

TASMANIA

EVIDENCE AMENDMENT BILL 2020

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EVIDENCE AMENDMENT BILL 2020

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
18 March 2020

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

An Act to amend the *Evidence Act 2001*

Be it enacted by Her 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. Short title

This Act may be cited as the *Evidence Amendment Act 2020*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Evidence Act 2001** is referred to as the Principal Act.

*No. 76 of 2001

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4. Section 194K substituted

Section 194K of the Principal Act is repealed and the following section is substituted:

194K. Publication of certain identifying particulars prohibited

- (1) A person, in relation to any proceedings in any court, must not publish identifying information, or cause identifying information to be published, in respect of –
- (a) if a crime is alleged to have been committed under section 133 of the *Criminal Code* –
 - (i) any person in respect of whom the crime is alleged to have been committed; or
 - (ii) any defendant in respect of those proceedings; or
 - (iii) any witness or intended witness in those proceedings; or
 - (b) if a crime is alleged to have been committed under section 124, 125, 125A, 125B, 126, 127, 129, 185 or 186 of the *Criminal Code* –

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- (i) any person in respect of whom the crime is alleged to have been committed; or
 - (ii) any witness or intended witness, other than the defendant, in those proceedings; or
- (c) if an offence is alleged to have been committed under section 35(3) of the *Police Offences Act 1935* –
- (i) any person in respect of whom the offence is alleged to have been committed; or
 - (ii) any witness or intended witness, other than the defendant, in those proceedings.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
- (b) an individual, a fine not exceeding 60 penalty units or imprisonment for a term not exceeding 12 months, or both.

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- (2) Subsection (1) applies to the publication of identifying information in respect of a person referred to in that subsection, whether or not criminal proceedings in respect of the relevant crime or offence are, or have been, finally determined or otherwise disposed of.
- (3) It is a defence in proceedings for an offence against subsection (1) if the defendant establishes –
- (a) that the publication of the information is in accordance with a court order made for the purposes of this section; or
 - (b) that –
 - (i) the identifying information that is published relates to a person referred to in subsection (1)(a)(i), (b)(i) or (c)(i); and
 - (ii) the person has consented, in accordance with subsection (4), to the publication of identifying information in respect of the person; and
 - (iii) the identifying information is published in accordance with that consent; and

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- (iv) the publication of the information does not identify, or is not likely to lead to the identification of, another person referred to in subsection (1)(a), (b) or (c), other than the defendant to the relevant crime or offence, unless the other person –
 - (A) is also a person referred to in subsection (1)(a)(i), (b)(i) or (c)(i) in respect of the relevant crime or offence; and
 - (B) has also consented, in accordance with subsection (4), to the publication of the identifying information; and
- (v) the information was published only after the criminal proceedings in court, in respect of the relevant alleged crime or offence, were finally determined or otherwise disposed of.

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- (4) For the purposes of subsection (3)(b), a person has consented to the publication of identifying information in respect of the person if the person –
- (a) had attained the age of 18 years at the time –
 - (i) the person gave the consent; and
 - (ii) the identifying information was so published; and
 - (b) had consented, in writing, to the publication of the identifying information before the information was published; and
 - (c) understood, at the time the consent was given, that he or she may be identified, or identifiable, as a result of the publication of the identifying information; and
 - (d) was not coerced into consenting, in accordance with this subsection, to the publication of the identifying information.
- (5) A court may make an order, for the purposes of this section, providing for the publication of identifying information in respect of a person referred to in subsection (1), if the court is satisfied that –

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- (a) each living person referred to in subsection (1)(a)(i), (b)(i) or (c)(i), who is likely to be identified, or identifiable, as a result of information being published in accordance with the order –
 - (i) has been consulted in respect of the order; and
 - (ii) understands that he or she may be identified if the order is made and information is published in accordance with the order; and
- (b) if a person referred to in subsection (1)(a)(i), (b)(i) or (c)(i) is deceased and is likely to be identified, or identifiable, as a result of information being published in accordance with the order, the next of kin, or legal representative, of the deceased person –
 - (i) has been consulted in respect of the order; and
 - (ii) has been given a reasonable opportunity to inform the court of the wishes of the deceased person, if known, in

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respect of being identified, or identifiable, if the order is made and information is published in accordance with the order; and

- (c) it is in the public interest to do so.
- (6) A court may make an order, for the purposes of this section, subject to any specified conditions, including the means by which identifying information may be published under the order.
- (7) If a person referred to in subsection (1)(a)(i), (b)(i) or (c)(i) in respect of a crime, or offence, applies for a court order for the purposes of this section in respect of the crime or offence, the person is not required to pay the relevant application fee in respect of the application.
- (8) A person who publishes, or causes to be published, any identifying information in contravention of this section –
- (a) commits a contempt of court; and
 - (b) if not prosecuted for the contravention under subsection (1) in respect of the publication, 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.

(9) In this section –

identifying information, in relation to
a person, includes –

- (a) the name, address, school,
place of employment and
any other reference or
allusion that identifies, or
is likely to lead to the
identification of, the
person; and
- (b) a picture or image of the
person;

publish means to make available to the
public, or a section of the public,
by any means, including but not
limited to –

- (a) publication in a
newspaper, journal,
periodical, book or other
document; and
- (b) broadcast by radio,
television, wireless or
other telegraphy; and
- (c) publication or broadcast,
by means of the internet,
in any format; and

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- (d) in print, or electronic, communication meant for one or more persons; and
- (e) public exhibition, spectacle or event; and
- (f) such other prescribed means of making information available to the public.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

5. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.