



ANNO TRICESIMO OCTAVO

**ELIZABETHAE II REGINAE**

**A.D. 1989**

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**No. 43 of 1989**

**An Act to amend the Evidence Act, 1929.**

[Assented to 4 May 1989]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Evidence Act Amendment Act, 1989*.
- (2) The *Evidence Act, 1929*, is referred to in this Act as “the principal Act”.

**Commencement**

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

**Interpretation**

3. Section 68 of the principal Act is amended—

(a) by inserting after the definition of “interim suppression order” the following definition:

“news media” means those who carry on the business of publishing information by newspaper, radio or television;:

and

(b) by striking out the definition of “suppression order” and substituting the following definition:

“suppression order” means an order—

(a) forbidding the publication of specified evidence or of any account or report of specified evidence;

or

(b) forbidding the publication of the name of—

(i) a party or witness;

or

(ii) a person alluded to in the course of proceedings before the court,

and of any other material tending to identify any such person.

**Substitution of s. 69a**

4. Section 69a of the principal Act is repealed and the following section is substituted:

**Suppression orders**

69a. (1) Where a court is satisfied that a suppression order should be made—

(a) to prevent prejudice to the proper administration of justice;

or

(b) to prevent undue hardship—

(i) to a victim of crime;

or

(ii) to a witness or potential witness in civil or criminal proceedings who is not a party to those proceedings,

the court may, subject to this section, make such an order.

(2) Where the question of making a suppression order (other than an interim suppression order) is under consideration by a court—

(a) the public interest in publication of information related to court proceedings, and the consequential right of the news media to publish such information, must be recognized as considerations of substantial weight;

and

(b) the court may only make the order if satisfied that the prejudice to the proper administration of justice, or the undue hardship, that would occur if the order were not made should be accorded greater weight than the considerations referred to above.

(3) Where an application is made to a court for a suppression order, the court may, without inquiring into the merits of the application, make such an order (an “interim suppression order”) to have effect, subject to revocation by the court, until the application is determined; but if such an order is made the court must determine the application as a matter of urgency and, wherever practicable, within 72 hours after making the interim suppression order.

(4) A suppression order may be made subject to such exceptions and conditions as the court thinks fit and specifies in the order.

(5) Where an application is made to a court for a suppression order—

(a) any of the following persons, namely:

(i) the applicant for the suppression order;

(ii) a party to the proceedings in which the suppression order is sought;

(iii) a representative of a newspaper or a radio or television station;

(iv) any person who has, in the opinion of the court, a proper interest in the question of whether a suppression order should be made,

is entitled to make submissions to the court on the application and may, by leave of the court, call or give evidence in support of those submissions;

(b) the court may (but is not obliged to) delay determining the application to make possible or facilitate non-party intervention in the proceedings under paragraph (a) (iii) or (iv).

(6) A suppression 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 (5) (a).

(7) On an application for the making, variation or revocation of a suppression order—

- (a) a matter of fact is sufficiently proved if proved on the balance of probabilities;
- (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—
  - (i) dispense with the taking of evidence on that matter;
  - and
  - (ii) accept the relevant fact as proved.

(8) An appeal lies against—

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

(9) Any of the following persons is entitled to institute, or to be heard on, an appeal:

- (a) where an application for a suppression order was made to the primary court—the applicant;
- (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 had, in the opinion of the primary court, a proper interest in the question of whether a suppression order should be made;

or

- (e) a person who did not appear before the primary court but has, in the opinion of the appellate court, a proper interest in the subject matter of the appeal or proposed appeal,

but a person who did not appear before the primary court may only bring an appeal, or be heard on an appeal, by leave of the appellate court (which will be granted if the appellate court is satisfied that that person's failure to appear before the primary court is not attributable to a lack of proper diligence).

(10) Where a court makes a suppression order (other than an interim suppression order), the court must—

- (a) immediately forward to the Registrar a copy of the order;
- and
- (b) within 30 days forward to the Attorney-General a report setting out—
  - (i) the terms of the order;
  - (ii) the name of any person whose name is suppressed from publication;
  - (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.

(11) Where a court varies or revokes a suppression order (other than an interim suppression order), the court must forward to the Registrar a written notification of the variation or revocation.

(12) The Registrar will establish and maintain a register of all suppression orders (other than interim suppression orders).

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

(14) In this section—

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

### Appeals

5. Section 69b of the principal Act is amended—

(a) by inserting after paragraph (b) of subsection (1) the following:

“and where the appeal lies in accordance with the above principles to some court other than the Full Court, a further appeal lies to the Full Court from a judgment or order of the primary appellate court”;

(b) by striking out from paragraph (a) of subsection (3) “of the primary court” and substituting “subject to the appeal”;

and

(c) by striking out from paragraph (b) of subsection (3) “by the primary court” and substituting “in the first instance”.

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

D. B. DUNSTAN, Governor