



ANNO TRICESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1983

No. 55 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 (No. 2), 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. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. Section 18 of the principal Act is amended—

(a) by striking out the passage " , and the wife or husband, as the case may be, of the person so charged"; Amendment of s. 18—
Accused persons competent to give evidence.

(b) by striking out from paragraph II the passage " , or of the wife or husband, as the case may be, of the person so charged,";

and

(c) by striking out paragraphs III and IV.

4. Section 21 of the principal Act is repealed and the following section is substituted: Repeal of s. 21 and substitution of new section.

21. (1) A close relative of a person charged with an offence shall be competent and compellable to give evidence for the defence and shall, subject to this section, be competent and compellable to give evidence for the prosecution. Provisions governing competence and compellability of close relatives of accused persons.

(2) Where a person is charged with an offence and a close relative of the accused is a prospective witness 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 obligation to give evidence against the accused in those proceedings.

(3) Where it appears to a court to which an application is made under subsection (2)—

(a) that, 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) that, 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 obligation to give evidence against the accused in the proceedings before the court.

(4) Where a court is constituted of a judge and jury—

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

and

(b) the fact that a prospective witness has applied for, or been granted or refused, an exemption under this section shall not be made the subject of any question put to a witness in the presence of the jury or of any comment to the jury by counsel or the presiding judge.

(5) The judge presiding at proceedings in which a close relative of an accused person is called as a witness against the accused shall satisfy himself that the prospective witness is aware of his right to apply for an exemption under this section.

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

(7) In this section—

“close relative” of an accused person means a spouse, parent or child:

“spouse” includes a putative spouse within the meaning of the Family Relationships Act, 1975.

5. The third schedule to the principal Act is repealed.

Repeal of third
schedule of
principal Act.

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

D. B. DUNSTAN, Governor