



ANNO PRIMO

# EDWARDI VIII REGIS.

A.D. 1936.

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**No. 2267.**

An Act to consolidate certain Acts relating to wrongs.

[*Assented to, 13th August, 1936.*]

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

1. This Act may be cited as the "Wrongs Act, 1936". Short title.

2. The following enactments are repealed, namely :— Repeal.

U.K. 6 and 7 Vict., c. 96 (adopted in South Australia by 17, 1846)—An Act of the Parliament of the United Kingdom, entitled "An Act to amend the Law respecting defamatory words and libel". (Sections 1, 2, 9, and 10.)

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

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

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

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

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Division of  
Act.

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

PART I.—Defamation: Sections 4–17.

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

**PART I.**

**PART I.**

**DEFAMATION.**

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

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

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

“proprietor” includes as well the sole proprietor of any newspaper as also, in the case of a divided proprietorship, the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person.

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

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

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

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

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

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

(a) a public meeting; or

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

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

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

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

Provided that—

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

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

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

Penalties on unfair and inaccurate reports.  
646, 1895, s. 5.

Provided that—

- (a) the punishment shall be by fine only if it is proved that the defendant, as soon as practicable after being informed of the unfairness and inaccuracy of the report, published in the newspaper a correction thereof, giving to the correction at least equal prominence to that which was given to the original report :
- (b) any person laying a complaint under this section shall be deemed to have waived all other remedies, both civil and criminal, against the same defendant in respect of the same report.

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Offer of an apology.  
U.K. 6 and 7  
Vict., c. 96,  
s. 1, adopted in  
S.A. by 17  
1846.

**9.** In any action for defamation, the defendant may, after notice in writing of his intention so to do, duly given to the plaintiff at the time of filing or delivering the defence in the action, give in evidence in mitigation of damages, that he made or offered an apology to the plaintiff for the defamation before the commencement of the action, or if the action was commenced before there was an opportunity of making or offering such an apology, as soon afterwards as he had an opportunity of doing so.

Defence in action against a newspaper for libel.  
U.K. 6 and 7  
Vict., c. 96,  
s. 2, adopted in  
S.A. by 17.  
1846.

**10.** (1) In an action for a libel contained in any public newspaper or other periodical publication, the defendant may plead that the libel was inserted in the newspaper or other periodical publication without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in the newspaper or other periodical publication, a full apology for the libel, or if the newspaper or periodical publication in which the libel appeared was ordinarily published at intervals exceeding one week, offered to publish such an apology in any newspaper or periodical publication to be selected by the plaintiff in the action.

(2) The defendant upon filing such defence may pay into Court a sum of money by way of amends for the injury sustained by the publication of the libel.

(3) To such a defence the plaintiff may reply generally denying the whole of such defence.

Evidence in mitigation of damages.  
646, 1895, s. 9.  
U.K. 51 and 52  
Vict., c. 64, s. 6.

**11.** At the trial of an action for a libel contained in any newspaper, the defendant may give in evidence in mitigation of damages that the plaintiff has already recovered or has brought action for damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought.

Publishing parliamentary reports.  
38, 1876, ss.  
307, 308.

**12.** (1) It shall be lawful for any defendant in any civil or criminal proceeding in respect of the publication of any report, paper, votes, or proceedings of Parliament, which either House of Parliament deems fit and necessary and has authorised to be published, to bring before the Court, after giving twenty-four hours notice to the plaintiff or prosecutor of his intention so to do, a certificate under the hand of the President or Clerk of the Legislative Council, or the Speaker or Clerk of the House of Assembly, stating that the matter in question was published by order or under the authority of the Legislative Council or House of Assembly, as the case may be, together with an affidavit verifying the said certificate, and the court shall thereupon stay the said proceeding, and the same and every writ and process therein shall thereupon be put an end to and superseded, by virtue of this Act.

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(2) It shall be lawful for the defendant in any civil or criminal proceeding in respect of the publication of any copy of any such report, paper, votes, or proceedings, to lay before the court, at any stage of the proceeding, the said report, paper, votes, or proceedings, and the said copy together with an affidavit verifying the same and the correctness of the said copy, and the court shall thereupon stay the said proceeding, and the same and every writ and process therein shall thereupon be put an end to and superseded by virtue of this Act.

(3) It shall be a good defence to any civil or criminal proceeding in respect of the printing of any extract from or abstract of such report, paper, votes, or proceedings if the defendant proves that the said extract or abstract was published in good faith and without malice.

**13.** (1) A judge or the court, upon an application by or on behalf of two or more defendants in actions to the same, or substantially the same libel, brought by the same person, may make an order for the consolidation of those actions, so that they shall be tried together.

Consolidation  
of actions.  
646, 1895, s. 7.  
U.K. 50 and 51  
Vict., c. 64, s. 5.

(2) After such an order has been made, and before the trial of the actions, the defendants in any new actions instituted in respect to the same or substantially the same libel, shall also be entitled to be joined in a common action, upon a joint application being made by those new defendants and the defendants in the actions already consolidated.

**14.** A court of summary jurisdiction, upon the hearing of a charge against the proprietor, publisher, or editor, or any person responsible for the publication of a newspaper for a libel therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate and published without malice, and as to any matter which under this or any other Act or otherwise might be given in evidence by way of defence by the person charged on his trial on indictment; and the Court, if of opinion after hearing such evidence that there is a strong or probable presumption that the jury at the trial would acquit the person charged, may dismiss the case.

Evidence as  
to publication,  
matters  
charged, &c.  
646, 1895, s. 8.

**15.** It shall not be necessary to set out in any indictment or other judicial proceeding instituted against the publisher of any obscene libel the obscene passage, but it shall be sufficient to deposit the book, newspaper, or other documents containing the alleged libel with the indictment or other judicial proceeding, together with particulars showing precisely by reference to pages, columns, and lines, in what part of the book, newspaper, or other document the alleged libel is to be found, and such particulars shall be deemed to form part of the record, and all

Obscene  
matter.  
646, 1895, s. 10.

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proceedings may be taken thereon as though the passages complained of had been set out in the indictment or judicial proceeding.

Proof of publication of newspaper, book or periodical.  
646, 1895, s. 11.

**16.** Upon the trial of an action or prosecution in respect of a libel contained in a newspaper or book, the production of such newspaper or book containing a printed statement that it is printed or published by or for the defendant shall be *prima facie* evidence of the publication of the said newspaper or book by the defendant.

Proof of copies of newspaper.  
646, 1895, s. 12.

**17.** Upon the trial of an action or prosecution in respect of a libel contained in a newspaper, after evidence sufficient in the opinion of the court has been given of the publication by the defendant of the newspaper containing the libel, other prints purporting to be other numbers or parts of the same newspaper formerly or subsequently published, and containing a printed statement that they were published by or for the defendant, shall be admissible in evidence on either side without further proof of publication of them.

## PART II.

## PART II.

## WRONGFUL ACTS OR NEGLIGENCE CAUSING DEATH.

Interpretation.  
1, 1865, s. 5.  
U.K. 9 and 10  
Vict., c. 93, s. 5.

**18.** In this Part, unless the context or subject matter otherwise requires—

“child” includes son, daughter, grandson, granddaughter, stepson and stepdaughter :

“parent” includes father, mother, grandfather, grandmother, stepfather and stepmother :

“person” includes bodies politic and corporate.

Liability for death caused wrongfully.  
1, 1865, s. 1.  
U.K. 9 and 10  
Vict., c. 93, s. 1.

**19.** Whenever the death of a person is caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to felony.

Effect of action and mode of bringing it.  
1, 1865, s. 2.  
U.K. 9 and 10  
Vict., c. 93, s. 2.

**20.** (1) Every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death has been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased.

(2) In every such action the court may give such damages as it thinks proportioned to the injury resulting from such death

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to the parties respectively for whom and for whose benefit the action is brought.

(3) The amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the court finds and directs.

**21.** Not more than one action shall lie under this Part for and in respect of the same subject matter of complaint; and every such action shall be commenced within twelve calendar months after the death of the deceased person.

Restriction of actions and time of commencement.

1, 1865, s. 3.  
U.K. 9 and 10  
Vict., c. 95, s. 3.

**22.** In every such action the plaintiff shall be required to deliver to the defendant or his solicitor, full particulars of the person or persons for whom and on whose behalf the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

Particular of the person for whom damages claimed.

1, 1865, s. 4.  
U.K. 9 and 10  
Vict., c. 95, s. 4.

**23.** (1) In any case falling under section 19 of this Act, if there is no executor or administrator of the deceased person or, there being such an executor or administrator, no action is commenced under this Part within six months after the death of the deceased person, then an action may be brought by and in the name or names of the person or all or any of the persons for whose benefit an action could have been brought under this Part by an executor or administrator of the deceased person.

Provision where no executor or administrator or action not commenced within six months.

17, 1874, s. 3.  
U.K. 27 and 28  
Vict., c. 95, s. 1

(2) Every action brought under this section shall be for the benefit of the same persons and shall be subject to the same regulations and procedure as nearly as may be as if brought by or in the name of an executor or administrator of the deceased person.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

W. DUGAN, Governor.

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## WRONGS ACT, 1936.

TABLE SHOWING HOW THE SECTIONS OF THE ACTS CONSOLIDATED HAVE BEEN DEALT WITH.

Section of Repealed Act.	Remarks.	Section of Consolidating Act.
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