



ANNO TRICESIMO SEXTO

**ELIZABETHAE II REGINAE**

A.D. 1987

\*\*\*\*\*

No. 60 of 1987

An Act to amend the Justices Act, 1921.

*[Assented to 17 September 1987]*

The Parliament of South Australia enacts as follows:

- Short title.           1. (1) This Act may be cited as the "Justices Act Amendment Act, 1987".
- (2) The Justices Act, 1921, is in this Act referred to as "the principal Act".
- Commencement.       2. This Act will come into operation on a day to be fixed by proclamation.
- Application of amendments.   3. The amendments made in this Act, insofar as they affect legal proceedings, apply to proceedings commenced either before or after the commencement of this Act.
- Amendment of s. 4— Interpretation.       4. Section 4 of the principal Act is amended by inserting after the definition of "Senior Judge" the following definition:
- "sexual offence" means—
- (a) rape;
- (b) indecent assault;
- (c) any offence involving unlawful sexual intercourse or an act of gross indecency;
- (d) incest;
- or
- (e) any attempt to commit or assault with intent to commit, any of the foregoing offences.
- Repeal of s. 106 and substitution of new section.   5. Section 106 of the principal Act is repealed and the following section is substituted:
- Receipt of evidence of prosecution witnesses.       106. (1) Where a person appears before a justice charged with an indictable offence, the justice will, before deciding whether to

commit the defendant for trial, take the statements of the witnesses for the prosecution in the presence of the defendant.

(2) The statement of a witness for the prosecution may be taken—

- (a) in the form of oral evidence;
- (b) in the form of a written statement verified by a declaration in or to the effect of the following form:

This statement, consisting of . . . pages signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the . . . day of . . . , 19 . . .

Signed . . . . .

Signature witnessed by . . . . . ;

(c) where the witness is a child—

- (i) in the form of a written statement taken down by a member of the police force at an interview with the child and verified by affidavit of the member of the police force as an accurate record of the child's oral statements at the interview insofar as they are relevant to the subject-matter of the charge;

or

- (ii) in the form of a videotape record of an interview with the child that is accompanied by a written transcript verified by affidavit of a member of the police force who was present at the interview as a complete record of the interview.

(3) Where a statement in the form of a written statement, videotape or transcript is submitted to the justice, and the justice accepts it as being relevant to, and admissible in, the proceedings, the statement will be regarded as having been duly taken by the justice.

(4) The relevance to the proceedings of any object tendered as an exhibit by the prosecutor may be proved by affidavit.

(5) No written statement, videotape or transcript may be submitted under subsection (2) and no affidavit may be submitted under subsection (4) unless—

- (a) not less than 14 days before submission of the statement or affidavit the informant gives personally or by post to the defendant or the defendant's counsel—
  - (i) . in the case of a written statement or affidavit—a copy of the statement or affidavit;
  - in the case of a videotape or transcript—a copy of the transcript and a statement of a time and place at which material recorded on the videotape may be viewed by the defendant and his or her legal representatives;

and

- (ii) a notice drawing the attention of the defendant or the defendant's legal representative to the provisions of this section under which the personal attendance of the witness at the preliminary examination may be secured;

or

- (b) the defendant consents to the submission of the statement, videotape, transcript or affidavit notwithstanding non-compliance with paragraph (a).

(6) Where—

- (a) a written statement, affidavit, videotape or transcript has been submitted to the justice;
- (b) the defendant, before completion of the case for the prosecution, requests that the witness appear for the purpose of oral examination;

and

(c) either—

- (i) the defendant has, at least seven days before making the request, notified the informant in writing of his or her intention to seek the personal attendance of the witness;

or

- (ii) the justice is satisfied that there is good reason for excusing the defendant for failure to give notice in accordance with subparagraph (i),

then, subject to subsection (7), the witness will be called or summoned to appear for oral examination.

(7) The alleged victim of a sexual offence will not be called or summoned to appear under subsection (6) unless the justice is satisfied that there are special reasons for the oral examination of the alleged victim.

(8) Where a witness is called or summoned to appear for the purpose of oral examination, the witness may be examined, cross-examined and re-examined in the usual manner.

(9) Where—

- (a) a statement, or a record of a statement is submitted under subsection (2);
- (b) a material part of the statement is to the knowledge of the person who made it false or misleading,

that person is guilty of a misdemeanour.

Penalty: Imprisonment for two years.

(10) In this section—

- (a) "child" means a person under the age of 10 years;

and

*(b)* a reference to a witness extends to any person by whom a statement or affidavit is made for the purposes of this section.

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

D. B. DUNSTAN, Governor