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## ELIZABETHAE II REGINAE

A.D. 1988

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No. 32 of 1988

An Act to amend the Evidence Act, 1929.

[Assented to 21 April 1988]

The Parliament of South Australia enacts as follows:

1. (1) This Act may be cited as the "Evidence Act Amendment Act, Short title. 1988".

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

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

3. Section 4 of the principal Act is amended—

(a) by inserting before the definition of "court" the following definition:

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

and

(b) by inserting after the definition of "telegraph station" the following definition:

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

Amendment of s. 4—  
Interpretation.

4. Section 9 of the principal Act is amended by inserting after subsection (5) the following subsection:

(6) Unsworn evidence given under this section has such weight and credibility as ought to be given to evidence given without the sanction of an oath.

Amendment of s. 9—  
Evidence without formality.

5. Sections 12 and 13 of the principal Act are repealed and the following section is substituted:

Repeal of ss. 12 and 13 and substitution of new section.

12. (1) A young child who is to give evidence before a court is not obliged to submit to the obligation of an oath unless—

Evidence of young children.

(a) the child is of or above the age of seven years;

and

(b) the judge is satisfied that the child understands the obligation of an oath.

(2) If a young child, who is not obliged to submit to the obligation of an oath, is to give evidence before a court and—

(a) the child appears to the judge to have reached a level of cognitive development that enables the child—

(i) to understand and respond rationally to questions; and

(ii) to give an intelligible account of his or her experiences;

and

(b) the child promises to tell the truth and appears to understand the obligations entailed by that promise,

unsworn evidence of the child will be treated in the same way as evidence given on oath.

(3) In any case in which unsworn evidence of a young child is not assimilated under subsection (2) to evidence given on oath—

(a) the child's evidence will be evaluated in the light of the child's level of cognitive development;

and

(b) a person who has been accused of an offence and has denied the offence on oath cannot be convicted of the offence on the basis of the child's evidence unless it is corroborated in a material particular by other evidence implicating the accused.

(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.

Insertion of new  
s. 34ca.

6. The following section is inserted after section 34c of the principal Act:

Statement of  
victim of sexual  
offence who is a  
young child.

34ca. (1) Subject to subsection (2), where the alleged victim of a sexual offence is a young child, the court may, in its discretion, admit evidence of the nature and contents of the complaint from a witness to whom the alleged victim complained of the offence if the court, after considering the nature of the complaint, the circumstances in which it was made and any other relevant factors, is of the opinion that the evidence has sufficient probative value to justify its admission.

(2) Such evidence may not be admitted at the trial unless the alleged victim has been called, or is available to be called, as a witness.

7. The following section is inserted after section 65 of the principal Act:

Insertion of new s. 65a.

**65a. If—**

Proof of age.

- (a) the age of a person is relevant to proceedings before a court;
- (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.

8. Section 69 of the principal Act is amended by inserting after subsection (1) the following subsection:

Amendment of s. 69—Order for clearing the court.

(1a) Where the alleged victim of a sexual offence is a child and is to give evidence in proceedings related to the offence, an order must be made under subsection (1) requiring all persons except—

- (a) those whose presence is required for the purposes of the proceedings;

- (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.

9. Section 71a of the principal Act is amended by inserting at the end of subsection (4) “(but no such authorization or consent can be given where the alleged victim is a child)”.

Amendment of s. 71a—Restriction on reporting proceedings relating to sexual offences.

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

D. B. DUNSTAN, Governor