

Legislative Council—No 47

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South Australia

**Evidence (Suppression Orders) Amendment
Bill 2006**

A BILL FOR

An Act to amend the *Evidence Act 1929*.

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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 (Suppression Orders) Amendment Act 2006*.

2—Commencement

- 5 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.

Part 2—Amendment of *Evidence Act 1929*

4—Amendment of section 69A—Suppression orders

- (1) Section 69A(2)—delete subsection (2) and substitute:
 - (2) If a court is considering whether to make a suppression order (other than an interim suppression order), the court—
 - (a) must recognise that a primary objective in the administration of justice is to safeguard the public interest in open justice and the consequential right of the news media to publish information relating to court proceedings; and

- (b) may only make a suppression order if satisfied that special circumstances exist giving rise to a sufficiently serious threat of prejudice to the proper administration of justice, or undue hardship, to justify the making of the order in the particular case.

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- (2) Section 69A(8) to (14) (inclusive)—delete subsections (8) to (14) inclusive and substitute:

- (8) If a court makes a suppression order, the court must—

- (a) immediately forward to the Registrar a copy of the order; and

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- (b) except in the case of an interim suppression order—within 30 days, forward to the Attorney-General a report setting out—

- (i) the terms of the order; and

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- (ii) the name of any person whose name is suppressed from publication; and

- (iii) a transcript or other record of any evidence suppressed from publication; and

- (iv) full particulars of the reasons for which the order was made.

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- (9) If a court orders the variation or revocation of a suppression order, the court must as soon as reasonably practicable forward a copy of the order to the Registrar.

- (10) The Registrar—

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- (a) will establish and maintain a register of all suppression orders; and

- (b) will, immediately after receiving a copy of a suppression order, or an order for the variation or revocation of a suppression order, enter the order in the register; and

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- (c) will, when an order is entered in the register, immediately transmit by fax, email or other electronic means notice of the order to the nominated address of the nominated representative of each authorised member of the news media.

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- (11) The register will be made available for inspection by members of the public free of charge during ordinary office hours.

- (12) Without limiting the ways in which notice of a suppression order, or an order varying or revoking a suppression order, may be given, the entry of such an order in the register is notice to the news media and the public generally (within and outside the State) of the making and terms of the order.

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(13) In this section—

authorised member of the news media means a member of the news media who has been authorised by the Registrar (or the Registrar's nominee) to receive, through the member's nominated representative, notices under subsection (10)(c);

nominated address of a nominated representative means the fax number, email address or other address for the receipt of electronic communications nominated by the representative as the address to which notices may be sent to the representative by the Registrar under subsection (10)(c);

nominated representative of an authorised member of the news media means a person—

- (a) who is nominated by the authorised member of the news media to be the member's representative for the purposes of subsection (10)(c); and
- (b) who has given the Registrar a notice specifying the representative's nominated address; and
- (c) who has paid the relevant fee or fees (which may consist of, or include, periodic fees) fixed by the regulations;

Registrar means a person to whom the functions of the Registrar under this section are assigned by the Attorney-General.

5—Insertion of sections 69AB and 69AC

After section 69A insert:

69AB—Review of suppression orders

- (1) Subject to the regulations, a suppression order becomes liable to review as follows:
 - (a) if the order relates to criminal proceedings and is in force at the time, the order becomes liable to review as follows:
 - (i) on the completion or termination of a preliminary examination;
 - (ii) on the withdrawal of a charge after the completion of a preliminary examination;
 - (iii) on the acquittal of the defendant;
 - (iv) when an appeal against conviction or sentence has been determined or all rights to appeal against conviction or sentence have been exhausted or expired;
 - (v) on the defendant being declared under Part 8A of the *Criminal Law Consolidation Act 1935* to be liable to supervision;
 - (vi) in any other case—when the proceedings are otherwise concluded or terminated,

(and, if more than 1 such occasion for review occurs in the course of the same proceedings, the order becomes liable to review on each such occasion);

- (b) if the order relates to a coronial inquest, the order becomes liable to review when the coroner gives his or her findings on the inquest;
- (c) if the order relates to civil proceedings, the order becomes liable to review when the court gives its judgment in the proceedings or the proceedings are settled or withdrawn.

(2) When a suppression order becomes liable to review, the court that made the order must conduct a review as soon as practicable.

(3) The following persons are entitled to be heard on a review:

- (a) the applicant for the suppression order;
- (b) a party to the proceedings in which the suppression order was made;
- (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 matters to be considered on the review.

(4) On a review, the court may confirm, vary or revoke the suppression order.

69AC—Appeal against suppression order etc

(1) An appeal lies against—

- (a) a suppression order or a decision by a court not to make a suppression order; or
- (b) the variation or revocation of a suppression order or a decision by a court not to vary or revoke a suppression order; or
- (c) a decision by a court on the review of a suppression order.

(2) Any of the following persons is entitled to bring, or to be heard on, an appeal under this section:

- (a) the applicant for the suppression order;
- (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;
- (d) a person who appeared in proceedings before the primary court related to the making or review of the suppression order;
- (e) a person who—

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- (i) did not appear in proceedings before the primary court related to the making or review of the suppression order but has, in the opinion of the appellate court, a proper interest in the subject matter of the appeal or proposed appeal; and
 - (ii) satisfies the appellate court that the failure to appear in the proceedings before the primary court is not attributable to a lack of proper diligence.

6—Amendment of section 70—Disobedience to orders under this Division

10 Section 70(1)—delete subsection (1) and substitute:

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- (1) If a person disobeys an order under this Division and the court by which the order was made has power to punish for contempt, the person is guilty of a contempt of the court.
 - (1a) If a person disobeys an order under this Division, whether or not the court by which the order was made has power to punish for contempt, the person is guilty of an offence.
Maximum penalty:
 - (a) in the case of a natural person—\$10 000 or imprisonment for 2 years;
 - (b) in the case of a body corporate—\$120 000.
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7—Amendment of section 71A—Restriction on reporting proceedings relating to sexual offences

- (1) Section 71A(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

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- (a) in the case of a natural person—\$10 000;
 - (b) in the case of a body corporate—\$120 000.

- (2) Section 71A(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

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- (a) in the case of a natural person—\$10 000;
 - (b) in the case of a body corporate—\$120 000.

- (3) Section 71A(4), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of a natural person—\$10 000;
- (b) in the case of a body corporate—\$120 000.

35 **8—Amendment of section 71B—Publishers required to report result of certain proceedings**

- (1) Section 71B(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of a natural person—\$10 000;

(b) in the case of a body corporate—\$120 000.

(2) Section 71B(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) in the case of a natural person—\$10 000;

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(b) in the case of a body corporate—\$120 000.

9—Amendment of section 71C—Restriction on reporting of proceedings following acquittals

Section 71C(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

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(a) in the case of a natural person—\$10 000;

(b) in the case of a body corporate—\$120 000.