



EVIDENCE (MISCELLANEOUS) AMENDMENT ACT 1993

No. 37 of 1993

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SCHEDULE

Repeal of Section 351a of Criminal Law Consolidation Act 1935



ANNO QUADRAGESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1993

No. 37 of 1993

An Act to amend the Evidence Act 1929 and to make a related amendment to the Criminal Law Consolidation Act 1935.

[Assented to 13 May 1993]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Evidence (Miscellaneous) Amendment Act 1993*.
- (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.

Insertion of s. 12a

3. The following section is inserted after section 12 of the principal Act :

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—

- (a) the child gave evidence on oath; or
- (b) the child's unsworn evidence is assimilated to evidence given on oath under section 12(2).

Amendment of s. 21—Competence and compellability of witnesses

4. Section 21 of the principal Act is amended by inserting after subsection (3) the following subsection:

(3a) If the prospective witness is a young child, or is mentally impaired, the court should consider whether to grant an exemption under subsection (3) even though no application for exemption has been made and, if of opinion that such an exemption should be granted, may proceed to grant the exemption accordingly.

Amendment of s. 49—Power to order inspection of banking records, etc.

5. Section 49 of the principal Act is amended—

(a) by striking out “or” occurring between paragraphs (a) and (b); and

(b) by inserting after paragraph (b) the following word and paragraph:

or

(c) a Magistrate.

Amendment of s. 59d—Interpretation

6. Section 59d(1) of the principal Act is amended—

(a) by striking out paragraphs (b), (c) and (d) from the definition of “authorized South Australian Court” and substituting the following paragraphs:

(b) the District Court;

(c) the Magistrates Court; and

(b) by striking out “country or state” from the definition of “foreign court” and substituting “country, state or territory”.

Amendment of s. 59e—Taking of evidence outside the State

7. Section 59e of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) An authorized South Australian court may take evidence from a place outside the State by video link or any other form of telecommunication that the court thinks appropriate in the circumstances.

Insertion of section 67c

8. The following section is inserted after section 67b of the principal Act:

Exclusion of evidence of settlement negotiations

67c. (1) Subject to this section, evidence of a communication made in connection with an attempt to negotiate the settlement of a civil dispute, or of a document prepared in connection with such an attempt, is not admissible in any civil or criminal proceedings.

(2) Such evidence is, however, admissible if—

(a) the parties to the dispute consent; or

(b) the substance of the evidence has been disclosed with the express or implied consent of the parties to the dispute; or

- (c) the substance of the evidence has been partly disclosed with the express or implied consent of the parties to the dispute, and full disclosure of the evidence is reasonably necessary to—
 - (i) enable a proper understanding of the other evidence that has already been adduced; or
 - (ii) avoid unfairness to any of the parties to the dispute; or
- (d) the communication or document included a statement to the effect that it was not to be treated as confidential; or
- (e) the communication or document relates to an issue in dispute and the dispute, so far as it relates to that issue, has been settled or determined; or
- (f) the evidence tends to contradict or to qualify evidence that has already been admitted about the course of an attempt to settle the dispute; or
- (g) the making of the communication, or the preparation of the document, affects the rights of a party to the dispute; or
- (h) the communication was made, or the document was prepared, in furtherance of—
 - (i) the commission of a fraud or an offence; or
 - (ii) the doing of an act that renders a person liable to a civil penalty; or
 - (iii) the abuse of a statutory power.

(3) Subsection (1) does not apply to parts of a document that do not concern attempts to negotiate a settlement of a dispute, if it would not be misleading to adduce evidence of only those parts of the document.

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

9. Section 71a of the principal Act is amended by striking out paragraphs (a) and (b) of subsection (1) and substituting the following paragraphs:

- (a) any evidence given before a Magistrate or Justice in a preliminary examination of a charge relating to a sexual offence;
 - (b) any report on such a preliminary examination;
- or
- (c) any evidence given in, or report of, related proceedings in which the accused person is involved after the accused person is charged but before the conclusion of the preliminary examination.

Insertion of section 71c

10. The following section is inserted after section 71b of the principal Act:

Restriction on reporting of proceedings following acquittals

71c. (1) Where an application has been made for the reservation of a question of law arising at the trial of a person who was tried on information and acquitted, a person must not publish, by newspaper, radio or television, any report, statement or representation in relation to the application or any consequent proceedings—

- (a) by which the identity of the acquitted person is revealed; or
- (b) from which the identity of the acquitted person might reasonably be inferred,

unless the acquitted person consents to the publication.

Penalty: Two thousand dollars.

(2) In this section—

“newspaper” means any newspaper, journal, magazine or other publication that is published daily or at periodic intervals, but does not include—

- (a) a publication consisting solely or primarily of the reported judgments or decisions of a court or courts; or
- (b) a publication of a technical nature designed primarily for use by legal practitioners.

SCHEDULE***Repeal of Section 351a of Criminal Law Consolidation Act 1935***

Section 351a of the *Criminal Law Consolidation Act 1935* is repealed.

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

ROMA MITCHELL Governor