

South Australia

# Evidence Act 1929

An Act to consolidate certain Acts relating to evidence.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Evidence Act 1929*.

### **3—Consolidation and repeal**

This Act is a consolidation of certain provisions contained in the Acts mentioned in Schedule 1, and the said Acts are hereby repealed to the extent expressed in the said Schedule.

### **4—Interpretation**

In this Act, unless some other intention is expressed, or implied by the context—

***child*** means a person under the age of 18 years;

***court*** includes a tribunal, authority or person invested by law with judicial or quasi-judicial powers, or with authority to make any inquiry or to receive evidence;

***domestic partner*** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

***judge*** includes the member or members of any court having authority to admit evidence;

***legal proceeding*** or ***proceeding*** includes any action, trial, inquiry, cause, or matter, whether civil or criminal, in which evidence is or may be given and includes an arbitration;

***mental disability*** includes an intellectual disability;

***serious offence against the person*** means—

- (a) attempted murder; or
- (b) attempted manslaughter; or
- (c) a sexual offence; or
- (d) —
  - (i) an offence of stalking under section 19AA of the *Criminal Law Consolidation Act 1935*; or
  - (ii) an offence of causing serious harm under section 23 of the *Criminal Law Consolidation Act 1935*; or
  - (iii) an offence involving an unlawful threat to kill or endanger life; or
  - (iv) an offence involving abduction; or
  - (v) an offence involving blackmail; or
  - (vi) an attempt to commit, or assault with intent to commit, any of the offences in the preceding subparagraphs;

**sexual offence** means—

- (a) rape; or
- (ab) compelled sexual manipulation; or
- (b) indecent assault; or
- (c) any offence involving unlawful sexual intercourse or an act of gross indecency; or
- (d) incest; or
- (da) any offence involving sexual exploitation or abuse of a child, or exploitation of a child as an object of prurient interest; or
- (e) any attempt to commit, or assault with intent to commit, any of the foregoing offences;

**spouse**—a person is the spouse of another if they are legally married;

**statement** includes a statement however made;

**sworn evidence** means evidence given under the obligation of an oath or an affirmation; and **unsworn evidence** has a corresponding meaning;

**electric telegraph** means any system of telecommunication operated by the Australian Telecommunication Commission or any other authority approved by proclamation;

**telegraphic message** means any message or other communication transmitted, or intended for transmission, or purporting to have been transmitted, by electric telegraph;

**telegraph station** means a station established or used by the Australian Telecommunication Commission or other authority approved by proclamation for the receipt or transmission of telegraphic messages;

**vulnerable witness** means—

- (a) a witness who is under 16 years of age; or
- (b) a witness who suffers from a mental disability; or
- (c) a witness who is the alleged victim of an offence to which the proceedings relate—
  - (i) where the offence is a serious offence against the person; or
  - (ii) in any other case—where, because of the circumstances of the witness or the circumstances of the case, the witness would, in the opinion of the court, be specially disadvantaged if not treated as a vulnerable witness; or
- (d) a witness who—
  - (i) has been subjected to threats of violence or retribution in connection with the proceedings; or
  - (ii) has reasonable grounds to fear violence or retribution in connection with the proceedings; or



- (e) in the case of proceedings for a serious and organised crime offence (within the meaning of the *Criminal Law Consolidation Act 1935*)—a person who will only consent to being a witness in the proceedings if he or she is treated as a vulnerable witness for the purposes of the proceedings;

*young child* means a child of or under the age of 12 years.

**Note—**

For definition of divisional penalties (and divisional expiation fees) see Appendix.

**5—Application of Act (*prima facie*) to all courts and enabling only**

The provisions of this Act, unless an intention to the contrary is expressed, or appears or is implied by the context—

- (a) apply to every proceeding before any court whatever; and
- (b) are in addition to, and not in derogation of, any rules of evidence, or power, or right, or duty in relation to procedure or evidence, whether existing at common law, or provided for by any law, at any time, in force in the State.



## Part 2—Witnesses

### 6—Oaths, affirmations etc

- (1) An oath shall be administered and taken as follows:
  - (a) the person taking the oath shall hold a copy of the Bible (being a book that contains the New Testament, the Old Testament or both) in his hand and, after the oath has been tendered to him, shall say "I swear"; or
  - (b) in any other manner and form which the person taking the oath declares to be binding on his conscience; or
  - (c) in any other manner or form authorised or permitted by law.
- (2) Where an oath has been lawfully administered and taken, the fact that the person taking the oath had no religious belief, or that the oath was not taken so as to be binding on his conscience, shall not affect, at law, the validity or effect of the oath.
- (3) A person is permitted, and should be offered the choice, to make an affirmation instead of an oath in all circumstances in which, and for all purposes for which, an oath is required or permitted by law.
- (4) An affirmation is to be administered to a person by asking the person "Do you solemnly and truly affirm" followed by the words of the appropriate oath (omitting any words of imprecation or calling to witness) after which the person must say "I do solemnly and truly affirm".
- (5) Every affirmation has, at law, the same force and effect as an oath.
- (6) No oath or affirmation is invalid by reason of a procedural or formal error or deficiency.

### 7—Oaths or affirmations taken before a court

- (1) Every court has authority to administer an oath or an affirmation.
- (2) Where an oath or affirmation is to be taken before a court, or in connection with proceedings before a court, it may be administered by—
  - (a) the court itself; or
  - (b) an officer of the court; or
  - (c) any person authorised by the court to administer the oath or affirmation; or
  - (d) any other person authorised by law to administer the oath or affirmation.

### 9—Unsworn evidence

- (1) A person is presumed to be capable of giving sworn evidence in any proceedings unless the judge determines that the person does not have sufficient understanding of the obligation to be truthful entailed in giving sworn evidence.
- (2) If the judge determines that a person does not have sufficient understanding of the obligation to be truthful entailed in giving sworn evidence, the judge may permit the person to give unsworn evidence provided that—
  - (a) the judge—

- (i) is satisfied that the person understands the difference between the truth and a lie; and
  - (ii) tells the person that it is important to tell the truth; and
- (b) the person indicates that he or she will tell the truth.
- (3) In determining a question under this section, the judge is not bound by the rules of evidence, but may inform himself or herself as the judge thinks fit.
- (4) If unsworn evidence is given under this section in a criminal trial, the judge—
  - (a) must explain to the jury the reason the evidence is unsworn; and
  - (b) may, and if a party so requests must, warn the jury of the need for caution in determining whether to accept the evidence and the weight to be given to it.
- (5) A justice to whom it appears that a person who desires to lay a complaint or information does not have sufficient understanding of the obligation to be truthful entailed in giving sworn evidence may ascertain by inquiry the subject matter of the complaint or information and reduce it into the appropriate form, and any action or proceedings may be taken on the complaint or information in all respects as if the complainant or informant had deposed to the truth of the contents on oath or affirmation.

## **12—Evidence of young children**

- (4) A young child who is called as a witness is, while giving evidence, entitled to have present in the court, and within reasonable proximity, a person of his or her choice to provide emotional support (but the person must not interfere in the proceedings).
- (5) Unless the court otherwise allows, a witness or prospective witness in the proceedings cannot be chosen under subsection (4) to provide emotional support for a young child.

## **12A—Warning relating to uncorroborated evidence of child in criminal proceedings**

- (1) In a criminal trial, a judge must not warn the jury that it is unsafe to convict on a child's uncorroborated evidence unless—
  - (a) the warning is warranted because there are, in the circumstances of the particular case, cogent reasons, apart from the fact that the witness is a child, to doubt the reliability of the child's evidence; and
  - (b) a party asks that the warning be given.
- (2) In giving any such warning, the judge is not to make any suggestion that the evidence of children is inherently less credible or reliable, or requires more careful scrutiny, than the evidence of adults.

## **13—Special arrangements for protecting witnesses from embarrassment, distress etc when giving evidence**

- (1) Subject to this section, if—
  - (a) it is desirable to make special arrangements for taking evidence from a witness in a trial in order to protect the witness from embarrassment or distress, to protect the witness from being intimidated by the atmosphere of the courtroom or for any other proper reason; and

- (b) the facilities necessary for the special arrangements are readily available to the court and it is otherwise practicable to make the special arrangements; and
- (c) the special arrangements can be made without prejudice to any party to the proceedings,

the court should, on its own initiative, order that special arrangements be made for taking the evidence of the witness.

- (2) Without limiting the kind of order that may be made under this section, the court may make 1 or more of the following orders:
  - (a) an order that the evidence be given outside the trial court and transmitted to the trial court by means of closed circuit television;
  - (b) an order that the evidence be taken outside the trial court, and that an audio visual record of the evidence be made and replayed in the trial court;
  - (c) an order that a screen, partition or one-way glass be placed to obscure the view of a party to whom the evidence relates or some other person;
  - (d) an order that a defendant be excluded from the place where the evidence is taken, or otherwise be prevented from directly seeing and hearing the witness while giving evidence;
  - (e) an order that the witness be accompanied by a relative or friend for the purpose of providing emotional support;
  - (f) if the witness suffers from a physical or mental disability—an order that the evidence be taken in a particular way (to be specified by the court) that will, in the court's opinion, facilitate the taking of evidence from the witness or minimise the witness's embarrassment or distress.
- (3) The court may, if of the opinion that expert evidence would assist the court to determine the special arrangements that should be made for taking the evidence of the witness, receive such evidence and, if the native language of the witness is not English and the witness is not reasonably fluent in English, evidence about any additional difficulty that may be caused by the witness giving evidence through an interpreter.
- (4) Special arrangements made under this section may relate to the witness's evidence as a whole or to particular aspects of the witness's evidence, such as cross-examination and re-examination.
- (5) An order must not be made under this section if the effect of the order would be—
  - (a) to relieve a witness from the obligation to give sworn evidence; or
  - (b) to relieve a witness from the obligation to submit to cross-examination; or
  - (c) to prevent the judge, jury or defendant from observing the witness's demeanour in giving evidence (but the observation may be direct or by live transmission of the witness's voice and image or by replay of a recording of the witness's voice and image); or
  - (d) to prevent the defendant from instructing counsel while the witness is giving evidence.

- (6) If a witness is accompanied by a relative or friend for the purpose of providing emotional support, that person must be visible to the judge and jury (if any) while the witness is giving evidence and, if, in consequence of an order under this section, a party is prevented from seeing that person directly while the witness gives evidence, the court must ensure that the party is able to observe that person either—
  - (a) by direct transmission of images of the witness together with that person while the witness is giving evidence; or
  - (b) by the later replay of a recording of images of the witness together with that person made while the witness was giving evidence.
- (7) If, in a criminal trial, a court makes special arrangements for taking the evidence of a witness, the judge must warn the jury not to draw from that fact any inference adverse to the defendant, and not to allow the special arrangements to influence the weight to be given to the evidence.
- (8) An order under this section may be made, varied or revoked on the court's own initiative, or on the application of a party or witness.

### **13A—Special arrangements for protecting vulnerable witnesses when giving evidence in criminal proceedings**

- (1) Subject to this section, if—
  - (a) a vulnerable witness is to give evidence in criminal proceedings; and
  - (b) the facilities necessary for the special arrangements are readily available to the court and it is otherwise practicable to make the special arrangements; and
  - (c) the special arrangements can be made without prejudice to any party to the proceedings,

the court must, on application under this section, order that special arrangements be made for taking the evidence of the witness.

- (2) Without limiting the kind of order that may be made under this section, the court may make 1 or more of the following orders:
  - (a) an order that the evidence be given outside the trial court and transmitted to the trial court by means of closed circuit television;
  - (b) an order that the evidence be taken outside the trial court, and that an audio visual record of the evidence be made and replayed in the trial court;
  - (c) an order that a screen, partition or one-way glass be placed to obscure the view of a party to whom the evidence relates or some other person;
  - (d) an order that a defendant be excluded from the place where the evidence is taken, or otherwise be prevented from directly seeing and hearing the vulnerable witness while giving evidence;
  - (e) an order that the vulnerable witness be accompanied by a relative or friend for the purpose of providing emotional support;
  - (f) if the vulnerable witness suffers from a physical or mental disability—an order that the evidence be taken in a particular way (to be specified by the court) that will, in the court's opinion, facilitate the taking of evidence from the witness or minimise the witness's embarrassment or distress.

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- (3) Special arrangements made under this section may relate to the vulnerable witness's evidence as a whole or to particular aspects of the witness's evidence, such as cross-examination and re-examination.
  - (4) An order must not be made under this section if the effect of the order would be—
    - (a) to relieve a vulnerable witness from the obligation to give sworn evidence; or
    - (b) to relieve a vulnerable witness from the obligation to submit to cross-examination; or
    - (c) to prevent the judge, jury or defendant from observing the vulnerable witness's demeanour in giving evidence (but the observation may be direct or by live transmission of the witness's voice and image or by replay of a recording of the witness's voice and image); or
    - (d) to prevent the defendant from instructing counsel while the vulnerable witness is giving evidence.
  - (5) If a vulnerable witness is accompanied by a relative or friend for the purpose of providing emotional support, that person must be visible to the judge and jury (if any) while the witness is giving evidence and, if, in consequence of an order under this section, a party is prevented from seeing that person directly while the witness gives evidence, the court must ensure that the party is able to observe that person either—
    - (a) by direct transmission of images of the witness together with that person while the witness is giving evidence; or
    - (b) by the later replay of a recording of images of the witness together with that person made while the witness was giving evidence.
  - (6) An application for an order under this section must—
    - (a) be made in writing by the party calling the vulnerable witness to give evidence; and
    - (b) be filed in the court before the commencement of the trial; and
    - (c) within 14 days of being filed in the court—be served on the other party to the proceedings (the *respondent*); and
    - (d) specify the nature of the vulnerability of the witness, the special arrangements sought and the reasons for the arrangements; and
    - (e) otherwise be made in accordance with the rules of court.
  - (7) The respondent may, if of the opinion that the witness on whose behalf the application has been made is not in fact a vulnerable witness, within 14 days of being served with the application (the *prescribed period*), file an answering document in the court objecting to the application on that ground.
  - (8) If an objection to the application is filed within the prescribed period, the court must determine the application before the commencement of the trial—
    - (a) in the absence of the applicant and respondent; or
    - (b) by conducting a hearing in a room closed to the public.

- (9) The court may, if of the opinion that expert evidence would assist the court to determine the special arrangements that should be made for taking the evidence of the vulnerable witness, receive such evidence and, if the native language of the witness is not English and the witness is not reasonably fluent in English, evidence about any additional difficulty that may be caused by the witness giving evidence through an interpreter.
- (10) If no objection to the application is filed within the prescribed period, the court may order that appropriate special arrangements be made for taking the evidence of the vulnerable witness at the trial.
- (11) The court—
- (a) may dispense with special arrangements for taking the evidence of a vulnerable witness in criminal proceedings if—
    - (i) the witness is an adult; and
    - (ii) the court is satisfied that—
      - (A) the facilities necessary for the special arrangements are not readily available to the court; and
      - (B) taking into account the following matters, it is not reasonably practicable to make the facilities available:
        - the cost, inconvenience and delay involved in procuring the necessary facilities or in adjourning to some other place where the necessary facilities are available;
        - the urgency of the proceedings; and
  - (b) must give reasons for its decision.
- (12) If, in a criminal trial, a court makes special arrangements for taking the evidence of a vulnerable witness, the judge must warn the jury not to draw from that fact any inference adverse to the defendant, and not to allow the special arrangements to influence the weight to be given to the evidence.
- (13) An order under this section may be made, varied or revoked on the court's own initiative, or on the application of a party to the proceedings.

### **13B—Cross-examination of victims of certain offences**

- (1) A defendant is not to be permitted to cross-examine a witness who is the alleged victim of an offence to which this section applies—
- (a) in a criminal trial unless the cross-examination is by counsel;
  - (b) in civil proceedings relating to the offence unless—
    - (i) the cross-examination is by counsel; or
    - (ii) if the defendant is not legally represented in the proceedings—to be undertaken—



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- (A) by the defendant submitting to the judge, in the manner required by the judge, the questions the defendant proposes the witness be asked in cross-examination and the judge (or the judge's delegate) asking the witness those of the questions submitted that are determined by the judge to be allowable in cross-examination; or
  - (B) as otherwise directed by the judge.
- (3) If a defendant is not legally represented in a criminal trial that will involve the taking of evidence from any such witness, the court must ensure that the defendant—
- (a) has been warned of the limitation on the right of cross-examination imposed by this section; and
  - (b) has been informed—
    - (i) that he or she may be entitled to legal assistance under the *Legal Services Commission Act 1977*;
    - (ii) in any case—of his or her rights under the *Criminal Law (Legal Representation) Act 2001* to obtain the assistance of counsel for the purpose of cross-examining the witness; and
  - (c) has had a reasonable opportunity to obtain the assistance of counsel before the evidence is taken.
- (4) If, in a criminal trial, an unrepresented defendant obtains the assistance of counsel for the purpose of cross-examining such a witness, the judge must—
- (a) explain to the jury the limitation imposed by this section on the defendant's right to personally cross-examine the witness; and
  - (b) warn the jury that no adverse inference may be drawn against the defendant from the requirement for the unrepresented defendant to obtain the assistance of counsel to cross-examine the witness.
- (5) In this section—
- offence to which this section applies*** means—
- (a) a serious offence against the person; or
  - (b) an offence of contravening or failing to comply with an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*; or
  - (c) an offence of contravening or failing to comply with a restraining order under the *Summary Procedure Act 1921*.

### **13C—Court's power to make audio visual record of evidence of vulnerable witnesses in criminal proceedings**

- (1) If a vulnerable witness is to give evidence in criminal proceedings, the following provisions apply:
- (a) in the case of a vulnerable witness who is a child of or under the age of 16 years and who is the alleged victim of a sexual offence—the court must order that an audio visual record be made of the witness's evidence before the court (unless an order has already been made in respect of the witness's evidence under section 13A(2)(b));

- (b) in the case of any other vulnerable witness—the court may, on application by the prosecution, order that an audio visual record be made of the witness's evidence before the court if—
  - (i) the facilities necessary for making an audio visual record of the evidence are readily available to the court; and
  - (ii) it is otherwise practicable to make such a record.
- (2) Subject to subsection (3), an audio visual record of evidence (whether made by order under this section or section 13A(2)(b)) is to be kept in the custody of the court.
- (2a) Rules of court may be made regulating access to, and responsibility for, an audio visual record in the custody of the court.
- (3) The court (or a superior court) may authorise a person to take custody of the audio visual record of evidence, or to have some other form of access to it, if satisfied that the custody or access is reasonably necessary for the purposes of related proceedings that have been commenced or are in contemplation.
- (4) Despite any other law, access to an audio visual record of evidence is not to be allowed except as provided by this section.

### 13D—Court's power to admit evidence taken in earlier proceedings

- (1) If, on application by a party to civil or criminal proceedings before a court, the court is satisfied that—
  - (a) evidence given by a witness in earlier criminal proceedings is relevant to the proceedings before the court; and
  - (b) the witness—
    - (i) has died; or
    - (ii) has become too ill or infirm to give evidence; or
    - (iii) has not, after diligent search, been found; or
    - (iv) is a vulnerable witness,

the court in the later proceedings has a discretion to admit an official record of the evidence.

- (2) An *official record* of evidence is a record made at the direction or with the approval of the court before which the evidence was taken and, if an audio or audio visual record of the evidence was taken at the direction or with the approval of the court, in addition to a written transcript, the official record of evidence includes the audio or audio visual record.
- (3) Before the court admits an official record into evidence in proceedings under this section, the record must be edited—
  - (a) as agreed between the parties to those proceedings so as to exclude material that is not relevant to those proceedings; and
  - (b) so as to exclude evidence that is inadmissible in those proceedings for any other reason.

- (4) If the court admits an official record into evidence under this section, it may relieve the witness, wholly or in part, from an obligation to give evidence in the later proceedings.

#### **14—Entitlement of a witness to be assisted by an interpreter**

- (1) Where—
- (a) the native language of a witness who is to give oral evidence in any proceedings is not English; and
  - (b) the witness is not reasonably fluent in English,
- the witness is entitled to give that evidence through an interpreter.
- (1a) A person may only act as an interpreter—
- (a) if the person takes an oath or makes an affirmation to interpret accurately; and
  - (b) in a case where a party to the proceeding disputes the person's ability or impartiality as an interpreter, if the judge is satisfied as to the person's ability and impartiality.
- (2) An affidavit or other written deposition in a language other than English shall be received in evidence in the same circumstances as an affidavit or other written deposition in English if it has annexed to it—
- (a) a translation of its contents into English; and
  - (b) an affidavit by the translator to the effect that the translation accurately reproduces in English the contents of the original.

#### **15—Witness not disqualified by interest or crime**

No person shall be excluded from giving evidence on the ground—

- (a) that he has or may have an interest in the matter in question or in the event of the proceeding, or
- (b) that he has previously been convicted of any crime or offence.

#### **16—Parties, their wives and husbands competent and compellable in civil proceedings**

In any proceeding not being a criminal proceeding the parties thereto and the persons on whose behalf such proceeding is brought or defended, and the husbands and wives of such parties or persons respectively, shall, subject to the provisions of this Act, be competent and compellable to give evidence on behalf of either or any of the parties to such proceeding.

#### **18—Accused persons competent to give evidence**

- (1) Every person charged with an offence shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person: Provided as follows:
- (a) a person so charged shall not be called as a witness in pursuance of this Act except upon his own application;
  - (b) the failure of any person charged with an offence to give evidence shall not be made the subject of any comment by the prosecution;

- (c) a person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;
  - (d) a person charged and called as a witness in pursuance of this Act shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—
    - (i) the evidence to be elicited by the question is admissible as tending to show that he is guilty or not guilty of the offence with which he is charged; or
    - (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character; or
    - (iii) he forfeits the protection of this paragraph by virtue of subsection (2); or
    - (iv) he has given evidence against any other person charged with the same offence;
  - (e) every person called as a witness in pursuance of this Act shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence;
  - (f) nothing herein contained shall affect the provisions of section 110 of the *Justices Act 1921*.
- (2) A defendant forfeits the protection of subsection (1)(d) if—
- (a) the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or a witness for the prosecution; and
  - (b) the imputations are not such as would necessarily arise from a proper presentation of the defence.
- (3) Notwithstanding the provisions of subsection (2), a defendant does not forfeit the protection of subsection (1)(d) by reason of imputations on the character of the prosecutor or a witness for the prosecution arising from evidence of the conduct of the prosecutor or witness—
- (a) in the events or circumstances on which the charge is based; or
  - (b) in the investigation of those events or circumstances, or in assembling evidence in support of the charge; or
  - (c) in the course of the trial, or proceedings preliminary to the trial.

### **18A—Abolition of right to make unsworn statement**

A person charged with an offence is not entitled to make at the trial for the offence any unsworn statement of fact in defence of the charge (except in the course of giving unsworn evidence under section 9).

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## 21—Competence and compellability of witnesses

- (1) A close relative of a person charged with an offence shall be competent and compellable to give evidence for the defence and shall, subject to this section, be competent and compellable to give evidence for the prosecution.
- (2) Where a person is charged with an offence and a close relative of the accused is a prospective witness against the accused in any proceedings related to the charge (including proceedings for the grant, variation or revocation of bail, or an appeal at which fresh evidence is to be taken) the prospective witness may apply to the court for an exemption from the obligation to give evidence against the accused in those proceedings.
- (3) Where it appears to a court to which an application is made under subsection (2)—
  - (a) that, if the prospective witness were to give evidence, or evidence of a particular kind, against the accused, there would be a substantial risk of—
    - (i) serious harm to the relationship between the prospective witness and the accused; or
    - (ii) serious harm of a material, emotional or psychological nature to the prospective witness; and
  - (b) that, having regard to the nature and gravity of the alleged offence and the importance to the proceedings of the evidence that the prospective witness is in a position to give, there is insufficient justification for exposing the prospective witness to that risk,

the court may exempt the prospective witness, wholly or in part, from the obligation to give evidence against the accused in the proceedings before the court.
- (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.
- (4) Where a court is constituted of a judge and jury—
  - (a) an application for an exemption under this section shall be heard and determined by the judge in the absence of the jury; and
  - (b) the fact that a prospective witness has applied for, or been granted or refused, an exemption under this section shall not be made the subject of any question put to a witness in the presence of the jury or of any comment to the jury by counsel or the presiding judge.
- (5) The judge presiding at proceedings in which a close relative of an accused person is called as a witness against the accused must satisfy himself or herself that the prospective witness—
  - (a) is aware of his or her right to apply for an exemption under this section; or
  - (b) is incapable, by reason of age or mental impairment, of understanding his or her right to apply for an exemption under this section.
- (6) This section does not operate to make a person who has himself been charged with an offence compellable to give evidence in proceedings related to that charge.

(7) In this section—

*close relative* of an accused person means a spouse, domestic partner, parent or child.

## **22—Certain questions may be disallowed**

In any proceeding in any court, whether civil or criminal, the judge may disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious and not relevant to any matter proper to be inquired into in the proceeding.

## **23—Rules as to relevancy**

In deciding whether a question affecting the credibility of a witness is relevant, or ought to be allowed, the judge shall have regard to the following considerations:

- (a) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies;
- (b) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect only in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies;
- (c) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

## **24—Disallowance of certain questions in cross-examination**

- (1) If any question put to a witness upon cross-examination relates to a matter not relevant to the proceeding, except in so far as it affects the credit of the witness by injuring his character, it shall be the duty of the court to decide whether or not the witness shall be compelled to answer it, and the court may, if it thinks fit, inform the witness that he is not obliged to answer it.
- (2) In exercising this discretion the court shall have regard to the considerations referred to in section 23.

## **25—Disallowance of improper questions**

- (1) A question is an *improper question* if—
  - (a) the question is misleading or confusing; or
  - (b) the question is apparently based on a stereotype, including a sexual, racial, ethnic or cultural stereotype or a stereotype based on age or physical or mental disability; or
  - (c) the question is unnecessarily repetitive, offensive or oppressive, or is 1 of a series of questions that is unnecessarily repetitive, offensive or oppressive; or
  - (d) the question is put in a humiliating, insulting or otherwise inappropriate manner or tone.

- (2) A question is not, however, improper only because—
  - (a) it challenges the truthfulness of the witness, or the consistency or accuracy of statements made by the witness; or
  - (b) it deals with matters the witness would find distasteful or intrudes on the witness's privacy.
- (3) If an improper question is put to a witness in cross-examination, the court must—
  - (a) disallow the question; and
  - (b) inform the witness that the question need not be answered.
- (4) In determining whether a question is improper, the court may take into account—
  - (a) the age, personality and educational level of the witness; and
  - (b) any mental or physical disabilities to which the witness is subject; and
  - (c) the witness's ethnic and cultural background; and
  - (d) any other characteristics of the witness that may be relevant; and
  - (e) the context in which the question is put, including—
    - (i) the nature of the proceedings and, if the proceedings are criminal proceedings, the nature of the offence to which they relate; and
    - (ii) the relationship (if any) between the witness and a party to the proceedings; and
  - (f) any other relevant factor.
- (5) The failure to exercise the discretion in relation to a question does not affect the admissibility of any answer given in response to the question.

## **26—Proof of previous conviction of witness may be given**

A witness may, subject to any other provisions of this Act, be questioned as to whether he has been convicted of any offence, and upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, it shall be lawful for the cross-examining party to prove such conviction.

## **27—How far a party may discredit his or her own witness**

A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but if the judge is of opinion that the witness is adverse, the party may—

- (a) contradict the witness by other evidence; or
- (b) with the permission of the judge, prove that the witness has made, at any other time, a statement inconsistent with his present testimony: Provided that, before giving such last-mentioned proof, the circumstances of the supposed statement sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made the statement.

## **28—Proof of contradictory statements of adverse witness**

If any witness, upon cross-examination as to a former statement made by him, relative to the subject matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made the statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made the statement.

## **29—Cross-examination as to previous statements in writing**

A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without the writing being shown to him; but if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: Provided always, that the judge, at any time during the trial, may require the production of the writing for his inspection; and may thereupon make such use of it, for the purposes of the trial, as he thinks fit.

## **29A—Victim who is a witness entitled to be present in court unless court orders otherwise**

- (1) A court in a criminal proceeding may only order a victim of the offence who is a witness in the proceeding to leave the courtroom until required to give evidence if the court considers it appropriate to do so, whether to ensure a fair trial or for any other reason.
- (2) Nothing in this section prevents a court from ordering a victim who is a witness in the proceeding to leave the courtroom at any time after giving evidence if the court considers it appropriate to do so.



## **Part 3—Miscellaneous rules of evidence**

### **Division 1—Miscellaneous rules of evidence in general cases**

#### **30—As to comparison of disputed writing**

Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court as evidence of the genuineness or otherwise of the writing in dispute.

#### **31—Attesting witness need not be called in certain cases**

It shall not be necessary to prove, by the attesting witness, any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto.

#### **33—Discovery in action for defamation**

- (1) A person who is required to answer a question, or to discover or produce a document or thing, in civil proceedings for defamation is not excused from answering the question or discovering or producing the document or thing on the ground that the answer to the question or the discovery or production of the document or thing might tend to incriminate the person of an offence.
- (2) However, any answer given to a question, or document or thing discovered or produced, by a natural person in compliance with the requirement is not admissible in evidence against the person in any other action or proceedings.

#### **34—Admissions by accused persons**

A person may admit on his trial any fact alleged or sought to be proved against him, and such admission shall be sufficient proof of the fact without other evidence: Provided that the admission shall be made by the accused either personally or by his counsel or solicitor in his presence, or, in the case of a body corporate, by its counsel or solicitor.

#### **34A—Proof of commission of offence**

Where a person has been convicted of an offence or found by a court exercising criminal jurisdiction to have committed an offence and the commission of the offence is in issue or relevant to an issue in a civil proceeding, the conviction or finding is evidence of the commission of the offence and admissible in the proceeding against the person or a party claiming through or under the person.

#### **34C—Admissibility of documentary evidence as to facts in issue**

- (1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say—
  - (a) if the maker of the statement either—

- (i) had personal knowledge of the matters dealt with by the statement; or
    - (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and
  - (b) if the maker of the statement is called as a witness in the proceedings.
- (1a) However, the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.
- (2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) of this section shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence—
- (a) notwithstanding that the maker of the statement is available but is not called as a witness;
  - (b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.
- (3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.
- (4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.
- (5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a legally qualified medical practitioner and where the proceedings are with a jury, the court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

**34CA—Statement of protected witness**

- (1) A court may admit evidence of the nature and contents of a statement made outside the court by a protected witness from the person to whom the statement was made if—
  - (a) the court, having regard to the circumstances in which the statement was made and any other relevant factors, is satisfied that the statement has sufficient probative value to justify its admission; and
  - (b) —
    - (i) the protected witness has been called, or is available to be called, as a witness in the proceedings; and
    - (ii) the court gives permission for the protected witness to be cross-examined on matters arising from the evidence.
- (2) A court may only give permission to allow a protected witness to be cross-examined on such matters if satisfied that the cross-examination is likely to elicit material of substantial probative value or material that would substantially reduce the credibility of the evidence.
- (3) Evidence that is admitted in a trial under this section of the nature and contents of a statement made outside the court by a protected witness may be used to prove the truth of the facts asserted in the statement.
- (4) In a criminal trial, the judge must, if evidence of the nature and contents of a statement made outside the court by a protected witness has been admitted but the protected person has not, for some reason, been cross-examined on matters arising from the evidence, warn the jury that the evidence should be scrutinised with particular care because it has not been tested in the usual way.
- (5) In this section—

*protected witness* means—

  - (a) a young child; or
  - (b) a person who suffers from a mental disability that adversely affects the person's capacity to give a coherent account of the person's experiences or to respond rationally to questions.

**34CB—Direction relating to delay where defendant forensically disadvantaged**

- (1) A rule of law or practice obliging a judge in a trial of a charge of an offence to give a warning of a kind known as a *Longman* warning is abolished.

**Note—**

See *Longman v The Queen* (1989) 168 CLR 79

- (2) If, in a trial of a charge of an offence, the court is of the opinion that the period of time that has elapsed between the alleged offending and the trial has resulted in a significant forensic disadvantage to the defendant, the judge must—
  - (a) explain to the jury the nature of the forensic disadvantage; and
  - (b) direct that the jury must take the forensic disadvantage into account when scrutinising the evidence.

- (3) An explanation or direction under subsection (2) may not take the form of a warning and—
- (a) must be specific to the circumstances of the particular case; and
  - (b) must not include the phrase "dangerous or unsafe to convict" or similar words or phrases.

### **34D—Weight to be attached to evidence**

- (1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.
- (2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Act shall not be treated as corroboration of evidence given by the maker of the statement.

### **34E—Proof of instrument to validity of which attestation is necessary**

Subject as hereinafter provided, in any proceedings, whether civil or criminal, an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive: Provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

### **34F—Presumptions as to documents twenty years old**

In any proceedings, whether civil or criminal, there shall, in the case of a document proved, or purporting, to be not less than twenty years old, be made any presumption which immediately before the commencement of this Act would have been made in the case of a document of like character proved, or purporting, to be not less than thirty years old.

### **34G—Interpretation and savings**

- (1) In sections 34C to 34F (inclusive) of this Act—
- document* includes books, maps, plans, drawings and photographs;
- statement* includes any representation of fact, whether made in words or otherwise;
- proceedings* includes arbitrations and references, and *court* shall be construed accordingly.
- (2) Nothing in sections 34C to 34F (inclusive) of this Act shall—
- (a) prejudice the admissibility of any evidence which would apart from the provisions of those sections be admissible; or
  - (b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if those sections had not been enacted.

**34H—Evidence of access or non-access**

In any proceedings a husband or wife may give evidence proving or tending to prove that he or she did or did not have sexual relations with his or her spouse, notwithstanding that any such evidence would prove or tend to prove that any child born to the wife during marriage was illegitimate.

**34J—Special provision for taking evidence where witness is seriously ill**

- (1) Where a person who may be in a position to give information in relation to an indictable offence is dangerously ill and, in the opinion of a medical practitioner, unlikely to recover from the illness, a magistrate or justice may take a statement from that person.
- (2) The statement is to be a sworn statement unless the magistrate or justice determines that the person making the statement does not have sufficient understanding of the obligation to be truthful entailed in giving sworn evidence.
- (3) Where a person is subsequently charged with an indictable offence to which the statement is relevant, the statement is admissible in evidence at the preliminary examination or trial of the charge if it is established—
  - (a) that the person from whom the statement was taken is dead or unable to give evidence because of illness or infirmity; and
  - (b) that the prosecutor or defendant (as the case requires) had reasonable notice of the proposal to take evidence and a reasonable opportunity to attend and cross-examine the person.

**34K—Admissibility of depositions at trial**

- (1) Where—
  - (a) a statement from a witness is filed or tendered for the purpose of the preliminary examination of a charge of an indictable offence or oral evidence is taken from a witness at a preliminary examination; and
  - (b) the witness subsequently dies or becomes so ill or infirm that he or she cannot give evidence at the trial,the record of the witness's evidence at the preliminary examination may, with the permission of the court of trial, be read as evidence at the trial.
- (2) Permission to admit evidence for the prosecution under this section will not be granted if the court considers that admission of the evidence without the opportunity of cross-examination would, in the circumstances of the case, be unfair to the defendant.

**34KA—Admissibility of evidence of out of court statements by unavailable witnesses**

- (1) Subject to this section, in prescribed proceedings, a statement not made in oral evidence in the proceedings (an *out of court statement*) is admissible as evidence of any matter stated if—
  - (a) oral evidence given in the proceedings by the person who made the out of court statement would be admissible as evidence of that matter; and

- (b) the person who made the out of court statement (the *relevant person*) is identified to the court's satisfaction; and
  - (c) any 1 of the conditions specified in subsection (2) is satisfied.
- (2) The conditions are as follows:
  - (a) that the relevant person is dead;
  - (b) that the relevant person is unfit to be a witness because of a bodily or mental condition;
  - (c) that the relevant person is outside of the State and it is not reasonably practicable to secure his or her attendance;
  - (d) that the relevant person cannot be found although such steps as it is reasonably practicable to take to find him or her have been taken;
  - (e) that through fear the relevant person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the out of court statement, and the court gives leave for the out of court statement to be given in evidence.
- (3) For the purposes of subsection (2)(e) *fear* is to be widely construed and includes, for example, fear of the death or injury of another person or of financial loss.
- (4) Leave may be given under subsection (2)(e) only if the court considers that the out of court statement ought to be admitted in the interests of justice, having regard to—
  - (a) any information (whether or not given in evidence, or of a kind that could be given in evidence) suggesting threats have been made to the witness, whether directly or indirectly; and
  - (b) the statement's contents; and
  - (c) any risk that its admission or exclusion will result in unfairness to a defendant in the proceedings (and in particular to how difficult it will be to challenge the statement if the relevant person does not give oral evidence and the defendant is not able to cross-examine the person); and
  - (d) any other measures that could be taken by the court in relation to the relevant person; and
  - (e) any other relevant circumstances.
- (5) A condition set out in any paragraph of subsection (2) which is in fact satisfied is to be treated as not satisfied if it is shown that the circumstances described in that paragraph are caused—
  - (a) by the person in support of whose case it is sought to give the out of court statement in evidence; or
  - (b) by a person acting on his or her behalf, in order to prevent the relevant person giving oral evidence in the proceedings (whether at all or in connection with the subject matter of the out of court statement).
- (6) Nothing in this section makes an out of court statement admissible as evidence if it was made by a person who was not competent at the time when he or she made the statement.

(7) This section is in addition to, and does not derogate from, any other power of a court to admit an out of court statement into evidence.

(8) In this section—

*prescribed proceedings* means—

- (a) proceedings for a criminal offence; or
- (b) proceedings under the *Serious and Organised Crime (Control) Act 2008*.

### **34KB—Credibility**

(1) This section applies if in prescribed proceedings—

- (a) a statement not made in oral evidence in the proceedings (an *out of court statement*) is admitted as evidence of a matter stated; and
- (b) the maker of the out of court statement does not give oral evidence in connection with the subject matter of the statement.

(2) In a case to which this section applies—

- (a) any evidence which (if the person who made the out of court statement had given such evidence) would have been admissible as relevant to the reliability of the statement and the person's credibility as a witness is so admissible in the proceedings; and
- (b) evidence may, with the court's leave, be given of any matter which (if the person who made the out of court statement had given such evidence) could have been put to the person in cross-examination as relevant to the reliability of the statement and the person's credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and
- (c) evidence tending to prove that the person who made the out of court statement made (at whatever time) any other statement inconsistent with the statement admitted as evidence is admissible for the purpose of showing that the person contradicted himself or herself.

(3) If as a result of evidence admitted under this section an allegation is made against the maker of a statement, the court may permit a party to lead additional evidence of such description as the court may specify for the purposes of denying or answering the allegation.

(4) In this section—

*prescribed proceedings* means—

- (a) proceedings for a criminal offence; or
- (b) proceedings under the *Serious and Organised Crime (Control) Act 2008*.

### **34KC—Stopping the case where evidence is unconvincing**

(1) If on a defendant's trial before a judge and jury for an offence the judge is satisfied at any time after the close of the case for the prosecution that—

- (a) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings (an *out of court statement*); and

- (b) the evidence provided by the out of court statement is so unconvincing that, considering its importance to the case against the defendant, a conviction of the offence would be unsafe,

the judge must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.

- (2) Where—

- (a) a jury is directed under subsection (1) to acquit a defendant of an offence; and
- (b) the circumstances are such that, apart from this subsection, the defendant could if acquitted of that offence be found guilty of another offence,

the defendant may not be found guilty of that other offence if the judge is satisfied as mentioned in subsection (1) in respect of it.

- (3) This section does not prejudice any other power a judge may have to direct a jury to acquit a person of an offence or to discharge a jury.

### **34KD—Court's general discretion to exclude evidence**

- (1) In prescribed proceedings the court may refuse to admit a statement as evidence of a matter stated if—

- (a) the statement was made otherwise than in oral evidence in the proceedings; and
- (b) the court is satisfied that the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting it, taking account of the value of the evidence.

- (2) Nothing in this section derogates from any other power of a court to exclude evidence at its discretion (whether by preventing questions from being put or otherwise).

- (3) In this section—

*prescribed proceedings* means—

- (a) proceedings for a criminal offence; or
- (b) proceedings under the *Serious and Organised Crime (Control) Act 2008*.

## **Division 2—Miscellaneous rules of evidence in sexual cases**

### **34L—Evidence in sexual cases generally**

- (1) In proceedings in which a person is charged with a sexual offence, no question may be asked or evidence admitted—

- (a) as to the sexual reputation of the alleged victim of the offence; or
- (b) except with the permission 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 permission should be granted under subsection (1)(b), the judge must 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 must not grant permission unless satisfied that the evidence in respect of which permission 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) Permission must not be granted under subsection (1)(b) authorising 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 permission under subsection (1)(b) must be heard and determined in the absence of the jury (if any).
- (5) In a trial of a charge of 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.

### 34M—Evidence relating to complaint in sexual cases

- (1) This section abolishes the common law relating to recent complaint in sexual cases.

**Note—**

See *Kilby v The Queen* (1973) 129 CLR 460; *Crofts v The Queen* (1996) 186 CLR 427

- (2) In a trial of a charge of a sexual offence, no suggestion or statement may be made to the jury that a failure to make, or a delay in making, a complaint of a sexual offence is of itself of probative value in relation to the alleged victim's credibility or consistency of conduct.
- (3) Despite any other rule of law or practice, evidence related to the making of an initial complaint of an alleged sexual offence is admissible in a trial of a charge of the sexual offence.

**Examples—**

Evidence may be given by any person about—

- when the complaint was made and to whom;
- the content of the complaint;
- how the complaint was solicited;
- why the complaint was made to a particular person at a particular time;
- why the alleged victim did not make the complaint at an earlier time.

- (4) If evidence referred to in subsection (3) is admitted in a trial, the judge must direct the jury that—
- (a) it is admitted—
    - (i) to inform the jury as to how the allegation first came to light; and
    - (ii) as evidence of the consistency of conduct of the alleged victim; and
  - (b) it is not admitted as evidence of the truth of what was alleged; and
  - (c) there may be varied reasons why the alleged victim of a sexual offence has made a complaint of the offence at a particular time or to a particular person,
- but that, otherwise, it is a matter for the jury to determine the significance (if any) of the evidence in the circumstances of the particular case.
- (5) It is not necessary that a particular form of words be used in giving the direction under subsection (4).
- (6) In this section—

*complaint*, in relation to a sexual offence, includes a report or any other disclosure (whether to a police officer or otherwise);

*initial complaint*, in relation to a sexual offence, includes information provided by way of elaboration of the initial complaint (whether provided at the time of the initial complaint or at a later time).

### **34N—Directions relating to consent in certain sexual cases**

- (1) In a trial of a charge of a sexual offence where a lack of consent of a person in relation to a particular sexual activity is in issue, the judge must direct the jury that the person is not to be regarded as having consented to the sexual activity the subject of the charge merely because—
- (a) the person did not say or do anything to indicate that he or she did not freely and voluntarily agree to the sexual activity; or
  - (b) the person did not protest to or physically resist the sexual activity; or
  - (c) the person was not physically injured in the course of, or in connection with, the sexual activity; or
  - (d) 1 or more of the following circumstances apply:
    - (i) the person freely and voluntarily agreed to sexual activity of a different kind with the defendant;
    - (ii) the person had freely and voluntarily agreed to sexual activity (whether or not of the same kind) with the defendant on an earlier occasion;
    - (iii) the person had, on that or some other occasion, freely and voluntarily agreed to sexual activity (whether or not of the same kind) with another person.
- (2) The judge must, in a trial referred to in subsection (1), give each of the directions referred to in that subsection as may be applicable in the circumstances of the particular case.

- (3) In this section—

*consent*, in relation to a sexual activity, has the same meaning as in the *Criminal Law Consolidation Act 1935*;

*sexual activity* includes sexual intercourse (within the meaning of the *Criminal Law Consolidation Act 1935*).

### **Division 3—Admissibility of evidence showing discreditable conduct or disposition**

#### **34O—Application of Division**

- (1) This Division applies to the trial of a charge of an offence and prevails over any relevant common law rule of admissibility of evidence to the extent of any inconsistency.
- (2) This Division does not apply to—
- (a) evidence adduced pursuant to section 18; or
  - (b) evidence of the character, reputation, conduct or disposition of a person as a fact in issue.

#### **34P—Evidence of discreditable conduct**

- (1) In the trial of a charge of an offence, evidence tending to suggest that a defendant has engaged in discreditable conduct, whether or not constituting an offence, other than conduct constituting the offence (*discreditable conduct evidence*)—
- (a) cannot be used to suggest that the defendant is more likely to have committed the offence because he or she has engaged in discreditable conduct; and
  - (b) is inadmissible for that purpose (*impermissible use*); and
  - (c) subject to subsection (2), is inadmissible for any other purpose.
- (2) Discreditable conduct evidence may be admitted for a use (the *permissible use*) other than the impermissible use if, and only if—
- (a) the judge is satisfied that the probative value of the evidence admitted for a permissible use substantially outweighs any prejudicial effect it may have on the defendant; and
  - (b) in the case of evidence admitted for a permissible use that relies on a particular propensity or disposition of the defendant as circumstantial evidence of a fact in issue—the evidence has strong probative value having regard to the particular issue or issues arising at trial.
- (3) In the determination of the question in subsection (2)(a), the judge must have regard to whether the permissible use is, and can be kept, sufficiently separate and distinct from the impermissible use so as to remove any appreciable risk of the evidence being used for that purpose.
- (4) Subject to subsection (5), a party seeking to adduce evidence under this section must give reasonable notice in writing to each other party in the proceedings in accordance with the rules of court.
- (5) The court may, if it thinks fit, dispense with the requirement in subsection (4).

### **34Q—Use of evidence for other purposes**

Evidence that under this Division is not admissible for 1 use must not be used in that way even if it is relevant and admissible for another use.

### **34R—Trial directions**

- (1) If evidence is admitted under section 34P, the judge must (whether or not sitting with a jury) identify and explain the purpose for which the evidence may, and may not, be used.
- (2) If evidence is admitted under section 34P and that evidence is essential to the process of reasoning leading to a finding of guilt, the evidence cannot be used unless on the whole of the evidence, the facts in proof of which the evidence was admitted are established beyond reasonable doubt, and the judge must (whether or not sitting with a jury) give a direction accordingly.

### **34S—Certain matters excluded from consideration of admissibility**

Evidence may not be excluded under this Division if the only grounds for excluding the evidence would be either (or both) of the following:

- (a) there is a reasonable explanation in relation to the evidence consistent with the innocence of the defendant;
- (b) the evidence may be the result of collusion or concoction.

### **34T—Severance**

Where—

- (a) 2 or more defendants are charged in the same information; and
- (b) a party proposes to adduce discreditable conduct evidence; and
- (c) a defendant (the *applicant*) applies prior to or during a trial for a separate trial or for a charge to be severed from the information,

the court, when considering the application, must give strong weight to a real possibility that the applicant may be prejudiced by—

- (d) evidence proposed to be adduced by the prosecutor against another defendant which is not admissible against the applicant; or
- (e) evidence proposed to be adduced by another defendant which is not admissible against the applicant; or
- (f) the applicant's inability to adduce with respect to another defendant relevant evidence that would be admissible but for the operation of section 34P.

## Part 4—Public Acts and documents

### 35—Judicial notice of legislative instruments

- (1) A court must take judicial notice of a legislative instrument.
- (2) In this section—

*legislative instrument* means—

- (a) an Act of this State, or an Act or ordinance of any other State or a Territory of the Commonwealth;
- (b) an Act of the Imperial Parliament that forms part of the law of this State or of any other State or a Territory of the Commonwealth;
- (c) a regulation, rule, by-law or other form of subordinate legislation made under the law of this State or of any other State or a Territory of the Commonwealth;
- (d) a proclamation, order or notice published in the Gazette or the corresponding official publication of some other State or a Territory of the Commonwealth;
- (e) an Act or other instrument of a kind referred to in a preceding paragraph as published or republished under—
  - (i) the *Legislation Revision and Publication Act 2002*; or
  - (ii) a former Act, or provision of an Act, of this State that provided for the reprinting or consolidation of any such instruments; or
  - (iii) a corresponding Act or ordinance of any other State or a Territory of the Commonwealth.

### 36—Proof of votes and proceedings of Parliament

All documents purporting to be copies of the votes and proceedings or journals or minutes of either House of Parliament, or of papers presented to either House of Parliament, if purporting to be printed by the Government Printer, shall on their mere production be admitted as evidence thereof.

### 37—Evidentiary value of official publications

The Gazette or the corresponding official publication of some other State or a Territory of the Commonwealth is admissible in any legal proceedings as evidence of any legislative, judicial or administrative acts published or notified in it.

### 37A—Proof of Gazette

The mere production of a paper purporting to be the Gazette shall in all courts be evidence that the paper is the Gazette and was published on the day on which it bears date.

### 37B—Proof of printing by Government Printer

The mere production of a paper purporting to be printed by the Government Printer or by the authority of the Government of the State shall in all courts be evidence that the paper was printed by the Government Printer or by such authority.

### **37C—Proof of Imperial orders-in-Council**

- (1) In this section—

*Imperial order-in-Council* means—

- (a) any letters patent or Imperial order-in-Council; or
  - (b) any admiralty map or chart issued by, or under the authority of, the Government of Great Britain, or the United Kingdom.
- (2) Evidence of the making and contents of an Imperial order-in-Council may be given by production of a document purporting to be certified by the Secretary to the Attorney-General as a true copy of the Imperial order-in-Council.
- (3) A statement in a document produced in evidence under subsection (2) of this section as to the date of publication of the Imperial order-in-Council shall be evidence that the Imperial order-in-Council was published on that date.

### **38—Foreign and Colonial Acts of State, judgments etc provable by copies**

- (1) Evidence of any proclamation, treaty, or other act of State, of any foreign State, or in any part of His Majesty's Dominions outside the Commonwealth and other than the United Kingdom, may be given by the production of a document, purporting to be a copy thereof and—
- (a) proved to be an examined copy thereof; or
  - (b) purporting to be sealed with the seal of the foreign State or of the said part of His Majesty's Dominions.
- (2) Evidence of any judgment, decree, order or other judicial proceeding of any court of justice in the United Kingdom or in any foreign State or part of His Majesty's Dominions outside the Commonwealth and other than the United Kingdom (including any affidavit, pleading, or other legal document filed or deposited in the court) may be given by the production of a document purporting to be a copy thereof; and
- (a) proved to be an examined copy thereof; or
  - (b) purporting to be sealed with the seal of such court; or
  - (c) purporting to be signed by a judge of such court with a statement in writing attached by him to his signature that such court has no seal, and without proof of his judicial character, or of the truth of such statement.
- (3) If any such document as aforesaid purports to be sealed or signed as aforesaid it shall be admissible without proof of the seal or of the signature as the case may be.

### **39—Public documents provable by examined or certified copy**

- (1) Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no Act exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence,
- (a) if it is proved to be an examined copy or extract; or
  - (b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted.

- (2) Every such officer is hereby required to furnish such certified copy or extract to any person applying for the same at a reasonable time, upon payment of a reasonable sum for the same, not exceeding five cents for every folio of ninety words.

#### **40—Proof of documents by examined or certified copies**

Whenever any book, or other document, in the United Kingdom, or in any part of His Majesty's Dominions outside the Commonwealth and other than the United Kingdom, is provable (according to the law of England, or of the said part of His Majesty's Dominions) by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence if it—

- (a) is proved to be an examined copy or extract; or
- (b) purports to be signed and certified as a true copy or extract by some officer who shall further certify that he is the officer to whose custody the original is entrusted.

#### **41—Certifying a false document**

If any officer authorised or required by this Act to furnish any certified copy or extract shall wilfully certify any document as being a true copy or extract, knowing that the same is not a true copy or extract, as the case may be, he shall be guilty of an offence, and be liable, on conviction, to imprisonment for any term not less than eighteen months or more than three years.

#### **42—Proof of conviction or acquittal of an indictable offence**

- (1) The information, trial, and conviction, or acquittal of any person for an indictable offence may be proved by a certificate purporting to be under the hand of the Registrar of the Supreme Court or the District Court or the associate or other officer having the custody of the records of the court where such conviction, or acquittal took place, or of the deputy of such associate or other officer.
- (2) The certificate may set forth the substance and effect of the record omitting the formal parts thereof.
- (3) A conviction for any offence committed in any other State or any Territory of the Commonwealth may be proved by a like certificate.
- (4) No proof shall be required of the handwriting or official position of any person certifying in pursuance of this section.
- (5) The mode of proof authorised by this section shall be in addition to and not to the exclusion of any other authorised mode of proof.

#### **43—Proof of convictions and orders of courts of summary jurisdiction**

- (1) Any conviction, order of dismissal or other order made by a court of summary jurisdiction may be proved in any court whatever by the production of a copy of such conviction, order of dismissal or other order, purporting to be certified by the clerk of the court by which such conviction, order of dismissal or other order was made, or by the deputy of such clerk.
- (2) No proof shall be required of the signature or official character of the person appearing to have signed any such copy as aforesaid.

- (3) This section shall apply to any conviction, order of dismissal or other order made before or after the commencement of this Act.
- (4) In this section the expression *court of summary jurisdiction* shall mean any court, by whatever name called, which in any State or Territory of the Commonwealth has jurisdiction to try offences summarily.

#### **43A—Proof of identity of person convicted in another State**

For the purpose of proving the identity of any person alleged to have been convicted in any other State, or any Territory of the Commonwealth, an affidavit substantially in the form of Schedule 4 shall be admissible in evidence in all courts and shall be *prima facie* evidence that the person whose finger-prints are exhibited thereto—

- (a) is the person who in any document exhibited to the said affidavit and purporting to be a certificate of conviction or a certified copy of conviction, is referred to as having been convicted;
- (b) has been convicted of the offences mentioned in the said affidavit.

#### **44—Registers of British vessels and certificates of registry admissible as *prima facie* evidence of their contents**

- (1) Every register of vessels kept under any of the Acts of the Imperial Parliament relating to the registry of British vessels, may be proved either by the production of the original or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having the charge of the original.
- (2) Every such register, or such copy of a register, and also every certificate of registry granted under any of the said Acts relating to the registry of British vessels, and purporting to be signed as required by law, shall be received in evidence as *prima facie* proof of all the matters contained or recited in such register when the register or such copy thereof as aforesaid is produced, and of all matters contained or recited in or endorsed on such certificate of registry when the said certificate is produced.

#### **45—Documents relating to transportation of persons or goods**

- (1) An apparently genuine document purporting to be a document of a prescribed nature and to relate to the transportation or shipment of any person or goods, from one place to another—
  - (a) shall be admissible in evidence on production without further proof; and
  - (b) shall be evidence of any fact stated, or referred to, in the document, or to be inferred from the document, and where the document relates to the shipment of goods, shall be evidence that the ownership of goods referred to in the document is in the consignee named in the document or his assignee.
- (2) Evidence of the description of any package or property, or of any inscription or mark upon any package or property shall be admissible (without production of the original inscription or mark) for the purpose of raising an inference as to the identity of the package or property with that referred to in a document admissible in evidence under this section.



(3) For the purpose of determining the evidentiary weight, if any, of a document admitted in evidence under this section, consideration shall be given to the source from which the document is produced, the safeguards (if any) that have been taken to ensure its accuracy and any other relevant matters.

(4) In this section—

*document of a prescribed nature* means—

- (a) bill of lading, manifest, shipping receipt, consignment note, way-bill, delivery sheet, register or order, invoice, ticket, passenger list or register, and any document of a like nature; or
- (b) any reproduction of any such document by photographic, photostatic, lithographic or other like process;

*shipment* means carriage by any means by air, land or water.

#### **45A—Admission of business records in evidence**

(1) An apparently genuine document purporting to be a business record—

- (a) shall be admissible in evidence without further proof; and
- (b) shall be evidence of any fact stated in the record, or any fact that may be inferred from the record (whether the inference arises wholly from the matter contained in the record, or from that matter in conjunction with other evidence).

(2) A document shall not be admitted in evidence under this section if the court is of the opinion—

- (a) that the person by whom, or at whose direction, the document was prepared can and should be called by the party tendering the document to give evidence of the matters contained in the document; or
- (b) that the evidentiary weight of the document is slight and is outweighed by the prejudice that might result to any of the parties from the admission of the document in evidence; or
- (c) that it would be otherwise contrary to the interests of justice to admit the document in evidence.

(3) For the purpose of determining the evidentiary weight, if any, of a document admitted in evidence under this section, consideration shall be given to the source from which the document is produced, the safeguards (if any) that have been taken to ensure its accuracy, and any other relevant matters.

(4) In this section—

*business* means business, occupation, trade or calling and includes the business of any governmental or local governmental body or instrumentality;

*business record* means—

- (a) any book of account or other document prepared or used in the ordinary course of a business for the purpose of recording any matter relating to the business; or

- (b) any reproduction of any such record by photographic, photostatic, lithographic or other like process.

#### **45B—Admission of certain documents in evidence**

- (1) An apparently genuine document purporting to contain a statement of fact, or written, graphical or pictorial matter in which a statement of fact is implicit, or from which a statement of fact may be inferred shall, subject to this section, be admissible in evidence.
- (2) A document shall not be admitted in evidence under this section where the court is not satisfied that the person by whom, or at whose direction, the document was prepared could, at the time of the preparation of the document have deposed of his own knowledge to the statement that is contained or implicit in, or may be inferred from, the contents of the document.
- (3) A document shall not be admitted in evidence under this section if the court is of the opinion—
  - (a) that the person by whom, or at whose direction, the document was prepared can and should be called by the party tendering the document to give evidence of the matters contained in the document; or
  - (b) that the evidentiary weight of the document is slight and is outweighed by the prejudice that might result to any of the parties from the admission of the document in evidence; or
  - (c) that it would be otherwise contrary to the interests of justice to admit the document in evidence.
- (4) In determining whether to admit a document in evidence under this section, the Court may receive evidence by affidavit of any matter pertaining to the admission of that document in evidence.
- (5) For the purpose of determining the evidentiary weight, if any, of a document admitted in evidence under this section, consideration shall be given to the source from which the document was produced, the safeguards (if any) that have been taken to ensure its accuracy, and any other relevant matters.
- (6) In this section—

**document** means—

  - (a) any original document; or
  - (b) any reproduction of an original document by photographic, photostatic or lithographic or other like process.

#### **45C—Modification of best evidence rule**

- (1) A document that accurately reproduces the contents of another document is admissible in evidence before a court in the same circumstances, and for the same purposes, as that other document (whether or not that other document still exists).
- (2) In determining whether a particular document accurately reproduces the contents of another, a court is not bound by the rules of evidence and, in particular—
  - (a) the court may rely on its own knowledge of the nature and reliability of the processes by which the reproduction was made;

- (b) the court may make findings based on the certificate of a person with knowledge and experience of the processes by which the reproduction was made;
  - (c) the court may make findings based on the certificate of a person who has compared the contents of both documents and found them to be identical;
  - (d) the court may act on any other basis it considers appropriate in the circumstances.
- (3) This section applies to reproductions made—
- (a) by an instantaneous process; or
  - (b) by a process in which the contents of a document are recorded (by photographic, electronic or other means) and the reproduction is subsequently produced from that record; or
  - (c) in any other way.
- (4) Where a reproduction is made by an approved process, it will be presumed that it accurately reproduces the contents of the document purportedly reproduced unless the contrary is established.
- (5) The above reference to an approved process is a reference to a process prescribed by regulation for the purposes of this subsection.
- (6) Where a court admits or refuses to admit a document under this section, the court must, if so requested by a party to the proceedings, state the reason for its decision.
- (7) A person who gives a certificate for the purposes of this section knowing it to be false is guilty of an indictable offence.

Penalty: Division 5 imprisonment.



## Part 5—Banking records

### 46—Interpretation

In this Part—

*bank* means—

- (a) a body corporate carrying on the business of banking in a State or Territory of the Commonwealth; or
- (d) any other body that accepts money on deposit from the public;

*banking records* means—

- (a) books of account, accounts, and accounting records (including working papers and other documents necessary to explain the methods and calculations by which accounts are made up); and
- (b) books, diaries, or other records used in the course of carrying on the business of a bank; and
- (c) cheques, bills of exchange, promissory notes, deposit slips, orders for the payment of money, invoices, receipts and vouchers; and
- (d) securities, and documents of title to securities,

in the possession or control of a bank;

*copy*, in relation to a banking record made by microfilming or by a mechanical or electronic process, means a document produced from the record containing, in an intelligible form, the information stored in the record.

### 47—Admission of banking record in evidence

- (1) Subject to subsection (2), a copy of a banking record is admissible in legal proceedings as evidence—
  - (a) of the record; and
  - (b) of the transactions or matters to which the record relates.
- (2) The copy shall not be admitted in evidence unless it is first proved—
  - (a) that the record was compiled in the ordinary course of business; and
  - (b) that the record is in the custody or control of the bank; and
  - (c) that reasonable steps have been taken to ensure that the copy is an accurate copy of the record, or accurately reproduces information stored in the record.
- (3) Evidence may be given orally or by affidavit by an officer of the bank for the purpose of proving the matters referred to in subsection (2).

### 48—Evidence of non-existence of account may be given by affidavit

An affidavit made by an officer of a bank stating that a person named in the affidavit had at a time, or over a period, specified in the affidavit no account at the bank, or at a specified branch, is admissible in legal proceedings as evidence of the fact stated.

#### **49—Power to order inspection of banking records etc**

- (1) On the application of any party to a legal proceeding a judge may order that such party be at liberty to inspect and take copies of a banking record for any of the purposes of such proceedings.

(1a) Where—

- (a) a Judge of the Supreme Court; or
- (b) a District Court Judge; or
- (c) a Magistrate,

is satisfied on the application of a member of the police force or an officer of the Corporate Affairs Commission that it would be in the interests of the administration of justice to permit the applicant to inspect and take copies of banking records, the Judge may order that the applicant be at liberty to inspect and take copies of those banking records.

- (2) An order under this section may be made either with or without summoning the bank or any other person, and shall be served on the bank three clear days before the same is to be obeyed, unless the judge otherwise directs. Any Sunday or public holiday shall be excluded from the computation of time under this section.
- (3) Subject to subsection (4), where an order is made under subsection (1a), the applicant shall cause a copy of the order to be served personally or by post on the person subject to investigation within six months of the date of the order or such further period as may be allowed by a Judge.

Penalty: One thousand dollars.

(4) Service of a copy of an order is not required under subsection (3)—

- (a) if evidence of the commission of an offence was obtained in pursuance of the order and, within the period allowed under subsection (3) for service of a copy of the order, the person subject to investigation is charged with that offence; or
- (b) if the whereabouts of the person on whom the copy is to be served is unknown and not ascertainable by reasonable inquiry.

(5) A reference in subsection (3) or (4) to the person subject to investigation shall be construed as a reference to the person to whose financial transactions the banking records subject to inspection in pursuance of an order under subsection (1a) relate.

(6) Copies of applications made under subsection (1a) shall be retained for a period of six years—

- (a) in the case of applications made by members of the police force—by the Commissioner of Police; and
- (b) in the case of applications made by officers of the Corporate Affairs Commission—by the Corporate Affairs Commission.

- (7) The Commissioner of Police shall in each calendar year report to the Minister responsible for the police force the number of applications made under subsection (1a) by members of the police force during the previous calendar year, and the Corporate Affairs Commission shall in each calendar year report to the Minister to whom it is responsible the number of applications made under subsection (1a) by officers of the Commission during the previous calendar year.
- (8) A report under subsection (7) may be incorporated in any other annual report that the Commissioner of Police or the Corporate Affairs Commission (as the case may be) is required by or under statute to make to the Minister to whom the report under that subsection is to be submitted.
- (9) A person who divulges, otherwise than in the course of his official duties, information obtained by him by virtue of an order under subsection (1a) shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

#### **50—Bank not compellable to produce records except under order**

A bank or officer of a bank shall not in any legal proceeding to which the bank is not a party be compellable—

- (a) to produce any banking record, the contents of which can be proved under this Act; or
- (b) to appear as a witness to prove the matters, transactions, and accounts recorded in a banking record,

unless by order of a judge made for special cause.

#### **51—Costs occasioned by default of bank**

- (1) Costs occasioned by a default or delay by a bank in complying with an order under this Part (not being an order under section 49(1a)) may be awarded by the judge against the bank.
- (2) Any such order against a bank may be enforced as if the bank were a party to the proceedings in aid of which the application is made.





## Part 6—Telegraphic messages

### 53—Party may give notice of intention to adduce telegraphic message in evidence

- (1) Any party to any legal proceedings may at any time after the commencement thereof give notice to any other party that he proposes to adduce in evidence at the trial or hearing any telegraphic message that has been sent by electric telegraph from any station in the Commonwealth to any other station within the Commonwealth: Provided that the time between the giving of such notice and the day on which such evidence shall be tendered shall not in any case be less than two days.
- (2) Every such notice shall specify the names of the sender and receiver of the message, the subject matter thereof, and the date as nearly as may be.

### 54—And thereupon may produce message received with evidence that same received from telegraph station

When such a notice has been given the production of any telegraphic message described in the notice, and purporting to have been sent by any person, together with evidence that the same was duly received from a telegraph station, shall be *prima facie* evidence that such message was signed and sent by the person so purporting to be the sender thereof to the person to whom the same shall be addressed without any further proof of the identity of the sender; but the party against whom any such message shall be given in evidence shall be at liberty, nevertheless, to prove that the same was not in fact sent by the person by whom it purports to have been sent.

### 55—After notice, sending a message may be proved by production of copy message and evidence of payment of fees for transmission

In any legal proceedings, the production of any telegraphic message, or of a machine copy or press copy thereof, or a copy thereof verified on oath or affirmation together with evidence that such message was duly taken to a telegraph station, and that the fees (if any) for the transmission thereof were duly paid, shall be *prima facie* evidence that such message was duly delivered to the person named therein as the person to whom the same was to be transmitted; and the burden of proving that such message was not in fact received, shall be upon the person against whom such message shall be given in evidence: Provided that the party adducing the same in evidence shall give notice to the other party of his intention so to do in such manner and at such time as the practice of the court requires with respect to a notice to produce documents at the trial or hearing.

## 56—Certain documents may be transmitted by electric telegraph under restriction

- (1) The Governor, any Minister of the Crown, the President of the Legislative Council, the Speaker of the House of Assembly, a Judge of the Supreme Court, a Local Court Judge, or District Criminal Court Judge, the Judge in Insolvency, any special magistrate, and any principal officer of Government, or solicitor, may cause to be transmitted by electric telegraph the contents of any writ, warrant, rule, order, authority, or other communication requiring signature or seal subject to the provisions following, that is to say—
  - (a) the original document shall be delivered at the telegraph station in the presence and under the inspection of some justice of the peace or notary public;
  - (b) the person to whom the contents of any such document shall be so sent shall, forthwith and in the presence and under the supervision of a justice of the peace or notary public, cause to be sent back by electric telegraph, a copy of the message received by him; and in the event of any error appearing therein, the process shall be repeated under the like supervision, until it appears that a true copy of such document has been received by the person to whom it has been sent;
  - (c) when it appears that such true copy has been so received, such first-mentioned justice, or notary public, shall endorse upon the original document a certificate that a true copy thereof has been sent, under the provisions of this Act, to the person to whom the same has been so sent; and shall forthwith, by electric telegraph, inform such person that such certificate has been so endorsed;
  - (d) the person so receiving such true copy shall, upon receiving information of such certificate, endorse upon the copy of the original document received by him a certificate that the same has been duly received, under the provisions of this Act, which certificate shall be signed by him and by the justice or notary public so supervising the receipt of such copy as hereinbefore provided.

- (2) In this section—

*any principal officer of Government* includes the Auditor-General, the Under Secretary, the Under Treasurer, the Solicitor-General, the Crown Solicitor, the Director of Public Prosecutions and the secretary to any department presided over by a Minister of the Crown, the Clerk of the Legislative Council, the Clerk of the House of Assembly, the Surveyor-General, the Registrar-General, the Sheriff, the Master of the Supreme Court, the Commissioner of Police, inspectors of police, the Returning Officer for the State; and for the purposes of returns to writs of election, but not otherwise, also includes any returning officer or deputy returning officer of an electoral district.

### **57—Copies so transmitted to be as valid and effectual as originals**

- (1) Every copy so endorsed and certified as aforesaid shall be as valid to all intents and purposes as the original, whereof it purports to be a copy, would have been, and shall be admissible in evidence in any case in which the original would have been so admissible; and any person by whom such copy has been received, or who is thereby authorised, instructed, or commanded, or who is lawfully charged with any duty in respect thereof, shall have and become liable to the same rights and duties in respect thereof as if he had received the original document duly signed and sealed, or signed or sealed, as the case may be.
- (2) In the case of any document intended to be served, or the efficacy or use whereof depends upon service, every such copy shall for the purpose of such service be deemed to be the original document whereof it purports to be a copy.

### **58—Penalty for false certificate of sending message**

Any justice or notary public who wilfully and falsely endorses upon any original document, delivered at a telegraph station for the purpose of being transmitted under the provisions of this Act, a certificate that a true copy thereof has been sent under this Act, or who by telegraph wilfully and falsely informs any person to whom such has been so sent that a certificate under the provisions of this Act has been endorsed thereon, shall forfeit a sum not exceeding two hundred dollars, which may be sued for and recovered by the first person who shall, for his own benefit and without collusion, sue for the same.

### **59—Signing false certificate upon copy**

Any person by this Part of this Act required to sign a certificate upon any copy of a document that such copy has been duly received under the provisions of this Act, who shall wilfully sign such certificate, knowing the same to be false, shall be guilty of an offence, and, being convicted thereof, shall be liable to be imprisoned for any term not exceeding two years.



## Part 6A—Computer evidence

### 59A—Interpretation

In this Part, unless the contrary intention appears—

**computer** means a device that is by electronic, electro-mechanical, mechanical or other means capable of recording and processing data according to mathematical and logical rules and of reproducing that data or mathematical or logical consequences thereof;

**computer output** or **output** means a statement or representation (whether in written, pictorial, graphical or other form) purporting to be a statement or representation of fact—

- (a) produced by a computer; or
- (b) accurately translated from a statement or representation so produced;

**data** means a statement or representation of fact that has been transcribed by methods, the accuracy of which is verifiable, into the form appropriate to the computer into which it is, or is to be, introduced.

### 59B—Admissibility of computer output

- (1) Subject to this section, computer output shall be admissible as evidence in any civil or criminal proceedings.
- (2) The court must be satisfied—
  - (a) that the computer is correctly programmed and regularly used to produce output of the same kind as that tendered in evidence pursuant to this section; and
  - (b) that the data from which the output is produced by the computer is systematically prepared upon the basis of information that would normally be acceptable in a court of law as evidence of the statements or representations contained in or constituted by the output; and
  - (c) that, in the case of the output tendered in evidence, there is, upon the evidence before the court, no reasonable cause to suspect any departure from the system, or any error in the preparation of the data; and
  - (d) that the computer has not, during a period extending from the time of the introduction of the data to that of the production of the output, been subject to a malfunction that might reasonably be expected to affect the accuracy of the output; and
  - (e) that during that period there have been no alterations to the mechanism or processes of the computer that might reasonably be expected adversely to affect the accuracy of the output; and
  - (f) that records have been kept by a responsible person in charge of the computer of alterations to the mechanism and processes of the computer during that period; and

- (g) that there is no reasonable cause to believe that the accuracy or validity of the output has been adversely affected by the use of any improper process or procedure or by inadequate safeguards in the use of the computer.
- (3) Where two or more computers have been involved, in combination or succession, in the recording of data and the production of output derived therefrom and tendered in evidence under this section, the court must be satisfied that the requirements of subsection (2) of this section have been satisfied in relation to each computer so far as those requirements are relevant in relation to that computer to the accuracy or validity of the output, and that the use of more than one computer has not introduced any factor that might reasonably be expected adversely to affect the accuracy or validity of the output.
- (4) A certificate under the hand of a person having prescribed qualifications in computer system analysis and operation or a person responsible for the management or operation of the computer system as to all or any of the matters referred to in subsection (2) or (3) of this section shall, subject to subsection (6) of this section, be accepted in any legal proceedings, in the absence of contrary evidence, as proof of the matters certified.
- (5) An apparently genuine document purporting to be a record kept in accordance with subsection (2) of this section, or purporting to be a certificate under subsection (4) of this section shall, in any legal proceedings, be accepted as such in the absence of contrary evidence.
- (6) The court may, if it thinks fit, require that oral evidence be given of any matters comprised in a certificate under this section, or that a person by whom such a certificate has been given attend for examination or cross-examination upon any of the matters comprised in the certificate.

### **59C—Regulations**

The Governor may make such regulations as he deems necessary or expedient for the purposes of this Part, and without limiting the generality of the foregoing those regulations may—

- (a) make any provision for the purposes of this Part with respect to the preparation, auditing or verification of data, or the methods by which it is prepared; and
- (b) prescribe the qualifications of a person by whom a certificate may be given, or a translation made, under this Part.

## **Part 6B—Obtaining evidence from outside a court's territorial jurisdiction**

### **59D—Interpretation**

- (1) In this Part—

*authorised South Australian court* means—

- (a) the Supreme Court;
- (b) the District Court;
- (c) the Magistrates Court;
- (e) a court or tribunal declared by the Attorney-General, by notice in the Gazette, to be an authorised South Australian court for the purposes of this Part;

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

- (2) This Part applies in respect of—

- (a) civil proceedings originating in courts within or outside Australia;
- (b) criminal proceedings originating in Australian courts.

### **59E—Taking of evidence outside the State**

- (1) Where, in the opinion of an authorised 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; or
  - (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.
- (4) An authorised 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.

### **59F—Power of South Australian Court to take evidence on request**

- (1) Where a foreign court requests an authorised South Australian court to take evidence in this State for the purpose of proceedings before that foreign 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 authorised 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 authorised 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 subsections (6) and (7), the validity of the ground of any such objection shall not be determined by the authorised South Australian court but by the foreign court at whose request the examination is being conducted.
- (6) The authorised 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.
- (7) A witness cannot be compelled to give evidence on a particular subject if he or she could not be compelled to give evidence on that subject in the foreign court from which the request to take evidence originated.

### **59G—Depositions to be signed**

Where pursuant to this Part—

- (a) a witness has given evidence before an authorised 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 authorised 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—Transmission of request**

Where an authorised South Australian court receives a request from a foreign 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, some other country or State, the South Australian court—

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



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

**59I—Saving provision**

- (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.



## Part 6C—Use of audio and audio visual links

### Division 1—Preliminary

#### 59IA—Interpretation

In this Part—

**audio link** means a system of two-way communication linking different places so that a person speaking at any one of the places can be heard at the other;

**Example—**

An audio link may be established by facilities such as a two-way radio or telephone.

**audio visual link** means a system of two-way communication linking different places so that a person speaking at any one of the places can be seen and heard at the other;

**Example—**

An audio visual link may be established by facilities such as a closed-circuit television.

**participating State** means another State in which statutory provisions substantially corresponding to this Part are in force;

**recognised court** means a court or tribunal of a participating State that is authorised by the provisions of an Act of that State in terms substantially corresponding to this Part to direct that evidence be taken or submissions made by audio, or audio visual, link from South Australia;

**South Australian court** means—

- (a) the Supreme Court;
- (b) the District Court;
- (c) the Magistrates Court;
- (d) the Coroner's Court;
- (e) a court or tribunal prescribed by regulation to be a South Australian court for the purposes of this Part;

**State** includes Territory;

**tribunal** of a State means a person or body authorised by or under a law of the State to take evidence on oath or affirmation.

#### 59IB—Transitional

This Part extends to proceedings whether the proceedings were commenced, or the cause of action arose, before or after the commencement of this Part.

#### 59IC—Application of Part

This Part is in addition to, and does not derogate from, other provisions of this Act or of any other law authorising the taking of evidence, or the conduct of proceedings, outside this State.

## **Division 2—Use of interstate audio or audio visual link in proceedings before South Australian courts**

### **59ID—Application of this Division**

This Division applies to any proceeding (including a criminal proceeding) before a South Australian court.

### **59IE—State courts may take evidence and submissions from outside State**

- (1) A South Australian court may, on the application of a party to a proceeding before the court, direct that evidence be taken or submissions made by audio, or audio visual, link from a participating State.
- (2) The court must not make such a direction if—
  - (a) the necessary facilities are unavailable or cannot reasonably be made available; or
  - (b) the court is satisfied that the evidence or submission can be more conveniently given or made in this State; or
  - (c) the court is satisfied by a party opposing the making of the direction that the direction would be unfair to the party.
- (3) The court may exercise in the participating State in connection with taking evidence or receiving submissions by audio, or audio visual, link any of its powers that the court is permitted, under the law of the participating State, to exercise in the participating State.

### **59IF—Expenses**

If a South Australian court directs evidence to be taken, or submissions to be made, by audio, or audio visual, link from a person in a participating State, the court may make such orders as it considers just for payment of expenses incurred in connection with—

- (a) taking the evidence or making the submissions; or
- (b) providing the audio, or audio visual, link.

### **59IG—Counsel entitled to practise**

A person who is entitled to practise as a legal practitioner in a participating State is entitled to practise as a barrister, solicitor or both—

- (a) in relation to the examination-in-chief, cross-examination or re-examination of a witness in the participating State whose evidence is being given by audio, or audio visual, link in a proceeding before a South Australian court; and
- (b) in relation to the making of submissions by audio, or audio visual, link from the participating State in a proceeding before a South Australian court.

## **Division 3—Use of interstate audio or audio visual link in proceedings in participating States**

### **59IH—Application of Division**

This Division applies to any proceeding (including a criminal proceeding) before a recognised court.

### **59II—Recognised courts may take evidence or receive submissions from persons in South Australia**

A recognised court may, for the purposes of a proceeding before it, take evidence or receive submissions by audio, or audio visual, link from a person in South Australia.

### **59IJ—Powers of recognised courts**

- (1) The recognised court may, for the purposes of the proceeding, exercise in South Australia, in connection with taking evidence or receiving submissions by audio, or audio visual, link any of its powers, except its powers—
  - (a) to punish for contempt; and
  - (b) to enforce or execute its judgments or process.
- (2) The laws of the participating State (including rules of court) that apply to the proceeding in that State also apply, by force of this subsection, to the practice and procedure of the recognised court in taking evidence or receiving submissions by audio, or audio visual, link from a person in South Australia.
- (3) For the purposes of the recognised court exercising its powers, the place in South Australia where evidence is given or submissions are made is taken to be part of the court.

### **59IK—Orders made by recognised court**

Without limiting section 59IJ, the recognised court may, by order—

- (a) direct that the proceeding, or a part of the proceeding, be conducted in private; or
- (b) require a person to leave a place in South Australia where the giving of evidence or the making of submissions is taking place or is going to take place; or
- (c) prohibit or restrict the publication of evidence given in the proceeding or of the name of a party to, or a witness in, the proceeding.

### **59IL—Enforcement of order**

- (1) An order of a recognised court under this Division must be complied with.
- (2) Subject to rules of court, the order may be enforced by the Supreme Court as if the order were an order of the Supreme Court.
- (3) Without limiting subsection (2), a person who contravenes the order—
  - (a) is taken to be in contempt of the Supreme Court; and
  - (b) is punishable accordingly,

unless the person establishes that the contravention should be excused.

### **59IM—Privileges, protection and immunity of participants in proceedings in courts of participating States**

- (1) A judge or other person presiding at a proceeding before a recognised court has, in connection with evidence taken or submissions received by audio, or audio visual, link from a person in South Australia, the same privileges, protection and immunity as a judge of the Supreme Court.
- (2) A person appearing as a legal practitioner in a proceeding before a recognised court has, in connection with evidence taken or submissions received by audio, or audio visual, link from a person in South Australia, the same protection and immunity as a legal practitioner has in appearing for a party in a proceeding before the Supreme Court.
- (3) A person appearing as a witness in a proceeding before a recognised court by audio, or audio visual, link from South Australia has the same protection as a witness in a proceeding before the Supreme Court.

### **59IN—Recognised court may administer oath in South Australia**

- (1) A recognised court may, for the purpose of obtaining in the proceeding by audio, or audio visual, link the testimony of a person in South Australia, administer an oath or affirmation in accordance with the practice and procedure of the recognised court.
- (2) Evidence given by a person on oath or affirmation so administered is, for the purposes of the law of South Australia, testimony given in a judicial proceeding.

### **59IO—Assistance to recognised court**

An officer of a South Australian court may, at the request of a recognised court—

- (a) attend at the place in the State where evidence is to be or is being taken, or submissions are to be or are being made, in the proceeding; and
- (b) take such action as the recognised court directs to facilitate the proceeding; and
- (c) assist with the administering by the recognised court of an oath or affirmation.

### **59IP—Contempt of recognised courts**

- (1) A person must not, in relation to proceedings in South Australia for the purpose of taking of evidence or the receiving of submissions by a recognised court by audio, or audio visual, link, engage in conduct that would, if the proceeding were before the Supreme Court, constitute—
  - (a) an offence; or
  - (b) a contempt of the Supreme Court.
- (2) A person who contravenes subsection (1) is liable to—
  - (a) if the conduct would have constituted an offence—the same penalty as if the offence had been committed in relation to proceedings before the Supreme Court; or

- (b) if the conduct would have constituted a contempt—imprisonment for 3 months.

## **Division 4—Use of audio visual link or audio link generally**

### **59IQ—Appearance etc by audio visual link or audio link**

- (1) A court may, subject to this Division and any relevant rules of court, receive evidence or submissions from a person who is in the State but not physically present in the courtroom by means of an audio visual link or an audio link.
- (2) The court may administer an oath or affirmation by means of the link for the purpose of taking evidence (and may adapt its normal practice in that regard to the extent necessary in the circumstances).
- (3) While the link is in operation the person from whom evidence or submissions are taken, and anyone else present in the place from which that person gives evidence or makes submissions, is taken to be before the court.

Any law or rule of practice relevant to contempt of the court applies accordingly.

Any law or rule of practice requiring the personal appearance of a person before the court is taken to be satisfied while the link between the court and the person remains in operation.

- (4) If—
- (a) a defendant is in custody prior to trial and is to be dealt with by a court to which the provisions of this subsection are extended by regulation; and
- (b) facilities exist for dealing with the proceedings by audio visual link,
- the court should, subject to subsection (5) and relevant rules of court, deal with the proceedings by audio visual link and without requiring the personal attendance of the defendant.
- (5) The personal attendance of a defendant who is in custody is, however, required if—
- (a) the proceeding is—
- (i) the defendant's first appearance before a court in connection with the charge or charges for which the defendant is in custody; or
- (ii) a preliminary examination of an indictable offence that involves the taking of oral evidence (but this subparagraph does not prevent the use of an audio visual link for parts of the proceeding that do not involve the taking of oral evidence or for incidental proceedings such as an adjournment or an application for bail or further remand in custody that do involve the taking of oral evidence); or
- (iii) a proceeding for which the defendant's personal attendance is required by regulation,
- (but in any of the above cases, the defendant may ask the court to be allowed to use an audio visual link and, if the court agrees, the defendant need not attend personally before the court); or
- (b) the proceeding is an investigation into the defendant's fitness to stand trial; or

- (c) the court is of the opinion that there are good reasons in the circumstances of the particular case for requiring the defendant's personal attendance and directs accordingly; or
  - (d) there are other matters to be dealt with on the same occasion for which the defendant's personal attendance is necessary or desirable.
- (6) The court should give the parties a reasonable opportunity to object to the use of an audio visual link or an audio link under this Division (but may, if it is convenient to do so, use the link for the purpose of hearing the objection).
- (7) In proceedings relating to an offence (other than proceedings to which subsection (4) applies), the prosecuting authority must object to the use by the court of an audio visual link or an audio link if requested to do so by—
- (a) an alleged victim of the offence; or
  - (b) if an alleged victim of the offence—
    - (i) is a child—a parent or guardian of the alleged victim; or
    - (ii) is deceased or unable to represent himself or herself because of some physical or medical condition—a member of the alleged victim's immediate family.
- (8) In subsection (7)—

*immediate family* of an alleged victim means—

- (a) a spouse or domestic partner; or
- (b) a parent or guardian; or
- (c) a grandparent; or
- (d) an adult child; or
- (e) an adult grandchild; or
- (f) a brother or sister;

*victim*, in relation to an offence, means—

- (a) a person who suffers physical or mental injury, damage or loss as a result of the commission of the offence;
- (b) a person who suffers psychological injury as a result of being directly involved in the circumstances of the offence or in operations in the immediate aftermath of the offence to deal with its consequences.

### **59IR—Communication between lawyer and client**

- (1) This section applies where—
- (a) a person who is to give evidence or make submissions (or on whose behalf submissions are to be made) is represented by a lawyer; and
  - (b) the lawyer and the client are physically separated—the lawyer being in the courtroom and the client in the remote location.
- (2) Evidence or submissions are not to be taken by audio visual link or by audio link if facilities do not exist to enable private oral communication between the lawyer and the client.



- (3) The court must, at the lawyer's request, make appropriate arrangements for the private communication of a document between the lawyer and the client.
- (4) Any communication between lawyer and client is absolutely privileged.



## Part 7—General provisions

### Division 1—Power to dispense with formal proof

#### 59J—Court's power to dispense with formal proof

- (1) A court may at any stage of civil or criminal proceedings—
  - (a) dispense with compliance with the rules of evidence for proving any matter that is not genuinely in dispute; or
  - (b) dispense with compliance with the rules of evidence where compliance might involve unreasonable expense or delay.
- (2) In exercising its power under subsection (1) the court may, for example, dispense with proof of—
  - (a) a document or the execution of a document;
  - (b) handwriting;
  - (c) the identity of a party;
  - (d) the conferral of an authority to do a particular act.
- (3) A court is not bound by the rules of evidence in informing itself on any matter relevant to the exercise of its discretion under this section.

### Division 2—Notice of action

#### 60—Sufficiency of notice of action

In any action or other proceeding in any court of justice in which notice of action is required, such notice shall be deemed sufficient if, in the opinion of the judge, commissioner, stipendiary or special magistrate, or justice of the peace presiding, such notice shall have given the defendant reasonable notice of the cause of such action, and the sufficiency of such notice shall be a question of fact and not of law; and no notice of action shall be held insufficient merely for want of form.

### Division 3—Facilitation of proof of certain matters

#### 62—Proof of "public place" in certain cases

Whenever in any proceedings before justices, in respect of any offence, it is an essential ingredient of the offence that the place (where any fact or matter occurred or was done) should be a public place, an allegation, in the complaint or information, that the place (specified as that in which the fact or matter charged occurred or was done) was a public place, shall be *prima facie* evidence of that fact, but the court may, if it thinks fit, and at any stage of the proceedings, permit evidence to be called with respect to the said fact.

#### 62A—Proof of place being within municipality etc

- (1) In any complaint or information an allegation that any place is within a municipality, district council district, town or township, shall be *prima facie* evidence of the fact so alleged.

- (2) In this section the word *place* shall include any place, public or private, however described in the complaint or information, including any street road or other thoroughfare, or part thereof, and any building or structure or part thereof.

### **63—Proof of foreign law**

Printed books purporting to contain statutes, ordinances or other written laws in force in any country, although not purporting to have been printed or published by authority, and books purporting to contain reports of decisions of courts or judges in such country, and text books treating of the laws of such country, may be referred to by all courts for the purpose of ascertaining the laws in force in such country; but such courts shall not be bound to accept or act on the statements in any such books as evidence of such laws.

### **63A—Evidence as to foreign law**

Where upon trial of any proceedings by judge and jury it is necessary to ascertain the law of any other country or state applicable to the proceedings, any question as to the effect of evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the judge.

### **64—Proof of matters of history, science etc**

All courts may, in matters of public history, literature, science, or art, refer, for the purposes of evidence, to such published books, calendars, maps, or charts as such courts consider to be of authority on the subjects to which they respectively relate: Provided that nothing herein contained shall be deemed to require any such court to accept or act upon any such evidence when tendered, unless it thinks fit.

### **65—Reference by court to books, official certificates etc**

- (1) In any matter relating to—
- (a) the ordinary course of the post between any place within the Commonwealth and any other place, whether within or without the Commonwealth, or to the public business and transactions of the Australian Postal Commission; or
  - (b) the territorial limits of the area controlled by any municipal or district council or other local governing body, or of any other area designated or proclaimed or appointed by or under any statute or to the inclusion in any such area or the exclusion therefrom of any particular place; or
  - (c) the distance between any two places in the State;
- every court may refer to—
- (d) any such published book, map, chart, or document as the court considers to be of authority upon the subject to which it relates; or
  - (e) any certificate purporting to be signed by some person occupying any official position which, in the opinion of the court, qualifies him to certify to the fact in question.
- (2) However nothing herein contained shall be deemed to require any such court to accept or act upon any such evidence when tendered unless it thinks fit.

## 65A—Proof of age

If—

- (a) the age of a person is relevant to proceedings before a court; and
- (b) a document that appears to be a certified copy of, or extract from, a register of births kept under an Australian law, or under the law of the country in which the person was born, is produced to the court; and
- (c) the name of the person to whom the document relates is the name or a former name of the person whose age is to be established,

it will be presumed, in the absence of evidence to the contrary, that the person whose age is to be established is the person named in the document produced to the court and that the date of his or her birth is the date of birth shown in that document.

## Division 4—Taking affidavits etc outside the State

### 66—Taking of affidavits out of the State

- (1) Any oath or affidavit required for the purpose of any court or matter in the State may be taken or made, in any place out of the State, before—
  - (a) a commissioner for taking affidavits in the Supreme Court empowered and authorised to act in that place; or
  - (b) a British diplomatic or consular agent exercising his function in that place; or
  - (ba) any person appointed to hold or act in any of the following offices of the Commonwealth in that place:
    - (i) ambassador;
    - (ii) high commissioner;
    - (iii) minister;
    - (iv) head of mission;
    - (v) commissioner;
    - (vi) charge d'affaires;
    - (vii) counsellor or secretary at an embassy, high commissioner's office, legation or other post;
    - (viii) consul-general;
    - (ix) consul;
    - (x) vice-consul;
    - (xi) trade commissioner;
    - (xii) consular agent; or
  - (bb) an employee of the Commonwealth, or the Australian Trade Commission, authorised under section 3 of the *Consular Fees Act 1955* (Commonwealth) and exercising his or her function in that place; or
  - (c) any person having authority to administer an oath in that place.

- (2) Judicial and official notice may be taken—
- (a) of the signature or seal of any such commissioner or agent or of any person appointed as aforesaid, or of any person having authority as aforesaid if he purports to have such authority, otherwise than by the law of a foreign country not under the dominion of His Majesty; and
  - (b) of the fact that any particular place is under the dominion of His Majesty.
- (3) In the case of a person purporting to have such authority by the law of a foreign country not under the dominion of His Majesty, such authority may be verified by any of the persons mentioned in paragraphs (a), (b) and (ba) of subsection (1) hereof, or by the certificate of the superior court of such place, and if such authority purports to be so verified the oath or affidavit may be admitted or received without further proof of the signature or seal, or of the judicial, official, or other character of such first mentioned person.
- (4) In this section—
- oath* includes affirmation and declaration;
- affidavit* includes any statutory or other declaration, acknowledgment, or examination;
- diplomatic agent* means ambassador, envoy, minister, charge d'affaires, or secretary of embassy or legation;
- consular agent* means consul-general, consul, vice-consul, or consular agent, or acting consul-general, acting consul, acting vice-consul, or acting consular agent.

#### **66A—Taking of affidavits out of the State by sailors, soldiers and airmen**

- (1) Any oath or affidavit required to be made by any member of a fighting force, for the purpose of any court or matter in the State, may be taken or made in any place out of the State before any officer of any naval, military or air force of any part of His Majesty's dominions who holds a rank not below the following, namely:
- (a) in the case of a naval officer, lieutenant;
  - (b) in the case of a military officer, captain;
  - (c) in the case of an officer of an air force, flight-lieutenant,
- or before any person having authority to administer an oath in the State.
- (2) An officer administering an oath or taking an affidavit by virtue of the powers conferred by this section shall state in the jurat or attestation to the oath or affidavit the following matters, namely:
- (a) the date on which the oath or affidavit is taken or sworn;
  - (b) the full name and rank of the officer.
- (3) An apparently genuine signature purporting to be the signature of a person administering an oath or taking an affidavit, and purporting to be the signature of an officer of a naval, military or air force of any part of His Majesty's dominions who holds a rank not below that specified in subsection (1) of this section, may be deemed to be the signature of such an officer unless the contrary is shown.
- (5) In this section—
- affidavit* includes any statutory or other declaration, acknowledgment, or examination;

*His Majesty's dominions* includes the United Kingdom of Great Britain and Northern Ireland, and all self-governing dominions, dependencies, colonies, protectorates, protected states, and mandated territories of His Majesty;

*member of a fighting force* includes any man or woman who is a member of a naval, military or air force of any country, and any person who, as a representative or employee of any charitable, religious or other organisation for promoting the welfare of members of any such force, is attached to any such force;

*oath* includes affirmation and declaration.

## **67—Extension of provisions relating to affidavits to attestation etc of other documents**

- (1) The provisions of section 66 and 66A shall, as far as applicable, extend to every attestation, verification, acknowledgment, or signature in relation to any document required, authorised, or permitted by or under any statute or by custom or otherwise to be attested, verified, acknowledged, or signed, and to the doing of all notarial acts as if such provisions had been re-enacted in this section, excluding words relating to the administration of oaths or affirmations and the taking of affidavits and substituting therefor words relating to attestation, verification, acknowledgment, or signature, as the case may be.
- (1a) Notwithstanding the provisions of section 66 of this Act as affected by subsection (1) of this section, judicial and official notice may be taken of the signature or seal of a person who, in connection with any of the matters to which those provisions so extend, appears to have signed that signature or affixed that seal while acting in the capacity of a notary public under the law for the time being in force in any country state or territory that is declared by proclamation to be a place within the Commonwealth of Nations to which this subsection applies, whether or not his authority for so acting has been verified in accordance with the provisions of subsection (3) of section 66 as so extended.
- (1b) A proclamation referred to in subsection (1a) of this section may be made, and may be varied or cancelled by subsequent proclamation, as the Governor thinks fit.
- (2) *Notarial act* includes any act, matter, or thing which in South Australia or elsewhere a notary public can attest or verify or otherwise do by or under any Act of Parliament or custom or otherwise for the purpose of being used in the State.
- (3) The provisions of this section apply to documents required, authorised, or permitted by or under the *Real Property Act 1886*.

## **Division 5—Admission of official documents in evidence**

### **67A—Admissibility of documents without proof of seal etc**

Every document admissible in evidence for any purpose in any court of justice in England or Wales without proof of the seal, or stamp, or signature authenticating the document, or of the judicial or official character of the person appearing to have signed it, shall be admissible in evidence for the like purpose in any court of the State or before any person acting judicially under any law of the State, without proof of the seal, or stamp, or signature authenticating the document, or of the judicial or official character of the person appearing to have signed it.

## **Division 6—Power of foreign authority to take evidence**

### **67AB—Taking of evidence in this State by foreign authorities**

- (1) Subject to subsection (2) of this section, a foreign authority may—
- (a) take evidence; and
  - (b) administer an oath or affirmation to any witness for the purpose of taking evidence,

in this State.

- (2) Where—
- (a) the foreign authority is not a court constituted of a person who holds judicial office under the laws of the place in which the court is established; or
  - (b) the evidence to be taken by the foreign authority relates to criminal proceedings,

it shall not be lawful for the foreign authority to take evidence, or to administer an oath or affirmation, in this State without the authority of the Attorney-General.

- (3) In this section—

*foreign authority* means—

- (a) a court established under the law of a place outside this State; or
- (b) any body or person authorised under the law of a place outside this State to take evidence; or
- (c) any person commissioned or otherwise authorised by any such court, body or person to act on its behalf in taking evidence in this State.

## **Division 7—Select Committee evidence**

### **67B—Evidence before the Parliamentary Select Committee of Inquiry into Prostitution**

- (1) Where a person in evidence, or in a submission, to the Select Committee makes a statement tending to incriminate himself of an offence, no proceedings in respect of that offence shall be commenced against him in respect of that offence except upon the authorisation of the Attorney-General.
- (2) Notwithstanding any law to the contrary no Minister or other person shall have power to give an authorisation under subsection (1) of this section on behalf of or in place of the Attorney-General.
- (3) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings in respect of an offence shall be accepted, in the absence of proof to the contrary, as proof of the authorisation required by subsection (1) of this section.
- (4) A person who, without the authority of the Select Committee, publishes—
- (a) the name of any person who gives evidence, or makes a submission, to the Select Committee; or



- (b) any information or material tending to identify any person who gives evidence, or makes a submission, to the Select Committee,

shall be guilty of an offence and liable, upon summary conviction, to a penalty not exceeding five thousand dollars.

- (5) In this section—

*the Select Committee* means the Parliamentary Select Committee of Inquiry into Prostitution.

## Division 8—Evidence of settlement negotiations

### 67C—Exclusion of evidence of settlement negotiations

- (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 proceeding in which the evidence is to be adduced is a proceeding to enforce an agreement for the settlement of the dispute or a proceeding in which the making of such an agreement is in issue; 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.

## Division 9—Protected communications

### 67D—Interpretation

In this Division—

*committal proceedings* means proceedings for the preliminary examination of a charge of an indictable offence;

*counsellor or therapist* means a person whose profession or work consists of, or includes, providing psychiatric or psychological therapy to victims of trauma (and includes a person who works voluntarily in that field);

*protected communication* means a communication that is protected by public interest immunity under section 67E;

*psychiatric or psychological therapy* includes counselling;

*therapeutic context*—a communication relating to a victim or alleged victim of a sexual offence is made in a therapeutic context if—

- (a) the communication is made—
  - (i) to enable a counsellor or therapist to assess the nature and severity of the trauma suffered by the victim or alleged victim, or consequent psychiatric, psychological or emotional harm; or
  - (ii) for the purposes, or in the course, of psychiatric or psychological therapy provided to the victim or alleged victim; and
- (b) the communication is made in circumstances that give rise to a duty of confidentiality or a reasonable expectation of confidentiality.

### 67E—Certain communications to be protected by public interest immunity

- (1) A communication relating to a victim or alleged victim of a sexual offence is, if made in a therapeutic context, protected from disclosure in legal proceedings by public interest immunity.
- (2) However, the following communications are not subject to public interest immunity:
  - (a) a communication made for the purposes of, or in the course of, a physical examination of the victim or alleged victim of a sexual offence by a registered medical practitioner or registered nurse; or
  - (b) a communication made for the purposes of legal proceedings arising from the commission of the alleged offence or for commencing such legal proceedings; or
  - (c) a communication as to which reasonable grounds exist to suspect that the communication evidences a criminal fraud, an attempt to pervert the administration of justice, perjury or another offence.
- (3) A public interest immunity arising under this section cannot be waived by—
  - (a) the counsellor or therapist; or
  - (b) a party to the protected communication; or

- (c) the victim or alleged victim of the sexual offence or the guardian of the victim or alleged victim.

### **67F—Evidence of protected communications**

- (1) Evidence of a protected communication—
- (a) is entirely inadmissible in committal proceedings; and
  - (b) cannot be admitted in other legal proceedings unless—
    - (i) the court gives permission to a party to the proceedings to adduce the evidence; and
    - (ii) the admission of the evidence is consistent with any limitations or restrictions fixed by the court; and
  - (c) is not liable to discovery or any other form of pre-trial disclosure.
- (2) On an application for permission to adduce evidence of a protected communication, the judge may make a preliminary examination of the relevant evidence if satisfied that—
- (a) the applicant has a legitimate forensic purpose for seeking permission to adduce the evidence; and
  - (b) there is an arguable case that the evidence would materially assist the applicant in the presentation or furtherance of his or her case.
- (3) For the purposes of a preliminary examination of evidence, the court may order the counsellor or therapist to do one or more of the following:
- (a) to provide written answers to questions;
  - (b) to produce written materials relating to the relevant protected communications;
  - (c) to appear for oral examination.

#### **Exceptions—**

- 1 If the counsellor or therapist who provided the counselling or therapy is an employee, answerable to another (the *principal*) in the organisation in which the counsellor or therapist is employed, an order under this subsection is to be addressed to the principal unless the court is satisfied that there are good reasons for not taking that course in the circumstances of the particular case.
  - 2 An order requiring a person to appear for oral examination is not to be made unless the court is satisfied that the examination cannot otherwise be effectively conducted.
- (4) The following provisions govern the conduct of a preliminary examination:
- (a) the preliminary examination is to be conducted—
    - (i) in the absence of the jury (if any); and
    - (ii) in a room closed to the public; and
  - (b) the evidence taken at the preliminary examination is not to be disclosed to the parties or their legal representatives except to the extent determined by the court; and
  - (c) no record of the preliminary examination is to be available for public access.

- (5) In deciding whether to grant permission to adduce evidence of a protected communication, the court is to weigh—
- (a) the public interest in preserving the confidentiality of protected communications;
- against—
- (b) the public interest in preventing a miscarriage of justice that might arise from suppression of relevant evidence.
- (6) In weighing the above considerations, the court is to have regard to—
- (a) the need to encourage victims of sexual offences to seek psychiatric or psychological therapy and the extent to which the effectiveness of such therapy is dependent on the maintenance of confidentiality between the counsellor or therapist and the victim;
  - (b) the probative value of the evidence and whether its exclusion may lead to a miscarriage of justice;
  - (c) the attitude of the victim or alleged victim to whom the communication relates (or the guardian of the victim or alleged victim) to the admission of the evidence;
  - (d) whether admission of the evidence is being sought on the basis of a discriminatory belief or bias;
  - (e) the extent to which admission of the evidence would infringe a reasonable expectation of privacy and the potential prejudice to any person who would otherwise be protected by public interest immunity.
- (7) The court is not to grant permission to adduce evidence of a protected communication unless satisfied that the public interest in preserving the confidentiality of protected communications is outweighed, in the circumstances of the case, by the public interest in preventing a miscarriage of justice that might arise from suppression of relevant evidence.
- (8) If the court decides to grant permission to adduce evidence of a protected communication, it may make ancillary orders—
- (a) to prevent further publication or dissemination of the evidence; or
  - (b) for any other purpose the court considers appropriate.

## **Division 10—Sensitive material**

### **67G—Interpretation and application**

- (1) In this Division—
- access*—a person gives another person access to sensitive material if the person—
- (a) allows the other to view the material; or
  - (b) gives the other a copy of the material; or
  - (c) gives the other a tape, disk or device from which the material may be produced or reproduced; or

- (d) transmits the material, or a copy of the material, to the other in the form of computer data;

**conditions of access**—see section 67I(4);

**criminal investigation** means the investigation of an offence, or alleged offence;

**criminal proceedings** means proceedings against a person for an offence (whether summary or indictable), including the following:

- (a) proceedings for the preliminary examination of an indictable offence;
- (b) proceedings relating to bail;
- (c) proceedings for the trial of an offence;
- (d) proceedings relating to sentencing;
- (e) proceedings on an appeal against conviction or sentence;

**private act** means—

- (a) a sexual act; or
- (b) an act involving an intimate bodily function such as using a toilet; or
- (c) an activity involving nudity or exposure or partial exposure of sexual organs, pubic area, buttocks or female breasts;

**prosecuting authority** means—

- (a) in relation to criminal proceedings—the Director of Public Prosecutions, a delegate of the Director of Public Prosecutions, a police officer, or any other person acting in a public official capacity, who is responsible for commencing or conducting a prosecution; and
- (b) in relation to a criminal investigation—a police officer or any other person acting in a public official capacity who is responsible for conducting a criminal investigation;

**public official** means—

- (a) a police officer; or
- (b) a person who holds an office or position in the employment of the State or an instrumentality or agency of the State; or
- (c) any person classified by regulation as a public official;

**restricted access** to sensitive material means access subject to conditions imposed under this Division;

**sensitive material** has the meaning given by section 67H;

**sensitive material notice**—see section 67I;

**unrestricted access** to sensitive material means access that is not subject to conditions imposed under this Division.

- (2) In this Division, a reference to a **prosecuting authority** includes a reference to a legal practitioner representing the prosecuting authority.

### 67H—Meaning of sensitive material

- (1) For the purposes of this Division, anything that contains or displays an image of a person is *sensitive material* if—
  - (a) the image is of the person engaged or apparently engaged in a private act; or
  - (b) the image is of the victim, or alleged victim, of a sexual offence or an offence of stalking under section 19AA of the *Criminal Law Consolidation Act 1935*; or
  - (c) the image is of the person taken or made after the person's death.
- (2) A reference to *sensitive material* extends to anything in a prosecuting authority's possession that the prosecuting authority reasonably considers to be sensitive material.

### 67I—Procedures for giving restricted access to sensitive material

- (1) If, but for this Division, a prosecuting authority would be required to give unrestricted access to sensitive material, the prosecuting authority has a discretion to give either unrestricted or restricted access to the sensitive material.
- (2) A prosecuting authority cannot, however, exercise its powers under this Division to restrict access to sensitive material by—
  - (a) a court; or
  - (b) a public official who reasonably requires access to the sensitive material for purposes connected with his or her official functions.
- (3) If the prosecuting authority decides to give restricted access, the authority must give the person entitled to access a notice (a *sensitive material notice*) that complies with this section.
- (4) The sensitive material notice must—
  - (a) describe the sensitive material; and
  - (b) indicate that the prosecuting authority has decided to exercise its powers under this section to restrict the person's access to the sensitive material; and
  - (c) state that the restricted access to the sensitive material is subject to the following conditions:
    - (i) the condition that the material will be available for examination by the person under the supervision of the prosecuting authority at a place specified in the notice and at a time to be arranged at the request of the person;
    - (ii) any other condition the prosecuting authority considers necessary or desirable to protect the integrity of the material and to prevent unauthorised reproduction or dissemination; and
  - (d) set out the name and contact details of the person who is responsible for arranging restricted access to the material on behalf of the prosecuting authority.
- (5) After receiving a sensitive material notice, the person entitled to restricted access may ask the prosecuting authority to give the person access to the sensitive material.

- (6) The prosecuting authority must, as soon as practicable after receiving such a request, give the person entitled to restricted access such opportunity or opportunities as may be reasonable in the circumstances to access the sensitive material under the conditions of access.
- (7) A decision by a prosecuting authority under this section to restrict access to sensitive material is administrative and final and not subject to any form of review.
- (8) A person who is given restricted access to sensitive material by a prosecuting authority under this section must not contravene a condition of access.  
Maximum penalty: \$8 000 or imprisonment for 2 years or both.

### **67J—Improper dissemination of sensitive material**

- (1) A person who creates sensitive material for a prosecuting authority, or who obtains possession of sensitive material on behalf of or from a prosecuting authority, in connection with a criminal investigation, or criminal or civil proceedings, must not allow access to the material except—
  - (a) for the legitimate purposes of the investigation or proceedings; or
  - (b) as may be authorised by the prosecuting authority.Maximum penalty: \$8 000 or imprisonment for 2 years or both.
- (2) A public official who creates, or obtains possession of, sensitive material in connection with official functions must not allow access to the material except as reasonably required for purposes connected with his or her official functions (which may include functions relating to education or training).  
Maximum penalty: \$8 000 or imprisonment for 2 years or both.
- (3) In proceedings for an offence against subsection (1) or (2), it is a defence to prove that the act or omission constituting the offence was attributable to an honest and reasonable mistake on the defendant's part.





## Part 8—Publication of evidence

### Division 1—Preliminary

#### 68—Interpretation

In this Part—

*court* includes any person acting judicially;

*evidence* includes any statement made before a court whether or not the statement constitutes evidence for the purposes of the proceedings before the court;

*interim suppression order* means a suppression order under section 69A(3);

*news media* means those who carry on the business of publishing;

*newspaper* means a newspaper, journal, magazine or other publication that is published at periodic intervals;

*primary court*, in relation to an appeal, means the court by which the decision or order subject to appeal was made;

*publish* means publish by newspaper, radio or television, or on the internet, or by other similar means of communication to the public;

*suppression order* means an order—

- (a) forbidding the publication of specified evidence or of any account or report of specified evidence; or
- (b) forbidding the publication of the name of—
  - (i) a party or witness; or
  - (ii) a person alluded to in the course of proceedings before the court, and of any other material tending to identify any such person.

### Division 2—Orders for clearing court or suppressing publication of evidence etc

#### 69—Order for clearing the court

- (1) Where a court considers it desirable in the interests of the administration of justice, or in order to prevent hardship or embarrassment to any person, to exercise the powers conferred by this section, it may order specified persons, or all persons except those specified, to absent themselves from the place in which the court is being held during the whole or any part of the proceedings before the court.
- (1a) Where the alleged victim of a sexual offence is a child and is to give evidence in proceedings related to the offence, an order must be made under subsection (1) requiring all persons except—
  - (a) those whose presence is required for the purposes of the proceedings; and
  - (b) a person who is present at the request or with the consent of the child to provide emotional support for the child; and

- (c) any other person who, in the opinion of the court, should be allowed to be present,  
to absent themselves from the place in which the court is being held while the child is giving evidence.
- (2) The court may, on the application of a person against whom an order under subsection (1) operates, make available to him a transcript of evidence, and a record of proceedings, taken before the court during the operation of the order.
- (3) Where a court refuses an application under subsection (2), the applicant may appeal against the refusal.

### **69A—Suppression orders**

- (1) Where a court is satisfied that a suppression order should be made—
  - (a) to prevent prejudice to the proper administration of justice; or
  - (b) to prevent undue hardship—
    - (i) to an alleged victim of crime; or
    - (ii) to a witness or potential witness in civil or criminal proceedings who is not a party to those proceedings; or
    - (iii) to a child,the court may, subject to this section, make such an order.
- (2) If a court is considering whether to make a suppression order (other than an interim suppression order), the court—
  - (a) must recognise that a primary objective in the administration of justice is to safeguard the public interest in open justice and the consequential right of the news media to publish information relating to court proceedings; and
  - (b) may only make a suppression order if satisfied that special circumstances exist giving rise to a sufficiently serious threat of prejudice to the proper administration of justice, or undue hardship, to justify the making of the order in the particular case.
- (3) Where an application is made to a court for a suppression order, the court may, without inquiring into the merits of the application, make such an order (an *interim suppression order*) to have effect, subject to revocation by the court, until the application is determined; but if such an order is made the court must determine the application as a matter of urgency and, wherever practicable, within 72 hours after making the interim suppression order.
- (4) A suppression order may be made subject to such exceptions and conditions as the court thinks fit and specifies in the order.
- (5) Where an application is made to a court for a suppression order—
  - (a) any of the following persons, namely:
    - (i) the applicant for the suppression order;
    - (ii) a party to the proceedings in which the suppression order is sought;
    - (iii) a representative of a newspaper or a radio or television station;

- (iv) any person who has, in the opinion of the court, a proper interest in the question of whether a suppression order should be made, is entitled to make submissions to the court on the application and may, with the permission of the court, call or give evidence in support of those submissions;
- (b) the court may (but is not obliged to) delay determining the application to make possible or facilitate non-party intervention in the proceedings under paragraph (a)(iii) or (iv).
- (6) A suppression order may be varied or revoked by the court by which it was made, on the application of any of the persons entitled to make submissions by virtue of subsection (5)(a).
- (7) On an application for the making, variation or revocation of a suppression order—
- (a) a matter of fact is sufficiently proved if proved on the balance of probabilities;
- (b) if there appears to be no serious dispute as to a particular matter of fact, the court (having regard to the desirability of dealing expeditiously with the application) may—
- (i) dispense with the taking of evidence on that matter; and
- (ii) accept the relevant fact as proved.
- (8) If a court makes a suppression order, the court must—
- (a) as soon as reasonably practicable forward to the Registrar a copy of the order; and
- (b) except in the case of an interim suppression order—within 30 days, forward to the Attorney-General a report setting out—
- (i) the terms of the order; and
- (ii) the name of any person whose name is suppressed from publication; and
- (iii) a transcript or other record of any evidence suppressed from publication; and
- (iv) full particulars of the reasons for which the order was made.
- (9) If a court orders the variation or revocation of a suppression order, the court must as soon as reasonably practicable forward a copy of the order to the Registrar.
- (10) The Registrar—
- (a) will establish and maintain a register of all suppression orders; and
- (b) will, immediately after receiving a copy of a suppression order, or an order for the variation or revocation of a suppression order, enter the order in the register; and
- (c) will, when an order is entered in the register, immediately transmit by fax, email or other electronic means notice of the order to the nominated address of each authorised news media representative.

- (11) The register will be made available for inspection by members of the public free of charge during ordinary office hours.
- (12) Without limiting the ways in which notice of a suppression order, or an order varying or revoking a suppression order, may be given, the entry of such an order in the register is notice to the news media and the public generally (within and outside the State) of the making and terms of the order.
- (13) In this section—

***authorised news media representative*** means a person—

- (a) who is nominated by a member of the news media to be the member's authorised representative for the purpose of receiving notices under subsection (10)(c); and
- (b) who has given the Registrar a notice specifying the representative's nominated address for the receipt of notices under subsection (10)(c); and
- (c) who has paid the relevant fee or fees (which may consist of, or include, periodic fees) fixed by the regulations;

***nominated address*** of a nominated representative means the fax number, email address or other address for the receipt of electronic communications nominated by the representative as the address to which notices may be sent to the representative by the Registrar under subsection (10)(c);

***Registrar*** means a person to whom the functions of the Registrar under this section are assigned by the Attorney-General.

## **69AB—Review of suppression orders**

- (1) Subject to the regulations, a suppression order becomes liable to review as follows:
  - (a) if the order relates to criminal proceedings and is in force at the time, the order becomes liable to review as follows:
    - (i) on the completion or termination of a preliminary examination;
    - (ii) on the withdrawal of a charge after the completion of a preliminary examination;
    - (iii) on the acquittal of the defendant;
    - (iv) when an appeal against conviction or sentence has been determined or all rights to appeal against conviction or sentence have been exhausted or expired;
    - (v) on the defendant being declared under Part 8A of the *Criminal Law Consolidation Act 1935* to be liable to supervision;
    - (vi) in any other case—when the proceedings are otherwise concluded or terminated,

(and, if more than 1 such occasion for review occurs in the course of the same proceedings, the order becomes liable to review on each such occasion);
  - (b) if the order relates to a coronial inquest, the order becomes liable to review when the coroner gives his or her findings on the inquest;

- (c) if the order relates to civil proceedings, the order becomes liable to review when the court gives its judgment in the proceedings or the proceedings are settled or withdrawn.
- (2) When a suppression order becomes liable to review, the court that made the order must conduct a review as soon as practicable.
- (3) The following persons are entitled to be heard on a review:
  - (a) the applicant for the suppression order;
  - (b) a party to the proceedings in which the suppression order was made;
  - (c) a representative of a newspaper or a radio or television station;
  - (d) any other person who has, in the opinion of the court, a proper interest in the matters to be considered on the review.
- (4) On a review, the court may confirm, vary or revoke the suppression order.

### **69AC—Appeal against suppression order etc**

- (1) An appeal lies against—
  - (a) a suppression order or a decision by a court not to make a suppression order; or
  - (b) the variation or revocation of a suppression order or a decision by a court not to vary or revoke a suppression order; or
  - (c) a decision by a court on the review of a suppression order.
- (2) Any of the following persons is entitled to bring, or to be heard on, an appeal under this section:
  - (a) the applicant for the suppression order;
  - (b) a party to the proceedings in which the order or decision subject to appeal was made;
  - (c) a representative of a newspaper or a radio or television station;
  - (d) a person who appeared in proceedings before the primary court related to the making or review of the suppression order;
  - (e) a person who—
    - (i) did not appear in proceedings before the primary court related to the making or review of the suppression order but has, in the opinion of the appellate court, a proper interest in the subject matter of the appeal or proposed appeal; and
    - (ii) satisfies the appellate court that the failure to appear in the proceedings before the primary court is not attributable to a lack of proper diligence.

### **69B—Appeals**

- (1) An appeal under this Division lies to—
  - (a) the court to which appeals lie against final judgments or orders of the primary court; and

- (b) where there is no such court—the Supreme Court constituted of a single judge,

and where the appeal lies in accordance with the above principles to some court other than the Full Court, a further appeal lies to the Full Court from a judgment or order of the primary appellate court.

- (2) An appeal under this Division shall be heard and determined as expeditiously as possible.
- (3) Upon an appeal under this Division, the appellate court—
  - (a) may confirm, vary or revoke the order or decision subject to the appeal; and
  - (b) may make any order or decision under this Division that could have been made in the first instance; and
  - (c) may make orders for costs and orders dealing with any other incidental or ancillary matters.
- (4) Except as provided in this Division, no appeal lies against a decision or order of a court made under this Division.

#### **70—Disobedience to orders under this Division**

- (1) If a person disobeys an order under this Division and the court by which the order was made has power to punish for contempt, the person is guilty of a contempt of the court.
- (1a) If a person disobeys an order under this Division, whether or not the court by which the order was made has power to punish for contempt, the person is guilty of an offence.  
Maximum penalty:
  - (a) in the case of a natural person—\$10 000 or imprisonment for 2 years;
  - (b) in the case of a body corporate—\$120 000.
- (2) A person shall not, in respect of the same act or default, be proceeded against under this section both for a contempt of court and a summary offence.

#### **71—Attorney-General to provide annual report**

- (1) The Attorney-General shall, on or before the thirty-first day of October in each year, prepare a report relating to the preceding financial year specifying—
  - (a) the total number of orders made under this Division or a corresponding previous enactment; and
  - (b) the number of such orders made by each of the various courts; and
  - (c) a summary of the reasons assigned by the courts for making such orders.
- (2) The Attorney-General shall, as soon as practicable after the report is prepared, cause a copy of the report to be laid before each House of Parliament.

## Division 3—Sexual cases

### 71A—Restriction on reporting on sexual offences

- (1) Subject to this section, a person must not, before the relevant date, publish—
- (a) any evidence given in proceedings against a person charged with a sexual offence (whether the evidence is given in the course of proceedings for a summary or minor indictable offence or in a preliminary examination of an indictable offence); or
  - (b) any report on such proceedings; 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 relevant date,

unless the accused person consents to the publication.

Maximum penalty:

- (a) in the case of a natural person—\$10 000;
- (b) in the case of a body corporate—\$120 000.

- (2) Subject to this section, a person must not, before the relevant date, publish any statement or representation—
- (a) by which the identity of a person who has been, or is about to be, charged with a sexual offence is revealed; or
  - (b) from which the identity of a person who has been, or is about to be, charged with a sexual offence, might reasonably be inferred,

unless the accused person consents to the publication.

Maximum penalty:

- (a) in the case of a natural person—\$10 000;
- (b) in the case of a body corporate—\$120 000.

- (3) If an accused person has not consented to the publication of material under subsection (1) or (2), the court may, on application, make an order (a **publication order**) that the restriction on publication under the relevant subsection be varied or removed altogether, if satisfied that to do so—
- (a) may assist in the investigation of an offence; or
  - (b) is otherwise in the public interest.
- (3a) A publication order may be subject to such exceptions and conditions as the court thinks fit and specifies in the order.
- (3b) An application for a publication order may be made, with the permission of the court, by any person who has, in the opinion of the court, a proper interest in the question of whether an order should be made.

- (3c) If the court permits an application for a publication order to be made, any of the following persons may make submissions to the court on the application and, with the permission of the court, call or give evidence in support of those submissions:
- (a) the applicant for the publication order;
  - (b) a party to the proceedings in which the order is sought;
  - (c) a representative of a newspaper or a radio or television station;
  - (d) any other person who has, in the opinion of the court, a proper interest in the question of whether an order should be made.
- (3d) A publication order may be varied or revoked by the court by which it was made, on the application of any of the persons entitled to make submissions by virtue of subsection (3c).
- (3e) On an application for the making, variation or revocation of a publication order—
- (a) a matter of fact is sufficiently proved if proved on the balance of probabilities; and
  - (b) if there appears to be no serious dispute as to a particular matter of fact, the court (having regard to the desirability of dealing expeditiously with the application) may—
    - (i) dispense with the taking of evidence on that matter; and
    - (ii) accept the relevant fact as proved.
- (4) A person must not publish any statement or representation—
- (a) by which the identity of a person alleged in any legal proceedings to be the victim of a sexual offence is revealed; or
  - (b) from which the identity of a person alleged in any legal proceedings to be the victim of a sexual offence might reasonably be inferred,

unless the judge authorises, or the alleged victim consents to, the publication (but no such authorisation or consent can be given where the alleged victim is a child).

Maximum penalty:

- (a) in the case of a natural person—\$10 000;
  - (b) in the case of a body corporate—\$120 000.
- (5) In this section—
- relevant date*** means—
- (a) in relation to a charge of a major indictable offence or a charge of a minor indictable offence for which the accused person has elected to be tried by a superior court—the date on which the accused person is committed for trial or sentence; or
  - (b) in relation to a charge of any other minor indictable offence or a charge of a summary offence—the date on which a plea of guilty is entered by the accused person or the date on which the accused person is found guilty following a trial; or



- (c) in any case—the date on which the charge is dismissed or the proceedings lapse by reason of the death of the accused person, for want of prosecution, or for any other reason.

## Division 4—Cases generally

### 71B—Publishers required to report result of certain proceedings

- (1) Where—
- (a) a report of proceedings taken against a person for an offence is published;
  - (b) the report identifies the person against whom the proceedings have been taken or contains information tending to identify that person;
  - (c) the report is published before the result of the proceedings is known;
  - (d) those proceedings do not result in conviction of the person to whom the report relates of the offence with which he was charged,

the person by whom the publication is made shall, as soon as practicable after the determination of the proceedings, publish a fair and accurate report of the result of the proceedings with reasonable prominence having regard to the prominence given to the earlier report.

Maximum penalty:

- (a) in the case of a natural person—\$10 000;
  - (b) in the case of a body corporate—\$120 000.
- (2) A person required under subsection (1) to publish a report of the result of proceedings may apply to the Supreme Court for directions in relation to the manner in which he should comply with that subsection.
- (3) Where—
- (a) a report of proceedings taken against a person for an offence is published;
  - (b) the report identifies the person against whom the proceedings have been taken or contains information tending to identify that person;
  - (c) the report is published after the result of the proceedings is known;
  - (d) those proceedings did not result in conviction of the person to whom the report relates of the offence with which he was charged,

the person by whom the publication is made shall include prominently in the report a statement of the result of the proceedings.

Maximum penalty:

- (a) in the case of a natural person—\$10 000;
  - (b) in the case of a body corporate—\$120 000.
- (4) In this section—
- proceedings* includes, in relation to an offence, the laying of a charge of the offence.

### **71C—Restriction on reporting of proceedings following acquittals**

- (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 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.

Maximum penalty:

- (a) in the case of a natural person—\$10 000;
- (b) in the case of a body corporate—\$120 000.

- (2) This section does not apply to the publication in printed or electronic form of material that—

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

## **Part 9—Miscellaneous**

### **73—Regulations**

The Governor may make such regulations as are necessary or expedient for the purposes of, or as are contemplated by, this Act.



## Schedule 1—Acts repealed or amended

Number and year	Title of Act	Extent of repeal
Imperial 6 & 7 Vic. c. 85 (adopted by Ordinance 17 of 1846)	An Act for Improving the Law of Evidence	The whole as the same is adopted and subsisting pursuant to Ordinance 17 of 1846.
3 of 1848	Ordinance to Facilitate the Admission of the unsworn Testimony of the Aboriginal Inhabitants of South Australia and the parts adjacent	The whole.
4 of 1849	Ordinance to amend Ordinance 3 of 1848	The whole.
2 of 1852	An Act to amend the Law of Evidence	The whole.
24 of 1855–6	<i>The Supreme Court Procedure Act 1855</i>	Sections 16 to 21 inclusive.
13 of 1866–7	An Act for amending the Law of Evidence and Practice on Criminal trials	Sections 3 to 8 inclusive.
3 of 1867	<i>Matrimonial Causes Act 1867</i>	Section 57.
10 of 1869–70	<i>Evidence Further Amendment Act 1869</i>	The whole.
9 of 1872	An Act for Shortening and Explaining the Language used in Acts of Parliament, and for other purposes	The whole as unrepealed by 1215 of 1915.
3 of 1873	<i>The Telegraphic Messages Act 1873</i>	The whole.
38 of 1876	<i>The Criminal Law Consolidation Act 1876</i>	Sections 377 and 378.
162 of 1879	<i>The Bankers Books Evidence Act 1879</i>	The whole.
435 of 1888	<i>Evidence Further Amendment Act 1888</i>	The whole.
1056 of 1911	<i>The Oaths and Affirmations Act 1911</i>	The whole.
1287 of 1917	<i>Evidence Publication Act 1917</i>	The whole.
1669 of 1925	<i>Evidence Amendment Act 1925</i>	The whole.

## Schedule 4—Affidavit about proof of identity of person convicted in another State or Territory

South Australia

[In the \_\_\_\_\_ Court]

The King v. ....  
[or In the matter of a Complaint by .....  
against .....  
or as the case may be]

I, ..... of .....  
a fingerprint expert attached to the Police Department of the State [or Territory] of .....  
..... make oath and say as follows:

- 1 I have examined the fingerprint card now produced and shown to me marked "A". The fingerprints on the said card are identical with those on a fingerprint card portion of the records of the said Department, being the fingerprints of one .....  
..... (*alias*) .....
- 2 According to the said records, which I believe to be accurate, the said .....  
..... has been convicted in the said State [or Territory] of the offences set out below, namely:  
*[Here insert description of offences, the Courts in which the convictions took place and the dates of the convictions]*
- 3 From an examination of the said records I believe that the person referred to as having been convicted, in the document(s) now shown to me and marked respectively "B" ["C", "D" etc], is identical with the person whose fingerprints are on the said card marked "A".

SWORN at ..... }  
this ..... day of ..... }  
20..... }

Before me

.....  
A person having authority to take affidavits in the  
State [or Territory] in which the affidavit is sworn

## Legislative history

### Notes

- This version is comprised of the following:
 

Part 1	17.6.2012
Part 2	9.6.2013
Part 3	17.6.2012
Part 4	18.1.2007
Part 5	1.1.2003 (Reprint No 13)
Part 6	24.11.2003 (Reprint No 15)
Part 6A	1.1.2003 (Reprint No 13)
Part 6B	1.1.2003 (Reprint No 13)
Part 6C	23.11.2008
Part 7	23.11.2008
Part 8	11.2.2013
Part 9	1.1.2003 (Reprint No 13)
Schedules	24.11.2003 (Reprint No 15)
- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1929	1907	<i>Evidence Act 1929</i>	30.10.1929	30.10.1929
1933	2110	<i>Evidence Act Amendment Act 1933</i>	31.8.1933	31.8.1933
1940	40	<i>Evidence Act Amendment Act 1940</i>	28.11.1940	28.11.1940
1941	27	<i>Evidence Act Amendment Act 1941</i>	13.11.1941	13.11.1941
1945	29	<i>Evidence Act Amendment Act 1945</i>	3.1.1946	3.1.1946
1947	5	<i>Evidence Act Amendment Act 1947</i>	2.10.1947	2.10.1947
1949	36	<i>Evidence Act Amendment Act 1949</i>	24.11.1949	24.11.1949
1952	42	<i>Statute Law Revision Act 1952</i>	4.12.1952	4.12.1952
1955	26	<i>Evidence Act Amendment Act 1955</i>	1.12.1955	1.12.1955
1957	36	<i>Evidence Act Amendment Act 1957</i>	14.11.1957	14.11.1957
1960	25	<i>Evidence Act Amendment Act 1960</i>	27.10.1960	27.10.1960
1968	46	<i>Evidence Act Amendment Act 1968</i>	19.12.1968	19.12.1968

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1969	72	<i>Evidence Act Amendment Act 1969</i>	11.12.1969	31.8.1970 ( <i>Gazette</i> 20.8.1970 p701)
1972	53	<i>Evidence Act Amendment Act 1972</i>	27.4.1972	1.2.1973 ( <i>Gazette</i> 1.2.1973 p377)
1972	54	<i>Local and District Criminal Courts Act Amendment Act 1972</i>	27.4.1972	9.11.1972 ( <i>Gazette</i> 9.11.1972 p2252)
1974	71	<i>Evidence Act Amendment Act 1974</i>	17.10.1974	28.11.1974 ( <i>Gazette</i> 28.11.1974 p3372)
1976	84	<i>Evidence Act Amendment Act 1976</i>	9.12.1976	9.12.1976
1978	65	<i>Evidence Act Amendment Act 1978</i>	28.9.1978	28.9.1978
1979	9	<i>Evidence Act Amendment Act 1979</i>	1.3.1979	1.3.1979
1982	40	<i>Evidence Act Amendment Act 1982</i>	22.4.1982	6.5.1982 ( <i>Gazette</i> 6.5.1982 p1438)
1983	47	<i>Evidence Act Amendment Act 1983</i>	16.6.1983	16.6.1983
1983	55	<i>Evidence Act Amendment Act (No. 2) 1983</i>	16.6.1983	1.8.1983 ( <i>Gazette</i> 7.7.1983 p5)
1984	24	<i>Evidence Act Amendment Act 1984</i>	10.5.1984	10.5.1984
1984	56	<i>Statutes Amendment (Oaths and Affirmations) Act 1984</i>	24.5.1984	1.7.1984 ( <i>Gazette</i> 28.6.1984 p1897)
1984	90	<i>Evidence Act Amendment Act (No. 2) 1984</i>	29.11.1984	1.1.1985 ( <i>Gazette</i> 13.12.1984 p1811)
1984	107	<i>Evidence Act Amendment Act (No. 3) 1984</i>	20.12.1984	20.12.1984
1985	96	<i>Evidence Act Amendment Act 1985</i>	1.11.1985	1.12.1985 ( <i>Gazette</i> 7.11.1985 p1361)
1986	107	<i>Evidence Act Amendment Act 1986</i>	18.12.1986	5.4.1987 ( <i>Gazette</i> 26.2.1987 p434)
1988	32	<i>Evidence Act Amendment Act 1988</i>	21.4.1988	1.5.1988 ( <i>Gazette</i> 28.4.1988 p1066)
1988	45	<i>Evidence Act Amendment Act (No. 2) 1988</i>	5.5.1988	5.5.1988
1989	43	<i>Evidence Act Amendment Act 1989</i>	4.5.1989	15.5.1989 ( <i>Gazette</i> 11.5.1989 p1250)
1990	72	<i>Evidence Act Amendment Act 1990</i>	20.12.1990	20.12.1990
1991	41	<i>Evidence Amendment Act 1991</i>	31.10.1991	16.7.1992 ( <i>Gazette</i> 16.7.1992 p622)
1991	49	<i>Director of Public Prosecutions Act 1991</i>	21.11.1991	6.7.1992 ( <i>Gazette</i> 25.6.1992 p1869)
1992	26	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1992</i>	14.5.1992	6.7.1992 ( <i>Gazette</i> 2.7.1992 p209)
1992	76	<i>Statutes Amendment (Right of Reply) Act 1992</i>	26.11.1992	s 5—1.1.1993 ( <i>Gazette</i> 10.12.1992 p1752)
1993	37	<i>Evidence (Miscellaneous) Amendment Act 1993</i>	13.5.1993	15.7.1993 ( <i>Gazette</i> 15.7.1993 p520)
1993	53	<i>Evidence (Vulnerable Witnesses) Amendment Act 1993</i>	27.5.1993	1.9.1993 ( <i>Gazette</i> 15.7.1993 p520)
1994	59	<i>Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994</i>	27.10.1994	1.1.1995 ( <i>Gazette</i> 8.12.1994 p1942)
1995	27	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1995</i>	27.4.1995	s 13—10.7.1995 ( <i>Gazette</i> 29.6.1995 p2973)
1996	26	<i>Evidence (Settlement Negotiations) Amendment Act 1996</i>	2.5.1996	2.5.1996
1997	59	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1997</i>	31.7.1997	Pt 4 (s 6)—14.9.1997 ( <i>Gazette</i> 11.9.1997 p704)



1998	9	<i>Evidence (Use of Audio and Audio Visual Links) Amendment Act 1998</i>	2.4.1998	27.6.1999 ( <i>Gazette 17.6.1999 p3090</i> )
1999	17	<i>Evidence (Confidential Communications) Amendment Act 1999</i>	1.4.1999	27.6.1999 ( <i>Gazette 17.6.1999 p3090</i> )
1999	18	<i>Evidence (Miscellaneous) Amendment Act 1999</i>	1.4.1999	27.6.1999 ( <i>Gazette 17.6.1999 p3090</i> )
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 21)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)
2000	57	<i>Statutes Amendment and Repeal (Attorney-General's Portfolio) Act 2000</i>	20.7.2000	Pt 11 (s 25)—14.8.2000 ( <i>Gazette 10.8.2000 p444</i> )
2002	32	<i>Legislation Revision and Publication Act 2002</i>	28.11.2002	Sch (cl 2)—1.1.2003 ( <i>Gazette 19.12.2002 p4735</i> )
2002	33	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2002</i>	28.11.2002	Pt 6 (ss 8 & 9)—3.3.2003 ( <i>Gazette 27.2.2003 p807</i> )
2003	33	<i>Coroners Act 2003</i>	31.7.2003	Sch (cll 10—12)—1.7.2005 ( <i>Gazette 23.6.2005 p1899</i> )
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 ( <i>Gazette 13.11.2003 p4048</i> )
2005	50	<i>Defamation Act 2005</i>	27.10.2005	Sch 1 (cl 5)—1.1.2006: s 2
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 31 (ss 113—118)—4.9.2006 ( <i>Gazette 17.8.2006 p2831</i> )
2006	30	<i>Evidence (Suppression Orders) Amendment Act 2006</i>	23.11.2006	1.4.2007 ( <i>Gazette 29.3.2007 p929</i> )
2006	33	<i>Evidence (Use of Audio and Audio Visual Links) Amendment Act 2006</i>	30.11.2006	1.4.2007 ( <i>Gazette 22.3.2007 p864</i> )
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 33 (s 97)—1.6.2007 ( <i>Gazette 26.4.2007 p1352</i> )
2006	44	<i>Statutes Amendment (Justice Portfolio) Act 2006</i>	14.12.2006	Pt 13 (s 21)—18.1.2007 ( <i>Gazette 18.1.2007 p234</i> )
2007	48	<i>Statutes Amendment (Victims of Crime) Act 2007</i>	8.11.2007	Pt 4 (s 6)—17.7.2008 ( <i>Gazette 17.7.2008 p3372</i> )
2008	7	<i>Statutes Amendment (Evidence and Procedure) Act 2008</i>	17.4.2008	Pt 4 (ss 10—22)—23.11.2008 ( <i>Gazette 20.11.2008 p5171</i> ) except new ss 13A, 13C & 13D (as inserted by s 12)—4.10.2009 ( <i>Gazette 1.10.2009 p4764</i> )
2008	10	<i>Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008</i>	17.4.2008	Sch 1 (cl 5)—23.11.2008 ( <i>Gazette 20.11.2008 p5171</i> )
2009	85	<i>Intervention Orders (Prevention of Abuse) Act 2009</i>	10.12.2009	Sch 1 (cl 14)—9.12.2011 ( <i>Gazette 20.10.2011 p4269</i> )
2011	34	<i>Evidence (Discreditable Conduct) Amendment Act 2011</i>	22.9.2011	Pt 2 (s 4) & Sch 1—1.6.2012 ( <i>Gazette 31.5.2012 p2637</i> )
2012	12	<i>Statutes Amendment (Serious and Organised Crime) Act 2012</i>	10.5.2012	Pt 8 (ss 40—42)—17.6.2012 ( <i>Gazette 14.6.2012 p2756</i> )

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2012	44	<i>Evidence (Reporting on Sexual Offences) Amendment Act 2012</i>	22.11.2012	11.2.2013 ( <i>Gazette 7.2.2013 p262</i> )
<b>2013</b>	<b>11</b>	<b><i>Statutes Amendment (Attorney-General's Portfolio) Act 2013</i></b>	<b>18.4.2013</b>	<b>Pt 6 (s 14)—9.6.2013 (<i>Gazette 6.6.2013 p2498</i>)</b>
2013	26	<i>Magistrates (Miscellaneous) Amendment Act 2013</i>	27.6.2013	Sch 1 (cl 2)—uncommenced

**Provisions amended since 3 February 1976**

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 3 of The Public General Acts of South Australia 1837-1975 at page 790.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>amended by 40/1982 s 3</i>	<i>6.5.1982</i>
	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.1.2003</i>
s 4		
<i>bank</i>	<i>deleted by 40/1982 s 4</i>	<i>6.5.1982</i>
<i>banker</i>	<i>deleted by 40/1982 s 4</i>	<i>6.5.1982</i>
<i>banker's book</i>	<i>deleted by 40/1982 s 4</i>	<i>6.5.1982</i>
child	inserted by 32/1988 s 3(a)	1.5.1988
court	substituted by 56/1984 s 3(a)	1.7.1984
domestic partner	inserted by 7/2008 s 10(1)	23.11.2008
electric telegraph	amended by 9/1979 s 2	1.3.1979
mental disability	inserted by 7/2008 s 10(2)	23.11.2008
serious offence against the person	inserted by 7/2008 s 10(2)	23.11.2008
sexual offence	inserted by 84/1976 s 2	9.12.1976
	amended by 26/1992 s 7	6.7.1992
	amended by 10/2008 Sch 1 cl 5	23.11.2008
spouse	inserted by 7/2008 s 10(3)	23.11.2008
statement	inserted by 12/2012 s 40(1)	17.6.2012
sworn evidence	inserted by 18/1999 s 3	27.6.1999
telegraph station	amended by 9/1979 s 2	1.3.1979
vulnerable witness	inserted by 7/2008 s 10(4)	23.11.2008
	amended by 12/2012 s 40(2)	17.6.2012
young child	inserted by 32/1988 s 3(b)	1.5.1988
Pt 2		
s 6	substituted by 56/1984 s 3(b)	1.7.1984
s 6(3)	substituted by 18/1999 s 4	27.6.1999
s 6(4)	substituted by 33/2002 s 8	3.3.2003

s 7	substituted by 56/1984 s 3(b)	1.7.1984
s 8	<i>deleted by 56/1984 s 3(b)</i>	<i>1.7.1984</i>
s 9	amended by 32/1988 s 4	1.5.1988
	substituted by 18/1999 s 5	27.6.1999
s 9(4)	amended by 7/2008 s 11	23.11.2008
s 12	substituted by 32/1988 s 5	1.5.1988
s 12(1)—(3)	<i>deleted by 18/1999 s 6</i>	<i>27.6.1999</i>
s 12A	inserted by 37/1993 s 3	15.7.1993
	substituted by 18/1999 s 7	27.6.1999
	substituted by 7/2008 s 12	23.11.2008
<i>s 13 before substitution by 7/2008</i>	<i>deleted by 32/1988 s 5</i>	<i>1.5.1988</i>
	<i>inserted by 53/1993 s 3</i>	<i>1.9.1993</i>
s 13(4)	<i>amended by 18/1999 s 8</i>	<i>27.6.1999</i>
s 13	substituted by 7/2008 s 12	23.11.2008
s 13A	inserted by 7/2008 s 12	4.10.2009
s 13B	inserted by 7/2008 s 12	23.11.2008
s 13B(1)	amended by 85/2009 Sch 1 cl 14(1)	9.12.2011
s 13B(2)	<i>deleted by 85/2009 Sch 1 cl 14(2)</i>	<i>9.12.2011</i>
s 13B(5)		
offence to which this section applies	amended by 85/2009 Sch 1 cl 14(3)	9.12.2011
s 13C	inserted by 7/2008 s 12	4.10.2009
<b>s 13C(2)</b>	<b>amended by 11/2013 s 14(1)</b>	<b>9.6.2013</b>
<b>s 13C(2a)</b>	<b>inserted by 11/2013 s 14(2)</b>	<b>9.6.2013</b>
s 13D	inserted by 7/2008 s 12	4.10.2009
s 14	inserted by 107/1986 s 3	5.4.1987
s 14(1a)	inserted by 18/1999 s 9	27.6.1999
s 18		
s 18(1)	s 18 amended by 47/1983 s 2(a)–(d)	16.6.1983
	s 18 redesignated as s 18(1) by 47/1983 s 2(e)	16.6.1983
	amended by 55/1983 s 3(a), (b)	1.8.1983
	III and IV deleted by 55/1983 s 3(c)	1.8.1983
	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 18(2) and (3)	inserted by 47/1983 s 2(e)	16.6.1983
	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 18A	inserted by 47/1983 s 3	16.6.1983
	substituted by 96/1985 s 3	1.12.1985
	substituted by 18/1999 s 10	27.6.1999
<i>ss 19 and 20</i>	<i>deleted by 76/1992 s 5</i>	<i>1.1.1993</i>
s 21	substituted by 55/1983 s 4	1.8.1983
s 21(3a)	inserted by 37/1993 s 4	15.7.1993
s 21(5)	substituted by 27/1995 s 13	10.7.1995

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s 21(7)		
close relative	amended by 43/2006 s 97(1)	1.6.2007
<i>domestic partner</i>	<i>inserted by 43/2006 s 97(2)</i>	<i>1.6.2007</i>
	<i>deleted by 7/2008 s 13</i>	<i>23.11.2008</i>
<i>spouse</i>	<i>substituted by 43/2006 s 97(2)</i>	<i>1.6.2007</i>
	<i>deleted by 7/2008 s 13</i>	<i>23.11.2008</i>
s 23	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 25	substituted by 7/2008 s 14	23.11.2008
s 26	amended by 59/1994 Sch 2	1.1.1995
s 27	amended by 17/2006 s 113	4.9.2006
s 29A	inserted by 48/2007 s 6	17.7.2008
Pt 3		
Pt 3 Div 1		
heading	inserted by 7/2008 s 15	23.11.2008
s 32	<i>deleted by 9/1979 s 3</i>	<i>1.3.1979</i>
s 33	substituted by 50/2005 Sch 1 cl 5	1.1.2006
s 34A	substituted by 33/2002 s 9	3.3.2003
s 34B	<i>deleted by 18/1999 s 11</i>	<i>27.6.1999</i>
s 34C		
s 34C(1)	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 34C(1a)	contents commencing "Provided that" amended and designated as s 34C(1a) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 34CA	inserted by 32/1988 s 6	1.5.1988
	substituted by 7/2008 s 16	23.11.2008
s 34CB	inserted by 7/2008 s 16	23.11.2008
s 34I before deletion by 7/2008	<i>inserted by 84/1976 s 3</i>	<i>9.12.1976</i>
	<i>amended by 47/1983 s 4</i>	<i>16.6.1983</i>
	<i>substituted by 90/1984 s 3</i>	<i>1.1.1985</i>
s 34I(1)	<i>amended by 17/2006 s 114(1)</i>	<i>4.9.2006</i>
s 34I(2)	<i>amended by 17/2006 s 114(2)</i>	<i>4.9.2006</i>
s 34I(3)	<i>amended by 17/2006 s 114(3)</i>	<i>4.9.2006</i>
s 34I(4)	<i>amended by 17/2006 s 114(4)</i>	<i>4.9.2006</i>
s 34I(6a)	<i>inserted by 18/1999 s 12</i>	<i>27.6.1999</i>
s 34I	<i>deleted by 7/2008 s 17</i>	<i>23.11.2008</i>
s 34J	inserted by 41/1991 s 3	16.7.1992
s 34J(2)	substituted by 18/1999 s 13	27.6.1999
s 34K	inserted by 41/1991 s 3	16.7.1992
s 34K(1)	amended by 17/2006 s 115(1)	4.9.2006
s 34K(2)	amended by 17/2006 s 115(2)	4.9.2006
ss 34KA—34KD	inserted by 12/2012 s 41	17.6.2012
Pt 3 Div 2	inserted by 7/2008 s 18	23.11.2008
Pt 3 Div 3	inserted by 34/2011 s 4	1.6.2012

Pt 4		
s 35	substituted by 72/1990 s 2	20.12.1990
s 35(2)		
legislative instrument	amended by 32/2002 Sch cl 2	1.1.2003
s 37	amended by 9/1979 s 4	1.3.1979
	substituted by 72/1990 s 3	20.12.1990
s 37C	inserted by 9/1979 s 5	1.3.1979
s 41	amended by 59/1994 Sch 2	1.1.1995
	amended by 44/2006 s 21	18.1.2007
s 42		
s 42(1)	amended by 33/2002 s 10	3.3.2003
s 45A		
s 45A(2)	amended by 9/1979 s 6	1.3.1979
s 45B		
s 45B(3)	amended by 9/1979 s 7	1.3.1979
s 45C	inserted by 24/1984 s 2	10.5.1984
	substituted by 72/1990 s 4	20.12.1990
Pt 5	heading amended by 40/1982 s 5	6.5.1982
s 46	substituted by 40/1982 s 6	6.5.1982
bank	(b) and (c) deleted by 33/1999 Sch (item 21)	1.7.1999
ss 47 and 48	substituted by 40/1982 s 6	6.5.1982
ss 48A and 48B	<i>deleted by 40/1982 s 6</i>	6.5.1982
s 49		
s 49(1)	amended by 40/1982 s 7(a)	6.5.1982
s 49(1a)	inserted by 40/1982 s 7(b)	6.5.1982
	amended by 37/1993 s 5	15.7.1993
s 49(2)	amended by 40/1982 s 7(c)	6.5.1982
s 49(3)—(9)	inserted by 40/1982 s 7(d)	6.5.1982
s 50	amended by 40/1982 s 8	6.5.1982
s 51		
s 51(1)	substituted by 40/1982 s 9	6.5.1982
s 52	<i>deleted by 40/1982 s 10</i>	6.5.1982
Pt 6		
s 55	amended by 18/1999 s 14	27.6.1999
s 56		
s 56(1)	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 56(2)	amended by 49/1991 Sch 2	6.7.1992
s 59	amended by 59/1994 Sch 2	1.1.1995
Pt 6A		
s 59B		
s 59B(1)	amended by 9/1979 s 8	1.3.1979
Pt 6B	heading substituted by 45/1988 s 2	5.5.1988

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s 59D	substituted by 45/1988 s 3	5.5.1988
s 59D(1)		
authorised South Australian court	amended by 37/1993 s 6(a)	15.7.1993
	(d) deleted by 37/1993 s 6(a)	15.7.1993
foreign court	amended by 37/1993 s 6(b)	15.7.1993
s 59D(2)	substituted by 72/1990 s 5	20.12.1990
s 59E	substituted by 45/1988 s 4	5.5.1988
s 59E(4)	inserted by 37/1993 s 7	15.7.1993
s 59F		
s 59F(1)	amended by 45/1988 s 5	5.5.1988
s 59F(5)	amended by 45/1988 s 5	5.5.1988
	amended by 72/1990 s 6(a)	20.12.1990
s 59F(7)	inserted by 72/1990 s 6(b)	20.12.1990
s 59H	amended by 45/1988 s 6	5.5.1988
Pt 6C	inserted by 9/1998 s 3	27.6.1999
Pt 6C Div 1		
s 59IA		
South Australian court	amended by 33/2003 Sch (cl 10)	1.7.2005
Pt 6C Div 4	inserted by 33/2006 s 4	1.4.2007
s 59IQ		
s 59IQ(8)		
immediate family	amended by 7/2008 s 19	23.11.2008
Pt 7		
Pt 7 Div 1	heading inserted by 17/1999 s 3(a)	27.6.1999
s 59J	inserted by 26/1992 s 8	6.7.1992
Pt 7 Div 2	heading inserted by 17/1999 s 3(b)	27.6.1999
s 60	amended by 17/2006 s 116	4.9.2006
s 61	<i>deleted by 9/1979 s 9</i>	1.3.1979
Pt 7 Div 3	heading inserted by 17/1999 s 3(c)	27.6.1999
s 65		
s 65(1)	s 65 amended by 9/1979 s 10	1.3.1979
	s 65 amended and redesignated as s 65(1) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 65(2)	s 65 amended and redesignated as s 65(2) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 65A	inserted by 32/1988 s 7	1.5.1988
Pt 7 Div 4	heading inserted by 17/1999 s 3(d)	27.6.1999
s 66		
s 66(1)	amended by 57/2000 s 25	14.8.2000
	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 66(3)	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 67		

s 67(1)	amended by 18/1999 s 15	27.6.1999
Pt 7 Div 5	heading inserted by 17/1999 s 3(e)	27.6.1999
Pt 7 Div 6	heading inserted by 17/1999 s 3(f)	27.6.1999
s 67AB	inserted by 9/1979 s 11	1.3.1979
s 67AB(1)	amended by 18/1999 s 16(a)	27.6.1999
s 67AB(2)	amended by 18/1999 s 16(b)	27.6.1999
Pt 7 Div 7	heading inserted by 17/1999 s 3(g)	27.6.1999
s 67B	inserted by 65/1978 s 2	28.9.1978
Pt 7 Div 8	heading inserted by 17/1999 s 3(h)	27.6.1999
s 67C	inserted by 37/1993 s 8	15.7.1993
s 67C(2)	amended by 26/1996 s 2	2.5.1996
Pt 7 Div 9	inserted by 17/1999 s 4	27.6.1999
s 67F		
s 67F(1)	amended by 17/2006 s 117(1)	4.9.2006
s 67F(2)	amended by 17/2006 s 117(2)	4.9.2006
s 67F(5)	amended by 17/2006 s 117(3)	4.9.2006
s 67F(7)	amended by 17/2006 s 117(4)	4.9.2006
s 67F(8)	amended by 17/2006 s 117(5)	4.9.2006
Pt 7 Div 10	inserted by 7/2008 s 20	23.11.2008
Pt 8		
Pt 8 Div 1	heading inserted by 107/1984 s 2	20.12.1984
s 68	substituted by 47/1983 s 5	16.6.1983
court	substituted by 33/2003 Sch (cl 11)	1.7.2005
<i>court of summary jurisdiction</i>	<i>inserted by 107/1984 s 3(a)</i>	<i>20.12.1984</i>
	<i>deleted by 33/2003 Sch (cl 11)</i>	<i>1.7.2005</i>
interim suppression order	inserted by 107/1984 s 3(b)	20.12.1984
news media	inserted by 43/1989 s 3(a)	15.5.1989
	substituted by 18/1999 s 17(a)	27.6.1999
newspaper	inserted by 18/1999 s 17(a)	27.6.1999
primary court	inserted by 107/1984 s 3(b)	20.12.1984
publish	inserted by 18/1999 s 17(b)	27.6.1999
suppression order	inserted by 107/1984 s 3(b)	20.12.1984
	substituted by 43/1989 s 3(b)	15.5.1989
Pt 8 Div 2	heading inserted by 107/1984 s 4	20.12.1984
s 69	substituted by 9/1979 s 12	1.3.1979
	substituted by 107/1984 s 4	20.12.1984
s 69(1a)	inserted by 32/1988 s 8	1.5.1988
s 69A	inserted by 107/1984 s 4	20.12.1984
	substituted by 43/1989 s 4	15.5.1989
s 69A(1)	amended by 72/1990 s 7	20.12.1990
	amended by 18/1999 s 18	27.6.1999

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s 69A(2)	substituted by 30/2006 s 4(1)	1.4.2007
s 69A(5)	amended by 17/2006 s 118(1)	4.9.2006
s 69A(8)	substituted by 30/2006 s 4(2)	1.4.2007
s 69A(9)	amended by 17/2006 s 118(2)	4.9.2006
	substituted by 30/2006 s 4(2)	1.4.2007
s 69A(10)—(13)	substituted by 30/2006 s 4(2)	1.4.2007
s 69A(14)	<i>deleted by 30/2006 s 4(2)</i>	1.4.2007
ss 69AB and 69AC	inserted by 30/2006 s 5	1.4.2007
s 69B	inserted by 107/1984 s 4	20.12.1984
s 69B(1)	amended by 43/1989 s 5(a)	15.5.1989
s 69B(3)	amended by 43/1989 s 5(b), (c)	15.5.1989
s 70	substituted by 107/1984 s 4	20.12.1984
s 70(1)	substituted by 30/2006 s 6	1.4.2007
s 70(1a)	inserted by 30/2006 s 6	1.4.2007
s 70(3)	<i>deleted by 33/2003 Sch (cl 12)</i>	1.7.2005
s 71	amended by 9/1979 s 13	1.3.1979
	amended by 40/1982 s 11	6.5.1982
	substituted by 107/1984 s 4	20.12.1984
Pt 8 Div 3	heading inserted by 107/1984 s 5	20.12.1984
s 71A	inserted by 84/1976 s 4	9.12.1976
s 71A(1)	amended by 40/1982 s 12	6.5.1982
	amended by 37/1993 s 9	15.7.1993
	amended by 59/1997 s 6(a)	14.9.1997
	amended by 18/1999 s 19(a)	27.6.1999
	amended by 30/2006 s 7(1)	1.4.2007
	amended by 44/2012 s 4(1), (2)	11.2.2013
s 71A(2)	amended by 40/1982 s 12	6.5.1982
	amended by 18/1999 s 19(b)	27.6.1999
	amended by 30/2006 s 7(2)	1.4.2007
	amended by 44/2012 s 4(3)	11.2.2013
s 71A(3)	<i>amended by 40/1982 s 12</i>	6.5.1982
	<i>deleted by 107/1984 s 6(a)</i>	20.12.1984
s 71A(3)—(3e)	inserted by 44/2012 s 4(4)	11.2.2013
s 71A(4)	amended by 40/1982 s 12	6.5.1982
	amended by 32/1988 s 9	1.5.1988
	amended by 18/1999 s 19(c)	27.6.1999
	amended by 30/2006 s 7(3)	1.4.2007
	amended by 44/2012 s 4(5)	11.2.2013
s 71A(5)		
acquittal	<i>deleted by 107/1984 s 6(b)</i>	20.12.1984
newspaper	<i>deleted by 18/1999 s 19(d)</i>	27.6.1999
relevant date	substituted by 59/1997 s 6(b)	14.9.1997
Pt 8 Div 4	heading inserted by 107/1984 s 7	20.12.1984



s 71B	inserted by 107/1984 s 7	20.12.1984
s 71B(1)	amended by 18/1999 s 20(a)	27.6.1999
	amended by 7/2008 s 21(1)	23.11.2008
s 71B(2)	amended by 30/2006 s 8(1)	1.4.2007
	amended by 7/2008 s 21(2)	23.11.2008
s 71B(3)	amended by 18/1999 s 20(b)	27.6.1999
	amended by 30/2006 s 8(2)	1.4.2007
s 71C	inserted by 37/1993 s 10	15.7.1993
s 71C(1)	amended by 18/1999 s 21(a)	27.6.1999
	amended by 30/2006 s 9	1.4.2007
s 71C(2)	substituted by 18/1999 s 21(b)	27.6.1999
<i>Pt 8 Div 5</i>	<i>amended by 107/1984 s 8</i>	<i>20.12.1984</i>
	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
Pt 9	inserted by 72/1990 s 8	20.12.1990
Sch 1	heading substituted by 44/2003 s 3(1) (Sch 1)	24.11.2003
<i>Sch 3</i>	<i>deleted by 55/1983 s 5</i>	<i>1.8.1983</i>
Sch 4	heading substituted by 44/2003 s 3(1) (Sch 1)	24.11.2003

## Transitional etc provisions associated with Act or amendments

### *Evidence (Settlement Negotiations) Amendment Act 1996*

#### 3—Application of amendment

The amendment made by this Act applies to proceedings commenced before or after the commencement of this Act, but does not affect any order made before the commencement of this Act.

### *Statutes Amendment (Evidence and Procedure) Act 2008*

#### 22—Transitional provision

The amendments made by Part 4 of this Act to the *Evidence Act 1929* apply to proceedings commenced after the commencement of that Part.

### *Evidence (Discreditable Conduct) Amendment Act 2011, Sch 1*

#### 1—Transitional provision

- (1) The amendments made by Part 2 of this Act to the *Evidence Act 1929* are intended to apply in respect of—
  - (a) proceedings for an offence commenced but not determined before the commencement of this clause; and
  - (b) proceedings for an offence commenced after the commencement of this clause.
- (2) An order made by a court under the *Evidence Act 1929* as in force immediately before the commencement of this clause will remain in force according to its terms.

## *Statutes Amendment (Serious and Organised Crime) Act 2012*

### **42—Transitional provision**

Sections 34KA, 34KB, 34KC and 34KD of the *Evidence Act 1929* as inserted by section 41 of this Act only apply in relation to proceedings commenced after the commencement of section 41.

### **Historical versions**

Reprint No 1—1.7.1991  
Reprint No 2—16.7.1992  
Reprint No 3—1.1.1993  
Reprint No 4—15.7.1993  
Reprint No 5—1.9.1993  
Reprint No 6—1.1.1995  
Reprint No 7—10.7.1995  
Reprint No 8—2.5.1996  
Reprint No 9—14.9.1997  
Reprint No 10—27.6.1999  
Reprint No 11—1.7.1999  
Reprint No 12—14.8.2000  
Reprint No 13—1.1.2003  
Reprint No 14—3.3.2003  
Reprint No 15—24.11.2003  
1.7.2005  
1.1.2006  
4.9.2006  
18.1.2007  
1.4.2007  
1.6.2007  
17.7.2008  
23.11.2008  
4.10.2009  
9.12.2011  
1.6.2012  
17.6.2012  
11.2.2013

## Appendix—Divisional penalties and expiation fees

At the date of publication of this version divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

*Note: This appendix is provided for convenience of reference only.*