



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 40 of 1982

An Act to amend the Evidence Act, 1929-1979

[Assented to 22 April 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Evidence Act Amendment Act, 1982". Short Titles.
- (2) The Evidence Act, 1929-1979, is in this Act referred to as "the principal Act".
- (3) The principal Act, as amended by this Act, may be cited as the "Evidence Act, 1929-1982".

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

3. Section 2 of the principal Act is amended by striking out the item: Amendment of s. 2—Arrangement of Act.
PART V—BANKER'S BOOKS
 and substituting the item:
PART V—BANKING RECORDS.

4. Section 4 of the principal Act is amended by striking out the definitions of "bank", "banker" and "banker's book". Amendment of s. 4—Interpretation.

5. The heading to Part V of the principal Act is amended by striking out the words "BANKER'S BOOKS" and substituting the words "BANKING RECORDS". Amendment of heading.

6. Sections 46, 47, 48, 48a and 48b of the principal Act are repealed and the following sections are substituted: Repeal of ss. 46, 47, 48, 48a and 48b and substitution of new sections.
 46. In this Part—
 - "bank" means—
 - (a) a body corporate carrying on the business of banking in a State or Territory of the Commonwealth;

Interpretation.

- (b) a building society;
- (c) a credit union;
- 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);
 - (b) books, diaries, or other records used in the course of carrying on the business of a bank;
 - (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.

Admission of banking record in evidence.

47. (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;
- (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).

Evidence of non-existence of account may be given by affidavit.

48. 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.

7. Section 49 of the principal Act is amended—

Amendment of
s. 49—
Power to order
inspection of
banking
records, etc.

(a) by striking out from subsection (1) the passage “any entries in a banker’s book” and substituting the passage “a banking record”;

(b) by inserting after subsection (1) the following subsection:

(1a) Where—

(a) a Judge of the Supreme Court;

or

(b) a District Court Judge,

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.;

(c) by striking out from subsection (2) the word “party” and substituting the word “person”;

and

(d) by inserting after subsection (2) the following subsections:

(3) Subject to subsection (4), where an order is made under subsection (1a), the applicant shall cause a copy of the order to be served personally or by post on the person subject to investigation within six months of the date of the order or such further period as may be allowed by a Judge.

Penalty: One thousand dollars.

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

(a) if evidence of the commission of an offence was obtained in pursuance of the order and, within the period allowed under subsection (3) for service of a copy of the order, the person subject to investigation is charged with that offence;

or

(b) if the whereabouts of the person on whom the copy is to be served is unknown and not ascertainable by reasonable inquiry.

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

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

(a) in the case of applications made by members of the police force—by the Commissioner of Police;

and

(b) in the case of applications made by officers of the Corporate Affairs Commission—by the Corporate Affairs Commission.

(7) The Commissioner of Police shall in each calendar year report to the Minister responsible for the police force the number of applications made under subsection (1a) by members of the police force during the previous calendar year, and the Corporate Affairs Commission shall in each calendar year report to the Minister to whom it is responsible the number of applications made under subsection (1a) by officers of the Commission during the previous calendar year.

(8) A report under subsection (7) may be incorporated in any other annual report that the Commissioner of Police or the Corporate Affairs Commission (as the case may be) is required by or under statute to make to the Minister to whom the report under that subsection is to be submitted.

(9) A person who divulges, otherwise than in the course of his official duties, information obtained by him by virtue of an order under subsection (1a) shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

Amendment of s. 50—
Bank not compellable to produce records except under order.

8. Section 50 of the principal Act is amended—

(a) by striking out the word “banker” and substituting the word “bank”;

and

(b) by striking out from paragraphs (a) and (b) the passage “banker’s book” wherever it occurs and substituting, in each case, the passage “banking record”.

Amendment of s. 51—
Costs occasioned by default of bank.

9. Section 51 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(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.

Repeal of s. 52.

10. Section 52 of the principal Act is repealed.

Amendment of s. 71—
Penalty for non-compliance with order.

11. Section 71 of the principal Act is amended—

(a) by striking out the passage “under paragraph (c) of subsection (1) of section 69 or under section 70” and substituting the passage “under section 69 or 70”;

and

(b) by striking out subsection (2) and substituting the following subsections:

(2) A person who disobeys an order under section 69 (1) (d) or (e) shall be guilty of an offence and liable to a penalty of not more than two thousand dollars, or imprisonment for a period not exceeding six months.

(3) A person shall not be liable, in respect of the same act or default, to be proceeded against both for a contempt of court and an offence under subsection (2).

12. Section 71a of the principal Act is amended by striking out the passage "One thousand dollars" wherever it occurs in subsections (1), (2), (3) and (4) and substituting, in each case, the passage "Two thousand dollars".

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

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

W. R. CROCKER, Governor's Deputy