



ANNO VICESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1974

No. 71 of 1974

An Act to amend the Evidence Act, 1929-1972.

[Assented to 17th October, 1974]

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

1. (1) This Act may be cited as the "Evidence Act Amendment Act, 1974". Short titles.

(2) The Evidence Act, 1929-1972, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Evidence Act, 1929-1974".

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

3. Section 2 of the principal Act is amended by inserting after the item— Amendment of principal Act, s. 2—
 Part VIA—Computer Evidence Arrangement.
 the following item:—

Part VIb—Reciprocal Procedures for Obtaining Evidence.

4. The following Part comprising the following sections is enacted and inserted in the principal Act immediately after section 59c thereof:— Enactment of Part VIb of principal Act—

PART VIb

RECIPROCAL PROCEDURES FOR OBTAINING EVIDENCE

59d. (1) In this Part, unless the contrary intention appears— Interpretation.

"authorized South Australian court" means any court, or person acting judicially in this State, declared by instrument under the hand of the Attorney-General, and published in the *Gazette*, to be a court entitled to exercise the powers conferred by this Part:

“corresponding court” in relation to an authorized South Australian Court means a court or person acting judicially in a prescribed country or State that is declared by instrument in writing under the hand of the Attorney-General, and published in the *Gazette*, to be a court in a prescribed country or State that corresponds to the authorized South Australian court:

“prescribed country or State” means—

- (a) any State or Territory of the Commonwealth;
- (b) New Zealand;
- and
- (c) any other country, State or Territory that is declared by instrument under the hand of the Attorney-General, and published in the *Gazette*, to be a country, State or Territory to which this Part applies.

(2) Subject to subsection (3) of this section, this Part applies in respect of both civil and criminal proceedings.

(3) No deposition or document shall be tendered, in pursuance of this Part, in proceedings that are being tried in this State before a jury unless all parties to the proceedings agree.

Power of
authorized
South
Australian
court to
request
corresponding
court to take
evidence for
use in this
State.

59e. (1) Where, in the opinion of an authorized South Australian court, it is necessary or expedient that evidence be taken in a prescribed country or State relating to proceedings before the authorized South Australian court, the court may, on the application of the person who desires to introduce the evidence, request the corresponding court in that prescribed country or State to examine, or order the examination of, a witness or to order the production of documents by any person.

(2) Subject to any just exception—

- (a) any depositions received from a corresponding court may be put in as evidence at the hearing of the proceedings to which they relate;

and

- (b) any documents received from a corresponding court may be put in at the hearing of the proceedings to which they relate as if produced at the hearing by the person who produced them pursuant to the order of the corresponding court.

(3) An authorized South Australian court shall be entitled to presume that any documents purporting to be depositions received from a corresponding court, or any documents purporting to have been produced in pursuance of an order of a corresponding court, are in fact depositions taken before that court or in pursuance of an order of that court, or documents produced in pursuance of an order of that court, as the case may require.

Power to take
evidence on
request from
corresponding
court.

59f. (1) Where a corresponding court requests an authorized South Australian court to take evidence in this State for the purpose of proceedings before that corresponding court the South Australian court may summon any person to appear before it for the purpose of giving evidence or for the purpose of producing documents.

(2) A witness summoned to appear before an authorized South Australian court under this section may be examined, cross-examined or re-examined before that court.

(3) Subject to this Part, the South Australian court in taking evidence under this section shall have the same powers as if the proceedings originated in that court.

(4) If, while any person is being examined before an authorized South Australian court, objection is taken to any question, or to answering any question, the ground of the objection and the answer (if any) to the question shall be set out in the deposition of that person.

(5) Subject to subsection (6) of this section, the validity of the ground of any such objection shall not be determined by the authorized South Australian court but by the corresponding court at whose request the examination is being conducted.

(6) The authorized South Australian court may permit a witness to decline to answer a question where in the opinion of the court the answer to that question might incriminate him or where it would in the opinion of the court be unfair to the witness, or to any other person, that the answer should be given and recorded.

59g. Where pursuant to this Part—

**Depositions to
be signed.**

(a) a witness has given evidence before an authorized South Australian court, his deposition shall be signed by him and by the person presiding over the court;

or

(b) a document has been produced before an authorized South Australian court, the person presiding over the court shall attach to that document a certificate signed by him stating the name of the person by whom the document was produced.

59h. Where an authorized South Australian court receives a request from a corresponding court for the examination of a witness, or the production of documents, and it appears to the court that the witness or person by whom the evidence is to be given, or the documents produced, is not in South Australia and is not proceeding to South Australia, but is in, or proceeding to, any other prescribed country or State, the South Australian court—

**Power of South
Australian
court to
transmit
request to
other places.**

(a) may transmit the request to a corresponding court in that other prescribed country or State together with such information as it possesses concerning the whereabouts of that person;

and

(b) shall give notice to the corresponding court from which it received the request of the fact that the request has been so transmitted.

Saving
provision.

59i. (1) Nothing in this Part limits the power of a court to require a witness to attend in person before the court.

(2) The provisions of this Part are supplementary to, and do not derogate from, the provisions of any other Act or law.

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

W. R. CROCKER, Governor's Deputy