

Acts reprinted pursuant to the Amendments Incorporation  
Act, 1937

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LOTTERY AND GAMING ACT, 1936-1950  
ROAD TRAFFIC ACT, 1934-1950

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With notes of judicial decisions affecting sections of the reprinted Acts



The Lottery and Gaming Act, 1936-1956, including all amendments passed to the end of 1959 and notes of judicial decisions, is reprinted in the Annual Volume, 1959, at page 273.



## LOTTERY AND GAMING ACT, 1936-1950.

BEING

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

AS AMENDED BY

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

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

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

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

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

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

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

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

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

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

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

AND

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

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

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

#### PART I.

PART I.

#### PRELIMINARY.

1. This Act may be cited as the "Lottery and Gaming Act, 1936-1950". Short title.

## PART I.

Division  
of Act.

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

- PART I.—Preliminary.
- PART II.—Lotteries.
- PART III.—Totalizator.
- PART IV.—Licensing of Bookmakers.
- PART V.—Unlawful Gaming.
- PART VI.—Common Gaming-houses.
- PART VII.—Evidence.
- PART VIII.—Procedure and Miscellaneous.

Repeal.

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

Interpreta-  
tion.

1285, 1917,  
s. 4.  
1447, 1920,  
s. 3.  
1494, 1921,  
s. 3.  
2185, 1933,  
s. 3.

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

“board” means the Betting Control Board:

“chairman” means the chairman of the board:

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

“loiter” means to idle or linger about:

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

Amended by  
2417, 1938,  
s. 2.

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

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

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

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

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

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

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

“public place” means—

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

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

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

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

## PART I.

cise, whether such race, game, sport, or exercise shall be within or outside the State:

Of. U.K.  
18 & 19  
Geo. 5, c. 41,  
s. 1 (8) (a).

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

“unlawful gaming” means—

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

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

## PART II.

## PART II.

## LOTTERIES.

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

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

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

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

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

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

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

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

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

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

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

7. No person shall promise or agree to—

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

(a) pay any sum of money; or

(b) deliver any goods; or

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

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

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

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

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

Advertising lotteries.  
1285, 1917, s. 8.  
Of U.K. 9 Anne, c. 6, s. 57;  
6 & 7 Will. 4, c. 66, c. 1; 24 & 25 Geo. 5, c. 58, s. 22.

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

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

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

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

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

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

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

#### 10. No person shall—

(a) print, publish, or exhibit, or cause to be printed, published, or exhibited in any newspaper, or on any placard, handbill, circular, or card, any advertisement, sign, notice, or other information of or relating to the establishment, commencement, promotion, carrying on, or drawing, or intended establishment, commencement, promotion, carrying on, or drawing of any illegal lottery, whether wholly or partly established, commenced, carried on, promoted, or managed in the State or elsewhere; or

(b) being registered as the proprietor, printer, or publisher of any newspaper, permit or suffer any such advertisement, sign, notice, or information to be printed or published in such newspaper; or

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

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

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

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

(c) print any ticket or other thing entitling or intended to entitle any person or persons to any chance or share in any illegal lottery; or

(d) sell, circulate, exhibit, or dispose of any newspaper printed in any part of the Commonwealth of Australia which contains any advertisement, sign, notice, or information relating to any illegal lottery, or the drawing, conduct, or management thereof.

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

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

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

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

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

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

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

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

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

(a) that any packet, parcel, money, cheque, draft, order for the payment of money or valuable thing specified in such complaint has been forwarded or

partly forwarded, or has been given or received for the purpose or intent that the same should be forwarded (as the case may be):

- (b) that any person or persons, club, association, or company named in the complaint is the promoter, manager, or conductor (as the case may be) of any illegal lottery:
- (c) that any lottery named or described in the complaint is an illegal lottery,

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

## PART III.

## TOTALIZATOR.

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

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

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

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

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

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

(6) In granting any licences the Commissioner of Police shall give priority to the claims of any racing club owning or

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

leasing a racecourse and to whom a licence was issued prior to the twentieth day of November, nineteen hundred and thirty.

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

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

**17.** (1) No licence shall be issued for the use of the totalizator on any racecourse situate within ten miles of any racecourse in respect of which a licence to use the totalizator has been or usually is issued, and where more applications than one are simultaneously made for racecourses situate within twenty miles of each other, it shall be in the discretion of the Commissioner, subject to the approval of the Chief Secretary, to license which racecourse he thinks fit.

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

(2) This section shall not apply to the racecourses known as the Victoria Park, Morphettville, Cheltenham, and Onkaparinga racecourses, nor to the racecourses used by James-town Jockey Club, the North-Western Jockey Club, and the Quorn Jockey Club.

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

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

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

- i. that there are at least one hundred members of such club; and
- ii. that the annual value of members' subscriptions of such club amounts to not less than two hundred pounds;

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

- i. that there are at least fifty members of such club; and
- ii. that the annual value of members' subscriptions amounts to not less than fifty pounds.

Number of  
times  
totalizator  
may be used.

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

Amended by  
2417, 1938,  
s. 3, and by  
46, 1948, s. 3.

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

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

Provided that a licence granted to the South Australian Jockey Club, Limited, may sanction the use of the totalizator on the Morphettville racecourse on one additional day if the Commissioner of Police is satisfied that on that day a race meeting will be held on that course by at least three racing clubs jointly, and that the net profits from that meeting will be devoted to charitable purposes:

Provided also—

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

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

- (b) on any other racecourse for more than eight days in any one year:

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

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

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

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

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

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

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

- (a) a written permit shall be obtained from the Chief Secretary authorizing the club to conduct the trotting races:
- (b) the permit shall specify the days on which the trotting races may be held, and no day other than a Saturday or public holiday (not being a Good Friday or Christmas day) shall be so specified:

## Lottery and Gaming Act, 1936-1950.

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

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

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

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

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

- (a) in the metropolitan area at more than thirty-five meetings in the aggregate in any year or at any meeting other than a night meeting;
- (b) on Eyre Peninsula at more than twenty meetings in the aggregate in any year, or at any meeting other than a day meeting held on a Saturday, or on a public holiday (not being Good Friday or Christmas day);
- (c) in areas other than the metropolitan area and Eyre Peninsula at more than sixty meetings in the aggregate in any year;
- (d) in any one town outside the metropolitan area at more than eleven meetings in any year.

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

in the case of licences outside the metropolitan area, shall not be issued for more than one day or night for any trotting club.

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

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

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

“Eyre Peninsula” means—

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

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

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

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

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

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

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

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

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

Penalty—Twenty pounds.

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

## PART III.

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

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

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

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

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

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

If any trotting club fails to nominate a delegate the board may nominate one on its behalf. Every delegate so nominated shall be a member of the League as from the first day of January next following his nomination.

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

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

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

Amended by  
58, 1950, s. 2.

(7) The League shall not delegate its powers to any sub-committee or other body, but this subsection shall not prevent the League from employing officers and servants to assist it in carrying out its functions: Provided that this subsection shall not prevent the League from appointing an Appeal Committee to hear and determine appeals against the decisions of trotting stewards.

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

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

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

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

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

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

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

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

Application of Lottery and Gaming Act to totalizator at trotting races.  
2188, 1934, s. 18.

**23a.** (1) If any licence is issued to the committee or executive body of any racing club or trotting club, authorizing the use of the totalizator upon any racecourse or trotting

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

## Lottery and Gaming Act, 1936-1950.

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

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

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

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

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

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

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

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

(a) revoke the licence of that club:

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

26. The Governor may—

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

- (a) revoke or vary any of the rules and regulations set out in the second schedule hereto:
- (b) make new rules and regulations in addition to or in substitution for any of such rules and regulations:
- (c) make regulations—
  - i. for regulating the manner of approaching to and departing from totalizators;
  - ii. generally for regulating the conduct of persons in the vicinity of totalizators;
  - iii. authorizing members of the police force to control and direct the conduct of persons in the vicinity of totalizators;
  - iv. providing for the compliance by persons in the vicinity of totalizators with the reasonable directions of members of the police force; and
  - v. imposing a penalty, not exceeding ten pounds, for the breach of any regulations made under the provisions of subdivision (c) of this section.

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

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

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

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

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

Penalty—Twenty pounds.

## PART III.

Mode of dealing with moneys paid into totalizator.

1285, 1917, s. 23.  
1494, 1921, s. 5.  
1877, 1928, s. 5.  
Of. U.K. 24 & 25  
Geo. 5, c. 58, s. 18.

## 28. (1) Every club—

- (a) shall deduct (for the purpose of being dealt with in accordance with this section) twelve and three-quarters per centum of the moneys paid into the totalizator in respect of each race;
- (b) shall, after making such deduction, pay out by way of dividends all moneys paid into the totalizator, but so that it shall not be necessary—
- (i.) in respect of a ticket issued on payment of any sum not exceeding five shillings, to pay out any smaller fraction of a shilling than three pence; and
  - (ii.) in respect of a ticket issued on payment of any sum exceeding five shillings, but not exceeding ten shillings, to pay out any smaller fraction of a shilling than six pence; and
  - (iii.) in respect of a ticket issued on payment of any other sum to pay out any fraction of a shilling.

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

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

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

Club to render account.

1285, 1917, s. 24.  
1447, 1920, s. 6.  
1494, 1921, s. 6.

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

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

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

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

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

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

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

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

## PART III.

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

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

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

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

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

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

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

## PART IV.

## PART IV.

## LICENSING OF BOOKMAKERS.

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

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

*Gf. U.K.*  
24 & 25  
Geo. 5, c. 58,  
ss. 2, 3.

*Interpretation.*

1285, 1917,  
s. 25a.  
2135, 1933,  
s. 4.  
2159, 1934,  
s. 4.

*Amended by*  
2417, 1938,  
s. 6.

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

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

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

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

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

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

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

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

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

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

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

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

Power to  
make  
proclamation.  
Inserted by  
2417, 1938,  
R. J.

## Lottery and Gaming Act, 1936-1950.

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

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

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

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

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

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

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

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

Amended by  
2417, 1938,  
s. 8.

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

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

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

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

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

Betting  
Control  
Board.

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

Substituted  
by 2417,  
1938, s. 9.

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

Inserted by  
42, 1945, s. 3.

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

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

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

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

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

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

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

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

Remuneration  
of board.

1285, 1917,  
s. 25d.  
2135, 1933,  
s. 4.

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

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

Financial  
provision.

Inserted by  
36, 1950, s. 4.

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

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

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

Officers of  
board.

1285, 1917,  
s. 25e.  
2135, 1933,  
s. 4.

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

Exemption of  
board from  
stamp duties.

Inserted by  
2417, 1938,  
s. 10.

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

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

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

Power of board to make rules as to bookmakers.

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

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

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

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

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

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

Lottery and Gaming Act, 1936-1950.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40. (1) Every bookmaker shall, not later than noon on Saturday in every week, pay to the board—

Payment of commission on bets and returns.

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

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

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

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

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

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

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

Amended by  
13, 1939, s. 4.

(3) Every bookmaker shall not later than noon on Saturday in every week forward to the board a return in the form fixed by the board from time to time—

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

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

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

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

Application of  
commission.

Substituted  
by 36, 1950,  
s. 5.

41. (1) The board shall—

- (a) keep full and true accounts of all money received by it as commission under section 40;
  - (b) forthwith upon the receipt of any such money pay it to the Treasurer to be held by him on behalf of the board until it is applied in accordance with this Act.
- (2) The board shall apply the commission as follows:—
- (a) the commission on all bets made on races held outside the State shall be paid to the Treasurer in aid of the general revenue of the State:

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

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

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

Registration of premises.  
1285, 1917, s. 251.  
2185, 1933, s. 4.  
2188, 1934, s. 4.

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

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

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

## Lottery and Gaming Act, 1936-1950.

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

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

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

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

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

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

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

(1i) In this section—

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

“the metropolitan area” means—

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

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

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

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

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

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

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

(6) No person shall—

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

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

(b) keep any registered premises open to the public,

at any time on a day on which a race meeting is appointed to be held or is held at a racecourse within ten miles of those premises.

Penalty—A fine not exceeding one hundred pounds.

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

Inserted by  
2417, 1938,  
s. 15.

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

Penalty—Fifty pounds.

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

Unlawful  
betting.

Inserted by  
2417, 1938,  
s. 16.

**42a.** (1) Any person who—

(a) carries on business as a bookmaker; or

(b) bets with a bookmaker on the result of any horse racing, trotting, or coursing event,

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

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

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

Betting  
tickets.

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

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

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

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

(3) If any bookmaker—

(a) fails to issue and deliver any ticket as required by this section; or

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

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

(b) issues or delivers to any person in respect of any bet a betting ticket previously used in respect of any other bet,

he shall be guilty of an offence.

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

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

Penalty—Five pounds.

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

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

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

Stamp duty on betting tickets.

1285, 1917, s. 25n.  
2135, 1933 s. 4.  
2188, 1934, s. 5.

Subsec. (1) substituted by 2417, 1938, s. 17.

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

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

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

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

44a. (1) Subject as hereinafter provided, there shall be charged upon every payment made to any person by a licensed bookmaker in respect of any bet made with him by that person on any racecourse or trotting ground or on any premises registered under this Part a tax at the rate fixed by subsection (2) of this section: Provided that no tax shall be paid on the amount of any money betted which is refunded in accordance with any rule of the board.

Tax upon winning bets.

Inserted by 2417, 1938, s. 18, and substituted by 36, 1950, s. 6.

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

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

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

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

(6) If any bookmaker—

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

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

he shall be guilty of an offence.

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

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

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

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

held the meeting, and one-twelfth to the club owning the course.

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

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

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

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

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

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

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

(8) If the Treasurer is satisfied that a club has not increased stakes as required by this section or has failed to supply the board with information required under this section he may direct that any tax which would otherwise be payable to that club under this section shall not be paid.

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

(10) In this section—

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

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

Betting with minors.

1285, 1917, ss. 250 and 250a.  
2135, 1933, s. 4.  
2188, 1934, s. 6.  
Cf. U.K. 25 & 25 Geo. 5, c. 58, s. 15.

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

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

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

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

Penalty—Ten Pounds.

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

Penalty—Ten Pounds.

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

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

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

(a) furnish to the board any return which is false in any material particular:

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

(b) fail to include in any such return any bet or other transaction or particular required to be included:

(c) fail to record in accordance with the rules every bet made by him.

Penalty—Fifty pounds, or imprisonment for three months.

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

Cancellation of licences.  
1285, 1917, s. 25q.  
2135, 1933, s. 4.  
2183, 1934, s. 7.  
Amended by 13, 1939, s. 6.

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

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

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

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

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

Penalty—Twenty pounds.

(5) For the purpose of this section—

(a) an agricultural show shall not be deemed to be a trotting race meeting:

(b) “metropolitan area” means the area within a radius of twenty-five miles from the General Post Office at Adelaide.

48a. Where any money which, under this Part or the rules is payable by the board to any person, has been held by the board for twelve months after that person first became

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

## PART IV.

entitled thereto, and during that period no claim has been made to that money by the person entitled thereto, the board shall pay that money to the Treasurer in aid of the general revenue of the State.

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

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

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

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

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## PART V.

## PART V.

## UNLAWFUL GAMING.

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

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

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

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

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

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

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

- (a) alleged to be won upon any bet; or
- (b) which has been deposited in the hands of any person to abide the event on which any bet has been made:

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

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

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

Extending provisions to gaming with coin, etc.  
1285, 1917, s. 28.

- (a) plays at any game or pretended game of chance; or
- (b) bets by way of wagering or gaming on any game or pretended game of chance,

shall be deemed a rogue and vagabond within the meaning of the Police Act, 1916, and may be so convicted and punished under the provisions of that Act.

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

Gambling, etc., in public places.  
1285, 1917, s. 29.

- (a) exhibit any implements or articles for unlawful gaming, in order to induce or entice any person to engage in any unlawful gaming; or
- (b) by any fraudulent act or device, cheat any person.

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

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

Betting with infants.  
1285, 1917, s. 30.

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

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

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

Penalty—Twenty pounds.

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

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

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

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

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

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

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

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

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

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

- (a) carry on any sweepstakes; or
- (b) pay, deposit, or receive any money or valuable thing for or in respect of any such sweepstakes; or
- (c) give or receive any card, ticket, paper, document, or other thing relating to or in connection with any such sweepstakes.

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

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

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

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

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

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

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

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

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

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

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

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

Certain games unlawful.  
1285, 1917, s. 36.  
2494, 1921, s. 7.  
Of U.K. 33 Hen. 8, c. 9; 12 Geo. 2, c. 28, s. 2; 13 Geo. 2, c. 19, s. 9.

**60.** No person shall—

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

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

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

(2) For a second offence the offender shall be deemed a rogue and vagabond within the meaning of the Police Act, 1916, and as such may be convicted and punished.

s. 60. BEE V. JANZEN (1884) 13 S.A.L.R. 39; 9 Austn. Digest 510. Where a number of persons stake money on the result of a game played in a public place and in which they take no part, they are guilty of betting.

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

The Police Act, 1916, has been repealed and superseded by the Police Act, 1936-1946.

Unlawful gaming and playing of unlawful games.

1285, 1917, s. 38.  
1494, 1921, s. 8.  
Of U.K.  
12 Geo. 2, c. 28, s. 3;  
18 Geo. 2, c. 34, s. 2.

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

Penalty—One hundred pounds.

(2) No person shall play any unlawful game.

Penalty—One hundred pounds.

(3) No person shall—

(a) be present at any unlawful gaming or at the playing of any unlawful game; or

(b) be in any place in which any unlawful gaming is taking place, without lawful excuse (the proof of which excuse shall be upon him).

Penalty—Twenty pounds.

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

Penalty—For a first offence, not more than fifty pounds:

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

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

Being in public place for betting.

1285, 1917, s. 39.  
1447, 1920, s. 7.  
1494, 1921, s. 11.  
1877, 1928, s. 4.  
2135, 1933, s. 5.

Of U.K.  
24 & 25 Geo. 5, c. 58, ss. 2, 30.

Amended by 42, 1945, s. 9.

- s. 61. BURCHELL v. STYLES (1906) S.A.L.R. 11; 9 Austn. Digest 447. Held, under Act 812, 1902, section 7, which penalized "a person found in a place used for unlawful gaming, without lawful excuse," that the onus of proving lawful excuse was on the defendant.
- s. 62. LAMPARD v. ALLCHURCH (1924) S.A.S.R. 341; 9 Austn. Digest 510. Settling bets is not betting within the meaning of section 62. [But see now section 62 (3).] An offence against section 62 may be committed if the defendant forms the purpose of betting while in a public place, and remains there to give effect to that purpose.
- CONNELLY v. ALLCHURCH (1925) S.A.S.R. 7; 9 Austn. Digest 543. Held that memorandum pads (on one of which the defendant was proved to have written), booklets, a settling book, a settling sheet, and a doubles book carried by the defendant on the relevant occasion were admissible in evidence to show the purpose of the defendant.
- ALLCHURCH v. BERESFORD (1928) S.A.S.R. 450; 9 Austn. Digest 533. An acquittal of a charge under section 62 will not support a plea of *autrefois acquit* on a complaint under section 90 (3).
- THATCHER v. LENTHALL (1933) S.A.S.R. 322; 12 Austn. Digest 635. In fixing the penalty for an offence under section 62 an important matter to be considered is whether the evidence discloses anything in the nature of a regular business of betting, and the size of the business.
- LANE v. GILES (1934) S.A.S.R. 311. Held that the evidence did not prove that the appellant was in a public place for the purpose of betting. LAMPARD v. ALLCHURCH (*supra*) approved but distinguished.
- KIRK v. MILLER (1936) S.A.S.R. 277. A person negotiates bets if he undertakes to make bets for other persons with a registered bookmaker in a betting shop.
- O'HALLORAN v. CRAFTER (1940) S.A.S.R. 29. When a barman whilst acting as such conducted betting operations in the bar held that, notwithstanding that he was

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

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

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

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

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

Loitering  
in street.  
1285, 1917,  
s. 40.

Penalty—Twenty pounds, or imprisonment for two months.

**64.** No person shall—

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

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

s. 62. in the bar acting as barman, he was there for the purpose of betting and was properly convicted under section 62.

KING v. McDONALD (1943) S.A.S.R. 3. When the evidence did not show that the defendant made more than a single bet in a saloon bar, held that he should not be convicted of being in a public place for the purpose of betting. The proper inquiry is whether the evidence shows that the defendant had the purpose of making bets and went to or remained in the public place with a view to accomplishing that purpose.

WILLIAMS v. BUTLER (1947) S.A.S.R. 442. Where a person was in a hotel for the purpose of betting as a bookmaker and another person, acting as his agent, received a bet in the hotel and passed it on to him, held that the agent aided and abetted in the offence and was liable to conviction as a principal offender.

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

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

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

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

## Lottery and Gaming Act, 1936-1950.

(b) cause to be printed, exhibited, published, sold, circulated, distributed, given away, or posted up, any newspaper or printed card or written document, list or card (whether published, written, or printed in the State or elsewhere), which contains or purports to contain any advertisement or notification by or on behalf of any person, club, or association, as to betting on any intended horse, pony, trotting race or races, coursing event, or other sport or exercise whatever in any part of the Commonwealth, or as to betting odds on any such race or races.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Penalty—Fifty pounds.

**68.** No person shall—

- (a) placard, post up, or exhibit; or
- (b) permit or suffer to be placarded, posted up, or exhibited; or
- (c) assist in placarding, posting up, or exhibiting,

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

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

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

Removal from racecourses of persons suspected of offences. 1285, 1917, s. 44. 1447, 1920, s. 8. 1494, 1921, s. 9. 2185, 1938, s. 8.

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

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

## Lottery and Gaming Act, 1936-1950.

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

Penalty—Fifty pounds.

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

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

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

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

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

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

(4) Except as mentioned in subsection (3) no member of the police force or other person, acting in good faith in the intended exercise of the powers conferred on him under this

section, shall be liable to any proceedings, civil or criminal, in consequence of his having so acted.

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

Penalty—Fifty pounds.

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

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

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

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

71. (1) It shall be lawful for—

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

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

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

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

(a) to enter or re-enter into and upon and search the place therein named at any time and from time to time, and at all times during the day or night,

Power of the police.

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

## Lottery and Gaming Act, 1936-1950.

within the space of three clear days from the date of the warrant:

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

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

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

**72.** No person shall wilfully—

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

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

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

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

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

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

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

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

during the said days and hours closes any such door or means of entrance shall be guilty of an offence.

Penalty—A fine not exceeding one hundred pounds.

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

## COMMON GAMING HOUSES.

Common gaming-houses.

1285, 1917, ss. 47 & 48.  
1447, 1920, s. 9.  
Of. U.K. 8 & 9 Vict., c. 109, s. 2; 16 & 17 Vict., c. 119, s. 2.

74. (1) Any house, office, room, or place—

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

shall be deemed to be a common gaming-house.

(2) A house, office, room, or place where an unlawful game is carried on shall be deemed to be a common gaming-house, notwithstanding that the same is open only for the use of

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

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

subscribers or of members or shareholders of any particular club or company, and is not open to all persons desirous of using the same.

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

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

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

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

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

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

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

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

(a) as a common gaming-house; or

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

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

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

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

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

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

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

## Lottery and Gaming Act, 1936-1950.

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

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

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

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

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

(a) as a common gaming-house; or

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

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

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

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

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

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

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

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

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

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

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

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

Inserted by  
42, 1945,  
s. 10.

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

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

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

(2) In any proceedings under this Act the production of a copy of the *Gazette* containing such notice shall be evidence that the declaration or rescission therein notified was duly made.

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

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

(a) shall cause to be published on two days in a newspaper circulating in the neighbourhood of the

## Lottery and Gaming Act, 1936-1950.

house, office, room, or place, a notice of the making of the declaration:

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

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

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

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

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

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

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

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

**85.** If after service on an owner, in pursuance of paragraph (b) of section 83 of notice of the making of a declaration with respect to a house, office, room, or place and while the declaration is in force, that house, office, room, or place is used in contravention of this Act, the owner shall, unless he proves that he has taken all reasonable steps to evict the occupier from the same, be liable to a penalty of not less than thirty and not more than one hundred pounds.

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

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

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

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

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

88. No person shall—

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

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

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

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

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

Certain  
offences.  
Inserted by  
2417, 1938,  
s. 24.

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

## PART VI.

Evidence of house being a gaming-house. 1285, 1917, s. 62. Cf. U.K. 17 & 18 Vict., c. 38, s. 2.

## 89. If—

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

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

Keeping house for purpose of gaming.

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

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

- (a) unlawful gaming;
- (b) the occupier betting with persons resorting thereto:
- (c) any money or valuable thing being received by or on behalf of the occupier as or for the consideration for any assurance, undertaking, promise, or agree-

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

- s. 89. *JOHNS v. MILBURN* (1934) S.A.S.R. 317. Where the police were delayed in entering a house, but gave no notice to the occupier that they were armed with a warrant, held that such delay did not establish a *prima facie* case on complaints for being the occupier of a house used for unlawful gaming, and for being the occupier of a common gaming house.
- s. 90. *ALLCHURCH v. BERESFORD* (1928) S.A.S.R. 450; 9 Austn. Digest 533. An acquittal under section 62 will not support a plea of *autrefois acquit* on a complaint under section 90 (3).
- BOND v. JENNINGS* (1930) S.A.S.R. 103; 9 Austn. Digest 480. Held that a "tipping" competition organized by proprietors of a newspaper was an undertaking to pay money on an event relating to a horse race.
- LENTHALL v. MITCHELL* (1933) S.A.S.R. 231; 9 Austn. Digest 446. A place used for unlawful gaming includes a common gaming house. The acts, words, and

ment, express or implied, to pay or give thereafter any money or any valuable thing on any event or contingency of or relating to any race, fight, game, sport, or exercise, or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency.

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

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

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

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

Inserted by  
2417, 1938,  
s. 25.

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

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

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

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

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

s. 90. conduct of persons using premises are relevant to show what its character is (contd.) regardless of whether there is an occupier in any other sense or not.

WADE v. TROTTER (1934) S.A.S.R. 62. Held that a fine of £100 or in default imprisonment for 12 months was an excessive penalty where it was not shown that the defendant had any interest in the betting being carried on in his hotel.

BOND v. FORAN (1934) 53 C.L.R. 364; affirming FORAN v. BOND (1934) S.A.S.R. 323; 9 Austn. Digest 485. To prove an offence against section 90 (3) it is necessary to prove *mens rea* in the sense that the occupier of the premises or the person to whom the management of the premises was committed, knew or connived at the use to which the premises were put. In order that the premises may be "used" within the meaning of section 90 (3), it must be shown that the person carrying on the illegal business has so acted as to establish the premises as his business site.

GROW v. LORD (1947) S.A.S.R. 451; 22 A.L.J. 94. A complaint under subsection (3) which alleges no other purpose than "unlawful gaming" is defective for want of particularity.

## Lottery and Gaming Act, 1936-1950.

undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any such event or contingency.

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

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

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

(3) Any money or valuable thing received by any such person aforesaid as a deposit on any bet, or as or for the consideration for any such assurance, undertaking, promise, or agreement, as aforesaid, shall be deemed to have been received to or for the use of the person from whom it was received, and that money or valuable thing, or the value thereof, may be recovered accordingly, with full costs of suit, in any court of competent jurisdiction.

### 93. No person shall—

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

(b) on behalf of the occupier of any such house, office, room, or place invite other persons to resort thereto, for the purpose of making such bets.

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

Exhibiting placards or advertising betting-houses.

1285, 1917, s. 65.

Amended by 42, 1945, s. 12.

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

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

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

Penalty—Thirty pounds, or imprisonment for two months.

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

Giving false names or addresses.  
1285, 1917, s. 67.  
Cf. U.K. 17 & 18 Vict., c. 38, s. 3.

Penalty—Fifty pounds, or imprisonment for one month.

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

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

PART VII.

PART VII.

EVIDENCE.

97. No member of the police force acting under the orders or instructions of any other member of the police force who is his superior in rank, and no other person acting under the lawful instructions of any member of the police force, shall be deemed to be an accomplice in the commission of any offence

Immunity of police and other authorized persons.  
1285, 1917, s. 69.  
1447, 1920, s. 10.

against this Act, nor shall the member giving such order or instructions, nor the member or other person who acts in pursuance or attempted pursuance thereof be liable to conviction or punishment for any act or matter done or committed by either of them in relation to or under such order or instructions, although, but for this section, such members or other person or any of them might have been deemed to be such accomplices or accomplice or have been liable to such conviction or punishment.

Incriminating  
evidence.

1285, 1917,  
s. 70.

**98.** (1) No person (other than the defendant) required to be examined as a witness in the hearing of any complaint laid in relation to any offence alleged to have been committed against this Act, shall be excused from being so examined or from answering any question or questions put to him as such witness on the ground that his evidence or the answer to any such question or questions might tend to incriminate him or render him liable to a prosecution.

Cf. U.K.  
17 & 18 Vict.,  
c. 38, s. 5.

(2) Any such person so required to be examined who refuses to make oath accordingly or to answer any question or questions shall be liable to the same penalties and to be dealt with in all respects as any witness may be dealt with for refusing to be sworn or to give evidence.

Cf. U.K.  
18 Geo. 2,  
c. 34, s. 9;  
8 & 9 Vict.,  
c. 109, s. 9;  
17 & 18 Vict.,  
c. 38, s. 6.

(3) Every such person so required to be examined who upon such examination makes a true and faithful discovery to the best of his knowledge of all matters as to which he is examined shall receive from the court a certificate in writing to that effect, and thereupon, but not otherwise, be freed from all prosecution, penalties, and punishment to which he might have been or become liable in respect of the matters touching which he has been so examined.

Allegations to  
be *prima facie*  
proof.

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

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

(a) that any person, firm, company, or partnership (as the case may be) named in the complaint is the

- s. 98. *R. v. SCOTT; Ex parte SCOTT* (1927) S.A.S.R. 492; 9 Austn. Digest 545. Explanation of section 98. A person who procures himself to be called or is called as a witness for any sinister or collateral purpose is not "required to be examined" within the meaning of section 98 and, therefore, is not entitled to a certificate.
- TROTTER v. BADENOCH* (1931) S.A.S.R. 84; 9 Austn. Digest 546. On the trial of a person for aiding and abetting an offence, the principal offender (whose case had been adjourned part heard) was held not to be "the defendant" within the meaning of the exception of subsection (1), and was therefore entitled to the benefit of a certificate granted to him.
- BURKE v. CRAFTER* (1935) S.A.S.R. 323. A co-defendant is not a compellable witness under section 98. Held, that a co-defendant who gave evidence must be assumed to have been called as witness on his own application.
- s. 99. *LENTHALL v. MITCHELL* (1933) S.A.S.R. 231; 9 Austn. Digest 441. A defendant alleged in a complaint to be the occupier of premises must satisfy the court on the balance of probabilities that he is not such an occupier.

owner, user, or occupier (as the case may be) of any place, room, or premises mentioned in the complaint:

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

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

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

Knowledge of owner as to occupancy of premises.  
1285, 1917,  
s. 72.

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

Secondary evidence relating to lotteries.  
1285, 1917,  
s. 73.

102. (1) In any proceedings against any person for establishing, commencing, or being a partner in any illegal lottery, or managing, conducting, or assisting to manage or conduct any illegal lottery, or selling or disposing or buying or accepting any ticket or thing purporting to be or usually known as a lottery ticket and relating to an illegal lottery, it shall, in default of or in addition to other evidence, be sufficient in support of the complaint to show that such ticket or thing was bought or accepted by the purchaser or acceptor under the belief by him that the possession and production of such ticket purporting to be a lottery ticket or other thing conveyed a right to the purchaser or any holder thereof to draw for, compete, or have an interest in an illegal lottery.

Evidence of illegal lottery.  
1285, 1917,  
s. 74.

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

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

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

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

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

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

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

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

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

s. 105. *SANDERSON v. ALLCHURCH* (1922) S.A.S.R. 7; 9 Austn. Digest 511. Every offence against the Act is unlawful gaming within the meaning of section 105. Reasonable suspicion means a suspicion which a reasonable man could reasonably entertain on the evidence of the prosecution. On a charge of being in a public place for the purpose of illegal betting the following facts were held sufficient to raise a reasonable suspicion of guilt:—(a) The defendant, whilst standing in the front of the grandstand on a racecourse spoke to several men at intervals, made entries in a race book, and when approached by the police threw away the book and several slips of paper; (b) the defendant had £60 in notes in his pockets; (c) some of the slips had entries thereon requiring explanation.

*ALLCHURCH v. DENTON* (1922) S.A.S.R. 91. On a charge of being in a public place for the purpose of illegal betting, *semble* a reasonable suspicion may be entertained against a bookmaker's clerk, although his employer has been acquitted on a similar charge relating to the same occasion.

*THOMPSON v. ALLCHURCH* (1922) S.A.S.R. 217; 9 Austn. Digest 512. "Unlawful gaming" includes every offence against the Lottery and Gaming Act and a complaint may be for unlawful gaming although the words "unlawful gaming"

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

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

- s. 105. are not used. On a charge of being in a public place for the purpose of betting the following facts were held sufficient to raise a reasonable suspicion of guilt:—(a) The acts of the defendant in a public place prior to his being spoken to by the police, which acts were such as would be done by a man making a bet, though capable of an innocent interpretation; (b) the conduct of the defendant after arrest, which was incapable of an innocent interpretation.
- NATION v. KROGDahl (1923) S.A.S.R. 94; 9 Austn. Digest 444. On a charge of being the occupier of a common gaming house the following facts were held sufficient to raise a reasonable suspicion of guilt:—(a) That on one occasion a game of hazard was being played on the premises by a number of persons and that a considerable number of bets were made; (b) that the defendant was the occupier of the premises; (c) that he was familiarly addressed by some of the players; (d) that on the arrival of the police the lights were turned down, a warning cry was given, and the players dispersed.
- HOLMES v. ALLCHURCH (1926) S.A.S.R. 255; 8 Austn. Digest 470. Held that where the evidence for the prosecution raised a reasonable suspicion of guilt, but the mind of the special magistrate may have been influenced by evidence wrongly received, the conviction should be quashed.
- LAMPARD v. WEST (1926) S.A.S.R. 293; 9 Austn. Digest 536. Reasonable suspicion in the mind of the court leads inevitably to a conviction in absence of evidence for the defence if the reasonable suspicion is established on facts proved beyond reasonable doubt. Discussion of onus imposed on defendant by establishment of reasonable suspicion.
- MCLEAN v. DAWKINS (1930) S.A.S.R. 94; 9 Austn. Digest 541; reversing DAWKINS v. MCLEAN (1930) S.A.S.R. 7; 9 Austn. Digest 537. On a charge of being on licensed premises for the purpose of illegal betting, acts of the defendant consistent with making a bet, coupled with the absence of a denial or explanation of the suspicious circumstances were held sufficient to create a reasonable suspicion. Where magistrates hold a *prima facie* case exists by reason of section 105, they should say so.
- LENTHALL v. POWELL (1930) S.A.S.R. 185; 8 Austn. Digest 163, 468; 9 Austn. Digest 536, 546; affirmed by POWELL v. LENTHALL 44 C.L.R. 470; 4 A.L.J. 311; 9 Austn. Digest 542. Where the evidence on a charge for an offence against the Lottery and Gaming Act satisfies the judicial conscience that it is right to suspect the accused person, the court is bound to entertain the suspicion and hold that a *prima facie* case is made out.
- POWELL v. LENTHALL (1930) 44 C.L.R. 470; 4 A.L.J. 311; 9 Austn. Digest 542; affirming LENTHALL v. POWELL (1930) S.A.S.R. 185; 9 Austn. Digest 536, which reversed LENTHALL v. POWELL (1930) S.A.S.R. 13; 9 Austn. Digest 536. The Supreme Court on appeal may examine the whole adjudication of the magistrate under section 105 including both the question whether he had a suspicion and whether he ought to have had one.
- HINTON v. TROTTER (1931) S.A.S.R. 123; 5 Austn. Digest 716; 9 Austn. Digest 539. A *prima facie* case established by reasonable suspicion may be rebutted by disproving the facts on which the suspicion is founded, or by proving facts which make it more likely than not that the defendant is innocent. It is not enough for the defence to disprove particular facts if the suspicion remains as a real suspicion reasonably based on the facts in evidence. Failure to explain suspicious circumstances at the relevant time may support an inference of guilt.
- BOND v. BERESFORD (1931) S.A.S.R. 285; 9 Austn. Digest 444. Where the evidence for the prosecution is equally consistent with guilt and innocence, section 105 does not apply. There must be some evidence which warrants an inference of guilt rather than of innocence.
- MOORE v. NOBLET (1932) S.A.S.R. 6. On a charge of unlawful betting in a billiard saloon the following facts were held to justify a reasonable suspicion of guilt:—(a) That the defendant was in possession of and attempted to conceal a betting book; (b) that he had knowledge of its contents; (c) that

Certain allegations *prima facie* evidence.

1285, 1917,  
s. 77.

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

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

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

s. 105. he refused to give an explanation as to his possession of or interest in the (contd.) book when questioned by the police; (d) that he gave false evidence in the witness box.

BLIGHT AND ANOTHER V. BOND (1932) S.A.S.R. 121; 9 Austn. Digest 544. On a joint charge against two defendants for unlawful betting in an hotel, conduct of the defendants in the hotel consistent with betting, the facts that one of the defendants had a large sum of money of different denominations distributed over a number of pockets, and the other defendant had betting slips in his possession, and both defendants falsely denied any knowledge of the slips, held sufficient to justify a reasonable suspicion.

KING V. McDONALD (1943) S.A.S.R. 3. Section 105 requires the court to act on something less than the preponderance of probability, which would normally make out a *prima facie* case, but the evidence must approximate to a *prima facie* case.

GILES V. DODD (1943) S.A.S.R. 132. Held on the evidence adduced that the evidence was sufficient to raise a reasonable suspicion that unlawful betting had taken place.

JONES V. HARRIS (1946) S.A.S.R. 98. Where a person is charged with having carried on business as a bookmaker, documents containing memoranda from which betting transactions may be inferred and which are found either in his possession or under circumstances from which his previous possession may be reasonably inferred, are properly admissible to be used as circumstantial evidence to raise the suspicion that a bookmaking business has been carried on, although there may be no other evidence to prove possession or of bets having been made.

PETTREY V. WILLIAMS (1946) S.A.S.R. 303. To found a reasonable suspicion under the section it is necessary to establish something approximating a *prima facie* case.

RICHARDS V. GROW (1947) S.A.S.R. 125. If on the circumstances proved by the prosecution the inference of guilt is a reasonably possible explanation of the circumstances, the court is entitled to entertain a reasonable suspicion under the section, notwithstanding that there are other possible explanations which may be equally reasonable, but in finally deciding whether the court should entertain the suspicion the court should bear in mind the over-riding fact suggested in SANDERSON V. ALLCHURCH (*supra*) namely:—"Would a reasonable man reasonably suspect the defendant of the offence charged on the evidence for the prosecution?"

O'SULLIVAN V. McMAHON (1947) S.A.S.R. 466. When the evidence for the prosecution on a charge for an offence under the Act raises in the mind of the court any real suspicion of the defendant's guilt, there is *prima facie* evidence, under section 105, of the defendant's guilt and he should be called upon to answer the charge. In general, it would be a sufficient answer if the defendant gives a reasonable explanation, the honesty of which the court sees no reason to doubt, from the circumstances which have aroused suspicion.

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

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

(a) the opinion of the court on its own view of such person; or

(b) the opinion of a police officer who has seen such person,

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

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

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

(2) In this section “name” includes any name, or any designation whatever, used or assumed by any person or by which any person is usually known or which is usually applied to any business or business premises of any person.

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

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

PART VIII.

PART VIII.

PROCEDURE AND MISCELLANEOUS.

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

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

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

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

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

## PART VIII.

More than one offence may be charged in complaint.  
1285, 1917,  
s. 80.

**111.** In any complaint laid in respect of any alleged offence or offences against this Act any number of offences to the number of not more than three may be charged against the defendant and evidence given in support thereof; and the court may convict the defendant of any one of those offences which to the satisfaction of the court has been proved, and may inflict such penalty therefor as is by law provided.

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

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

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

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

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

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

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

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

**114.** (1) On complaint being laid on oath before a special magistrate by any police constable stating that the constable has reasonable grounds of suspicion that the premises occupied by or under the control of any company registered under The Companies Act, 1892, or the Companies Act, 1934, are being or have been during their occupation or control by that company used for the purpose of unlawful gaming, the special magistrate may issue his summons to the manager, secretary, or directors of the company, or any of them, requiring him or them or any of them to appear before him, the said magistrate, at the place and time mentioned in the summons, to answer the matter of the complaint and to show

s. 111. *ALLCHURCH v. TASKER* (1922) S.A.S.R. 336; 9 *Austn. Digest* 532. If more than one offence is proved the court has a discretion to convict of such offence as it thinks fit, and may hear the parties as to how its discretion should be exercised.

cause why the registration of the company should not be cancelled.

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

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

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

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

- (a) any premises in respect of which a licence granted under the Licensing Act, 1932, is in force;
- (b) any shop or any part of a building occupied in connection with or for the purposes of a shop;
- (c) any factory and the appurtenances of any factory;  
or
- (d) any building or place occupied by any club (whether a racing club or not) and the appurtenances thereof.

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

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

(3) The authority of a member of the police force, referred to in subsection (1) of this section, may be limited to one or more specified occasions, or one or more specified localities, or one or more specified places, or may authorize such member

## Lottery and Gaming Act, 1936-1950.

to act generally as in the subsection mentioned without limitation as to occasion, locality, or place, or may be limited in any manner deemed proper by the officer giving the authority.

Exemption of certain sweepstakes. 1285, 1917, s. 83A. 2135, 1933, s. 14. Cf. U.K. 24 & 25 Geo. 5, c. 58, ss. 23, 24.

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

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

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

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

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

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

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SCHEDULES.

THE FIRST SCHEDULE.

ACTS REPEALED.

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

THE SECOND SCHEDULE.

RULES AND REGULATIONS AS TO THE TOTALIZATOR.

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

*Licences to Use the Totalizator.*

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

*Conditions to which Licences Subject.*

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

- (a) the chairman, the secretary, and every member of the committee or executive body of such club; and
- (b) every person employed by such club.

## Lottery and Gaming Act, 1936-1950.

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

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

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

Lottery and Gaming Act, 1936-1950.

that any such certificate with respect to any racecourse or trotting grounds may at any time be revoked by the Commissioner of Police, whereupon this condition shall again apply on such racecourse or trotting grounds.

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

XIX. The Commissioner of Police shall cause a member of the police force to supervise the working of every separate totalizator, including every doubles totalizator, at all times when it is being used by any club, and such club shall pay to the Commissioner of Police the sum of one pound per day for each member of the police force so supervising.

Form of Licence and Fees.

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

Form of Licence.

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

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

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

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

Control of Queues.

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

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

Inserted by regulations "Government Gazette," 7th December, 1939, p. 1556.

8. No person shall—

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

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

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

*Penalties.*

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

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THE THIRD SCHEDULE.

FORM OF APPLICATION FOR LICENCE.

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

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

[Here specify dates.]

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

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THE FOURTH SCHEDULE.

SEARCH WARRANT.

South [Royal Arms] Australia.

(To wit.)

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

Lottery and Gaming Act, 1936-1950.

gaming is being or is about to be carried on in or upon a certain place, to wit. This is therefore to authorize and require you, with such assistance as may be necessary, to enter and re-enter into and upon and search such place at any time, and from time to time and at all times during day or night, within the space of three clear days from the date of this warrant, and to remain in and upon such place during the whole or any part of the three days aforesaid, and if necessary to use force in making such entry or any re-entry, whether by breaking open doors or otherwise, and to arrest and bring before a Special Magistrate or two Justices of the Peace all such persons as may be found therein or thereupon, and to seize all dice, balls, counters, tables, or other instruments of gaming, moneys, lists, cards, papers, documents, or things found upon such persons, or in or upon such place, as may be reasonably supposed to have been used or designed for use in connection with or in relation to any suspected offence, and to detain any such dice, balls, counters, tables, or other instruments of gaming, moneys, lists, cards, papers, documents, or things so found, to be dealt with according to law: And for so doing this shall be your warrant.

Given under my hand at \_\_\_\_\_ in South Australia,
this \_\_\_\_\_ day of \_\_\_\_\_

THE FIFTH SCHEDULE.

Inserted by
13, 1939, s. 8.

The following are the maximum fees which may be prescribed by rules made pursuant to section 37 with respect to the matters hereunder mentioned:—

Table with 3 columns: Description, £, s., d.
On the application for a bookmaker's licence or renewal .. 1 0 0
On an application for a clerk's or deputy clerk's or agent's licence or renewal .. 0 10 0
On an application for registration of premises or renewal .. 1 0 0
For each permit to act as deputy clerk which is issued to a licensed clerk and his licence is exhibited when the permit is obtained .. 0 5 0
For each permit to act as a deputy clerk to any other person or to a licensed clerk if his licence is not exhibited .. 0 10 0
For a permit to act as or on behalf of an authorized press agent (per annum) .. 0 10 0
For authority to publish racing information (per annum) .. 100 0 0
Fees payable on an appeal in connection with a betting dispute .. 1 0 0
On registration of premises (per annum) .. 5 0 0
If the board has directed that more than one bookmaker shall (if required) be accommodated on any registered premises, for each such additional bookmaker (per annum) .. 1 0 0
For the replacement of any lost licence, permit, authority, or registration certificate .. 0 2 6



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, 1934-1950.

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.]

ROAD TRAFFIC ACT AMENDMENT ACT (No. 3), 1939, No. 45 OF 1939 [ASSENTED TO 21ST DECEMBER, 1939.]

ROAD TRAFFIC ACT AMENDMENT ACT, 1940, No. 61 OF 1940 [ASSENTED TO 5TH DECEMBER, 1940.]

ROAD TRAFFIC ACT AMENDMENT ACT, 1941, No. 2 OF 1941 [ASSENTED TO 20TH AUGUST, 1941.]

ROAD TRAFFIC ACT AMENDMENT ACT (No. 2), 1941, No. 46 OF 1941 [ASSENTED TO 27TH NOVEMBER, 1941.]

ROAD TRAFFIC ACT AMENDMENT ACT, 1942, No. 4 OF 1942 [ASSENTED TO 10TH SEPTEMBER, 1942.]

ROAD TRAFFIC ACT AMENDMENT ACT (No. 2), 1942, No. 17 OF 1942 [ASSENTED TO 5TH NOVEMBER, 1942.]

ROAD TRAFFIC ACT AMENDMENT ACT, 1943, No. 35 OF 1943 [ASSENTED TO 23RD DECEMBER, 1943.]

ROAD TRAFFIC ACT AMENDMENT ACT, 1944, No. 2 OF 1944 [ASSENTED TO 31ST AUGUST, 1944.]

ROAD TRAFFIC ACT AMENDMENT ACT (No. 2) 1944, No. 20 OF 1944 [ASSENTED TO 7TH DECEMBER, 1944.]

ROAD TRAFFIC ACT AMENDMENT ACT, 1945, No. 2 OF 1945 [ASSENTED TO 23RD AUGUST, 1945.]

ROAD TRAFFIC ACT AMENDMENT ACT (No. 2), 1945, No. 40 OF 1945 [ASSENTED TO 17TH JANUARY, 1946.]

ROAD TRAFFIC ACT AMENDMENT ACT, 1946, No. 4 OF 1946 [ASSENTED TO 30TH AUGUST, 1946.]

ROAD TRAFFIC ACT AMENDMENT ACT, 1947, No. 3 OF 1947 [ASSENTED TO 28TH AUGUST, 1947.]

ROAD TRAFFIC ACT AMENDMENT ACT (No. 2), 1947, No. 40 OF 1947 [ASSENTED TO 11TH DECEMBER, 1947.]

ROAD TRAFFIC ACT AMENDMENT ACT, 1948, No. 55 OF 1948 [ASSENTED TO 22ND DECEMBER, 1948.]

AND

ROAD TRAFFIC ACT AMENDMENT ACT, 1950, No. 29 OF 1950 [ASSENTED TO 30TH NOVEMBER, 1950.]

An Act to consolidate certain Acts relating to road traffic.

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

### PART I.

PART I.

#### PRELIMINARY MATTERS.

1. (1) This Act may be cited as the "Road Traffic Act, 1934-1950," and shall come into operation on a day to be fixed by proclamation.

Short title, commencement, and division of Act.

## PART I.

(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.

Repeal.

2. The Acts mentioned in the schedule are repealed.

Administra-  
tion of Act.

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.

(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.

Interpreta-  
tion.

1480, 1921,  
s. 4.  
1695, 1925,  
ss. 3, 15.  
1941, 1929,  
s. 4.  
Of. U.K.  
20 & 21  
Geo. 5 c. 43,  
s. 1.

4. (1) In this Part, unless inconsistent with the context, or some other meaning is clearly intended—

“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:

“driver” means any person driving a motor vehicle or a motor cycle, and as regards a trailer means a person driving the motor vehicle by which the trailer is being drawn:

“licence” means licence under this Part:

“motor vehicle” includes any motor car, motor carriage, automobile, motor cycle, tractor, or other vehicle or carriage driven or propelled, or ordinarily capable of being driven or propelled, either partly or wholly,

Definition  
of “court”,  
substituted  
by 45, 1939,  
s. 3 (a).

Of. U.K.  
20 & 21  
Geo. 5 c. 43,  
s. 2.

Amended by  
45, 1939,  
s. 3 (b).

s. 1. (2) In addition to the Parts mentioned in subsection (2), Part II.A. (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.

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:

“trailer” means any vehicle without motive power constructed or adapted for being drawn by a motor vehicle and any machine which is mounted on wheels and is 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—

Cf. U.K.  
20 & 21  
Geo. 5 c. 43,  
s. 2 (3).  
Amended by  
45, 1939,  
s. 3 (c) and  
by 20, 1944,  
s. 3.

\* \* \* \* \*

(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.

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.

Registrar and  
inspectors of  
motor vehicles.  
1480, 1921,  
s. 5.  
1760, 1926,  
s. 3.

(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 2416, 1939, 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.

s. 7. ECLIPSE MOTORS PROPRIETARY LTD. v. MILNER (1950) S.A.S.R. 1. Where a company was the owner of an unregistered motor vehicle and also held trader's plates and an employee in pursuance of instructions of the manager drove the vehicle on a road without the trader's plates being affixed, held that the vehicle was not driven without the knowledge or against the instructions of the owner and that the owner was guilty of an offence against subsection (3).

(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 require registration under this Part or insurance under Part II.A. of this Act by reason only of the fact that it is driven on roads within fifteen miles of a farm occupied by the owner of the tractor on journeys to or from that farm for all or any of the following purposes, namely:—

Substituted  
by 40, 1945,  
s. 3.

- (a) removal of the tractor to a workshop for repairs, or return of the tractor to the farm from a workshop where repairs were carried out;
- (b) delivery of the tractor to the farm upon the acquisition of the tractor or delivery of the tractor from the farm upon the sale or the disposal thereof;
- (c) drawing farm implements;
- (d) proceeding to a place where farm implements are to be attached to the tractor for removal, or returning after delivery of farm implements.

A farm implement or machine shall not require registration under this Part, or insurance under Part II.A. of this Act by reason only of the fact that it is drawn by a tractor as mentioned in this subsection.

In this subsection "farm implement" means any implement or machine for ploughing, cultivating, clearing or rolling land, sowing seed, spreading fertilizer, harvesting crops, spraying, chaffcutting, or other like operations, but does not include a vehicle wholly or mainly constructed for the carriage of goods.

(6) A tractor, bulldozer, scarifier, grader, roller, tar sprayer, tar kettle, or other like vehicle constructed or adapted for doing work in constructing, improving, or repairing roads or constructing firebreaks on roads shall not be deemed to be driven on any road so as to require registration under this Part, by reason only of the fact that it is used on a road in the work of constructing, improving, or repairing the road or constructing a firebreak on the road or is driven on a road in the course of a journey to or from a place where such work is being done.

Inserted by  
20, 1944,  
s. 4 (b).

## PART II.

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.

Para. (a) amended by 29, 1950, 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 twenty-five 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 or a cover note which is in the prescribed form and is binding on an approved insurer and the terms of which provide that it will during the period of the operation of the permit applied for have the same effect in relation to the motor vehicle as a policy of insurance complying with Part II.A. of this Act—

Amended by 61, 1940, s. 3.

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 wind-screen of the vehicle to which it relates in the position prescribed for the carrying of a registration card.

**7c.** (1) The registrar may at his discretion, without fee, grant to any person a permit permitting that person or any person authorized by him to drive on any route specified in the permit, no part of which route is within any hundred, a motor vehicle being—

Permits  
to move  
dam-sinking  
machinery.  
Inserted by  
40, 1945, s. 4.

- (a) mobile machinery and plant used for excavating and cleaning dams;
- (b) a trailer used for carrying any machinery and plant used for excavating and cleaning dams;
- (c) a tractor used for drawing any such machinery and plant or for drawing a trailer conveying any such machinery and plant;
- (d) a caravan or other like vehicle used as living accommodation for persons operating any such machinery and plant,

on a journey from a place where such machinery and plant has been used for excavating or cleaning a dam to another place where it is intended to be so used.

(2) A vehicle may be driven pursuant to a permit granted under this section, without registration or insurance.

(3) Any such permit shall be subject to such conditions as the registrar inserts therein.

(4) A person who contravenes any condition of a permit granted under this section shall be guilty of an offence and liable to a fine not exceeding twenty-five pounds.

(5) In this section "dams" means excavations in which water is stored or intended to be stored.

**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

Provisions  
as to  
registration.  
1480, 1921,  
s. 8,  
1941, 1929,  
s. 5.

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, and  
substituted  
by 55, 1948,  
s. 4.

**8c.** The registrar shall not register a motor vehicle unless when the application for registration is made there is lodged with him a certificate in the prescribed form given by or on behalf of an approved insurer certifying that one or more policies of insurance complying with Part IIA. of this Act have been issued by that insurer in relation to the said motor vehicle, and that the insurance provided by those policies

will remain in force throughout the period for which registration is applied for and for fourteen days after the end of that period.

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 not having a side car attached thereto shall be as follows:—

	£	s.	d.
If the weight of the motor bicycle does not exceed one hundredweight . . . . .	1	0	0
If the weight of the motor bicycle exceeds one hundredweight . . . . .	1	10	0
The registration fee for a motor bicycle having a side car attached thereto shall be . . . . .	2	0	0
The registration fee for any electrically or mechanically propelled invalid's chair shall be .	0	2	6

(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

Mode of computing registration fee.  
1480, 1921, s. 8K.  
1941, 1929, s. 5 and the schedule.  
2095, 1932, ss. 17-20.  
Of U.K.  
23 & 24  
Geo. 5 c. 19, s. 25, 7th Sch.

Substituted by 61, 1940, s. 4.

(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
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:—

Amended by  
20, 1944,  
s. 5.

	£	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.

Where the trailer consists of a machine, which is mounted on wheels and is constructed or adapted for being drawn by a motor vehicle, the fee shall be fifty per centum of the amount which would otherwise be payable under this section.

(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.

Amended by  
2332, 1936,  
s. 5.

The percentage referred to in this subsection shall be as follows:—

- (a) If registration is effected during the period of twelve months after the commencement of the Road Traffic Act Amendment Act, 1936, fifty-five per centum:
- (b) If registration is effected within the period of twelve months commencing after the expiration of the period mentioned in paragraph (a), fifty-three and three-quarters per centum:

(c) If registration is effected at any time after the expiration of the period mentioned in paragraph (b), fifty-two and one-half per centum.

Amended by 2332, 1936, s. 6.

Cf U.K. 26 Geo. 5 & 1 Edw. 8 c. 34, s. 12.

(7) If the registrar is satisfied by statutory declaration or such other evidence as he requires that—

(a) any commercial motor vehicle is owned by a primary producer; and

(b) such motor vehicle will not be used on roads for carrying His Majesty's mails, goods, or passengers, for pecuniary reward or for carrying goods in the course of any trade or business other than that of a primary producer,

the registration fee shall be the amount which would otherwise be payable under this section, less 50 per cent thereof.

Passage inserted by 2416, 1933, 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.

Para. (9) repealed by 35, 1943, s. 4 (a).

\* \* \* \* \*

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

(b) such motor tractor will not be used on roads except for transporting goods the produce of the land

Amended by 45, 1939, s. 5, and by 29, 1950, s. 4.

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 any town not more than twelve miles from the land of such primary producer for the purpose of the packing processing or sale of such goods, 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.

(10a) If the registrar is satisfied by statutory declaration or such other evidence as he requires—

- (a) that any motor vehicle will, during the period for which registration is applied for, be used wholly or mainly in areas which are not within any municipality or district council district or Whyalla or Iron Knob;
- (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 or Whyalla or Iron Knob; 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 or Whyalla or Iron Knob;

the registration fee shall, if the applicant is not entitled to have the motor vehicle registered at a reduced fee under paragraph (7), (8), 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

Inserted by  
2332, 1936,  
s. 7, and  
amended by  
2, 1941, s. 3,  
and by 35,  
1943, s. 4  
(b).

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.

In this paragraph—

“Whyalla” means all those portions of the hundreds of Randell and Cultana and County of York, bounded as follows:—Commencing at the south-western corner of section 39, hundred of Randell; thence west-south-westerly at right angles with the western boundary of said section for one and a half miles; thence north-north-westerly at right angles to the north-eastern boundary of the Iron Knob Tramway in the County of York; thence south-easterly along said boundary of Tramway to its intersection with the southern boundary of the hundred of Cultana; thence easterly along portion of said hundred boundary to the sea coast; thence generally southerly and south-westerly in the hundreds of Randell following the said sea coast to intersect the production south-south-easterly of the western boundary of section 40; thence north-north-westerly along said production and boundary; thence north-easterly to the south-western corner of section 37; thence north-north-westerly along the western boundary of said section and production to the point of commencement:

“Iron Knob” means all that portion of County of Manchester, within a circle having a radius of one and a half miles and its centre at the south-western corner of allotment 270, Town of Iron Knob.

Inserted by  
40, 1945, s. 5.

(10b) The fee for registration of a vehicle consisting of mobile machinery and plant used for excavating or cleaning dams shall be fifty per centum of the amount which would otherwise be payable under this section. In this paragraph “dams” means excavations in which water is stored or intended to be stored.

Amended by  
45, 1939, s. 6,  
and by 35,  
1943, s. 4  
(b).

(11) (a) If any commercial motor vehicle for the registration of which a reduced registration fee has been paid as allowed by paragraph (7) is used for the carriage of goods or passengers for pecuniary reward or for carrying goods in the course of any trade or business other than that of a primary producer; or

- (b) if any commercial motor vehicle for the registration of which a reduced registration fee has been paid as allowed by paragraph (8) is used for any purpose other than a purpose set out in paragraph (8), 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—

- (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 purpose of fire fighting:
- (b) any ambulance motor vehicle for the use of which no charge is made:
- (c) any 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:

Amended by  
2416, 1938,  
s. 8 (2).

Amended by  
2, 1941, s. 4.

(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 carrière* who is a national of the country which he represents and who resides in the State:

Inserted by  
61, 1940,  
s. 5 (1).

(h) any trailer which is used solely for the purpose of carrying equipment and fuel for generating producer gas for the propulsion of the motor vehicle by which the trailer is drawn.

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—

Amended by  
35, 1943,  
s. 4 (c).

“primary producer” means any person engaged in fishing or in agricultural, horticultural, viticultural, pastoral, or other like pursuits; and

Amended by  
61, 1940,  
s. 5 (2).

“weight” means the weight of a vehicle without passengers, load, or petrol, but including the oil, buffers, accessories, and tools usually carried. Where a motor vehicle is propelled by producer gas generated by equipment carried on or affixed to or forming part of the vehicle, the weight of that equipment and of any fuel carried on the vehicle for use in that equipment shall be excluded in computing the weight of the vehicle.

Inserted by  
61, 1940,  
s. 5 (3).

(15) The registrar may require any person applying for the registration of a motor vehicle to satisfy him by statutory declaration or other means as to any facts on which the amount of the registration fee depends or which entitle the applicant to be granted registration without payment of any fee.

**9a.** Where a motor vehicle is registered at any time before the first day of September, nineteen hundred and forty-eight, the registration fee for that vehicle shall be the amount which would be payable under section 9 of this Act, less twenty-five per centum thereof.

Temporary reduction of registration fee.  
 Inserted by 2, 1941, s. 5, and repealed and re-enacted by 35, 1943, s. 5, and amended by 2, 1944, s. 3, by 2, 1945, s. 3, by 4, 1946, s. 3, and by 3, 1947, s. 3.

**9b.** Every registration fee shall be calculated to the nearest shilling, and the amount so calculated shall be the amount payable.

Calculation of fees to nearest shilling.  
 Inserted by 2, 1941, s. 5.

**9c.** (1) Where a vehicle has been registered at a reduced fee under paragraph (7), (8), (10), or (10a) of section 9 of this Act, the owner of the vehicle may at any time while that registration is in force pay to the registrar the balance of the registration fee and thereafter—

Registration at full fee after registration at reduced fee.  
 Inserted by 40, 1945, s. 6.

- (a) the vehicle may be driven on roads to the same extent and in the same circumstances as a vehicle registered upon payment of the full registration fee; and
- (b) the provisions contained in lines twenty-two to thirty-seven of paragraph (10a) of section 9, and paragraph (11) of section 9, and section 59 of this Act shall not apply in relation to such driving.

(2) In this section “the balance of the registration fee” means a proportionate part of the full registration fee payable for registration of the vehicle for the period for which it was registered, less a proportionate part of the reduced registration fee actually paid for registration of the vehicle. For the purposes of this definition a proportionate part of a fee shall be a part of the fee bearing the same ratio to the whole fee as the number of months unexpired when the balance of the registration fee is paid bears to the number of months for which the whole fee is payable, the whole of the month in which that balance is paid being regarded as unexpired.

**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.

Reduced fees for vehicles of British origin.  
 1480, 1921, s. 8 A.  
 1941, 1929, s. 5.

(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.

Concessions to  
incapacitated  
ex-servicemen.  
Inserted by  
40, 1947, s. 3.

**10b.** (1) If the registrar is satisfied by such evidence as he requires that—

- (a) a motor vehicle is owned by a person who has been a member of a naval, military, or air force of His Majesty; and
- (b) the owner, as a result of his service in a naval, military, or air force, is totally and permanently incapacitated, or is blind, or has lost a leg or foot, or by reason of impairment of his power of locomotion receives a pension under the Australian Soldiers Repatriation Act, 1920-1943, of not less than seventy-five per centum of the pension payable for total incapacity; and
- (c) that motor vehicle will during the period for which it is sought to be registered be wholly or mainly used for the transport of the owner,

the registration fee for that motor vehicle shall be half of the amount payable under paragraphs (1) to (6) inclusive, of section 9, and sections 9a, 9b, and 10 of this Act.

(2) The registration of a vehicle registered at a reduced fee under this section shall not be transferable.

(3) When a person ceases to be the owner of a vehicle registered at a reduced fee under this section he shall be entitled upon compliance with section 21 of this Act, to a payment or credit as provided in that section; and the registration of the vehicle, if not sooner cancelled, shall become

void upon the expiration of twenty-one days after that person ceased to be the owner of it.

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.

Provision for  
ascertaining  
power-weight.  
2131, 1933,  
s. 3.

(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 horsepower in accordance with the measurements of the registrar or the nominated person.

12. Where an applicant applies for registration of—

- (a) any motor car the power-weight of which cannot be ascertained from the list; or
- (b) any motor vehicle other than a motor car,

Determination  
of power-  
weight by  
other means.  
2131, 1933,  
s. 4.

the registrar may require the applicant for registration to produce a weighbridge certificate showing the weight of the vehicle or any other evidence of the weight or horsepower of the vehicle.

13. (1) Every motor vehicle (not being a trailer) required by this Part to be registered shall, at all times whilst it is being driven or is standing in any road, carry attached thereto in the prescribed positions two plates as prescribed, one on the front and one on the rear thereof, each having

Duty to carry  
registered  
number on  
motor vehicle.  
1480, 1921,  
ss. 10, 34 (c).  
1527, 1922,  
s. 4.  
1695, 1925,  
s. 7.

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:

(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:

(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

Substituted  
by 45, 1939,  
s. 7.

Inserted by  
45, 1939, s. 7.

- (d) having upon any number plate a number which is not the registered number assigned to the motor vehicle,

shall be guilty of an offence: Provided that no person shall be liable to a penalty for any breach of this subsection if he proves to the satisfaction of the court that he took all reasonable precautions to prevent such breach or that such breach was the result of an accident.

(5) Any person who forges or fraudulently alters or uses or fraudulently lends or allows to be used by any other person any number plate, trader's plate, or registration card shall be guilty of an offence and liable to a fine of not more than one hundred pounds, or to imprisonment for not more than twelve months.

Inserted by  
2332, 1936,  
s. 10.

14. Any person who owns or drives upon a road any unregistered motor vehicle having upon it any numbers or number plate of a description prescribed to be affixed to registered motor vehicles shall be guilty of an offence.

Prohibition  
of use of  
plates on  
unregistered  
vehicles.  
1480, 1921,  
s. 35 (d).

15. Where any motor vehicle is registered under this Part and is also licensed by a municipal or district council to ply for hire within its municipality or district, there may appear on the number plates required by this Part to be attached to such motor vehicle, in addition to the registered number, some distinctive design, character, or letter approved by the registrar, for the purpose of indicating that such motor vehicle is so licensed.

Distinctive  
marks for  
number plates  
of vehicle  
licensed to  
ply for hire.  
1480, 1921,  
s. 11.

16. (1) Every registration of a motor vehicle effected prior to the commencement of the Road Traffic Act Amendment Act, 1936, shall, unless sooner terminated under this Part, expire on the thirty-first day of March, nineteen hundred and thirty-seven.

Duration of  
registration.  
Amended by  
2332, 1936,  
s. 11.

(2) Every registration of a motor vehicle effected on or after the date of the commencement of the Road Traffic Act Amendment Act, 1936, shall expire upon the expiration of six months or twelve months calculated as from the commencement of the month in which it was effected, according to the period for which registration was applied for.

17. (1) The registrar shall at the time of registration issue to every person who registers a motor vehicle under this Part a registration card having printed or written thereon particulars of the motor vehicle registered, the duration of the registration, and any other matters which the registrar thinks proper to insert.

Issue of, and  
duty to carry,  
registration  
card.  
1480, 1921,  
s. 8C,  
1941, 1929,  
s. 5,  
2131, 1933,  
s. 7.

(2) Every registration card or the prescribed part thereof shall throughout the period during which the registration remains in force be affixed to and carried on the motor vehicle for which the card is issued, in accordance with the regulations.

Amended by  
55, 1948, s. 5.

(3) Any person who drives on any road, or causes or permits any person to drive on any road 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 registra-  
tion cards.  
1480, 1921,  
s. 8 D.  
1941, 1929,  
s. 5.  
Of. 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.

19. (1) If an owner who has registered a motor vehicle transfers the ownership thereof to some other person whether on a sale or any other transaction, he shall within twenty-one days of the transfer—

- (a) notify the registrar in the prescribed form of the transfer:
- (b) deliver to the registrar the registration card issued in respect of the transferred motor vehicle and for the time being in force, or take such other action in relation to the said card as is prescribed by regulation.

(2) If any person fails to comply with any requirement of this section he shall be guilty of an offence.

20. (1) Upon or after delivery to the registrar of the registration card in accordance with the last preceding section, or upon taking the prescribed action in relation to the card, the transferor may either—

- (a) join with the transferee in a joint application to the registrar to transfer the registration of the motor vehicle to the transferee; or
- (b) apply for cancellation of the said registration and a refund or credit of part of the registration fee in accordance with the next succeeding section.

(2) If such a joint application for the transfer of the registration is made the registrar shall upon payment by the transferee of a fee of two shillings and sixpence 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.

(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.

Duty to notify registrar of transfer of motor vehicle.  
1480, 1921, s. 8 B.  
1941, 1929, s. 5.  
2095, 1932, s. 5.  
2131, 1933, s. 7 (2).

Transfer of registration or refund.  
1480, 1921, s. 8F.  
2095, 1932, s. 6.  
2131, 1933, s. 6.

Amended by 45, 1939, s. 8 (1).

Amended by 45, 1939, s. 8 (2).

## PART II.

Refunds of registration fee in certain cases.

1480, 1921, s. 8 G.  
2095, 1932, s. 6.  
2181, 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:
- (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:
- (f) If pursuant to any enactment, regulation, or rule (whether of the Commonwealth or the State) or any order or direction made thereunder the vehicle has ceased to be used on roads.

Inserted by 2416, 1938, s. 9 (1).

Inserted by 45, 1939, s. 9.

Inserted by 17, 1942, s. 3 (1).

Inserted by 35, 1943, s. 6.

(2a) Where a motor tractor has been registered at a reduced fee pursuant to paragraph (10) of section 9 of this Act, the owner of the tractor may, at any time during the currency of that registration, upon delivery to the registrar of the current registration card issued in respect of the tractor, or upon taking the prescribed action in relation to the card, apply to the registrar to cancel the registration of the tractor and pay or credit to him the prescribed amount as defined in this section.

(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.

**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 authorized by him or any member of the police force may remove from that vehicle the registration card relating to that registra-

Destruction of  
registration  
card.

Inserted by  
2416, 1938,  
s. 10.

tion 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 authorized 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, 1933, 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.  
Amended by 17, 1942, s. 4.

**24.** If a trailer is registered as a motor vehicle under this Part and carries the current registration card issued in respect of the trailer it need not be licensed under any other Part of this Act.

25. Any member of the police force or the registrar or any person authorized in writing by the registrar to examine motor vehicles for the purposes of this Part may—

Inspection  
of motor  
vehicles to  
ascertain  
power-weight.  
1480, 1921,  
s. 8 J.  
1941, 1929,  
s. 5.

- (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.

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.

Duty of  
owners to  
notify changes  
in vehicles  
and tires to  
registrar.  
1480, 1921,  
s. 8 L.  
1941, 1929,  
s. 5.

(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) Within fourteen days after the making of any such alteration or addition as mentioned in subsection (2) of this section 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

Amended by  
35, 1943,  
s. 7 (a).

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.

(5) In proceedings for any offence against this section the court may in addition to imposing a fine order the defendant to pay to the registrar any such additional fee as mentioned in subsection (3) of this section.

Inserted by  
35, 1943,  
s. 7 (b).

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).

\* \* \* \* \*

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.

Amended by  
2416, 1938,  
s. 11 (c).

(6) The fees for the issue or extension of operation of trader's plates shall be as follows:—

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 trader's 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) Subject to subsection (10a), a motor vehicle bearing general trader's plates may be driven—

Substituted  
by 35, 1943,  
s. 8.

(a) by any person for any purpose directly connected with a business carried on by the person to whom the plates were issued (hereinafter called "the trader") and being either—

(i.) a business of manufacturing, repairing, or dealing in motor vehicles; or

(ii.) a business of manufacturing or repairing mechanical or electrical goods, carried on in conjunction with a business of manufacturing, repairing, or dealing in motor vehicles;

(b) by any customer of the trader, or any employee of any such customer, for any purpose, while the vehicle is on loan from the trader to the customer, and a vehicle owned by the customer is in possession of the trader for the purpose of being repaired, altered, added to, or tested by the trader;

(c) for any purpose by the trader himself or any person who is a partner of the trader in a business of manufacturing, repairing, or dealing in motor vehicles, if the trader or partner is a natural

person and the vehicle is a motor car or a buckboard ordinarily used in connection with such 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.

A person shall not on any road drive a motor vehicle having a general trader's plate attached thereto except as allowed by the foregoing provisions of this subsection.

Inserted by  
35, 1943, s. 8.

(10a) A person shall not on any road drive a motor vehicle having a general trader's plate attached thereto if the vehicle is carrying passengers or goods for hire or reward.

(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.

Temporary reduction of fees for trader's plates.

Inserted by 35, 1943, s. 9, and amended by 2, 1945, s. 4, by 4, 1946, s. 4, and by 3, 1947, s. 4.

**27a.** Where a pair of general trader's plates is issued or the operation of a pair of general trader's plates is extended at any time before the first day of September nineteen hundred and forty-eight, the fee for such issue or extension shall be the amount payable under section 27 of this Act, less twenty-five per centum thereof.

Refunds where general trader's plates surrendered to registrar.

Inserted by 35, 1943, s. 9.

**27b.** Where a person to whom general trader's plates have been issued surrenders the plates to the registrar before the thirty-first day of March next after the issue of the plates, the registrar shall pay or credit to that person a sum arrived at by multiplying one-twelfth of the fee paid for the plates by the number of complete calendar months in the period commencing on the day of the surrender of the plates and ending on the thirty-first day of March next following the day of surrender.

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.

29. (1) The owner of any motor vehicle on being served with a notice signed by the registrar requiring him within a time mentioned in the notice to cause his motor vehicle to be weighed unladen on the weighing machine mentioned in the notice or any one of the weighing machines so mentioned if more than one are mentioned, shall obey such notice and shall forward to the registrar forthwith the document showing the result of the weighing.

Duty of owners to weigh motor vehicles in certain cases. 1695, 1925, s. 17.

(2) This section shall not apply if the distance from the place where the motor vehicle is usually kept to the weighing machine mentioned in the notice, or to the nearest of those weighing machines, if more than one are mentioned, is greater than three miles.

(3) Any person failing to comply with any requirement of the registrar under this section shall be guilty of an offence.

*Licensing of Drivers.*

30. Any person who, unless exempted by the regulations, drives a motor vehicle on any road without being the holder of a licence for the time being in force, or employs or permits any person not being the holder of such a licence to drive a motor vehicle on any road shall be guilty of an offence.

Duty to obtain driver's licence. 1480, 1921, s. 34 (a). Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 4.

31. (1) The registrar may, subject to the provisions of this Part, issue a licence to any person who—

Issue of driver's 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.

(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—

Amended by 40, 1945, s. 7.

(a) for a licence to drive a motor vehicle of any kind—  
ten shillings:

s. 30. PROUDMAN v. DAYMAN (1941) 67 C.L.R. 536; 15 A.L.J. 192, in which special leave was refused to appeal to the High Court from DAYMAN v. PROUDMAN (1941) S.A.S.R. 87. On a charge of permitting an unlicensed person to drive a motor vehicle on a road, proof that the defendant knew that the driver was unlicensed is unnecessary.

- (b) for a licence to drive a motor cycle only—five shillings:
- (c) for a licence to drive an electrically or mechanically propelled invalid chair only—one shilling.

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  
driver's  
licences.

Inserted by  
2416, 1938,  
s. 12.

**31a.** (1) Where the registrar is satisfied that owing to the age or any physical defect or infirmity of any applicant for a driver's licence it is desirable that any licence issued to that applicant should be subject to restrictive conditions, the registrar may issue to that applicant a licence containing conditions as to the localities in which the applicant shall be entitled to drive, or the class or equipment of the vehicles which the applicant shall be entitled to drive or as to any other matters which the registrar thinks necessary for the purpose of preventing danger to the applicant or the public.

(2) In any case where the registrar is satisfied that, by reason of the distance necessary to be travelled by an applicant for a driver's licence to be examined as provided by section 32a, it would be unreasonable to require the applicant to submit to such an examination, he may, without examination as provided by section 32a, issue to the applicant a licence as provided by subsection (1) of this section.

(3) If any such applicant is not willing to accept a licence containing any such conditions proposed by the registrar the registrar may refuse him a licence and the refusal shall be subject to appeal as mentioned in section 32 of this Act.

(4) If any person contravenes any such condition he shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

**32.** (1) If the registrar suspects that any applicant for the issue or renewal of a driver's licence is for any reason incompetent to drive a motor vehicle without danger to the public, the registrar shall not issue a driver's licence to that applicant until he is satisfied that that applicant is competent to drive a motor vehicle without danger to the public.

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.

**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

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.

Subsec. (1)

amended by

2332, 1936,

s. 14, and by

2416, 1938,

s. 13.

Examination of applicant for driver's licence.

Cf. U.K.

24 & 25

Geo. 5 c. 50,

s. 6.

Inserted by

2332, 1936,

s. 15.

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.

(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.

(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.

**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.

**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.

Passage inserted by 2416, 1938, s. 14.

Amended by 45, 1939, s. 11.

Age of drivers to whom licences may be issued. Cf. U.K. 20 & 21 Geo. 5 c. 48, s. 9.

Amended by 2332, 1936, s. 16.

Licences may be refused in certain cases.

1480, 1921, s. 17. Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 4 (6).

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.

(3) The decision of the local court shall be final and conclusive, and shall not be challenged, appealed against, reviewed, quashed, or called in question, or be subject to prohibition or mandamus, in any court on any account whatever.

(4) The local court on the hearing of any such appeal may make any order as to costs which it thinks fit.

(5) For any such appeal the local court shall consist of a special magistrate.

**36.** Unless cancelled or suspended under this Part every licence shall continue in force until the thirtieth day of June next after the licence commences to be in force.

Duration of licence.

1480, 1921, s. 13.  
Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 4 (4).

**36a.** (1) Notwithstanding the other provisions of this Part the registrar may at any time during a period of war upon payment of a fee of two shillings and sixpence, issue to any member of any naval, military, or air force of the Commonwealth or of any other part of His Majesty's Dominions, a driver's licence having a currency of three months. Subject to this Act, such a licence shall authorize the person to whom it is issued to drive a motor vehicle of any kind during the period specified in the licence.

Quarterly licences for members of the defence force.

Inserted by 61, 1940, s. 6, and amended by 40, 1945, s. 8 (1).

(2) In this section "a period of war" means a period commencing on the day on which the Commonwealth becomes engaged in a war and ending upon the expiration of six months after the Commonwealth issues a proclamation declaring that that war has ceased.

Substituted by 40, 1945, s. 8 (2).

**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 endorsed on the original licence.

If licence lost, duplicate may be issued.

1480, 1921, s. 14.

(2) Such duplicate shall avail for all purposes as if it were the original licence.

**38.** (1) The registrar shall keep a register of the names and addresses of all licensed drivers, and of all endorsements on, and renewals and cancellations of, licences.

Register of licences.

1480, 1921, s. 19, 2095, 1932, s. 8.

(2) The prescribed forms of application received by the registrar from persons applying for licences shall be bound or otherwise assembled by the registrar and arranged in

order as the registrar determines and shall constitute the register of licences within the meaning of this Act: Provided that the regulations may provide that the register of licences shall be constituted and kept in any other way.

Suspension of licence and disqualification of holder on conviction.

Of 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.

**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.

Subsec. (1a) inserted by 55, 1948, s. 6, and amended by 29, 1950, s. 5.

(1a) If any person after being convicted for an offence against any of the following sections of this Act, namely, sections 43, 43b, 121, and 131, is convicted for a second or subsequent offence against the same section, the court shall order that that person shall be disqualified for a period fixed by the court or until further order from holding or obtaining a driver's licence: Provided that the court, if satisfied by evidence given on oath, that any such offence is trifling, may certify accordingly and if such a certificate is given the offence to which it relates shall not be taken into account for purposes of this subsection: Provided also that—

(a) a conviction for an offence committed on or before the sixth day of January, nineteen hundred and forty-nine; or

(b) a conviction for an offence committed ten years or more before the commission of a second or subsequent offence against the same section,

shall not be taken into account for the purposes of this subsection.

(2) An order made under this section may be in addition to any other penalty to which the defendant is liable.

**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.

**HATCHER V. O'SULLIVAN (1949) S.A.S.R. 240.** Held, before the enactment of the proviso to subsection (1a), that, upon conviction of a second offence against one of the sections specified in section 38a, the court must make an order of disqualification from holding or obtaining a licence, notwithstanding that the first offence was committed prior to the passing of the amending Act of 1948.

**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.

Of. U.K. 20 & 21 Geo. 5 c. 43, s. 7.

Inserted by 2332, 1936, s. 17.

(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.

**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.

Suspension of licence on the ground of incompetence to drive.

Inserted by 2332, 1936, s. 17.

(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.

Made of suspension by Commissioner of Police or registrar.

Inserted by 2332, 1936, s. 17.

**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.

Refusal or revocation of temporary registration of vehicle from other States.

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.

(2) The revocation shall be by a document in writing under the hand of the registrar, and personally served on the person thereby affected.

**39.** Any person who—

- (a) by any false statement or by misrepresentation obtains or attempts to obtain a licence; or
- (b) without lawful excuse has in his possession a licence or any article resembling such licence and liable to be mistaken therefor; or
- (c) forges or fraudulently alters or uses or fraudulently lends or allows to be used by any other person any licence,

Offences in connection with licences. 1480, 1921, s. 35.

shall be guilty of an offence.

*Warning devices, silencers, and lights on motor vehicles.*

**40.** (1) Any person who drives in any road or who, being the owner, causes or permits any person to drive on any road a motor vehicle which has not attached thereto, under the immediate control of the hand or foot of the driver, a proper horn or other instrument capable of giving audible and sufficient warning of the approach and position of that motor vehicle, shall be guilty of an offence:

Duty to carry warning device. 1480, 1921, s. 30. 1695, 1925, s. 10. Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 59 (1) (b). Amended by 2332, 1936, s. 18, and by 2416, 1938, s. 15.

Provided that this subsection shall not apply to any trailer so long as the motor vehicle to which that trailer is attached complies with this subsection.

(2) Any driver of a motor vehicle who does not whenever necessary, by sounding the horn or other instrument attached thereto, give audible and sufficient warning of the approach or position of that motor vehicle, shall be guilty of an offence.

(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—

Inserted by 2332, 1936, s. 18.

- (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.

**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

Misuse of warning devices. Inserted by 2332, 1936, s. 19.

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.

- (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.

Mechanical signals on vehicles with left-hand drive.

Inserted by 40, 1945, s. 9.

**40b.** (1) Every motor vehicle with left-hand drive shall be fitted with a mechanical or electrical device of a kind approved by the registrar, by which driving signals substantially similar to those prescribed by section 134 of this Act may be given.

(2) A motor vehicle shall be deemed to have left-hand drive if the steering wheel is on the left of a vertical plane bisecting the vehicle longitudinally.

(3) A person who drives or causes or permits any person to drive on any road a motor vehicle which in any particular does not comply with this section shall be guilty of an offence.

Duty of drivers as to silencers and elimination of noise, smoke, etc. 1480, 1921, s. 31. 2095, 1932, s. 11.

**41.** (1) Any person who in any road drives a motor vehicle—

- (a) which has not attached to it and in use a silencer which eliminates all unnecessary noise; or
- (b) which has attached to it a silencer to which any alteration has been made which reduces or is likely to reduce the effectiveness of such silencer; or
- (c) on which there is any device which may be used to reduce the effectiveness of the silencer,

shall be guilty of an offence.

(2) Any person who makes any alteration to a silencer which reduces or is likely to reduce its effectiveness shall be guilty of an offence.

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.

(3) Any driver of a motor vehicle who allows it to make or emit any unnecessary noise, smoke, visible vapour or smell shall be guilty of an offence.

42. (1) Every motor vehicle (other than a motor cycle or trailer) which is at any time between half an hour after sunset and half an hour before sunrise on any road shall carry attached thereto—

(a) two lighted lamps carried one on each side of such motor vehicle, such lamps being so constructed and carried as to show a bright white, yellow or amber-coloured light in front of such motor vehicle; and

(b) a lighted lamp carried on the 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:

Lights on  
motor vehicles.  
1480, 1921,  
s. 32,  
1527, 1922,  
s. 6,  
1695, 1925,  
s. 11,  
1827, 1927,  
s. 7.

Para. (a)  
amended by  
2416, 1938,  
s. 16.

Para. (b)  
amended by  
2332, 1936,  
s. 20, and  
by 20, 1944,  
s. 6 (a).

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 rear of such trailer, or on the rear of the rearmost of such trailers, if there is more than one, instead of on such motor vehicle:

Amended by  
20, 1944,  
s. 6 (a).

(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

(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

Amended by  
2332, 1936,  
s. 20.

s. 42. RUDALL AND OTHERS V. DEACON AND OTHERS (1943) S.A.S.R. 271. Appeal to the High Court dismissed (1943) 67 C.L.R. 642 (note); (1943) S.A.S.R. xxiii. (note). It is not necessary that the red light required to be carried pursuant to paragraph (b) of subsection (1) shall be carried at the extreme edge of the off side rear part of the vehicle.

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 drives or leaves stationary on any road, or causes or permits any person to drive or leave stationary on any road, any motor vehicle which in any particular does not comply with this section, he shall be guilty of an offence.

Substituted  
by 20, 1944,  
s. 6 (b).

#### *Brakes on Motor Vehicles.*

42a. (1) In this section, unless the context otherwise requires—

“independent brake” means a brake of which the entire operating mechanism or system is either—

(a) separate from all parts and connections of any other brake or brake system, so that the brake in question cannot be adversely

Brakes on  
motor vehicles.  
Of U.K.  
20 & 21  
Geo. 5 c. 43,  
s. 59 (1) (a).  
Inserted by  
2332, 1936,  
s. 21.

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 side-car attached) shall be equipped with two independent brakes, one of which shall be capable of stopping the vehicle within forty feet and the other a brake of reasonable efficiency.

Inserted by  
2416, 1938,  
s. 19 (2).

(10) A trailer need not be equipped with brakes, if the motor vehicle by which it is drawn has brakes capable of stopping that vehicle with the trailer attached, within the distance prescribed by this section.

(11) A motor vehicle of the self-laying track type, having a continuous band or bands as its sole means of locomotion or traction, or having in addition thereto no more than two wheels in contact with the ground, is hereby exempted from the requirement of subsection (5).

(12) Each brake referred to in this section shall be capable of easy adjustment, and shall be maintained at all times in good working order.

(12a) The Governor may make regulations prescribing the standards or percentages of efficiency (as ascertained or measured by any brake-testing apparatus mentioned in the regulations) for brakes on motor vehicles of any class and if the brakes on any motor vehicle do not comply with any

Inserted by  
2416, 1938,  
s. 19 (3).

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.

(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.

Subsec. (2)  
substituted  
by 2416,  
1938, s. 18.

*Duties of Drivers and Owners of Motor Vehicles.*

43. (1) Any person who drives a motor vehicle on any road at an excessive speed shall be guilty of an offence.

Provision as to speed of motor vehicles. 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.

\* \* \* \* \*

Subsec. (3) repealed by 46, 1941, s. 4.

(4) In considering whether an offence has been committed under this section the court shall have regard to the nature, condition, and use of the road upon which the offence is alleged to have been committed and to the amount of traffic which at the time actually is or which might reasonably be expected to be upon such road and to the vehicle concerned, and to all other circumstances affecting the matter, whether of the same nature as those mentioned or not.

43a. (1) Any person who on any road, drives at a greater speed than twenty-five miles per hour a two wheeled motor cycle carrying any person in addition to the driver, shall be guilty of an offence.

Speed of motor cycles carrying pillion passengers. Inserted by 2332, 1936, s. 22.

(2) This section does not apply to a motor cycle having a side-car attached thereto.

43b. (1) Any person who drives a motor vehicle on a road in a municipality, town, or township at a greater speed than thirty-five miles an hour shall be guilty of an offence.

Speed in municipalities and towns. Inserted by 55, 1948, s. 7, and substituted by 29, 1950, s. 6.

(2) This section shall not restrict the operation of any other provision of this Act relating to the speed at which motor vehicles may be driven.

\* \* \* \* \*

s. 44 repealed by 2332, 1936, s. 23.

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.

## PART II.

Duty of driver to produce licence and give name and address.  
1480, 1921, s. 22.  
Of. U.K. 20 & 21  
Geo. 5 c. 48, 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.

\* \* \* \* \*

S. 47  
repealed by  
2332, 1936,  
s. 26.

\* \* \* \* \*

Driving whilst drunk or under the influence of drugs.

## 48. (1) Any person who—

- (a) drives a motor vehicle; or
- (b) occupies the driver's seat and attempts to put a motor vehicle in motion,

whilst he is so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle shall be guilty of an offence.

s. 48. BURROWS v. HANLIN (1930) S.A.S.R. 54. The opinion of persons, not experts, as to whether a man is drunk, or capable of driving a car, is not admissible as evidence.

DAYMAN v. SIMPSON (1935) S.A.S.R. 320. Where the defence suggests that an expert witness, called by the prosecutor as to the condition of the defendant, has given an unsound opinion, that should be suggested to the witness before he leaves the box. Complaint referred for re-hearing where this rule was not observed.

HENNIG v. ROBERTSON. ROBERTSON v. HENNIG (1937) S.A.S.R. 400. Where a person, who had been convicted under section 26 of the Motor Vehicles Act, 1921, of driving a motor vehicle whilst so much under the influence of liquor as to be incapable of exercising effective control of the vehicle, committed this offence under section 48 of this Act, held that the penalty to be inflicted was that appropriate to a second offence under section 48.

CHUCK v. WEST (1938) S.A.S.R. 51. It is not necessary on a charge under section 48 to show that the defendant was drunk.

PULLEINE v. BUTTON (1948) S.A.S.R. 1. Upon a charge under section 48 proof that the defendant actually drove the vehicle for some distance in an apparently normal manner and without mishap does not necessarily compel a finding that he was capable of exercising effective control of it. The court may be satisfied that the defendant was incapable of exercising effective control of the vehicle upon inferences drawn from evidence which may not include any actual act of driving or notwithstanding evidence of acts of apparently normal driving.

Penalty—For a first offence, a fine of not less than thirty 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 but not less than fourteen days.

(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.

(4) For the purposes of subsection (1) of this section a person shall be deemed to be incapable of exercising effective control of a vehicle if at the relevant time owing to the influence of intoxicating liquor or a drug the use of any mental or physical faculty of that person was lost or appreciably impaired. This subsection shall not be deemed

Inserted by  
55, 1948,  
s. 8 (c).

to restrict the meaning of the words "incapable of exercising effective control of a vehicle."

S. 49 repealed by 2332, 1936, s. 26.

\* \* \* \* \*

Registered owners and licensed drivers to notify change of address. 1480, 1921, s. 28.

50. (1) 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.

Inserted by 46, 1941, s. 5.

(2) Every person to whom any trader's plates have been issued and who changes his principal place of business during the period of operation of those plates shall, within fourteen days of so doing, give written notice to the registrar of his new principal place of business.

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.

\* \* \* \* \*

Penalty for using motor vehicle without consent of owner.

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.

1480, 1921, s. 37. 1695, 1925, s. 13. Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 28.

Penalty—For a first offence, imprisonment for not more than twelve months. For any subsequent offence, imprisonment for not less than three months or more than two years.

Subsec. (1) amended by 2416, 1938, s. 21, and by 46, 1941, s. 6.

(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

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.

LOGAN v. COPP (1942) S.A.S.R. 45. When a soldier was convicted, on a plea of guilty, of unlawfully using a motor vehicle without first obtaining the consent of the "Commonwealth Military Defence Department" alleged in the complaint to be the owner of the vehicle, held that the conviction was bad as the owner of the vehicle must, by reason of section 111 of the Defence Act, 1903-1939, be deemed to be the commanding officer of the corps.

CRAFTER v. SIMPSON (1943) S.A.S.R. 87. When a soldier, without any authority from the officer commanding his unit, took and used on his own affairs a motor cycle belonging to the Commonwealth, held that he could properly be convicted of an offence under section 53.

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.

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.

Interfering with motor vehicle. 1480, 1921, s. 39. Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 29 (2).

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.

Procuring use of car by fraud. 1480, 1921, s. 40.

57. (1) Whenever a licensed driver is charged with any breach of this Part he shall produce his licence to the court at the time of the hearing of the charge.

Production of licence at court. 1480, 1921, s. 41. Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 8.

(2) Any such driver who fails without reasonable excuse to produce his licence as aforesaid shall be guilty of an offence.

58. Any person who wilfully makes any false statement in an application under this Part for the registration of a motor vehicle, or in an application for the issue or renewal of a licence to drive a motor vehicle, shall be guilty of an offence.

False statement by applicant for licence or for registration punishable. 1480, 1921, s. 42.

59. (1)—

(a) If any commercial motor vehicle, for the registration of which a reduced registration fee has been paid as allowed by paragraph (7) of section 9 of this Act, is during the period of the registration used for the carriage of His Majesty's mails, goods, or passengers for pecuniary reward or for carrying goods in the course of any trade or business other than that of a primary producer; or

Penalty on improper use of vehicles registered for reduced fee. Substituted by 2416, 1938, s. 22.

(b) if any commercial motor vehicle for the registration of which a reduced registration fee has been paid as allowed by paragraph (8) of section 9 of this Act is during the period of registration

Amended by 35, 1943, s. 10.

used for any purpose other than a purpose set out in the said paragraph (8) 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.

Inserted by  
61, 1940, s. 7.

(1a) If any trailer which has been registered without fee as provided in subparagraph (h) of paragraph (13) of section 9 of this Act is during the period of the registration used for any purpose other than the carriage of equipment and fuel for generating producer gas for the propulsion of the motor vehicle by which the trailer is drawn, the full registration fee which would be payable under paragraph (5) of section 9 of this Act for the registration of the trailer for the said period, shall forthwith become due and payable and may be recovered from the owner by the registrar on complaint in a court of summary jurisdiction, and in addition the driver of the motor vehicle by which the trailer is drawn 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.*

61. (1) In addition to any power by any other section of this Part conferred on the Governor to make regulations (which power shall in every case be implied for the purpose of any section in which the word “prescribed” is used), the Governor may make regulations prescribing all matters and things which by this Part are contemplated, required or permitted to be prescribed, or which appear to him to be necessary or convenient to be prescribed for the purpose of more effectually carrying out any of the provisions of this Part, or for better effecting the objects of this Act, and in particular (without limiting the effect of this section) for all or any of the following purposes,—

Regulations.  
1480, 1921,  
s. 44.  
Of. U.K.  
20 & 21  
Geo. 5 c. 43,  
s. 30.

- 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;

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.

- vi. Prohibiting the use of motor vehicles that, owing to defects in construction or other causes, are unsuitable for safe use;
- vii. Prohibiting or restricting the use of motor vehicles upon any specified roads, or within the roads in any specified area, either generally or within certain hours;
- viii. Prohibiting or regulating the carrying of any person on a motor cycle in addition to the rider thereof;
- ix. Regulating the form of the registered numbers assigned to motor vehicles, and the manner of placing them upon such vehicles;
- x. Providing that any regulations under this section may be of a local nature and limited in their application to a particular area, or may be restricted in their operation to any specified class of motor vehicle;
- xi. Providing for the erection of uniform signs and notices for the guidance of motor drivers;
- xii. Providing for the temporary registration, 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;
- xiii. Providing for the transfer or cancellation of the registration of a motor vehicle when the ownership of the vehicle passes to any person on the bankruptcy of the registered owner, or on repossession of the vehicle pursuant to a hire-purchase agreement, or on any other involuntary alienation, and prescribing the conditions under which refunds of the registration fee may be made in such cases, and any other matters relevant to such changes of ownership;
- xiii. Providing for the regulation of the owners and drivers of motor vehicles; and
- xiv. Providing for any other purpose which the Governor may consider necessary for the safety or convenience of the public, or for the protection of property;
- xv. Requiring motor vehicles to be provided with apparatus for deflecting, dipping, dimming, or otherwise adjusting the headlights thereof and for regulating the use of such apparatus.

Of U.K.  
20 & 21  
Geo. 5 c. 43,  
s. 16.

Substituted  
by 45, 1939,  
s. 15.

Inserted by  
46, 1941, s. 7.

Inserted by  
2416, 1938,  
s. 23.

(2) Any such regulation may impose a penalty not exceeding twenty pounds for any breach of the same or any other regulation.

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.

Inconsistency of regulation or by-law.

1480, 1921, s. 47.

*Legal Proceedings and Evidence.*

63. Any contravention of or failure to observe any provision of this Part, whether by act or omission, shall be an offence.

Offences.

1480, 1921, s. 48.

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.

Penalties.

1480, 1921, s. 49.

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.

Copy of record of registration and licences to be evidence.

1480, 1921, s. 50.  
1695, 1925, s. 14.  
2095, 1932, s. 15.

(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 of 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 what-

ever, 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.

Facilitation  
of proof.  
1480, 1921,  
s. 51.

**66.** In any proceedings for an offence against this Part—

- (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 disqualifi-  
cation.

Cf. U.K.  
20 & 21  
Geo. 5 c. 43,  
ss. 7, 8.  
Cf. U.K.  
24 & 25  
Geo. 5 c. 50,  
s. 5.

Substituted  
by 2332,  
1936, s. 28.

**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.

**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.

Effect of disqualification from holding licence.

Cl. U.K. 20 & 21  
Geo. 5 c. 43,  
ss. 4 (6), 7.

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 driver's licences.

Enforcement of obligation to procure driver's licence.

Inserted by  
2332, 1936,  
s. 28.

**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—

Suspension of registration.

Inserted by  
2332, 1936,  
s. 29.

(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.

**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—

Offences by employees.

Inserted by  
2332, 1936,  
s. 30.

(a) that he is the employee of another person;

(b) that he drove the vehicle on the relevant occasion under the express instructions of his employer;

(c) that he was not aware that the vehicle did not comply with this Act or that before driving the vehicle he called the attention of his employer to the fact that the vehicle did not comply with this Act,

that person so charged shall be acquitted.

**67e.** (1) A person who by virtue of an order of a court under this Act is disqualified from holding and obtaining a driver's licence may appeal against the order in the same manner as against a conviction.

Suspension of orders of disqualification.

Inserted by  
2416, 1938,  
s. 24.

s. 67e. COX v. BUTTON (1949) S.A.S.R. 244. On an appeal under section 67e the appellate court may rescind the order of disqualification or may increase or reduce the period of disqualification. Observations as to the principles upon which the appellate court will act.

(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 endorsement.  
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 endorse 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.

68. All proceedings for offences against this Part shall be disposed of summarily.

Summary proceedings for offences.

69. This Part applies to persons in the public service of the Crown while engaged on such service, as well as when not so engaged.

Persons in service of the Crown bound.

69a. (1) If—

(a) the owner of a motor vehicle lets it on hire to a person who, for the purpose of or by virtue of any industrial award is deemed to be a servant of that owner; and

(b) whilst the vehicle is so let the person taking it on hire drives it in the course of a business of carrying passengers or goods for hire,

Liability in tort of persons taking vehicles on hire and driving them for carriage of passengers and goods for hire.

Inserted by 46, 1941, s. 8.

that person shall, as regards liability for any injury, loss, or damage caused by him whilst so driving the vehicle, be deemed to be the servant of the owner and to have been so driving the vehicle in the course of his employment by the owner.

(2) In this section “industrial award” means any award, order, or determination of the Commonwealth Court of Conciliation and Arbitration, or of the Industrial Court or any industrial board constituted by or under the Industrial Code, 1920-1937.

## PART II.

Common law  
or statutory  
liability not  
affected.

Cf. U.K.  
20 & 21  
Geo. 5 c. 43,  
s. 33.

70. Nothing in this Part shall affect any liability of any person under any statute or at common law.

## PART IIA.

## PART IIA.

INSURANCE AGAINST THIRD PARTY RISKS  
ARISING OUT OF THE USE OF MOTOR VEHICLES.

Interpretation  
and applica-  
tion of this  
Part.

Inserted by  
2332, 1936,  
s. 31.

Inserted by  
45, 1939,  
s. 17.

70a. (1) In this Part, unless the context otherwise requires—

“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:

“insured” when used as a noun has the same meaning as “insured person” as hereinafter defined:

“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

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.

Tramways Trust and used solely in connection with the business of that Trust: Provided that in relation to any motor vehicle which is owned by the Crown or the Municipal Tramways Trust and is not insured the Crown or the Municipal Tramways Trust shall be under the same liabilities and have the same rights as an insurer who has issued to the Crown or the Municipal Tramways Trust (as the case may be) a policy of insurance complying with this Part in relation to the use of that vehicle.

**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.

Insurance against third party risks.  
U.K. 20 & 21 Geo. 5 c. 43, s. 35.  
Inserted by 2332, 1936, s. 31.  
Subsec. (1) amended by 35, 1943, s. 11 and by 20, 1944, s. 7.

Any person contravening this subsection shall be guilty of an offence.

- s. 70b. **RAKE v. BOND** (1938) S.A.S.R. 253. The discretionary powers of the court to order disqualification 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.
- YEARS v. KERINS** (1940) S.A.S.R. 99. Where the defendant drove an unregistered and uninsured motor vehicle along a country road and his only excuse was that he had not sufficient money to pay the premium, held that he should have been disqualified from holding a driver's licence.
- GASSNER v. FROST** (1940) S.A.S.R. 295, affirming **GASSNER v. FROST** (1940) S.A.S.R. 77. Where a farmer drove a motor tractor for the purpose of carting wheat over a public road which was merely a dirt track and hardly ever used, held that, in the circumstances, the justices' refusal to disqualify was correct. Observations on the meaning of "special reasons."
- DAYMAN v. MCKENZIE** (1941) S.A.S.R. 103. Where the only reason given by a defendant for driving a motor vehicle on public roads after his policy of insurance had expired was that he was a member of Parliament for a country district and required to use his car about the affairs of his constituents, held that this was not a sufficient reason for exempting from disqualification.
- DAVIES v. SPROD** (1943) S.A.S.R. 53. Where the defendant had an oral agreement with an insurance company to hold him covered each time his renewal premium became due up to a matter of three months and after the expiry of his policy, but before the expiration of three months, drove his motor car on a public road, held that no policy of insurance complying with Part IIA. was in force. The requirement of the Act is not satisfied by there being in force a contract by an insurance company to treat the position as being the same as it would be if there were a policy of insurance in force (in the business sense) and the Act requires that there be a policy itself in force and by "policy" is meant a document.
- SCROOP v. DAYMAN** (1944) S.A.S.R. 51. When a defendant pleaded guilty to an offence under section 70b but did not take advantage of an opportunity to obtain an adjournment to lead evidence of special circumstances and later appealed and affidavit evidence was admitted as to such circumstances, held, in those circumstances, the period of suspension should be reduced to three months.
- HAMMOND v. O'SULLIVAN** (1947) S.A.S.R. 1. Where the defendant gave evidence that he failed to renew his policy by oversight, that the insurance expired only a

Penalty: A fine of not less than twenty pounds and not more than one hundred pounds and disqualification from holding and obtaining a driver's licence for not less than three months and not more than twelve months.

Notwithstanding any other Act the minimum amount of any fine and the minimum period of disqualification prescribed by this section shall not be reduced or mitigated in any way except as follows:—

In the case of a first offence, if the court for special reasons thinks fit to do so, it may impose a fine of less than twenty pounds and order disqualification for a period less than three months.

Subsec. (2)  
repealed by  
35, 1943,  
s. 11.

\* \* \* \* \*

(3) Proceedings for an offence under this section may be commenced—

(a) within a period of six months from the date of the commission of the alleged offence; or

(b) within a period which exceeds neither three months from the date on which it came to the knowledge of the prosecutor that the offence had been committed nor one year from the date of the commission of the offence,

whichever period is the longer.

(4) In any prosecution for an offence under this section, the allegation in the complaint that at any time mentioned in the complaint there was not in force in respect of any particular motor vehicle a policy of insurance complying with this Part shall be *prima facie* evidence of the fact so alleged.

(5) Any owner of a motor vehicle shall on being so requested by a member of the police force produce evidence that there is in force in respect of every motor vehicle owned by him a policy of insurance complying with this Part. The owner shall be deemed to have complied with this subsection if he produces the necessary evidence at a police

Cl. U.K.  
20 & 21  
Geo. 5 c. 43,  
s. 40.

s. 70b.  
(contd.)

few days before the offence, that he required to use the vehicle for the purpose of his business, and that he was financially in a position to meet any claim up to £1,000, held that these facts did not amount to "special reasons" within the meaning of subsection (1).

JAMES v. COGLAN (1950) S.A.S.R. 48. The minimum penalties prescribed by section 70b must be imposed except in cases where it is palpably unjust to do so, and the discretion of the court to reduce such minimum penalties for special reasons, in the case of a first offence, should be exercised only for grave and weighty reasons.

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.

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.

**70ba.** (1) An insurer who has issued a policy shall, notwithstanding that the insured person named therein has not agreed to pay or has not paid the premium for the policy, be bound by the policy to the same extent as if the said insured person had agreed to pay and had paid that premium: Provided that this section shall not affect any right which the insurer may have to cancel the policy with the consent of the Treasurer or to recover any premium owing under the policy.

Liability of  
insurers.  
Inserted by  
17, 1942, s. 5.

(2) In this section "policy" includes any document purporting to be a policy or cover note and to comply with this Part.

**70bb.** Where an insurer has given a certificate certifying that a policy of insurance has been issued by him in relation to a motor vehicle and that the policy complies with this Part and will unless lawfully cancelled remain in operation for a period specified in the certificate, he shall, until a policy conforming to the statements in the certificate is actually issued, or comes into force by virtue of the renewal of a previous policy, be deemed to have issued a policy conforming to the statements in the certificate.

Effect of  
certificate of  
insurance.  
Inserted by  
35, 1943,  
s. 12.

**70c.** (1) In order to comply with this Part, a policy of insurance must—

(a) be issued by an approved insurer:

(b) except as provided in this section insure the owner of the vehicle mentioned in the policy and any other person who at any time 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

Requirements  
in respect of  
policies.

Cf. U.K.  
20 & 21  
Geo. 5 c. 43,  
s. 26.

Inserted by  
2332, 1936,  
s. 31, and  
amended by  
35, 1943,  
s. 13.

person in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle in any part of the Commonwealth.

(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:

Para. (b) repealed by 2416, 1938, s. 25 (1), and 35, 1943, s. 13 (2).

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Subsec. (2a) inserted by 2416, 1938, s. 25 (1), repealed and re-enacted by 45, 1939, s. 18, and repealed by 35, 1943, s. 13 (3).

\* \* \* \* \*

Subsec. (3) repealed by 2416, 1938, s. 25 (2).

\* \* \* \* \*

Policies to give cover required by amending Acts. Inserted by 35, 1943, s. 14.

**70ca.** When any Act comes into operation which alters the insurance required to be given by a policy under this Part or the rights or liabilities of the insurer under any such policy, every policy of insurance which has been issued for the purpose of providing insurance required by this Part and is in force when the said Act comes into operation, or at any time thereafter, shall be deemed to be altered so as to provide the insurance required by this Part, as altered by the said Act.

Policy not affected by change of ownership of vehicle. Inserted by 35, 1943, s. 14.

**70cb.** (1) Notwithstanding any agreement to the contrary a policy of insurance issued under this Part—

(a) shall not be cancelled or otherwise terminated solely by reason of a change of ownership of the vehicle in relation to which the policy was issued; but

(b) shall, subject to any lawful termination thereof, enure in favour of every person who during the period for which the policy was granted or renewed becomes an owner for the time being of the vehicle in respect of which the policy was

issued, and in favour of every person who during that period drives that vehicle whether with or without the consent of the owner.

(2) So long as a policy of insurance is in force every owner of the vehicle in respect of which the policy was issued (whether originally a party to the policy or not) shall be bound by all the terms warranties and conditions in the policy as if he had expressly agreed to them.

**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, but this proviso shall not apply where the judgment was obtained outside the State: 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.

Liability of  
insurers.

Of. U.K.  
24 & 25  
Geo. 5 c. 50,  
s. 10.

Inserted by  
2332, 1936,  
s. 31.

Subsec. (1)  
amended by  
2416, 1938,  
s. 26 (1),  
and 35, 1943,  
s. 15 (1).

(2) Where an insured person has caused death or bodily injury by negligence in the use of a motor vehicle specified in a policy of insurance under this Part but that insured person is dead or cannot be served with process, any person who could have obtained a judgment in respect of the death

s. 70d. *MILLAR v. MILLER* (1940) S.A.S.R. 185, special leave to appeal to the High Court refused, 64 C.L.R. 662 (note); (1940) S.A.S.R. VIII. (note). Where an accident occurred in November, 1938, and notice was given to the Treasurer in July, 1939, held that, in the circumstances, notice had not been given as soon as possible after the plaintiff knew that the identity of the driver of the vehicle causing the accident could not be ascertained. Discussion of the meaning of "knew."

*HAUBER v. THE HALIFAX FIRE INSURANCE COMPANY LIMITED AND ANOTHER* (1940) S.A.S.R. 341. Meaning of "specified" in subsection (1). Observations on the scheme of Part IIA.

*WALTON v. FAWCETT* (1948) S.A.S.R. 158; 22 A.L.J. 326. Where the wife of a driver of a vehicle was a passenger in the vehicle and was injured in a collision, held that the husband's claim in respect of the loss of his wife's services was within the ambit of subsection (2) and that the court had power to award such damages.

*EXECUTOR TRUSTEE AND AGENCY COMPANY OF SOUTH AUSTRALIA LIMITED AND OTHERS v. THE INSURANCE OFFICE OF AUSTRALIA AND COMMONWEALTH RAILWAYS COMMISSIONER* (1949) S.A.S.R. 337. The liability of an insurer under subsection (2) where the insured vehicle is not one used in the business of carrying passengers for hire, is unlimited in amount, whether or not the policy of insurance contains any limitation of liability. In the case of a vehicle used in the business of carrying passengers for hire, the insurer may by the policy limit his liability to the maximum amount specified in paragraph (b) of subsection (6).

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—

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Para. (a) repealed by 35, 1943, s. 15 (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:

Amended by 2416, 1938, s. 26 (2).

(c) to any accident which happened before the commencement of this Part.

(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.

Amended by 45, 1939, s. 19 (a).

The Treasurer may out of the general revenue of the State and without any appropriation other than this Act pay the amount of any judgment obtained against a nominal defendant under this section and of the nominal defendant's costs; and the approved insurers who are under this subsection liable for such judgment and costs shall upon demand made by the Treasurer repay to him their respective proportions of any amounts so paid by him.

Inserted by 2416, 1938, s. 27.

(7a) Any association consisting of not less than ten approved insurers may submit for the Treasurer's approval

Inserted by 45, 1939, s. 19 (b).

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.

(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.

Of U.K.  
20 & 21  
Geo. 5 c. 43,  
s. 38;  
24 & 25  
Geo. 5 c. 50,  
s. 12.

Duties of  
owner or  
insurer.  
Of 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.

**70f.** (1) The insurer may on behalf of the insured, conduct the negotiations in respect of any claim against the insured, and may assume the conduct and control of any legal proceedings in respect of any such claim, and at any stage of those negotiations or proceedings may pay, compromise, or settle any such claim.

Power of  
insurers to  
deal with  
claims against  
insured.  
Inserted by  
2332, 1936,  
s. 31.

(2) The insured shall sign and execute all such warrants, authorities, and other documents as are necessary to give effect to this section, and, if the insured makes default in doing so or is absent or cannot be found, the warrants, authorities, or other documents may be signed or executed by the insurer on behalf of the insured.

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 (2).

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 sixpence 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 sixpence 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;
- (b) of the insurer to the owner or driver in respect of the contract of insurance; and
- (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.

Inserted by  
2416, 1938,  
s. 29 (e).

(6) A sum payable under this section shall be recoverable as if it were a simple contract debt due from the insurer to the person entitled to that sum.

Inserted by  
2416, 1938,  
s. 29 (e).

(7) The Commissioner of Police shall if so requested by a person who alleges that he is entitled to a payment under this section furnish that person with any information at his disposal as to the identification marks of any motor vehicle which that person alleges to be a motor vehicle out of the use of which the death or bodily injury arose, and as to the identity and address of the person who was using the vehicle at the time of the event out of which the death or bodily injury arose.

Inserted by  
2416, 1938,  
s. 29 (e).

(8) Any person who was using a motor vehicle at the time when death or bodily injury was caused by or arose from such use, shall upon request of any person who alleges that he is entitled to payment under this section, furnish such person with the name and address of the insurer who issued the policy in force in relation to that vehicle at the time of the death or injury.

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.

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.

## PART IIA.

Power to suspend or cancel driver's licences on application of approved insurer.

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.

(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 twenty-one days' notice in writing given to the person to whom the policy was issued and to the Registrar of Motor Vehicles, unless the insurer substitutes another policy of insurance which complies with this Part, and commences immediately upon the termination of the previous policy.

(4) Upon the termination of the policy on such a notice, the motor vehicle specified in the policy shall be an unregistered vehicle unless and until the registrar is satisfied that another policy of insurance has been issued in respect of the use of that vehicle.

Amended by 40, 1945, s. 10.

Information to be furnished by insurers.  
Inserted by 2332, 1936, s. 31.

**70l.** (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 inquire 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.

**70n.** Proceedings for any offence against this Part shall be disposed of summarily.

Summary procedure.  
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.

Regulations.  
Inserted by  
2332, 1936,  
s. 31.

**70p.** Any contract (whether under seal or not) by virtue of which any person in advance contracts out of any right to claim damages or any other remedy for the negligence of any other person in driving a motor vehicle shall to that extent be void.

Contracting out of liability for negligence.  
Inserted by  
2416, 1938,  
s. 30.

**70q.** Notwithstanding anything in any enactment, a person issuing a policy of insurance whether under this Part or otherwise in relation to a motor vehicle shall, as from the date of the policy, be liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of these persons or classes of persons.

Rights of persons named in policies.  
Inserted by  
2416, 1938,  
s. 30.

## PART IIA.

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 examination his right to commence proceedings or (if commenced) to continue proceedings shall be suspended until the examination has taken place.

(3) A person shall not be entitled to any damages or compensation for any period during which he refuses to submit himself to or obstructs the examination or during which he has unreasonably delayed making a claim.

(4) Upon demand made by or on behalf of the person submitting himself to an examination under this section the person against whom the claim is made shall deliver to him a full and true copy of any report of the medical practitioner, and if default is made in such delivery for one week the report shall cease to be privileged from discovery.

Soliciting  
instructions  
to claim.

Inserted by  
2416, 1938,  
s. 30, and  
repealed and  
re-enacted by  
45, 1939,  
s. 20.

Subsec. (1)  
substituted  
by 46, 1941,  
s. 9 (1).

**70s.** (1) No person shall—

- (a) for or in the expectation of directly or indirectly receiving any reward accept instructions or authority to act on behalf of any person in respect of the making, commencement, resisting, compromise or settlement of any claim or action for damages for the death of or bodily injury to any person or for injury to the property of any person arising out of the use of a motor vehicle;
- (b) for or in the expectation of directly or indirectly receiving any reward make, commence, cause to be made or commenced, negotiate, settle, or compromise, on behalf of any person, any such claim or action;
- (c) hold himself out as being willing to act for reward on behalf of any person in making, commencing,

resisting, negotiating, settling, or compromising any such claim or action.

(2) This section shall not apply to—

Substituted  
by 35, 1943,  
s. 16.

- (a) any qualified legal practitioner acting in the course of his profession;
- (b) any officer of an 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 that association;
- (c) any person employed or instructed by an approved insurer to act on its behalf in connection with—
  - I. any claim or action in a case where the insurer is liable to indemnify the person against whom the claim is made or the action brought;
  - II. any claim for injury to property in a case where the insurer is exercising rights of subrogation in respect of that injury and where the person so employed or instructed limits himself to making and settling the claim without threatening or otherwise referring to legal proceedings in respect thereof.

(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.

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### PART III.

PART III.

## LICENSING OF VEHICLES OTHER THAN MOTOR VEHICLES.

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:

Interpreta-  
tion.  
1699, 1925,  
s. 3.  
1823, 1927,  
s. 3.

“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:
- (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.

s. 71. (Definition of “metropolitan area.”) The following district council districts have been constituted municipalities:—Burnside, *Gazette* 16th May, 1935, p. 1308; West Torrens, *Gazette* 9th December, 1943, p. 755; Mitcham, *Gazette* 16th December, 1943, p. 781; Marion, *Gazette* 30th March, 1944, p. 381; Walkerville, *Gazette* 24th August, 1944, p. 221; Payneham, *Gazette* 27th September, 1945, p. 489; Campbelltown, *Gazette* 11th April, 1946, p. 569. The name of the district council district of Yatala South has been altered to Enfield, *Gazette* 11th July, 1935, p. 38, and the district constituted a municipality, *Gazette* 30th March, 1944, p. 415.

**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: Provided that a vehicle shall not be required to be licensed by reason only of the fact that it is drawn or towed unladen behind another vehicle, if that other vehicle is licensed.

Duty to obtain licences for vehicles.  
1699, 1925, ss. 5, 10, 11.  
Cf. U.K. 10 & 11 Geo. 5 c. 72, s. 13.  
Amended by 17, 1942, s. 6.

(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.

**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 authorized for that purpose by the Minister.

Applications for and issue of licences.  
1699, 1925, ss. 5 (2), 6.

(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 authorized 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.

**75.** (1) The licence fee for a vehicle shall be calculated as follows:—

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).

- (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 authorized 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 authorized as aforesaid requires or as is prescribed.

Licence discs.  
1699, 1925,  
s. 8.  
1923, 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.

**79.** (1) Upon application, the registrar or other person authorized to issue licences, may, on proof to his satisfaction of the loss or destruction of any licence or disc, and on payment of a fee of two shillings and sixpence, issue to the applicant a duplicate licence or disc.

Duplicate licences and discs.  
1699, 1925, s. 9.

(2) Any such duplicate licence or disc shall be effectual for all purposes as if it were the original licence or disc.

**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 and liable to a penalty of not more than twenty pounds.

Penalty for affixing discs to wrong vehicles.  
1699, 1925, s. 12.

**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,

Penalty for unlawfully obtaining licence.  
1699, 1925, s. 13.  
Cf. U.K. 10 & 11 Geo. 5 c. 72, s. 13 (2), (11).

shall be guilty of an offence and liable to a penalty of twenty pounds.

**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

Facilitation of proof.  
1699, 1925, s. 14.  
Cf. U.K. 10 & 11 Geo. 5 c. 72, s. 13 (3).

## PART III.

(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:

“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:

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**Part IV. JAMES V. JOHNSON (1922) S.A.S.B. 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.

“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 waggon, dray, trolley, 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 of a wheel of a vehicle means—

Substituted by 35, 1943, s. 17.

- (a) in the case of a metal tire or a solid rubber tire, the width of the bearing surface of the tire:
- (b) in the case of a pneumatic tire, the full width of the tire measured at any part where the tire is not distorted.

**86.** Any person who drives or causes or permits to be driven on any road—

Maximum axle load for non-mechanical vehicles.

- (a) any non-mechanical 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;

Substituted by 35, 1943, s. 18.

- (b) any non-mechanical vehicle having metal tires and carrying on any axle thereof a greater weight than six tons and ten hundredweights; or
- (c) any non-mechanical vehicle having rubber tires and carrying on any axle thereof a greater weight than eight tons,

shall be guilty of an offence.

**87.** Any person who drives or causes or permits to be driven on any road—

- (a) any non-mechanical vehicle carrying a weight greater than that calculated in accordance with the rules contained in section 92;
- (b) any non-mechanical vehicle having metal tires and carrying a weight greater than that calculated at the rate of five tons for each axle of such vehicle; or
- (c) any non-mechanical vehicle having rubber tires and carrying a weight greater than that calculated at the rate of six tons for each axle of the vehicle,

shall be guilty of an offence.

**88.** Any person who drives or causes or permits to be driven on any road—

- (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 to be carried on a two-wheeled vehicle fitted with wheels of the same diameter and width of tire as the two wheels turning on such axle;
- (b) any motor vehicle having metal tires and carrying on any axle thereof a greater weight than six tons and ten hundredweights; or
- (c) any motor vehicle having rubber tires and carrying on any axle thereof a greater weight than eight tons,

shall be guilty of an offence.

**89.** Any person who drives or causes or permits to be driven on any road any motor vehicle carrying a weight greater than that computed in accordance with the rules contained in section 92 shall be guilty of an offence.

Maximum total load for non-mechanical vehicles. 1580, 1923, s. 4 (1).

Maximum axle load for motor vehicles. 1580, 1923, s. 6 (1).

Maximum total load for motor vehicles. 1580, 1923, s. 6 (2).

90. The provisions of this Part as to the maximum total load or maximum axle load for vehicles shall not apply to—

Exemptions.  
1580, 1923,  
s. 4 (4).

- (a) any tractor or traction engine not usually used upon a road; or
- (b) the conveyance of any piece of heavy machinery or other merchandise which cannot be taken apart without great expense or loss: Provided that the vehicle conveying such machinery follows the special route (if any) along which the town or district clerk of every municipality or district through which such machinery is carried, has ordered that it be conveyed to its destination.

91. If any person is guilty of an offence against section 86, 87, 88, or 89 he shall be liable to a penalty calculated at the rate of not less than two shillings and sixpence and not more than ten shillings for each hundredweight or part of a hundredweight carried in excess of the weight allowed by this Act.

Penalty.  
1580, 1923,  
ss. 4 (3),  
6 (3).  
Amended by  
55, 1943, s. 9.

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:—

Rules as to  
maximum  
weight.  
1580, 1923,  
the schedule.

- 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:
- 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

Amended by  
35, 1943,  
s. 19 (a).

Amended by  
35, 1943,  
s. 19 (b).

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 quarter of an 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.

Authorized  
officers.  
1580, 1923,  
s. 7.  
1714, 1925,  
s. 2.

**94.** (1) Any council may appoint any person to be an authorized 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 authorized officer for the purposes of this Part.

(2) The Minister may appoint any person to be an authorized 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 authorized 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.

**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 authorized 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.

Vehicles and load to be weighed if required.  
1580, 1923, s. 9.

(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.

**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 authorized officer, allow that member of the police force, inspector, or officer—

Load may be measured.  
1580, 1923, s. 10.

(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 authorized officer, in doing any act mentioned in subsection (1),

he shall be guilty of an offence.

## PART IV.

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 authorized 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 authorized 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 authorized 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 authorized 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.

**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 authorized 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.

Vehicle to  
be weighed  
if required.  
1580, 1923,  
s. 14.

(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 authorized 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.

**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—

Regulations.  
1580, 1923,  
s. 15.

- (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.

## PART IV.

**105.** Any person who is guilty of any offence against this Part for which no other penalty is provided shall be liable for the first offence to a penalty of not more than ten pounds, and for every subsequent offence to a penalty of not less than two pounds and not more than twenty pounds.

Penalty.  
1580, 1923,  
s. 18.

**106.** All proceedings in respect of offences against this Part shall be disposed of summarily.

Summary  
proceedings  
for offences.  
1580, 1923,  
s. 19.

**107.** All money collected as fines in respect of convictions under this Part shall be paid into general revenue: Provided that where any fine is imposed in respect of an offence committed within a local government area and the complaint in respect of the offence was made by an officer of the council of such area, one moiety of such fine shall be paid to the council for the use and benefit of the area.

Appropriation  
of penalties.  
1580, 1923,  
s. 20.

## PART V.

## PART V.

## LIGHTS AND EQUIPMENT ON VEHICLES OTHER THAN MOTOR VEHICLES.

Heading  
amended by  
2416, 1938,  
s. 31.

**108.** In this Part, unless the context or subject matter requires a different construction—

Interpreta-  
tion.  
1970, 1919,  
s. 4.  
Cl. U.K.  
17 & 18  
Geo. 5 c. 37,  
s. 15.

“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.  
1970, 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.

(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.  
1970, 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.

(3) Where two lamps are carried—

(a) one shall be affixed on the front of the bicycle or tricycle in such a position and manner that a bright white light from the lamp is clearly visible to any person approaching the bicycle or tricycle from the front; and

(b) one shall be affixed on the rear of the bicycle or tricycle not more than twenty inches above the ground in such a position and manner that a red light from the lamp is clearly visible to any person approaching the bicycle or tricycle from the rear.

Para. (b) amended by 2332, 1936, s. 34.

(4) In this section the term “visible” means “visible at a distance of at least two hundred yards from the bicycle or tricycle on which the lamp or lamps is or are carried”.

Amended by 2332, 1936, s. 34.

(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.

Substituted by 45, 1939, s. 21.

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.

**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

Lights where load projects. 1370, 1919, s. 7. Cf. U.K. 17 & 18 Geo. 5, c. 37, s. 6.

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) If any person drives or leaves stationary on any road or causes or permits any person to drive or leave stationary on any road, any vehicle which in any particular does not comply with this section, he shall be guilty of an offence.

Substituted  
by 20, 1944,  
s. 8.

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) If any person drives or leaves stationary on any road or causes or permits any person to drive or leave stationary on any road, any vehicle which in any particular does not comply with this section, he shall be guilty of an offence.

Substituted  
by 20, 1944,  
s. 9.

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.

**112c.** Every rider of a bicycle or tricycle shall, whenever necessary, by sounding the warning instrument attached thereto, give audible and sufficient warning of the approach of the bicycle or tricycle.

Duty to use warning instrument.  
Inserted by 2416, 1938, s. 32.

**113.** (1) Every member of the police force and every inspector in the Highways and Local Government Department of the public service shall, without any further appointment, be an inspector under this Part for the whole State.

Who to be inspectors under Act.  
1870, 1919, s. 9.

(2) The Governor may appoint any other person to be an inspector under this Part for the whole State, or for any particular portion of the State.

(3) Any council may appoint any other person to be an inspector under this Part within the local government area of such council.

(4) The exercise by every inspector appointed otherwise than for the whole State of his powers and duties under this Part shall be limited to the portion of the State or the local government area, for which he was appointed.

**114.** Any contravention of or failure to observe any provision of this Part, whether by act or omission, shall be an offence.

Offences.  
1870, 1919, s. 10.

**115.** Any person guilty of an offence under this Part shall be liable to a penalty for a first offence of not more than five pounds, and for any subsequent offence of not more than ten pounds.

Penalties.  
1870, 1919, s. 11.  
Amended by 55, 1948, s. 10.

**116.** All moneys received for or on account of penalties imposed for offences against this Part shall be paid to the Treasurer for the public uses of the State; except moneys received in respect of an offence committed within the limits of a local government area, which shall be paid over to, and for the use of, the council of such area.

Appropriation of penalties.  
1870, 1919, s. 15.

**117.** Whenever in any proceedings for an offence against this Part, any place is described as a road such description shall be *prima facie* evidence that that place is a road within the meaning of this Part.

Facilitation of proof.  
1870, 1919, s. 14 (a).  
1609, 1924, s. 2.

**118.** All proceedings in respect of offences against this Part shall be disposed of summarily.

Summary proceedings for offences.  
1870, 1919, s. 16.

PART VI.

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, and amended by 55, 1948, s. 11.

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 except as provided in subsection (3) of this section, 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—

Para. (a) repealed by 46, 1941, s. 10.

\* \* \* \* \*

(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.

(3) In sections 120, 121, 123, and 139 of this Act the word "vehicle" shall include a tramcar.

Inserted by  
55, 1948,  
s. 11 (b).

**120.** (1) If any person drives or rides any vehicle or animal or walks on a road without due care or attention or without reasonable consideration for other persons using the road he shall be guilty of an offence.

Careless  
driving.  
U.K. 20 & 21  
Geo. 5 c. 43,  
s. 12.

(2) If any person rides a bicycle on any road without having at least one hand upon the handle-bar in such a

Inserted by  
2332, 1936,  
s. 35.

- s. 120. **HUNT v. BOND** (1930) S.A.S.R. 46; 12 Austn. Digest 285. Held, that a complaint alleging negligent driving, without giving particulars of the negligence, was sufficient.
- WINTULICH v. LENTHALL** (1932) S.A.S.R. 60. Held (under section 21 of the Motor Vehicles Act, 1921, which made it an offence to drive a motor car negligently) that the standard of care required was that which an ordinarily prudent man would deem necessary in the circumstances presented to him, in order to avoid injury or damage to the person or property of others. Wilful or intentional negligence need not be proved.
- NEALE v. WALSH** (1932) S.A.S.R. 429. Any substantial breach of the ordinary duty to take care amounted to "driving negligently" within the meaning of section 21 of the Motor Vehicles Act, 1921.
- KIERNAN v. PIERCE** (1933) S.A.S.R. 137. Where the circumstances proved against a defendant proved to have been involved in a collision are such that he may be presumed to know why the collision occurred, and the only evidence before the court indicates that the other party was not blameworthy, the defendant must either explain why the collision occurred or submit to the conclusion that it occurred because he was driving negligently.
- 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 defendant 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. EL딩** (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.
- DAYMAN v. SARIS** (1939) S.A.S.R. 445. Held, in the particular facts, that the driver of a vehicle drove without due care.
- STEPHENS v. STEWART** (1941) S.A.S.R. 24. Where a driver of a vehicle turned his vehicle for the purpose of proceeding in the opposite direction, held out his hand to signal the turn, but did not look for traffic whilst on the turn, held that he drove without due care.
- DAYMAN v. GILL** (1941) S.A.S.R. 208. Where a driver of a vehicle turned across a street and his explanation was accepted that when he commenced his turn approaching vehicles were at a distance which made it appear safe to cross in front of them, held that the dismissal of the complaint should not be disturbed.
- FRASER v. DAYMAN** (1942) S.A.S.R. 5. Where a motor car stopped at about twenty feet from the kerb and a motor omnibus overtook and ran down the motor car,

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.

(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.

- s. 120. held that, notwithstanding the unexpected place where the motor car was stopped, the driver of the omnibus had driven without due care.
- HOWE v. DAYMAN* (1943) S.A.S.R. 20. There is no general rule that a driver is guilty of driving without due care if he makes a right hand turn in a busy thoroughfare without looking behind him to see whether there is any risk of collision with a following vehicle.
- MILKINS v. ROBERTS* (1949) S.A.S.R. 251. Nature of the offence of driving or riding a vehicle or animal without due care or attention considered.
- s. 121. *MOORE v. THE KING* (1926) S.A.S.R. 52; 5 Austn. Digest 280; affirmed by *MOORE v. THE KING* (1926) 39 C.L.R. 602. *Semble*, that if the accused (although not guilty of criminal negligence) had committed the offence of negligent or dangerous driving, and thereby killed a person, he could not make out the defence of homicide by misadventure.
- KELLY v. WALSH* (1929) S.A.S.R. 481. On a charge of dangerous driving it is not necessary to show that the safety of any particular person was endangered. It is enough if there is some substantial possibility of injury to persons who might reasonably be expected to come upon a road. Conviction quashed where the defendant had not endangered any person and the court was of opinion that there was no potentiality of mischief to the public in the circumstances.
- BARNETT v. WALSH* (1934) S.A.S.R. 303. Where the defendant and another person, through an error of judgment, endangered each other's safety, but not that of the public, held that the defendant was not guilty of dangerous driving.
- KELDOULIS v. FRENCH* (1935) S.A.S.R. 192. An attempt to pass between stationary motor cars held to be dangerous driving.
- THOMPSON v. COPELAND* (1936) S.A.S.R. 45. Held that "recklessness" implies that the possible consequences of his act are adverted to by the actor, but he is indifferent whether they occur or not.
- BOND v. COCKS* (1938) S.A.S.R. 14. Circumstances which would justify a reduction of penalty under section 75 of the Justices Act, 1921, discussed.
- 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.

**121a.** (1) Any person who—

- (a) drives or rides any vehicle, not being a motor vehicle; or
- (b) occupies the driver's or rider's seat on a vehicle, not being a motor vehicle, and attempts to put the vehicle in motion,

Driving horse-drawn and other vehicles while drunk. Inserted by 35, 1943, s. 20.

while he is so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle or of any animal attached thereto, shall be guilty of an offence and liable to a fine of not more than fifty pounds.

(2) 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 subsection shall be paid by him into the general revenue of the State.

(3) For the purposes of subsection (1) of this section a person shall be deemed to be incapable of exercising effective control of a vehicle or animal if, at the relevant time, owing to the influence of intoxicating liquor or a drug, the use of any mental or physical faculty of that person was lost or appreciably impaired. This subsection shall not be deemed to restrict the meaning of the words "incapable of exercising effective control of a vehicle".

Inserted by 55, 1948, s. 12.

**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 authorized crossing place he shall be guilty of an offence.

Crossing railways at unauthorized places. Inserted by 2332, 1936, s. 35.

s. 122. *BOND v. CLARKE* (1938) S.A.S.R. 55. It is unnecessary to prove *mens rea* to establish an offence.

*FLINT v. BARBER* (1944) S.A.S.R. 49. It is not necessary that a complaint under paragraph (b) of subsection (2) charging a driver with attempting to drive a motor vehicle across a railway line when there was a possibility of a collision with a train should contain a direct and specific allegation that the defendant was the driver of the vehicle.

(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 authorized 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.

(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.

Inserted by  
2416, 1938,  
s. 33.

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.** (1) 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.

(2) A traffic sign placed at or near an intersection and showing a light signal shall be deemed to indicate the following rules to be observed by the drivers and riders of vehicles and animals:—

- (a) While a red, amber, amber-with-red, or amber-with-green signal is being shown, a person shall not drive or ride a vehicle or animal across the stop line in the direction of the signal, except as allowed in paragraph (c) of this subsection, and a person driving or riding a vehicle or animal shall not turn to the right within the intersection so as to proceed in the direction of the signal.
- (b) While a green signal is being shown a person may drive or ride a vehicle or animal across the stop

Inserted by  
20, 1944,  
s. 10.

line in the direction of the signal, and having done so may, notwithstanding a change in the colour of the signal, complete the crossing of the intersection in the direction of the signal, or turn to the left.

- (c) If, when the signal changes from green to amber or amber-with-green, a vehicle or animal proceeding in the direction of the signal is so close to the stop line that it cannot safely be stopped before crossing that line, a person may drive or ride the vehicle or animal across the stop line in the direction of the signal, and having done so may, notwithstanding a change in the colour of the signal, complete the crossing of the intersection in the direction of the signal, or turn to the left.

(3) A traffic sign placed at or near an intersection and showing a light signal shall be deemed to indicate the following rules for pedestrians:—

Inserted by  
20, 1944,  
s. 10.

- (a) While the red, amber, amber-with-red, or amber-with-green signal is showing a pedestrian must not proceed in the direction of the signal, beyond the edge of the footpath on the side of the road opposite to the signal.
- (b) While the green signal is showing a pedestrian proceeding in the direction of the signal may commence to cross the intersection and having so commenced may, notwithstanding a change in the colour of the signal, complete such crossing except as provided in paragraph (c) of this subsection.
- (c) If, while a pedestrian is on the carriage-way the amber or amber-with-green signal appears, and there is a safety zone between the pedestrian and the signal towards which he is proceeding, he shall not proceed beyond the safety zone until the green signal is shown.

(4) For the purposes of this section a person shall be deemed to be proceeding in the direction of a signal and a vehicle or animal shall be deemed to be driven or ridden in the direction of a signal if, within the intersection, the person proceeds or the vehicle or animal is driven or ridden towards the side or the prolongation of the side of the intersection from which the signal is shown.

Inserted by  
20, 1944,  
s. 10.

(4a) Notwithstanding the other provisions of this section a tramcar may, while an amber light is showing—

Inserted by  
55, 1948,  
s. 13.

- (a) be driven over the stop line for the purpose of turning; and
- (b) complete a turn.

Inserted by  
20, 1944,  
s. 10.

(5) Where the indication given by a light signal is inconsistent with a reasonable direction given by a member of the police force for the purpose of regulating traffic, the direction shall prevail.

Inserted by  
20, 1944,  
s. 10.

(6) In this section—

“intersection” means—

(a) the quadrilateral or other area comprised within straight lines joining the corners formed by the intersection of two or more roads; and

(b) every part of a road which is within twenty feet of any such quadrilateral or area:

“stop line” means, in relation to any signal, a line marked with studs, paint or other material on the road in such a position as to indicate a stopping place for vehicular traffic approaching the intersection from the side opposite the signal:

“safety zone” means a space on a road indicated as a safety zone by the words “safety zone” marked on the surface of the road or on a sign.

Duty to keep  
vehicles and  
animals to  
the left.

**124.** If any person riding or driving any vehicle or animal upon any road—

Inserted by  
2332, 1936,  
s. 35.

(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.

**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.

Inserted by  
2332, 1936,  
s. 35.

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.

*WILLIAMS v. STEWART* (1944) S.A.S.R. 254. *Quaere*, whether the word “practicable” is to be interpreted subjectively or objectively.

s. 125. *RUDALL AND OTHERS v. DEACON AND OTHERS* (1945) S.A.S.R. 271. Appeal to the High Court dismissed (1945) 67 C.L.R. 641 (note); (1945) S.A.S.R. xxiii. (note). Section 125 is a remedial section and should receive a liberal consideration pursuant to section 22 of the Acts Interpretation Act. Meaning of “as near as practicable” discussed.

*O’SULLIVAN v. BARTON* (1947) S.A.S.R. 4. Where a taxi driver was hailed by three pedestrians and stopped his vehicle but kept his engine running and when about to move off a motor cycle collided with the rear of his taxi, held that he had not left his vehicle stationary on the carriage-way within the meaning of section 125.

**126.** (1) The rider or driver of any vehicle or animal on any road when passing any other vehicle or animal going in the same direction shall—

- (a) if the driver or rider of that other vehicle or animal has signalled his intention to turn to the right keep on his left hand side of that other vehicle or animal;
- (b) in any other case keep on his right hand side of that other vehicle or animal.

(2) Any person contravening this section shall be guilty of an offence.

**127.** If any person riding or driving any vehicle or animal does not, when passing any tram car travelling or about to travel in the same direction, keep on his left hand side of the tram car, he shall be guilty of an offence: Provided that if the tramway line is laid so near the left hand side of the road as not to permit the free passage of the animal or vehicle on the left of the tram car, or if owing to any obstruction in the road, it is not practicable to pass on the left of the tram car, the animal or vehicle may lawfully be ridden or driven on the right of the tram car.

**127a.** (1) Notwithstanding sections 124, 125, and 126 of this Act, where the driver of a vehicle is about to turn his vehicle to the right from one road to another at an intersection or junction—

- (a) he shall, except where the road which he is about to leave is a one-way traffic road, so drive his vehicle that when it reaches the intersection or junction it will be as near as practicable to, but on the left of, the centre of the carriage-way of that road;
- (b) he shall, where the road which he is about to leave is a one-way traffic road, so drive his vehicle that when it reaches the intersection or junction it will be as near as practicable to the right hand boundary of the carriage-way of that road; and
- (c) in every case he shall upon entering the intersection or junction drive his vehicle parallel with the left boundary of the carriage-way of the road which he is leaving until it is as near as practicable to the left boundary of the carriage-way of the road which he is entering;

Overtaking vehicles and animals.

Inserted by 2332, 1936, s. 35, and substituted by 29, 1950, s. 7.

Overtaking tram cars.

Inserted by 2332, 1936, s. 35.

Mode of making right turns.

Inserted by 29, 1950, s. 8.

(d) if there is upon or near any portion of the intersection or junction any vehicle or any animal with which his vehicle if turned to the right might collide, he shall cause his vehicle to stand until it may turn with safety.

(2) Notwithstanding subsection (1) of this section the driver of a vehicle who is about to turn or who turns the vehicle to his right at an intersection or junction shall not drive the vehicle in a position where it is likely to obstruct the progress of any tram car nor allow the vehicle to stand in any such position.

(3) Where the driver of a vehicle turns his vehicle to the right from one road into another at an intersection or junction—

(a) if a traffic dome or beacon is placed at or near the centre of the intersection or junction he shall drive his vehicle so as to keep such dome or beacon on his right;

(b) he shall in all circumstances take adequate precautions to prevent his vehicle from colliding with any obstruction which may be upon any portion of the intersection or junction.

(4) This section shall also apply to riders of animals and to the animals ridden by them and for that purpose the expression “driver of a vehicle” and the word “driver” shall be deemed to include a rider of an animal, and the word “vehicle” shall be deemed to include an animal.

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.

Inserted by  
2416, 1938,  
s. 34, and  
repealed and  
re-enacted by  
46, 1941,  
s. 11.

(1a) Subsection (1) of this section shall not apply to—

(a) a person walking on the carriage-way of a road if he is drawing or pushing any vehicle, or leading any animal:

(b) any persons marching on the carriage-way of a road in a column or other regular formation;

but section 124 of this Act shall apply to all such persons.

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.

DELLAMINA v. GIBBS (1940) S.A.S.R. 282. A “carriage-way” includes any part of the highway which is commonly and reasonably used by vehicles.

(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.

Inserted by  
2416, 1938,  
s. 34.

(2) This section shall not restrict the operation of any Act, regulation, or by-law which regulates walking upon roads.

**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.

Overtaking  
other vehicles.  
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.

Warning by  
driver of  
overtaking  
vehicle.  
Of. U.K.  
20 & 21  
Geo. 5 c. 43,  
s. 59 (1) (b).  
Inserted by  
2332, 1936,  
s. 35.

(2) After the signal has been given, the driver of the vehicle being overtaken shall not increase his speed until the overtaking vehicle has had a reasonable opportunity to pass and draw clear of the overtaken vehicle.

(3) If any person contravenes this section in any way, he shall be guilty of an offence.

**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 at any place on any road, a sign containing in clearly legible letters of the size prescribed by regulation the word "Stop".

Stop signs.  
Inserted by  
2416, 1938,  
s. 35, and  
repealed and  
re-enacted by  
61, 1940, s. 8.

(2) The Commissioner of Police shall, at least one month before the erection of any such sign or, as the case may be,

s. 129. *BLUNDERFIELD v. MATES AND OTHERS* (1942) S.A.S.R. 1, appeal to the High Court dismissed, 66 C.L.R. 669 (note). Observations on section 129.

s. 130a. *PAGET v. STEWART* (1941) S.A.S.R. 148. *Semble*, "The road on both sides" of the intersection refers to so much of the road intersecting the road on which the stop sign is erected as lies on either side of the medial line of the last mentioned road; and it would be an offence to enter the intersection while there was a vehicle travelling along the intersecting road and *a fortiori* if that vehicle had entered the quadrilateral formed by the intersection.

*SMALLACOMBE v. DAY* (1943) S.A.S.R. 368. Where the appellant had approached a stop sign and failed to see a motor car approaching along the road into which he was converging, held that the appellant was guilty of an offence and

giving his approval to such erection, publish in the *Gazette* a notice of his intention to erect such sign or approve the erection thereof. The notice shall specify the type of sign proposed to be erected or approved and the place where it is to be erected.

(3) Any person objecting to the erection of any such sign may within one month after the publication of the notice in the *Gazette* give the Minister written notice of his objection and of the grounds thereof and the Minister may thereupon either prohibit or approve the erection of the sign, or may approve the erection of the sign subject to any conditions, and the Minister's decision shall be final.

(4) When any such sign is erected at any intersection or junction the driver or rider of a vehicle or animal approaching the intersection or junction from the direction in which the sign is facing—

- (a) shall before entering the intersection or junction stop his vehicle or animal; and
- (b) shall not enter the intersection or junction until the road on both sides thereof is sufficiently clear of traffic to allow his vehicle or animal to pass through the intersection or junction without danger.

(5) Section 131 of this Act shall not apply to the driver or rider of a vehicle or animal approaching an intersection or junction, if the driver or rider of the vehicle or animal on his right is required by virtue of this section to stop his vehicle or animal before entering the intersection or junction; but section 131 shall apply in other respects at intersections or junctions at which a sign is erected under this section.

(6) When any such sign is erected elsewhere than at an intersection or junction the driver or rider of any vehicle or animal approaching the sign from the direction in which it is facing shall stop his vehicle or animal before any part thereof passes the sign.

(7) Subsections (4) and (6) of this section shall not apply if at the intersection, junction, or place where the sign is erected the traffic was at the material time being controlled

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s. 130a. it was immaterial whether the driver of the motor car had or had not been  
(contd.) guilty of negligence.

SMITH AND OTHERS v. DYER AND WILSON (1949) S.A.S.R. 187. The presence of a stop sign at an intersection does not relieve the driver who has the right of way from the duty of exercising vigilance with reference to possible traffic emerging from the intersecting road, and he is not entitled to assume that he may safely drive across the intersection without looking to see if there is any such traffic.

by a member of the police force or some other authorized person.

(8) If any person fails to comply with any requirement of subsection (4) or subsection (6) of this section he shall be guilty of an offence.

(9) 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.

(10) Any sign containing the word "Stop" in clearly legible letters of the size prescribed by regulation and erected before the passing of the Road Traffic Act Amendment Act, 1940, shall be deemed to be a sign erected under this section.

(11) 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.

(12) For the purposes of this section—

Inserted by  
29, 1950, s. 9.

(a) each carriage-way of a double road shall be deemed to be a separate road;

(b) where a road intersects both carriage-ways of a double road it shall be deemed to form a separate intersection with each such carriage-way;

(c) where a road intersects one carriage-way of a double road and adjoins but does not extend beyond the other carriage-way of that double road it shall be deemed to form an intersection with the first-mentioned carriage-way and a junction with the other;

(d) any vehicular track which passes through the strip of land separating the carriage-ways of a double road and joins one carriage-way to the other shall be regarded as a separate road forming a junction with each carriage-way;

- (e) a sign erected under this section on a road at the approach to a double road shall operate only as regards the intersection formed by the road first mentioned and the carriage-way nearest to the sign;
- (f) a double road means a double road having two carriage-ways separated by a strip of land.

Stop signs  
at railway  
crossings.

Inserted by  
2416, 1938,  
s. 35.

**130b.** (1) The South Australian Railways Commissioner may on any road at or near any level crossing erect signs clearly visible to traffic approaching the crossing and containing in clearly legible letters of the size prescribed by regulation the word "Stop".

Substituted  
by 45, 1939,  
s. 24.

(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—

- (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.  
Subsecs. (1)  
to (3) sub-  
stituted by  
55, 1948,  
s. 14.

**130c.** (1) The Commissioner of Highways may mark on any part of a road—

- (a) a broken line for the purpose of indicating the division of that road into traffic lanes;

(b) on either side of any broken line a continuous line for the purpose of controlling the movement of traffic to the right as hereinafter provided.

Every such line shall be of the colour and width fixed by the Commissioner.

(2) Where a continuous line is on the left-hand side of a broken line it shall be a traffic control line within the meaning of this section.

(3) If any person drives or rides a vehicle or animal so that the whole or any part of that vehicle or animal passes over a traffic control line marked on the right-hand side of the traffic lane in which the vehicle or animal was being driven, he shall be guilty of an offence: Provided that no person shall be punished for contravening the foregoing provisions of this subsection if he proves that he was obliged to cross the traffic control 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.

(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.

Inserted by  
45, 1939,  
s. 25.

**130d.** (1) The Commissioner of Police may—

(a) cause to be erected in accordance with this section, signs indicating a speed limit for vehicles crossing any bridge;

(b) cause any signs erected under this section to be removed.

Speed limits  
on bridges.

Inserted by  
55, 1948,  
s. 15.

(2) The powers conferred on the Commissioner of Police by this section may be exercised either of his own motion or on the application of the municipal or district council in whose area the bridge is situated.

(3) If the Commissioner of Police refuses an application made to him by a council under this section the council may appeal to the Minister against the decision of the Commissioner.

When an appeal is so made the Minister after obtaining such information as he thinks fit shall decide the matter and his decision shall be final.

(4) The speed limit for a bridge shall be indicated by two signs. One shall be placed at or near each abutment

of the bridge, or on the approach to the bridge within two hundred yards of each abutment.

(5) A sign erected under this section shall—

(a) have marked thereon figures showing the miles per hour of the speed limit intended to be fixed thereby, followed by the letters m.p.h.;

(b) be of such size and shape and be erected in such manner as the Commissioner of Police determines.

(6) A person who drives a vehicle on a bridge at a speed in excess of that indicated by the signs erected on that bridge or the approaches thereof pursuant to this section shall be guilty of an offence.

(7) The allegation in a complaint that any signs are erected pursuant to this section shall be *prima facie* evidence of that fact.

(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.

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

s. 131. **THE MUNICIPAL TRAMWAYS TRUST v. AUSTIN** (1930) S.A.S.R. 81. In civil proceedings the onus of proving a breach of section 131 and of negating the proviso to section 131 (1) is on the party who alleges the breach.

**MORRIS v. PFUHL** (1932) S.A.S.R. 78. Section 131 does not apply to two vehicles approaching an intersection from the same direction along the same road.

**RECHNER v. PALMER** (1934) S.A.S.R. 409. Held as regards regulation 6A (which section 131 follows, with alterations):—(a) Regulation 6A did not apply only when the driver having the other vehicle on his right could see or was otherwise made aware of the approaching vehicle before he reached the intersection: (b) the area to which the regulation applied included not only the quadrilateral of the intersection but the immediate neighbourhood: (c) regulation 6A did not lessen the obligation of a person who was about to drive out of a by-street into a main thoroughfare.

**SUTER v. RUEDIGER AND ANOTHER** (1936) S.A.S.R. 130. Held that the driver of a vehicle is entitled to assume that other drivers will observe the regulation applicable to traffic at an 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

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.

(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

s. 131. junction. Subsection (1) gives a right to continue a course, not to alter it (contd.) 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 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

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.

Amended by  
61, 1940, s. 9.

(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 authorized person, or by any system of lights.

(4) Subsection (1) and subsection (2) of this section shall each be deemed to create a single offence, and no objection shall be taken on the ground of duplicity or uncertainty to a complaint under either subsection alleging that, in the circumstances mentioned in the subsection, the defendant "did not decrease the speed of his vehicle to such an extent or stop his vehicle for such time" as is required by the subsection.

(5) This section shall also apply in cases where two animals, or an animal and a vehicle or tram car are approach-

s. 131.  
(contd.)

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.

DAYMAN v. SARIS (1939) S.A.S.R. 445. A driver of a vehicle does not comply with the section if he so drives as to suggest that he does not intend to give way.

VIRGO v. FIDDAMAN (1940) S.A.S.R. 17. If a defendant is driving at a reasonable speed along a main road and sounds his horn when approaching an intersection, he is not bound to stop at every blind corner upon the bare chance of another vehicle ignoring his horn and emerging upon the main road without answering.

MATTHEW v. FLOOD (1940) S.A.S.R. 48. *Seemingly*, an unmade road is sufficiently a road for the locality to be a junction within the meaning of section 131.

BOWDEN v. PETHERICK (1940) S.A.S.R. 90. Where a cyclist was riding along a street and the driver of a motor car proceeding in the opposite direction along the same street turned into another street at right angles to the first street and so that each vehicle had the other on its right, held that section 131 did not apply.

PETERS v. BECK (1940) S.A.S.R. 204. Where a cyclist crossing an intersection at slow speed was struck by a motor vehicle, the driver of which thought, without justification, that the cyclist intended to turn to the left, that is, in the same direction as the motor vehicle was proceeding, held that a breach of section 131 had been committed.

SKINNER v. DAY (1941) S.A.S.R. 19. The provisions of section 131 are applicable not only to an intersection but also to a junction of roads.

DAYMAN v. BLEWETT (1941) S.A.S.R. 32. To escape liability for failure to give way to the vehicle on the right, the person charged must establish on the balance of probabilities that he was not aware, and could not, by exercising reasonable care, have become aware of the approach of the other vehicle. The awareness referred

ing 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.

(6) For the purpose of this section—

Inserted by  
29, 1950,  
s. 10.

(a) each carriage-way of a double road shall be deemed to be a separate road;

s. 131.  
(contd.) to in the proviso to subsection (1) is of the approach to the intersection and not of the situation of the two vehicles at the time when the approach is over and the intersection is reached or is being crossed. The duty to become aware is directed to the same time.

SWANN v. THOMPSON (1941) S.A.S.R. 150. Where a collision occurred at an intersection where the plaintiff was travelling at an excessive speed and the defendant failed to give way, held that the plaintiff was guilty of contributory negligence and the action failed.

DAYMAN v. TISHER (1941) S.A.S.R. 205. Section 131 is directed to the regulation of crossing and converging lines of traffic.

DAYMAN v. WILCKENS (1942) S.A.S.R. 88. Section 131 requires the driver of a vehicle having an approaching vehicle on the right so to act that the driver of the approaching vehicle can maintain his course and speed, and it is no defence to a complaint under the section that the driver of a motor vehicle is approaching and crossing over an intersection at a slow speed and fails to give way to a vehicle approaching at a fast speed from his right.

PARKER v. DAYMAN (1943) S.A.S.R. 326. A driver with the right of way is to be expected to maintain his course and speed when crossing an intersection unless there is something in the circumstances existing at the time that might reasonably demand a change in either. *Seem*, a substantial change of speed by the driver having the right of way while crossing the intersection from that at which the vehicle is travelling when approaching would seem to relieve the other driver from liability under the section, assuming that otherwise there would have been no reasonable possibility of danger.

SLATER v. DAY (1946) S.A.S.R. 146. Duty of driver having another vehicle on his right discussed.

BORN v. O'SULLIVAN (1947) S.A.S.R. 121. A tramway thoroughfare and viaduct, used by tram cars and pedestrians but not by public vehicular traffic is not a "road" within the meaning of section 131.

ROBINSON v. CREASER (1948) S.A.S.R. 47. Held: (1) Where vehicles collide within a junction or intersection, having been visible to each other on their approach, and having maintained their respective courses and speeds, the impact affords cogent proof that the relationship of the vehicles to each other and to the junction or intersection was one to which subsection (1) applies. (2) Where the situation postulated in subsection (1) arises, an unqualified duty is imposed on the driver who has the other vehicle on his right to decrease his speed or stop to allow the other vehicle to continue on its course; and the existence of the duty is not negated by showing that the other driver was negligent. (3) A driver approaching a junction or intersection is relieved by subsection (1) from maintaining a continuous lookout for the actions of drivers approaching a junction or intersection on his left; and his failure to look during the approach or when traversing the junction or intersection will not amount to negligence. If he has received some actual warning of the creation of a situation of danger by the approach of another vehicle from his left hand side, and unreasonably fails to act to prevent a collision, which he has had an opportunity of preventing, he may be guilty of negligence; but the onus is on the other party to prove these facts.

BAKER v. O'SULLIVAN (1949) S.A.S.R. 127. The driver of a vehicle who has another vehicle on his right at a junction or intersection is not relieved from the liability to give way by stopping his vehicle at the boundary of the junction or intersection, and then starting again to cross the junction or intersection.

O'SULLIVAN v. SARIS (1950) S.A.S.R. 127. Where a road bifurcated at an intersection, held that it was the duty of the driver of a vehicle entering the intersection to give way to another vehicle on his right.

## Road Traffic Act, 1934-1950.

- (b) where a road intersects both carriage-ways of a double road it shall be deemed to form a separate intersection with each such carriage-way;
- (c) where a road intersects one carriage-way of a double road and adjoins but does not extend beyond the other carriage-way of that double road it shall be deemed to form an intersection with the first-mentioned carriage-way and a junction with the other;
- (d) a double road means a road having two carriage-ways separated by a strip of land.

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.

Subsec. (3) repealed by 46, 1941, s. 12.

\* \* \* \* \*

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
- (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.

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. 455, appeal to the High Court dismissed, 62 C.L.R. 747 (note). "Passing" a tram car in a regulation relating to the passing of stationary tram cars, held to mean overtaking a tram car which is using the same road and is going in the same direction as the vehicle.

(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).

**134.** (1) Whenever the driver or rider of a vehicle or animal is about to turn his vehicle or animal to the right in or into any road he shall give a clear signal of his intention to do so by extending his right arm horizontally from the right side of the vehicle or animal with the palm facing the front and the fingers extended.

Signals.  
Substituted  
by 40, 1945,  
s. 11.

(2) Whenever the driver or rider of a vehicle or animal is about to slow down or stop he shall give a clear signal of his intention to do so by raising his right fore-arm and hand in a vertical position with the palm of the hand turned to the front and the fingers extended and pointing upwards.

(3) A clear signal for the purposes of this section means a signal which—

- (a) is so given as to be clearly visible to traffic approaching the vehicle or animal from behind; and

s. 134. COLLINS v. GOTTSCH (1941) S.A.S.R. 256. It does not follow that, if circumstances arise in which prudence calls for slowing down without being able to comply with subsection (2), a driver is free from negligence in not slowing down.

LE CORNU v. BARRINGTON (1945) S.A.S.R. 163. There is a duty on the driver of a car in starting a stationary car ranked alongside a kerb and intending to turn to his right to give the signal prescribed in subsections (1) and (1a).

LITTLE v. FOX (1950) S.A.S.R. 40. Provided the signal is given for such time as is necessary to give reasonable warning to traffic approaching from behind, it is not necessary that it should also have been given continuously for a distance of one hundred feet before the point where the vehicle turns.

(b) is given for such time as is necessary to give reasonable warning to traffic approaching the vehicle or animal from behind.

A signal shall be deemed to comply with paragraph (b) of this subsection if it is given continuously for a distance of one hundred feet before the point where the vehicle or animal turns, slows down, or stops.

(4) It shall be sufficient compliance with the provisions of this section if the appropriate signal is given by a mechanical or electrical device which has been approved by the Registrar of Motor Vehicles.

(5) 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.

**136.** If any person causes or permits any vehicle or animal to remain at rest on any road—

(a) in such a position or in such condition or circumstances as to be likely to cause danger to other persons using the road or so as to obstruct the passage of traffic on the road; or

(b) in such a position as to obstruct any gate, door or entrance by which vehicles gain access to any land or building, or so as to obstruct any crossing leading from the carriage-way of a road across a footpath to any such gate, door, or entrance,

he shall be guilty of an offence.

Causing danger of obstruction.

Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 50.

Inserted by 2332, 1936, s. 35, and substituted by 29, 1950, s. 11.

**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.

Driving or riding on footpaths, etc.

Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 14.

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.

Control of animals by driver.

Inserted by 2332, 1936, s. 35.

**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 as soon as practicable after the accident happens 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.

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), and by 20, 1944, s. 11.

s. 136. *NOONAN v. JOHNS* (1940) S.A.S.R. 4. Where the driver of a motor car stopped his car with its near side about twelve feet from the kerb in a busy street to allow a passenger to alight and there was a space a short distance away where the driver could have pulled in alongside the kerb, held that the driver had committed an offence against section 136.

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),

(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).

Inserted by 2416, 1938, s. 38 (c).

(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.

Duty to give information as to identity of driver.

Cf. U.K. 20 & 21 Geo. 5 c. 43, s. 113 (3).

Inserted by 2332, 1936, s. 35, and substituted by 29, 1950, s. 12.

140. (1) Any person shall, when requested by a member of the police force or by an inspector appointed under Part II. of this Act, truly answer any question put to him seeking information which may lead to the identification of the person who was driving any vehicle on any occasion.

(2) Any person who refuses to answer, or fails to answer truly any such question shall be guilty of an offence.

Projecting loads.

Inserted by 2332, 1936, s. 35.

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—

s. 139. 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. (contd.)

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.

COX v. BUTTON (1949) S.A.S.R. 244. Observations on the duty to stop imposed by section 139.

- (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; or
- (c) the load is not firmly stacked, arranged, or tied down so that it will retain its position in or upon the vehicle whilst the vehicle is in motion,

Inserted by  
61, 1940,  
s. 10.

he shall be guilty of an offence.

**141a.** If any person drives on any road a motor vehicle while any part of the vehicle, or the load on the vehicle, or anything attached or affixed to the vehicle prevents him from having a clear view of the areas in front and on either side of the vehicle, he shall be guilty of an offence.

Driving  
without  
clear view.  
Inserted by  
46, 1941,  
s. 13.

**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 over-all length of the vehicle (including the length of any trailers attached thereto and of any load projecting from the front or rear of the vehicle or of any trailer attached thereto) exceeds sixty-six feet; or
- (c) the vehicle has more than two trailers attached thereto.

Width of  
vehicles, and  
number of  
trailers.

Of U.K.  
20 & 21  
Geo. 5 c. 43,  
s. 13.

Inserted by  
2332, 1936,  
s. 35.  
Subsec. (1)  
amended by  
46, 1941,  
s. 14, and by  
55, 1948,  
s. 16 (a).

(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.

s. 142. KEANE V. KNOWLES AND ANOTHER (1942) S.A.S.R. 13. Failure to comply with conditions of a permit under subsection (3) is a departure from the proper standard of care for the safety of the highway.

## PART VI.

Amended by  
17, 1942, s. 7,  
and by 55,  
1948, s. 16  
(a).

(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 or although the overall length of the vehicle (including the length of any trailers attached thereto and of any load projecting from the front or rear of the vehicle or of any trailer attached thereto) exceeds sixty-six feet he may on the application of the owner of the vehicle grant a permit, either general or restricted as to time, place, or circumstances, 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.

Amended by  
55, 1948,  
s. 16 (b).

(7) In this section "agricultural machine" means any machine (other than a tractor) used for cultivating land or sowing or harvesting crops and "trailer" includes any vehicle of any kind drawn by a motor vehicle.

Inserted by  
2416, 1938,  
s. 40.

(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.

Restriction  
on carriage  
of persons  
on bicycles.  
U.K. 24 & 25  
Geo. 5 c. 50,  
s. 20.

**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.

Inserted by  
2332, 1936,  
s. 35.

(2) In this section references to a person carried on a bicycle shall include reference to a person riding the bicycle.

(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.

Places where passengers must not be carried.

Inserted by 2416, 1938, s. 41, and amended by 40, 1946, s. 12.

**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.

Of U.K. 20 & 21 Geo. 5 c. 43, s. 29.

(2) Any rider of a bicycle or other vehicle propelled by human power, who attaches himself to any other vehicle whilst that vehicle is in motion on any road shall be guilty of an offence.

Inserted by 2332, 1936, s. 35.

(3) Any person who rides on a vehicle without the consent of the driver of that vehicle shall be guilty of an offence.

**145.** If any person riding a bicycle travels on any road for more than three hundred yards behind any motor vehicle and within six feet from that vehicle he shall be guilty of an offence.

Facing by cyclists.

Inserted by 2332, 1936, s. 35.

**146.** Any person who in any road, boards or alights from any tram car or vehicle whilst in motion, shall be guilty of an offence.

Boarding and alighting from moving vehicles.

Inserted by 2332, 1936, s. 35.

**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—

Driving and riding abreast.

Inserted by 2332, 1936, s. 35 and amended by 2416, 1938 s. 42, and by 23, 1939, s. 3 (a).

(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.

## PART VI.

Inserted by  
23, 1939,  
s. 5 (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, and  
amended by  
55, 1948,  
s. 17.

**148a.** If any person on any road within twelve 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) (e);  
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 inquiry, the owner cannot be found, to the Treasurer, in aid of the general revenue of the State.

151. (1) The Governor may by proclamation declare that any area in that part of any street which abuts on the site of either House of Parliament shall be a prohibited area within the meaning of this section and may revoke or amend any such proclamation.

Control of parking outside Parliament House.

Inserted by 2332, 1936, s. 35.

(2) If any person, whether holding any other licence, permit, or other authority or not, leaves any vehicle or animal stationary in any prohibited area proclaimed under this section, without the permission of the Minister of 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 Minister

s. 151. References to the "Commissioner of Public Works" altered to "Minister of Works" pursuant to the Amendments Incorporation Act, 1937.

of Works. A document purporting to give such consent and purporting to be signed by the Minister of Works shall be *prima facie* evidence of such consent.

Power of  
police to  
examine and  
test vehicles.

Inserted by  
2332, 1936,  
s. 35.

**152.** (1) Any member of the police force may, if he has reasonable cause to suspect that any vehicle has been involved in an accident or has been driven on a road recklessly or at a speed or in a manner which is dangerous to the public or has been stolen or taken without the consent of the owner and is on any land or premises, enter such land or premises and therein search for that vehicle and examine it if found.

(2) Any person who hinders any member of the police force, in the exercise of any power conferred upon him by this section, shall be guilty of an offence.

(3) If any member of the police force or any inspector appointed under Part II. of this Act has reasonable cause to suspect that any motor vehicle does not comply with any requirement of this Act he may—

- (a) require the owner or person in charge of the vehicle to produce the vehicle to him or to some person named by him for the purpose of being tested:
- (b) for that purpose remove the vehicle to the nearest convenient place where it can be tested:
- (c) detain the vehicle for such time as is necessary for testing it.

(4) If the owner or person in charge of any vehicle when so requested by a member of the police force or an inspector appointed under Part II. of this Act does not produce the vehicle, together with any key or other device necessary for starting the engine, in accordance with a request under subsection (3) of this section, he shall be guilty of an offence.

Closing roads  
for races and  
exemptions.

Cf. U.K.  
20 & 21  
Geo. 5 c. 43,  
ss. 13, 46.

Inserted by  
2332, 1936,  
s. 35.

Para. (a)  
substituted  
by 2416,  
1938, s. 43.

**153.** (1) Upon the application of any persons interested the Minister of Local Government may make either or both of the following orders:—

- (a) That any road or part of a road upon which any races or tests are to be held, and any other adjacent or adjoining road or part of any such road shall be closed to traffic on any day or days:
- (b) That persons taking part in any races or tests be exempted from the duty to observe any enactment, regulation or by-law prescribing speed limits or other rules to be observed on roads by drivers and riders of vehicles.

(2) No order closing a road shall be made under this section except with the consent of every municipal or district council within whose area the road or part of a road is situated.

(3) At least two clear days before any road is to be closed or any exemption is to operate pursuant to an order under this section the Minister shall by advertisement in two newspapers, one of which shall be a daily newspaper, circulating generally in the State, give notice of the intended closing of the road or exemption. The costs of every such advertisement shall be paid by the applicants.

(4) Any order made under this section shall be subject to any conditions which the Minister thinks fit to impose and upon breach of any condition shall cease to have any effect.

(5) An order under this section shall render lawful anything done in accordance therewith.

(6) If any person is requested by a member of the police force to depart from any road or part of a road closed under this section or to remove any vehicle of which he is in charge from any such road or part of a road and does not forthwith comply with that request he shall be guilty of an offence.

**153a.** If the Treasurer is satisfied that any vehicle is intended to be ridden or driven on roads solely for the purpose of taking part in a street procession or other like entertainment, he may in writing exempt the owner and driver of that vehicle from the obligation to comply with any specified provisions of this Act on any day or days.

Vehicles taking part in processions.  
Inserted by 2416, 1938, s. 44.

**154.** (1) After a day to be fixed by the Governor by proclamation for the commencement of this section no person shall drive any vehicle or cause any vehicle to be driven for the purpose of carrying passengers for hire unless that vehicle has been inspected and certified to be safe for the carriage of passengers by an officer appointed by the Registrar of Motor Vehicles: Provided that this section shall not apply where a vehicle is driven pursuant to a licence under the Road and Railway Transport Act, 1930, or under any by-law of a local governing authority, or to any vehicle operated or licensed by the Municipal Tramways Trust.

Vehicles used for carrying passengers for hire.  
Inserted by 2332, 1936, s. 35, and amended by 55, 1948, s. 18.

(2) Every certificate granted under this section shall remain in force for twelve months from the date of the granting thereof unless revoked by any such officer as

aforesaid before the expiration of that period on the ground that the vehicle is no longer safe for the carriage of passengers.

Inserted by  
2416, 1938,  
s. 45.

(3) Any certificate granted under this section may contain a condition prescribing the maximum number of passengers which may lawfully be carried upon the vehicle to which the certificate relates.

Any person who drives any vehicle carrying more than the maximum number of passengers prescribed in a certificate relating to such vehicle shall be guilty of an offence.

Inserted by  
2416, 1938,  
s. 45.

(4) An apparently genuine document produced by the prosecution and purporting to be signed by the Registrar of Motor Vehicles and to certify that any vehicle specified in the certificate has not during any period specified in the certificate been inspected and certified to be safe for the carriage of passengers as required by this section shall be *prima facie* evidence of the fact so certified.

Inserted by  
2416, 1938,  
s. 45.

(5) It shall lie on the defendant to prove that any vehicle in respect of which a complaint has been laid under this section was driven pursuant to a licence under the Road and Railway Transport Act, 1930, or under any by-law of a local governing authority.

Inserted by  
2416, 1938,  
s. 45.

(6) The Governor may make any regulations necessary or convenient for the due administration and enforcement of this section and may by regulations impose penalties recoverable summarily and not exceeding ten pounds for breach of any such regulation.

Dangerous  
lights and  
signs.

Inserted by  
2332, 1936,  
s. 35.

**155.** (1) If any light, or any sign showing a light, is on or over or adjacent to any footpath or road in any municipality or district council district or is affixed to the wall or roof or other external part of any building or verandah in any municipality or district council district, and the council of the municipality or district council district is satisfied that the light or sign is dangerous to traffic on any road, the council may give notice in writing to the owner of the light or sign requiring him to remove the light or sign within a reasonable time specified in the notice.

(2) If within the time specified in the notice that owner does not remove the light or sign, the council may remove it and recover the costs of so doing from that owner in any court of competent jurisdiction as a debt due to the council.

(3) Any notice under this section may be given by post addressed to the last known place of business or abode of the person to whom it is to be given, or by delivering it to that person.

**156.** When any regulation or any by-law is inconsistent with any provision of this Part, that provision shall prevail and the regulation or by-law shall, to the extent of the inconsistency, be invalid.

Inconsistency of this Part with regulations and by-laws.  
Inserted by 2332, 1936, s. 35.

**156a.** (1) For the purposes of this section the following shall be exempt vehicles—

Exemption of fire, ambulance, and police vehicles from certain provisions.  
Inserted by 46, 1941, s. 15.

- (a) any motor vehicles used by the Fire Brigades Board or by a fire brigade, while it is being driven to any place in answer to a call for the services of a fire brigade, or is in use at a fire:
- (b) any motor ambulance while it is being driven in the course of, or in connection with, the carriage of patients:
- (c) any motor vehicle being driven by a member of the police force in the execution of his duty.

(2) While a vehicle is an exempt vehicle, the following provisions of this Act, namely:—Paragraph (b) of subsection (1) of section 40a; paragraph (b) of section 123; sections 124 to 127 inclusive, 130a, 130b, 130c, 131 to 133 inclusive, 136, 137, subsection (1) of section 139, 143a, 146, 147, 169, 174 to 176 inclusive, shall not apply in relation to that vehicle or the owner, driver, or person in charge thereof.

**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, and amended by 55, 1948, s. 19 (a), and by 29, 1950, s. 13.

- (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:

s. 156a. THE SOUTH AUSTRALIAN AMBULANCE TRANSPORT INCORPORATED v. WAHLHEIM (1948) 77 C.L.R. 215; 22 A.L.J. 545, reversing Wahlheim v. The South Australian Ambulance Transport Incorporated (1948) S.A.S.R. 152. Observations upon the duties of a driver of an exempt vehicle.

THE FIRE BRIGADES BOARD v. MUNICIPAL TRAMWAYS TRUST (1950) S.A.S.R. 262. The duties of drivers of tramcars and vehicles, such as fire engines, exempted from compliance with normal provisions for the regulation of road traffic, considered.

- (d) that any specified place was or was not on any specified date an authorized crossing place on any line of railway:
- (e) that any place is or was a road:
- (f) that any intersection, intersecting roads, or part of any intersecting roads was or were within a municipality, town, or township named in the complaint:

shall be *prima facie* evidence of the matters so alleged.

Inserted by 2416, 1938, s. 46, and substituted by 55, 1948, s. 19 (b).

(3) A document produced by the prosecution and purporting to be signed by the Commissioner of Police, or by a superintendent or an inspector of police, and purporting to certify that any stop-watch or speedometer specified therein had been tested on a day mentioned therein and was shown by the test to be accurate to the extent indicated in the document, shall be *prima facie* evidence of the facts certified and that the stop-watch or speedometer was accurate to the said extent on each of the fourteen days following the day of the test.

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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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.

**162.** If any person drives or hauls over any improved main road any farm or other implement constructed in such a manner as to injure or damage any portion of the road when travelling thereon he shall be guilty of an offence.

Farm implements.  
Inserted by  
2332, 1936,  
s. 35.

**163.** If any person locks or prevents from revolving any wheel of any horse-drawn vehicle whilst such vehicle is proceeding along any improved main road, he shall be guilty of an offence.

Locking of wheels.  
Inserted by  
2332, 1936,  
s. 35.

**164.** If any person draws or drags any sledge, timber, tree, or other heavy material on any improved main road, he shall be guilty of an offence.

Drags.  
Inserted by  
2332, 1936,  
s. 35.

## PART VII.

Wheels with bars, studs, etc.

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.

**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.

Actions likely to cause fire.  
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.

Depositing material on roads.  
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.

Use of wheel chains.  
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.

Defective tires.  
Inserted by 2332, 1936, s. 35.

**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:—

Speed of heavy vehicles.  
Inserted by 2332, 1936, s. 35, and repealed and re-enacted by 45, 1939, s. 28.

- (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.

(7) In this section “commercial motor vehicle” includes a tractor.

Inserted by  
40, 1945,  
s. 13.

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) authorizing that person to use a trailer with metal tires for transporting that piece of machinery or other merchandise along any main road specified in the permit.

**177.** (1) Every motor lorry (not being a buckboard) and every vehicle carrying passengers or goods for hire in actual use on any road shall have the name and address of the owner 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.

Information  
to be painted  
on vehicles.  
Inserted by  
2332, 1936,  
s. 35.

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.

Inserted by  
35, 1943,  
s. 21.

(4) The registrar or a person authorized by him may by a written certificate of exemption, exempt any vehicle from all or any of the provisions of subsections (1), (2), and (3) of this section.

Every such exemption—

- (a) shall remain in force for a period specified in the certificate or until the happening of a condition specified therein;
- (b) shall be subject to any conditions specified in the certificate;
- (c) may be revoked by the registrar upon breach of any condition thereof.

Inserted by  
35, 1943,  
s. 21.

(5) An apparently genuine document produced by the prosecution and purporting to be signed by the registrar and to certify that a vehicle specified in the document was not at a time so specified exempted from any provisions of this section so specified shall be *prima facie* evidence of the fact so certified.

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.

180. Any person who commits an offence against this Part shall be liable, on summary conviction, to a penalty not exceeding twenty pounds.

Penalty  
Inserted by  
2332, 1936,  
s. 35.

181. The commissioner may appoint any person to be an authorized officer for the purpose of this Part, and any municipal or district council may appoint any person to be an authorized officer for the purpose of this Part within the district of such district council or municipal corporation.

Appointment  
of authorized  
officers.  
Inserted by  
2332, 1936,  
s. 35.

182. This Part shall be binding on any person in the employ of the Government of the State.

Application  
to employees  
of Crown.  
Inserted by  
2332, 1936,  
s. 35.

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.