



ANNO TRICESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1984

No. 107 of 1984

An Act to amend the Evidence Act, 1929; and to make consequential amendments to the Criminal Law Consolidation Act, 1935, and the Justices Act, 1921.

[Assented to 20 December 1984]

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. 3), 1984". Short title.

(2) The Evidence Act, 1929, is in this Act referred to as "the principal Act".

2. The following heading is inserted in the principal Act before section 68: Insertion of new heading.

DIVISION I—PRELIMINARY.

3. Section 68 of the principal Act is amended—

(a) by inserting after the definition of "court" the following definition: Amendment of s. 68— Interpretation.

"court of summary jurisdiction" includes a justice conducting a preliminary examination;

and

(b) by inserting after the definition of "evidence" the following definitions:

"interim suppression order" means a suppression order under section 69a (3):

"primary court", in relation to an appeal, means the court by which the decision or order subject to appeal was made:

"suppression order" means an order under section 69a.

Repeal of ss. 69, 70 and 71 and insertion of new heading and sections.

4. Sections 69, 70 and 71 of the principal Act are repealed and the following heading and sections are substituted:

DIVISION II—ORDERS FOR CLEARING COURT OR SUPPRESSING PUBLICATION OF EVIDENCE, ETC.

Order for clearing the court.

69. (1) Where a court considers it desirable in the interests of the administration of justice, or in order to prevent hardship or embarrassment to any person, to exercise the powers conferred by this section, it may order specified persons, or all persons except those specified, to absent themselves from the place in which the court is being held during the whole or any part of the proceedings before the court.

(2) The court may, on the application of a person against whom an order under subsection (1) operates, make available to him a transcript of evidence, and a record of proceedings, taken before the court during the operation of the order.

(3) Where a court refuses an application under subsection (2), the applicant may appeal against the refusal.

Suppression orders.

69a. (1) Where a court considers it desirable in the interests of the administration of justice, or in order to prevent undue hardship to any person, to exercise the powers conferred by this section, it may make an order (a "suppression order")—

(a) forbidding the publication of specified evidence or of any account or report of specified evidence;

or

(b) forbidding the publication of the name of—

(i) any party or witness;

or

(ii) any person alluded to in the course of proceedings before the court,

and of any other material tending to identify any such person.

(2) A suppression order may be made subject to such exceptions and conditions as the court thinks fit and specifies in the order.

(3) Where an application is made to a court for a suppression order, the following provisions apply:

(a) the court may, without enquiring into the merits of the application, make such an order (an "interim suppression order") to have effect, subject to revocation by the court, until the application is determined;

(b) any of the following persons, namely:

(i) the applicant for the suppression order;

(ii) a party to the proceedings in which the suppression order is sought;

(iii) a representative of a newspaper or a radio or television station;

(iv) any person who satisfies the court that he has a proper interest in the question of whether a suppression order should be made,

is entitled to make submissions to the court on the application and may, by leave of the court, call or give evidence in support of those submissions;

(c) the court may (but is not obliged to) delay determining the application to make possible or facilitate non-party intervention in the proceedings under paragraph (b) (iii) or (iv).

(4) A suppression order may be varied or revoked, by the court by which it was made, on the application of any of the persons entitled to make submissions by virtue of subsection (3) (b).

(5) An appeal lies against—

(a) a suppression order or a decision by a court not to make a suppression order;

(b) the variation or revocation of a suppression order.

(6) Any of the following persons is entitled to institute, or to be heard upon, an appeal under subsection (5):

(a) where an application for a suppression order was made to the primary court—the applicant;

(b) a party to the proceedings in which the order or decision subject to appeal was made;

(c) a representative of a newspaper or a radio or television station, who—

(i) appeared before the primary court;

or

(ii) did not appear before the primary court but satisfies the appellate court that his non-appearance before the primary court is not attributable to any lack of proper diligence on his part;

(d) a person who satisfied the primary court that he had a proper interest in the question of whether a suppression order should be made;

or

(e) a person who did not appear before the primary court but satisfies the appellate court—

(i) that he has a proper interest in the subject matter of the appeal or proposed appeal;

and

(ii) that his non-appearance before the primary court is not attributable to any lack of proper diligence on his part.

(7) Where a court makes a suppression order (not being an interim suppression order), it shall forward to the Attorney-General a report setting out—

- (a) the terms of the order;
 - (b) the name of any person whose name was suppressed from publication;
 - (c) a transcript or other record of any evidence suppressed from publication;
- and
- (d) a summary stating with reasonable particularity the reasons for which the order was made.

Appeals.

69b. (1) An appeal under this Division lies to—

- (a) the court to which appeals lie against final judgments or orders of the primary court;
- and
- (b) where there is no such court—the Supreme Court constituted of a single judge.

(2) An appeal under this Division shall be heard and determined as expeditiously as possible.

(3) Upon an appeal under this Division, the appellate court—

- (a) may confirm, vary or revoke the order or decision of the primary court;
 - (b) may make any order or decision under this Division that could have been made by the primary court;
- and
- (c) may make orders for costs and orders dealing with any other incidental or ancillary matters.

(4) Except as provided in this Division, no appeal lies against a decision or order of a court made under this Division.

Disobedience to orders under this Division.

70. (1) Where a person disobeys an order under this Division, he shall—

- (a) if the court by which the order was made has power to punish for contempt—be guilty of a contempt of that court and punishable accordingly;

and

- (b) whether or not that court has power to punish for contempt—be guilty of a summary offence punishable by a fine not exceeding two thousand dollars or imprisonment for a term not exceeding six months.

(2) A person shall not, in respect of the same act or default, be proceeded against under this section both for a contempt of court and a summary offence.

(3) Where a court of summary jurisdiction makes an order under this Division and the order is disobeyed in the face of the court, the court may proceed immediately to convict the person guilty of that disobedience on its own view of the matter and, if it imposes a sentence

of imprisonment, to issue a warrant of commitment to enforce the sentence.

71. (1) The Attorney-General shall, on or before the thirty-first day of October in each year, prepare a report relating to the preceding financial year specifying—

Attorney-General to provide annual report.

(a) the total number of orders made under this Division or a corresponding previous enactment;

(b) the number of such orders made by each of the various courts;

and

(c) a summary of the reasons assigned by the courts for making such orders.

(2) The Attorney-General shall, as soon as practicable after the report is prepared, cause a copy of the report to be laid before each House of Parliament.

5. The following heading is inserted in the principal Act before section 71a:

Insertion of new heading.

DIVISION III—SEXUAL CASES.

6. Section 71a of the principal Act is amended—

(a) by striking out subsection (3);

and

(b) by striking out from subsection (5) the definition of “acquittal”.

Amendment of s. 71a—
Restriction upon reporting proceedings relating to sexual offences.

7. The following heading and section are inserted in the principal Act after section 71a:

Insertion of new heading and section.

DIVISION IV—CASES GENERALLY

71b. (1) Where—

(a) a report of proceedings taken against a person for an offence is published by newspaper, radio or television;

(b) the report identifies the person against whom the proceedings have been taken or contains information tending to identify that person;

(c) the report is published before the result of the proceedings is known;

(d) those proceedings do not result in conviction of the person to whom the report relates of the offence with which he was charged,

Publishers required to report result of certain proceedings.

the person by whom the publication is made shall, as soon as practicable after the determination of the proceedings, publish a fair and accurate report of the result of the proceedings with reasonable prominence having regard to the prominence given to the earlier report.

(2) A person required under subsection (1) to publish a report of the result of proceedings may apply to the Supreme Court for directions in relation to the manner in which he should comply with that subsection.

Penalty: Two thousand dollars.

(3) Where—

- (a) a report of proceedings taken against a person for an offence is published by newspaper, radio or television;
- (b) the report identifies the person against whom the proceedings have been taken or contains information tending to identify that person;
- (c) the report is published after the result of the proceedings is known;
- (d) those proceedings did not result in conviction of the person to whom the report relates of the offence with which he was charged,

the person by whom the publication is made shall include prominently in the report a statement of the result of the proceedings.

Penalty: Two thousand dollars.

(4) In this section—

“proceedings” includes, in relation to an offence, the laying of a charge of the offence.

Insertion of new heading.

72: 8. The following heading is inserted in the principal Act before section

DIVISION V—PROCEEDINGS.

Amendment of Criminal Law Consolidation Act, 1935.

9. Section 74 of the Criminal Law Consolidation Act, 1935, is repealed.

Amendment of Justices Act, 1921.

10. Section 107 of the Justices Act, 1921, is repealed.

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

D. B. DUNSTAN, Governor