



ANNO QUADRAGESIMO

ELIZABETHAE II REGINAE

A.D. 1991

No. 41 of 1991

An Act to amend the Evidence Act 1929.

[Assented to 31 October 1991]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Evidence Amendment Act 1991*.
- (2) The *Evidence Act 1929* is referred to in this Act as "the principal Act".

Commencement

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

Insertion of ss. 34j and 34k

3. The following sections are inserted after section 34i of the principal Act:

Special provision for taking evidence where witness is seriously ill

34j. (1) Where a person who may be in a position to give information in relation to an indictable offence is dangerously ill and, in the opinion of a medical practitioner, unlikely to recover from the illness, a magistrate or justice may take a statement from that person.

(2) The statement will be taken on oath unless the person who makes the statement is not liable to the obligation of an oath.

(3) Where a person is subsequently charged with an indictable offence to which the statement is relevant, the statement is admissible in evidence at the preliminary examination or trial of the charge if it is established—

- (a) that the person from whom the statement was taken is dead or unable to give evidence because of illness or infirmity;

and

- (b) that the prosecutor or defendant (as the case requires) had reasonable notice of the proposal to take evidence and a reasonable opportunity to attend and cross-examine the person.

Admissibility of depositions at trial

34k. (1) Where—

(a) a statement from a witness is filed or tendered for the purpose of the preliminary examination of a charge of an indictable offence or oral evidence is taken from a witness at a preliminary examination;

and

(b) the witness subsequently dies or becomes so ill or infirm that he or she cannot give evidence at the trial,

the record of the witness's evidence at the preliminary examination may, by leave of the court of trial, be read as evidence at the trial.

(2) Leave to admit evidence for the prosecution under this section will not be granted if the court considers that admission of the evidence without the opportunity of cross-examination would, in the circumstances of the case, be unfair to the defendant.

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

ROMA MITCHELL Governor