



ANNO TRICESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1983

No. 47 of 1983

An Act to amend the Evidence Act, 1929-1982.

[Assented to 16 June 1983]

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, 1983". Short titles.

(2) The Evidence Act, 1929-1982, 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, 1929-1983".

2. Section 18 of the principal Act is amended—

(a) by striking out subparagraph (a) of paragraph VI and substituting the following subparagraph:

(a) 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; ;

(b) by striking out from subparagraph (b) of paragraph VI the passage "or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution";

(c) by inserting after subparagraph (b) of paragraph VI the following subparagraph:

(ba) he forfeits the protection of this paragraph by virtue of subsection (2); ;

(d) by striking out from paragraph VIII the passage "or any right of the person charged to make a statement without being sworn";

and

(e) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsections:

Amendment of
s. 18—
Evidence by
accused persons
and their
spouses.

(2) A defendant forfeits the protection of paragraph VI of subsection (1) 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 paragraph VI of subsection (1) 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;

(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.

3. The following section is inserted after section 18 of the principal Act:

18a. (1) Subject to this section, a person charged with an offence (not being a summary offence, or a minor indictable offence that is heard and determined in a summary way) may, at his trial, make an unsworn statement of fact in his defence.

(2) No assertion may be made by way of unsworn statement if, assuming that the defendant had chosen to give sworn evidence, that assertion would have been inadmissible as evidence.

(3) Where an assertion made in the course of an unsworn statement is such as would, if made on oath, have been liable to rebuttal, evidence may be given in rebuttal of that assertion.

(4) Where—

(a) in the course of making an unsworn statement, a defendant makes assertions with a view to establishing his own good character or involving imputations on the character of the prosecutor or the witnesses for the prosecution;

and

(b) the defendant would, if the assertions had been made on oath, have been liable to be asked questions tending to show that he has committed, or been convicted of or charged with, an offence (other than that with which he is charged), or is of bad character,

then, evidence may be given to show that the defendant has committed, or been convicted of or charged with, an offence (other than that with which he is charged), or is of bad character.

Insertion of
new s. 18a.

Right to
make unsworn
statement.

(5) A person is not entitled both to make an unsworn statement under this section and to give sworn evidence in his defence.

(6) This section operates to the exclusion of the right, previously existing at common law, to make an unsworn statement but, subject to the provisions of this section, the rules of the common law relating to unsworn statements apply in relation to unsworn statements under this section.

(7) In this section—

“assertion” means any allegation or statement of fact.

4. Section 34i of the principal Act is amended—

(a) by striking out from subsection (2) the passage “shall not be adduced (whether by examination in chief, cross examination or re-examination)” and substituting the passage “is inadmissible”;

(b) by striking out from subsection (3) the passage “to adduce evidence under this section” and substituting the passage “to introduce evidence to which subsection (2) applies”;

and

(c) by inserting after subsection (3) the following subsection:

(4) For the purposes of subsections (2) and (3) “evidence” includes an assertion by way of unsworn statement.

5. Section 68 of the principal Act is repealed and the following section is substituted:

68. In this Part—

“court” includes—

(a) a justice conducting a preliminary examination;

(b) a coroner;

(c) 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.

Amendment of
s. 34i—
Evidence in
sexual cases.

Repeal of
s. 68 and
substitution
of new section.
Interpretation.

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

D. B. DUNSTAN, Governor