

Legislative Council—No 85

As received from the House of Assembly and read a first time, 18 September 2012

South Australia

**Evidence (Reporting on Sexual Offences)
Amendment Bill 2012**

A BILL FOR

An Act to amend the *Evidence Act 1929*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Evidence Act 1929*

- 4 Amendment of section 71A—Restriction on reporting on sexual offences
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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Evidence (Reporting on Sexual Offences) Amendment Act 2012*.

5 2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 Part 2—Amendment of *Evidence Act 1929*

4—Amendment of section 71A—Restriction on reporting on sexual offences

- (1) Section 71A(1)—delete "A person shall not" and substitute:

Subject to this section, a person must not

- (2) Section 71A(1)(a)—delete "before a Magistrate or Justice"

- 15 (3) Section 71A(2)—delete "A person shall not" and substitute:

Subject to this section, a person must not

- (4) Section 71A—after subsection (2) insert:

- (3) If an accused person has not consented to the publication of material under subsection (1) or (2), the court may, on application, make an order (a **publication order**) that the restriction on publication under the relevant subsection be varied or removed altogether, if satisfied that to do so—

- 20 (a) may assist in the investigation of an offence; or
- (b) is otherwise in the public interest.

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- (3a) A publication order may be subject to such exceptions and conditions as the court thinks fit and specifies in the order.
- (3b) An application for a publication order may be made, with the permission of the court, by any person who has, in the opinion of the court, a proper interest in the question of whether an order should be made.
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- (3c) If the court permits an application for a publication order to be made, any of the following persons may make submissions to the court on the application and, with the permission of the court, call or give evidence in support of those submissions:
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- (a) the applicant for the publication order;
 - (b) a party to the proceedings in which the order is sought;
 - (c) a representative of a newspaper or a radio or television station;
 - (d) any other person who has, in the opinion of the court, a proper interest in the question of whether an order should be made.
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- (3d) A publication 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 (3c).
- (3e) On an application for the making, variation or revocation of a publication order—
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- (a) a matter of fact is sufficiently proved if proved on the balance of probabilities; and
 - (b) if there appears to be no serious dispute as to a particular matter of fact, the court (having regard to the desirability of dealing expeditiously with the application) may—
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- (i) dispense with the taking of evidence on that matter; and
 - (ii) accept the relevant fact as proved.
- (5) Section 71A(4)—delete "shall" and substitute:
- must