



ANNO TRICESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1984

No. 90 of 1984

An Act to amend the Evidence Act, 1929.

[Assented to 29 November 1984]

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 (No. 2), 1984". Short title.

(2) The Evidence Act, 1929, is in this Act referred to as "the principal Act".

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

3. Section 34i of the principal Act is repealed and the following section is substituted: Repeal of s. 34i and substitution of new section.

34i. (1) In proceedings in which a person is charged with a sexual offence, no question shall be asked or evidence admitted— Evidence in sexual cases.

(a) as to the sexual reputation of the alleged victim of the offence;

or

(b) except with the leave of the judge, as to the alleged victim's sexual activities before or after the events of and surrounding the alleged offence (other than recent sexual activities with the accused).

(2) In deciding whether leave should be granted under subsection (1) (b), the judge shall give effect to the principle that alleged victims of sexual offences should not be subjected to unnecessary distress, humiliation or embarrassment through the asking of questions or admission of evidence of the kind referred to in that subsection and shall not grant leave unless satisfied that the evidence in respect of which leave is sought—

(a) is of substantial probative value;

or

(b) would, in the circumstances, be likely materially to impair confidence in the reliability of the evidence of the alleged victim,

and that its admission is required in the interests of justice.

(3) Leave shall not be granted under subsection (1) (b) authorizing the asking of questions or the admission of evidence the purpose of which is only to raise inferences from some general disposition of the alleged victim.

(4) An application for leave under subsection (1) (b) shall be heard and determined in the absence of the jury (if any).

(5) In proceedings in which a person is charged with a sexual offence, the judge is not required by any rule of law or practice to warn the jury that it is unsafe to convict the accused on the uncorroborated evidence of the alleged victim of the offence.

(6) Subsection (5) does not affect the operation of any provision of this or any other Act requiring that the evidence of a witness be corroborated.

(7) In this section—

“evidence” includes an allegation or statement made by way of an unsworn statement:

“sexual activities” includes sexual experience or lack of sexual experience.

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

D. B. DUNSTAN, Governor