



ANNO TRICESIMO SEPTIMO

# ELIZABETHAE II REGINAE

A.D. 1988

\*\*\*\*\*

No. 45 of 1988

**An Act to amend the Evidence Act, 1929, and to exclude the operation of certain Acts of the Imperial Parliament.**

[Assented to 5 May 1988]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Evidence Act Amendment Act (No. 2), 1988*.
- (2) The *Evidence Act, 1929*, is in this Act referred to as "the principal Act".

**Substitution of heading**

2. The heading to Part VIB of the principal Act is repealed and the following heading is substituted:

PART VIB

OBTAINING EVIDENCE FROM OUTSIDE A COURT'S TERRITORIAL JURISDICTION.

**Substitution of s. 59d**

3. Section 59d of the principal Act is repealed and the following section is substituted:

**Interpretation**

59d. (1) In this Part—

"authorized South Australian court" means—

- (a) the Supreme Court;
- (b) a District Court;
- (c) a local court;
- (d) a court of summary jurisdiction;
- (e) a court or tribunal declared by the Attorney-General, by notice in the *Gazette*, to be an authorized South Australian court for the purposes of this Part:

"foreign court" means a court established under the law of some country or state other than this State.

(2) This Part applies in respect of both civil and criminal proceedings.

**Substitution of s. 59e**

4. Section 59e of the principal Act is repealed and the following section is substituted:

**Taking of evidence outside the State**

59e. (1) Where, in the opinion of an authorized South Australian court, it is necessary or expedient that evidence relating to proceedings before it be taken outside the State, the court may—

- (a) sit outside the State for the purpose of taking the evidence;
- (b) issue a commission to an officer of the court or some other appropriate person to take the evidence;

or

- (c) request a foreign court to take the evidence.

(2) Subject to any just exception—

- (a) any depositions taken on commission or by a foreign court that takes evidence in pursuance of a request under this Part may be put in as evidence at the hearing of the proceedings to which they relate;

and

- (b) any documents produced to a commissioner or a foreign court that takes evidence in pursuance of a request under this Part are admissible at the hearing of the proceedings to which they relate as if produced at the hearing.

(3) Any documents appearing to be depositions or documents so taken or produced, will, in the absence of evidence to the contrary, be accepted as such.

**Power of South Australian Court to take evidence on request**

5. Section 59f of the principal Act is amended by striking out “corresponding” wherever it occurs and substituting, in each case, “foreign”.

**Transmission of request**

6. Section 59h of the principal Act is amended—

- (a) by striking out “corresponding” wherever it occurs and substituting, in each case, “foreign”;
- (b) by striking out “any other prescribed country or State” and substituting “some other country or State”;

and

- (c) by striking out from paragraph (a) “prescribed”.

**Exclusion of certain Imperial Acts**

7. The following Acts of the Imperial Parliament have no further force or effect in the State:

*The Foreign Tribunals Evidence Act, 1856*  
*The Evidence by Commission Act, 1859*  
*The Evidence by Commission Act, 1885.*

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

D. B. DUNSTAN, Governor