



Queensland

# **Criminal Law (Sexual Offences) Act 1978**

**Current as at 1 December 2008**

# Information about this reprint

This Act is reprinted as at 1 December 2008. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

## Spelling

The spelling of certain words or phrases may be inconsistent in this reprint or with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’). Variations of spelling will be updated in the next authorised reprint.

## Dates shown on reprints

**Reprints dated at last amendment** All reprints produced on or after 1 July 2002, authorised (that is, hard copy) and unauthorised (that is, electronic), are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If an authorised reprint is dated earlier than an unauthorised version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

**Replacement reprint date** If the date of an authorised reprint is the same as the date shown on another authorised reprint it means that one is the replacement of the other.



## Queensland

# Criminal Law (Sexual Offences) Act 1978

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# Criminal Law (Sexual Offences) Act 1978

[as amended by all amendments that commenced on or before 1 December 2008]

**An Act to regulate the admission of certain evidence in proceedings relating to sexual offences and the mode of taking evidence in such proceedings, to protect persons concerned in the commission of sexual offences from identification, and for related purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Criminal Law (Sexual Offences) Act 1978*.

### 3 Definitions

In this Act—

***complainant*** means a person in respect of whom a sexual offence is alleged to have been committed.

***defendant*** means a person charged with having committed a sexual offence.

***examination of witnesses*** means an examination of witnesses in relation to an indictable offence, being a sexual offence, commenced after the commencement of this Act and taken pursuant to the *Justices Act 1886*.

***prescribed sexual offence*** means any of the following offences—

- (a) rape;

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- (b) attempt to commit rape;
- (c) assault with intent to commit rape;
- (d) an offence defined in the Criminal Code, section 352.

**report** means an account in writing and an account broadcast or distributed in any way in or as sound or visual images.

**sexual offence** means any offence of a sexual nature, and includes a prescribed sexual offence.

**the court** includes justices taking an examination of witnesses.

**trial** means a trial of a defendant and a proceeding taken with a view to sentencing a defendant convicted of a sexual offence, which in either case is commenced after the commencement of this Act.

## Part 2 Evidence

### 4 Special rules limiting particular evidence about sexual offences

The following rules shall apply in relation to any examination of witnesses or trial in relation to a sexual offence whether or not the examination or trial relates also to a charge of an offence other than a sexual offence against the same or any other defendant—

- 1 The court shall not receive evidence of and shall disallow any question as to the general reputation of the complainant with respect to chastity.
- 2 Without leave of the court—
  - (a) cross-examination of the complainant shall not be permitted as to the sexual activities of the complainant with any person;

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(b) evidence shall not be received as to the sexual activities of the complainant with any person.

3 The court shall not grant leave under rule 2 unless it is satisfied that the evidence sought to be elicited or led has substantial relevance to the facts in issue or is proper matter for cross-examination as to credit.

4 Evidence relating to or tending to establish the fact that the complainant has engaged in sexual activity with a person or persons must not be regarded as having substantial relevance to the facts in issue only because of any inference it may raise about general disposition.

*Example of inference about general disposition—*

an inference that the complainant, because of having engaged in conduct of a sexual nature, is more likely to have consented to the conduct involved in the offence

Without prejudice to the substantial relevance of other evidence, evidence of an act or event that is substantially contemporaneous with any offence with which a defendant is charged in an examination of witnesses or a trial or that is part of a sequence of acts or events that explains the circumstances in which such an offence was committed shall be regarded as having substantial relevance to the facts in issue.

5 Evidence relating to or tending to establish the fact that the complainant has engaged in sexual activity with a person or persons is not proper matter for cross-examination as to credit unless, because of special circumstances, the court considers the evidence would be likely to materially impair confidence in the reliability of the complainant's evidence.

The purpose of this rule is to ensure that a complainant is not regarded as less worthy of belief as a witness only because the complainant has engaged in sexual activity.

6 An application for leave under rule 2 shall be made in the absence of the jury (if any) and, if the defendant so requests, in the absence of the complainant and shall be determined after the court has allowed such submissions

[s 4A]

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or evidence (sworn or unsworn) as the court considers necessary for the determination of the application.

#### **4A Evidence of complaint generally admissible**

- (1) This section applies in relation to an examination of witnesses, or a trial, in relation to a sexual offence.
- (2) Evidence of how and when any preliminary complaint was made by the complainant about the alleged commission of the offence by the defendant is admissible in evidence, regardless of when the preliminary complaint was made.
- (3) Nothing in subsection (2) derogates from the power of the court in a criminal proceeding to exclude evidence if the court is satisfied it would be unfair to the defendant to admit the evidence.
- (4) If a defendant is tried by a jury, the judge must not warn or suggest in any way to the jury that the law regards the complainant's evidence to be more reliable or less reliable only because of the length of time before the complainant made a preliminary or other complaint.
- (5) Subject to subsection (4), the judge may make any comment to a jury on the complainant's evidence that it is appropriate to make in the interests of justice.
- (6) In this section—  
*complaint* includes a disclosure.  
*preliminary complaint* means any complaint other than—
  - (a) the complainant's first formal witness statement to a police officer given in, or in anticipation of, a criminal proceeding in relation to the alleged offence; or
  - (b) a complaint made after the complaint mentioned in paragraph (a).

*Example—*

Soon after the alleged commission of a sexual offence, the complainant discloses the alleged commission of the offence to a parent (*complaint 1*). Many years later, the complainant makes a complaint to a secondary



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school teacher and a school guidance officer (*complaints 2 and 3*). The complainant visits the local police station and makes a complaint to the police officer at the front desk (*complaint 4*). The complainant subsequently attends an appointment with a police officer and gives a formal witness statement to the police officer in anticipation of a criminal proceeding in relation to the alleged offence (*complaint 5*). After a criminal proceeding is begun, the complainant gives a further formal witness statement (*complaint 6*).

Each of complaints 1 to 4 is a preliminary complaint. Complaints 5 and 6 are not preliminary complaints.

## Part 3                      Limit on publicity

### 5                      Exclusion of public

- (1) Whilst a complainant is giving evidence in any examination of witnesses or trial, the court shall cause to be excluded from the room in which it is then sitting all persons other than—
  - (a) the counsel and solicitor of the complainant;
  - (b) the defendant and the defendant's counsel and solicitor;
  - (c) a Crown law officer or a person authorised by a Crown law officer;
  - (d) the prosecutor;
  - (e) any person whose presence is, in the opinion of the court, necessary or desirable for the proper conduct of the examination or trial;
  - (f) any person whose presence will provide emotional support to the complainant;
  - (g) where the complainant is under or apparently under the age of 17 years—the parent or guardian of the child unless, in the court's opinion, the presence of that person would not be in the child's interests;
  - (h) any person who makes application to the court to be present and whose presence, in the court's opinion—

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- (i) would serve a proper interest of the applicant; and
  - (ii) would not be prejudicial to the interests of the complainant.
- (2) The provisions of subsection (1) shall be construed so as not to prejudice the power of the court had under any other provision or rule of law to exclude from the room in which it is sitting any person, including a defendant.

## **6 Publication at large of complainant's identity prohibited**

- (1) Any report made or published concerning an examination of witnesses or a trial, other than a report specified in section 8(1), shall not reveal the name, address, school or place of employment of a complainant therein or any other particular likely to lead to the identification of a complainant therein unless the court, for good and sufficient reason shown, orders to the contrary.
- (2) If the court makes an order to the contrary it may therein specify—
  - (a) the particulars that may be revealed; and
  - (b) the extent to which publication of the report made is permitted.
- (3) A person must not make or publish a report that contravenes subsection (1).

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
  - (b) for a corporation—1000 penalty units.
- (4) If the court makes an order under subsection (2) about the making or publishing of a report, a person who makes or publishes a report that contravenes the order commits an offence.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
  - (b) for a corporation—1000 penalty units.
- (5) The fact that a person is liable to a penalty for an offence under subsection (4) does not prevent the person being dealt with for contempt of court evidenced by the person's offence.

## **7 Publication prematurely of defendant's identity prohibited**

- (1) Any report made or published concerning an examination of witnesses in relation to a prescribed sexual offence, other than a report specified in section 8, shall not reveal the name, address, school or place of employment of a defendant therein or any other particular likely to lead to identification of a defendant therein unless the justices taking the examination, for good and sufficient reason shown, order to the contrary.
- (2) If justices make an order to the contrary they may therein specify—
  - (a) the particulars that may be revealed; and
  - (b) the extent to which publication of the report made is permitted.
- (3) A person must not make or publish a report that contravenes subsection (1).

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
  - (b) for a corporation—1000 penalty units.
- (4) If justices makes an order under subsection (2) about the making or publishing of a report, a person who makes or publishes a report that contravenes the order commits an offence.

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Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
  - (b) for a corporation—1000 penalty units.
- (5) The fact that a person is liable to a penalty for an offence under subsection (4) does not prevent the person being dealt with for contempt of court evidenced by the person's offence.

## **8 Exempted reports**

- (1) Sections 6 and 7 do not apply to—
- (a) a report made for the purposes of an examination of witnesses or a trial or of a proceeding on appeal arising from a trial; or
  - (b) a report made verbatim of a judgment or decision delivered in a trial or in a proceeding on appeal arising from a trial and contained in a recognised series of law reports; or
  - (c) a report made to or on behalf of the Department of Justice and Attorney-General, the commissioner of the police service, the Queensland College of Teachers or the department for the time being administering the *Child Protection Act 1999* for the purposes of the department or other entity to or on behalf of which it is made; or
  - (d) a report made to or on behalf of the department for the time being administering the *Education (General Provisions) Act 2006* or the *Vocational Education, Training and Employment Act 2000* for the purposes of the department to or on behalf of which it is made, if the report relates to a defendant mentioned in column 1, item 5(1) or 7 of the table in the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 9A; or
  - (e) a report made to or on behalf of the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001*.

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- (2) Section 7 does not apply to a report made concerning an examination of witnesses that reveals any particular referred to in that section of a defendant therein who as a result of the examination is committed for trial or sentence upon a charge of a sexual offence if the report is made after the committal order is made and does not reveal any such particular of any other defendant therein who is not so committed.

## **9 Act affords additional protection**

Sections 6 and 7 shall be construed to be in addition to and not to prejudice any other provision or rule of law directed towards the protection of witnesses or other persons in an examination of witnesses or a trial from identification.

## **10 When other publication of complainant's or defendant's identity is prohibited**

- (1) A person who, by a statement or representation made or published otherwise than in a report concerning an examination of witnesses or a trial, reveals the name, address, school or place of employment, or any other particular that is likely to lead to the identification, of—
- (a) a complainant, at any time; or
  - (b) a defendant charged with a prescribed sexual offence to which the statement or representation relates, before the defendant is committed for trial or sentence upon that charge;

commits an offence except where the statement or representation is made or published for an authorised purpose referred to in section 11.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1000 penalty units.

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- (2) It is a defence to a proceeding for an offence against subsection (1)(a) for a person to prove that, before the relevant statement or representation was made or published—
  - (a) the complainant authorised in writing the making or the publishing of the statement or representation; and
  - (b) when the complainant authorised the making or the publishing of the statement or representation, the complainant—
    - (i) was at least 18 years; and
    - (ii) had capacity to give the authorisation.
- (3) In this section—

*capacity* see the *Guardianship and Administration Act 2000*, schedule 4.

## **10A Provisions do not affect other laws**

Sections 6, 7 and 10 are not intended to prevent a person from giving information that is permitted or required to be given under another law.

## **11 Authorised purposes**

- (1) For the purposes of section 10 an authorised purpose is one authorised by or pursuant to this section.
- (2) The following purposes are authorised by this section—
  - (a) the purpose of an investigation into the complaint made by or on behalf of a complainant;
  - (b) the purpose of preparing for or conducting an examination of witnesses or a trial or a proceeding on appeal arising from a trial.
- (3) If, before the commencement of an examination of witnesses or a trial, a defendant makes application to a judge of the Supreme Court for a direction pursuant to this subsection and satisfies the judge that—

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- (a) the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the examination or trial; and
  - (b) the conduct of the applicant's defence at the examination or trial is likely to be substantially prejudiced if the direction is not given;

the judge shall direct that section 10(1) shall not, by virtue of an accusation that alleges a sexual offence and is specified in the direction, apply in relation to a complainant or defendant specified in the direction.

- (4) If a person who has been convicted of a sexual offence and has given notice of appeal to the Court of Appeal against the conviction or notice of an application for leave to so appeal applies to that court or to a judge of the Supreme Court for a direction pursuant to this subsection and satisfies the court or judge that—
  - (a) the direction is required for the purpose of obtaining evidence in support of the appeal; and
  - (b) the applicant is likely to suffer substantial injustice if the direction is not given;

the court or judge shall direct that section 10(1) shall not, by virtue of an accusation that alleges a sexual offence and is specified in the direction, apply in relation to a complainant specified in the direction.

## **12 Liability of directors etc. of body corporate**

Where a body corporate has committed an offence against this Act a person who, at the time the offence is committed, is a director or member of the governing body of the body corporate or the manager of or an officer concerned in the management of the business in Queensland of the body corporate (including, where the offence consists in publication in a newspaper, the editor thereof) shall be deemed to have committed a like offence and be liable therefor unless the person proves that the offence occurred without his or her

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consent or connivance and that the person exercised all due diligence to prevent the commission of the offence.

### **13 Proceedings for offences**

A proceeding in respect of an offence against this Act shall be taken in a summary way under the *Justices Act 1886* upon the complaint of a person authorised in writing in that behalf by the Minister whose signature shall, for this purpose, be judicially noticed.

## **Part 4 Transitional provisions**

### **14 Transitional provision for Criminal Law Amendment Act 2000**

The reference in the definition of *prescribed sexual offence* in section 3 to a sexual assault defined in the Criminal Code, section 352 is, in relation to an offence that was committed before the commencement of this section, a reference to a sexual assault defined in the Criminal Code, section 337 as in force at any time before the commencement of this section.

### **15 Transitional provision for Evidence (Protection of Children) Amendment Act 2003**

- (1) Section 4A only applies in relation to an examination of witnesses, or a trial, in relation to a sexual offence, that starts or continues after the commencement of this section.
- (2) Subsection (1) applies even if the sexual offence was committed, or the complaint was made, before the commencement of this section.



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## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 December 2008. Future amendments of the Criminal Law (Sexual Offences) Act 1978 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	1990 Act No. 93	19 January 1991	21 March 1996
1A	1997 Act No. 3	1 July 1997	4 July 1997
1B	1997 Act No. 83	1 January 1998	9 February 1998
1C	1999 Act No. 10	10 September 1999	21 October 1999
1D	1999 Act No. 10	23 March 2000	24 March 2000
2	2000 Act No. 43	27 October 2000	3 November 2000

  

Reprint No.	Amendments included	Effective	Notes
2A	2003 Act No. 55	5 January 2004	
2B	2004 Act No. 43	3 December 2004	
2C	2005 Act No. 47	1 January 2006	R2C withdrawn, see R3
3	—	1 January 2006	
3A	2008 Act No. 55	1 December 2008	

## 5 Tables in earlier reprints

Name of table	Reprint No.
Changed names and titles	1
Corrected minor errors	3
Obsolete and redundant provisions	1
Renumbered provisions	1

## 6 List of legislation

### **Criminal Law (Sexual Offences) Act 1978 No. 28**

date of assent 2 June 1978

commenced 31 July 1978 (proc pubd gaz 17 June 1978 p 878)

Note—This Act was to have been repealed by the Criminal Code No. 37 of 1995 s 460(1) sch 4 (automatic commencement under AIA s 15DA(2) deferred to 14 June 1997 (1996 SL No. 84 s 2(2)) but the 1995 Code was never proclaimed into force and was repealed by 1997 No. 3 s 121.

amending legislation—

### **Family Services Act 1987 No. 32 s 69(1) sch (prev Family and Youth Services Act 1987)**

date of assent 30 April 1987

commenced 9 June 1987 (proc pubd gaz 30 May 1987 p 846)

### **Criminal Code, Evidence Act and other Acts Amendment Act 1989 No. 17 pt 9**

date of assent 30 March 1989

commenced 3 July 1989 (proc pubd gaz 24 June 1989 p 1821 (as amd by proc pubd gaz 1 July 1989 p 2190))

### **Public Service (Administrative Arrangements) Act (No. 2) 1990 No. 80 s 3 sch 1**

date of assent 14 November 1990

commenced 31 August 1989 (see s 2(2)(b))

### **Criminal Code and Another Act Amendment Act 1990 No. 93 s 15**

date of assent 7 December 1990

commenced 19 January 1991 (proc pubd gaz 19 January 1991 p 174)

### **Criminal Code No. 37 of 1995 pt 1, s 460(1) sch 4**

date of assent 16 June 1995

ss 1–2 commenced on date of assent

remaining provisions never proclaimed into force and rep 1997 No. 3 s 121

### **Criminal Law Amendment Act 1997 No. 3 ss 1, 2(2), 122 sch 2**

date of assent 3 April 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 152)

**Education and Other Legislation Amendment Act 1997 No. 83 pts 1, 4**

date of assent 5 December 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1998 (1997 SL No. 464)

**Child Protection Act 1999 No. 10 ss 1, 2(2), 205 sch 3**

date of assent 30 March 1999

ss 1–2 commenced on date of assent

s 205 commenced 10 September 1999 (1999 SL No. 205)

remaining provisions commenced 23 March 2000 (2000 SL No. 45)

**Criminal Law Amendment Act 2000 No. 43 pts 1, 4**

date of assent 13 October 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 27 October 2000 (2000 SL No. 270)

**Evidence (Protection of Children) Amendment Act 2003 No. 55 pts 1, 7**

date of assent 18 September 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 5 January 2004 (2003 SL No. 280)

**Justice and Other Legislation Amendment Act 2004 No. 43 ss 1–3 sch**

date of assent 18 November 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 3 December 2004 (2004 SL No. 263)

**Education (Queensland College of Teachers) Act 2005 No. 47 ss 1–2, 329 sch 2**

date of assent 2 November 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2006 (see s 2)

**Criminal Code and Other Acts Amendment Act 2008 No. 55 pts 1, 5**

date of assent 23 October 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2008 (2008 SL No. 386)

## 7 List of annotations

### PART 1—PRELIMINARY

**pt hdg** ins 2003 No. 55 s 37

### Commencement of Act

**s 2** om R1 (see RA s 37)

### Definitions

**prov hdg** sub 2000 No. 43 s 37(1)

**s 3** def “**complainant**” sub 1989 No. 17 s 83(a)  
amd 2000 No. 43 s 37(2)

def “**Minister**” ins 1990 No. 80 s 3 sch 1  
om R1 (see RA s 39)

def “**prescribed sexual offence**” ins 1989 No. 17 s 83(b)  
amd 1990 No. 93 s 15  
sub 1997 No. 3 s 122 sch 2  
amd 2000 No. 43 s 37(3)  
def “**report**” sub 1997 No. 3 s 122 sch 2  
def “**sexual offence**” sub 1989 No. 17 s 83(c)

## **PART 2—EVIDENCE**

**pt hdg** ins 2003 No. 55 s 38

### **Special rules limiting particular evidence about sexual offences**

**prov hdg** sub 2003 No. 55 s 39

**s 4** amd 1989 No. 17 s 84; 2000 No. 43 s 38

### **Evidence of complaint generally admissible**

**s 4A** ins 2003 No. 55 s 40

## **PART 3—LIMIT ON PUBLICITY**

**pt hdg** ins 2003 No. 55 s 41

### **Exclusion of public**

**s 5** amd 1987 No. 32 s 69(1) sch  
sub 1989 No. 17 s 85

### **Publication at large of complainant’s identity prohibited**

**s 6** amd 2008 No. 55 s 129

### **Publication prematurely of defendant’s identity prohibited**

**s 7** amd 1989 No. 17 s 86; 2008 No. 55 s 130

### **Exempted reports**

**s 8** amd 1987 No. 32 s 69(1) sch; 1997 No. 83 s 8; 1999 No. 10 s 205 sch 3; 2005  
No. 47 s 329 sch 2; 2008 No. 55 s 131

### **When other publication of complainant’s or defendant’s identity is prohibited**

**prov hdg** sub 2008 No. 55 s 132(1)

**s 10** amd 1989 No. 17 s 87; 2008 No. 55 s 132(2)–(7)

### **Provisions do not affect other laws**

**s 10A** ins 2008 No. 55 s 133

### **Authorised purposes**

**s 11** amd 2008 No. 55 s 134

### **Proceedings for offences**

**s 13** amd 1990 No. 80 s 3 sch 1

## **PART 4—TRANSITIONAL PROVISIONS**

**pt hdg** ins 2003 No. 55 s 42

### **Transitional provision for Criminal Law Amendment Act 2000**

**s 14** ins 2000 No. 43 s 39

**Transitional provision for Evidence (Protection of Children) Amendment Act 2003**

**prov hdg** amd 2004 No. 43 s 3 sch

**s 15** ins 2003 No. 55 s 43

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