

EVIDENCE.

No. 145 of 1976.

AN ACT to amend the Evidence Act, 1906-1975.

[Assented to 13th December, 1976.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Evidence Act Amendment Act, 1976.*

Short title
and
citation.

(2) In this Act the Evidence Act, 1906-1975 is referred to as the principal Act.

Reprinted
as approved
for reprint
2nd July,
1971 and
amended by
Acts Nos.
41 of 1971
and 61
of 1975.

(3) The principal Act as amended by this Act may be cited as the Evidence Act, 1906-1976.

Commence-
ment.

2. Subject to section 3 of this Act, this Act shall come into operation on a date to be fixed by proclamation.

Applica-
tion.

3. (1) The amendments to the principal Act effected by section 4 of this Act shall not have effect in relation to a hearing which began before the date on which this Act comes into operation.

(2) The amendments to the principal Act effected by section 5 of this Act shall not have effect in relation to a trial which began before the date on which this Act comes into operation.

Section 36A
added.

4. The principal Act is amended by adding after section 36 the following new section—

Restrictions
on certain
evidence
and cross-
examina-
tion at
committal
proceedings
for rape,
etc.

36A. (1) Notwithstanding anything in this or any other Act or rule of law to the contrary, but subject to subsection (4) of this section, at a hearing before a court of summary jurisdiction or a children's court to determine whether there is sufficient evidence for a person charged with a rape offence to be committed to a court of competent jurisdiction for trial, no evidence about restricted matters shall be adduced by or on behalf of a defendant, and no question about restricted matters shall be asked in cross-examination by or on behalf of a defendant, except as authorised by leave given in pursuance of this section.

(2) Leave shall not be given except on an application by or on behalf of a defendant which specifies the restricted matters in respect of which it is made; and on such an application the court shall give leave if and only if it is satisfied that the restricted matters in respect of which the application is made are of such relevance to issues arising in the hearing that it would be unfair to the defendant to exclude evidence of those matters.

(3) If on such an application the court is satisfied that it is made wholly or mainly for the purpose of showing that a complainant

behaved on a specific occasion in accordance with her disposition in sexual matters, the court shall treat the restricted matters to which the application relates as not being of such relevance as is mentioned in the preceding subsection unless the court is also satisfied that there is such a striking relationship between—

(a) a way, or matters connected with a way, in which the complainant is alleged to have behaved on that occasion; and

(b) the restricted matters in respect of which the application is made or matters connected with those matters,

as to suggest that her disposition in sexual matters was to behave in a way similar to that in which she is alleged to have behaved on that occasion.

(4) Nothing in subsection (1) of this section requires a particular defendant to obtain leave in respect of the sexual experiences of a complainant with a man other than the defendant, or in respect of her disposition in sexual matters with respect to the man, if the defendant could not, at a trial, be convicted of a particular offence with which he is charged unless it is shown that the man had or attempted to have sexual intercourse with the complainant without her consent or that the man indecently assaulted or attempted to indecently assault the complainant.

(5) In this section and in sections thirty-six B and thirty-six C of this Act—

“defendant”, in relation to a hearing or trial, means any defendant at the hearing or trial whether or not he is charged with a rape offence;

“rape offence” means the offence of rape, the offence of indecent assault, and the offences of attempting to commit,

conspiracy to commit or counselling or procuring the commission of, the offences of rape or indecent assault; and

“restricted matters”, in relation to a particular defendant, means any of the following, namely—

- (a) the sexual experiences (of any kind and at any time) of a complainant with a person other than the defendant; and
- (b) a complainant’s disposition in sexual matters excluding her disposition with respect to the defendant; and
- (c) a complainant’s reputation in sexual matters,

excluding any matter included among the *res gestae* connected with any offence with which a defendant is charged at the trial,

and nothing in this section or section thirty-six B of this Act authorises evidence to be adduced or a question to be asked which cannot be adduced or asked apart from this section. .

(6) In this section and in section thirty-six B of this Act—

“complainant” means a woman upon whom, in a charge for a rape offence to which the hearing or trial in question relates, it is alleged that rape or indecent assault was committed, attempted or proposed;

Section 36B added.

5. The principal Act is amended by adding a section as follows—

Restrictions on certain evidence and cross-examination at trial for rape, etc.

36B. (1) Notwithstanding anything in this or any other Act or rule of law to the contrary at a trial at which a person is charged with a

rape offence, no evidence about restricted matters shall be adduced by or on behalf of a defendant and no question about restricted matters shall be asked in cross-examination of the complainant unless leave of the court has first been obtained on application made in the absence of the jury (if any).

(2) The court shall not grant leave under subsection (1) of this section unless it is satisfied that what is sought to be adduced or elicited has substantial relevance to the facts in issue or to the credit of the complainant. .

6. The principal Act is amended by adding a section as follows—

Section 36C added.

36C. (1) Subject to subsection (5) of this section, after a person is accused of a rape offence no matter likely to lead members of the public to identify the complainant and, in the case of a complainant who is attending a school, no matter likely to lead members of the public to identify the school which the complainant attends, in relation to that accusation shall be published in a written publication available to the public or be broadcast, except by leave of the court which has or may have jurisdiction to try the person accused for that offence.

Names of complainants not to be published.

(2) If any matter is published or broadcast in contravention of subsection (1) of this section, the following persons, namely—

- (a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) in the case of any other publication, the person who publishes it; and
- (c) in the case of a broadcast, any body corporate which transmits or provides the programme in which the broadcast

is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars.

(3) For the purposes of this section a person is accused of a rape offence if—

- (a) a complaint is made under the Justices Act, 1902 alleging that he has committed a rape offence;
- (b) he appears before a court charged with a rape offence; or
- (c) a court before which he is appearing commits him for trial on a new charge alleging a rape offence,

and references in this section to an accusation alleging a rape offence shall be construed accordingly.

(4) In this section—

“a broadcast” means a broadcast by wireless telegraphy of a sound or visual images intended for general reception, and cognate expressions shall be construed accordingly;

“complainant”, in relation to a person accused of a rape offence or an accusation alleging a rape offence, means the woman against whom the offence is alleged to have been committed; and

“written publication” includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

(5) Nothing in this section prohibits the publication or broadcasting, in consequence of an accusation alleging a rape offence, of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with that offence, and the giving of leave in pursuance of this section does not affect the operation of subsection (1) of this section at any time before the leave is given. .
