

EVIDENCE AMENDMENT ACT 1987

No. 55 of 1987

TABLE OF PROVISIONS

1. Short title.
2. Principal Act.
3. Amendment of section 85 of Principal Act (Evidence in criminal proceedings).
4. Substitution of section 102A of Principal Act.
102A—Evidence relating to sexual experience &c.
5. Substitution of section 103AB of Principal Act.
103AB—Prohibition of publication of certain identifying particulars in certain cases.
6. Amendment of section 104 of Principal Act (Prohibited questions and evidence, &c., not to be published).



EVIDENCE AMENDMENT ACT 1987

No. 55 of 1987

AN ACT to amend the Evidence Act 1910.

[Royal Assent 18 August 1987]

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—This Act may be cited as the *Evidence Amendment Act* Short title. 1987.

2—In this Act, the *Evidence Act 1910** is referred to as Principal Act. the Principal Act.

3—Section 85 (7) (b) of the Principal Act is amended by omitting “129, 130, or 132” and substituting “or 129”. Amendment of section 85 of Principal Act (Evidence in criminal proceedings).

4—Section 102A of the Principal Act is repealed and the following section is substituted:— Substitution of section 102A of Principal Act.

* 1 Geo. V No. 20. For this Act, as amended to 1st June 1979, see the continuing Reprint of Statutes. Subsequently amended by No. 52 of 1981, Nos. 60 and 75 of 1982, No. 29 of 1984, Nos. 5, 21, and 51 of 1985, and No. 34 of 1986.

Evidence relating
to sexual
experience, &c.

102A—(1) In any proceeding before a magistrate or a court relating to a crime charged under Chapter XIV or Chapter XX of the *Criminal Code*—

(a) any evidence which discloses or implies the sexual reputation of the person against whom the crime is alleged to have been committed shall not be adduced nor elicited; and

(b) any evidence which discloses or implies the sexual experience of that person, other than sexual experience which forms part of the events or circumstances out of which the charge arises, shall not be adduced nor elicited unless leave of the magistrate or judge is first obtained on application made in the absence of any jury.

(2) A magistrate or judge in any proceeding relating to a crime referred to in subsection (1) shall not grant leave under paragraph (b) of that subsection unless satisfied that—

(a) the evidence which is sought to be adduced or elicited has direct and substantial relevance to a fact or matter in issue; and

(b) the probative value of such evidence outweighs any distress, humiliation, or embarrassment which the person against whom the crime is alleged to have been committed might suffer as a result of the admission of such evidence.

(3) In this section, a reference to the sexual experience of a person includes a reference to—

(a) any sexual activity or sexual behaviour of that person;

(b) the disposition of that person in sexual matters; and

(c) the lack of sexual experience of that person.

Substitution of
section 103AB of
Principal Act.

5—Section 103AB of the Principal Act is repealed and the following section is substituted:—

103AB—(1) A person shall not, in relation to any proceedings in any court in respect of any offence, publish or cause to be published in any newspaper, journal, or other periodical, or document or in any broadcast by means of wireless telegraphy or television—

Prohibition of publication of certain identifying particulars in certain cases.

- (a) the name, address, or any other reference or allusion likely to lead to the identification, of any person in respect of whom a crime is alleged to have been committed under sections 124-129 inclusive, section 185, or section 186, of the *Criminal Code*, or of any witness or intended witness in any such proceedings; or
- (b) any picture purporting to be a picture of any such person,

unless the court makes an order that any such name, address, reference, allusion, or picture may be so published subject to such conditions that the court may specify in that order.

(2) A person shall not, in relation to any proceedings in any court in respect of any offence, publish or cause to be published in any newspaper, journal, or other periodical or document, or in any broadcast by means of wireless telegraphy or television—

- (a) the name, address, or any other reference or allusion likely to lead to the identification of—
 - (i) any person in respect of whom a crime is alleged to have been committed under section 133 of the *Criminal Code*; or
 - (ii) the person who is alleged to have committed that crime; or
 - (iii) any witness or intended witness in such proceedings; or
- (b) any picture purporting to be a picture of any such person,

unless the court makes an order that any such name, address, reference, allusion, or picture may be so published subject to such conditions that the court may specify in that order.

(3) A court shall not make an order under subsection (1) or (2) unless satisfied that it is in the public interest to make that order.

(4) A person who publishes or causes to be published anything in contravention of this section commits a contempt of court and is liable to punishment for that contempt as if it had been committed in the face of the court against which the contempt is committed and on similar proceedings as in that last mentioned case.

Amendment of
section 104 of
Principal Act
(Prohibited
questions and
evidence, &c.,
not to be
published).

6—Section 104 (1) of the Principal Act is amended as follows:—

- (a) by omitting from paragraph (a) “published;” and substituting “published; or”;
- (b) by omitting from paragraph (b) “published; or” and substituting “published.”;
- (c) by omitting paragraph (c).