



# **EVIDENCE (VULNERABLE WITNESSES) AMENDMENT ACT 1993**

**No. 53 of 1993**

## **SUMMARY OF PROVISIONS**

1. Short title
2. Commencement
3. Insertion of s. 13
  13. Protection of witnesses



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**ELIZABETHAE II REGINAE**

A.D. 1993

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No. 53 of 1993

**An Act to amend the Evidence Act 1929.**

[Assented to 27 May 1993]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Evidence (Vulnerable Witnesses) Amendment Act 1993*.
- (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 s. 13**

3. The following section is inserted after section 12 of the principal Act:

**Protection of witnesses**

13. (1) If it is practicable and desirable to make special arrangements for taking evidence from a witness in order to protect the witness from embarrassment or distress, to protect the witness from being intimidated by the atmosphere of a courtroom, or for any other proper reason, the court should, subject to subsections (3) and (4), order that special arrangements be made for taking the evidence of that witness.

(2) The Court may, for example, make orders of the following kinds:

- (a) an order that the evidence be given outside the courtroom and transmitted to the courtroom by means of closed circuit television;
- (b) an order that a screen, partition or one-way glass be placed to obscure the witness's view of a party to whom the evidence relates or some other person;
- (c) an order that the witness be accompanied by a relative or friend for the purpose of providing emotional support.

(3) An order must not be made under subsection (1) if the order would prejudice any party to the proceedings.

(4) An order must not be made under subsection (1) if its effect would be—

- (a) to relieve a witness from the obligation to take an oath;
- (b) to relieve a witness from the obligation to submit to cross-examination;

or

- (c) to prevent the judge, or (in the case of a trial by jury) the jury, from seeing and hearing the witness while giving evidence.

(5) If the effect of an order under subsection (1) would be to prevent the defendant in criminal proceedings from seeing and hearing a witness while giving evidence, the order may only be made if there is no other practicable way to protect the witness.

(6) If a witness is accompanied by a relative or friend for the purpose of providing emotional support, that person must be visible to the parties, the judge and (in the case of a trial by jury) the jury while the witness is giving evidence.

(7) If, on a trial by jury, a court makes special arrangements for taking the evidence of a witness, the judge must warn the jury not to draw from that fact any inference adverse to the defendant, and not to allow the special arrangements to influence the weight to be given to the evidence.

(8) An order under this section may be made, varied or revoked on the court's own initiative, or on the application of a party or witness.

(9) If evidence is to be given in criminal proceedings by a vulnerable witness, the court should, before evidence is taken in the proceedings from the witness, determine whether an order should be made under this section.

(10) In subsection (9)—

“vulnerable witness” means—

- (a) a witness who is under 16 years of age;
- (b) a witness who suffers from an intellectual disability;
- (c) a witness who is the alleged victim of a sexual offence to which the proceedings relate;

or

- (d) a witness who is, in the opinion of the court, at some special

disadvantage because of the circumstances of the case, or the circumstances of the witness.

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

ROMA MITCHELL Governor