



ANNO VICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1976

No. 84 of 1976

An Act to amend the Evidence Act, 1929-1974.

[Assented to 9th December, 1976]

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, 1976". Short titles.

(2) The Evidence Act, 1929-1974, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Evidence Act, 1929-1976".

2. Section 4 of the principal Act is amended by inserting after the definition of "legal proceedings" the following definition:—

"sexual offence" means—

- (a) rape;
 - (b) indecent assault;
 - (c) any offence involving unlawful sexual intercourse or an act of gross indecency;
 - (d) incest;
- or
- (e) any attempt to commit, or assault with intent to commit, any of the foregoing offences:.

Amendment of
principal Act,
s. 4—
Interpretation.

Enactment of
s. 34i of
principal Act—

3. The following section is enacted and inserted in the principal Act immediately after section 34h thereof:—

Evidence in
sexual cases.

34i. (1) In proceedings in which a person is accused of a sexual offence, evidence of a statement made by the alleged victim of the offence—

(a) after the time the offence is alleged to have been committed; and

(b) otherwise than in the presence of the accused,

is inadmissible unless introduced by cross-examination, or in rebuttal of evidence tendered by or on behalf of the accused.

(2) In proceedings in which a person is accused of a sexual offence, evidence of—

(a) sexual experiences of the alleged victim of the offence prior to the date on which the offence is alleged to have been committed;

or

(b) the sexual morality of the alleged victim of the offence,

shall not be adduced (whether by examination in chief, cross examination, or re-examination) except by leave of the judge.

(3) Leave to adduce evidence under this section shall not be granted except where the judge is satisfied that—

(a) an allegation has been, or is to be, made by or on behalf of the prosecution or the defence, to which the evidence in question is directly relevant;

and

(b) the introduction of the evidence is, in all the circumstances of the case, justified.

Enactment of
s. 71a of
principal Act—

4. The following section is enacted and inserted in the principal Act immediately after section 71 thereof:—

Restriction
upon reporting
proceedings
relating to
sexual offences.

71a. (1) A person shall not, before the relevant date, publish by newspaper, radio or television—

(a) any evidence given before a magistrate or justice in a preliminary investigation of a charge relating to a sexual offence;

or

(b) any report upon any such preliminary investigation,

unless the accused person consents to the publication.

Penalty: One thousand dollars.

(2) A person shall not, before the relevant date, publish by newspaper, radio or television any statement or representation—

(a) by which the identity of a person who has been, or is about to be, charged with a sexual offence is revealed;

or

- (b) from which the identity of a person who has been, or is about to be, charged with a sexual offence, might reasonably be inferred,

unless the accused person consents to the publication.

Penalty: One thousand dollars.

(3) Where—

- (a) a person publishes by newspaper, radio or television a report upon the trial of a person charged with a sexual offence;
- (b) the identity of the person charged with the offence is disclosed in the report, or the report is such that the identity of that person might reasonably be inferred;
- and
- (c) the accused person is acquitted of the charge, or the charge is dismissed,

the publisher shall include prominently in the report, or publish prominently as soon as practicable after the acquittal, or the dismissal of the charge, a statement to the effect that the accused was acquitted, or the charge dismissed.

Penalty: One thousand dollars.

(4) A person shall not publish by newspaper, radio or television any statement or representation—

- (a) by which the identity of a person alleged in any legal proceedings to be the victim of a sexual offence is revealed;
- or
- (b) from which the identity of a person alleged in any legal proceedings to be the victim of a sexual offence might reasonably be inferred,

unless the judge authorizes, or the alleged victim consents to, the publication.

Penalty: One thousand dollars.

(5) In this section—

“acquittal” includes a finding that an accused person has no case to answer:

“newspaper” means any newspaper, journal, magazine or other publication that is published daily or at periodic intervals:

“the relevant date” means the date on which—

- (a) the accused person is committed for trial or sentence;
- or
- (b) the charge is dismissed or the proceedings lapse by reason of the death of the accused, for want of prosecution, or for any other reason.

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

D. NICHOLLS, Governor