

RESPONSE OF THE DEPARTMENT OF THE ATTORNEY-GENERAL AND JUSTICE

TO THE LEGISLATION SCRUTINY COMMITTEE

QUESTION ON NOTICE

Sexual Offences (Evidence and Procedure) Amendment Bill 2019

The South Australian Parliament recently passed the Evidence (Reporting on Sexual Offences) Amendment Bill 2019. The Bill removes the blanket prohibition on disclosing the identity of the defendant after the defendant's first appearance in court. What is the view of the Department of the Attorney-General and Justice on implementing this kind of provision instead of proposed section 7 in the Bill?

As the Department of the Attorney-General and Justice has previously noted, the purpose of the Sexual Offences (Evidence and Procedure) Bill 2019 (NT) was to remove the blanket prohibition on identifying victims of sexual offences where an adult victim consents. Making that amendment gave rise to the need to redraft other sections of the *Sexual Offences (Evidence and Procedure) Act 1983* including current sections 7 and 11B(1)(c) without reviewing the policy behind those sections.

Current section 71A(2) of the *Evidence Act 1929* (SA) operates similarly to current sections 7 and 11B(1)(c) of the *Sexual Offences (Evidence and Procedure) Act 1983*, or proposed new section 7 in the NT Bill. The South Australian section prohibits the publication of the identity of a defendant in sexual offence proceedings until the 'relevant date', which is at the time of a plea of guilty or finding of guilt for minor indictable sexual offence matters, or at the time of committal for trial or sentence for major indictable sexual offence matters. The Evidence (Reporting on Sexual Offences) Amendment Bill 2019 (SA) will amend section 71A(2) of the *Evidence Act 1929* (SA) so that the prohibition on publication of the identity of the defendant in a sexual offence proceeding is restricted to the time before the conclusion of the accused's first court appearance.

The South Australian Treasurer, the Hon Rob Lucas MP, in his second reading speech for the SA Bill, stated that the reasons for the prohibition applying until the time of the first court appearance are:

- preserving the integrity of an on-going police investigation and future criminal proceedings by ensuring there can be no reporting on a potential arrest before it happens;
- the existing prohibition can fuel rumour and innuendo impacting on the ability of the defendant to receive a fair trial;
- enabling a victim who is an adult and who consents to speak publicly about what they allege the defendant did after the first court hearing; and
- ensuring that there is no inadvertent identification of an alleged victim.

It is not clear to what extent these reasons are applicable in the Northern Territory context to justify only adjusting the timeframe for the prohibition rather than removing the prohibition completely. It is noted that the effect of the South Australian Bill is to preserve the status of defendants of sexual offences as a special category of defendant.

The Department reiterates its recommendation that whether to retain or amend proposed section 7 be the subject of wider consultation.