not exceed 1½ tons	2	0	0
If the weight of the trailer unladen exceeds 1½ tons, but does not exceed 2 tons	2	10	0
If the weight of the trailer unladen exceeds 2 tons	3	0	0

If the trailer has all or any of its wheels fitted with rubber tires other than pneumatic tires, the fee shall be at such one of the above rates as is applicable, plus 50 per cent. thereof.

If the trailer has all or any of its wheels fitted with metal tires, the fee shall be at such one of the above rates as is applicable, plus 100 per cent. thereof.

Amended by 2332, 1936, s. 5.

(6) The fees previously set out in this section are those payable for a full period of twelve months. If any registration is effected for a period of six months the fee for registration shall be the percentage hereinafter mentioned of that which would be payable for the full period of twelve months.

The percentage referred to in this subsection shall be as follows:—

(*a*) If registration is effected during the period of twelve months after the commencement of the Road Traffic Act Amendment Act, 1936, fifty-five per centum:

(*b*) If registration is effected within the period of twelve months commencing after the expiration of the period mentioned in paragraph (*a*), fifty-three and three-quarters per centum:

(*c*) If registration is effected at any time after the expiration of the period mentioned in paragraph (*b*), fifty-two and one-half per centum.

Amended by 2332, 1936, s. 6.

(7) If the registrar is satisfied by statutory declaration or such other evidence as he requires that—

Cf. U.K. 26 Geo. 5 & 1 Edw. 8 c. 34, s. 12.

(*a*) any commercial motor vehicle is owned by a primary producer; and

(*b*) such motor vehicle will not be used on roads for carrying His Majesty's mails, goods, or passengers, for pecuniary reward or for carrying goods in the course of any trade or business other than that of a primary producer,

the registration fee shall be the amount which would otherwise be payable under this section, less 50 per cent. thereof.

Passage inserted by 2416, 1938, s. 6.

The carriage of goods or passengers on any motor vehicle which is on the establishment of any unit of the military forces of the Commonwealth, if those goods or passengers are carried in connection with military training or other military operations carried on by the Commonwealth, shall not be regarded as the carriage of goods or passengers within the meaning of subparagraph (*b*) of this paragraph.

(8) If the registrar is satisfied by the production of a certificate from the Director of Mines or such other evidence as he requires, that—

(*a*) any commercial motor vehicle is owned by a genuine prospector whose principal business consists in prospecting for metals or minerals; and

(*b*) such motor vehicle will not be used on roads except for carrying plant, tools, stores, or other equipment used in connection with such prospecting, or metals or minerals won by the said owner from the soil,

the registration fee shall be fifty per centum of the amount which would otherwise be payable under this section.

(9) If the registrar is satisfied by the production of a certificate from the Chief Inspector of Fisheries or such other evidence as he requires that—

(*a*) any commercial motor vehicle is owned by a person who is engaged in fishing as his sole means of livelihood; and

(*b*) that such motor vehicle will not be used on roads or streets except for carrying fish, or equipment used in connection with the occupation of fishing,

the registration fee shall be fifty per centum of the amount which would otherwise be payable under this section.

Cf. U.K. 26 Geo. 5 & 1 Edw. 8 c. 34, s. 12.

(10) If the registrar is satisfied by statutory declaration or such other evidence as he requires that—

(*a*) any motor tractor is owned by a primary producer; and

Amended by 45, 1939, s. 5.

(*b*) such motor tractor will not be used on roads except for transporting goods the produce of the land of such primary producer to the railway station nearest to such land, or if there is a port nearer to such land than any railway station, then to such port, or to the nearest town not being a town where there is a railway station or port, or for transporting goods, intended for consumption or use on the land of such primary producer, from the said railway station, port, or town to the said land,

the registration fee for such motor tractor shall be twenty-five per centum of the amount which would otherwise be payable under this section.

Inserted by 2332, 1936, s. 7.

(10*a*) If the registrar is satisfied by statutory declaration or such other evidence as he requires—

(*a*) that any motor vehicle will, during the period for which registration is applied for, be used wholly or mainly in areas which are not within any municipality or district council district;

(*b*) that during the said period that motor vehicle will be in the possession and under the control of a person whose place of abode at the time will not be within any municipality or district council district; and

(*c*) that that motor vehicle, when not in use, will during the said period be usually kept at premises not within any municipality or district council district,

the registration fee shall, if the applicant is not entitled to have the motor vehicle registered at a reduced fee under paragraph (7), (8), (9), or (10) of this section, be the amount which would otherwise be payable under this section, less fifty per centum thereof.

If the registrar is satisfied that at any time during the period for which a vehicle has been registered at a reduced fee by virtue of this paragraph that vehicle did not comply with subparagraph (*a*), (*b*) or (*c*) of this paragraph, he may, by notice in writing, notify the person who applied for registration of the vehicle that the balance of the full fee for that period must be paid. Upon the expiration of seven days after the giving of the notice that balance shall become due and payable and the registrar may recover it by action in any court of competent jurisdiction; and without prejudice to his right to do so may cancel any registration of the vehicle for the time being in force if that balance is not paid in full upon its becoming due and payable. For the purposes of this paragraph the whole of Kangaroo Island shall be taken to be outside any municipality or district council district.

(11) (*a*) If any commercial motor vehicle for the registration of which a reduced registration fee has been paid as allowed by paragraph 7 is used for the carriage of goods or passengers for pecuniary reward or for carrying goods in the course of any trade or business other than that of a primary producer; or Amended by 45, 1939, s. 6.

(*b*) if any commercial motor vehicle for the registration of which a reduced registration fee has been paid as allowed by paragraph 8 or 9 is used for any purpose other than a purpose set out in paragraph 8 or 9, as the case may be; or

(*c*) if any motor tractor for the registration of which a reduced registration fee has been paid as allowed by paragraph 10 is used for any purpose other than the purpose mentioned in that paragraph,

the balance of the full registration fee for the period for which the vehicle was registered shall in all cases be forthwith due and payable, and may be recovered from the owner by the registrar in a summary way on complaint in a court of summary jurisdiction.

(12) If the Commonwealth of Australia imposes any Customs duty on motor spirit in addition to the Customs duty existing on the twelfth day of December nineteen hundred and twenty-nine, and pays the proceeds thereof to the State, the Governor may from time to time by proclamation vary the amounts of the registration fees as set out in this section to such an extent that the total revenue received in each year from the altered registration fees and the payments to the State by the Commonwealth, as mentioned above, would be approximately equal to the amount which would have been received from the registration fees set out in this section if they had not been altered.

(13) The registrar shall register without fee—

Amended by 2416, 1938, s. 8 (2).

(*a*) any motor vehicle owned by the Fire Brigades Board or any voluntary fire brigade or any motor vehicle owned by a voluntary fire-fighting organization and used solely for the purposes of fire-fighting:

(*b*) any ambulance motor vehicle for the use of which no charge is made:

(*c*) any commercial motor vehicle owned by the corporation or council of any municipality, or by any district council, and used solely or mainly in connection with the construction or maintenance of roads:

(*d*) any motor vehicle owned by the Crown:

(*e*) any motor vehicle owned by the Municipal Tramways Trust:

(*f*) any motor vehicle consisting of mobile machinery and plant used for the purpose of boring for water:

Inserted by 2416, 1938, s. 7.

(*g*) any motor vehicle owned by a consular officer *de carriere* who is a national of the country which he represents and who resides in the State.

Inserted by 2416, 1938, s. 8 (1).

(13a) Where the Treasurer is satisfied that any motor ambulance is operated by a municipal or district council, or by any society or association otherwise than for the purpose of monetary gain to the individual members thereof, he may, at his discretion, direct that that ambulance shall be registered without fee.

Where any such ambulance has been registered since the first day of March, nineteen hundred and thirty-eight, and the registration fee has been paid therefor the Treasurer may at his discretion refund the amount of that fee to the council, society, or association which paid it.

(14) In this section—

"primary producer" means any person engaged in agricultural, horticultural, viticultural, pastoral, or other like pursuits; and

"weight" means the weight of a vehicle without passengers, load, or petrol, but including the oil, buffers, accessories, and tools usually carried.

Reduced fees for vehicles of British origin. 1480, 1921, s. 8 A. 1941, 1929, s. 5.

10. (1) The Governor may, from time to time, by proclamation, declare that any commercial motor vehicles, or any class of commercial motor vehicles described or referred to in the proclamation shall be commercial motor vehicles of British origin for the purposes of this Part.

(2) The Governor at any time by proclamation may partially or wholly revoke, or may vary any proclamation for the time being in force under this section.

(3) The fees payable under this Act for registration of any motor vehicles which, by any proclamation for the time being in force under this section, are declared to be commercial motor vehicles of British origin, shall be the amount which would otherwise be payable under this Part, less ten per centum thereof.

Refunds in certain cases. Inserted by 2332, 1936, s. 9.

10a. If during the period for which a motor vehicle has been registered any alteration is made to that vehicle and that alteration is such that if it had been made before the registration of the vehicle the fee for registration would have been less than the amount actually paid, the Treasurer may, at his discretion, make to the owner of the vehicle a refund of such amount as he deems just in the circumstances.

Provision for ascertaining power-weight. 2131, 1933, s. 3.

11. (1) The registrar shall prepare and keep in his office available for public inspection a list containing the usual names or designations of all models of motor cars commonly in use, and stating the standard power-weight of motor cars of each model when constructed and equipped as mentioned in the list.

(2) The power-weight shown in the list as the standard power-weight of motor cars of any model shall be the power-weight of every motor car of that model, unless—

(*a*) the owner at the time of applying for registration, objects to the power-weight as so shown; or

(*b*) the motor car has some attachment or alteration affecting its weight and not taken into account when computing the power-weight shown in the list.

(3) The owner of any motor car who objects to the determination of the power-weight by reference to the list may—

(*a*) weigh the motor car on a public weighbridge in the presence of the registrar or a person nominated by him; and

(*b*) strip his engine or power unit for measure or examination by the registrar or a person nominated by him,

in which case the weight shall be calculated in accordance with the weighbridge certificate, and the horse power in accordance with the measurements of the registrar or the nominated person.

Determination of power-weight by other means.
2131, 1933, s. 4.

12. Where an applicant applies for registration of—

(*a*) any motor car the power-weight of which cannot be ascertained from the list; or

(*b*) any motor vehicle other than a motor car,

the registrar may require the applicant for registration to produce a weighbridge certificate showing the weight of the vehicle or any other evidence of the weight or horsepower of the vehicle.

Duty to carry registered number on motor vehicle.
1480, 1921, ss. 10, 34 (c).
1527, 1922, s. 4.
1695, 1925, s. 7.

13. (1) Every motor vehicle (not being a trailer) required by this Part to be registered shall, at all times whilst it is being driven or is standing in any road, carry attached thereto in the prescribed positions two plates as prescribed, one on the front and one on the rear thereof, each having the registered number conspicuously painted or otherwise legibly and permanently marked thereon in manner prescribed: Provided that any motor vehicle, not being a motor cycle, instead of carrying the plate required by this section to be attached to the rear thereof, may have the registered number painted or marked on the rear of such vehicle itself in which case all the provisions of this Act relating to plates and the numbers thereon shall, so far as the same are applicable, apply respectively to that portion of the rear of such vehicle on which the number is painted or marked, and to such number.

(2) Every trailer required by this Act to be registered shall, at all times whilst it is being driven or is standing in any road, carry attached thereto in the prescribed position, one or more plates as prescribed having the registered number conspicuously painted or otherwise legibly and permanently marked thereon in manner prescribed.

(3) If any person owns or drives any motor vehicle which does not comply with this section he shall be guilty of an offence: Provided that where the owner and driver are different persons both shall not be punished in respect of the same contravention.

(4) Any person who, unless exempted by the regulations, drives or causes or permits to be driven or to stand in any road any motor vehicle—

(*a*) on which any letter or figure on the number plate on the front thereof is not clearly visible in daylight, to a person standing on the same plane as the vehicle, at any point directly in front of the vehicle and not less than ten feet or more than sixty feet from the front of the vehicle: Substituted by 45, 1939, s. 7.

(*aa*) on which any letter or figure on the number plate on the rear thereof is not clearly visible in daylight, to a person standing on the same plane as the vehicle, at any point directly behind the vehicle and not less than ten feet or more than sixty feet from the rear of the vehicle: Inserted by 45, 1939, s. 7.

(*b*) having the registered number upon any number plate wholly or partly obliterated by paint or any other material; or

(*c*) having any number plate thereon so damaged that the registered number is not complete and distinctly visible; or

(*d*) having upon any number plate a number which is not the registered number assigned to the motor vehicle,

shall be guilty of an offence: Provided that no person shall be liable to a penalty for any breach of this subsection if he proves to the satisfaction of the court that he took all reasonable precautions to prevent such breach or that such breach was the result of an accident.

Inserted by 2332, 1936, s. 10.

(5) Any person who forges or fraudulently alters or uses or fraudulently lends or allows to be used by any other person any number plate, trader's plate, or registration card shall be guilty of an offence and liable to a fine of not more than one hundred pounds, or to imprisonment for not more than twelve months.

Prohibition of use of plates on unregistered vehicles.
1480, 1921, s. 35 (d).

14. Any person who owns or drives upon a road any unregistered motor vehicle having upon it any numbers or number plate of a description prescribed to be affixed to registered motor vehicles shall be guilty of an offence.

Distinctive marks for number plates of vehicle licensed to ply for hire.
1480, 1921, s. 11.

15. Where any motor vehicle is registered under this Part and is also licensed by a municipal or district council to ply for hire within its municipality or district, there may appear on the number plates required by this Part to be attached to such motor vehicle, in addition to the registered number, some distinctive design, character, or letter approved by the registrar, for the purpose of indicating that such motor vehicle is so licensed.

Duration of registration.
Amended by 2332, 1936, s. 11.

16. (1) Every registration of a motor vehicle effected prior to the commencement of the Road Traffic Act Amendment Act, 1936, shall, unless sooner terminated under this Part, expire on the thirty-first day of March, nineteen hundred and thirty-seven.

(2) Every registration of a motor vehicle effected on or after the date of the commencement of the Road Traffic Act Amendment Act, 1936, shall expire upon the expiration of six months or twelve months calculated as from the commencement of the month in which it was effected, according to the period for which registration was applied for.

Issue of, and duty to carry, registration card.
1480, 1921, s. 8C.
1941, 1929, s. 5.
2131, 1933, s. 7.

17. (1) The registrar shall at the time of registration issue to every person who registers a motor vehicle under this Part a registration card having printed or written thereon particulars of the motor vehicle registered, the duration of the registration, and any other matters which the registrar thinks proper to insert.

(2) Every registration card or the prescribed part thereof shall throughout the period during which the registration remains in force be affixed to and carried on the motor vehicle for which the card is issued, in accordance with the regulations.

(3) Any person who on any road drives any motor vehicle registered under this Part which does not carry the registration card issued for that vehicle under this section, or which carries the said registration card otherwise than in conformity with all the requirements of this section and the regulations, shall be guilty of an offence and liable to a penalty for a first offence not exceeding ten pounds and for a second or any subsequent offence not exceeding twenty pounds.

(4) If any motor vehicle does not carry at any time a registration card issued in respect of that vehicle and for the time being in force, that fact shall be *prima facie* evidence that the said vehicle is not registered at that time.

Offences in connection with registration cards. 1480, 1921, s. 8 D. 1941, 1929, s. 5. Cf. U.K. 23 & 24 Geo. 5 c. 53, s. 34.

18. Any person who—

(*a*) drives a motor vehicle on which is affixed any registration card other than a registration card issued under this Part in respect of that motor vehicle and for the time being in force;

(*b*) makes any false statement in or in connection with any application for registration under this Part;

(*c*) without lawful excuse has in his possession any registration card or any article resembling a registration card and liable to be mistaken therefor;

(*d*) alters, defaces, mutilates, or adds anything to any registration card;

(*e*) drives a motor vehicle on which is affixed any registration card which has been altered, defaced, mutilated, or added to; or

(*f*) drives a motor vehicle on which is affixed any colourable imitation of a registration card,

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

Duty to notify registrar of transfer of motor vehicle. 1480, 1921, s. 8 E. 1941, 1929, s. 5. 2095, 1932, s. 5. 2131, 1933, s. 7 (2).

19. (1) If an owner who has registered a motor vehicle transfers the ownership thereof to some other person whether on a sale or any other transaction, he shall within twenty-one days of the transfer—

(*a*) notify the registrar in the prescribed form of the transfer:

(*b*) deliver to the registrar the registration card issued in respect of the transferred motor vehicle and for the time being in force, or take such other action in relation to the said card as is prescribed by regulation.

(2) If any person fails to comply with any requirement of this section he shall be guilty of an offence.

Transfer of registration or refund.
1480, 1921, s. 8F.
2095, 1932, s. 6.
2131, 1933, s. 6.

20. (1) Upon or after delivery to the registrar of the registration card in accordance with the last preceding section, or upon taking the prescribed action in relation to the card, the transferor may either—

(*a*) join with the transferee in a joint application to the registrar to transfer the registration of the motor vehicle to the transferee; or

(*b*) apply for cancellation of the said registration and a refund or credit of part of the registration fee in accordance with the next succeeding section.

Amended by 45, 1939, s. 8 (1).

(2) If such a joint application for the transfer of the registration is made the registrar shall upon payment by the transferee of a fee of two shillings and sixpence and lodgment by him of an application in the prescribed form for the registration of a motor vehicle and production of a certificate of insurance as required by section 8c of this Act transfer the registration to the transferee and issue to him a registration card similar to that issued upon the original registration of a motor vehicle.

Amended by 45, 1939, s. 8 (2).

(3) Unless a joint application for the transfer of the registration, accompanied by the proper fee and by an application and a certificate as required by subsection (2) of this section, or an application for cancellation of the registration, is lodged with the registrar within twenty-one days after the transfer, or within such longer period as the registrar fixes, the registration shall, upon the expiration of the said twenty-one days, become void, and the registrar shall neither transfer such registration nor refund or credit any money in respect thereof.

Refunds of registration fee in certain cases.
1480, 1921, s. 8 G.
2095, 1932, s. 6.
2131, 1933, s. 7.

21. (1) The owner or (as the case may be) the former owner of any registered motor vehicle may in any of the circumstances mentioned hereunder, upon delivery to the registrar of the current registration card issued in respect of that vehicle, or upon taking the prescribed action in relation to the card, apply to the registrar to cancel the registration of the vehicle and pay or credit to him the prescribed amount as defined in this section.

(2) The circumstances in which an application under this section may be made are the following:—

(*a*) If the applicant has ceased to be the owner of the vehicle:

(*b*) If the motor vehicle has become permanently unfit for use as a motor vehicle:

(*c*) If the motor vehicle has been removed from the State for permanent use out of the State, and, where the removal is to another State of the Commonwealth, has been registered in that State:

(*d*) If the motor vehicle has been used by a person engaged in business as a seller of motor vehicles, for the purpose of demonstrating its qualities to prospective purchasers, but has ceased to be so used: Inserted by 2416, 1938, s. 9 (1).

(*e*) If the registered owner of the motor vehicle is, whilst the Commonwealth is at war, serving in any naval, military, or air force of the Commonwealth. Inserted by 45, 1939, s. 9.

(3) The prescribed amount shall be one-twelfth of the full annual registration fee for the particular vehicle for each complete month of the registration period which is unexpired at the time when the registration card is delivered by the applicant to the registrar or, as the case may be, when the prescribed action is taken in relation to the card.

(4) Where the ownership of a registered motor vehicle is transferred before the end of the period for which it was registered and the transferor within twenty-one days of the transfer applies to register another motor vehicle, the registrar shall make such refund in respect of the transferred vehicle and such charge for the registration of the other vehicle—

(*a*) that in respect of the month in which the application is made, the transferor shall pay one-twelfth of the annual registration fee for one vehicle only, plus the transfer fee of two shillings and sixpence:

(*b*) that if the fees for registration of the transferred vehicle and the other vehicle are different, the said payment shall be one-twelfth of the greater fee.

(4a) Where the registration of a vehicle used for the purpose of demonstration as mentioned in paragraph (*d*) of subsection (2) of this section is cancelled, and the owner of the vehicle applies forthwith after the cancellation for the registration of another vehicle which the registrar is satisfied will be used for the said purpose of demonstration, the registrar shall credit such amount in respect of the registration which has been cancelled, and make such charge for the registration of the other vehicle— Inserted by 2416, 1938, s. 9 (2).

(*a*) that in respect of the month in which the application for registration is made the applicant shall pay

one-twelfth of the annual registration fee for one vehicle only, plus the transfer fee of two shillings and sixpence:

(*b*) that if the fees for registration of the two vehicles are different the said payment shall be one-twelfth of the greater fee.

(5) The registrar may require any applicant to satisfy him by statutory declaration or other means as to the truth of the matters on which he bases his claim for a refund or credit.

Destruction of registration card.
Inserted by 2416, 1938, s. 10.

21a. (1) Whenever the registration of a motor vehicle has become void before the expiration of the period for which it was granted, the registrar or any person authorised by him or any member of the police force may remove from that vehicle the registration card relating to that registration and for the purpose of so doing may at any reasonable time enter and remain upon any place or premises.

(2) Any person who hinders the registrar or any person authorised by him, or any member of the police force in the exercise of any power conferred by this section shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

Avoidance of registration where cheque dishonoured.
1480, 1921, s. 8 H.
2095, 1932, s. 6.

22. If any applicant for registration of a motor vehicle pays the registration fee by cheque and the cheque is dishonoured on presentation the registration of the motor vehicle for which the cheque was tendered shall be void as from the day on which it was effected, and the applicant shall on demand made by the registrar immediately deliver to him the registration card issued in respect of that motor vehicle. If any applicant fails so to deliver the card he shall be guilty of an offence and liable to a fine not exceeding twenty pounds.

Provision for recovery where registration fee short paid.
1480, 1921, s. 8 I.
2095, 1932, s. 6.
2131, 1938, s. 9.

23. (1) If any motor vehicle is incorrectly described in the application for registration thereof, and as a result of the mis-description the vehicle is registered without the full amount of the fee payable for the said registration being paid, the applicant for registration shall be liable to pay to the registrar a sum equal to the balance of the fee short paid, and the said sum may be recovered by the registrar as a debt by action in any court of competent jurisdiction.

(2) Where, owing to understatement of the power weight of any motor vehicle, that vehicle has before the thirtieth day of November, nineteen hundred and thirty-three, been registered at a fee less than the fee fixed by law, the Treasurer, if satisfied that the understatement was not

fraudulent, may remit the balance of the fee, or any part of that balance, and if the balance has been recovered from the owner, may refund the whole or any part thereof if he thinks circumstances warrant that action.

Exemption of registered trailers from licensing under other provisions of this Act. 1480, 1921, s. 8 I. 1941, 1929, s. 5.

24. If a trailer is registered as a motor vehicle under this Part it need not be licensed under any other Part of this Act.

Inspection of motor vehicles to ascertain power-weight. 1480, 1921, s. 8 J. 1941, 1929, s. 5.

25. Any member of the police force or the registrar or any person authorised in writing by the registrar to examine motor vehicles for the purposes of this Part may—

(*a*) examine or stop and examine any motor vehicle for the purpose of determining any facts necessary to ascertain the amount of the fee payable for registration of that motor vehicle:

(*b*) enter any premises at any time and search therein for motor vehicles and examine for the purposes aforesaid any motor vehicles found therein:

(*c*) take from any part of any motor vehicle a sample of any liquid fuel used or appearing to be used for propelling that motor vehicle.

Duty of owners to notify changes in vehicles and tires to registrar. 1480, 1921, s. 8 L. 1941, 1929, s. 5.

26. (1) The owner of a registered motor vehicle, to which at any time after registration any of the alterations or additions mentioned in subsection (2) of this section are made, shall, within fourteen days after the making of the alteration or addition, give notice thereof in writing to the registrar, and shall forward to the registrar such particulars as are prescribed, of the alteration or addition.

(2) The alterations and additions referred to in subsection (1) hereof are the following:—

(*a*) Any alteration of or addition to the motor vehicle by which its horsepower or weight as defined in the provisions of this Part as to the mode of computing the amount of the registration fee is increased:

(*b*) In the case of a motor vehicle fitted entirely with pneumatic tires, the removal of any pneumatic tire and the substitution therefor of any tire other than a pneumatic tire:

(*c*) In the case of a vehicle not having metal tires, the removal of any tire and the substitution therefor of a metal tire:

(*d*) In the case of a motor cycle not having a side-car attached thereto the attachment thereto of a side-car.

(3) At the time of giving notice to the registrar of any alteration or addition the owner of the motor vehicle shall pay an additional fee which shall consist of the difference between the amount actually paid as registration fee for the motor vehicle and the amount which would have been payable if the alteration or addition had been made at the time of registration, due allowance being made for every full month expired at the time of the making of the alteration or addition.

(4) Any person failing to comply with any requirement of this section shall be guilty of an offence.

Trader's plates. 1480, 1921, s. 9. 2095, 1932, s. 7. Cf. U.K. 10 & 11 Geo. 5 c. 72, s. 9.

27. (1) The registrar may, upon payment of the proper fee as fixed by this section for each pair, issue in accordance with this section trader's plates to any person who has proved to his satisfaction that he is engaged in the business of manufacturing, repairing, or dealing in motor vehicles, and has suitable premises for the purpose. There shall be two kinds of trader's plates, namely, general trader's plates, and limited trader's plates.

(2) Every pair of trader's plates shall remain operative as such until the thirty-first day of March next after the date of the issue thereof and no longer unless the period of operation thereof is extended. The registrar may from time to time upon payment of the proper fee extend the period of operation of any trader's plates for any period not exceeding twelve months and expiring on the thirty-first day of March.

Subsec. (3) repealed by 2416, 1938, s. 11 (a).

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Amended by 2416, 1938, s. 11 (b).

(4) The number of trader's plates which may be issued to any one person shall be determined by the registrar, due regard being paid to the business requirements of the applicant.

(5) No limited trader's plate shall be issued to any person who is not the holder of a current general trader's plate.

(6) The fees for the issue or extension of operation of trader's plates shall be as follows:— Amended by 2416, 1938, s. 11 (c).

For the issue or extension of operation of one pair of general trader's plates, eleven pounds eleven shillings:

For the issue or extension of operation of a second or any subsequent pair of general traders' plates, eight pounds eight shillings:

For the issue or extension of operation of each pair of limited trader's plates ten shillings:

Provided that if the trader's plates are issued between the thirtieth day of September and the first day of April the said fee shall be half of the fee otherwise payable.

(7) The registrar shall keep a record showing the name and place of business of every person to whom any trader's plates have been issued under this section.

(8) Every pair of trader's plates shall bear a distinctive number and conform to such specifications as the Minister from time to time directs by notice in the *Gazette*.

(9) Any person selling or disposing of his business during the currency of any trader's plates issued to him shall, within seven days thereafter, give written notice of such sale or disposal to the registrar; and the registrar may, upon payment of a transfer fee of five shillings cause the trader's plates to be transferred to the purchaser of the business for the remainder of the period for which such trader's plates were issued.

(10) No person shall on any road drive any motor vehicle having a general trader's plate thereon— Substituted by 45, 1939, s. 10.

(*a*) if the vehicle is carrying passengers or goods for hire or reward; or

(*b*) if the vehicle is being driven for any purpose other than a purpose directly connected with a business carried on by the person to whom the trader's plate was issued, and being a business of manufacturing, repairing, or dealing in motor vehicles.

(11) No person shall on any road drive any motor vehicle having a limited trader's plate attached thereto unless he is—

(*a*) the person to whom such trader's plate was issued;

(*b*) a partner of the person or member of the company to whom or to which such trader's plate was issued;

(*c*) a salaried officer or regular employee of the person or company to whom or to which such trader's plate was issued;

(*d*) a prospective purchaser of the motor vehicle accompanied (except in the case of a motor cycle) by any such person as is mentioned in paragraph (*a*), (*b*), or (*c*) of this subsection; or

(*e*) a purchaser of the motor vehicle and resident in another State.

(12) No person shall on any road drive any motor vehicle having a limited trader's plate attached thereto unless the vehicle is at the time—

(*a*) on trial, during the course of construction or repairs or immediately after completion of construction or repairs, for the purpose of ascertaining whether its parts are in proper working condition;

(*b*) on trial for the benefit of a prospective purchaser, or any person *bona fide* interested in the exchange or sale of the vehicle;

(*c*) proceeding to or returning from a prospective purchaser for or after trial;

(*d*) proceeding for delivery to a purchaser or being driven by a purchaser resident in another State to a place within that State;

(*e*) proceeding to or returning from a workshop for painting or repairs;

(*f*) proceeding to a railway station or wharf for entraining or shipment or proceeding from a railway station or wharf to the premises of a manufacturer or dealer;

(*g*) proceeding to an exhibition or show for display or trial or returning therefrom;

(*h*) proceeding to or returning from any garage, auction room, or other place at which vehicles are usually stored or usually or periodically offered for sale, and at which the vehicle is to be, or has been stored, or is to be, or has been offered for sale; or

(*i*) proceeding to or returning with a motor vehicle which, while being driven upon a road or street, has become unable to proceed under its own power.

(13) No person shall on any road, by means of any motor vehicle having a limited trader's plate attached thereto—

(*a*) convey any person to or from any race meeting, trotting meeting, foot races, football or cricket match, or other sport; or

(*b*) carry any goods or load whatsoever except a load which consists solely of some ordinary form of ballast such as sand, gravel, scrap iron, or the like and is carried solely for the purpose of testing the vehicle.

(14) No person shall on any Sunday or public holiday drive on any road any motor vehicle having a limited trader's plate attached thereto.

(15) If any vehicle is driven in contravention of subsection (11), (12), (13), or (14) of this section the driver of the vehicle, and if the driver is not the person to whom the trader's plates were issued, then that person also shall be guilty of an offence.

(16) Every trader's plate issued under this section shall remain the property of the Minister; and if any trader's plate at any time ceases to be operative as such the person to whom it was issued shall, on demand made by the registrar, return the plate to him within seven days thereafter, and if he fails to do so he shall be guilty of an offence and liable to a penalty of not more than ten pounds.

(17) Any person who is driving or has driven a motor vehicle to which a trader's plate is or was attached shall, when required by any member of the police force, forthwith truly answer any questions put to him by such member relevant to the purpose for which, and the circumstances in which, such vehicle is being driven or was driven.

If any person fails to comply with this section he shall be guilty of an offence.

(18) Every person to whom any trader's plate has been issued under this section shall, when required to do so by any member of the police force, furnish to such member the name and address of any person driving on any occasion specified by such member any motor vehicle to which such plate was attached. If any person upon being so required refuses or fails to furnish such name and address or furnishes a false name or false address he shall be guilty of an offence.

(19) Any person guilty of any failure to observe or contravention of any of the provisions of this section shall be guilty of an offence; and any person guilty of an offence against this

section for which some other penalty is not specifically provided shall be liable to a penalty not exceeding thirty pounds.

Duty of registered owners to furnish particulars of vehicles.
1695, 1925, s. 16.

28. (1) Every person who is registered as the owner of a motor vehicle, shall, upon request by the registrar, produce to the registrar such evidence of the nature and weight of any motor vehicle owned by such person and of the nature of the tires with which that vehicle is fitted, as is prescribed, or as is required by the registrar.

(2) Any person failing to comply with any request under this section shall be guilty of an offence.

Duty of owners to weigh motor vehicles in certain cases.
1695, 1925, s. 17.

29. (1) The owner of any motor vehicle on being served with a notice signed by the registrar requiring him within a time mentioned in the notice to cause his motor vehicle to be weighed unladen on the weighing machine mentioned in the notice or any one of the weighing machines so mentioned if more than one are mentioned, shall obey such notice and shall forward to the registrar forthwith the document showing the result of the weighing.

(2) This section shall not apply if the distance from the place where the motor vehicle is usually kept to the weighing machine mentioned in the notice, or to the nearest of those weighing machines, if more than one are mentioned, is greater than three miles.

(3) Any person failing to comply with any requirement of the registrar under this section shall be guilty of an offence.

Licensing of Drivers.

Duty to obtain driver's licence.
1480, 1921, s. 34 (a). Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 4.

30. Any person who, unless exempted by the regulations, drives a motor vehicle on any road without being the holder of a licence for the time being in force, or employs or permits any person not being the holder of such a licence to drive a motor vehicle on any road shall be guilty of an offence.

Issue of drivers' licences.
1480, 1921, ss. 12 & 13 (2). 1527, 1922, s. 5. 1827, 1927, s. 5. Cf. U.K. 24 & 25 Geo. 5 c. 50, s. 6; 26 Geo. 5 & 1 Edw. 8 c. 23.

31. (1) The registrar may, subject to the provisions of this Part, issue a licence to any person who—

(*a*) makes written application therefor in the prescribed form; and

(*b*) forwards with such application the fee fixed by this section,

and, subject as aforesaid, may, upon application in the prescribed form, renew any licence. Such renewal shall be in the prescribed form.

(2) The annual fees for licences shall be—

(*a*) for a licence to drive a motor vehicle of any kind—ten shillings:

(*b*) for a licence to drive a motor cycle only—five shillings.

Where a licence takes effect from a day between the thirty-first day of December and the next ensuing first day of July, one half of the annual fee shall be payable therefor.

(3) Every application for the renewal of a licence shall be accompanied by the annual fee therefor.

Inserted by 2332, 1936, s. 12.

(4) A licence to drive a motor cycle may be surrendered to the registrar in exchange for a licence to drive a motor vehicle of any kind expiring on the same day as the licence to drive a motor cycle upon payment of the following fee:—

(*a*) If the licence issued in exchange takes effect from a day between the thirtieth day of June and the first day of January, five shillings;

(*b*) if the licence issued in exchange takes effect from a day between the thirty-first day of December and the first day of July, two shillings and sixpence.

Inserted by 2332, 1936, s. 13.

(5) Every application for a licence shall contain a statement, signed by the applicant, that he is aware that it is an offence to drive a motor vehicle on a road unless there is in force a policy of insurance insuring any person driving that vehicle against his liability in respect of the death of or bodily injury to any person caused by or arising from the use of the vehicle.

Restricted drivers' licences.

Inserted by 2416, 1938, s. 12.

31a. (1) Where the registrar is satisfied that owing to the age or any physical defect or infirmity of any applicant for a driver's licence it is desirable that any licence issued to that applicant should be subject to restrictive conditions, the registrar may issue to that applicant a licence containing conditions as to the localities in which the applicant shall be entitled to drive, or the class or equipment of the vehicles which the applicant shall be entitled to drive or as to any other matters which the registrar thinks necessary for the purpose of preventing danger to the applicant or the public.

(2) In any case where the registrar is satisfied that, by reason of the distance necessary to be travelled by an applicant for a driver's licence to be examined as provided by section 32a, it would be unreasonable to require the applicant

to submit to such an examination, he may, without examination as provided by section 32a, issue to the applicant a licence as provided by subsection (1) of this section.

(3) If any such applicant is not willing to accept a licence containing any such conditions proposed by the registrar the registrar may refuse him a licence and the refusal shall be subject to appeal as mentioned in section 32 of this Act.

(4) If any person contravenes any such condition he shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

Tests of drivers.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 5; 24 & 25 Geo. 5 c. 50, s. 6; 26 Geo. 5 & 1 Edw. 8 c. 23.

32. (1) If the registrar suspects that any applicant for the issue or renewal of a driver's licence is for any reason incompetent to drive a motor vehicle without danger to the public, the registrar shall not issue a driver's licence to that applicant until he is satisfied that that applicant is competent to drive a motor vehicle without danger to the public.

Subsec. (1) amended by 2332, 1936, s. 14, and by 2416, 1938, s. 13.

If the registrar refuses to grant any application for the issue or renewal of a licence to any applicant, that applicant may, in accordance with rules of court made under this section, appeal against that refusal to any special magistrate sitting in chambers. On the appeal the special magistrate may—

(*a*) hear the parties and their witnesses;

(*b*) confirm, reverse or vary the decision appealed against;

(*c*) make any other order which he thinks just including any order as to costs.

Rules of court shall be made under the Local Courts Act, 1926, prescribing the time within which, and the mode in which appeals are to be instituted and dealt with under this section, and any other matters relevant to such appeals.

(2) The registrar, in order to satisfy himself of the competence of any such person, may require him to furnish such evidence of competency as is prescribed, or as the registrar thinks necessary, or to submit to such tests as are prescribed, or as the registrar thinks proper to impose, and may refuse to issue the licence until the applicant furnishes such evidence or satisfies such tests.

Examination of applicant for driver's licence.
Cf. U.K. 24 & 25 Geo. 5 c. 50, s. 6.
Inserted by 2332, 1936, s. 15.

32a. (1) Where an applicant for a driver's licence has not previously held a licence and applies for a licence after a day to be proclaimed by the Governor as the day on which this section shall come into operation, the registrar shall not issue a licence unless the applicant produces to the registrar a certificate from an examiner certifying that the

applicant has passed an examination conducted by that examiner, in the rules required by law to be observed by owners and drivers of motor vehicles. No person shall be deemed to have passed an examination for the purposes of this section unless he has answered correctly at least three-quarters of the questions asked in the examination.

Although a person may have answered correctly at least three-quarters of the questions asked in the examination, the registrar may treat him as having failed if he has given an incorrect answer to any question dealing with any rule which in the registrar's opinion is one of special importance.

Passage inserted by 2416, 1938, s. 14.

(2) Every member of the police force shall be an examiner for purposes of this section, and the Governor may appoint such other persons as he thinks fit to be examiners.

(3) The examination shall consist of twelve questions to be answered by the applicant in writing; and the questions for each applicant shall be selected by the examiner from a series of questions formulated and supplied to him by the registrar.

Amended by 45, 1939, s. 11.

(4) A person who has sat for and failed to pass an examination under this section may again sit for a similar examination at any time after an interval of two clear days.

33. No licence (whether to drive a motor vehicle or a motor cycle) shall be issued to any person who has not previously been granted a licence and who is under the age of sixteen years.

Age of drivers to whom licences may be issued.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 9.
Amended by 2332. 1936, s. 16.

34. Upon the direction in writing of the Minister, the registrar shall refuse to issue or renew a licence to any person who has been convicted of driving a motor vehicle whilst so much under the influence of intoxicating liquor as to be incapable of exercising effective control of such motor vehicle, or of driving a motor vehicle in any road in a culpably negligent manner, furiously, or recklessly, or at a speed or in a manner which is dangerous to the public, or of any offence which, in the opinion of the Minister, renders him unfit to hold a licence, or who, in the opinion of the Minister, is otherwise unfit to hold a licence.

Licences may be refused in certain cases.
1480, 1921, s. 17.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 4 (6).

Appeal on refusal to issue or renew licence.
1480, 1921, s. 18.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 5 (5); 24 & 25 Geo. 5 c. 50, s. 6.

35. (1) Any applicant for the issue or renewal of a licence whose application has been refused may, on giving to the registrar at least seven clear days' notice in writing of his intention so to do, appeal against such refusal to the Local Court of Adelaide, or, at the option of the applicant, to the local court nearest to his residence.

(2) If after hearing the appeal the local court decides that the application ought to be granted, the registrar shall issue or renew the licence accordingly.

(3) The decision of the local court shall be final and conclusive, and shall not be challenged, appealed against, reviewed, quashed, or called in question, or be subject to prohibition or mandamus, in any court on any account whatever.

(4) The local court on the hearing of any such appeal may make any order as to costs which it thinks fit.

(5) For any such appeal the local court shall consist of a special magistrate.

Duration of licence.
1480, 1921, s. 13.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 4 (4).

36. Unless cancelled or suspended under this Part every licence shall continue in force until the thirtieth day of June next after the licence commences to be in force.

If licence lost, duplicate may be issued.
1480, 1921, s. 14.

37. (1) Upon the application of the holder of any licence the registrar may, on proof to his satisfaction of the loss or destruction of such licence, and on payment of a fee of two shillings and sixpence, issue to the holder of the licence a duplicate licence bearing all memoranda indorsed on the original licence.

(2) Such duplicate shall avail for all purposes as if it were the original licence.

Register of licences.
1480, 1921, s. 19.
2095, 1932, s. 8.

38. (1) The registrar shall keep a register of the names and addresses of all licensed drivers, and of all indorsements on, and renewals and cancellations of, licences.

(2) The prescribed forms of application received by the registrar from persons applying for licences shall be bound or otherwise assembled by the registrar and arranged in order as the registrar determines and shall constitute the register of licences within the meaning of this Act: Provided that the regulations may provide that the register of licences shall be constituted and kept in any other way.

38a. (1) When any person is convicted, before the Supreme Court or any other court, for any offence against any provision of this Act relating to motor vehicles, or for any offence in the commission of which a motor vehicle was used, or the commission of which was facilitated by the use of a motor vehicle, the court may order that that person be disqualified either for a period fixed by the court or until further order from holding and obtaining a driver's licence.

Suspension of licence and disqualification of holder on conviction.
Cf. U.K. 20 & 21 Geo. 5 c. 43, ss. 7, 8; 24 & 25 Geo. 5 c. 50, s. 5.
Inserted by 2332, 1936, s. 17, and amended by 45, 1939, s. 12.

(2) An order made under this section may be in addition to any other penalty to which the defendant is liable.

38b. If a court of summary jurisdiction on complaint duly laid is satisfied that any person has used or is likely to use a motor vehicle in connection with the commission of any offence by himself or any other person, or to facilitate the escape of himself or any other person from arrest or punishment, it may order that the person who used or is likely to use the vehicle be disqualified either for a period fixed by the court or until further order from holding and obtaining a driver's licence.

Power of suspension, cancellation, and disqualification where vehicle used for criminal purposes.
Inserted by 2332, 1936, s. 17.

38c. If a court of summary jurisdiction presided over by a special magistrate on complaint duly laid by the Commissioner of Police or by the registrar, is satisfied that any person is by reason of intemperance in the consumption of alcoholic liquor or by reason of the habitual use of drugs, likely to cause danger to the public if he drives a motor vehicle on roads, the court may order that that person be disqualified either for a period fixed by the court or until further order from holding and obtaining a driver's licence.

Disqualification of addicts to liquor or drugs.
Inserted by 2332, 1936, s. 17.

38d. (1) Where an order has been made against any person disqualifying him from holding and obtaining a driver's licence until further order that person may on complaint duly laid before a court of summary jurisdiction, and served on the Commissioner of Police as defendant to the proceedings, apply to that court for an order removing the disqualification, and the court may, if it deems it expedient to do so, order that the disqualification be removed as from any date which it thinks proper.

Removal of disqualification.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 7.
Inserted by 2332, 1936, s. 17.

s. 38a. GEORGE v. TROTTER (1938) S.A.S.R. 48. Where the defendant entered an intersection at a very fast rate of speed and narrowly escaped a collision and was convicted under section 131, held that the defendant's licence was rightly suspended.

AUSTIN v. DAYMAN (1939) S.A.S.R. 136. Circumstances discussed which may be taken into account in considering whether an order for disqualification should be made.

(2) No application shall be made under this section earlier than three months after the making of the original order for disqualification, nor shall any application under this section be made within three months of a previous application relating to the same order of disqualification.

Suspension of licence on the ground of incompetence to drive.

Inserted by 2332, 1936, s. 17.

38e. (1) If the Commissioner of Police or the registrar has reasonable cause to suspect that any person holding a driver's licence is incompetent to drive a motor vehicle without danger to the public, he may require that person to satisfy him by a practical test that he is competent to drive a motor vehicle without danger to the public and if he fails to pass such a test may suspend the licence held by him.

(2) The Commissioner of Police or the registrar, at the request of any person whose licence has been suspended under this section, shall at a convenient time conduct a further test of that person's ability to drive a motor vehicle; and if that person fails to pass the test he shall be entitled to undergo further tests from time to time at intervals of not less than fourteen days. When that person passes a test the suspension of his licence shall forthwith cease.

Suspension of licence of person suffering from disease or disability.

Inserted by 45, 1939, s. 13.

38ee. (1) If the Commissioner of Police or the registrar suspects that any person holding a driver's licence is suffering from any disease (mental or physical) or any disability which impairs or may at any time impair his ability to drive a motor vehicle he may suspend the licence of that person for such period as he thinks proper.

(2) If the Commissioner of Police or the registrar is subsequently satisfied that the ability of the said person to drive a motor vehicle is not impaired, or is not impaired to such an extent as to justify the continuance of the suspension, he may remove the suspension.

(3) Where the licence of any person has been suspended under this section, that person may on complaint duly laid before a court of summary jurisdiction and served on the Commissioner of Police or the registrar, as the case may be, as defendant to the proceedings, apply to that court for an order removing the suspension, and the court may if it deems it expedient to do so order that the suspension shall be removed as from any date which it thinks proper, or that the period of suspension shall be altered, or may make any other order relating to the suspension which the court thinks just.

38f. Every suspension imposed by the registrar or the Commissioner of Police, shall be by a document in writing under his hand, and shall be served on the holder of the licence either personally or by registered post.

Mode of suspension by Commissioner of Police or registrar.

Inserted by 2332, 1936, s. 17.

38g. (1) If the registrar has reasonable cause to suspect that any applicant for temporary registration of a motor vehicle registered in another State, or any person who has been granted such temporary registration, has used, is using, or is likely to use that motor vehicle in connection with the commission of any offence by himself or any other person, or to facilitate the escape of himself or any other person from arrest or punishment, he may refuse to issue or, as the case may be, revoke such temporary registration.

Refusal or revocation of temporary registration of vehicle from other States.

Inserted by 2332, 1936, s. 17.

(2) The revocation shall be by a document in writing under the hand of the registrar, and personally served on the person thereby affected.

39. Any person who—

Offences in connection with licences. 1480, 1921, s. 35.

(*a*) by any false statement or by misrepresentation obtains or attempts to obtain a licence; or

(*b*) without lawful excuse has in his possession a licence or any article resembling such licence and liable to be mistaken therefor; or

(*c*) forges or fraudulently alters or uses or fraudulently lends or allows to be used by any other person any licence,

shall be guilty of an offence.

Warning devices, silencers, and lights on motor vehicles.

40. (1) Any person who drives in any road or who, being the owner, causes or permits any person to drive on any road a motor vehicle which has not attached thereto, under the immediate control of the hand or foot of the driver, a proper horn or other instrument capable of giving audible and sufficient warning of the approach and position of that motor vehicle, shall be guilty of an offence:

Duty to carry warning device. 1480, 1921, s. 30. 1695, 1925, s. 10. Cf. U.K. 20 & 21 Geo. 5 c. 43. s. 59 (1), (b).

Amended by 2332, 1936, s. 18, and by 2416, 1938, s. 15.

Provided that this subsection shall not apply to any trailer so long as the motor vehicle to which that trailer is attached complies with this subsection.

s. 40. JOLLY v. WALLMAN (1936) S.A.S.R. 121. Where a dangerous situation arises at a time when it is too late for a warning to be effective, there is no need to give warning of the approach of a vehicle.

(2) Any driver of a motor vehicle who does not whenever necessary, by sounding the horn or other instrument attached thereto, give audible and sufficient warning of the approach or position of that motor vehicle, shall be guilty of an offence.

Inserted by 2332, 1936, s. 18.

(3) A bell or siren shall not be taken to be a proper horn or other instrument within the meaning of this section except where the motor vehicle to which it is attached is—

(*a*) being used at the time by the Fire Brigades Board or a fire brigade or the Police Department; or

(*b*) an ambulance; or

(*c*) an emergency vehicle being used at the time by the Municipal Tramways Trust.

Misuse of warning devices.

Inserted by 2332, 1936, s. 19.

40a. (1) If any person—

(*a*) uses the warning device of a motor vehicle otherwise than for giving reasonable warning of the approach of that vehicle; or

(*b*) uses the warning device of a motor vehicle in such a manner as to produce an offensive noise,

he shall be guilty of an offence.

(2) If any person in any road sounds any bell or siren attached to or being upon any motor vehicle other than—

(*a*) a vehicle being used at the time by the Fire Brigades Board, or a fire brigade, or the Police Department; or

(*b*) an ambulance; or

(*c*) an emergency vehicle being used by the Municipal Tramways Trust,

he shall be guilty of an offence.

Duty of drivers as to silencers and elimination of noise, smoke, &c.

1480, 1921, s. 31. 2095, 1932 s. 11.

41. (1) Any person who in any road drives a motor vehicle—

(*a*) which has not attached to it and in use a silencer which eliminates all unnecessary noise; or

(*b*) which has attached to it a silencer to which any alteration has been made which reduces or is likely to reduce the effectiveness of such silencer; or

s. 41. DAYMAN v. ELLIS (1933) S.A.S.R. 274. Section 41 requires that the silencer must at the material time be in actual use and eliminate all unnecessary noise.

(*c*) on which there is any device which may be used to reduce the effectiveness of the silencer,

shall be guilty of an offence.

(2) Any person who makes any alteration to a silencer which reduces or is likely to reduce its effectiveness shall be guilty of an offence.

(3) Any driver of a motor vehicle who allows it to make or emit any unnecessary noise, smoke, visible vapour or smell shall be guilty of an offence.

Lights on motor vehicles. 1480, 1921, s. 32. 1527, 1922, s. 6. 1695, 1925, s. 11. 1827, 1927, s. 7.

42. (1) Every motor vehicle (other than a motor cycle or trailer) which is at any time between half an hour after sunset and half an hour before sunrise on any road shall carry attached thereto—

(*a*) two lighted lamps carried one on each side of such motor vehicle, such lamps being so constructed and carried as to show a bright white yellow or amber-coloured light in front of such motor vehicle; and

Para. (a) amended by 2416, 1938, s. 16.

(*b*) a lighted lamp carried on the off side of the rear of such motor vehicle, such lamp being so constructed and carried as to illuminate and render easily distinguishable from a distance of at least forty feet each figure and letter on the number plate attached to the rear of such motor vehicle, and to show a red light in such a position and manner as to be clearly visible at a distance of at least two hundred yards to any person approaching such motor vehicle from the rear:

Para. (b) amended by 2332, 1936, s. 20.

Provided that—

(*a*) if one or more trailers are attached to such motor vehicle the light provided for by subdivision (*b*) hereof shall be placed on the off side of the rear of such trailer, or on the off side of the rear of the rearmost of such trailers, if there is more than one, instead of on such motor vehicle:

(*b*) this subsection shall not apply to any such motor vehicle if and so long as such motor vehicle is stationary in a road and is standing under or near a lighted public street lamp or other lamp, so illuminating such road as to render such motor vehicle clearly visible and to remove any risk of accident by collision or otherwise; and

Amended by 2332, 1936, s. 20.

(*c*) this subsection shall not apply to any such motor vehicle if and so long as such motor vehicle is stationary in a road, and the rear lamp of such motor vehicle is alight and is showing a light sufficiently bright to indicate the presence of such motor vehicle, and to remove any risk of accident by collision or otherwise.

Inserted by 2332, 1936, s. 20, and amended by 2416, 1938, s. 17.

(1a) Every motor vehicle which, or the load on which, is more than six feet six inches wide and which is at any time between half an hour after sunset and half an hour before sunrise on any road, shall carry attached to the extreme off-side of the vehicle or, where there is a load projecting from the off side of the vehicle, at the extreme off side of that load, a lighted lamp so constructed and carried as to show a bright green light in front of the vehicle clearly visible at a distance of at least two hundred yards from the front of the vehicle, and a bright red light clearly visible at a distance of at least two hundred yards from the rear of the vehicle, or alternatively two lighted lamps showing respectively a green light and a red light complying with the foregoing provisions of this subsection. The lamp so carried shall be not less than three and not more than six feet from the ground, and shall be affixed as near as practicable to the edge of the vehicle or load.

It shall be sufficient compliance with this subsection if any lamp or lamps carried in pursuance of the other provisions of this Act also comply with this section.

Inserted by 2332, 1936, s. 20.

(1b) Every motor vehicle the load on which extends more than three feet behind the rear of the motor vehicle and which is at any time between half an hour after sunset and half an hour before sunrise on any road shall carry attached to the extreme rear of that load a lighted lamp so constructed and carried as to show a red light clearly visible from a distance of two hundred yards from the rear of the motor vehicle.

For the purpose of this subsection any frame work, fixed or placed on a motor vehicle, shall be deemed to be the load or portion of the load on that motor vehicle.

Inserted by 45, 1939, s. 14.

(1c) Whenever any part of a motor vehicle, which is at any time between half an hour after sunset and half an hour before sunrise on any road, projects to the rear for more than three feet beyond the lamp carried on the rear of the motor vehicle pursuant to paragraph (*b*) of subsection (1) of this

section, a lighted lamp shall be kept attached to the rearward extremity of the said projecting part of the motor vehicle in such a position and manner as to show a red light clearly visible from a distance of two hundred yards from the rear of the motor vehicle.

(2) Every motor cycle which is on any road between half an hour after sunset and half an hour before sunrise shall carry—

(*a*) a lighted lamp attached to the front of the motor cycle and so constructed and carried as to show a bright white yellow or amber-coloured light in front of the motor cycle and also illuminate and render easily distinguishable from a distance of at least ten yards each figure and letter on the number-plate attached to the front of the motor cycle: Amended by 2416, 1938, s. 16.

(*b*) a lighted lamp attached to the rear of the motor cycle and so constructed and carried as to show a red light clearly visible at a distance of at least two hundred yards from the rear of the motor cycle and illuminate and render easily distinguishable from a distance of at least forty feet each figure and letter on the number-plate attached to the rear of the motor cycle:

(*c*) if a side-car is attached to the motor cycle, in addition to the lighted lamps provided for by the preceding paragraphs a lighted lamp attached to the front of that side-car, such lamp being so constructed and carried as to show a bright white light in front of the side-car:

Provided that this subsection shall not apply to any motor cycle if and so long as such motor cycle is stationary in a road and is standing under or near a lighted public street lamp or other lamp so illuminating such road as to render the motor cycle clearly visible and to remove any risk of accident by collision or otherwise.

(3) If any person owns or drives any motor vehicle not complying with this section in any particular he shall be guilty of an offence: Provided that where the owner and driver of the vehicle are different persons both shall not be punished in respect of the same contravention.

Brakes on Motor Vehicles.

Brakes on motor vehicles.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 59 (1) (a).
Inserted by 2332, 1936, s. 21.

42a. (1) In this section, unless the context otherwise requires—

"independent brake" means a brake of which the entire operating mechanism or system is either—

(*a*) separate from all parts and connections of any other brake or brake system, so that the brake in question cannot be adversely affected by the operation or failure of any other brake; or

(*b*) common to any other brake or brake system only in parts or connections which are of such design and strength, that there is no reasonable probability of failure of the independent brake by reason of the failure of any other brake or brake system:

"retaining-brake" means a brake so constructed and of such a nature that it is capable, when applied on used grades with any load carried or likely to be carried by the vehicle, of retaining all road-wheels, other than the steering-wheels, immovable for an indefinite period and without further attention than the initial application:

"tractor" means any motor vehicle used solely for the purposes of traction, and not for the carriage thereon of passengers (other than the driver) or goods:

"used grades" includes every road of whatever grade upon which the motor vehicle in question is used or likely to be used.

(2) In this section the term "capable of stopping" as applied to a brake means capable of bringing to a standstill the vehicle to which it is attached from a speed of twenty miles per hour upon a hard, dry, level road having a surface of tar, bitumen, concrete, or similar substance, and free of loose material, without assistance from the compression of the engine, within the specified distance from the point at which the brake is applied.

(3) Every motor vehicle (not being a motor cycle, and not being a tractor the maximum possible speed of which is fifteen miles per hour or less) shall be equipped with two independent brakes attached thereto.

(4) At least one of the brakes shall be a retaining brake.

(5) At least one of the brakes shall be so constructed as to act directly on the wheels, and not through transmission gear.

(6) In the case of a vehicle driven by steam—

(*a*) if the engine is capable of being reversed; and

(*b*) if the engine is incapable of being disconnected from all the road-wheels or all the axles, other than the front wheel or axle, save by the sustained action of the driver; and

(*c*) if there is no differential gear or similar mechanism between any two of the axles,

then it shall be sufficient if the vehicle is equipped with one brake independent of the engine, and complying with the requirements of subsections (4) and (5) of this section.

(7) One brake of a motor vehicle shall, if that brake acts on four wheels, be capable of stopping the vehicle within thirty feet, and if it acts on two wheels, within forty-five feet, and the other brake shall be capable of stopping the motor vehicle within seventy feet.

(8) Every motor cycle (with or without a side-car attached) shall be equipped with at least one brake which shall be capable of stopping the cycle within forty feet.

(9) Every motor cycle having a side-car attached shall, after the first of April, nineteen hundred and thirty-eight, be equipped with two independent brakes attached thereto, one being a brake complying with the requirements of the last preceding subsection and the other a brake of reasonable efficiency. Amended by 2416, 1938, s. 19 (1).

(9a) A three wheeled motor vehicle (not being a motor cycle with a sidecar attached) shall be equipped with two independent brakes, one of which shall be capable of stopping the vehicle within forty-feet and the other a brake of reasonable efficiency. Inserted by 2416, 1938, s. 19 (2).

(10) A trailer need not be equipped with brakes, if the motor vehicle by which it is drawn has brakes capable of stopping that vehicle with the trailer attached, within the distance prescribed by this section.

(11) A motor vehicle of the self-laying track type, having a continuous band or bands as its sole means of locomotion or traction, or having in addition thereto no more than two wheels in contact with the ground, is hereby exempted from the requirement of subsection (5).

(12) Each brake referred to in this section shall be capable of easy adjustment, and shall be maintained at all times in good working order.

Inserted by 2416, 1938, s. 19 (3).

(12a) The Governor may make regulations prescribing the standards or percentages of efficiency (as ascertained or measured by any brake-testing apparatus mentioned in the regulations) for brakes on motor vehicles of any class and if the brakes on any motor vehicle do not comply with any such regulation, that motor vehicle shall be deemed not to comply with this section.

Nothing in this subsection or in the regulations made under this subsection shall affect the obligation to comply with the other subsections of this section.

(13) Any person who drives or causes or permits any person to drive on any road any motor vehicle which in any particular does not comply with this section shall be guilty of an offence.

Windscreen Wipers and Rear Vision Mirrors.

Windscreen wipers.

Inserted by 2332, 1936, s. 21.

42b. (1) Every motor vehicle having a windscreen, shall be equipped with a windscreen wiper, capable at all times of effectively removing rain or other moisture from the portion of the windscreen immediately in front of the driver, and so constructed and situated that it can be controlled or operated from the driver's seat of the vehicle.

(2) If the motor vehicle is registered for the first time after the first of January, nineteen hundred and thirty-seven, the windscreen wiper shall be capable of being operated by a mechanical power.

(3) Any person who drives or causes or permits any person to drive on any road any motor vehicle which in any particular fails to comply with this section, shall be guilty of an offence.

Reflecting mirrors.

Inserted by 2332, 1936, s. 21.

42c. (1) Every motor vehicle, other than a motor cycle, shall be equipped with a mirror, so constructed and fitted to the motor vehicle as to give the driver of the motor vehicle a view along the carriage-way of the road behind the vehicle, for at least one hundred yards on a straight road: Provided that this section shall not apply to a motor vehicle when drawing a trailer.

Subsec. (2), substituted by 2416, 1938, s. 18.

(2) Any person who drives or who, being the owner, causes or permits any person to drive on any road a motor vehicle which in any respect fails to comply with this section shall be guilty of an offence.

(3) It shall be a defence to any charge made under this section if the defendant shows that owing to the mode of construction of the vehicle, or the load carried thereon, it was not practicable to comply with this section.

Duties of Drivers and Owners of Motor Vehicles.

Provision as to speed of motor vehicles.

43. (1) Any person who drives a motor vehicle on any road at an excessive speed shall be guilty of an offence.

1480, 1921, s. 20. 2095, 1932, s. 9. Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 10; 24 & 25 Geo. 5 c. 50, ss. 1, 2.

(2) It shall be *prima facie* proof only that a person has driven at an excessive speed if it is proved that he drove on a road—

(*a*) in any municipality, town, or township at a greater speed than twenty-five miles per hour; or

(*b*) outside a municipality, town, or township at a greater speed than forty miles per hour.

Cf. U.K. 24 & 25 Geo. 5 c. 50, s. 3.

(3) Subsection (2) of this section shall not apply to—

(*a*) any motor vehicle owned by the Fire Brigades Board or any fire brigade, or the controlling authority thereof, and which is being driven to a fire for use in connection with the extinguishing thereof;

(*b*) any motor vehicle which is being used by a member of the police force for the purpose of effecting an arrest, or otherwise in connection with the detection, suppression, or prevention of crime; or

(*c*) any ambulance motor vehicle which is being used for ambulance work.

(4) In considering whether an offence has been committed under this section the court shall have regard to the nature, condition, and use of the road upon which the offence is alleged to have been committed and to the amount of traffic which at the time actually is or which might reasonably be expected to be upon such road and to the vehicle concerned, and to all other circumstances affecting the matter, whether of the same nature as those mentioned or not

Speed of motor cycles carrying pillion passengers.

Inserted by 2332, 1936. s. 22.

43a. (1) Any person who on any road, drives at a greater speed than twenty-five miles per hour a two wheeled motor cycle carrying any person in addition to the driver, shall be guilty of an offence.

s. 43. BOND v. HALL (1938) S.A.S.R. 59. Where evidence was given as to speed by reference to a speedometer but there was evidence that the speedometer had not been tested, held that the recording by the speedometer was lawful evidence (and see also section 157 (3), enacted since this decision).

GIBSON v. JENNINGS AND ANOTHER (1938) S.A.S.R. 330. A speed exceeding that mentioned in subsection (2) is an element to consider on the question of negligence in a civil action.

(2) This section does not apply to a motor cycle having a side-car attached thereto.

S. 44 repealed by 2332, 1936, s. 23.

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Duty of driver to produce licence and give name and address. 1480, 1921, s. 22. Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 4 (5).

45. (1) Any driver of a motor vehicle who—

(*a*) when requested by a member of the police force in the execution of his duty under this Act to produce his licence fails to do so within forty-eight hours of the making of the request; or

(*b*) when requested by a member of the police force to state his name and place of abode or the name and place of abode of the owner of such motor vehicle refuses or fails to do so or states a false name or place of abode,

shall be guilty of an offence.

(2) Any inspector may without any warrant other than this Act apprehend any driver of a motor vehicle who is guilty of any offence under this section.

S. 46 repealed by 2332, 1936, s. 24.

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S. 47 repealed by 2332, 1936, s. 26.

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Driving whilst drunk or under the influence of drugs. Substituted by 2416, 1938, s. 20.

48. (1) Any person who—

(*a*) drives a motor vehicle; or

(*b*) occupies the driver's seat and attempts to put a motor vehicle in motion,

whilst he is so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle shall be guilty of an offence.

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s. 48. BURROWS v. HANLIN (1930) S.A.S.R. 54. The opinion of persons, not experts, as to whether a man is drunk, or capable of driving a car, is not admissible as evidence.

DAYMAN v. SIMPSON (1935) S.A.S.R. 320. Where the defence suggests that an expert witness, called by the prosecutor as to the condition of the defendant, has given an unsound opinion, that should be suggested to the witness before he leaves the box. Complaint referred for re-hearing where this rule was not observed.

HENNIG v. ROBERTSON. ROBERTSON v. HENNIG (1937) S.A.S.R. 400. Where a person, who had been convicted under section 26 of the Motor Vehicles Act, 1921, of driving a motor vehicle whilst so much under the influence of liquor as to be incapable of exercising effective control of the vehicle, committed this offence under section 48 of this Act, held that the penalty to be inflicted was that appropriate to a second offence under section 48.

CHUCK v. WEST (1938) S.A.S.R. 51. It is not necessary on a charge under section 48 to show that the defendant was drunk.

Penalty—For a first offence, a fine of not less than twenty pounds and not more than fifty pounds and disqualification from holding and obtaining a driver's licence for such period as the court thinks fit, but in no case less than three months.

For a second offence, a fine of not less than fifty pounds and not more than one hundred pounds, or imprisonment for not less than two months and not more than six months, or both such fine and imprisonment, and in any case disqualification from holding and obtaining a driver's licence for such period as the court thinks fit but in no case less than six months.

For a third or any subsequent offence, imprisonment for not less than three months and not more than twelve months and disqualification from holding and obtaining a driver's licence for such period as the court thinks fit, but in no case less than three years.

(2) Notwithstanding any other Act the minimum amount of any fine and the minimum period of imprisonment or disqualification prescribed by this section shall not be reduced or mitigated in any way except as follows:—

In the case of a first offence, the court, if it is satisfied by evidence given on oath that the offence is trifling, may order disqualification for a period less than three months or may refrain from ordering disqualification.

(3) The court by which any person is convicted under this section on the complaint of a member of the police force, may, in addition to ordering any other penalty, order on the application of the complainant that the defendant pay to the complainant a reasonable sum to cover the expenses of any of the following things:—

(*a*) Apprehending the defendant:

(*b*) Conveying him to any police station:

(*c*) Keeping him in custody until trial:

(*d*) Medically examining him.

Any amount received by the complainant under this section shall be paid by him into the general revenue of the State.

* * * * * * * * * * * S. 49 repealed by 2332, 1936, s. 26.

Registered owners and licensed drivers to notify change of address.
1480, 1921, s. 28.

50. Every person registered as the owner of a motor vehicle and every holder of a licence who permanently changes his place of abode shall, within fourteen days of so doing, give written notice to the registrar of his new place of abode.

Side-car to be on left side of motor cycle.
1480, 1921, s. 33.

51. (1) No motor cycle having a side-car attached thereto shall be driven or shall stand in any road unless such side-car is so attached on the left side of such motor cycle.

(2) If any person owns or drives any motor cycle not complying with this section in any particular he shall be guilty of an offence: Provided that where the owner and driver of the cycle are different persons both shall not be punished in respect of the same contravention.

S. 52 repealed by 2332, 1936, s. 27.

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Penalty for using motor vehicle without consent of owner.
1480, 1921, s. 37.
1695, 1925, s. 13.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 28.
Subsec. (1) amended by 2416, 1938, s. 21.

53. (1) Any person who drives or uses any motor vehicle without first obtaining the consent of the owner thereof shall be guilty of an offence.

Penalty—For a first offence, imprisonment for not more than three months. For any subsequent offence, imprisonment for not more than twelve months.

(2) The court may, in addition to any other penalty imposable under this section, order the defendant to pay to the owner of the motor vehicle used in contravention of this section such a sum as the court thinks proper by way of compensation for any loss or damage suffered by the owner.

(3) This section shall not apply to any member of the police force in the execution of his duty under this Act.

S. 54 repealed by 2332, 1936, s. 27.

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Interfering with motor vehicle.
1480, 1921, s. 39.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 29 (2).

55. Any person who interferes with or tampers with a motor vehicle or any part thereof, without first obtaining the consent of the owner thereof, shall be guilty of an offence.

s. 53. BOLLMEYER v. DALY (1933) S.A.S.R. 295; 5 Austn. Digest 168. "Use" covers every degree of use. The *mens rea* necessary to support a charge under section 53 is an intention to use a motor vehicle without the consent of the owner.

Procuring use of car by fraud.
1480, 1921, s. 40.

56. Any person who procures the use or hire of any motor vehicle by fraud or misrepresentation shall be guilty of an offence and liable to a fine not exceeding twenty pounds or to imprisonment for any period not exceeding six months, or to both such fine and imprisonment.

Production of licence at court.
1480, 1921, s. 41.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 8.

57. (1) Whenever a licensed driver is charged with any breach of this Part he shall produce his licence to the court at the time of the hearing of the charge.

(2) Any such driver who fails without reasonable excuse to produce his licence as aforesaid shall be guilty of an offence.

False statement by applicant for licence or for registration punishable.
1480, 1921, s. 42.

58. Any person who wilfully makes any false statement in an application under this Part for the registration of a motor vehicle, or in an application for the issue or renewal of a licence to drive a motor vehicle, shall be guilty of an offence.

Penalty on improper use of vehicles registered for reduced fee.
Substituted by 2416, 1938, s. 22.

59. (1)—

(*a*) If any commercial motor vehicle, for the registration of which a reduced registration fee has been paid as allowed by paragraph (7) of section 9 of this Act, is during the period of the registration used for the carriage of His Majesty's mails, goods, or passengers for pecuniary reward or for carrying goods in the course of any trade or business other than that of a primary producer; or

(*b*) if any commercial motor vehicle for the registration of which a reduced registration fee has been paid as allowed by paragraph (8) or (9) of section 9 of this Act is during the period of registration used for any purpose other than a purpose set out in the said paragraph (8) or (9) as the case may be; or

(*c*) if any motor tractor for the registration of which a reduced registration fee has been paid as allowed by paragraph (10) of section 9 of this Act is during the period of the registration used for any purpose other than a purpose set out in the said paragraph (10),

and the balance of the full registration fee for the said period has not been paid before the vehicle is so used, then the person driving the vehicle and, if that person is employed by any other person to drive the vehicle, then the employer also shall be guilty of an offence.

(2) The carriage of goods and passengers on any motor vehicle which is on the establishment of any unit of the military forces of the Commonwealth, shall not, if those goods or passengers are carried in connection with military training or other military operations carried on by the Commonwealth, be regarded as the carriage of goods or passengers within the meaning of paragraph (*a*) of subsection (1) of this section.

Powers and duties of police.
1480, 1921, s. 43.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 49.

60. (1) Every member of the police force shall see that this Part is duly observed.

(2) Any member of the police force in the execution of his duty under this Part may give such reasonable directions to persons driving motor vehicles upon any road as are, in his opinion, necessary for the safe and efficient regulation of the traffic thereon, or for the purpose of ascertaining whether any offence against this Part has been or is being committed.

(3) Any person who—

(*a*) obstructs or hinders any member of the police force in the exercise of his duties under this Part; or

(*b*) in any way interferes with or prevents the exercise of any of the powers conferred or the discharge of any of the duties imposed by this Part upon members of the police force; or

(*c*) disobeys any lawful order or direction of a member of the police force in the exercise of his duties under this Part,

shall be guilty of an offence.

Regulations as to motor vehicles.

Regulations.
1480, 1921, s. 44.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 30.

61. (1) In addition to any power by any other section of this Part conferred on the Governor to make regulations (which power shall in every case be implied for the purpose of any section in which the word "prescribed" is used), the Governor may make regulations prescribing all matters and things which by this Part are contemplated, required or permitted to be prescribed, or which appear to him to be necessary or convenient to be prescribed for the purpose of more

S. 61. GRAVES v. WALKOM (1926) S.A.S.R. 34. The breach of a statutory regulation may tend to show negligence on the part of the plaintiff or defendant.

FORBY v. LAUCKE (1933) S.A.S.R. 60. The existence of a statutory regulation for the use of the highway is a circumstance to be taken into account in applying the principles of common law in an action for negligence.

effectually carrying out any of the provisions of this Part, or for better effecting the objects of this Act, and in particular (without limiting the effect of this section) for all or any of the following purposes, namely:—

I. Regulating the use of motor vehicles and the conditions under which they may be used;

II. Regulating the speed of motor vehicles in particular localities or under particular circumstances, and for such purposes varying the rates of speed declared by this Part to be *prima facie* evidence of driving at excessive speed;

III. Prescribing and regulating the affixing and use of warning devices on motor vehicles;

IV. Prescribing and regulating the affixing of efficient brakes on motor vehicles;

V. Providing for minimising the noise and the issue of smoke or fumes from the working of motor vehicles;

VI. Prohibiting the use of motor vehicles that, owing to defects in construction or other causes, are unsuitable for safe use;

VII. Prohibiting or restricting the use of motor vehicles upon any specified roads, or within the roads in any specified area, either generally or within certain hours;

VIII. Prohibiting or regulating the carrying of any person on a motor cycle in addition to the rider thereof; Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 16.

IX. Regulating the form of the registered numbers assigned to motor vehicles, and the manner of placing them upon such vehicles;

X. Providing that any regulations under this section may be of a local nature and limited in their application to a particular area, or may be restricted in their operation to any specified class of motor vehicle;

XI. Providing for the erection of uniform signs and notices for the guidance of motor drivers;

XII. Providing for the temporary registration, or the exemption from registration, of motor vehicles owned by persons resident outside the State and temporarily in the State, and for the issue of temporary licences to the drivers of such vehicles or for the exemption of such drivers from the obligation to hold licences; Substituted by 45, 1939, s. 15.

XIII. Providing for the regulation of the owners and drivers of motor vehicles; and

XIV. Providing for any other purpose which the Governor may consider necessary for the safety or convenience of the public, or for the protection of property;

Inserted by 2416, 1938, s. 23.

XV. Requiring motor vehicles to be provided with apparatus for deflecting, dipping, dimming, or otherwise adjusting the headlights thereof and for regulating the use of such apparatus.

(2) Any such regulation may impose a penalty not exceeding twenty pounds for any breach of the same or any other regulation.

Inconsistency of regulation or by-law. 1480, 1921, s. 47.

62. When any regulation or by-law made by any municipal or district council or other authority is inconsistent with a regulation made under this Part, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Legal Proceedings and Evidence.

Offences. 1480, 1921, s. 48.

63. Any contravention of or failure to observe any provision of this Part, whether by act or omission, shall be an offence.

Penalties. 1480, 1921, s. 49.

64. Any person guilty of an offence under this Part for which no specific pecuniary penalty is provided shall be liable to a penalty of not more than twenty pounds.

Copy of record of registration and licences to be evidence. 1480, 1921, s. 50. 1695, 1925, s. 14. 2095, 1932, s. 15.

65. (1) A document purporting to be an extract from, or copy of, any entry contained in the register of motor vehicles or in the register of licences and purporting to be certified as such under the hand of the registrar shall, in all courts and upon all occasions whatsoever be admissible as evidence, and shall be *prima facie* evidence of the truth of the matters stated in such document without the production of such registers, or any licence, notice, or other document upon which any entry may be founded.

(2) A document purporting to be a certificate under the hand of the registrar stating all or any of the following matters, namely:—

(*a*) That the person therein described was not on any given date the holder of a licence:

(*b*) That the person therein described had not on any given date registered any motor vehicle whatever, or any particular motor vehicle therein described:

(*c*) That no trader's plate or no trader's plate bearing a particular number had on any given date been issued to the person therein described:

(*d*) That any number therein mentioned was not the number on any trader's plate in force on any given date:

(*e*) That any motor vehicle therein described was not on any given date a registered motor vehicle:

(*f*) That any number therein mentioned was not on any given date assigned to any motor vehicle whatever, or to any particular motor vehicle therein described:

(*g*) That any person therein described had not on any given date notified the registrar in the prescribed form of the transfer of any motor vehicle therein described:

(*h*) That any person therein described had not on any given date delivered to the registrar the registration card issued in respect of any transferred motor vehicle therein described:

(*i*) That any person therein described had not on any given date notified the registrar in writing of his permanent change of address from any address therein described to any other address therein described,

shall in all courts and upon all occasions whatsoever, be admitted as *prima facie* evidence of the truth of the matters stated as aforesaid.

66. In any proceedings for an offence against this Part— Facilitation of proof. 1480, 1921, s. 51.

(*a*) proof that a motor vehicle has not upon it a distinguishing number as prescribed by this Part shall be *prima facie* evidence that that motor vehicle is not registered;

(*b*) proof that a person is registered as the owner of a motor vehicle shall be *prima facie* evidence that that person is the owner of that motor vehicle;

(*c*) the fact that any place is described as a street or road shall be *prima facie* evidence that that place is a road within the meaning of this Part; and

(*d*) the allegation in the complaint that any road whereon it is alleged that any such offence was committed is situated in a municipality, or in a town or township, shall be *prima facie* evidence that that road is situated as alleged.

Endorsement of disqualification.
Cf. U.K. 20 & 21 Geo. 5 c. 43, ss. 7, 8. Cf. U.K. 24 & 25 Geo. 5 c. 50, s. 5.
Substituted by 2332, 1936, s. 28.

67. (1) When a holder of a driver's licence is disqualified under this Act from holding and obtaining a licence, or when the licence of any such holder is suspended, he shall forthwith produce his licence to such person as the court or other person or authority ordering the disqualification or suspension directs for the purpose of having a memorandum of the disqualification or suspension endorsed thereon.

(2) Any person who fails to produce a licence as and when required to do so under this section shall be guilty of an offence.

Effect of disqualification from holding licence.
Cf. U.K. 20 & 21 Geo. 5 c. 43, ss. 4 (6), 7.
Inserted by 2332, 1936, s. 28.

67a. (1) A driver's licence shall during the period during which it is suspended or the holder is disqualified from holding and obtaining a licence be of no force or effect.

(2) The registrar shall not issue a driver's licence to any person who is disqualified from holding and obtaining a driver's licence.

Enforcement of obligation to procure driver's licence.
Inserted by 2332, 1936, s. 28.

67b. The Commissioner of Police shall at intervals of not less than twelve months take such steps as are reasonably practicable to ascertain whether any persons are driving motor vehicles without holding drivers' licences.

Suspension of registration.
Inserted by 2332, 1936, s. 29.

67c. In any proceedings against the owner of a motor vehicle for any offence against this Act if the court is satisfied that the vehicle does not comply with any requirement of this Act or is otherwise so defective that it cannot be driven on a road without danger to the public, the court may order that—

(*a*) the registration of the vehicle be suspended and not renewed; or

(*b*) if the vehicle is unregistered, that the vehicle be not registered,

until the vehicle is made to comply with this Act or otherwise rendered safe for use to the satisfaction of a police officer.

Offences by employees.

Inserted by 2332, 1936, s. 30.

67d. If a person charged with driving a motor vehicle which does not comply with a requirement of this Act as to lights, warning devices, brakes, windscreen wipers, rear-vision mirrors, or other equipment, proves—

(*a*) that he is the employee of another person;

(*b*) that he drove the vehicle on the relevant occasion under the express instructions of his employer;

(*c*) that he was not aware that the vehicle did not comply with this Act or that before driving the vehicle he called the attention of his employer to the fact that the vehicle did not comply with this Act,

that person so charged shall be acquitted.

Suspension of orders of disqualification.

Inserted by 2416, 1938, s. 24.

67e. (1) A person who by virtue of an order of a court under this Act is disqualified from holding and obtaining a driver's licence may appeal against the order in the same manner as against a conviction.

(2) Pending the hearing and determination of any such appeal the operation of any such order may be suspended—

(*a*) in the case of an order made by a court of summary jurisdiction, by the court which made the order, or a judge of the Supreme Court;

(*b*) in the case of an order made by the Supreme Court, by a judge of that Court.

(3) An order of suspension may be made before or after the institution of the appeal, but shall not have any effect until the defendant—

(*a*) has duly instituted the appeal and paid the appropriate court fees; and

(*b*) has served on the registrar the order of suspension or a copy thereof, and a notice that the appeal has been duly instituted and the fees paid.

Notice of disqualification of drivers and suspension of licences.

Inserted by 45, 1939, s. 16.

67f. (1) Whenever a court makes an order disqualifying a person from holding and obtaining a driver's licence, and whenever the Commissioner of Police suspends a driver's licence, the proper officer of the court or, as the case may be, the Commissioner of Police, shall forthwith send to the registrar a notice in writing setting out the date on which the order of disqualification was made or the licence suspended, the period of the disqualification or suspension, and short particulars of the grounds thereof.

(2) If any such order of disqualification is quashed or varied by a court on appeal, the proper officer of the court shall forthwith send to the registrar a notice in writing setting out the date of the order made on the appeal and the effect thereof.

(3) If any such suspension is removed by the Commissioner of Police, he shall forthwith send to the registrar a notice in writing setting out the date of the removal of the suspension, the date as from which it takes effect and the grounds therefor.

(4) In this section "proper officer" means—

(*a*) in relation to the Supreme Court, the Master of that court:

(*b*) in relation to any other court, the clerk of that court.

Delivery of licence to registrar and indorsement.

Inserted by 45, 1939, s. 16.

67g. (1) The registrar may by notice in writing served personally or by post on any holder of a driver's licence in relation to whom an order of disqualification has been made under this Act or whose licence has been suspended or cancelled, require him to deliver his licence to the registrar or to some member of the police force specified by the registrar in the notice, at a place and within a reasonable time specified in the notice.

(2) Any person who without reasonable excuse (proof of which shall lie on such person) fails to comply with a notice under this section shall be guilty of an offence.

(3) The registrar or any member of the police force to whom a licence is delivered under this section—

(*a*) may indorse thereon particulars of any suspension or cancellation thereof or any order of disqualification made against the holder thereof; and

(*b*) in a case where the licence is cancelled or where the suspension or disqualification extends until or beyond the time of the expiration of the licence, may retain the licence.

Summary proceedings for offences.

68. All proceedings for offences against this Part shall be disposed of summarily.

Persons in service of the Crown bound.

69. This Part applies to persons in the public service of the Crown while engaged on such service, as well as when not so engaged.

70. Nothing in this Part shall affect any liability of any person under any statute or at common law.

Common law or statutory liability not affected.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 33.

PART IIA.

PART IIA.

INSURANCE AGAINST THIRD PARTY RISKS ARISING OUT OF THE USE OF MOTOR VEHICLES.

70a. (1) In this Part, unless the context otherwise requires—

Interpretation and application of this Part.

"approved insurer" means any person or association of persons carrying on the business of insurance who or which has been approved by the Treasurer as an approved insurer under this Part:

Inserted by 2332, 1936, s. 31.

"insured" when used as a noun has the same meaning as "insured person" as hereinafter defined:

Inserted by 45, 1939, s. 17.

"insured person" means the owner of a motor vehicle in respect of which a policy of insurance is in force under this Part and the driver and the person in charge at the material time whether with or without the consent of the owner:

"owner" includes every person who is the owner or joint owner or part owner of a motor vehicle and any person who has the use of any motor vehicle under a hire purchase agreement, but does not include an unpaid owner of a motor vehicle the subject of a hire purchase agreement:

"policy of insurance" includes a cover note which is binding on the insurer.

(2) Other words and expressions used in this Part shall, unless the context otherwise requires, have the same meaning as they have in Part II. of this Act.

(3) This Part shall not render it obligatory to insure any vehicle owned by the Crown and used solely in the public business of the State or any vehicle owned by the Municipal Tramways Trust and used solely in connection with the

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s. 70. FORBY v. LAUCKE (1933) S.A.S.R. 60. Section 70 means that the other provisions of the Act are not to alter the principles upon which liability falls to be determined under any other statutes or at common law. The existence of a statutory regulation for the use of the highway is a circumstance to be taken into account in applying the principles of the common law in an action for negligence.

business of that Trust: Provided that in relation to any motor vehicle which is owned by the Crown or the Municipal Tramways Trust and is not insured the Crown or the Municipal Tramways Trust shall be under the same liabilities and have the same rights as an insurer who has issued to the Crown or the Municipal Tramways Trust (as the case may be) a policy of insurance complying with this Part in relation to the use of that vehicle.

Insurance against third party risks. U.K. 20 & 21 Geo. 5 c. 43, s. 35.

Inserted by 2332, 1936, s. 31.

70b. (1) After a day to be proclaimed by the Governor as the day on which this Part shall come into operation no person shall use, or cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with this Part.

Any person contravening this subsection shall be guilty of an offence and liable for a first offence to a fine of not more than one hundred pounds and for any subsequent offence to a fine of not more than two hundred pounds.

(2) Any person convicted of an offence under this section shall (unless the court for special reasons thinks fit to order otherwise) be disqualified from holding and obtaining a driver's licence or the registration of a motor vehicle under this Act for a period of twelve months from the date of the conviction.

(3) Proceedings for an offence under this section may be commenced—

(*a*) within a period of six months from the date of the commission of the alleged offence; or

(*b*) within a period which exceeds neither three months from the date on which it came to the knowledge of the prosecutor that the offence had been committed nor one year from the date of the commission of the offence,

whichever period is the longer.

s. 70b. RAKE v. BOND (1938) S.A.S.R. 253. The discretionary powers of the court under subsection (2) to grant an order of exemption discussed.

PENNEY v. BOURKE (1938) S.A.S.R. 328. Where a person had used a motor car without having a policy of insurance in force for approximately three weeks, held that the suspension of his driver's licence for a period of three months was not excessive.

SCOTT v. WARD (1939) S.A.S.R. 51. Where evidence was given by a police constable on a complaint for an offence against subsection (5) that he had required the appellant to produce his policy of insurance at a police station, held that the demand for the production of the policy was not a demand within the meaning of the subsection.

(4) In any prosecution for an offence under this section, the allegation in the complaint that at any time mentioned in the complaint there was not in force in respect of any particular motor vehicle a policy of insurance complying with this Part shall be *prima facie* evidence of the fact so alleged.

(5) Any owner of a motor vehicle shall on being so requested by a member of the police force produce evidence that there is in force in respect of every motor vehicle owned by him a policy of insurance complying with this Part. The owner shall be deemed to have complied with this subsection if he produces the necessary evidence at a police station (to be nominated by the owner to the member of the police force at the time when the request is made) within five days of the time when its production was requested.

Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 40.

Any person who without just excuse fails to comply with this subsection shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

(6) Every application for registration of a motor vehicle shall contain a statement by the owner of the vehicle or by the person applying for registration on behalf of that owner that a policy of insurance complying with this Part is in force and a statement of the name of the insurer who has issued the policy.

70c. (1) In order to comply with this Part, a policy of insurance must—

Requirements in respect of policies.

Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 36.

(*a*) be issued by an approved insurer:

(*b*) except as provided in this section insure the owner of the vehicle mentioned in the policy and any other person who at any times drives that vehicle, whether with or without the consent of the owner, in respect of all liability for negligence which may be incurred by that owner or other person in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle.

Inserted by 2332, 1936, s. 31.

(2) A policy of insurance shall be deemed to comply with this Part notwithstanding that the liability of the insurer—

(*a*) is limited to two thousand pounds in respect of any claim made by or in respect of any passenger carried in the vehicle mentioned in the policy, and

to twenty thousand pounds in respect of all claims made by or in respect of such passengers, and such limits shall be inclusive of all costs in relation to any such claim or claims:

(*b*) does not indemnify the insured in respect of any claim based on the death of, or injury suffered by, any person who at the time of the accident was—

(i.) the spouse or a child or other relative of the insured of a degree not more remote than the fourth:

(ii.) a servant of the insured:

Subpara. (iii.) repealed by 2416, 1938, s. 25 (1).

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Subsec. (2a) inserted by 2416, 1938, s. 25 (1), and repealed and re-enacted by 45, 1939, s. 18.

(2a) Every policy which relates to a vehicle operated for the carriage of passengers for hire pursuant to a licence issued under the by-laws of a municipal or district council, or the Road and Railway Transport Act, 1930-1935, or The Municipal Tramways Trust Act, 1935, or any other Act providing for the licensing of vehicles used for the carriage of passengers for hire, must indemnify the insured person in respect of any claim based on the death of or bodily injury to any person who as a passenger carried or about to be carried for hire was being conveyed in or on or was entering or alighting from that vehicle. Except as mentioned in this subsection, a policy of insurance need not for the purposes of this Part indemnify the insured person against any claim based on the death of, or injury to, any person driving or being conveyed in or on or entering or alighting from the vehicle mentioned in the policy.

Subsec. (3), repealed by 2416, 1938, s. 25 (2).

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Liability of insurers. Cf. U.K. 24 & 25 Geo 5 c. 50, s. 10. Inserted by 2332, 1936, s. 31. Proviso substituted by 2416, 1938, s. 26 (1).

70d. (1) Any person who has obtained a judgment against an insured person in respect of death or bodily injury caused by negligence in the use of a motor vehicle specified in a policy of insurance under this Part may recover by action from the insurer such amount of the money (including costs or a proportionate part thereof) payable pursuant to the judgment as relates to death or bodily injury and is unsatisfied: Provided that before the action in which judgment was

obtained against the insured person, came on for hearing, the insurer knew that that action had been commenced: Provided also that the right to recover under this subsection shall be subject to any limitations prescribed by the policy of insurance as to the amount in respect of which the insured is indemnified or as to the persons in respect of whose death or injury the insured is indemnified.

(2) Where an insured person has caused death or bodily injury by negligence in the use of a motor vehicle specified in a policy of insurance under this Part but that insured person is dead or cannot be served with process, any person who could have obtained a judgment in respect of the death or bodily injury so caused against that insured person if he were living or if he had been served with process may recover by action against the insurer the amount of the judgment which he could have so recovered against the insured person: Provided that he cannot so recover unless he proves that he gave to the insurer notice of the claim and a short statement of the grounds thereof as soon as possible after he knew that the insured person was dead or could not be served, or that such notice was given within such time as would prevent the possibility of the insurer being prejudiced by want of such notice.

(3) Where the driver of a motor vehicle has caused death or bodily injury by negligence in the use of a motor vehicle, but the identity of the vehicle cannot be ascertained, any person who could have obtained a judgment in respect of the death or bodily injury so caused against that driver may obtain by action against a nominal defendant to be named by the Treasurer the judgment which in the circumstances he could have recovered against the driver of the vehicle: Provided that as soon as possible after he knew that the identity of the vehicle could not be ascertained, he gave to the Treasurer notice of the claim and a short statement of the grounds thereof.

(4) It shall be no defence by an insurer to an action against him under this section that he is not liable under a policy of insurance by reason of the fact that—

(*a*) the policy was obtained by any mis-statement or non-disclosure whether fraudulent, material, or otherwise;

(*b*) the insured person has committed any breach of any term, condition or warranty of a policy or any provision of this Part; or

(*c*) the insured has failed to comply with any condition of the policy as to what the insured person should do or should not do after the event giving rise to liability.

(5) The insurer may, in addition to any other right or remedy he may have, recover from the insured person liable in respect of any such accident, and if two or more persons were so liable from those persons jointly and severally—

(*a*) such part of any judgment so obtained against the insurer; or

(*b*) such sums as the insurer has paid in payment settlement or compromise of the claim or judgment against the insured person or the insurer; and

(*c*) such costs and expenses,

as would not have been recovered from or incurred or paid by the insurer but for the last preceding subsection of this section, and that amount may be recovered either in a separate action or by means of third party procedure in the action against the insurer by the person who obtained the judgment: Provided that if the insured person has made any written request to the insurer that he should settle or compromise up to any specified sum or should pay or should contest the claim, and if the insurer acts unreasonably in failing to comply with such request then the insurer shall not recover more than the amount of the liability which the insurer would have paid or incurred if he had not so acted unreasonably.

(6) This section shall not apply—

Amended by 2416, 1938, s. 26 (2).

(*a*) so as to confer any rights against an insurer upon the spouse or a child or other relative of the insured person of a degree not more remote than the fourth; or upon a servant of the insured person or any passenger (other than a passenger carried or about to be carried for hire in a vehicle such as mentioned in subsection (2a) of section 70c of this Act), in, or any person entering or alighting from, or about to enter or alight from the vehicle specified in the policy, nor

Amended by 2416, 1938, s. 26 (2).

(*b*) so as to make an insurer liable for more than two thousand pounds (including costs) in respect of any one passenger nor more than twenty thousand pounds (including costs) in respect of all

passengers in the motor vehicle specified in the policy if at the material time it was being used in the business of carrying passengers for hire:

(*c*) to any accident which happened before the commencement of this Part.

Amended by 45, 1939, s. 19 (a).

(7) Subject to subsection (7a) of this section a nominal defendant shall not be liable to satisfy any judgment obtained against him but the judgment and the nominal defendant's costs shall be paid by all those who were approved insurers at the date of the accident giving rise to the liability in proportions determined by the Treasurer who, in so determining, shall have regard to the premium income for insurance under this Part received by each such insurer during the previous year.

Inserted by 2416, 1938, s. 27.

The Treasurer may out of the general revenue of the State and without any appropriation other than this Act pay the amount of any judgment obtained against a nominal defendant under this section and of the nominal defendant's costs; and the approved insurers who are under this subsection liable for such judgment and costs shall upon demand made by the Treasurer repay to him their respective proportions of any amounts so paid by him.

Inserted by 45, 1939, s. 19 (b).

(7a) Any association consisting of not less than ten approved insurers may submit for the Treasurer's approval a scheme under which it is proposed that all approved insurers will contribute money in proportions provided for in the scheme for—

(*a*) satisfying claims made in respect of death or bodily injury caused by negligence in the use of a motor vehicle where the identity of the vehicle cannot be ascertained; and

(*b*) satisfying judgments obtained against nominal defendants under this section; and

(*c*) paying the costs of such defendants.

If the Treasurer approves of any scheme so submitted every approved insurer shall enter into and execute an agreement between himself and all other approved insurers for the purpose of carrying the scheme into effect, and shall carry out the obligations imposed upon him by the agreement; and the Treasurer may by notice in the *Gazette* declare that any approved insurer who refuses to enter into or execute such an agreement or fails or refuses to carry any such obligation shall cease to be an approved insurer.

Subsection (7) of this section, so far as it provides that the Treasurer shall determine the proportions in which approved insurers are to satisfy judgments and pay nominal defendants' costs, and that the Treasurer may satisfy judgments and pay a nominal defendant's costs, shall not apply in relation to any judgment against a nominal defendant which is satisfied pursuant to a scheme approved by the Treasurer under this subsection, or in relation to any nominal defendant's costs which are paid pursuant to any such scheme.

Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 38; 24 & 25 Geo. 5 c. 50, s. 12.

(8) No policy shall be deemed to comply with this Act if any term, warranty or condition thereof is in form or substance a term, warranty or condition of which the committee appointed under section 70m. of this Act has expressed its disapproval by notice in the *Gazette*: Provided that every such notice shall come into effect upon the expiration of three months after the publication thereof in the *Gazette* and not earlier.

Duties of owner or insurer.
Cf. U.K. 24 & 25 Geo. 5 c. 50, s. 13.
Inserted by 2332, 1936, s. 31.

70e. (1) Upon the happening of any accident which results in the death of or causes bodily injury to any person and is caused by, or arises out of the use of a motor vehicle, the driver and the person in charge thereof shall give written notice forthwith to the insurer concerned, and such notice (which notice shall not be subject to discovery or admissible in evidence in any proceedings except proceedings for an offence under this section) shall set forth the following information with as full particulars as the owner is able to give:—

(*a*) The fact of the accident:

(*b*) The time and place at which it occurred:

(*c*) The circumstances of the accident:

(*d*) The name and address of any person killed or injured therein:

(*e*) The names of any witnesses of the accident.

(2) When neither the driver nor the person in charge of the motor vehicle is the owner of the motor vehicle concerned the owner shall give a like notice immediately upon the accident coming to his knowledge.

(3) An insured person, immediately upon any claim being made upon him in respect of an accident, shall give notice of the claim to the insurer concerned, and supply to that insurer such particulars of the claim as he requires.

(4) If any person fails to comply with any requirement of subsection (1) or subsection (3) of this section he shall be guilty of an offence and liable to a fine not exceeding five pounds.

(5) An insured person shall not, without the consent in writing of the insurer concerned—

(*a*) enter upon, or incur any expense in, any litigation:

(*b*) make any offer or promise of payment or settlement:

(*c*) make any payment or settlement: or

(*d*) make any admission of liability,

in respect of any claim in respect of which he is insured with such insurer, but this provision shall not prevent any person truthfully answering any question reasonably asked of him.

(6) The insurer shall be entitled to recover from an insured person who has failed to comply with any provision of this section all moneys paid and costs incurred by the insurer in relation to any claim arising out of the accident in respect of which such failure has occurred.

Power of insurers to deal with claims against insured.

Inserted by 2332, 1936, s. 31.

70f. (1) The insurer may on behalf of the insured, conduct the negotiations in respect of any claim against the insured, and may assume the conduct and control of any legal proceedings in respect of any such claim, and at any stage of those negotiations or proceedings may pay, compromise, or settle any such claim.

(2) The insured shall sign and execute all such warrants, authorities, and other documents as are necessary to give effect to this section, and, if the insured makes default in doing so or is absent or cannot be found, the warrants, authorities, or other documents may be signed or executed by the insurer on behalf of the insured.

Inserted by 2416, 1938, s. 28.

(3) Where, as the result of the use of a motor vehicle an accident happens which results in the death of or bodily injury to any person, as well as damage to property, and claims are made in respect of the death or bodily injury and also in respect of the damage to property, and the person against whom claims are made is insured against his liability for death or bodily injury but not against his liability for damage to property, then nothing said or done in any negotiations for settlement of either of the claims, and no judgment given in any legal proceedings in respect of either of the claims, shall

be evidence in any legal proceedings in respect of the other claim unless the negotiations or proceedings in respect of both claims are conducted or controlled by the person against whom the claims are made with the authority of the insurer, or by the insurer with the authority of the said person.

Emergency treatment.
Cf. U.K. 24 & 25 Geo. 5 c. 50, s. 16.
Inserted by 2332, 1936, s. 31.

70g. (1) Where—

(*a*) (i.) any legally qualified medical practitioner or registered nurse renders emergency treatment in respect of bodily injury (including fatal injury) to any person caused by or arising out of the use of a motor vehicle; or

(ii.) the person so injured is immediately after such injury conveyed in any vehicle; and

Para. (b), repealed by 2416, 1938, s. 29 (a).

* * * * * * * * * * *

Amended by 2416, 1938, s. 29 (b).

(*c*) notice in writing of a claim under this section is given by the medical practitioner, nurse, or person who conveyed the injured person, to the insurer who issued the policy of insurance in force under this Part in relation to the said motor vehicle within one month after the occurrence out of which the death or bodily injury arose,

the insurer shall make such of the following payments as are applicable to the case:—

(i.) To the medical practitioner the sum of twelve shillings and six pence for each person to whom emergency treatment is rendered together with any travelling expenses reasonably and necessarily incurred in respect of the emergency treatment so rendered:

(ii.) To the nurse the sum of ten shillings and six pence for all emergency treatment rendered by her to the person or persons injured in the accident together with any travelling expenses reasonably and necessarily incurred in respect of the emergency treatment so rendered which sum shall, if emergency treatment is rendered to two or more persons, be deemed to have been paid on behalf of all those persons in equal shares:

(iii.) To any person who conveyed the injured person as mentioned in paragraph (*a*) of this subsection, an amount to be ascertained in accordance with the regulations.

(2) Where bodily injury (including fatal injury) is caused by or arises out of the use of two or more motor vehicles in respect of which policies were issued by different insurers each such insurer shall pay an equal share of the payments required to be made under subsection (1) of this section. Substituted by 2416, 1938, s. 29 (c).

(3) The liability (if any)—

(*a*) of the owner or driver of such motor vehicle in respect of the death or bodily injury; and

(*b*) of the insurer to the owner or driver in respect of the contract of insurance,

(*c*) of the injured person or his personal representatives to the person to whom the payment is made under this section, Inserted by 2416, 1938, s. 29 (d).

shall be reduced by the amount paid by the insurer under this section.

(4) In this section "emergency treatment" means such medical or surgical treatment or examination by a legally qualified medical practitioner or a registered nurse as is immediately required as the result of any such injury as mentioned in subsection (1).

(5) Every policy issued in pursuance of this Part of this Act which is in force at the time of the enactment of this subsection shall be deemed to impose an obligation on the insurer named therein to make the payments prescribed by this section. Inserted by 2416, 1938, s. 29 (e).

Every policy of insurance issued after the enactment of this subsection shall not be deemed to comply with this Part unless it binds the insurer to make the payments prescribed by this section.

(6) A sum payable under this section shall be recoverable as if it were a simple contract debt due from the insurer to the person entitled to that sum. Inserted by 2416, 1938, s. 29 (e).

(7) The Commissioner of Police shall if so requested by a person who alleges that he is entitled to a payment under this section furnish that person with any information at his disposal as to the identification marks of any motor vehicle which that person alleges to be a motor vehicle out of the use of which the death or bodily injury arose, and as to the identity and address of the person who was using the vehicle at the time of the event out of which the death or bodily injury arose. Inserted by 2416, 1938, s. 29 (e).

Inserted by 2416, 1938, s. 29 (e).

(8) Any person who was using a motor vehicle at the time when death or bodily injury was caused by or arose from such use, shall upon request of any person who alleges that he is entitled to payment under this section, furnish such person with the name and address of the insurer who issued the policy in force in relation to that vehicle at the time of the death or injury.

Hospital treatment.
U.K. 24 & 25 Geo. 5 c. 50, s. 16.
Inserted by 2332, 1936, s. 31.

70h. (1) Where—

(*a*) any payment is made (whether or not with an admission of liability) by an insurer, under or in consequence of a contract of insurance under this Part, in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle; and

(*b*) the person who has so died or been injured received treatment at a hospital, whether as an in-patient or as an out-patient in respect of the bodily injury (fatal or otherwise) so caused or arising; and

(*c*) notice in writing of a claim under this section is made by that hospital to the insurer within one month after the occurrence out of which the death or bodily injury arose,

there shall be paid by the insurer to the hospital the amount owing to the hospital in respect of treatment afforded to the person who has so died or been injured.

(2) Where two or more insurers make payments under or in consequence of a contract of insurance under this Part in respect of the death or of bodily injury to a person caused by or arising out of the use of two or more motor vehicles each such insurer shall pay an equal share of the payments required to be made under subsection (1) of this section.

(3) The liability (if any)—

(*a*) of the owner or driver of the motor vehicle in respect of the death or bodily injury; and

(*b*) of the insurer to the owner or driver in respect of the contract of insurance,

shall be deemed to be reduced by the amount paid by the insurer to the hospital under this section.

(4) The amount to be paid by the insurer to the hospital in respect of any such bodily injury (fatal or otherwise), shall not exceed fifty pounds for each person so treated as

an in-patient or five pounds for each person so treated as an out-patient: Provided that in either case the amount to be paid to the hospital as aforesaid shall not exceed one-fifth of the total amount (exclusive of costs) paid by the insurer in respect of such fatal or bodily injury.

(5) If the person who has died or been bodily injured has received treatment at more than one hospital, and the total amount owing to those hospitals in respect of treatment afforded to that person exceeds fifty pounds, the sum of fifty pounds shall be divisible between the hospitals in proportion to the claims of the hospitals.

(6) The insurer shall not be liable to pay the amounts payable under this section as well as the amount payable under the Public Hospitals (Charges) Act, 1931, but shall pay the larger of such amounts.

70i. Every action brought against the owner or driver of a motor vehicle for damages in respect of the death of or bodily injury to any person caused by or arising out of the use of that vehicle, shall be tried without a jury.

Actions to be tried without jury.

Inserted by 2332, 1936, s. 31.

70j. The registrar shall not grant a certificate of temporary registration in respect of any motor vehicle of a person visiting the State unless in his opinion that person is adequately insured against any liability which may be incurred by him in respect of the death of or bodily injury to any person caused by or arising out of the use of that motor vehicle in the State.

Insurance by visiting motorists.

Inserted by 2332, 1936, s. 31.

70k. (1) Any approved insurer may apply on complaint to a court of summary jurisdiction for an order that any person be disqualified for such period as the court fixes from holding and obtaining a driver's licence.

Power to suspend or cancel drivers' licences on application of approved insurer.

Inserted by 2332, 1936, s. 31.

(2) If it is proved to the satisfaction of the court that the defendant is likely, in the event of his continuing to drive motor vehicles, to endanger unduly the safety of the public, the court may make such order under subsection (1) as it thinks just.

(3) An insurer shall not terminate a policy of insurance complying with this Part before its expiry by effluxion of time except upon fourteen days' notice in writing given to the person to whom the policy was issued and to the Registrar

s. 70h. (6) The Public Hospitals (Charges) Act, 1931, has been repealed by the Hospitals Act, 1934, and superseded by Part VI. of that Act.

of Motor Vehicles, unless the insurer substitutes another policy of insurance which complies with this Part, and commences immediately upon the termination of the previous policy.

(4) Upon the termination of the policy on such a notice, the motor vehicle specified in the policy shall be an unregistered vehicle unless and until the registrar is satisfied that another policy of insurance has been issued in respect of the use of that vehicle.

Information to be furnished by insurers.

Inserted by 2332, 1936, s. 31.

701. (1) Every approved insurer shall, whenever so required by the Treasurer, furnish to the Treasurer such information as the Treasurer reasonably requires relating to the following matters:—

(*a*) Premiums received for insurance under this Part:

(*b*) Claims paid under this Part:

(*c*) Persons insured under this Part:

(*d*) Any other matters relevant to this Part.

(2) Any insurer who without lawful excuse fails to furnish any information to the Treasurer within two months after receipt of a written notice demanding such information shall be guilty of an offence and liable to a penalty of one hundred pounds.

(3) Any insurer who wilfully or negligently furnishes any false information to the Treasurer shall be guilty of an offence and liable to a penalty of two hundred pounds.

Inquiries into premium.

Inserted by 2332, 1936, s. 31.

70m. (1) Upon the recommendation of the Treasurer the Governor may from time to time appoint a committee to enquire into and report upon the question whether the premiums charged for insurance under this Part are fair and reasonable.

(2) The persons appointed to such a committee shall be—

(*a*) a judge of the Supreme Court or a special magistrate or a legal practitioner actually practising law, who shall be chairman:

(*b*) the Public Actuary:

(*c*) two persons appointed as representing owners of motor vehicles:

(*d*) two persons appointed as representing approved insurers.

(3) The members referred to in paragraphs (*c*) and (*d*) of the last preceding subsection shall be appointed after consultation with such body or bodies as in the opinion of the Treasurer represent the interests of approved insurers and owners of motor vehicles respectively.

(4) The committee shall have all the powers of a Royal Commission, and the Royal Commissions Act, 1917, with the necessary modifications shall apply to the chairman and other members of the committee and its proceedings and to witnesses and persons summoned as witnesses before the committee.

(5) The Treasurer shall lay every report of the committee before Parliament.

Summary procedure. Inserted by 2332, 1936, s. 31.

70n. Proceedings for any offence against this Part shall be disposed of summarily.

Regulations. Inserted by 2332, 1936, s. 31.

70o. The Governor may make any regulations necessary or convenient for carrying this Part into effect or for facilitating the operation of this Part, and may by any regulation impose penalties recoverable summarily and not exceeding twenty pounds for breach of any regulation.

Contracting out of liability for negligence. Inserted by 2416, 1938, s. 30.

70p. Any contract (whether under seal or not) by virtue of which any person in advance contracts out of any right to claim damages or any other remedy for the negligence of any other person in driving a motor vehicle shall to that extent be void.

Rights of persons named in policies. Inserted by 2416, 1938, s. 30.

70q. Notwithstanding anything in any enactment, a person issuing a policy of insurance whether under this Part or otherwise in relation to a motor vehicle shall, as from the date of the policy, be liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of these persons or classes of persons.

Medical examination of claimants. Inserted by 2416, 1938, s. 30.

70r. (1) Where any claim has been made by or on behalf of any person for bodily injury caused by or arising out of the use of a motor vehicle, such person shall from time to time if and as required by the person against whom the claim is made, submit himself for examination by a duly qualified medical practitioner provided and paid by the person against whom the claim is made: Provided that a person shall not be required to submit himself for examination under this section otherwise than in accordance with such regulations (if any) as may be made by the Governor nor at more frequent intervals than are prescribed by those regulations.

(2) If any person refuses to submit himself to any examination as required by this section, or in any way obstructs the exmination his right to commence proceedings or (if commenced) to continue proceedings shall be suspended until the examination has taken place.

(3) A person shall not be entitled to any damages or compensation for any period during which he refuses to submit himself to or obstructs the examination or during which he has unreasonably delayed making a claim.

(4) Upon demand made by or on behalf of the person submitting himself to an examination under this section the person against whom the claim is made shall deliver to him a full and true copy of any report of the medical practitioner, and if default is made in such delivery for one week the report shall cease to be privileged from discovery.

Soliciting instructions to claim.
Inserted by 2416, 1938, s. 30, and repealed and re-enacted by 45, 1939, s. 20.

70s. (1) No person shall—

(*a*) directly or indirectly hold himself out as being willing for reward to accept instructions or authority to act on behalf of any person in respect of the making or commencement of any claim or action for damages for the death of or bodily injury to any person arising out of the use of a motor vehicle or in respect of the negotiation, compromise or settlement of any such claim or action on behalf of the claimant:

(*b*) for reward make or commence or cause to be made or commenced on behalf of any person any claim or action for such damages as aforesaid or negotiate, settle or compromise on behalf of the claimant any such claim or action when made or commenced.

(2) This section shall not apply to any qualified legal practitioner acting in the course of his profession or to any officer of any association, *bona fide* formed for the protection of the interests of employees and whether registered under any Commonwealth or State Act or not, when acting in the course of his duties for a member of such association.

(3) Any agreement to pay any money for work done or services rendered contrary to this section shall be void, and any money so paid shall be recoverable by the person who has paid it.

(4) If any person contravenes this section in any way he shall be guilty of an offence and liable to a fine not exceeding one hundred pounds.

PART III.

LICENSING OF VEHICLES OTHER THAN MOTOR VEHICLES.

Interpretation. 1699, 1925, s. 3. 1823, 1927, s. 3.

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

"licence" means a licence issued pursuant to this Part and "licensed" and "unlicensed" have corresponding meanings:

"metropolitan area" means the Municipalities of Adelaide, Brighton, Glenelg, Henley and Grange, Hindmarsh, Kensington and Norwood, Port Adelaide, Prospect, St. Peters, Thebarton, Unley, and Woodville, and the District Council Districts of Burnside, Campbelltown, Marion, Mitcham, Payneham, Walkerville, West Torrens, and Yatala South, and the Garden Suburb, and any other municipalities and district council districts or parts of municipalities or district council districts contiguous to any part of the metropolitan area as defined for the time being to which the Governor, by proclamation, declares that this Act shall apply:

"owner" includes the holder under a hire purchase agreement and the verb "to own" has a corresponding meaning:

"registrar" means the Registrar of Motor Vehicles holding office under Part II. of this Act, or any deputy registrar of motor vehicles:

"road" includes every public road, street, terrace, thoroughfare, or other public place, and every private road or street commonly used by the public, or to which the public are permitted to have access:

"vehicle" means every vehicle of any description whatsoever which is drawn or propelled by animal but not human power and used or ordinarily intended to be used on roads or streets.

Exemption of certain vehicles. 1699, 1925, s. 4.

72. The following vehicles are exempted from the operation of this Part, namely:—

(*a*) Every vehicle owned by the Fire Brigades Board, or any volunteer fire brigade:

s. 71. (Definition of "metropolitan area.") The district council district of Burnside has been constituted a municipality, *Gazette* 16th May, 1935, p. 1308, and the name of the district council district of Yatala South has been altered to Enfield, *Gazette* 11th July, 1935, p. 38.

(*b*) Any ambulance vehicle for the use of which no charge is made:

(*c*) Any vehicle owned by the corporation or council of any municipality, or by any district council, and used solely in connection with the construction and maintenance of roads.

Duty to obtain licences for vehicles.
1699, 1925, ss. 5, 10, 11.
Cf. U.K. 10 & 11 Geo. 5 c. 72, s. 13.

73. (1) Any person who on any road within the metropolitan area drives, or causes or permits to be driven, any vehicle which is not licensed pursuant to this Part shall be guilty of an offence and liable to a penalty of not more than twenty pounds.

(2) Any person who owns any vehicle which is driven on any road within the metropolitan area and is not licensed pursuant to this Part shall be guilty of an offence and liable to a penalty of not more than twenty pounds.

Applications for and issue of licences.
1699, 1925, ss. 5 (2), 6.

74. (1) A licence may be obtained on application duly made in accordance with this Part and the regulations to the registrar or some other person authorised for that purpose by the Minister.

(2) No licence shall be issued to any applicant unless and until the fee as set out in the next succeeding section has been paid to the registrar or other person authorised pursuant to the last preceding subsection.

(3) Every application for a licence shall be made during the currency of the year in which the licence is to have effect or in the month immediately preceding that year.

Fee for licence.
1699, 1925, the schedule.
1823, 1927, s. 5.
Cf. U.K. 51 & 52 Vict. c. 8, s. 4; 10 & 11 Geo. 5 c. 72, s. 7 (6).

75. (1) The licence fee for a vehicle shall be calculated as follows:—

(*a*) If the weight unladen of the vehicle does not exceed 25cwts. the fee shall be calculated at the rate of two shillings per cwt. of such weight:

(*b*) If the weight unladen of the vehicle exceeds 25cwts. but does not exceed 40cwts. the fee shall be calculated at the amount of the fee for a vehicle of 25cwts., plus five shillings for every cwt. by which the weight unladen of the vehicle exceeds 25cwts.

(*c*) If the weight unladen of the vehicle exceeds 40cwts. the fee shall be calculated at the amount of the fee for a vehicle of 40cwts., plus nine shillings for every cwt. by which the weight unladen of the vehicle exceeds 40cwts.

The weight of a vehicle shall be calculated to the nearest hundredweight.

(2) Where a licence is issued to take effect from a date between the thirty-first day of March and the thirtieth day of September in any year one-half the amount payable for a licence for a year shall be payable.

(3) Notwithstanding the foregoing provisions of this section—

(*a*) the minimum fee payable for a licence for a vehicle used or ordinarily capable of being used solely or mainly for the carriage of goods or merchandise shall be one pound, or, if the licence is issued between the first day of April and the thirtieth day of September, ten shillings; and

(*b*) the minimum fee payable for a licence for any other vehicle shall be ten shillings, or, if the licence is issued between the first day of April and the thirtieth day of September, five shillings.

Duration of licences. 1699, 1925, s. 6 pt.

76. Every licence shall remain in force until the thirtieth day of September next after the day on which it commences to take effect.

Evidence in support of application for licence. 1699, 1925, s. 7. Cf. U.K. 10 & 11 Geo. 5 c. 72, s. 5 (1).

77. The applicant for a licence shall produce to the registrar or other person authorised to issue licences such evidence as to the nature and weight of the vehicle in respect of which a licence is applied for as the registrar or other person authorised as aforesaid requires or as is prescribed.

Licence discs. 1699, 1925, s. 8. 1823, 1927, s. 4. Cf. U.K. 10 & 11 Geo. 5 c. 72, s. 6.

78. (1) The registrar or other person issuing a licence shall deliver to the applicant a metal disc of a size and shape to be fixed annually by the Minister by notice published in the *Gazette*, and to be annually varied, on which shall be inscribed the year of issue and any other particulars which may be prescribed.

(2) The disc shall, during the whole period in respect of which it is issued, be kept securely affixed to the vehicle in respect of which the disc and the licence are issued.

(3) Any person—

(*a*) who drives a vehicle licensed under this Part to which vehicle there is not affixed the metal disc delivered with the licence for such vehicle to the person applying for the same; or

(*b*) who drives a vehicle licensed under this Part on which vehicle the said disc is affixed otherwise than in the manner prescribed by this Part or any regulation under this Part,

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

Duplicate licences and discs. 1699, 1925, s. 9.

79. (1) Upon application, the registrar or other person authorised to issue licences, may, on proof to his satisfaction of the loss or destruction of any licence or disc, and on payment of a fee of two shillings and sixpence, issue to the applicant a duplicate licence or disc.

(2) Any such duplicate licence or disc shall be effectual for all purposes as if it were the original licence or disc.

Penalty for affixing discs to wrong vehicles. 1699, 1925, s. 12.

80. Any person who affixes any disc issued pursuant to this Part, to any vehicle other than the vehicle in respect of which the disc was issued, shall be guilty of an offence liable to a penalty of not more than twenty pounds.

Penalty for unlawfully obtaining licence. 1699, 1925, s. 13. Cf. U.K. 10 & 11 Geo. 5 c. 72, s. 13 (2), (11).

81. Any person who—

(*a*) by any false statement or misrepresentation obtains or attempts to obtain a licence or disc under this Part; or

(*b*) without lawful excuse has in his possession a licence or disc, or any article resembling a licence or disc and liable to be mistaken therefor; or

(*c*) forges or fraudulently alters or uses, or fraudulently lends or allows to be used by any other person, any licence or disc,

shall be guilty of an offence and liable to a penalty of twenty pounds.

Facilitation of proof. 1699, 1925, s. 14. Cf. U.K. 10 & 11 Geo. 5 c. 72, s. 13 (3).

82. In any proceedings for an offence against this Part—

(*a*) proof that a vehicle has not affixed upon it a disc of the size and shape fixed by the Minister for the current year shall be *prima facie* evidence that the vehicle is unlicensed;

(*b*) the allegation in the complaint that any person is the owner of a vehicle shall be *prima facie* evidence that that person is the owner of the vehicle;

(*c*) the allegation in the complaint that any place is a road shall be *prima facie* evidence that the place is a road within the meaning of this Part;

(*d*) the allegation in the complaint that any road wherein it is alleged that any such offence was committed is situated within the metropolitan area shall be *prima facie* evidence that the road is situated as alleged; and

(*e*) any conveyance shall be deemed to be a vehicle within the meaning of this Part unless the defendant satisfies the court to the contrary.

Summary proceedings for offences. 1699, 1925, s. 15

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

Regulations.

84. The Governor may make any regulations necessary or convenient for carrying into effect the provisions and objects of this Part, including (though without limiting the operation of this section) regulations in respect of the following matters:—

I. the form of licence and the application therefor:

II. any matters in this Part left to be expressed or ascertained by regulations.

PART IV.

PART IV.

WIDTH OF TIRES.

Interpretation. 1580, 1923, s. 3.

85. In this Part, unless some other meaning is clearly intended—

"council" means a municipal or district council, and includes the Renmark Irrigation Trust No. 1:

"inspector" means inspector of the Highways and Local Government Department appointed for the purposes of this Act by the Minister:

Part IV. JAMES v. JOHNSON (1922) S.A.S.R. 294. The term "carry" in Part IV. means to support or sustain and applies to a stationary vehicle. Held, that the weight of the load carried by a jinker usually connected with a horse dray, was its weight ascertained when the jinker was disconnected from the dray and stationary.

"load" includes everything inanimate or animate carried on a vehicle:

"local government area" or "area" means a municipality or a district council district, and includes the area of the Renmark Irrigation Trust No. 1:

"motor vehicle" means any motor vehicle within the meaning of Part II. of this Act: Provided that the term shall not include—

(*a*) any motor vehicle not used exclusively or principally for the conveyance of goods; or

(*b*) any trailer, semi-trailer, or jinker:

"non-mechanical vehicle" means any wagon, dray, trolly, cart, car, truck, or any other vehicle drawn or propelled by animal power, or any trailer, semi-trailer, or jinker attached to any vehicle (howsoever drawn or propelled) or to any motor vehicle; but does not include any motor vehicle:

"owner", when used in relation to a vehicle, includes not only the owner but also the hirer or borrower or other person for the time being entitled to the possession of the vehicle and also any manager, overseer, foreman, agent, or other representative of the owner with whose orders the driver or other person in charge of the vehicle is bound to comply:

"road" means any street, road, terrace, thoroughfare, court, lane, alley, cul-de-sac, or other place, commonly used by the public, or to which the public are permitted to have access:

"vehicle" includes motor vehicles and non-mechanical vehicles:

"width", when used in relation to the tire (being a metal tire) of a wheel of a vehicle, means the width of the bearing surface of the tire which would actually come in contact with or bear upon a road when the wheel is attached to the axle and the vehicle is ready for use, and when used in relation to the tire (being a rubber tire) of a wheel of a vehicle shall mean the distance between the inside of the flanges on the rim of such wheel.

Maximum axle load for non-mechanical vehicles. 1580, 1923, s. 4 (2).

86. Any person who drives or causes or permits to be driven on any road any four-wheeled non-mechanical vehicle carrying on any axle thereof a greater weight than the maximum which may, in accordance with the rules contained in

section 92 lawfully be carried on a two-wheeled vehicle fitted with wheels of the same diameter and width of tire as the two wheels turning on such axle shall be guilty of an offence.

Maximum total load for non-mechanical vehicles. 1580, 1923, s. 4 (1).

87. Any person who drives or causes or permits to be driven on any road—

(*a*) any non-mechanical vehicle carrying a weight greater than that calculated in accordance with the rules contained in section 92;

(*b*) any non-mechanical vehicle having metal tires and carrying a weight greater than that calculated at the rate of five tons for each axle of such vehicle; or

(*c*) any non-mechanical vehicle having rubber tires and carrying a weight greater than that calculated at the rate of six tons for each axle of the vehicle,

shall be guilty of an offence.

Maximum axle load for motor vehicles. 1580, 1923 s. 6 (1)

88. Any person who drives or causes or permits to be driven on any road—

(*a*) any motor vehicle carrying on any axle thereof a greater weight than the maximum which may lawfully in accordance with the rules contained in section 92 be carried on a two-wheeled vehicle fitted with wheels of the same diameter and width of tire as the two wheels turning on such axle;

(*b*) any motor vehicle having metal tires and carrying on any axle thereof a greater weight than six tons and ten hundredweights; or

(*c*) any motor vehicle having rubber tires and carrying on any axle thereof a greater weight than eight tons,

shall be guilty of an offence.

Maximum total load for motor vehicles. 1580, 1923, s. 6 (2).

89. Any person who drives or causes or permits to be driven on any road any motor vehicle carrying a weight greater than that computed in accordance with the rules contained in section 92 shall be guilty of an offence.

Exemptions. 1580, 1923, s. 4 (4).

90. The provisions of this Part as to the maximum total load or maximum axle load for vehicles shall not apply to—

(*a*) any tractor or traction engine not usually used upon a road; or

(*b*) the conveyance of any piece of heavy machinery or other merchandise which cannot be taken apart without great expense or loss: Provided that the vehicle conveying such machinery follows the special route (if any) along which the town or district clerk of every municipality or district through which such machinery is carried, has ordered that it be conveyed to its destination.

Penalty. 1580, 1923, ss. 4 (3), 6 (3).

91. If any person is guilty of an offence against section 86, 87, 88, or 89, he shall be liable to a penalty calculated at the rate of not less than two shillings and six pence for each hundredweight or part of a hundredweight carried in excess of the weight allowed by this Act.

Rules as to maximum weight. 1580, 1923, the schedule.

92. The rules for determining by reference to the width of tires, the maximum weight which may be carried by any vehicle are as follows:—

I. The maximum weight which may be carried on any vehicle shall be calculated at the rate of seven hundredweights for each inch of the total width of the tires on all wheels fitted to such vehicle which are thirty inches or less in diameter and at the rate of eight hundredweights for each inch of the total width of the tires on all wheels fitted to such vehicle which are more than thirty inches in diameter: Provided that where the vehicle has metal tires and carries a load any part of which exceeds ten feet in height from the level of the roadway or ten feet in width the maximum weight shall be calculated at the rate of seven hundredweights for each inch of the total width of all tires on all wheels fitted to such vehicle. This proviso shall not apply to any part of the State outside a radius of fifty miles from the General Post Office, Adelaide:

II. In computing the maximum weight which may be carried on a three-wheeled vehicle that vehicle shall be treated as if it were a two-wheeled vehicle fitted with two wheels of such vehicle which turn on the same axle:

III. (*a*) For the purpose of these rules if the two wheels on any vehicle which turn on the same axle are not of the same width the wider tire shall be deemed to be of the same width as the narrower tire:

(*b*) The total width of each tire shall be calculated to the nearest half inch:

IV. In computing the actual weight carried on any vehicle or axle the weight of the vehicle itself shall be taken into account:

V. These rules apply in respect to all vehicles.

Rules to be observed with respect to tires. 1580, 1923, s. 5.

93. (1) The following rules shall be observed in respect of every vehicle having metal tires on any road:—

I. The tire of each wheel of any such vehicle shall have an even-bearing surface across its full width:

II. No tire of any such vehicle shall be less than one-and-a-quarter inches in width.

(2) If any vehicle in respect of which any of the said rules is not complied with is on any road, the person in charge of such vehicle and also the owner of such vehicle shall be guilty of an offence: Provided that both shall not be punished in respect of the same non-compliance.

(3) This section shall not apply to any vehicle not plying for hire, and constructed or adapted and ordinarily used for the carriage of passengers only, even if goods or merchandise are on any particular occasion carried in such vehicle.

Authorised officers. 1580, 1923, s. 7. 1714, 1925, s. 2.

94. (1) Any council may appoint any person to be an authorised officer for the purpose of carrying out the provisions of this Part within the area of such council, and any person so appointed shall, within the area of the council appointing him, be an authorised officer for the purposes of this Part.

(2) The Minister may appoint any person to be an authorised officer for the purpose of carrying out the provisions of this Part in any part of the State, and any person so appointed shall, within any such part of the State, be an authorised officer for the purposes of this Part.

Weighing machines. 1580, 1923, s. 8. 1641, 1924, s. 2.

95. (1) Any council may within its area erect weighing machines with suitable houses or structures for the weighing of vehicles, goods, or merchandise, or may provide any weighing apparatus of a prescribed kind for similar purposes, and may license any weighing machine erected, or any such apparatus as aforesaid provided, by any person within its area.

(2) The Minister may in any part of the State erect weighing machines with suitable houses or structures for the weighing of vehicles, goods, or merchandise, or may provide any weighing apparatus of a prescribed kind for similar purposes, and may license any weighing machine erected, or any such apparatus as aforesaid provided, by any person within any part of the State not within a local government area.

Vehicles and load to be weighed if required.
1580, 1923, s. 9.

96. (1) Every person in charge of a vehicle on any road shall, if required by any member of the police force, any inspector, or any authorised officer, forthwith cause such vehicle, with the load (if any) thereon, to be weighed by means of any available weighing apparatus of a prescribed kind provided or licensed by a council or the Minister, or at the most convenient weighing machine erected or licensed by a council or the Minister, for the purpose of ascertaining the weight of such vehicle, and the load thereon, or the weight carried on any axle of such vehicle.

(2) If there is any such weighing apparatus or such a weighing machine within one mile of the place where the requisition is made, and any such person refuses or fails to comply with any such requisition, that person shall be guilty of an offence.

Load may be measured.
1580, 1923, s. 10.

97. (1) Every person in charge of any vehicle on any road shall, if required by any member of the police force, any inspector, or any authorised officer, allow that member of the police force, inspector, or officer—

(*a*) to measure and examine such vehicle, or the tires or the load on such vehicle; or

(*b*) to ascertain the weight of the load on the vehicle, or the weight carried on any axle of such vehicle, by measurement or otherwise in accordance with the appropriate regulation.

(2) If any such person—

(*a*) refuses or fails to comply in any respect with subsection (1) of this section; or

(*b*) obstructs or interferes with any such member, inspector, or authorised officer, in doing any act mentioned in subsection (1),

he shall be guilty of an offence.

Weight ascertained in accordance with regulation *prima facie* proof. 1580, 1923, s. 11.

98. (1) The weight of the load on any vehicle ascertained in accordance with the appropriate regulation shall, in any proceedings in respect of any offence against this Act, be taken to be, in the absence of proof to the contrary, the actual weight of that load, unless the owner or the person in charge of the vehicle—

(*a*) at the time of the ascertainment as aforesaid, gives notice to such member of the police force, inspector, or authorised officer of his intention to have the load weighed at a weighing machine erected or licensed by a council or the Minister, or by means of any weighing apparatus of a prescribed kind provided or licensed by a council or the Minister; and

(*b*) forthwith upon such weighing delivers, or causes to be delivered, to such member of the police force, inspector, or authorised officer the document showing the result of such weighing.

(2) In the event of any proceedings for an offence against this Act in respect of the load so weighed, the document (if any) showing the result of such weighing received by such member of the police force, inspector, or authorised officer shall be produced to the court at the hearing.

(3) The weight carried on the axle of any vehicle ascertained in accordance with the appropriate regulation shall, in any proceedings in respect of any offence against this Act, be taken to be, in the absence of proof to the contrary, the actual weight carried on such axle.

Vehicles may be stopped and questions asked. 1580, 1923, s. 12.

99. (1) Any member of the police force, any inspector, or any authorised officer may require the person in charge of any vehicle on any road to stop, and may request such person to state his name and address and the name and address of the owner of the vehicle.

(2) Any person in charge of any vehicle on any road who—

(*a*) upon being requested to stop as aforesaid, refuses or fails to stop; or

(*b*) upon being requested to stop as aforesaid, refuses or fails to state his name or address, or the name or address of the owner of the vehicle, or states a false name or address,

shall be guilty of an offence.

(3) Any member of the police force may, without any warrant other than this Act, apprehend any person who is guilty of any offence under this section.

S. 100 repealed by 2332, 1936, s. 32.

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Vehicle to be weighed if required. 1580, 1928, s. 14.

101. (1) The owner of any vehicle, upon being served with a notice in the prescribed form signed by any member of the police force, any inspector, or any authorised officer and by a justice of the peace, requiring him with all practical speed to cause the vehicle to be weighed unladen by means of any apparatus of a prescribed kind provided or licensed by a council or the Minister, which is available, or on any weighing machine erected or licensed by a council or the Minister, shall forthwith obey such order, and shall forthwith upon such weighing deliver, or cause to be delivered, to such member of the police force, inspector, or officer the document showing the result of such weighing.

(2) Any such owner who refuses or fails forthwith to obey any such order or forthwith upon such weighing to forward the document showing the result of such weighing, as provided by subsection (1) hereof, shall be guilty of an offence.

(3) This section shall not apply if—

(*a*) the distance from the place where such vehicle is at the time of service of the notice to such apparatus or the nearest weighing machine erected or licensed by a council or the Minister is greater than two miles; and

(*b*) the owner produces to the inspector or authorised officer signing such notice a statement of the weight of such vehicle signed by the person in charge of any such apparatus or weighing machine, wherever situated.

Regulations. 1580, 1928, s. 15.

102. (1) In addition to any power by any other section of this Part conferred on the Governor to make regulations (which power shall in every case be implied for the purpose of any section in which the word "prescribed" is used) the Governor may make regulations—

(*a*) prescribing the method of ascertaining the weight of the load on any vehicle, and the weight carried on any axle of any vehicle, whether by weighing, measurement, or otherwise; and

(*b*) prescribing the kinds of apparatus which the Minister or a council may provide or license for the weighing of vehicles, goods, or merchandise for the purposes of this Part; and

(*c*) prescribing all matters and things which by this Part are contemplated, required, or permitted to be prescribed, or which appear to him to be necessary or convenient to be prescribed, for the purpose of more effectually carrying out any of the provisions of this Part or for better effecting the objects of this Part.

(2) Any such regulation may fix penalties not exceeding in any case the sum of ten pounds for the breach of the same or any other regulation.

Alteration of maximum loads.
1580, 1923, s. 16.
1961, 1930, s. 3.

103. (1) The Governor may make regulations restricted in their application to any road or roads named therein, or any part or parts of the State described therein, prescribing for vehicles or any class of vehicles a maximum weight which may be carried on any such vehicle or on the axle thereof, lower than that fixed by or under this Part. Such regulations may definitely fix the maximum weight applicable to any case or may prescribe the method by which the said maximum weight is to be calculated, and may differentiate between vehicles having different kinds of tires.

(2) Any maximum weight so fixed shall, subject to the restrictions aforesaid, be deemed to be substituted for that fixed by or under the relevant provisions of this Part.

Evidence.
1580, 1923, s. 17.

104. In any proceedings for an offence against this Part—

(*a*) the production of a statement purporting to be signed by the person in charge of any apparatus of a prescribed kind owned or licensed by a council or the Minister, or any weighing machine erected or licensed by a council or the Minister shall be *prima facie* evidence of the weight of the load or of the vehicle therein specified, or of the weight both of such load and of such vehicle, or the weight carried on the axle of such vehicle; and

(*b*) any apparatus of a prescribed kind or weighing machine shall, until the contrary is proved, be deemed to be apparatus of a prescribed kind or a weighing machine erected or licensed by a council or the Minister (as the case may require) for the purposes of this Part.

Penalty. 1580, 1923, s. 18.

105. Any person who is guilty of any offence against this Part for which no other penalty is provided shall be liable for the first offence to a penalty of not more than ten pounds, and for every subsequent offence to a penalty of not less than two pounds and not more than twenty pounds.

Summary proceedings for offences. 1580, 1923, s. 19.

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

Appropriation of penalties. 1580, 1923, s. 20.

107. All money collected as fines in respect of convictions under this Part shall be paid into general revenue: Provided that where any fine is imposed in respect of an offence committed within a local government area and the complaint in respect of the offence was made by an officer of the council of such area, one moiety of such fine shall be paid to the council for the use and benefit of the area.

PART V.

PART V.

LIGHTS AND EQUIPMENT ON VEHICLES OTHER THAN MOTOR VEHICLES.

Heading amended by 2416, 1938, s. 31.

Interpretation. 1370, 1919, s. 4. Cf. U.K. 17 & 18 Geo. 5 c. 37, s. 15.

108. In this Part, unless the context or subject matter requires a different construction—

"council" means any municipal or district council, and includes the Renmark Irrigation Trust No. 1:

"bicycle" does not include motor bicycle:

"inspector" means any inspector appointed by or under this Part:

"local government area" means a municipality or district council district, as the case may require, and includes the Renmark Irrigation District No. 1:

"owner", used with reference to a vehicle, includes not only the owner, but also the hirer or borrower or other person for the time entitled to the possession of the vehicle, and also any manager, overseer, foreman, agent, or other representative of the owner, with whose orders the driver or other person in charge of the vehicle is bound to comply:

"road" includes every public street, road, terrace, thoroughfare, or other public place, and every private street or road commonly used by the public, or to which the public are permitted to have access:

"tricycle" does not include motor tricycle:

"vehicle" means any vehicle other than a motor vehicle within the meaning of Part II. of this Act, and includes a handcart and a road roller.

Vehicles to carry lights at night. 1370, 1919, s. 5. 1858, 1925, s. 2. Cf. U.K. 17 & 18 Geo. 5 c. 37, s. 1.

109. (1) No person shall drive upon any road or cause or permit to be upon any road at any time between half an hour after sunset and half an hour before sunrise, any vehicle which has not attached thereto:—

(*a*) two lighted lamps carried one on each side of such vehicle, each lamp being so constructed and carried as to show a bright white light in front of such vehicle; and

(*b*) a lighted lamp carried on the off side of the rear of such vehicle, such lamp being so constructed and carried as to show a red light at the rear of such vehicle, which said light is clearly visible to any person approaching the vehicle from the rear.

Subsec. (2) inserted by 2332, 1936, s. 33.

(2) No person shall drive upon any road or cause or permit to be upon any road at any time between half an hour after sunset and half an hour before sunrise any vehicle which, or the load on which, is more than seven feet wide unless that vehicle carries attached to the extreme off side of the vehicle or, where there is a load projecting from the off side of the vehicle, at the extreme off side of the load, a lighted lamp so constructed and carried as to show a bright green light in front of the vehicle.

It shall be a sufficient compliance with this subsection if any lamp carried in pursuance of subsection (1) of this section also complies with this subsection.

Lights on bicycles and tricycles. 1370, 1919, s. 6. 1858, 1928, s. 3. 2019, 1931, s. 2. 2169, 1934, ss. 2, 3. Cf. U.K. 17 & 18 Geo. 5 c. 37, ss. 5, 9; 24 & 25 Geo. 5, c. 50, s. 19.

110. (1) No person shall ride any bicycle or any tricycle upon any road at any time between half an hour after sunset and half an hour before sunrise unless it has attached thereto either one or two lighted lamps complying with this section.

(2) Where one lamp is carried it shall be affixed on the off side of the bicycle or tricycle in such a position and manner as to show a bright white light clearly visible to any person approaching the bicycle or tricycle from the front and a red light clearly visible to any person approaching the bicycle or tricycle from the rear.

s. 109. YELLOW CABS (SOUTH AUSTRALIA) LIMITED v. BLIGHT (1929) S.A.S.R. 118. Failure to comply with section 109 may be negligence.

(3) Where two lamps are carried—

(*a*) one shall be affixed on the front of the bicycle or tricycle in such a position and manner that a bright white light from the lamp is clearly visible to any person approaching the bicycle or tricycle from the front; and

Para. (b) amended by 2332, 1936, s. 34.

(*b*) one shall be affixed on the rear of the bicycle or tricycle not more than twenty inches above the ground in such a position and manner that a red light from the lamp is clearly visible to any person approaching the bicycle or tricycle from the rear.

Amended by 2232, 1936, s. 34.

(4) In this section the term "visible" means "visible at a distance of at least two hundred yards from the bicycle or tricycle on which the lamp or lamps is or are carried".

Substituted by 45, 1939, s. 21.

(5) This section shall apply within—

(*a*) every municipality and every district council district:

(*b*) the Garden Suburb:

(*c*) such other areas as the Governor declares by proclamation to be areas within which this section applies.

The Governor may by proclamation declare any area defined or mentioned in the proclamation to be an area within which this section shall apply, and may by proclamation revoke or vary any proclamation previously made under this subsection.

(6) This section shall come into operation on a day to be fixed by proclamation which shall not be earlier than the first of March, one thousand nine hundred and thirty-five, and may be a day other than the day on which the remainder of this Act comes into operation.

(7) Until this section comes into operation section 6 of the Lights on Vehicles Act, 1919, as existing prior to the passing of the Lights on Vehicles Act Amendment Act, 1934, shall remain in operation.

Lights where load projects. 1370, 1919, s. 7. Cf. U.K. 17 & 18 Geo. 5 c. 37, s. 6.

111. (1) Whenever any load carried on any vehicle which is being driven or is standing upon any road at any time between half an hour after sunset and half an hour before sunrise projects more than three feet behind the body of the vehicle, a lighted lamp shall be kept attached to the rearward

extremity of such load in such a position and manner as to show a red light clearly visible to any person approaching such vehicle from the rear or passing such vehicle from the front.

(2) Any person who on any road drives any vehicle not complying with this section, shall be guilty of an offence.

Lights on projecting parts of vehicles. Inserted by 45, 1939, s. 22.

111a. (1) Whenever any part of a vehicle which is being driven or is standing upon any road at any time between half an hour after sunset and half an hour before sunrise, projects to the rear for more than three feet beyond the lamp carried on the rear of the vehicle pursuant to paragraph (*b*) of subsection (1) of section 109 of this Act, a lighted lamp shall be kept attached to the rearward extremity of the said projecting part of the vehicle in such a position and manner as to show a red light clearly visible from a distance of two hundred yards from the rear of the vehicle.

(2) Any person who on any road drives any vehicle not complying with this section shall be guilty of an offence.

Duty to stop and give name and address. 1870, 1919, s. 8.

112. (1) Any driver of a vehicle or any rider of a tricycle or bicycle who, when requested by an inspector, in the execution of his duty under this Part, to stop or to state his name and place of abode, refuses or fails to do so, or, when so requested, states a false name or place of abode shall be guilty of an offence.

(2) Any inspector may, without any warrant other than this Part, apprehend any person who is guilty of any offence under this section.

Brakes on bicycles. Inserted by 2416, 1938, s. 32.

112a. No person shall ride any bicycle or tricycle on any road unless that bicycle or tricycle is equipped with an efficient brake in proper working order.

Warning devices on bicycles. Inserted by 2416, 1938, s. 32.

112b. No person shall ride any bicycle or tricycle on any road unless that bicycle or tricycle has attached thereto a bell or other suitable instrument capable of giving audible and sufficient warning of the approach of that bicycle or tricycle.

A siren shall not be a suitable instrument within the meaning of this section.

Duty to use warning instrument. Inserted by 2416, 1938, s. 32.

112c. Every rider of a bicycle or tricycle shall, whenever necessary, by sounding the warning instrument attached thereto, give audible and sufficient warning of the approach of the bicycle or tricycle.

Who to be inspectors under Act. 1370, 1919, s. 9.

113. (1) Every member of the police force and every inspector in the Highways and Local Government Department of the public service shall, without any further appointment, be an inspector under this Part for the whole State.

(2) The Governor may appoint any other person to be an inspector under this Part for the whole State, or for any particular portion of the State.

(3) Any council may appoint any other person to be an inspector under this Part within the local government area of such council.

(4) The exercise by every inspector appointed otherwise than for the whole State of his powers and duties under this Part shall be limited to the portion of the State or the local government area, for which he was appointed.

Offences. 1370, 1919, s. 10.

114. Any contravention of or failure to observe any provision of this Part, whether by act or omission, shall be an offence.

Penalties. 1370, 1919, s. 11.

115. Any person guilty of an offence under this Part shall be liable to a penalty for a first offence of not more than two pounds, and for any subsequent offence of not more than five pounds.

Appropriation of penalties. 1370, 1919, s. 15.

116. All moneys received for or on account of penalties imposed for offences against this Part shall be paid to the Treasurer for the public uses of the State; except moneys received in respect of an offence committed within the limits of a local government area, which shall be paid over to, and for the use of, the council of such area.

Facilitation of proof. 1370, 1919, s. 14 (a). 1609, 1924, s. 2.

117. Whenever in any proceedings for an offence against this Part, any place is described as a road such description shall be *prima facie* evidence that that place is a road within the meaning of this Part.

Summary proceedings for offences. 1370, 1919, s. 16.

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

PART VI.

GENERAL RULES TO BE OBSERVED BY TRAFFIC.

General provisions as to traffic.
Cf. U.K. 20 & 21 Geo. 5 c. 43, ss. 1, 2.
Inserted by 2332, 1936, s. 35.

119. (1) In this Part, unless the context otherwise requires—

"vehicle" includes motor vehicle as defined in Part II. of this Act, vehicle propelled by animal power, bicycle, tricycle, and any other like vehicle propelled by human power, but does not include a vehicle run on a tramway or railway line:

"animal" means horse, mule, ass, bullock, camel, or other beast used to draw or carry vehicles, loads, or human beings:

"driver" means any person driving or riding a vehicle or animal and as regards a trailer means a person driving the vehicle by which the trailer is being drawn:

"left" means left reckoned by reference to the direction in or towards which the vehicle, animal, or person is proceeding or facing at the material time:

"road" includes every public road, street, terrace, thoroughfare, or other public place, and every private road or street commonly used by the public, or to which the public are permitted to have access:

"trailer" means any vehicle without motive power constructed or adapted or used for being drawn by another vehicle: Provided that a vehicle without motive power constructed and adapted for being drawn by a motor vehicle shall not be deemed a trailer, but shall be deemed part of the motor vehicle by which it is drawn if—

(*a*) it has two wheels only;

(*b*) it is constructed for attachment to a motor vehicle by means of a turntable and king-pin; and

(*c*) a substantial part of its weight and of the weight of its load rests upon the motor vehicle by which it is drawn.

(2) This Part does not apply to any stock travelling loose on a road.

Careless driving.
U.K. 20 & 21 Geo. 5 c. 43, s. 12.
Inserted by 2332, 1936, s. 35.

120. (1) If any person drives or rides any vehicle or animal or walks on a road without due care or attention or without reasonable consideration for other persons using the road he shall be guilty of an offence.

(2) If any person rides a bicycle on any road without having at least one hand upon the handle-bar in such a position as to have adequate control of the steering of the bicycle he shall be guilty of an offence.

Reckless driving.
U.K. 20 & 21 Geo. 5 c. 43, s. 11; 24 & 25 Geo. 5 c. 50, ss. 4, 5.
Inserted by 2332, 1936, s. 35.

121. (1) If any person drives or rides any vehicle or animal on a road recklessly or at a speed or in a manner which is dangerous to the public he shall be guilty of an offence and liable to a fine for a first offence of not less than ten pounds and not more than fifty pounds, and for any subsequent offence of not less than fifty pounds and not more than one hundred pounds, and may for any subsequent offence be imprisoned for any term not exceeding three months.

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s. 120. HUNT v. BOND (1930) S.A.S.R. 46; 12 Austn. Digest 285. Held that a complaint alleging negligent driving, without giving particulars of the negligence, was sufficient.

WINTULICH v. LENTHALL (1932) S.A.S.R. 60. Held (under section 21 of the Motor Vehicles Act, 1921, which made it an offence to drive a motor car negligently) that the standard of care required was that which an ordinarily prudent man would deem necessary in the circumstances presented to him, in order to avoid injury or damage to the person or property of others. Wilful or intentional negligence need not be proved.

NEALE v. WALSH (1932) S.A.S.R. 429. Any substantial breach of the ordinary duty to take care amounted to "driving negligently" within the meaning of section 21 of the Motor Vehicles Act, 1921.

KIERNAN v. PIERCE (1933) S.A.S.R. 137. Where the circumstances proved against a defendant proved to have been involved in a collision are such that he may be presumed to know why the collision occurred, and the only evidence before the court indicates that the other party was not blameworthy, the defendant must either explain why the collision occurred or submit to the conclusion that it occurred because he was driving negligently.

TAYLOR v. GEARY (1939) S.A.S.R. 89. Where the defendant, driving a motor vehicle, had collided with a horse-drawn vehicle emerging from a side-street and crossing over the road on which the appellant was travelling and there was evidence to show that the defendant, had he been keeping a proper look-out, could have seen there was ample room to pass behind the other vehicle, held that he had been properly convicted under subsection (1) for driving without due care.

JOHNS v. SILBEY (1939) S.A.S.R. 133. Where a collision occurred between a motor vehicle driven by the defendant and a cycle, held that the dismissal of a complaint under subsection (1) for driving without due care could be supported upon the view that the defendant had been guilty of a mere error of judgment in the emergency created by the cyclist. The court should take into account the difficulty created by conditions of poor visibility.

DAYMAN v. SARIS (1939) S.A.S.R. 176. The negligence of a driver of a vehicle contributing to a collision with another vehicle is irrelevant on a charge under subsection (1) for driving without due care against the driver of the second vehicle.

VIRGO v. ELDING (1939) S.A.S.R. 294. To constitute the offence of driving without due care, it is not necessary to show that the driver is driving without due regard to the safety of other users of the highway. Where a driver had fallen asleep at the wheel and his car had run off the road, held that he was properly convicted of driving without due care.

s. 121. MOORE v. THE KING (1926) S.A.S.R. 52; 5 Austn. Digest 280; affirmed by MOORE v. THE KING (1926) 39 C.L.R. 602. *Semble*, that if the accused (although not guilty of criminal negligence) had committed the offence of negligent or

(2) In considering whether an offence has been committed under this section the court shall have regard to all the circumstances of the case including the nature, condition and use of the road upon which the offence is alleged to have been committed, and to the amount of traffic which at the time actually is or which might reasonably be expected to be upon that road.

Crossing railways at unauthorised places.

Inserted by 2332, 1936, s. 35.

122. (1) If any person crosses or attempts to cross or rides or drives or attempts to ride or drive any vehicle or animal across any line of railway elsewhere than at an authorised crossing place he shall be guilty of an offence.

(2) If any person crosses or attempts to cross or rides or drives or attempts to ride or drive any vehicle or animal across any line of railway at an authorised crossing place—

(*a*) carelessly; or

(*b*) in such a manner or at such a time as to give rise to the possibility of a collision between that person, vehicle or animal and any train or vehicle which is using the railway at or in the vicinity of the crossing place; or

(*c*) when warned not to do so by an employee of the Railways Commissioner; or

(*d*) when any mechanical or electrical or other warning device at or in the vicinity of the crossing is operating,

he shall be guilty of an offence.

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s. 121. (*contd.*) dangerous driving, and thereby killed a person, he could not make out the defence of homicide by misadventure.

KELLY v. WALSH (1929) S.A.S.R. 481. On a charge of dangerous driving it is not necessary to show that the safety of any particular person was endangered. It is enough if there is some substantial possibility of injury to persons who might reasonably be expected to come upon a road. Conviction quashed where the defendant had not endangered any person and the court was of opinion that there was no potentiality of mischief to the public in the circumstances.

BARNETT v. WALSH (1934) S.A.S.R. 303. Where the defendant and another person, through an error of judgment, endangered each other's safety, but not that of the public, held that the defendant was not guilty of dangerous driving.

KELDOULIS v. FRENCH (1935) S.A.S.R. 192. An attempt to pass between stationary motor cars held to be dangerous driving.

THOMPSON v. COPELAND (1936) S.A.S.R. 45. Held that "recklessness" implies that the possible consequences of his act are adverted to by the actor, but he is indifferent whether they occur or not.

BOND v. COCKS (1938) S.A.S.R. 14. Circumstances which would justify a reduction of penalty under section 75 of the Justices Act, 1921, discussed.

DANKEL v. BOND (1938) S.A.S.R. 45. Where evidence was given that the defendant (who collided with a woman) drove in a normal manner and at a reasonable speed and that he was not drunk but to some extent under the influence of liquor, and it was inferred he did not keep a proper look-out, held that a conviction for driving in a manner dangerous to the public could not be supported.

SMITH v. DAYMAN. DAYMAN v. THOMSON (1938) S.A.S.R. 477. The condition of the vehicle being driven is part of the manner of driving.

s. 122. BOND v. CLARKE (1938) S.A.S.R. 55. It is unnecessary to prove *mens rea* to establish an offence.

Inserted by 2416, 1938, s. 33.

(3) Subsection (1) of this section shall not apply to any part of the State not comprised within a municipality or a district council district.

Obedience to police directions and traffic signs.

Cf. U.K. 20 & 21 Geo. 5 c. 43, ss. 20 (3), 49.

Inserted by 2332, 1936, s. 35.

123. If any person driving or riding or in charge of any vehicle or animal or walking on any road—

(*a*) fails to obey any reasonable direction of any member of the police force given for the purpose of regulating traffic; or

(*b*) fails to conform to the indication given by any sign lawfully placed on or near any road for regulating the movement of traffic or indicating the route to be followed by traffic,

he shall be guilty of an offence.

Duty to keep vehicles and animals to the left.

Inserted by 2332, 1936, s. 35.

124. If any person riding or driving any vehicle or animal upon any road—

(*a*) does not keep as near as practicable to his left hand side of that road; or

(*b*) when meeting any other vehicle or animal going in the opposite direction, does not pass on his left hand side of that other vehicle or animal,

he shall be guilty of an offence.

Duty to keep stationary vehicle on left of road.

Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 50.

Inserted by 2332, 1936, s. 35.

125. If any person leaves any vehicle or animal stationary on the carriage-way of any road, and not being drawn in as near as practicable to the left hand side of the road, he shall be guilty of an offence.

Duty to overtake vehicle on right-hand side.

Inserted by 2332, 1936, s. 35.

126. If any person riding or driving any vehicle or animal on any road, does not, when passing any other vehicle or animal going in the same direction, keep on his right hand side of that other vehicle or animal, he shall be guilty of an offence.

Overtaking tram cars.

Inserted by 2332, 1936, s. 35.

127. If any person riding or driving any vehicle or animal, does not, when passing any tram car travelling or about to travel in the same direction, keep on his left hand side of the tram car, he shall be guilty of an offence: Provided that if the tramway line is laid so near the left hand side

s. 124. DUNN v. BEEVOR (1937) S.A.S.R. 386. Held that the regulation which required vehicles to keep close to the left of the road was not directed to the safety of vehicles emerging from by-streets.

of the road as not to permit the free passage of the animal or vehicle on the left of the tram car, or if owing to any obstruction in the road, it is not practicable to pass on the left of the tram car, the animal or vehicle may lawfully be ridden or driven on the right of the tram car.

Pedestrians on road to face traffic.

Inserted by 2332, 1936, s. 35.

128. (1) If any person walking on the carriage-way of a road parallel with the line of the traffic thereon, does not keep as near as practicable to his right hand side of that carriage way, he shall be guilty of an offence.

Subsecs. (1a) and (1b), inserted by 2416, 1938, s. 34.

(1a) Subsection (1) of this section shall not apply to a person walking on the carriage-way of a road parallel with the line of traffic thereon if he is drawing or pushing any vehicle or leading any animal, but section 124 of this Act shall apply to any such person.

(1b) If any person riding or driving any vehicle or animal upon any road, does not, when passing any pedestrian who is proceeding towards him on the same side of the road, keep on his right hand side of that pedestrian, he shall be guilty of an offence.

(2) This section shall not restrict the operation of any Act, regulation or by-law which regulates walking upon roads.

Overtaking other vehicles.

Inserted by 2332, 1936, s. 35.

129. If any driver of a vehicle on any road commences to overtake any vehicle proceeding in the same direction, and if the road is not then clearly visible to the driver of the overtaking vehicle, or is not clear of traffic in front of the vehicle which is being overtaken, for a sufficient distance to enable the overtaking vehicle to completely pass the other vehicle without impeding the free passage or endangering the safety of traffic on that road, the driver of the overtaking vehicle shall be guilty of an offence.

Warning by driver of overtaking vehicle.

Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 59 (1) (b).

Inserted by 2332, 1936, s. 35.

130. (1) If any driver of a motor vehicle, before overtaking another vehicle, signals by use of the warning instrument his desire to pass that other vehicle, thereupon the driver of that other vehicle shall move to his left, if the movement is possible with safety, so as to allow the overtaking vehicle a reasonable space in which to pass.

(2) After the signal has been given, the driver of the vehicle being overtaken shall not increase his speed until the overtaking vehicle has had a reasonable opportunity to pass and draw clear of the overtaken vehicle.

s. 128. CORRELL v. THOMAS (1939) S.A.S.R. 39. The primary distinction intended by subsection (1) is between carriage-way and footway, and if there is no part of the road apparently reserved for walking or some other special purpose, so much of the whole road as is practicable for vehicular traffic is a carriage-way.

(3) If any person contravenes this section in any way, he shall be guilty of an offence.

Stopping and slowing down at intersections and bridges.

Inserted by 2416, 1938, s. 35.

130a. (1) The Commissioner of Police or any municipal or district council with the approval of the Commissioner of Police may erect or cause to be erected on the left hand side of any road at or near the place where the road joins or intersects any other road, or near the approach to any bridge, a sign containing in clearly legible letters or figures of the size prescribed by regulation—

(*a*) the word "Stop"; or

(*b*) the words "Slow m.p.h.", indicating the number of miles per hour to which speed is to be reduced.

(2) Provided that the Commissioner shall not less than one month before the erection of any such sign publish in the *Government Gazette* a notice of his intention to erect such sign specifying the type of sign which he proposes to erect and the place where it is to be erected.

(3) Any person objecting to the erection of any such sign shall in writing set out to the Minister the grounds of his objection and the Minister may thereupon either prohibit or approve the erection, with or without modification, of such sign, and the Minister's decision shall be final.

(4) When any such sign containing the word "Stop" is erected the rider or driver of a vehicle or animal in the street in which the sign is erected—

(*a*) shall before entering the junction or intersection at or near which the sign is erected, stop his vehicle or animal; and

(*b*) shall not enter that junction or intersection until the road on both sides thereof is sufficiently clear of traffic so as to allow his vehicle or animal to pass through the junction or intersection without danger.

(5) When any such sign requiring a reduction of speed is erected the rider or driver of any vehicle or animal in the street in which the sign is erected shall not—

(*a*) enter the junction or intersection at or near which the sign is erected until the road on both sides thereof is sufficiently clear of traffic so as to allow his vehicle or animal to pass through the intersection or junction without danger; or

(*b*) drive or ride his vehicle or animal across any part of the junction or intersection at a speed exceeding that mentioned in the sign; or

(*c*) drive or ride his vehicle or animal across the bridge at the approach to which the sign is erected at a speed exceeding that mentioned in the sign.

(5a) Subsections (4) and (5) of this section shall not apply if at the junction or intersection at or near which the sign is erected the traffic was at the material time being controlled by a member of the police force or some other authorized person. Inserted by 45, 1939, s. 23.

(5b) If any person fails to comply with any requirement of subsection (4) or subsection (5) of this section he shall be guilty of an offence. Inserted by 45, 1939, s. 23.

(6) Section 131 of this Act shall not apply to any junction or intersection at or near which a sign is erected under this section.

(7) In this section—

"intersection" means the quadrilateral or other area comprised within straight lines joining the corners formed by the intersection of two or more roads:

"junction" means that part of a road which is comprised between the lines formed by the production of the alignments of another road which abuts on the first mentioned road.

(8) The Commissioner of Highways shall, at the request of the Commissioner of Police, provide and erect on behalf of the Commissioner of Police any signs which the Commissioner of Police desires to erect under this section.

The cost of all signs so erected shall be defrayed from the moneys appropriated by Parliament for main roads.

130b. (1) The South Australian Railways Commissioner may on any road at or near any level crossing erect signs clearly visible to traffic approaching the crossing and containing in clearly legible letters of the size prescribed by regulation the word "Stop". Stop signs at railway crossings. Inserted by 2416, 1938, s. 35.

(2) The rider or driver of any vehicle or animal approaching a level crossing at or near which any such sign is erected, from the direction in which the sign is facing— Substituted by 45, 1939, s. 24.

(*a*) shall stop his vehicle or animal at least ten yards from the railway line:

(*b*) if, while the vehicle or animal is so stopped, any mechanical or electrical or other warning device in the vicinity of the crossing is operating, shall not put the vehicle or animal in motion again until the warning device has ceased operating.

Inserted by 45, 1939, s. 24.

(2a) Any person approaching on foot a level crossing at or near which any such sign is erected, from the direction in which the sign is facing—

(*a*) shall stop at least ten yards from the railway line:

(*b*) if, while he is stationary, any mechanical or electrical or other warning device in the vicinity of the crossing is operating, shall not move forward until the warning device has ceased operating.

Inserted by 45, 1939, s. 24.

(2b) If any person fails to comply with subsection (2) or subsection (2a) of this section in any respect he shall be guilty of an offence.

Inserted by 45, 1939, s. 24.

(2c) Nothing in this section shall affect the obligation of any person to comply with any other provision of this Act relating to railway crossings.

(3) In this section "level crossing" means a place at which a road and a railway cross each other at the same level.

Centre lines on roads.

Inserted by 2416, 1938, s. 35.

130c. (1) The Commissioner of Highways may mark on any part of any road a double line running longitudinally along the road at or near the centre of the carriage way thereof.

(2) Every such line shall be of the colour and width prescribed by regulations.

(3) If any person drives or rides any vehicle or animal so that the whole or any part of that vehicle or animal is on his right hand side of any line marked on a road in accordance with this section he shall be guilty of an offence:

Provided that no person shall be punished for failing to comply with this section if the court is of the opinion that he was obliged to cross the line in order to avoid an accident, or owing to an obstruction on the roadway.

(4) The allegation in any complaint for an offence against this section that any line was marked on any road in accordance with this section shall be *prima facie* evidence of that fact.

Inserted by 45, 1939, s. 25.

(5) For the purposes of this section any bridge used for carrying vehicular traffic or any part of any such bridge shall be deemed to be part of a road.

Right-of-way at points where roads meet.

Inserted by 2332, 1936, s. 35.

131. (1) When two vehicles are approaching the junction or intersection of two or more roads in such circumstances that there is a reasonable possibility that they might arrive at the same point simultaneously, or that a dangerous situation might otherwise be created, the rider or driver of the vehicle who has the other vehicle on his right shall either decrease the speed of his vehicle to such an extent, or stop his vehicle for such time, as is necessary to allow the vehicle on his right to continue on its course in front of his vehicle without change of speed: Provided that a person shall not be convicted for failure to comply with this section, if it appears to the court that he was not aware, and could not, by exercising reasonable care, have become aware, of the approach of the other vehicle.

s. 131. THE MUNICIPAL TRAMWAYS TRUST v. AUSTIN (1930) S.A.S.R. 81. In civil proceedings the onus of proving a breach of section 131 and of negativing the proviso to section 131 (1) is on the party who alleges the breach.

MORRIS v. PFUHL (1932) S.A.S.R. 78. Section 131 does not apply to two vehicles approaching an intersection from the same direction along the same road.

RECHNER v. PALMER (1934) S.A.S.R. 409. Held as regards regulation 6A (which section 131 follows, with alerations):—(*a*) Regulation 6A did not apply only when the driver having the other vehicle on his right could see or was otherwise made aware of the approaching vehicle before he reached the intersection: (*b*) the area to which the regulation applied included not only the quadrilateral of the intersection but the immediate neighbourhood: (*c*) regulation 6A did not lessen the obligation of a person who was about to drive out of a by-street into a main thoroughfare.

SUTER v. RUEDIGER AND ANOTHER (1936) S.A.S.R. 130. Held that the driver of a vehicle is entitled to assume that other drivers will observe the regulation applicable to traffic at intersection, but is not entitled to disregard the possibility of traffic approaching from the left.

RAKE v. ADELAIDE CO-OPERATIVE SOCIETY LIMITED (1937) S.A.S.R. 281. Where two roads running northerly came together in the form of a V at the point of junction with a main road running north-east, held, under the regulation relating to traffic at intersections, that the junction of the two roads was an intersection within the meaning of the regulation. Held also that, in applying the regulation, allowance must be made for the nature of the intersection.

DREW v. GLEESON (1937) S.A.S.R. 380. Where a vehicle is already on a junction the driver does not, by altering his course, acquire a right-of-way as against the driver of another vehicle who is continuing his course and thus crossing the junction. Subsection (1) gives a right to continue a course, not to alter it across that of another vehicle. Meaning of "junction" examined.

DUNN v. BEEVOR (1937) S.A.S.R. 386. Held under the regulation relating to traffic at intersections that an intersection is a place where two or more ways cross each other and that the regulation made no provision for a by-road which merely meets or enters a main thoroughfare without anything in the nature of a crossing.

PEARCE v. BOURKE (1937) S.A.S.R. 404. Where justices, prior to the hearing, visited the intersection for the purposes of refreshing their memories and qualifying themselves to follow the evidence, but it did not appear that they used their own knowledge to correct or supplement the evidence, held that this did not constitute a ground of objection to the proceedings.

ELLIS v. HOEPNER AND ANOTHER (1937) S.A.S.R. 461. Observations as to the application of the regulation relating to traffic at intersections.

BOND v. HOLLOWAY (1938) S.A.S.R. 41. A driver of a motor vehicle on approaching an intersection is not entitled to ignore the risk that another driver will cross over the intersection at a speed beyond that allowed by law.

BOURKE v. SMITH (1938) S.A.S.R. 74. The driver of a vehicle, approaching an intersection when another vehicle is approaching from his right, is not entitled to assume that the other vehicle will alter its course or speed. The speed or course of the other vehicle may become relevant when it becomes necessary to consider whether the defendant's ignorance of its approach was consistent with due care

(2) When a vehicle and a tram car are approaching the junction or intersection of two or more roads in such circumstances that there is a reasonable possibility that they might arrive at the same point simultaneously, or that a dangerous situation might otherwise be created, the rider or driver of the vehicle shall either decrease the speed of his vehicle to such an extent, or stop his vehicle for such time, as is necessary to allow the tram car to pass in front of his vehicle without change of speed.

(3) This section shall not apply if at the junction or intersection the traffic was at the material time being controlled by a member of the police force or some other authorised person, or by any system of signs or lights.

(4) Subsection (1) and subsection (2) of this section, shall each be deemed to create a single offence, and no objection shall be taken on the ground of duplicity or uncertainty to a complaint under either subsection alleging that, in the circumstances mentioned in the subsection, the defendant "did

s. 131. (*contd.*) on his part. There is no rule of law which requires a driver to approach an intersection at a speed which enables him to see whether any other vehicle is approaching from his right; the circumstances of each case must be taken into consideration (but see section 130a, enacted since this decision).

HART v. BRATCHELL (1938) S.A.S.R. 141. Where two roads intersect by reason of one road curving towards and meeting the other, section 131 applies. It does not necessarily follow that, because a person commits a breach of section 131, the breach confers upon a party injured thereby a civil cause of action for damage. Where section 131 applies, there is an implied duty on the part of the person entitled to proceed to continue on his course without change of speed, unless and until some other course of conduct, being possible, becomes prudent, proper, and imperative in the interests of safety and to avoid a collision.

BARRINGTON v. POWER (1938) S.A.S.R. 321. Where the driver of a motor vehicle approaching a junction became aware of the approach of another vehicle on his right, held that the proviso to subsection (1) did not apply.

SMITH v. MAY (1938) S.A.S.R. 410. In an action for negligence arising out of the death of a person who failed to give way as required by section 131, held that the onus of showing that the defendant could have avoided the collision, if he had acted reasonably, was upon the plaintiff.

MADDERN v. DAYMAN (1939) S.A.S.R. 12. The course of an oncoming vehicle having the right of the road at an intersection is not necessarily a straight line as a divergence from this course may be necessary. The driver of the vehicle whose duty it is to stop or slacken must so manage his vehicle that no act or omission on his part constrains the driver of the vehicle having the right to the road to deviate from his course. The degree of care reasonable to be taken in the circumstances of a given case by the driver of a vehicle under the obligation to stop or slacken speed will be the greater the more hindrances there are to his getting a clear view of the traffic approaching along an intersecting street.

DAYMAN v. DARWIN (1939) S.A.S.R. 29. The degree of error of judgment that can render it inexpedient to inflict any punishment when there has been any infringement of the rule laid down by subsection (1) should be very slight.

TAYLOR v. GEARY (1939) S.A.S.R. 89. Subsection (1) does not mean that a slow moving vehicle cannot enter upon an intersection so long as any fast moving vehicle is approaching at a speed which might create a situation of danger if maintained without alteration. If the circumstances are such that the approaching vehicle must of necessity have ample notice and opportunity to slacken speed, the driver of the slow moving vehicle may be justified in assuming that it will do so and that no situation of danger will be created.

not decrease the speed of his vehicle to such an extent or stop his vehicle for such time" as is required by the subsection.

(5) This section shall also apply in cases where two animals, or an animal and a vehicle or tram car are approaching a junction or intersection in the circumstances mentioned in subsection (1) or (2), and the term "vehicle" shall be so construed as to include an animal.

Speed at intersections.
Inserted by 2332, 1936, s. 35.

132. (1) If any person in any municipality, town, or township drives or rides any vehicle or animal over that part of any intersecting roads, which is common to two or more roads, at a greater speed than twenty-five miles per hour, he shall be guilty of an offence.

(2) In this section "intersecting roads" means roads each of which completely crosses and extends on both sides of the other.

(3) Subsections (1) and (2) of this section shall not apply to—

(*a*) any motor vehicle owned by the Fire Brigades Board or any fire brigade, or the controlling authority thereof, and which is being driven to a fire for use in connection with the extinguishing thereof;

(*b*) any motor vehicle which is being used by a member of the police force for the purpose of effecting an arrest or otherwise in connection with the detection, suppression or prevention of crime; or

(*c*) any ambulance motor vehicle which is being used for ambulance work.

Speed in certain circumstances.
Inserted by 2332, 1936, s. 35.

133. (1) If any person rides or drives any vehicle or animal at a greater speed than six miles per hour—

(*a*) when proceeding from any land abutting on a road into that road; or

s. 132. BOND v. GOUDIE (1937) S.A.S.R. 416, reversing BOND v. GOUDIE (1937) S.A.S.R. 371. The Port Road is comprised of two carriage ways, one reserved for up and the other for down traffic; the ways are separated by a reserve and cross roads intersect the ways and reserves. Held that, for the purposes of section 132, the Port Road was one road only and, accordingly, that a road entering the Port Road and crossing the up track and the reserve to enter the down track but not continuing further, does not form an intersection with the up track.

s. 133. JOLLY v. WALLMAN (1936) S.A.S.R. 121. Held that a Sunday school was not a school within the meaning of a regulation prescribing a speed limit for vehicles passing schools. (But see subsection (4), enacted since this decision).

GERAGHTY v. ANGUS AND OTHERS (1938) S.A.S.R. "Passing" a tramcar in a regulation relating to the passing of stationary tramcars, held to mean overtaking a tramcar which is using the same road and is going in the same direction as the vehicle.

(*b*) when passing any tram car which, on any road in the course of a journey in the same direction as the overtaking vehicle or animal, has stopped for the purpose of allowing passengers to board or alight,

he shall be guilty of an offence.

(2) If any person rides or drives within ten miles from the General Post Office at Adelaide any vehicle or animal at a greater speed than ten miles per hour when turning from one road into another he shall be guilty of an offence.

(3) If any person rides or drives any vehicle or animal at a greater speed than fifteen miles an hour whilst passing any school or school playground or children's playground at any time when children are going into or coming out of that school or playground, he shall be guilty of an offence: Provided that no person shall be convicted of an offence against this subsection unless the prosecution shows that on or near the road on which the defendant rode or drove a vehicle or animal as aforesaid there was a sign bearing in clear letters the word "school", "school playground" or "children's playground", as the case may be, and erected in such a position as to give reasonable warning to the defendant of the existence of the school or playground.

Proviso added by 2416, 1938, s. 36 (1).

(4) In this section "children's playground" means a children's playground which is maintained by a municipal or district council and "school" includes any church or other building used as a Sunday school, together with the land used in connection therewith.

Amended by 2416, 1938, s. 36 (2).

Signals.

Inserted by 2332, 1936, s. 35.

134. (1) Whenever the driver or rider of any vehicle or animal is about to turn his vehicle or animal to the right, in or into any road, he shall, at least one hundred feet before the point where he commences to turn, signify his intention to do so by extending his right arm horizontally from the right hand side of the vehicle or animal with the palm facing forward, the arm being in such a position that it is clearly visible from a distance of at least one hundred feet to any person following the vehicle or animal.

Inserted by 2416, 1938, s. 37.

(1a) No person shall be deemed to have signified his intention to turn to the right as required by subsection (1) of this section unless he has given the signal prescribed by that subsection continuously for a distance of one hundred feet before the point where his vehicle commences to turn.

(2) Whenever the driver or rider of any vehicle or animal is about to slow down or stop he shall at least one hundred feet before the point where he commences to slow down signify his intention to do so—

(*a*) by extending his right arm horizontally from the right-hand side of the vehicle or animal with the palm of the hand turned downwards the arm being in such a position that it is clearly visible at a distance of at least fifty feet to any person following the vehicle or animal; and

(*b*) by moving the arm slowly up and down.

(3) It shall be sufficient compliance with the provisions of this section to give the appropriate signal by some mechanical or electrical device which has been approved by the Registrar of Motor Vehicles.

(4) If any person fails to comply with this section he shall be guilty of an offence.

Requirements as to towing.

Inserted by 2332, 1936, s. 35.

135. (1) No person shall drive upon any road any vehicle having any vehicle (not being a trailer) attached thereto for the purpose of being towed, if any of the following provisions is not observed:—

(*a*) The space between the vehicles shall not exceed twelve feet:

(*b*) When the towed vehicle is a motor vehicle, a competent person shall be in charge of that vehicle, to control it so far as the condition of its brakes and mechanism will permit:

(*c*) Where the two vehicles are joined by means of a tow rope, chain or wire, there shall be displayed on the tow rope, chain or wire, midway between the two vehicles, a white flag or cloth, so as to be clearly visible as a warning of danger:

(*d*) Between half an hour after sunset, and half an hour before sunrise, a lighted lamp, showing a bright white light, shall be affixed to the front of the towed vehicle in such a manner as to render clearly visible, any flag or cloth displayed in accordance with paragraph (*c*) of this subsection, and a lighted lamp shall be affixed to the off side of the rear of the towed vehicle, showing a red light clearly visible at a distance of 200 yards, to any person approaching the vehicle from the rear:

Provided that where the vehicle being towed is fastened in actual contact with the towing vehicle, the white flag or cloth mentioned in paragraph (*c*), and the lighted lamp affixed to the front of the towed vehicle, mentioned in paragraph (*d*), shall not be required.

(2) If any person contravenes this section in any respect, he shall be guilty of an offence.

Leaving vehicles in dangerous positions.
U.K. 20 & 21 Geo. 5 c. 43, s. 50.
Inserted by 2332, 1936, s. 35.

136. If any person in charge of a vehicle or animal causes or permits that vehicle or any trailer drawn thereby or that animal to remain at rest on any road in such a position or in such condition or circumstances as to be likely to cause danger to other persons using the road, he shall be guilty of an offence.

Driving or riding on footpaths, &c.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 14.
Inserted by 2332, 1936, s. 35.

137. If any person rides, drives, or leads any animal, or rides or drives any vehicle so that that animal or vehicle or any part thereof is on any footpath, causeway, or place set apart or constructed on or by the side of any road for the accommodation of foot passengers, he shall be guilty of an offence: Provided that this section shall not apply where the animal or vehicle is ridden, driven, or led across any such footpath, causeway, or place at right angles in crossing to or from any premises.

Control of animals by driver.
Inserted by 2332, 1936, s. 35.

138. If the driver of a vehicle drawn by an animal on any road, is at such a distance from that vehicle or in such a situation that he cannot properly guide and control the animal drawing the vehicle, he shall be guilty of an offence.

Duty to stop in case of accident.
U.K. 20 & 21 Geo. 5 c. 43, ss. 20, 22, 113 (3).
Inserted by 2332, 1936, s 35.
Subsec (1), amended by 2416, 1938, s. 38 (a).

139. (1) If, owing to the presence of a vehicle on a road, an accident occurs, whereby damage or injury is caused to any person, vehicle or animal, or any other property real or personal, the driver of the vehicle shall stop and, if required so to do by any person having reasonable grounds for so requiring, give his name and address, and also the name and address of the owner of the vehicle and, if the vehicle is a registered motor vehicle, the registered number of the vehicle.

s. 139. MINERVINI v. WALSH (1928) S.A.S.R. 286. The obligation to stop implies that the vehicle must be brought to rest within such a distance and time as is reasonable in the circumstances.

NOBLET v. CONDON (1935) S.A.S.R. 329. Held that section 52 of the Road Traffic Act, 1934 (re-enacted by section 139 with amendments not material to this case), required the driver to stop so long as reasonably necessary to enable the proper questions to be put, if there was anyone in the vicinity who desired to put them.

JARMAN v. WALSH (1936) S.A.S.R. 25. Held that section 52 of the Road Traffic Act, 1934 (re-enacted by section 139 with amendments not material to this case), required the driver of a motor vehicle to stop in case of accident as soon as practicable in the circumstances.

BOND v. GILBERT (1938) S.A.S.R. 37. The offence of failing to stop may be of a trifling nature although the accident occasioning the stop may be more than trivial.

(2) When any such accident happens, the driver of the vehicle shall also report the accident at a police station or to a police constable as soon as reasonably practicable, and in any case, within twenty-four hours after the occurrence thereof.

(3) In this section, the expression "animal" means any horse, cattle, ass, mule, sheep, pig, goat, or dog.

(4) If any person fails to comply with this section in any respect he shall be guilty of an offence: Provided that no person shall be punished for failing to comply with this section if the court is of opinion that the accident was a trivial one or if the defendant satisfies the court that he did not know that any accident had occurred: Provided also that it shall be a defence to a charge of an offence under this section if it is shown that the only damage or injury resulting from the accident was damage or injury to property owned by the defendant.

Proviso added by 2416, 1938, s. 38 (b).

(5) An apparently genuine document produced by the prosecution, purporting to be signed by the Commissioner of Police and to certify that any accident specified in the document (whether by reference to the approximate time and place thereof, or to the person or persons involved or otherwise so as to reasonably identify it) had not been reported at a police station or to a police constable prior to any date mentioned in the certificate shall be *prima facie* evidence of the matter so certified.

Inserted by 2416, 1938, s. 38 (c).

140. (1) Any owner of any vehicle shall, if required by a member of the police force, or by any inspector appointed under Part II. of this Act, truly answer any question put to him which may lead to the identification of the person who was driving that vehicle on any occasion when an offence under this Act is alleged to have been, or is suspected of having been, committed.

Duty of owner to give information to identify driver.

Cf. U.K. 20 & 21 Geo. 5 c. 43. s. 113 (3).

Inserted by 2332, 1936, s. 35.

(2) Any such owner who refuses to answer, or fails to answer truly, any such question shall be guilty of an offence.

(3) In this section the term "owner" shall include a bailee.

Inserted by 2416, 1938, s. 39.

141. If any person drives or causes or permits to be driven on any road any vehicle, upon which the load extends beyond any portion of the vehicle, and—

Projecting loads.

Inserted by 2332, 1936, s. 35.

(*a*) the load is not as nearly as practicable parallel to the sides of the vehicle; or

(*b*) any iron, timber, piping, or other solid materials projecting beyond any portion of the vehicle, is not wrapped at the projecting ends thereof, with bagging or other suitable material, and securely tied so as to prevent noise, flapping, and swaying, and covered with some white material so as to indicate the presence of such projection,

he shall be guilty of an offence.

Width of vehicles, and number of trailers.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 18.
Inserted by 2332, 1936, s. 35.

142. (1) No person shall drive any motor vehicle on any road if—

(*a*) the width of the vehicle or of any part of the load thereon exceeds eight feet; or

(*b*) the vehicle (being a tractor) has more than two trailers attached thereto; or

(*c*) the vehicle (being a vehicle other than a tractor) has more than one trailer attached thereto.

(2) Any person who contravenes this section shall be guilty of an offence.

In any proceedings for an offence of driving on a road a motor vehicle the width of which exceeds eight feet it shall be a defence to prove that the motor vehicle was, on the first day of September, nineteen hundred and thirty-six, a registered motor vehicle, and that at the said date the motor vehicle was of the same width as at the time of the alleged contravention, and that the load on the motor vehicle did not project beyond either side of the vehicle.

(3) If the Registrar of Motor Vehicles is satisfied that it is reasonable to permit any vehicle to be driven on any road, although the width of that vehicle or of any part of the load thereon exceeds eight feet he may on the application of the owner of the vehicle grant a permit, either general or restricted as to time, place, or circumstance, permitting that vehicle to be driven on any specified roads or on roads generally and such a permit shall render lawful anything done in accordance therewith.

(4) The Governor may by proclamation declare that this section shall not apply to any road or part of a road mentioned in the proclamation, and may from time to time revoke or alter any such proclamation. The operation of this section shall be restricted according to the terms of all proclamations for the time being in force under this subsection.

(5) Notwithstanding subsection (1) of this section it shall be lawful to drive on any road a vehicle carrying a load more than eight feet wide if that load consists of any agricultural machine or motor bodies more than eight feet wide.

(6) No agricultural machine shall be deemed to be a vehicle within the meaning of this section.

(7) In this section "agricultural machine" means any machine (other than a tractor) used for cultivating land or sowing or harvesting crops.

(8) For the purposes of this section any frame work fixed or placed on a motor vehicle shall be deemed to be the load or portion of the load of that motor vehicle.

Inserted by 2416, 1938, s. 40.

143. (1) If more than one person is carried on a road on a bicycle not propelled by mechanical power and not constructed or adapted for the carriage of more than one person, each of those persons shall be guilty of an offence.

Restriction on carriage of persons on bicycles.
U.K. 24 & 25 Geo. 5 c. 50, s. 20.

(2) In this section references to a person carried on a bicycle shall include reference to a person riding the bicycle.

Inserted by 2332, 1936, s. 35.

(3) This section shall apply only within the areas in which the Governor declares that it shall apply. The Governor may by proclamation declare the areas within which this section shall apply and may at any time by proclamation alter any such area, or revoke any proclamation in force under this section.

143a. No person shall on any road drive any motor vehicle carrying any person on the roof or bonnet thereof, or on the driver's seat on the right hand side of the driver.

Places where passengers must not be carried.
Inserted by 2416, 1938, s. 41.

144. (1) If the driver of a vehicle knowingly permits any person riding a bicycle or other vehicle propelled by human power to attach himself to the vehicle being driven while it is in motion on any road, that driver shall be guilty of an offence.

Holding on to motor vehicles, and riding without driver's consent.
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 29.

(2) Any rider of a bicycle or other vehicle propelled by human power, who attaches himself to any other vehicle whilst that vehicle is in motion on any road shall be guilty of an offence.

Inserted by 2332, 1936, s. 35.

(3) Any person who rides on a vehicle without the consent of the driver of that vehicle shall be guilty of an offence.

s. 144. WALSH v. FAEHRMANN (1936) S.A.S.R. 49. The onus is on the complainant to prove that the driver did not consent to the defendant's action.

Pacing by cyclists.
Inserted by 2332, 1936, s. 35.

145. If any person riding a bicycle travels on any road for more than three hundred yards behind any motor vehicle and within six feet from that vehicle he shall be guilty of an offence.

Boarding and alighting from moving vehicles.
Inserted by 2332, 1936, s. 35.

146. Any person who in any road, boards or alights from any tram car or vehicle whilst in motion, shall be guilty of an offence.

Driving and riding abreast.
Inserted by 2332, 1936, s. 35, and amended by 2416, 1938, s. 42, and by 23, 1939, s. 3 (a).

147. (1) If two or more vehicles are driven or ridden abreast of each other in the same direction on any road, the rider or driver of each of those vehicles shall be guilty of an offence: Provided that this section shall not apply—

(*a*) where two bicycles and no more are ridden abreast:

(*b*) where a vehicle is driven abreast of another vehicle for the purpose of passing that other vehicle.

(2) A vehicle shall be deemed to be abreast of another vehicle if any part of the vehicle is by the side of any part of that other vehicle.

Inserted by 23, 1939, s. 3 (b).

(3) If two bicycles are ridden abreast of each other in the same direction on any road, the rider of the bicycle on the left-hand side of the road shall be guilty of an offence if he does not ride as near as practicable to such left-hand side of the road and the other rider shall be guilty of an offence if he does not ride as near as practicable to the rider on the inside of him.

Prohibition of riding horses abreast.
Inserted by 2332, 1936, s. 35.

148. (1) If three or more horses are ridden abreast on the carriage-way of any road within twelve miles of the General Post Office at Adelaide, the rider of each horse shall be guilty of an offence: Provided that this section shall not apply where the horses are ridden by members of the police force on duty.

(2) A horse shall be deemed to be abreast of another horse if any part of that horse is by the side of any part of the other horse.

Leading animals.
Inserted by 45, 1939, s. 26.

148a. If any person on any road within six miles of the General Post Office at Adelaide, whilst riding an animal or driving a vehicle, leads three or more animals, he shall be guilty of an offence.

Injurious matter on roads.
Inserted by 2332, 1936, s. 35.

149. If any person deposits or drops or causes or suffers to be deposited or dropped upon any road, any matter or substance likely to cause damage or danger to vehicles, being any wood, stone, sand, gravel, nail, tack, scrap iron, glass,

wire, tin, bottle, thorn, clipping, oily or sticky substance or other matter or substance, he shall be guilty of an offence: Provided that it shall be a defence to a charge under this section if the defendant proves that he had taken reasonable precautions to prevent the matter or substance from being so deposited or dropped.

Removal of vehicles from roads.

Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 59 (1), (c); 24 & 25 Geo. 5 c. 50, s. 22.

Inserted by 2332, 1936, s. 35.

150. (1) If—

(*a*) any vehicle or animal is left unattended on a road in such a position or in such a condition or in such circumstances as to be likely to cause danger to other persons using the road; or

(*b*) on any day on which a road is closed to the public or forms part of the route of a procession which has been duly advertised under any enactment, regulation, or by-law, any vehicle is left unattended for more than one hour,

any member of the police force or any officer of any municipal or district council may remove that vehicle or animal to a place of safe custody.

(2) Forthwith after such removal, the person removing the vehicle or animal, or some person on his behalf, shall give the owner written notice of the removal, and of the place to which the vehicle or animal was removed. The notice shall, wherever practicable, be served upon the owner personally; but if it is not so served within fourteen days after the removal, it shall forthwith upon the expiration of those fourteen days be given by public advertisement in two newspapers circulating generally in the State.

(3) If the owner of the vehicle or animal does not, within one month after the service or advertisement of the notice, pay all expenses in connection with the removal, custody, and maintenance of the vehicle or animal, and of serving or advertising the notice, and take possession of the vehicle or animal, the Commissioner of Police, or the municipal or district council whose officer removed the vehicle or animal shall sell it by public auction, and apply the proceeds as follows:—

(*a*) Firstly, in payment of the expenses of the sale:

(*b*) Secondly, in payment of the cost of removal, custody, and maintenance of the vehicle or animal, and of the notice served or advertised under this section:

(*c*) Thirdly, in payment of the balance to the owner, or if, after reasonable enquiry, the owner cannot be found, to the Treasurer, in aid of the general revenue of the State.

Control of parking outside Parliament House.

Inserted by 2332, 1936, s. 35.

151. (1) The Governor may by proclamation declare that any area in that part of any street which abuts on the site of either House of Parliament shall be a prohibited area within the meaning of this section and may revoke or amend any such proclamation.

(2) If any person, whether holding any other licence, permit, or other authority or not, leaves any vehicle or animal stationary in any prohibited area proclaimed under this section, without the permission of the Commissioner of Public Works, he shall be guilty of an offence.

(3) This section shall take effect notwithstanding anything in the Local Government Act, 1934, or any other Act or any regulation or by-law.

(4) No prosecution for an offence against this section shall be commenced except with the authority of the Commissioner of Public Works. A document purporting to give such consent and purporting to be signed by the Commissioner of Public Works shall be *prima facie* evidence of such consent.

Power of police to examine and test vehicles and animals.

Inserted by 2332, 1936, s. 35.

152. (1) Any member of the police force may, if he has reasonable cause to suspect that any vehicle has been involved in an accident or has been driven on a road recklessly or at a speed or in a manner which is dangerous to the public or has been stolen or taken without the consent of the owner and is on any land or premises, enter such land or premises and therein search for that vehicle and examine it if found.

(2) Any person who hinders any member of the police force, in the exercise of any power conferred upon him by this section, shall be guilty of an offence.

(3) If any member of the police force or any inspector appointed under Part II. of this Act has reasonable cause to suspect that any motor vehicle does not comply with any requirement of this Act he may—

(*a*) require the owner or person in charge of the vehicle to produce the vehicle to him or to some person named by him for the purpose of being tested:

(*b*) for that purpose remove the vehicle to the nearest convenient place where it can be tested:

(*c*) detain the vehicle for such time as is necessary for testing it.

(4) If the owner or person in charge of any vehicle when so requested by a member of the police force or an inspector appointed under Part II. of this Act does not produce the vehicle, together with any key or other device necessary for starting the engine, in accordance with a request under subsection (3) of this section, he shall be guilty of an offence.

Closing roads for races and exemptions.
Cf. U.K. 20 & 21 Geo. 5 c. 43, ss. 13, 46.
Inserted by 2332, 1936, s. 35.
Para. (a) substituted by 2416, 1938, s. 43.

153. (1) Upon the application of any persons interested the Minister of Local Government may make either or both of the following orders:—

(*a*) That any road or part of a road upon which any races or tests are to be held, and any other adjacent or adjoining road or part of any such road shall be closed to traffic on any day or days:

(*b*) That persons taking part in any races or tests be exempted from the duty to observe any enactment, regulation or by-law prescribing speed limits or other rules to be observed on roads by drivers and riders of vehicles.

(2) No order closing a road shall be made under this section except with the consent of every municipal or district council within whose area the road or part of a road is situated.

(3) At least two clear days before any road is to be closed or any exemption is to operate pursuant to an order under this section the Minister shall by advertisement in two newspapers, one of which shall be a daily newspaper, circulating generally in the State give notice of the intended closing of the road or exemption. The costs of every such advertisement shall be paid by the applicants.

(4) Any order made under this section shall be subject to any conditions which the Minister thinks fit to impose and upon breach of any condition shall cease to have any effect.

(5) An order under this section shall render lawful anything done in accordance therewith.

(6) If any person is requested by a member of the police force to depart from any road or part of a road closed under this section or to remove any vehicle of which he is in charge from any such road or part of a road and does not forthwith comply with that request he shall be guilty of an offence.

Vehicles taking part in processions.

Inserted by 2416, 1938, s. 44.

153a. If the Treasurer is satisfied that any vehicle is intended to be ridden or driven on roads solely for the purpose of taking part in a street procession or other like entertainment, he may in writing exempt the owner and driver of that vehicle from the obligation to comply with any specified provisions of this Act on any day or days.

Vehicles used for carrying passengers for hire.

Inserted by 2332, 1936, s. 35.

154. (1) After a day to be fixed by the Governor by proclamation for the commencement of this section no person shall drive any vehicle or cause any vehicle to be driven for the purpose of carrying passengers for hire unless that vehicle has been inspected and certified to be safe for the carriage of passengers by an officer appointed by the Registrar of Motor Vehicles: Provided that this section shall not apply where a vehicle is driven pursuant to a licence under the Road and Railway Transport Act, 1930, or under any by-law of a local governing authority.

(2) Every certificate granted under this section shall remain in force for twelve months from the date of the granting thereof unless revoked by any such officer as aforesaid before the expiration of that period on the ground that the vehicle is no longer safe for the carriage of passengers.

Inserted by 2416, 1938, s. 45.

(3) Any certificate granted under this section may contain a condition prescribing the maximum number of passengers which may lawfully be carried upon the vehicle to which the certificate relates.

Any person who drives any vehicle carrying more than the maximum number of passengers prescribed in a certificate relating to such vehicle shall be guilty of an offence.

Inserted by 2416, 1938, s 45.

(4) An apparently genuine document produced by the prosecution and purporting to be signed by the Registrar of Motor Vehicles and to certify that any vehicle specified in the certificate has not during any period specified in the certificate been inspected and certified to be safe for the carriage of passengers as required by this section shall be *prima facie* evidence of the fact so certified.

Inserted by 2416, 1938, s. 45.

(5) It shall lie on the defendant to prove that any vehicle in respect of which a complaint has been laid under this section was driven pursuant to a licence under the Road and Railway Transport Act, 1930, or under any by-law of a local governing authority.

(6) The Governor may make any regulations necessary or convenient for the due administration and enforcement of this section and may by regulations impose penalties recoverable summarily and not exceeding ten pounds for breach of any such regulation.

Inserted by 2416, 1938, s. 45.

155. (1) If any light, or any sign showing a light, is on or over or adjacent to any footpath or road in any municipality or district council district or is affixed to the wall or roof or other external part of any building or verandah in any municipality or district council district, and the council of the municipality or district council district is satisfied that the light or sign is dangerous to traffic on any road, the council may give notice in writing to the owner of the light or sign requiring him to remove the light or sign within a reasonable time specified in the notice.

Dangerous lights and signs.

Inserted by 2332, 1936, s. 35.

(2) If within the time specified in the notice that owner does not remove the light or sign, the council may remove it and recover the costs of so doing from that owner in any court of competent jurisdiction as a debt due to the council.

(3) Any notice under this section may be given by post addressed to the last known place of business or abode of the person to whom it is to be given, or by delivering it to that person.

156. When any regulation or any by-law is inconsistent with any provision of this Part, that provision shall prevail and the regulation or by-law shall, to the extent of the inconsistency, be invalid.

Inconsistency of this Part with regulations and by-laws.

Inserted by 2332, 1936, s. 35.

157. (1) The allegation in any complaint for an offence against this Act, or against any regulation under this Act, that any person was, at any time mentioned in the complaint, the rider or driver of any animal or vehicle shall be *prima facie* evidence of that fact.

Evidentiary provisions.

Inserted by 2332, 1936, s. 35.

(2) In any complaint for an offence against this Act or against any regulation under this Act allegations as to all or any of the following matters—

Inserted by 2416, 1938, s. 46.

(*a*) that any sign was lawfully placed on or near any road, or that any such sign was for any purpose specified in the complaint:

(*b*) that any sign on a road was erected under or complied with any specified statutory provision:

(*c*) that any sign on a road contained any specified words:

(*d*) that any specified place was or was not on any specified date an authorised crossing place on any line of railway,

shall be *prima facie* evidence of the matters so alleged.

Inserted by 2416, 1938, s. 46.

(3) An apparently genuine document produced by the prosecution and purporting to be signed by the Commissioner of Police or the superintendent or any inspector of police and to certify that any stop watch or speedometer specified therein had been tested and found correct on any date specified therein shall be *prima facie* evidence that that stop watch or speedometer was correct on each of the fourteen days following that date.

Offences. Inserted by 45, 1939, s. 27.

157a. Any contravention of or failure to observe any provision of this Part, whether by act or omission, shall be an offence.

Penalty. Inserted by 2332, 1936, s. 35.

158. Any person guilty of any offence against this Part, for which no other penalty is provided, shall be liable to a fine of not more than twenty pounds.

Summary proceedings. Inserted by 2332, 1936, s. 35.

159. Proceedings for offences against this Part shall be disposed of summarily.

S. 160 inserted by 2332, 1936, s. 35, and repealed by 2416, 1938, s. 47.

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PART VII.

PART VII.

PROTECTION OF ROADS.

Interpretation. Cf. U.K. 20 & 21 Geo. 5 c. 43, ss. 3, 24, 25. Inserted by 2332, 1936, s. 35.

161. In this Part unless the context otherwise requires or some other meaning is clearly intended—

"commissioner" means the Commissioner of Highways appointed pursuant to the Highways Acts, 1926 to 1935:

"improved main road" means any main road within the meaning of the Highways Acts, 1926 to 1935, which has been formed, metalled, or gravelled, or which has any prepared surface, and includes the shoulders and drains thereof, and any bridge, culvert, guard fence, or post thereon:

"road authority" means the municipal or district council within whose area the road in question is situated, and includes the commissioner when exercising the powers of a council in respect of any work:

"shoulders", when used in relation to a main road, means the protection work formed or constructed of any material whatsoever for strengthening, backing up, or protecting the edges of any improved main road:

"drain", when used in relation to a main road, means any work formed or constructed of any material whatsoever, which is provided for the drainage of such road:

"motor lorry" means a motor vehicle constructed in such a manner as to be ordinarily used for the carriage of goods, wares, or merchandise, or for the conveyance of any kind of material used in any trade, business, or industry, or for use in any work whatsoever other than the conveyance of passengers:

"motor vehicle" means a motor vehicle as defined in Part II. of this Act:

"tractor" means a motor vehicle used for hauling other vehicles, but not built to carry passengers or loads other than fuel or water for its own consumption.

Farm implements.

Inserted by 2332, 1936, s. 35.

162. If any person drives or hauls over any improved main road any farm or other implement constructed in such a manner as to injure or damage any portion of the road when travelling thereon he shall be guilty of an offence.

Locking of wheels.

Inserted by 2332, 1936, s. 35.

163. If any person locks or prevents from revolving any wheel of any horse-drawn vehicle whilst such vehicle is proceeding along any improved main road, he shall be guilty of an offence.

Drags.

Inserted by 2332, 1936, s. 35.

164. If any person draws or drags any sledge, timber, tree, or other heavy material on any improved main road, he shall be guilty of an offence.

Wheels with bars, studs, &c.

Inserted by 2332, 1936, s. 35.

165. If any person, except in crossing a road, drives on or within six feet of any part of the metalled, gravelled, rubbled, tarred, or other prepared surface of any improved main road any motor vehicle having attached to the surface of any wheel or tire, which comes into contact with the road, any metal bar, spike, stud, grip, or other metal projection, he shall be guilty of an offence: Provided that this section shall not

apply where the wheels or tires of the motor vehicle have no projection on the surface thereof which comes into contact with the road other than cross bars affixed thereto at an angle of not more than forty-five degrees with the edge of the wheel or tire, and each extending the full width of the wheel or tire, and being not less than three inches in width and not more than three-quarters of an inch in thickness, and being separated by a space of not more than three inches from the cross bar nearest to it on either side.

Caterpillar tractors.

Inserted by 2332, 1936, s. 35.

166. If any person, except in crossing a road, uses or drives on or within six feet of any part of the metalled, gravelled, or other prepared surface of any improved main road any tractor of the caterpillar type which has any metal bar, spike, stud, grip, or other metal projection on the track or belt of that tractor, he shall be guilty of an offence.

Stopping vehicles on bridges.

Inserted by 2332, 1936, s. 35, and amended by 2416, 1938, s. 48.

167. (1) If any person stops a vehicle on any bridge or culvert on any road for any purpose whatever except in case of a breakdown or other unavoidable accident or the purpose of enabling any person to enter or alight from the vehicle, he shall be guilty of an offence.

(2) If the owner of any vehicle which has stopped on a bridge or culvert because of a breakdown or other unavoidable accident or the purpose of enabling any person to enter or alight from the vehicle, fails to remove the vehicle from that bridge or culvert without unnecessary delay, he shall be guilty of an offence.

Damage to bridges.

Inserted by 2332, 1936, s. 35.

168. If any person drives any vehicle on any main road in such a way as to damage any bridge, culvert, guard fence, or post on or appertaining to that main road, he shall be guilty of an offence.

Driving on shoulders of roads.

Inserted by 2332, 1936, s. 35.

169. If any person drives any vehicle on the shoulders of any improved main road except for the purpose of passing another vehicle, or leaving the metalled, gravelled, rubbled, tarred, or other improved surface, he shall be guilty of an offence.

Actions likely to cause fire.

Inserted by 2332, 1936, s. 35.

170. If any person discharges any ashes, cinders, or other refuse from a tractor or any motor vehicle upon or within twenty feet of a bridge or culvert upon a main road, or upon any main road within twenty feet of the centre of that road, and does not completely extinguish and spread out such ashes, cinders, or refuse, so as not to injure that road or any fence thereon or adjacent thereto, and so as not to interfere with the drainage, he shall be guilty of an offence.

Depositing material on roads.

Inserted by 2332, 1936, s. 35.

171. If any person without the permission of the commissioner in writing stacks or deposits any wood, sand, stone, or material of any description on any main road or part of a main road which is in any way being maintained by the commissioner, he shall be guilty of an offence.

Use of wheel chains.

Inserted by 2332, 1936, s. 35.

172. If any person drives or hauls upon any improved main road any vehicle having solid rubber tires which are fitted with chains, or having metal studs or other metal projections inserted in the rubber thereof, he shall be guilty of an offence.

Defective tires.

Inserted by 2332, 1936, s. 35.

173. If any person drives on any improved main road any motor vehicle having any wheel shod with a rubber tire (not being a pneumatic tire) which has not rubber at least one inch thick over the whole of the outer surface of the wheel, or which is in any way defective, he shall be guilty of an offence.

Speed of heavy vehicles.

Inserted by 2332, 1936, s. 35, and repealed and re-enacted by 45, 1939, s. 28.

174. (1) No person shall drive on any road any commercial motor vehicle drawing a trailer at any speed in excess of those hereinafter prescribed:—

(*a*) If the aggregate weight of the vehicle and of every trailer drawn thereby, exceeds eleven tons, twenty miles per hour:

(*b*) If the aggregate weight of the vehicle and of every trailer drawn thereby, exceeds six tons, but does not exceed eleven tons, twenty-five miles an hour:

(*c*) If the aggregate weight of the vehicle and of every trailer drawn thereby, exceeds three tons, but does not exceed six tons, thirty miles an hour.

(2) No person shall drive on any road any commercial motor vehicle, not drawing a trailer, at any speed in excess of those hereinafter prescribed:—

(*a*) If the weight of the vehicle exceeds eleven tons, twenty-five miles an hour:

(*b*) If the weight of the vehicle exceeds six tons but does not exceed eleven tons, thirty miles an hour:

(*c*) If the weight of the vehicle exceeds three tons, but does not exceed six tons, thirty-five miles an hour.

(3) For the purposes of this section the weight of a vehicle or of a trailer drawn thereby shall be the weight of the vehicle or trailer together with the weight of the load (if any), (including passengers, fuel, and equipment), carried thereon.

(4) Nothing in subsections (1), (2), and (3) of this section shall affect the obligation of any person to comply with any other provision of this Act relating to the speed at which motor vehicles may be driven.

(5) If any person contravenes this section in any way he shall be guilty of an offence.

(6) The Governor may for the purpose of this section make regulations—

(*a*) providing for the ascertainment of the weight of vehicles, trailers, and their loads, or any part of their loads, whether by calculation, measurement or by weighing the vehicles, trailers and loads on any weighbridge, or by means of any loadometer or other prescribed apparatus;

(*b*) prescribing the duties of persons in charge of vehicles and trailers in relation to the ascertainment of the weight of the vehicles, trailers and their loads or any part of their loads; and

(*c*) prescribing penalties not exceeding ten pounds for breach of any such regulation.

Speed of heavy motor vehicles on certain roads.

Inserted by 2332, 1936, s. 35.

175. If any person on any road which is not paved with bitumen, concrete, or wooden blocks drives at a greater speed than thirty miles per hour any motor vehicle which weighs more than two tons when unladen, he shall be guilty of an offence.

Vehicles with metal tires.

Inserted by 2332, 1936, s. 35.

176. (1) If any person on any improved main road drives any motor vehicle having one or more metal tires at a greater speed than six miles per hour he shall be guilty of an offence.

(2) If any person on any improved main road drives any vehicle drawing a trailer having one or more metal tires he shall be guilty of an offence: Provided that if the commissioner of Highways is satisfied that any piece of heavy machinery or other merchandise cannot be taken apart without great expense or loss, he may issue to any person a permit (subject to any conditions specified therein) authorising that person to use a trailer with metal tires for transporting that piece of machinery or other merchandise along any main road specified in the permit.

Information to be painted on vehicles.

Inserted by 2332, 1936, s. 35.

177. (1) Every motor lorry (not being a buckboard) and every vehicle carrying passengers or goods for hire in actual use on any road shall have the name and address of the owner thereof and the weight of the vehicle unladen painted on

some conspicuous part of the off side of the vehicle in letters not less than two inches high and one inch wide.

For the purpose of this subsection:

"name" means—

(*a*) in the case of a vehicle owned by an individual, the Christian names or the initials of the Christian names and the full surname of that individual; and

(*b*) in the case of a vehicle owned by a firm, the registered name of the firm; and

(*c*) in the case of a vehicle owned by a company or body corporate, the registered name of the company, or the full name of the body corporate:

"address" means either place of abode or place of business:

"buckboard" means a vehicle adapted partly for the carriage of goods and partly for the carriage of passengers and weighing when unladen less than thirty-two hundredweights.

(2) Every motor lorry or tractor (for whatever purpose used) having any tires which are not pneumatic tires shall have, in addition to any particulars required under subsection (1), its weight unladen, together with the speed at which the lorry or tractor may travel under section 174 clearly and distinctly painted on the off side of the lorry or tractor in figures not less than two inches high and one inch wide.

(3) If any person owns or drives on any road any vehicle not complying with this section he shall be guilty of an offence: Provided that where the owner and the driver are different persons, both shall not be punished in respect of the same non-compliance.

Damage to roads and works.

Inserted by 2332, 1936, s. 35.

178. Any person who—

(*a*) otherwise than by reasonable use thereof damages any road, bridge, or culvert; or

(*b*) removes, damages, or interferes with any guard fence, post, traffic sign, direction sign, notice, mark, light, signal, barrier, lamp, or other thing erected or placed thereon by or with the consent of a road authority, or by the Royal Automobile Association of South Australia, Incorporated; or

(*c*) does any act or makes any omission of such a nature as to be likely to injure any such road or other thing,

shall be guilty of an offence, and in addition to being liable to a fine, shall pay to the road authority compensation for the damage done.

Notice of damage.

Inserted by 2332, 1936, s. 35.

179. If the driver or person in charge of any vehicle causing damage to any improved main road does not forthwith give to the road authority in whose area the damage has been caused notice of that damage, with full particulars of any damage to the surface of the road or to bridges, culverts, guard fences, or posts on the road, he shall be guilty of an offence.

Penalty.

Inserted by 2332, 1936, s. 35.

180. Any person who commits an offence against this Part shall be liable, on summary conviction, to a penalty not exceeding twenty pounds.

Appointment of authorised officers.

Inserted by 2332, 1936, s. 35.

181. The commissioner may appoint any person to be an authorised officer for the purpose of this Part, and any municipal or district council may appoint any person to be an authorised officer for the purpose of this Part within the district of such district council or municipal corporation.

Application to employees of Crown.

Inserted by 2332, 1936, s. 35.

182. This Part shall be binding on any person in the employ of the Government of the State.

SCHEDULE.

ACTS REPEALED.

No. and Year of Act.	Title of Act.
No. 19 of 1853	An Act to provide for the regulation and licensing of Public Conveyances, and to prevent the wanton ill-treatment of Horses and Cattle.
No. 1 of 1854	An Act to amend "An Act to provide for the regulation and licensing of Public Conveyances, and to prevent the wanton ill-treatment of Horses and Cattle."
No. 1370 of 1919 (except sections 12, 13, and 14 thereof)	Lights on Vehicles Act, 1919.
No. 1609 of 1924	Lights on Vehicles Act Amendment Act, 1924.
No. 1858 of 1928	Lights on Vehicles Act Amendment Act, 1928.
No. 2019 of 1931	Lights on Vehicles Act Amendment Act, 1931.
No. 1480 of 1921	Motor Vehicles Act, 1921.
No. 1527 of 1922	Motor Vehicles Act Amendment Act, 1922.
No. 1645 of 1924	Motor Vehicles Act, 1924.
No. 1695 of 1925	Motor Vehicles Act Amendment Act, 1925.
No. 1760 of 1926	Motor Vehicles Act Amendment Act, 1926.
No. 1827 of 1927	Motor Vehicles Acts Amendment Act, 1927.
No. 1941 of 1929	Motor Vehicles Act, 1929.
No. 2095 of 1932	Motor Vehicles Act, 1932.
No. 2131 of 1933	Motor Vehicles Act, 1933.
No. 1580 of 1923	Width of Tires Act, 1923.
No. 1641 of 1924	Width of Tires Act Amendment Act, 1924.
No. 1714 of 1925	Width of Tires Act Amendment Act, 1925.
No. 1961 of 1930	Width of Tires Act, 1930.
No. 1699 of 1925	Vehicles (Licensing) Act, 1925.
No. 1823 of 1927	Vehicles (Licensing) Amendment Act, 1927.
No. 2169 of 1934	Lights on Vehicles Act Amendment Act, 1934.