



ANNO TRICESIMO TERTIO

**ELIZABETHAE II REGINAE**

**A.D. 1984**

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**No. 78 of 1984**

**An Act to amend the Criminal Law Consolidation Act, 1935; and to make a consequential amendment to the Justices Act, 1921.**

*[Assented to 15 November 1984]*

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

Short title.

1. (1) This Act may be cited as the "Criminal Law Consolidation Act Amendment Act (No. 2), 1984".

(2) The Criminal Law Consolidation Act, 1935, is in this Act referred to as "the principal Act".

Insertion of new s. 285c.

2. The following section is inserted after section 285b of the principal Act:

Notice of certain evidence to be given.

285c. (1) Subject to subsection (2), if a defendant proposes to introduce evidence of alibi at the trial of an indictable offence in the Supreme Court or a District Criminal Court, prior notice of the proposed evidence must be given.

(2) Notice of proposed evidence of alibi is not required under subsection (1) if the same evidence, or evidence to substantially the same effect, was received at the preliminary examination at which the defendant was committed for trial.

(3) The notice—

(a) must be in writing;

(b) must contain—

(i) a summary setting out with reasonable particularity the facts sought to be established by the evidence;

(ii) the name and address of the witness by whom the evidence is to be given;

and

(iii) any other particulars that may be required by the rules;

(c) must be given within seven days after the defendant is committed for trial;

(d) must be given by lodging the notice at the office of the Crown Prosecutor or by serving the notice by post on the Crown Prosecutor.

(4) Non-compliance with this section does not render evidence inadmissible but the non-compliance may be made the subject of comment to the jury.

(5) Except by leave of the court, evidence in rebuttal of an alibi shall not be adduced after the close of the case for the prosecution.

(6) Leave shall be granted under subsection (5) where the defendant gives or adduces evidence of alibi in respect of which—

(a) no notice was given under this section;

or

(b) notice was given but not with sufficient particularity,

(but this section does not limit the discretion of the court to grant such leave in any other case).

(7) In any legal proceedings, a certificate apparently signed by the Crown Prosecutor certifying receipt or non-receipt of a notice under this section, or any matters relevant to the question of the sufficiency of a notice given by a defendant under this section, shall be accepted, in the absence of proof to the contrary, as proof of the matters so certified.

(8) In this section—

“evidence” includes an unsworn statement:

“evidence of alibi” means evidence given or adduced, or to be given or adduced, by a defendant tending to show that he was in a particular place or within a particular area at a particular time and thus tending to rebut an allegation made against him either in the charge on which he is to be tried or in evidence adduced in support of the charge at the preliminary examination at which he was committed for trial.

3. Section 112 of the Justices Act, 1921, is amended—

(a) by striking out subsection (3) and substituting the following subsection:

(3) If, in the opinion of the justice, the evidence is so sufficient, he shall—

(a) inform the defendant of his intention to commit him for trial;

(b) inform the defendant of his obligation to give notice of any evidence of alibi that he may

Amendment of  
s. 112 of the  
Justices Act,  
1921—  
Discharge of  
defendant or  
committal for  
trial.

desire to give or adduce at his trial, and provide him with a written memorandum explaining the nature of that obligation;

- (c) make a direction under subsection (4);
- (d) commit the defendant to prison, or to some other place of detention to which he may lawfully be committed, to await his trial, or admit him to bail as provided by Division IV;
- (e) make, or cause to be made, a written record in the form prescribed by the rules containing—
  - (i) a statement of the offence or offences on which the defendant is to be put on trial;
  - (ii) a statement of whether the defendant has been committed into custody or released on bail;
  - (iii) the terms of the direction made under subsection (4);
  - (iv) any other particulars prescribed by the rules;

- (b) by striking out from subsection (4) all words before paragraph (a) and substituting the following passage:

(4) Where a justice proposes to commit a defendant for trial, he shall direct whether the defendant is to be tried in the Supreme Court or a District Criminal Court, and in making such a direction shall apply the following principles;

- (c) by striking out subsection (5);

and

- (d) by inserting after subsection (7) the following subsection:

(8) Where the record referred to in subsection (3) contains a certificate by the justice to the effect that he provided the defendant with the information and memorandum as required by subsection (3) (b), the record shall be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the fact so certified.

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

D. B. DUNSTAN, Governor