

Legislative Council—No 215A

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South Australia

Summary Offences (Interviewing Vulnerable Witnesses) Amendment Bill 2017

A BILL FOR

An Act to amend the *Summary Offences Act 1953*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Summary Offences (Interviewing Vulnerable Witnesses) Amendment Act 2017*.

2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Summary Offences Act 1953*

3—Section 74EC—Admissibility of evidence of interview

- 10 (1) Section 74EC—delete "prescribed person" wherever occurring and substitute in each case:

prescribed interviewer

- (2) Section 74EC(1)(b)—delete "prescribed person's" and substitute:

15 prescribed interviewer's

- (3) Section 74EC—after subsection (1) insert:

(1a) If a person to whom this Division applies is to be interviewed as a potential witness in relation to the investigation of any other offence, evidence of the interview may be admissible under section 13BA of the *Evidence Act 1929* if—

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- (a) an audio visual recording of the interview is made in accordance with the regulations; and
- (b) the interview is conducted by a prescribed interviewer; and

(c) the manner in which the interview is conducted meets the prescribed requirements to the prescribed extent.

(1b) If a prescribed interviewer's conduct and recording of an interview does not meet the requirements of subsection (1a)(c), the court may nevertheless admit evidence of the interview if satisfied that the interests of justice require the admission of the evidence despite the prescribed interviewer's non-compliance.

(4) Section 74EC(2)—after "subsection (1)(b)" insert:

or (1b)

Schedule 1—Transitional provision

1—Transitional provision

(1) An audio visual record of a statement of a witness to whom this subclause applies made to an investigating officer after the commencement of Part 5 of the SAVW Act and before the commencement of Part 2 of this Act as part of a formal interview process in relation to the investigation of an alleged offence (other than a serious offence against the person) may be admissible under section 13BA of the *Evidence Act 1929* as evidence in the trial of a charge of the offence as if the recording had been made pursuant to Division 3 of Part 17 of the *Summary Offences Act 1953* in accordance with the requirements of that Division as in force following the commencement of Part 2 of this Act.

(2) Subclause (1) applies to a witness who is—

(a) a child of or under the age of 14 years; or

(b) a person with a disability that adversely affects the person's capacity to give a coherent account of the person's experiences or to respond rationally to questions.

(3) In this clause—

interview and *investigating officer* have the same meanings as in section 74C of the *Summary Offences Act 1953*;

serious offence against the person has the same meaning as in section 74EA of the *Summary Offences Act 1953*;

SAVW Act means the *Statutes Amendment (Vulnerable Witnesses) Act 2015*.

2—Prescribed interviewer

(1) An interview conducted by a designated person with a potential witness during the transitional period will be taken to be (and always have been) an interview conducted by a prescribed interviewer for the purposes of section 74EB of the *Summary Offences Act 1953*.

(2) In this clause—

designated person means a person identified by the Minister for Health by notice in the Gazette as a designated person for the purposes of subclause (1);

transitional period means the period commencing on 1 July 2016 and concluding on 21 August 2017.

Note—

The *Statutes Amendment (Vulnerable Witnesses) Act 2015* came into operation on 1 July 2016.

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