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LEGAL PRACTICE

# Sex offences and the publication of the defendant's identity: important legislative changes in Queensland

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As of 3 October 2023, persons accused of, and charged with sexual offences, including rape, attempted rape, assault with intent to commit rape, and sexual assault, can have their identity published by the media. This applies irrespective of whether a person was **charged before 3 October 2023**.

This is a major change to long-standing laws in Queensland which, historically, placed restrictions on the reporting of sexual offences, including any details of the defendant.

## Publication of sex offenders' identities prior to October 2023 was prohibited – this has now changed

Previously, where a person was charged with a sexual offence, s7 of the *Criminal Law (Sexual Offences) Act 1978* (**the Act**) prohibited the publication of a complainant's or defendant's:

'*name, address, school or place of employment, or any other particular that is likely to lead to the identification*'

before the defendant was committed to a higher court for trial or sentence. The objective of this prohibition was, in essence, to protect victims.

Now though, the Act has been amended so that only the identification of a complainant is prohibited. This amendment brings Queensland into line with most other states.

# The implications of changes to permit publishing of accused sex offenders' identities

The legislative changes mean that any person facing charges of rape, attempted rape, assault with intent to commit rape, or sexual assault can be identified in any media reporting (print, online, TV broadcasting) about their proceedings at *any* time during their proceedings.

Remember, this applies irrespective of whether a person was **charged before 3 October 2023**.

However, the new provisions do create a regime by which a defendant can apply to the court for a non-publication order (also known as a 'suppression order').

# The new non-publication order regime for sexual offences

Section 7B of the Act provides three grounds on which a non-publication order (suppression order) can be made:

1. The order is necessary to prevent prejudice to the proper administration of justice;
2. The order is necessary to prevent undue hardship or distress to a complainant or witness in relation to the charge;
3. The order is necessary to protect the safety of any person.

When hearing an application for a non-publication order, the court must consider factors including:

- the public interest;
- the views of the complainant;
- cultural considerations
- the potential effect of publication in a rural or remote community; and
- the history (and context) of the relationship between the complainant and defendant.

However, the principle of 'open justice' will undoubtedly be the paramount consideration for the court – namely, that judicial proceedings should take place:

- in open court;
- publicly and in open view;
- with no restriction on reporting.

# The practicalities of non-publication orders for sexual offences

The First Reading Speech (when the Bill was first introduced into Parliament), along with case law (from both Queensland and interstate), suggest that courts will not make non-publication orders lightly.

To that end, and as observed in *John Fairfax Group v Local Court of NSW* (1991) 26 NSWLR 131:

*'It has often been acknowledged that* ***an unfortunate incident of the open administration of justice is that embarrassing, damaging and even dangerous facts occasionally come to light. Such considerations have never been regarded as a reason for the closure of courts, or the issue of suppression orders*** *in their various alternative forms…A significant reason for adhering to a stringent principle,* ***despite sympathy for those who suffer embarrassment, invasions of privacy or even damage by publicity of their proceedings is that such interests must be sacrificed to the greater public interest in adhering to an open system of justice****.'*

The First Reading Speech for the amendments even expressly precludes reputational harm of the accused from being a ground on which an order can be made:

*'The possibility of reputational damage to a defendant will not be a ground upon which a non-publication order can be made.'*

The process to be followed when applying for a non-publication order (suppression order) in sexual offence cases also serves as a possible disadvantage to defendants. This arises by virtue of the requirement for a defendant to provide three business days' notice of their intended application to the court, complainant and the prosecution. In doing so, the court must notify 'each accredited media agency', so that those agencies may appear and be heard on the application.

So, where a defendant had never previously attracted media attention, the mere bringing of a non-publication application (particularly if unsuccessful) may serve to do just that.

# Get help from a criminal lawyer

If you have been charged with a sexual offence, then you will be impacted by these new laws, and you should contact one of our experienced criminal lawyers for assistance. In particular, if you are considering an application for a non-publication order, you will need to act swiftly.

## Contacting Gilshenan &Luton

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