South Australia

Evidence Act 1929

An Act to consolidate certain Acts relating to evidence.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

4—Interpretation

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

canine court companion means a dog accredited by—

(a) the Guide Dogs Association of SA and NT Inc.; or

(b) a person or body prescribed by the regulations,

as a canine court companion;

child means a person under the age of 18 years;

child sexual offence means a sexual offence committed in relation to a child;

cognitive impairment includes the following:

(a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder);

(b) an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder);

(c) a mental illness;

communication partner means a person, or a person of a class, approved by the Minister for the purposes of providing assistance in proceedings to a witness with complex communication needs;

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;

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 and harassment 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

(db) an offence of sexual exploitation of a person with a cognitive impairment under section 51 of the *Criminal Law Consolidation Act 1935*; 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 is cognitively impaired; 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 14 years.

(2) For the purposes of this Act, a witness who is to give oral evidence in proceedings will be taken to have ***complex communication needs*** if the witness's ability to give the evidence is significantly affected by a difficulty to communicate effectively with the court, whether the communication difficulty is temporary or permanent and whether caused by disability, illness, injury or some other cause.

(3) However, a witness who is to give oral evidence in proceedings whose native language is not English will not be taken to have ***complex communication needs*** merely because the witness is not reasonably fluent in English (although the witness may be entitled to give the evidence through an interpreter under section 14).

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.

(6) Subject to this Act, this section does not apply to a statement made outside of a court admitted as evidence in any proceedings under an exception to the rule against hearsay at common law or under this Act.

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.

12AB—Pre-trial special hearings

(1) Subject to this section, if—

(a) the evidence of a witness to whom this section applies is necessary for the purposes of the trial of a charge of an offence to which this section applies; and

(b) the facilities necessary to take the evidence of the witness are readily available to the court and it is otherwise practicable to make arrangements for a special hearing to be convened as a proceeding preliminary to the trial (a ***pre-trial special hearing***); and

(c) the arrangements can be made without prejudice to any party to the proceedings,

the court should, on application under this section, order that arrangements be made relating to the giving of evidence by the witness at a pre-trial special hearing.

(2) An order for a pre-trial special hearing—

(a) must make provision for each of the following matters:

(i) that a hearing be convened as a proceeding preliminary to the trial of the charge of the offence for the purpose of taking the evidence of the witness in any setting that the court thinks fit in the circumstances (including an informal setting);

(ii) if the witness has a physical disability or cognitive impairment—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 (including, if the witness has complex communication needs, with such communication assistance as may be specified by the court);

Note—

Communication assistance for a witness may be provided, for example, by a communication partner or by using a device (such as a speak-and-spell communication device).

(iii) that an audio visual record of the evidence be made;

(iv) that the taking of evidence at the hearing be transmitted to the defendant by means of closed circuit television;

(v) if the defendant attends the hearing in person—that appropriate measures be taken to prevent the witness and the defendant from directly seeing or hearing each other before, during or after the hearing; and

(b) may make provision for the witness to be accompanied at the hearing by a relative, friend or other person, or by a canine court companion, for the purpose of providing emotional support; and

(c) may specify that the hearing is convened for any (or all) of the following purposes:

(i) examination of the witness;

(ii) cross-examination of the witness;

(iii) re-examination of the witness; and

(ca) may specify that the hearing include an initial hearing for the purpose of taking any evidence (if required), hearing submissions and making rulings as to the admissibility of any evidence and a subsequent hearing (or hearings) for the examination, cross-examination or re-examination of the witness to whom this section applies (if required) and any other matters; and

(d) may make provision for any other matter that the court thinks fit.

(3) An order must not be made for, or in, a pre-trial special hearing if the effect of the order would be—

(a) to relieve a witness from the obligation to give sworn or unsworn evidence or to submit to cross-examination (except where recorded evidence is admitted under section 13BA and permission of the court for further examination, cross-examination or re-examination of the witness is not granted); or

(c) to prevent the judge 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

(d) to prevent the defendant from instructing counsel while the witness is giving evidence.

(4) If a witness to whom this section applies is accompanied by a person for the purpose of providing emotional support or communication assistance—

(a) the accompanying person must be visible to the judge while the witness is giving evidence; and

(b) if the defendant is prevented from seeing the accompanying person directly while the witness is giving evidence—the court must ensure that the defendant is able to observe that person by direct transmission of images of the witness together with that person while the witness is giving evidence; and

(c) the audio visual record of the evidence must show the accompanying person throughout the taking of the evidence.

(5) A person may only provide communication assistance—

(a) if the person—

(i) is a communication partner or has been approved by the court to provide such assistance to the witness; and

(ii) takes an oath or makes an affirmation that he or she will communicate accurately with both the witness and the court; and

(b) in a case where a party to the proceedings disputes the person's ability or impartiality in providing communication assistance—if the judge is satisfied as to the person's ability and impartiality.

(6) The fact that a person has provided communication assistance to a witness in a pre-trial special hearing under this section does not of itself prevent that person also from being called as a witness in the trial of the charge of the offence or in any other relevant proceedings.

(6a) If a witness to whom this section applies is accompanied by a canine court companion for the purpose of providing emotional support—

(a) the witness may also be accompanied by a person who will act as a handler for the dog and subsection (4) applies to the handler as if they were an accompanying person providing emotional support to the witness; and

(b) if practicable, the dog should not be visible in the audio visual record of the evidence.

(7) An application for a pre-trial special hearing must—

(a) be made in writing by the party calling the witness to whom this section applies to give evidence; and

(b) be filed in the court as a proceeding preliminary to 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 why the witness is a witness to whom this section applies and the reasons why the special hearing is sought; and

(e) otherwise be made in accordance with the rules of court.

(8) The respondent may, if of the opinion that the witness on whose behalf the application has been made is not in fact a witness to whom this section applies, 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.

(9) 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.

(10) If no objection to the application is filed within the prescribed period, the court must, subject to subsection (1)(b) and (c), make an order for a pre-trial special hearing pursuant to this section.

(11) An order for a pre-trial special hearing may be varied or revoked on the court's own initiative, or on the application of a party to the proceedings.

(11a) If an order has been made for a pre-trial special hearing in relation to a witness in a trial of a charge of a child sexual offence, the court may also (at the time of making that order, at the pre-trial special hearing or at any other time) give 1 or more of the following directions:

(a) a direction about the manner of questioning the witness;

(b) a direction about the duration of questioning the witness;

(c) a direction about the questions that may or may not be put to the witness;

(d) if there is more than 1 accused, a direction about the allocation among the accused of the topics about which the witness may be asked;

(e) a direction about the use of models, plans, body maps or similar aids to help communicate a question or an answer;

(f) a direction that if a party intends to lead evidence that contradicts or challenges the evidence of the witness or that otherwise discredits the witness, the party is not obliged to put that evidence in its entirety to the witness in cross-examination;

(g) any other direction the court thinks necessary for the fair and efficient conduct of the proceeding.

(12) Subject to this section, a pre-trial special hearing will be conducted as the court thinks fit.

(13) At a pre-trial special hearing the court may do any of the following:

(a) make orders under section 13BA as to the admission of any recorded evidence of the witness made pursuant to Part 17 Division 3 of the *Summary Offences Act 1953*;

(b) if any such recorded evidence is to be admitted—hear and determine any application for further examination, cross-examination or re-examination of the witness made pursuant to section 13BA;

(c) if no such recorded evidence exists or is to be admitted or if an application referred to in paragraph (b) is granted—permit examination, cross-examination or re-examination of the witness at the pre-trial special hearing;

(d) make orders under section 13BA as to the admission of the audio visual record of any examination, cross-examination or re-examination of the witness at the pre-trial special hearing;

(e) make orders (on the court's own initiative, or on the application of a party to the proceedings) as to any other matter that the court thinks fit (including, without limitation, any orders of a kind referred to in section 13A(2)).

(13a) The court may only permit examination, cross-examination or re-examination of the witness at the pre-trial special hearing if the court is satisfied as to the witness's capacity to give sworn or unsworn evidence at the time of the pre-trial special hearing.

(14) In this section—

trial of a charge of an offence to which this section applies means—

(a) the trial of a charge of a serious offence against the person; or

(b) the trial of a charge of an offence of contravening or failing to comply with an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*; or

(c) the trial of a charge of an offence of contravening or failing to comply with a restraining order under the *Summary Procedure Act 1921*;

witness to whom this section applies means—

(a) a young child; or

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

(c) in the case of a trial of a charge of a child sexual offence, any of the following witnesses:

(i) an alleged victim of the offence (regardless of their age at the time of the trial);

(ii) a child;

(iii) a vulnerable witness;

(iv) any other witness if the court is satisfied that they should be allowed to give evidence in a manner contemplated by this section; or

(d) in the case of a trial of an offence involving domestic abuse (within the meaning of the *Intervention Orders (Prevention of Abuse) Act 2009*)—an alleged victim of the domestic abuse.

12AC—Effect of orders made at pre-trial special hearing

(1) An order made by the court at the pre-trial special hearing as to the admission of a recording of evidence of a witness (being an order under section 13BA) is taken to have been made for the purposes of the trial and, subject to subsection (2), is binding on the trial court provided that, during the course of the trial, the witness is available, if required, for further examination, cross-examination or re-examination.

(2) An order referred to in subsection (1) is not, however, binding on the trial court if the trial court is satisfied, on application by a party to proceedings and based only on matters that have arisen or become known after the making of the order at the pre-trial special hearing, that the order should not be binding (either in respect of all or part of the evidence to which the order relates, as the court considers appropriate).

(3) Despite subsection (1), the witness cannot be further examined, cross-examined or re-examined at the trial on the evidence admitted pursuant to an order made at the pre-trial special hearing without the permission of the trial court which may only be given—

(a) if the trial court is satisfied, on application by a party to proceedings, that a party to the proceedings has, since the pre-trial special hearing, become aware of a matter of which the party could not reasonably have been aware at the time of the pre-trial special hearing; or

(b) if the witness gives evidence in the trial apart from or in addition to evidence admitted pursuant to an order made at the pre-trial special hearing and the trial court is satisfied that it is in the interests of justice that the witness be further examined, cross-examined or re-examined at the trial; or

(c) if the trial court is satisfied that it is otherwise in the interests of justice to permit the witness to be further examined, cross-examined or re-examined.

(4) A reference in this section to the trial court includes any subsequent trial following a stay of proceedings, discontinuance of an earlier trial or an appeal.

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, or by a canine court companion, for the purpose of providing emotional support;

(f) if the witness has a physical disability or cognitive impairment—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.

(6a) If a witness is accompanied by a canine court companion for the purpose of providing emotional support, the following provisions apply:

(a) the witness may also be accompanied by a person who will act as a handler for the dog and subsection (6) applies to the handler as if they were an accompanying person providing emotional support to the witness;

(b) in a criminal trial—

(i) if the witness is accompanied by the dog while giving evidence before a jury—if practicable, the dog should not be visible to the jury while the witness is giving the evidence; and

(ii) if practicable, the dog should not be visible in any audio visual record of the 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 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 vulnerable witness or minimise the witness's embarrassment or distress, including (for example)—

(i) that the witness be accompanied by a relative, friend or other person, or by a canine court companion, for the purpose of providing emotional support; and

(ii) if the witness has a physical disability or cognitive impairment—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 (including, if the witness has complex communication needs, with such communication assistance as may be specified by the court); and

Note—

Communication assistance for a vulnerable witness with complex communication needs may be provided, for example, by a communication partner or by using a device (such as a speak-and-spell communication device).

(iii) that extra allowance be made for breaks during, and time to be given for, the taking of evidence; and

(iv) that, while the evidence is being taken, the judge and any lawyer present in the court not wear a wig or gown (or both).

(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 person for the purpose of providing emotional support or communication assistance, 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.

(5a) A person may only provide communication assistance to a witness—

(a) if the person—

(i) is a communication partner or has been approved by the court to provide such assistance to the witness; and

(ii) takes an oath or makes an affirmation that he or she will communicate accurately with both the witness and the court; and

(b) in a case where a party to the proceedings disputes the person's ability or impartiality in providing communication assistance—if the judge is satisfied as to the person's ability and impartiality.

(5b) The fact that a person has provided communication assistance to a witness in proceedings under this section does not of itself prevent that person also from being called as a witness to give evidence in the proceedings or in any other relevant proceedings.

(5c) If a witness is accompanied by a canine court companion for the purpose of providing emotional support, the following provisions apply:

(a) the witness may also be accompanied by a person who will act as a handler for the dog and subsection (5) applies to the handler as if they were an accompanying person providing emotional support to the witness;

(b) if the witness is accompanied by the dog while giving evidence before a jury—if practicable, the dog should not be visible to the jury while the witness is giving the evidence;

(c) if practicable, the dog should not be visible in any audio visual record of the 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.

(14) If an order has been made under this section in relation to a witness in a trial of a charge of a child sexual offence, the court may also (at the time of making that order or at any other time) give 1 or more of the following directions:

(a) a direction about the manner of questioning the witness;

(b) a direction about the duration of questioning the witness;

(c) a direction about the questions that may or may not be put to the witness;

(d) if there is more than 1 accused, a direction about the allocation among the accused of the topics about which the witness may be asked;

(e) a direction about the use of models, plans, body maps or similar aids to help communicate a question or an answer;

(f) a direction that if a party intends to lead evidence that contradicts or challenges the evidence of the witness or that otherwise discredits the witness, the party is not obliged to put that evidence in its entirety to the witness in cross-examination;

(g) any other direction the court thinks necessary for the fair and efficient conduct of the proceeding.

13B—Cross-examination of certain witnesses

(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 (whether or not related to the offence) 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—

(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—

(aa) an offence under section 24 of the *Criminal Law Consolidation Act 1935*; or

(a) a serious offence against the person; or

(ab) an aggravated offence under section 20 of the *Criminal Law Consolidation Act 1935*, where the aggravating circumstances of the offence are the circumstances referred to in section 5AA(1)(g) of that Act; 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*.

13BA—Admissibility of recorded evidence by certain witnesses in certain criminal proceedings

(1) Subject to this section, the court may, in the trial of a charge of an offence, or in a pre-trial special hearing conducted in accordance with section 12AB, order that the evidence of a witness be admitted in the form of an audio visual record.

(2) Subject to subsection (2a), an application for an order under subsection (1) must—

(a) be made in writing by the party wishing to have the audio visual record of the evidence admitted under this section; and

(b) be filed in the court; and

(c) within 14 days of being filed in the court—be served on the other party to the proceedings (the ***respondent***); and

(d) otherwise be made in accordance with the rules of court.

(2a) An application for an order to admit an audio visual record of the examination, cross-examination or re-examination of a witness at a pre-trial special hearing may be made orally at the pre-trial special hearing or in accordance with any directions of the court.

(3) An audio visual record of the evidence of a witness may be admitted under this section if the recording—

(a) has been made in a pre-trial special hearing conducted in accordance with section 12AB; or

(b) has been made pursuant to Part 17 Division 3 of the *Summary Offences Act 1953* and—

(i) the court is satisfied as to the witness's capacity to give sworn or unsworn evidence at the time the recording was made; and

(ii) the court is satisfied that the respondent has been given a reasonable opportunity to view the recording; and

(iii) the witness is available, if required, for further examination, cross-examination or re-examination during the course of the trial or, if the order for admission of the recording is being sought in a pre-trial special hearing under section 12AB, during the course of the pre-trial special hearing.

(4) The court's discretion to exclude evidence is not affected by subsection (3) and the court may—

(a) rule as inadmissible the whole or any part of the recording; or

(b) before admitting the recording, order that it be edited so as to exclude evidence that is inadmissible for any reason.

(5) Despite subsection (3)(b)(iii), the witness cannot be further examined, cross-examined or re-examined on the evidence admitted under this section without the permission of the court which may only be given, on application by a party to the proceedings—

(a) if the court is satisfied that a party to the proceedings has, since the making of the audio visual record, become aware of a matter of which the party could not reasonably have been aware at the time the record was made; or

(b) if the witness gives evidence in the trial or, if the order for admission of the recording is being sought in a pre-trial special hearing under section 12AB, during the course of the pre-trial special hearing, apart from or in addition to evidence admitted under this section in the form of an audio visual record and the court is satisfied that it is in the interests of justice that the witness be further examined, cross-examined or re-examined; or

(c) if the court is satisfied that it is otherwise in the interests of justice to permit the witness to be further examined, cross-examined or re-examined.

(6) If a court admits evidence in the form of an audio visual record under this section, the judge must—

(a) explain to the jury that the law allows the court to admit evidence in this form; and

(b) warn the jury—

(i) not to draw from the admission of evidence in that form any inference adverse to the defendant; and

(ii) not to allow the admission of evidence in that form to influence the weight to be given to the evidence.

13BB—Admissibility of recorded evidence in domestic violence proceedings

(1) This section applies in addition to section 13BA and any other law allowing evidence to be admitted in the form of a recording.

(2) In proceedings for a domestic violence offence, the evidence of a complainant may be admitted in the form of a recording made by a police officer—

(a) if—

(i) the evidence is in the form of a prescribed recording; and

(ii) the court is satisfied as to the complainant's capacity to give sworn or unsworn evidence at the time the recording was made; and

(iii) the court is satisfied that the defendant has been given a reasonable opportunity to listen to or view the recording; and

(iv) during the course of the trial, the complainant is available, if required, for further examination, cross-examination or re-examination; or

(b) if the court is satisfied that the interests of justice require the admission of the evidence (whether or not any of the requirements specified in paragraph (a) are satisfied).

(3) The court's discretion to exclude evidence is not affected by this section and the court may—

(a) rule as inadmissible the whole or any part of the recording; or

(b) before admitting the recording, order that it be edited so as to exclude evidence that is inadmissible for any reason.

(4) Despite subsection (2)(a)(iv) but subject to subsections (5) and (6), the complainant cannot be further examined, cross-examined or re-examined on the evidence admitted in the trial without the permission of the court which may only be given, on application by a party to the proceedings, if—

(a) the court is satisfied that a party to the proceedings has, since the making of the recording, become aware of a matter of which the party could not reasonably have been aware at the time the recording was made; or

(b) the complainant gives evidence in the trial apart from, or in addition to, evidence admitted under this section in the form of a recording and the court is satisfied that it is in the interests of justice that the complainant be further examined, cross-examined or re-examined; or

(c) the court is satisfied that it is otherwise in the interests of justice to permit the complainant to be further examined, cross-examined or re-examined.

(5) The prosecution may, with the permission of the court and in accordance with any directions of the court, question the complainant about—

(a) evidence given by the complainant that is unfavourable to the prosecution case; or

(b) a matter of which the complainant may reasonably be supposed to have knowledge and about which it appears to the court the complainant is not, in examination-in-chief, making a genuine attempt to give evidence; or

(c) whether the complainant has, at any time, made a prior inconsistent statement,

(and, for the avoidance of doubt, the requirements of subsection (4)(a), (b) and (c) do not apply to the giving of permission under this subsection).

(6) Questioning under subsection (5) must be conducted as if it were (and is, for the purposes of this Act other than provisions relating to re-examination, taken to be) cross-examination.

(7) Subsections (5) and (6) apply in addition to section 27.

(8) If a court admits evidence in the form of a recording under this section, the judge must—

(a) explain to the jury that the law allows the court to admit evidence in this form; and

(b) warn the jury—

(i) not to draw from the admission of evidence in that form any inference adverse to the defendant; and

(ii) not to allow the admission of evidence in that form to influence the weight to be given to the evidence.

(9) Without limiting section 73, the regulations may—

(a) prescribe additional requirements in relation to recordings under this section; and

(b) require that additional material be provided to the court with a recording in certain circumstances (such as a transcript or translation); and

(c) prescribe requirements in relation to access to, or service of, recordings and other material; and

(d) prescribe requirements in relation to custody of recordings; and

(e) impose restrictions on copying or distribution of recordings.

(10) In this section—

complainant, in proceedings for a domestic violence offence, means the person against whom the domestic violence offence is alleged to have been committed, but does not include a person who—

(a) is under 16 years of age; or

(b) is cognitively impaired;

domestic violence offence means any offence involving domestic abuse (within the meaning of the *Intervention Orders (Prevention of Abuse) Act 2009*);

informed consent means consent given in accordance with requirements prescribed by the regulations;

prescribed recording means a recording made by a police officer of a representation made by a complainant when the complainant was questioned by a police officer in connection with the investigation of the commission of a domestic violence offence where—

(a) the questioning occurred as soon as practicable after the commission of the offence; and

(b) the recording was made with the informed consent of the complainant; and

(c) the recording contains the following statements by the complainant:

(i) a statement as to the complainant's age;

(ii) a statement as to the truth of the representation;

(iii) any other matter required by the regulations or by rules of court;

recording means an audio record or an audio visual record.

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 the alleged victim of a child 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 12AB(2)(a) or 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, section 12AB(2)(a) or 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.

14A—Entitlement of witness to be given communication assistance in certain circumstances

(1) Subject to this section, if—

(a) a witness in proceedings is a person with complex communication needs; and

(b) assistance of a kind to meet the needs of the witness with understanding and communicating with the court during proceedings is readily available and it is otherwise practicable to make the assistance available,

the court may, on application under this section or on its own initiative, order that the evidence be given by the witness using assistance of a kind specified in the order (***communication assistance***).

(2) An order under this section need not be made in respect of a witness if the court is satisfied that the witness is able to understand and communicate with the court during the proceedings, including the ability to answer questions put orally and respond to them.

(3) 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 witness be accompanied by a communication partner;

(b) an order that the witness use a device or device of a kind, approved by the court, for the purpose of facilitating the taking of evidence from the witness;

(c) an order that the evidence be taken in some other particular way (to be specified by the court) that will, in the court's opinion, facilitate the taking of evidence from the witness.

(4) A person may only provide communication assistance to a witness—

(a) if the person—

(i) is a communication partner or has been approved by the court to provide such assistance to the witness; and

(ii) takes an oath or makes an affirmation that he or she will communicate accurately with both the witness and the court; and

(b) in a case where a party to the proceeding disputes the person's ability or impartiality in providing communication assistance—if the judge is satisfied as to the person's ability and impartiality.

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 and their spouses 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 spouses 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).

21—Competence and compellability of witnesses

(1) A close relative of a person charged with an offence is competent and compellable to give evidence for the defence and, subject to this section, is competent and compellable to give evidence for the prosecution.

(2) If a person is charged with an offence and a close relative of the accused is required by law (whether by subpoena or other process) to give evidence 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 requirement to give evidence against the accused in the proceedings.

(3) If, on an application under subsection (2), the court considers that—

(a) 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) 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 requirement to give evidence against the accused in the proceedings before the court.

(4) A court may, on its own initiative, grant an exemption under subsection (3) where no application has been made under subsection (2) if—

(a) the prospective witness who is required by law to give evidence against the accused is a young child or is cognitively impaired; and

(b) the court is of the opinion that such an exemption should be granted.

(5) Despite subsection (4), in proceedings in which a close relative of an accused person is called as a witness against the accused, the court is not required to make any inquiry about whether the prospective witness—

(a) is aware of his or her right to apply for an exemption under this section; or

(b) is incapable (whether by reason of age or some other reason) of understanding his or her right to apply for an exemption under this section.

(6) If a court is constituted of a judge and jury—

(a) an application for an exemption under this section must be heard and determined by the judge in the absence of the jury; and

(b) the following matters may not be made the subject of a question put to a witness in the presence of the jury or of any comment to the jury by counsel or the judge:

(i) whether or not a person applied for an exemption under this section;

(ii) whether or not the court considered granting an exemption under this section;

(iii) whether a person has been granted or refused an exemption under this section.

(7) A decision or order of a court made under this section, or the failure of a court to make an inquiry under subsection (5), does not give rise to a ground of appeal under section 157(1)(a)(i) or (ii) of the *Criminal Procedure Act 1921*.

(8) This section does not operate to make a person who has been charged with an offence compellable to give evidence in proceedings related to that charge.

(9) 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 inappropriate questions

(1) A question is an ***inappropriate question*** if—

(a) the question is misleading or confusing; or

(ab) the question is expressed in language that is unnecessarily complicated; 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, inappropriate 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 inappropriate 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 inappropriate, the court may take into account—

(a) the age, personality and educational level of the witness; and

(b) any physical disability or cognitive impairment of the witness; 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.

25A—Abolition of oath belief rule

The rule of law or practice known as the oath belief rule that allows a witness in a trial to be questioned and express an opinion about whether the evidence given on oath by another witness in court is credible is abolished.

Note—

See R v J, SM [2013] SASFC 96

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 or alleged 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, or alleged 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, or alleged 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.

29B—Prohibited direction in relation to doubts regarding truthfulness or reliability of victim's evidence

(1) In a trial in which more than one offence is charged, the trial judge must not direct the jury that if the jury doubts the truthfulness or reliability of the victim's evidence in relation to a charge, that doubt must be taken into account in assessing the truthfulness or reliability of the victim's evidence generally or in relation to other charges.

(2) Any rule of common law under which a trial judge is required or permitted to give the jury a direction referred to in subsection (1) is abolished.

29C—Evidence of opinions based on specialised knowledge of child behaviour etc

(1) Despite any other provision of this Act, or any other Act or law, if a person has specialised knowledge, based on the person's training, study or experience, of child development and child behaviour then evidence of that person's opinion that is wholly or substantially based on that specialised knowledge is admissible in proceedings relating to sexual abuse of a child.

(2) A reference in subsection (1) to an opinion of a person includes a reference to an opinion relating to—

(a) the development and behaviour of children generally; or

(b) the development and behaviour of children who have been victims of sexual offences, or offences similar to sexual offences.

(3) In this section—

sexual abuse of a child includes any unlawful conduct of a sexual nature committed to, or in relation to, a child.

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—Disclosure in action for defamation

(1) A person who is required to answer a question, or to disclose or produce a document or thing, in civil proceedings for defamation is not excused from answering the question or disclosing or producing the document or thing on the ground that the answer to the question or the disclosure 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 disclosed 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.

34AB—Identification evidence

(1) In a criminal trial, evidence of the identity of a person alleged to have committed an offence is not inadmissible, and is not to be excluded, merely because it was obtained other than by means of an identity parade involving a physical line-up of persons.

(2) In a criminal trial, evidence of the identity of a person alleged to have committed an offence obtained by means of an identity parade is to be excluded unless—

(a) —

(i) an audio visual record of the identity parade is made and kept in accordance with the regulations; and

(ii) if the regulations prescribe procedures for the conduct of an identity parade—the identity parade is conducted in accordance with the prescribed procedures; or

(b) the judge is satisfied that the interests of justice require the admission of the evidence despite the failure to comply with paragraph (a).

(3) In a criminal trial where the identity of a person alleged to have committed an offence is in issue, the judge must, if evidence of the identity of the person is admitted, inform the jury—

(a) of the need for caution before accepting identification evidence; and

(b) of the reasons for the need for caution, both generally and in the circumstances of the case.

(4) In giving any such information, the judge is not required to use any particular form of words but may not suggest that identification evidence obtained from an identity parade by any means other than by a physical line-up of persons is inherently or intrinsically less reliable than evidence obtained from an identity parade by such means.

(5) To avoid doubt, this section does not—

(a) make evidence admissible that would otherwise be inadmissible; or

(b) affect the court's discretion to exclude evidence.

(6) In this section—

identity parade means a contemporaneous presentation (whether by a physical line-up or by means of images) of a number of persons to a witness for the purpose of identifying a 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.

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.

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 committal proceedings 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 committal proceedings relating to a charge of an indictable offence or oral evidence is taken from a witness in committal proceedings; 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 in the committal proceedings 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.

34LA—Admissibility of evidence of out of court statements by certain alleged victims of sexual offences

(1) In proceedings in which a person is charged with a sexual offence, 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 is identified to the court's satisfaction; and

(c) each of the conditions specified in subsection (2) is satisfied.

(2) The conditions are as follows:

(a) the person who made the out of court statement is the alleged victim of the sexual offence;

(b) the person will not be called as a witness in the proceedings because the judge is satisfied that, at the time the person made the out of court statement, the person was—

(i) a young child; or

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

(c) the out of court statement was not made by the person to an investigating or other authority as part of a formal interview process conducted in relation to the alleged offence;

(d) after considering the out of court statement, the circumstances in which it was made and any other relevant factor, the judge is of the opinion that the evidence has sufficient probative value to justify its admission.

(3) Subsection (2)(b) applies regardless of the age of the person or the person's capacity at the time the judge is considering whether to admit the evidence of the out of court statement in the proceedings.

(4) Evidence of an out of court statement admitted under this section may be used to prove the truth of the facts asserted in the statement.

(5) If evidence of an out of court statement is admitted under this section, the judge must warn the jury to treat the evidence of the out of court statement with particular care because it has not been tested by way of examination or cross-examination of the alleged victim.

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 degree of 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) Subject to subsection (2), 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 as to the following matters:

(a) that there is no typical or normal response to non-consensual sexual activity and the person is not to be regarded as having consented to the sexual activity the subject of the charge merely because—

(i) 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

(ii) the person did not protest to or physically resist the sexual activity; or

(iii) the person was not physically injured in the course of, or in connection with, the sexual activity; or

(iv) 1 or more of the following circumstances apply:

(A) the person freely and voluntarily agreed to sexual activity of a different kind with the defendant;

(B) the person had freely and voluntarily agreed to sexual activity (whether or not of the same kind) with the defendant on an earlier occasion;

(C) 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;

(b) that non-consensual sexual activity can occur in many different circumstances and is not always perpetrated by a stranger in a public area;

(c) that non-consensual sexual activity can occur between different kinds of people including—

(i) people who know one another; or

(ii) people who are married to one another; or

(iii) people who are in an established relationship with one another,

and is not less serious just because the people involved have any such relationship;

(d) that—

(i) trauma may affect people differently, which means that some people may show obvious signs of emotion or distress when giving evidence in court about an alleged sexual offence but others may not; and

(ii) the presence or absence of emotion or distress does not necessarily mean that a person is not telling the truth about an alleged sexual offence;

(e) that it should not be assumed that a person consented to sexual activity because the person—

(i) wore particular clothing or had a particular appearance; or

(ii) consumed alcohol or any other drug; or

(iii) was present in a particular location (either generally or at a particular time).

(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.

(2a) Despite any other provision of this Act, or any other Act or law, a court may, in a trial of a charge of a sexual offence, receive expert evidence about any matter referred to in this section.

(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 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 that relies on a particular propensity or disposition of the defendant as circumstantial evidence of a fact in issue 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.

Division 4—Evidence in proceedings where circumstances of family violence

34U—Interpretation

(1) In this Division—

abuse has the same meaning as in the *Intervention Orders (Prevention of Abuse) Act 2009* and, for the purposes of this definition—

(a) a single act may amount to abuse; and

(b) a number of acts that form part of a pattern of behaviour may amount to abuse, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial; and

(c) a person may commit an act of abuse by causing or allowing another person to commit the act or to take part in the commission of the act;

family violence, in relation to a person, means an act or acts of abuse committed against the person by a member of the person's family;

member of a person's family—the following persons are members of a person's family:

(a) a person who is, or was, a spouse of the person;

(b) a person who is, or was, a domestic partner of the person;

(c) a person who is, or was, in an intimate personal relationship with the person (not being a marriage or domestic partnership);

(d) a person who is, or was, a parent, grandparent or step-parent of the person;

(e) a sibling or step-sibling of the person;

(f) a child, grandchild or step-child of the person;

(g) a person who, according to Aboriginal or Torres Strait Islander kinship rules, is a member of a culturally recognised family group of the person;

(h) a guardian of the person;

(i) a person who is in an ongoing care relationship with the person (within the meaning of the *Carers Recognition Act 2005*);

(j) a person (not being a person referred to in a preceding paragraph) who is, or was, a member of the household of the person;

(k) any other person prescribed by the regulations for the purposes of this paragraph,

and ***family member*** has a corresponding meaning.

(2) For the purposes of this Division, a reference to proceedings related to the offence includes a reference to any committal or interlocutory proceedings related to the offence.

34V—Circumstances of family violence

(1) For the purposes of this Act and any other Act, an offence is committed in, or an event occurs in, ***circumstances of family violence*** if—

(a) the offence or event consists of, or includes, the commission of family violence; or

(b) the offence is committed, or the event occurs—

(i) during the commission of family violence; or

(ii) as a response to the commission of family violence, or a threat of the commission of family violence in the future (whether implied or express and whether the commission of the family violence is imminent or otherwise); or

(c) the offence is committed, or the event occurs, in any other circumstances resulting from or related to the commission of family violence.

(2) A court sentencing a person for an offence committed in circumstances of family violence—

(a) will, if the trial court made a finding of fact relating to circumstances or evidence of family violence, be bound by that finding; and

(b) may, if the trial court has not made such a finding, determine any question relating to circumstances of family violence—

(i) by reference to any evidence of family violence adduced during proceedings related to the offence (whether by the defendant or the prosecution); or

(ii) by reference to any evidence of family violence provided to the sentencing court during sentencing proceedings (whether by the defendant or the prosecution); or

(iii) by reference to any statement of agreed facts provided to the court during proceedings related to the offence or the sentencing proceedings; or

(iv) by otherwise informing itself in relation to the circumstances of family violence in accordance with any rules of court.

34W—Evidence of family violence

Except where the contrary intention appears, a reference in this or any other Act to ***evidence of family violence***, in relation to a person, will be taken to include a reference to evidence of the following kinds:

(a) evidence of the history of the relationship between the person and a family member, including family violence by the family member towards the person or a family member, or by the family member or the person in relation to any other family member;

(b) evidence of the effect, including the cumulative effect, of family violence on the person or a family member;

(c) evidence of any social, cultural or economic effects of the family violence on the person or a family member;

(d) evidence of the general nature and dynamics of the person's relationship, including the possible consequences of separation from the person who committed the family violence;

(e) evidence of the psychological effect of family violence on the person or a family member,

and includes, to avoid doubt, social framework evidence within the meaning of section 34X.

34X—Certain expert evidence relating to nature and effect of family violence to be admissible

(1) Despite any other provision of this Act, or any other Act or law, a court may, in prescribed proceedings before the court, receive expert evidence consisting of social framework evidence about family violence.

(2) To avoid doubt, nothing in subsection (1) limits the ability of a defendant or any other person to adduce evidence relating to the nature and effect of family violence.

(3) To avoid doubt, social framework evidence may include evidence relating to a particular person or to particular circumstances.

(4) In this section—

prescribed proceedings means proceedings for an offence that the defendant asserts occurred in circumstances of family violence and in which 1 or more of the following defences are raised:

(a) self defence;

(b) duress;

(c) sudden or extraordinary emergency;

social framework evidence means evidence of the nature and effect of family violence that provides context to the experiences of victims of family violence, including—

(a) evidence relating to the general nature and dynamics of relationships affected by family violence and the cumulative effect on the person or a family member of family violence; and

(b) evidence of the experiences of victims of family violence generally, to the extent that the evidence assists in understanding family violence generally; and

(c) such other evidence as may be necessary or appropriate to ensure a jury has an adequate understanding of family violence.

34Y—Trial directions relating to evidence of family violence

If evidence of family violence is admitted in the course of a trial for an offence that the defendant asserts occurred in circumstances of family violence, 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.

34Z—Review of Division and section 69A

(1) The Minister must cause a review of the operation of this Division and section 69A (as enacted or amended by the *Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Act 2020*) to be conducted and a report on the review to be prepared and submitted to the Minister.

(2) The review and report must include—

(a) consideration of the effect (if any) that this Division has had generally in relation to offences committed in circumstances of family violence; and

(b) consideration of whether the circumstances of family violence set out in section 34V should be modified; and

(c) details of any appeals relating to directions given under section 34Y; and

(d) details of any suppression orders made under section 69A(1a); and

(e) a recommendation as to whether further modification to the Act is necessary or desirable for the purpose of recognising and addressing the role family violence plays in relation to certain offending,

and may include any other matter the Minister thinks fit.

(3) The review and the report must be completed after the fifth, but before the sixth, anniversary of the commencement of this section.

(4) A report under this section may be combined with a report under section 15F of the *Criminal Law Consolidation Act 1935*.

(5) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

Division 5—Evidence relating to Aboriginal traditional laws and customs

34ZA—Evidence relating to Aboriginal traditional laws and customs

Despite a provision of this Act, or any other Act or law, the following provisions apply if an Aboriginal person gives evidence relating to the existence, or non-existence, or the content, of traditional laws and customs of an Aboriginal group:

(a) evidence that would otherwise be inadmissible under the hearsay rule at common law is admissible as evidence of the fact stated;

(b) evidence that would otherwise be inadmissible under the opinion rule at common law is admissible to prove the existence of the fact about the existence of which the opinion was expressed;

(c) the court may make orders or other arrangements that the court thinks fit (including, but not limited to, making orders or arrangements relating to the giving, receiving or publication of evidence) having regard to Aboriginal traditional law and custom, but not so as to prejudice unduly any other party to the relevant proceedings.

Part 4—Documents and other records

Division 1—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.

35A—Evidence of date of assent to Act

The date appearing—

(a) on a copy of an Act printed or published, or purporting to be printed or published, by the Government Printer; or

(b) on a copy of an Act published under the *Legislation Revision and Publication Act 2002* or in material published in relation to such an Act on a website prescribed by regulations made for the purposes of section 9(3) of the *Legislation Revision and Publication Act 2002*,

as the date on which the Governor assented to the Act, or made known Her Majesty's assent to the Act, is evidence that the date is the date on which the Governor so assented, or made known Her Majesty's assent, and will be judicially noticed accordingly.

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 or published 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 document purporting to be the Gazette shall in all courts be evidence that the document is the Gazette and was published on the day on which it bears date.

37B—Proof of printing or publishing by Government Printer

The mere production of a document purporting to be printed or published by the Government Printer or by the authority of the Government of the State will in all courts be evidence that the document was printed or published 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.

Division 2—Proof of convictions, acquittals etc

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.

Division 3—Documents relating to ships or transport

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.

Division 4—Banking records

46—Interpretation

In this Division—

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.

Maximum penalty: $1 000.

(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 $5 000.

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.

Division 5—Other documents and records

52—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 is, subject to this section, admissible in evidence.

(2) A document must not be admitted in evidence under subsection (1) if 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 or her own knowledge to the statement that is contained or implicit in, or may be inferred from, the contents of the document.

(3) A document must not be admitted in evidence under subsection (1) 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 must 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.

53—Admission of business records in evidence

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

(a) is admissible in evidence without further proof; and

(b) is evidence of a 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 must not be admitted in evidence under subsection (1) 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 subsection (1), consideration must 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.

Division 6—Matters relating to communications

54—Electronic communications

(1) If an apparently genuine document purports to contain a record of an electronic communication (other than one referred to in section 55), it will be presumed in the absence of evidence to the contrary, that the communication—

(a) was sent or made in the form of electronic communication that appears from the document to have been the form by which it was sent or made; and

(b) was sent or made by or on behalf of the person by or on whose behalf it appears from the document to have been sent or made; and

(c) was sent or made on the day on which, at the time at which and from the place from which it appears from the document to have been sent or made; and

(d) was received at the destination to which it appears from the document to have been sent; and

(e) if it appears from the document that the sending of the communication concluded at a particular time—was received at that destination at that time.

(2) A provision of subsection (1) does not apply in proceedings if—

(a) the proceedings relate to a contract; and

(b) all parties to the proceedings are parties to the contract; and

(c) the provision is inconsistent with a term of the contract.

(3) A document referred to in subsection (1) may be admitted in proceedings as evidence of any of the following representations contained in the document:

(a) the identity of the person from whom or on whose behalf the electronic communication was sent;

(b) the date on which or the time at which the communication was sent;

(c) the destination of the communication or the identity of the person to whom the communication was addressed.

(4) In this section—

electronic communication has the same meaning as in the *Electronic Transactions Act 2000*.

55—Telegrams and lettergrams

(1) If a document purporting to contain a record of a message is transmitted by means of a lettergram or telegram, it will be presumed, in the absence of evidence to the contrary, that the message was received by the person to whom the message is addressed no later than 24 hours after the message was delivered to a post office for transmission as a lettergram or telegram.

(2) This section does not apply in proceedings if—

(a) the proceedings relate to a contract; and

(b) all parties to the proceedings are parties to the contract; and

(c) subsection (1) is inconsistent with a term of the contract.

Division 7—Miscellaneous

56—Evidence produced by processes, machines and other devices

(1) This section applies to a document or thing—

(a) that is produced wholly or partly by a device or process; and

(b) that is tendered by a party to proceedings who asserts that, in producing the document or thing, the device or process has produced a particular outcome.

(2) If a device or process is one that, or is of a kind that, if properly used, will ordinarily produce that outcome, it will be presumed, in the absence of evidence to the contrary, that, in producing the document or thing on the occasion in question, the device or process produced that outcome.

Example—

It would not be necessary to call evidence to prove that a photocopier normally produced complete copies of documents and that it was working properly when it was used to photocopy a particular document.

57—Modification of best evidence rule

(1) A document that 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) This section applies to a reproduction made—

(a) by an instantaneous process; or

(b) by a process in which the contents of a document—

(i) recorded by photographic, electronic or other means; or

(ii) stored on a data storage device,

are reproduced, whether in the same form or in some other form; or

(c) in any other way.

(3) If 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.

(4) 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, the court may rely on its own knowledge of the nature and reliability of the processes by which the reproduction was made.

Example—

A photograph displaying the contents of an image on a computer screen, or a transcript of sounds or words captured on an audio recording, may be admissible as a reproduction of the contents of the image or recording (as the case may be).

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) Subject to any other Act and any relevant rules of court, if a defendant is in custody prior to trial and facilities exist for dealing with proceedings by means of an audio visual link or audio link, the court may, if of the opinion that it is appropriate in the circumstances to do so, deal with the proceedings by audio visual link or audio link without requiring the personal attendance of the defendant.

(5) Without limiting the circumstances that a court may take into consideration for the purposes of subsection (4), if the proceeding is the defendant's first appearance before a court in connection with the charge or charges for which the defendant is in custody, the court must take into consideration whether or not the defendant is represented by a legal practitioner or has had the opportunity to obtain legal advice.

(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 person 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 $5 000.

(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—see Part 5 Division 3 of the *Criminal Procedure Act 1921*;

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) committal proceedings for 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, ***sensitive material*** includes—

(a) the whole or part of an audiovisual record, or the transcript of any such record, of—

(i) an interview of a witness to whom this paragraph applies made pursuant to Part 17 Division 3 of the *Summary Offences Act 1953*; or

(ii) evidence of a witness to whom this paragraph applies at a pre-trial special hearing conducted in accordance with section 12AB; and

(ab) child exploitation material (within the meaning of section 62 of the *Criminal Law Consolidation Act 1935*); and

(b) anything that contains or displays an image of a person if—

(i) the image is of the person engaged or apparently engaged in a private act; or

(ii) the image is of the victim, or alleged victim, of a sexual offence or an offence of stalking and harassment under section 19AA of the *Criminal Law Consolidation Act 1935*; or

(iii) 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.

(3) Paragraph (a) of subsection (1) applies to a witness—

(a) who is—

(i) a young child; or

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

(b) who is the victim, or alleged victim, of a sexual offence.

67HA—Court may give access to certain sensitive material in certain circumstances

A court may, if of the opinion that giving access to sensitive material of a kind referred to in section 67H(1)(a) that has been, or may be, admitted as evidence in proceedings before the court would assist a medical practitioner or psychologist—

(a) to prepare an expert report for the court; or

(b) to provide treatment or therapy to the witness,

make the sensitive material available to the medical practitioner or psychologist (as the case may be) subject to such conditions as the court thinks fit.

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.

Division 11—Religious confession

67K—No confessional privilege in child sexual abuse matters

(1) The fact that information was gained by a person during, or in connection with, a religious confession does not prevent or otherwise affect the giving of evidence as to, or other disclosure of, the information for the purpose of criminal proceedings for a child sexual offence or civil proceedings for child sexual abuse.

(2) In this section—

civil proceedings for child sexual abuse means any civil proceedings in which a party is alleging that unlawful conduct of a sexual nature was committed to, or in relation to, a child;

religious confession means a confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the member's church or religious denomination.

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 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 (including evidence admitted in the form of an audio visual record) 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.

(1b) Where child exploitation material (within the meaning of section 62 of the *Criminal Law Consolidation Act 1935*) is adduced, or is to be adduced, as evidence in proceedings before the court, 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) 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 evidence is adduced.

(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.

(1a) Without limiting subsection (1), a court may, subject to this section, make a suppression order in relation to evidence given by, or relating to, a defendant if—

(a) the defendant asserts that an offence with which the defendant is charged occurred in circumstances of family violence; and

(b) the evidence relates to those circumstances of family violence; and

(c) the evidence is of a humiliating or degrading nature (whether to the defendant or another person).

(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 committal proceedings;

(ii) on the withdrawal of a charge after the completion of committal proceedings;

(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 Court of Appeal, a further appeal lies to the Court of Appeal 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

(2) A person must not, before the relevant time, 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.

(2a) A police officer or any other person acting in a public official capacity who is responsible for conducting the criminal investigation in respect of a person who has been, or is about to be, charged with a sexual offence must, before the relevant time, ensure that all reasonable efforts are made to notify the victim about the expiry of the prohibition applying in respect of publication of the accused person's identity under subsection (2).

(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 time, in relation to a charge of an offence, means the time at which the accused person's first appearance in a court (whether personally or by counsel or solicitor) in relation to the charge is concluded.

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 8A—Journalists

72—Interpretation

In this Part—

informant means a person who gives information to a journalist in the normal course of the journalist's work;

journalist means a person engaged in the profession or occupation of journalism in connection with the publication of information in a news medium;

news medium means any medium for the dissemination to the public, or a section of the public, of news and observations on news;

prescribed person, in respect of a journalist, means—

(a) an employer of the journalist; or

(b) a person who engaged the journalist under a contract for services; or

(c) any other person prescribed by the regulations for the purposes of this definition.

72A—Application of Part

This Part applies to any proceedings before a court commenced before or after the commencement of this Part.

72B—No liability incurred for failure to disclose identity of informant in court proceedings

(1) Subject to this section, but despite any other provision of this Act or any other Act or law, if, in the course of proceedings to which this Part applies, a person satisfies the court that—

(a) the person is—

(i) a journalist; or

(ii) a prescribed person in respect of a journalist; and

(b) —

(i) in the case of a journalist—the journalist; or

(ii) in the case of a prescribed person—the journalist in respect of whom the person is a prescribed person,

has been given information by an informant; and

(c) the informant gave the information to the journalist in the expectation that the information may be published in a news medium; and

(d) the informant reasonably expected that the informant's identity would be kept confidential (whether because of an express undertaking given by the journalist or otherwise),

then the person does not incur any criminal or civil liability for failing or refusing to answer any question, or to produce any document or other material, that may directly or indirectly disclose the identity of the informant.

(2) However, the court may, on the application of a party to the proceedings or (subject to subsection (3)) on its own motion—

(a) order that subsection (1) does not apply to, or in relation to, a person; and

(b) make any ancillary order the court thinks appropriate.

(3) The court may only make orders on its own motion if—

(a) all parties to the proceedings before the court are not legally represented; or

(b) the court is of a kind that does not make orders on application by parties.

(4) The court may only make an order under subsection (2)(a) if it is satisfied that, having regard to the circumstances of the case, the public interest in disclosing the identity of the informant—

(a) outweighs any likely adverse effect of the disclosure on the informant or any other person; and

(b) outweighs the public interest relating to the communication of information by the news media generally; and

(c) outweighs the need of the news media to be able to access information held by potential informants.

72C—Review of Part

(1) The Minister must cause a review of the operation of this Part to be conducted and a report on the review to be prepared and submitted to the Minister.

(2) The review and the report must be completed after the third but before the fourth anniversary of the commencement of this Part.

(3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

Part 9—Miscellaneous

73—Regulations

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

(2) Without limiting the generality of subsection (1), the regulations may—

(a) prescribe forms for the purposes of this Act; and

(b) prescribe, or provide for the calculation of, costs, fees or charges for the purposes of this Act; and

(c) exempt any person or class of persons from the obligation to pay any costs, fees or charges so prescribed; and

(d) prescribe penalties, not exceeding $5 000, for breach of, or non-compliance with, a regulation.

(3) The regulations may—

(a) be of general or limited application; and

(b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and

(c) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and

(d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or another person.

Schedule 1—Review of identity parade evidence

1—Review and report on section 34AB

(1) The Minister must, within 12 months after the commencement of this clause, cause a review to be carried out of any orders and directions issued by the Commissioner of Police to support the operation of section 34AB of this Act (as inserted by the *Evidence (Identification Evidence) Amendment Act 2013*), including the extent to which any such orders and directions—

(a) reflect scientific best practice; and

(b) make provision for the following:

(i) persons with disability;

(ii) persons of cultural and linguistic diversity.

Example—

Ensuring that the procedures to be followed are accessible to persons referred to in paragraph (b).

(2) A report on the review must be provided to the Minister within 3 months after the commencement of the review.

(3) The Minister must, within 12 sitting days after receipt of the report under this clause, cause a copy of the report to be laid before each House of Parliament.

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	8.6.2025
Part 2	1.6.2022
Part 3	1.7.2026
Part 4	1.1.2022
Part 6B	1.1.2003 (Reprint No 13)
Part 6C	8.12.2016
Part 7	8.6.2025
Part 8	29.3.2021
Part 8A	9.8.2018
Part 9	31.1.2019
Schedules	7.7.2014

- 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.

Legislation repealed by principal Act

The *Evidence Act 1929* repealed the following:

An Act for Improving the Law of Evidence

Ordinance to Facilitate the Admission of the unsworn Testimony of the Aboriginal Inhabitants of South Australia and the parts adjacent

Ordinance to amend Ordinance 3 of 1848

An Act to amend the Law of Evidence

Evidence Further Amendment Act 1869

An Act for Shortening and Explaining the Language used in Acts of Parliament, and for other purposes

The Telegraphic Messages Act 1873

The Bankers Books Evidence Act 1879

Evidence Further Amendment Act 1888

The Oaths and Affirmations Act 1911

Evidence Publication Act 1917

Evidence Amendment Act 1925

Legislation amended by principal Act

The *Evidence Act 1929* amended the following:

The Supreme Court Procedure Act 1855

An Act for amending the Law of Evidence and Practice on Criminal trials

Matrimonial Causes Act 1867

The Criminal Law Consolidation Act 1876

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1929	1907	*Evidence Act 1929*	30.10.1929	30.10.1929
1933	2110	*Evidence Act Amendment Act 1933*	31.8.1933	31.8.1933
1940	40	*Evidence Act Amendment Act 1940*	28.11.1940	28.11.1940
1941	27	*Evidence Act Amendment Act 1941*	13.11.1941	13.11.1941
1945	29	*Evidence Act Amendment Act 1945*	3.1.1946	3.1.1946
1947	5	*Evidence Act Amendment Act 1947*	2.10.1947	2.10.1947
1949	36	*Evidence Act Amendment Act 1949*	24.11.1949	24.11.1949
1952	42	*Statute Law Revision Act 1952*	4.12.1952	4.12.1952
1955	26	*Evidence Act Amendment Act 1955*	1.12.1955	1.12.1955
1957	36	*Evidence Act Amendment Act 1957*	14.11.1957	14.11.1957
1960	25	*Evidence Act Amendment Act 1960*	27.10.1960	27.10.1960
1968	46	*Evidence Act Amendment Act 1968*	19.12.1968	19.12.1968
1969	72	*Evidence Act Amendment Act 1969*	11.12.1969	31.8.1970 (*Gazette 20.8.1970 p701*)
1972	53	*Evidence Act Amendment Act 1972*	27.4.1972	1.2.1973 (*Gazette 1.2.1973 p377*)
1972	54	*Local and District Criminal Courts Act Amendment Act 1972*	27.4.1972	9.11.1972 (*Gazette 9.11.1972 p2252*)
1974	71	*Evidence Act Amendment Act 1974*	17.10.1974	28.11.1974 (*Gazette 28.11.1974 p3372*)
1976	84	*Evidence Act Amendment Act 1976*	9.12.1976	9.12.1976
1978	65	*Evidence Act Amendment Act 1978*	28.9.1978	28.9.1978
1979	9	*Evidence Act Amendment Act 1979*	1.3.1979	1.3.1979
1982	40	*Evidence Act Amendment Act 1982*	22.4.1982	6.5.1982 (*Gazette 6.5.1982 p1438*)
1983	47	*Evidence Act Amendment Act 1983*	16.6.1983	16.6.1983
1983	55	*Evidence Act Amendment Act (No. 2) 1983*	16.6.1983	1.8.1983 (*Gazette 7.7.1983 p5*)
1984	24	*Evidence Act Amendment Act 1984*	10.5.1984	10.5.1984
1984	56	*Statutes Amendment (Oaths and Affirmations) Act 1984*	24.5.1984	1.7.1984 (*Gazette 28.6.1984 p1897*)
1984	90	*Evidence Act Amendment Act (No. 2) 1984*	29.11.1984	1.1.1985 (*Gazette 13.12.1984 p1811*)

1984	107	*Evidence Act Amendment Act (No. 3) 1984*	20.12.1984	20.12.1984
1985	96	*Evidence Act Amendment Act 1985*	1.11.1985	1.12.1985 (*Gazette 7.11.1985 p1361*)
1986	107	*Evidence Act Amendment Act 1986*	18.12.1986	5.4.1987 (*Gazette 26.2.1987 p434*)
1988	32	*Evidence Act Amendment Act 1988*	21.4.1988	1.5.1988 (*Gazette 28.4.1988 p1066*)
1988	45	*Evidence Act Amendment Act (No. 2) 1988*	5.5.1988	5.5.1988
1989	43	*Evidence Act Amendment Act 1989*	4.5.1989	15.5.1989 (*Gazette 11.5.1989 p1250*)
1990	72	*Evidence Act Amendment Act 1990*	20.12.1990	20.12.1990
1991	41	*Evidence Amendment Act 1991*	31.10.1991	16.7.1992 (*Gazette 16.7.1992 p622*)
1991	49	*Director of Public Prosecutions Act 1991*	21.11.1991	6.7.1992 (*Gazette 25.6.1992 p1869*)
1992	26	*Statutes Amendment (Attorney-General's Portfolio) Act 1992*	14.5.1992	6.7.1992 (*Gazette 2.7.1992 p209*)
1992	76	*Statutes Amendment (Right of Reply) Act 1992*	26.11.1992	s 5—1.1.1993 (*Gazette 10.12.1992 p1752*)
1993	37	*Evidence (Miscellaneous) Amendment Act 1993*	13.5.1993	15.7.1993 (*Gazette 15.7.1993 p520*)
1993	53	*Evidence (Vulnerable Witnesses) Amendment Act 1993*	27.5.1993	1.9.1993 (*Gazette 15.7.1993 p520*)
1994	59	*Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994*	27.10.1994	1.1.1995 (*Gazette 8.12.1994 p1942*)
1995	27	*Statutes Amendment (Attorney-General's Portfolio) Act 1995*	27.4.1995	s 13—10.7.1995 (*Gazette 29.6.1995 p2973*)
1996	26	*Evidence (Settlement Negotiations) Amendment Act 1996*	2.5.1996	2.5.1996
1997	59	*Statutes Amendment (Attorney-General's Portfolio) Act 1997*	31.7.1997	Pt 4 (s 6)—14.9.1997 (*Gazette 11.9.1997 p704*)
1998	9	*Evidence (Use of Audio and Audio Visual Links) Amendment Act 1998*	2.4.1998	27.6.1999 (*Gazette 17.6.1999 p3090*)
1999	17	*Evidence (Confidential Communications) Amendment Act 1999*	1.4.1999	27.6.1999 (*Gazette 17.6.1999 p3090*)
1999	18	*Evidence (Miscellaneous) Amendment Act 1999*	1.4.1999	27.6.1999 (*Gazette 17.6.1999 p3090*)
1999	33	*Financial Sector Reform (South Australia) Act 1999*	17.6.1999	Sch (item 21)—1.7.1999 being the date specified under s 3(16) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)
2000	57	*Statutes Amendment and Repeal (Attorney-General's Portfolio) Act 2000*	20.7.2000	Pt 11 (s 25)—14.8.2000 (*Gazette 10.8.2000 p444*)

2002	32	*Legislation Revision and Publication Act 2002*	28.11.2002	Sch (cl 2)—1.1.2003 (*Gazette 19.12.2002 p4735*)
2002	33	*Statutes Amendment (Attorney-General's Portfolio) Act 2002*	28.11.2002	Pt 6 (ss 8 & 9)—3.3.2003 (*Gazette 27.2.2003 p807*)
2003	33	*Coroners Act 2003*	31.7.2003	Sch (cll 10—12)—1.7.2005 (*Gazette 23.6.2005 p1899*)
2003	44	*Statute Law Revision Act 2003*	23.10.2003	Sch 1—24.11.2003 (*Gazette 13.11.2003 p4048*)
2005	50	*Defamation Act 2005*	27.10.2005	Sch 1 (cl 5)—1.1.2006: s 2
2006	17	*Statutes Amendment (New Rules of Civil Procedure) Act 2006*	6.7.2006	Pt 31 (ss 113—118)—4.9.2006 (*Gazette 17.8.2006 p2831*)
2006	30	*Evidence (Suppression Orders) Amendment Act 2006*	23.11.2006	1.4.2007 (*Gazette 29.3.2007 p929*)
2006	33	*Evidence (Use of Audio and Audio Visual Links) Amendment Act 2006*	30.11.2006	1.4.2007 (*Gazette 22.3.2007 p864*)
2006	43	*Statutes Amendment (Domestic Partners) Act 2006*	14.12.2006	Pt 33 (s 97)—1.6.2007 (*Gazette 26.4.2007 p1352*)
2006	44	*Statutes Amendment (Justice Portfolio) Act 2006*	14.12.2006	Pt 13 (s 21)—18.1.2007 (*Gazette 18.1.2007 p234*)
2007	48	*Statutes Amendment (Victims of Crime) Act 2007*	8.11.2007	Pt 4 (s 6)—17.7.2008 (*Gazette 17.7.2008 p3372*)
2008	7	*Statutes Amendment (Evidence and Procedure) Act 2008*	17.4.2008	Pt 4 (ss 10—22)—23.11.2008 (*Gazette 20.11.2008 p5171*) except new ss 13A, 13C & 13D (as inserted by s 12)—4.10.2009 (*Gazette 1.10.2009 p4764*)
2008	10	*Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008*	17.4.2008	Sch 1 (cl 5)—23.11.2008 (*Gazette 20.11.2008 p5171*)
2009	85	*Intervention Orders (Prevention of Abuse) Act 2009*	10.12.2009	Sch 1 (cl 14)—9.12.2011 (*Gazette 20.10.2011 p4269*)
2011	34	*Evidence (Discreditable Conduct) Amendment Act 2011*	22.9.2011	Pt 2 (s 4) & Sch 1—1.6.2012 (*Gazette 31.5.2012 p2637*)
2012	12	*Statutes Amendment (Serious and Organised Crime) Act 2012*	10.5.2012	Pt 8 (ss 40—42)—17.6.2012 (*Gazette 14.6.2012 p2756*)
2012	44	*Evidence (Reporting on Sexual Offences) Amendment Act 2012*	22.11.2012	11.2.2013 (*Gazette 7.2.2013 p262*)
2013	11	*Statutes Amendment (Attorney-General's Portfolio) Act 2013*	18.4.2013	Pt 6 (s 14)—9.6.2013 (*Gazette 6.6.2013 p2498*)
2013	26	*Magistrates (Miscellaneous) Amendment Act 2013*	27.6.2013	Sch 1 (cl 2)—4.7.2013 (*Gazette 4.7.2013 p2970*)
2013	47	*Statutes Amendment (Attorney-General's Portfolio No 2) Act 2013*	24.10.2013	Pt 5 (ss 7 & 8)—17.5.2014 (*Gazette 8.5.2014 p1630*)
2013	50	*Evidence (Discreditable Conduct) Amendment Act 2013*	24.10.2013	25.11.2013 (*Gazette 21.11.2013 p4276*)
2013	58	*Evidence (Identification Evidence) Amendment Act 2013*	7.11.2013	7.7.2014 (*Gazette 3.7.2014 p3127*)

2015	14	*Intervention Orders (Prevention of Abuse) (Miscellaneous) Amendment Act 2015*	9.7.2015	Sch 1 (cl 4)—1.12.2015 (*Gazette 19.11.2015 p4975*)
2015	16	*Statutes Amendment (Vulnerable Witnesses) Act 2015* as amended by 28/2016	6.8.2015	Pt 3 (ss 5—20) & Sch 1 (cl 1)—1.7.2016 (*Gazette 23.6.2016 p2618*)
2015	39	*Evidence (Records and Documents) Amendment Act 2015*	26.11.2015	4.4.2016 (*Gazette 4.2.2016 p366*)
2016	28	*Statutes Amendment (Attorney-General's Portfolio) Act 2016*	16.6.2016	Pt 8 (s 21)—1.7.2016 immediately after s 5 of 16/2015: s 2(4)
2016	35	*Statutes Amendment (Gender Identity and Equity) Act 2016*	4.8.2016	Pt 7 (s 32)—8.9.2016 (*Gazette 8.9.2016 p3676*)
2016	62	*Statutes Amendment (Courts and Justice Measures) Act 2016*	8.12.2016	Pt 5 (ss 8 & 9)—8.12.2016: s 2(1)
2017	7	*Statutes Amendment and Repeal (Simplify) Act 2017*	15.3.2017	Pt 10 (s 53)—15.3.2017: s 2(1)
2017	18	*Summary Procedure (Indictable Offences) Amendment Act 2017*	14.6.2017	Sch 2 (cll 19—26 & 41)—5.3.2018 (*Gazette 12.12.2017 p4961*)
2018	13	*Evidence (Journalists) Amendment Act 2018*	9.8.2018	9.8.2018
2018	38	*Statutes Amendment (Domestic Violence) Act 2018*	6.12.2018	Pt 4 (s 8)—31.1.2019 (*Gazette 24.1.2019 p272*); s 7—1.9.2019 (*Gazette 18.7.2019 p2744*)
2019	13	*Statutes Amendment (Child Exploitation and Encrypted Material) Act 2019*	11.7.2019	Pt 4 (ss 9 & 10)—24.10.2019 (*Gazette 24.10.2019 p3572*)
2019	21	*Statutes Amendment (Attorney-General's Portfolio) (No 2) Act 2019*	19.9.2019	Pt 7 (ss 13 & 14)—19.9.2019: s 2(1)
2019	45	*Supreme Court (Court of Appeal) Amendment Act 2019*	19.12.2019	Sch 1 (cl 46)—1.1.2021 (*Gazette 10.12.2020 p5638*)
2019	46	*Statutes Amendment (Legalisation of Same Sex Marriage Consequential Amendments) Act 2019*	19.12.2019	Pt 5 (s 9)—1.5.2020 (*Gazette 30.4.2020 p838*)
2020	2	*Evidence (Reporting on Sexual Offences) Amendment Act 2020*	12.3.2020	7.5.2020 (*Gazette 23.4.2020 p811*)
2020	43	*Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Act 2020*	10.12.2020	Pt 4 (ss 10 & 11) & Sch 1 (cl 2)—29.3.2021 (*Gazette 27.1.2021 p163*)
2020	45	*Evidence (Vulnerable Witnesses) Amendment Act 2020*	10.12.2020	19.3.2021 (*Gazette 11.3.2021 p892*)
2021	36	*Legislation Interpretation Act 2021*	30.9.2021	Sch 1 (cll 2 to 5)—1.1.2022 (*Gazette 23.12.2021 p4619*)
2021	57	*Statutes Amendment (Child Sexual Abuse) Act 2021*	9.12.2021	Pt 4 (ss 12 to 18)—1.6.2022 (*Gazette 17.2.2022 p490*)
2022	25	*Statutes Amendment (Stealthing and Consent) Act 2022*	8.12.2022	Pt 4 (ss 6 & 7)—8.3.2023 (*Gazette 2.3.2023 p464*)
2024	30	*Evidence (Aboriginal Traditional Laws and Customs) Amendment Act 2024*	19.9.2024	16.12.2024 (*Gazette 5.12.2024 p4544*)

2025	1	*Criminal Law Consolidation (Stalking and Harassment) Amendment Act 2025*	13.2.2025	Sch 1 (cll 1 & 2)—8.6.2025 (*Gazette 15.5.2025 p1171*)
2025	35	*Criminal Law Consolidation (Coercive Control) Amendment Act 2025*	11.9.2025	Sch 1 (cl 1)—uncommenced
2025	**73**	***Carers Recognition (Miscellaneous) Amendment Act 2025***	**4.12.2025**	**Sch 1 (cl 3)—1.7.2026 (*Gazette 19.2.2026 p361*)**

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	*amended by 40/1982 s 3*	*6.5.1982*
	omitted under Legislation Revision and Publication Act 2002	*1.1.2003*
s 3	*omitted under Legislation Revision and Publication Act 2002*	*7.7.2014*
s 4		
s 4(1)	s 4 redesignated as s 4(1) by 28/2016 s 21	1.7.2016
bank	*deleted by 40/1982 s 4*	*6.5.1982*
banker	*deleted by 40/1982 s 4*	*6.5.1982*
banker's book	*deleted by 40/1982 s 4*	*6.5.1982*
canine court companion	inserted by 45/2020 s 4	19.3.2021
child	inserted by 32/1988 s 3(a)	1.5.1988
child sexual offence	inserted by 57/2021 s 12	1.6.2022
cognitive impairment	inserted by 16/2015 s 5(1)	1.7.2016
communication partner	inserted by 16/2015 s 5(1)	1.7.2016
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*
	deleted by 16/2015 s 5(2)	*1.7.2016*
serious offence against the person	inserted by 7/2008 s 10(2)	23.11.2008
	amended by 1/2025 Sch 1 cl 1	8.6.2025

	amended by 35/2025 Sch 1 cl 1	uncommenced—not incorporated
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
	amended by 16/2015 s 5(3)	1.7.2016
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
	amended by 16/2015 s 5(4)	1.7.2016
young child	inserted by 32/1988 s 3(b)	1.5.1988
	amended by 16/2015 s 5(5)	1.7.2016
s 4(2) and (3)	inserted by 28/2016 s 21	1.7.2016
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	*deleted by 56/1984 s 3(b)*	*1.7.1984*
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 9(6)	inserted by 16/2015 s 6	1.7.2016
s 12	substituted by 32/1988 s 5	1.5.1988
s 12(1)—(3)	*deleted by 18/1999 s 6*	*27.6.1999*
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
s 12AB	inserted by 16/2015 s 7	1.7.2016
s 12AB(2)	amended by 45/2020 s 5(1), (2)	19.3.2021
s 12AB(3)	amended by 45/2020 s 5(3), (4)	19.3.2021
	(b) deleted by 45/2020 s 5(4)	19.3.2021
s 12AB(6a)	inserted by 45/2020 s 5(5)	19.3.2021
s 12AB(7)	amended by 45/2020 s 5(6)	19.3.2021
s 12AB(10)	amended by 45/2020 s 5(7)	19.3.2021
s 12AB(11)	amended by 45/2020 s 5(8)	19.3.2021
s 12AB(11a)	inserted by 57/2021 s 13(1)	1.6.2022
s 12AB(12) and (13)	substituted by 45/2020 s 5(9)	19.3.2021
s 12AB(13a)	inserted by 45/2020 s 5(9)	19.3.2021

s 12AB(14) witness to whom this section applies	amended by 57/2021 s 13(2)	1.6.2022
s 12AC	inserted by 45/2020 s 6	19.3.2021
s 13 before substitution by 7/2008	*deleted by 32/1988 s 5*	*1.5.1988*
	inserted by 53/1993 s 3	*1.9.1993*
s 13(4)	*amended by 18/1999 s 8*	*27.6.1999*
s 13	substituted by 7/2008 s 12	23.11.2008
s 13(2)	amended by 16/2015 s 8	1.7.2016
	amended by 45/2020 s 7(1)	19.3.2021
s 13(6a)	inserted by 45/2020 s 7(2)	19.3.2021
s 13A	inserted by 7/2008 s 12	4.10.2009
s 13A(2)	amended by 16/2015 s 9(1)	1.7.2016
	(f) deleted by 16/2015 s 9(1)	1.7.2016
	amended by 45/2020 s 8(1)	19.3.2021
s 13A(5)	amended by 16/2015 s 9(2)	1.7.2016
s 13A(5a) and (5b)	inserted by 16/2015 s 9(3)	1.7.2016
s 13A(5c)	inserted by 45/2020 s 8(2)	19.3.2021
s 13A(14)	inserted by 57/2021 s 14	1.6.2022
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
	amended by 62/2016 s 8(1)	8.12.2016
s 13B(2)	*deleted by 85/2009 Sch 1 cl 14(2)*	*9.12.2011*
s 13B(5) offence to which this section applies	amended by 85/2009 Sch 1 cl 14(3)	9.12.2011
	amended by 14/2015 Sch 1 cl 4	1.12.2015
	amended by 62/2016 s 8(2)	8.12.2016
s 13BA	inserted by 16/2015 s 10	1.7.2016
s 13BA(1)	amended by 45/2020 s 9(1)	19.3.2021
s 13BA(2)	amended by 45/2020 s 9(2), (3)	19.3.2021
s 13BA(2a)	inserted by 45/2020 s 9(4)	19.3.2021
s 13BA(3)	substituted by 45/2020 s 9(4)	19.3.2021
s 13BA(5)	amended by 45/2020 s 9(5), (6)	19.3.2021
s 13BB	inserted by 38/2018 s 7	1.9.2019
s 13C	inserted by 7/2008 s 12	4.10.2009
s 13C(1)	amended by 16/2015 s 11(1)	1.7.2016
	amended by 57/2021 s 15	1.6.2022
s 13C(2)	amended by 11/2013 s 14(1)	9.6.2013
	amended by 16/2015 s 11(2)	1.7.2016
s 13C(2a)	inserted by 11/2013 s 14(2)	9.6.2013
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 14A	inserted by 16/2015 s 12	1.7.2016
s 16	amended by 46/2019 s 9	1.5.2020
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
ss 19 and 20	*deleted by 76/1992 s 5*	*1.1.1993*
s 21 before substitution by 16/2015	*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*
s 21(7)		
close relative	*amended by 43/2006 s 97(1)*	*1.6.2007*
domestic partner	*inserted by 43/2006 s 97(2)*	*1.6.2007*
	deleted by 7/2008 s 13	*23.11.2008*
spouse	*substituted by 43/2006 s 97(2)*	*1.6.2007*
	deleted by 7/2008 s 13	*23.11.2008*
s 21	substituted by 16/2015 s 13	1.7.2016
s 21(7)	amended by 18/2017 Sch 2 cl 19	5.3.2018
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 25(1)	amended by 16/2015 s 14(1), (2)	1.7.2016
s 25(2)	amended by 16/2015 s 14(3)	1.7.2016
s 25(3)	amended by 16/2015 s 14(4)	1.7.2016
s 25(4)	amended by 16/2015 s 14(5), (6)	1.7.2016
s 25A	inserted by 7/2017 s 53	15.3.2017
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
s 29A(1) and (2)	amended by 21/2019 s 13	19.9.2019
ss 29B and 29C	inserted by 57/2021 s 16	1.6.2022
Pt 3		
Pt 3 Div 1		

heading	inserted by 7/2008 s 15	23.11.2008
s 32	*deleted by 9/1979 s 3*	*1.3.1979*
s 33	substituted by 50/2005 Sch 1 cl 5	1.1.2006
s 33(1)	amended by 47/2013 s 7(1)—(3)	17.5.2014
s 33(2)	amended by 47/2013 s 7(4)	17.5.2014
s 34A	substituted by 33/2002 s 9	3.3.2003
s 34AB	inserted by 58/2013 s 4	7.7.2014
s 34B	*deleted by 18/1999 s 11*	*27.6.1999*
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*
	deleted by 16/2015 s 15	*1.7.2016*
s 34CB	inserted by 7/2008 s 16	23.11.2008
s 34H	*deleted by 35/2016 s 32*	*8.9.2016*
s 34I before deletion by 7/2008	*inserted by 84/1976 s 3*	*9.12.1976*
	amended by 47/1983 s 4	*16.6.1983*
	substituted by 90/1984 s 3	*1.1.1985*
s 34I(1)	*amended by 17/2006 s 114(1)*	*4.9.2006*
s 34I(2)	*amended by 17/2006 s 114(2)*	*4.9.2006*
s 34I(3)	*amended by 17/2006 s 114(3)*	*4.9.2006*
s 34I(4)	*amended by 17/2006 s 114(4)*	*4.9.2006*
s 34I(6a)	*inserted by 18/1999 s 12*	*27.6.1999*
s 34I	*deleted by 7/2008 s 17*	*23.11.2008*
s 34J	inserted by 41/1991 s 3	16.7.1992
s 34J(2)	substituted by 18/1999 s 13	27.6.1999
s 34J(3)	amended by 18/2017 Sch 2 cl 20	5.3.2018
s 34K	inserted by 41/1991 s 3	16.7.1992
s 34K(1)	amended by 17/2006 s 115(1)	4.9.2006
	amended by 18/2017 Sch 2 cl 21(1), (2)	5.3.2018
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
s 34LA	inserted by 16/2015 s 16	1.7.2016
s 34M		
s 34M(4)	amended by 16/2015 s 17	1.7.2016
s 34N		
s 34N(1)	substituted by 25/2022 s 6(1)	8.3.2023
s 34N(2a)	inserted by 25/2022 s 6(2)	8.3.2023
Pt 3 Div 3	inserted by 34/2011 s 4	1.6.2012

s 34P		
s 34P(2)	amended by 57/2021 s 17	1.6.2022
s 34P(4)	amended by 50/2013 s 4	25.11.2013
Pt 3 Div 4	inserted by 43/2020 s 10	29.3.2021
s 34U		
s 34U(1)		
member of a person's family	**amended by 73/2025 Sch 1 cl 3**	**1.7.2026**
Pt 3 Div 5	inserted by 30/2024 s 3	16.12.2024
Pt 4		
heading	substituted by 39/2015 s 4	4.4.2016
Pt 4 Div 1		
heading	inserted by 39/2015 s 5	4.4.2016
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 35A	inserted by 36/2021 Sch 1 cl 2	1.1.2022
s 36	amended by 36/2021 Sch 1 cl 3	1.1.2022
s 37	amended by 9/1979 s 4	1.3.1979
	substituted by 72/1990 s 3	20.12.1990
s 37A	amended by 36/2021 Sch 1 cl 4	1.1.2022
s 37B	amended by 36/2021 Sch 1 cl 5	1.1.2022
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
Pt 4 Div 2		
heading	inserted by 39/2015 s 6	4.4.2016
s 42		
s 42(1)	amended by 33/2002 s 10	3.3.2003
Pt 4 Div 3		
heading	inserted by 39/2015 s 7	4.4.2016
s 45A before deletion by 39/2015		
s 45A(2)	*amended by 9/1979 s 6*	*1.3.1979*
s 45A	*deleted by 39/2015 s 8*	*4.4.2016*
s 45B before deletion by 39/2015		
s 45B(3)	*amended by 9/1979 s 7*	*1.3.1979*
s 45B	*deleted by 39/2015 s 8*	*4.4.2016*
s 45C before deletion by 39/2015	*inserted by 24/1984 s 2*	*10.5.1984*
	substituted by 72/1990 s 4	*20.12.1990*
s 45C	*deleted by 39/2015 s 8*	*4.4.2016*

Pt 4 Div 4	Pt 5 heading amended by 40/1982 s 5	6.5.1982
	Pt 5 heading deleted and Pt 4 Div 4 heading inserted by 39/2015 s 9	4.4.2016
s 46	substituted by 40/1982 s 6	6.5.1982
	amended by 39/2015 s 10	4.4.2016
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	*deleted by 40/1982 s 6*	*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	*deleted by 40/1982 s 10*	*6.5.1982*
Pt 4 Divs 5—7	inserted by 39/2015 s 11	4.4.2016
Pt 5—see Pt 4 Div 4		
Pt 6 before deletion by 39/2015		
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 6	*deleted by 39/2015 s 12*	*4.4.2016*
Pt 6A before deletion by 39/2015		
s 59B		
s 59B(1)	*amended by 9/1979 s 8*	*1.3.1979*
Pt 6A	*deleted by 39/2015 s 12*	*4.4.2016*
Pt 6B	heading substituted by 45/1988 s 2	5.5.1988
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(4)	substituted by 62/2016 s 9	8.12.2016
s 59IQ(5)	substituted by 62/2016 s 9	8.12.2016
	amended by 18/2017 Sch 2 cl 22 (The purported amendment to s 59IQ(5)(a) made by Sch 2 is of no effect because the provision does not exist.)	
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
	amended by 26/2013 Sch 1 cl 2	4.7.2013
s 61	*deleted by 9/1979 s 9*	*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 67D		
committal proceedings	amended by 18/2017 Sch 2 cl 23	5.3.2018
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
s 67G		
s 67G(1)		
criminal proceedings	amended by 18/2017 Sch 2 cl 24	5.3.2018
s 67H		
s 67H(1)	substituted by 16/2015 s 18(1)	1.7.2016
	amended by 13/2019 s 9	24.10.2019
	amended by 45/2020 s 10	19.3.2021
	amended by 1/2025 Sch 1 cl 2	8.6.2025
s 67H(3)	inserted by 16/2015 s 18(2)	1.7.2016
	amended by 21/2019 s 14	19.9.2019
s 67HA	inserted by 16/2015 s 19	1.7.2016
Pt 7 Div 11	inserted by 57/2021 s 18	1.6.2022
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
court of summary jurisdiction	*inserted by 107/1984 s 3(a)*	*20.12.1984*
	deleted by 33/2003 Sch (cl 11)	*1.7.2005*
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
	amended by 16/2015 s 20	1.7.2016
s 69(1b)	inserted by 13/2019 s 10	24.10.2019
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
s 69A(1a)	inserted by 43/2020 s 11	29.3.2021
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)	*deleted by 30/2006 s 4(2)*	*1.4.2007*
s 69AB	inserted by 30/2006 s 5	1.4.2007
s 69AB(1)	amended by 18/2017 Sch 2 cl 25	5.3.2018
s 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
	amended by 45/2019 Sch 1 cl 46	1.1.2021
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)	*deleted by 33/2003 Sch (cl 12)*	*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*
	amended by 18/2017 Sch 2 cl 26	*5.3.2018*
	deleted by 2/2020 s 4(1)	*7.5.2020*
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
	amended by 2/2020 s 4(2)	7.5.2020
s 71A(2a)	inserted by 2/2020 s 4(3)	7.5.2020
s 71A(3)	*amended by 40/1982 s 12*	*6.5.1982*
	deleted by 107/1984 s 6(a)	*20.12.1984*
s 71A(3)—(3e)	*inserted by 44/2012 s 4(4)*	*11.2.2013*
	deleted by 2/2020 s 4(4)	*7.5.2020*
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	*deleted by 107/1984 s 6(b)*	*20.12.1984*
newspaper	*deleted by 18/1999 s 19(d)*	*27.6.1999*
relevant date	*substituted by 59/1997 s 6(b)*	*14.9.1997*
	amended by 47/2013 s 8(1), (2)	*17.5.2014*
	deleted by 2/2020 s 4(5)	*7.5.2020*
relevant time	inserted by 2/2020 s 4(5)	7.5.2020
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
Pt 8 Div 5	*amended by 107/1984 s 8*	*20.12.1984*
	deleted by 44/2003 s 3(1) (Sch 1)	*24.11.2003*
Pt 8A	inserted by 13/2018 s 3	9.8.2018
Pt 9	inserted by 72/1990 s 8	20.12.1990
s 73		
s 73(1)	s 73 redesignated as s 73(1) by 38/2018 s 8	31.1.2019

s 73(2) and (3)	inserted by 38/2018 s 8	31.1.2019
Sch 1 before substitution by 58/2013		
heading	*substituted by 44/2003 s 3(1) (Sch 1)*	*24.11.2003*
Sch 1	substituted by 58/2013 s 5	7.7.2014
Sch 3	*deleted by 55/1983 s 5*	*1.8.1983*
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.

Statutes Amendment (Vulnerable Witnesses) Act 2015, Sch 1 as amended by Statutes Amendment (Attorney-General's Portfolio) Act 2016, s 27

1—Transitional provision

(1) The amendments made by Part 3 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 audio visual record of the statement of a witness to whom this subclause applies made to an investigating or other authority before the commencement of section 10 of this Act as part of a formal interview process in relation to the investigation of an alleged offence may, after the commencement of that section, be admitted under section 13BA of the *Evidence Act 1929* as evidence in the trial of a charge of the offence as if the recording had been made pursuant to Division 3 of Part 17 of the *Summary Offences Act 1953* in accordance with the requirements of that Division.

Note—

Section 10 of this Act inserts section 13BA into the *Evidence Act 1929*.

(3) Subclause (2) applies—

(a) to a witness who is—

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

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

(b) despite section 34LA(2)(c) of the *Evidence Act 1929*.

Summary Procedure (Indictable Offences) Amendment Act 2017, Sch 2 Pt 14

41—Transitional provision

The amendments made by this Act apply to proceedings relating to an offence that are commenced after the commencement of this Act, regardless of when the offence occurred (and the Acts amended by this Act, as in force before the commencement of this Act, continue to apply to proceedings that were commenced before the commencement of this Act).

Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Act 2020, Sch 1

2—Transitional provisions—amendments to *Evidence Act 1929*

(1) Subject to subclause (2), Part 3 Division 4 of the *Evidence Act 1929* (as enacted by this Act) applies in relation to—

(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 (whether the offence was committed before or after that commencement).

(2) Section 34Y of the *Evidence Act 1929* (as enacted by this Act) will be taken not to apply in relation to a trial that commenced before the commencement of this clause.

Statutes Amendment (Stealthing and Consent) Act 2022, Pt 4

7—Transitional provision

The amendments made by this Part apply to proceedings relating to an offence that are commenced after the commencement of this Part, regardless of when the offence occurred.

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
9.6.2013
4.7.2013

25.11.2013
17.5.2014
7.7.2014
1.12.2015
4.4.2016
1.7.2016
8.9.2016
8.12.2016
15.3.2017
5.3.2018
9.8.2018
31.1.2019
1.9.2019
19.9.2019
24.10.2019
1.5.2020 (electronic only)
7.5.2020
1.1.2021
19.3.2021 (electronic only)
29.3.2021
1.1.2022
1.6.2022
8.3.2023
16.12.2024
8.6.2025