



EVIDENCE (No. 3)

No. 106 of 1976

ANALYSIS

1. Short title and citation.
2. Cross-examination of alleged rape victim as to prior sexual conduct.
3. Court may prohibit publication of names of parties and witnesses.
4. Prohibited questions and evidence, &c., not to be published.

AN ACT to amend the Evidence Act 1910.

[15 December 1976]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

- 1**—(1) This Act may be cited as the *Evidence Act (No. 3) 1976*. Short title and citation.
- (2) The *Evidence Act 1910*, as subsequently amended, is in this Act referred to as the Principal Act.

2 The Principal Act is amended by inserting after section 102 the following section:—

Cross-examination of alleged rape victim as to prior sexual conduct.

“ 102A A magistrate who is conducting an examination into a charge of rape, and a court hearing a charge of rape, shall disallow any question in cross-examination put to a woman alleged to have been raped as to her prior sexual behaviour with persons other than the person charged unless, in the opinion of the magistrate or of the court, as the case may be, the question asked is directly related to or tends to establish a fact or matter in issue before the magistrate or court.”.

3 The Principal Act is amended by inserting after section 103A the following section:—

Court may prohibit publication of names of parties and witnesses.
Cf. S.A. No. 1907 of 1929, s. 69.

“ 103AB—(1) Where it appears to any court that for the furtherance of, or otherwise in the interests of, the administration of justice it is desirable to prohibit the publication of the name of any party or intended party to, or witness or intended witness in, any proceedings before the court, wherein a person is charged with rape, or that such publication would prejudice the fair trial of any such case, the court may, either before or during the course of the proceedings or thereafter, make an order forbidding the publication of the name of the party or witness.

“(2) Where a court makes an order under subsection (1), the publication of any reference or allusion to any party or witness, the name of whom by an order under that subsection is forbidden to be published, shall, if such reference or allusion is, in the opinion of the court making the order, intended, or is sufficient, to disclose the identity of the party or witness, be deemed to be a publication of the name of the party or witness.

“(3) Where a court makes an order under this section forbidding the publication of any name, it shall report the fact to the Attorney-General and shall embody in its report a statement of the name by such order forbidden to be published and the circumstances in which the order was made.”.

Prohibited questions and evidence, &c., not to be published.

4 Section 104 of the Principal Act is amended—

- (a) by inserting in subsection (1) (a) (i), after the word “ section ”, the numeral and word “ 102A or”;
- (b) by transposing the word “ or ” from the end of subsection (1) (a) to the end of subsection (1) (b); and

(c) by inserting the following paragraph at the end of subsection (1):—

“(c) any name that the court has, under the provisions of section 103AB, ordered not to be published.”.

