



**EVIDENCE (MISCELLANEOUS) AMENDMENT ACT 1999**

**No. 18 of 1999**

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**ELIZABETHAE II REGINAE**

A.D. 1999

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No. 18 of 1999

An Act to amend the Evidence Act 1929.

[Assented to 1 April 1999]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Evidence (Miscellaneous) Amendment Act 1999*.
- (2) The *Evidence Act 1929* is referred to in this Act as "the principal Act".

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Amendment of s. 4—Interpretation**

3. Section 4 of the principal Act is amended by inserting after the definition of "sexual offence" the following definition:

"sworn evidence" means evidence given under the obligation of an oath or an affirmation; and "unsworn evidence" has a corresponding meaning;.

**Amendment of s. 6—Oaths, affirmations, etc.**

4. Section 6 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) A person is permitted, and should be offered the choice, to make an affirmation instead of an oath in all circumstances in which, and for all purposes for which, an oath is required or permitted by law.

**Substitution of s. 9**

5. Section 9 of the principal Act is repealed and the following section is substituted:

**Unsworn evidence**

9. (1) A person is presumed to be capable of giving sworn evidence in any proceedings unless the judge determines that the person does not have sufficient understanding of the obligation to be truthful entailed in giving sworn evidence.

(2) If the judge determines that a person does not have sufficient understanding of the obligation to be truthful entailed in giving sworn evidence, the judge may permit the person to give unsworn evidence provided that—

(a) the judge—

(i) is satisfied that the person understands the difference between the truth and a lie; and

(ii) tells the person that it is important to tell the truth; and

(b) the person indicates that he or she will tell the truth.

(3) In determining a question under this section, the judge is not bound by the rules of evidence, but may inform himself or herself as the judge thinks fit.

(4) If unsworn evidence is given under this section in a trial by jury, the judge—

(a) must explain to the jury the reason the evidence is unsworn; and

(b) may, and if a party so requests must, warn the jury of the need for caution in determining whether to accept the evidence and the weight to be given to it.

(5) A justice to whom it appears that a person who desires to lay a complaint or information does not have sufficient understanding of the obligation to be truthful entailed in giving sworn evidence may ascertain by inquiry the subject matter of the complaint or information and reduce it into the appropriate form, and any action or proceedings may be taken on the complaint or information in all respects as if the complainant or informant had deposed to the truth of the contents on oath or affirmation.

**Amendment of s. 12—Evidence of young children**

6. Section 12 of the principal Act is amended by striking out subsections (1), (2) and (3).

**Substitution of s. 12a**

7. Section 12a of the principal Act is repealed and the following section is substituted:

**Warning relating to uncorroborated evidence**

12A. There is no rule of law or practice obliging a judge in a criminal trial to warn the jury that it is unsafe to convict on the uncorroborated evidence of a child if the child gave sworn evidence.

**Amendment of s. 13—Protection of witnesses**

8. Section 13 of the principal Act is amended by striking out from subsection (4)(a) "take an oath" and substituting "give sworn evidence".

**Amendment of s. 14—Entitlement of a witness to be assisted by an interpreter**

9. Section 14 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) A person may only act as an interpreter—

- (a) if the person takes an oath or makes an affirmation to interpret accurately; and
- (b) in a case where a party to the proceeding disputes the person's ability or impartiality as an interpreter, if the judge is satisfied as to the person's ability and impartiality.

**Substitution of s. 18a**

10. Section 18a of the principal Act is repealed and the following section is substituted:

**Abolition of right to make unsworn statement**

18A. A person charged with an offence is not entitled to make at the trial for the offence any unsworn statement of fact in defence of the charge (except in the course of giving unsworn evidence under section 9).

**Repeal of s. 34b**

11. Section 34b of the principal Act is repealed.

**Amendment of s. 34i—Evidence in sexual cases**

12. Section 34i of the principal Act is amended by inserting after subsection (6) the following subsection:

(6a) If, in proceedings in which a person is charged with a sexual offence, any information is presented to the jury, or suggestion made in the presence of the jury, that the alleged victim failed to make a complaint, or delayed in making a complaint, about the alleged offence, the judge must—

- (a) warn the jury that the alleged victim's failure to make a complaint, or delay in making a complaint, does not necessarily mean the allegation is false; and
- (b) inform the jury that the victim of a sexual offence could have valid reasons for failing to make a complaint or for delaying in making a complaint.

**Amendment of s. 34j—Special provision for taking evidence where witness is seriously ill**

13. Section 34j of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) The statement is to be a sworn statement unless the magistrate or justice determines that the person making the statement does not have sufficient understanding of the obligation to be truthful entailed in giving sworn evidence.

**Amendment of s. 55—After notice, sending a message may be proved by production of copy message and evidence of payment of fees for transmission**

14. Section 55 of the principal Act is amended by inserting "or affirmation" after "on oath".

**Amendment of s. 67—Extension of provisions relating to affidavits to attestation, etc., of other documents**

15. Section 67 of the principal Act is amended by inserting in subsection (1) "or affirmations" after "of oaths".

**Amendment of s. 67ab—Taking of evidence in this State by foreign authorities**

16. Section 67ab of the principal Act is amended—

(a) by inserting in subsection (1)(b) "or affirmation" after "an oath";

(b) by inserting in subsection (2) "or affirmation" after "an oath".

**Amendment of s. 68—Interpretation**

17. Section 68 of the principal Act is amended—

(a) by striking out the definition of "news media" and substituting the following definitions:

"news media" means those who carry on the business of publishing;

"newspaper" means a newspaper, journal, magazine or other publication that is published at periodic intervals;;

(b) by inserting after the definition of "primary court" the following definition:

"publish" means publish by newspaper, radio or television, or on the internet, or by other similar means of communication to the public;.

**Amendment of s. 69a—Suppression orders**

18. Section 69a of the principal Act is amended by inserting after subparagraph (ii) of subsection (1)(b) the following word and subparagraph:

or

(iii) to a child,.

**Amendment of s. 71a—Restriction on reporting proceedings relating to sexual offences**

19. Section 71a of the principal Act is amended—

(a) by striking out from subsection (1) "by newspaper, radio or television";

(b) by striking out from subsection (2) "by newspaper, radio or television";

(c) by striking out from subsection (4) "by newspaper, radio or television";

(d) by striking out from subsection (5) the definition of "newspaper".

**Amendment of s. 71b—Publishers required to report result of certain proceedings**

20. Section 71b of the principal Act is amended—

(a) by striking out from subsection (1)(a) "by newspaper, radio or television";

(b) by striking out from subsection (3)(a) "by newspaper, radio or television".

**Amendment of s. 71c—Restriction on reporting of proceedings following acquittals**

**21. Section 71c of the principal Act is amended—**

- (a)* by striking out from subsection (1) ", by newspaper, radio or television,";
- (b)* by striking out subsection (2) and substituting the following subsection:

(2) This section does not apply to the publication in printed or electronic form of material that—

- (a)* consists solely or primarily of the reported judgements or decisions of a court or courts; or
- (b)* is of a technical nature designed primarily for use by legal practitioners.

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

E. J. NEAL Governor