

NORTHERN TERRITORY OF AUSTRALIA

SEXUAL OFFENCES (EVIDENCE AND PROCEDURE) ACT

As in force at 7 November 2002

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 7 November 2002

SEXUAL OFFENCES (EVIDENCE AND PROCEDURE) ACT

An Act to relating to evidence and procedure in the examination of witnesses and the trial of persons in respect of sexual offences

1 Short title

This Act may be cited as the *Sexual Offences (Evidence and Procedure) Act*.

2 Commencement

This Act shall come into operation on the commencement of the *Criminal Code Act 1983*.

3 Definitions

In this Act, unless the contrary intention appears:

complainant means a person on or against whom a sexual offence is alleged to have been committed.

court includes a Justice acting under Part V of the *Justices Act*.

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

examination of witnesses means an examination of witnesses in relation to a sexual offence, commenced after the commencement of this Act and taken under Part V of the *Justices Act*.

report means an account in writing or an account broadcast by wireless telegraphy in sound or in visual images.

sexual offence means:

- (a) an offence against section 128 to 132 (inclusive), 134, 135, 192, 192B or 201 of the Criminal Code;
- (b) an offence against section 127 of the Criminal Code committed in the circumstances referred to in subsection (2) of that section;

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- (c) an offence against section 188(1) of the Criminal Code committed in the circumstances referred to in subsection (2)(k) of that section; or
 - (d) an offence committed against section 60 to 69 (inclusive), 70(2), 71, 72 or 74 of the *Criminal Law Consolidation Act*.

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

4 Rules of evidence in relation to sexual offences

- (1) In an examination of witnesses or a trial, whether or not it relates also to a charge of an offence other than a sexual offence against the same or another defendant, except with the leave of the court, evidence shall not be elicited or led, whether by examination in chief, cross-examination or re-examination, relating to:
 - (a) the complainant's general reputation as to chastity; or
 - (b) the complainant's sexual activities with any other person,and the leave of the court shall not be granted unless the court is satisfied that the evidence sought to be elicited or led has substantial relevance to the facts in issue.
- (2) For the purposes of subsection (1)(b), evidence that relates to or tends to establish the fact that the complainant was accustomed to engage in sexual activities with any other person, shall not be regarded:
 - (a) as having substantial relevance to the facts in issue by reason only of an inference it may raise as to general disposition; or
 - (b) as being proper matter for cross-examination as to credit, in the absence of special circumstances by reason of which it would be likely materially to impair the confidence in the reliability of the evidence of the complainant.
- (3) For the purposes of subsection (1)(b), and without derogating from the relevance of other evidence in an examination of witnesses or a trial, evidence of an act or event that is substantially contemporaneous with an offence with which a defendant is charged, or that is part of a sequence of acts or events that explain the circumstances in which the alleged offence was committed, shall be regarded as having substantial relevance to the facts in issue.

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- (4) An application for leave of the court for the purposes of subsection (1)(b) 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 or sworn or unsworn evidence as it considers necessary for the determination of the application.
- (5) On the trial of a person for a sexual offence or an assault with intent to commit such an offence:
- (a) the Judge shall not warn, or suggest in any way to, the jury that it is unsafe to convict on the uncorroborated evidence of a complainant because the law regards complainants as an unreliable class of witness; and
 - (b) where:
 - (i) evidence is given;
 - (ii) a question is asked of a witness; or
 - (iii) a statement is made in the course of an address on evidence,

which tends to suggest that there was delay in making a complaint about the alleged sexual offence, or alleged assault with intent to commit such an offence, by the person against whom the offence is alleged to have been committed, the Judge shall:
 - (iv) warn the jury that delay in complaining does not necessarily indicate that the allegation is false; and
 - (v) inform the jury that there may be good reasons why a victim of a sexual offence may hesitate in complaining about it.
- (6) Nothing in subsection (5) prevents a Judge from making any comment on evidence given in a trial that it is appropriate to make in the interests of justice.

5 Unrepresented defendant not to cross-examine complainant

- (1) Notwithstanding any other law in force in the Territory, where, in an examination of witnesses or a trial, a defendant is not represented by a legal practitioner and the defendant wishes to cross-examine the complainant, the defendant:
- (a) shall not be entitled to cross-examine the complainant directly; and

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- (b) shall put any question to the complainant by stating the question to the Justice, Judge or another person approved by the Court, and the Justice, Judge or other person shall repeat the question accurately to the complainant.
- (2) Where, in a trial, a defendant who is not represented by a legal practitioner conducts a cross-examination in accordance with subsection (1), the Judge shall cause a warning to be issued to the jury in accordance with section 21A(3) of the *Evidence Act*.

6 Publication of complainant's identity prohibited

Subject to section 9, a report made or published concerning an examination of witnesses or a trial shall not reveal the name, address, school or place of employment of a complainant or any other particular likely to lead to the identification of a complainant, unless the Justice taking the examination or the court at the trial makes an order to the contrary.

7 Premature publication of defendant's identity prohibited

Subject to section 9, a report made or published concerning an examination of witnesses shall not reveal the name, address, school or place of employment of a defendant or any other particular likely to lead to identification of a defendant, unless the Justice taking the examination makes an order to the contrary.

8 Conditions of publication

An order made under section 6 or 7 may specify the particulars that may be revealed and the extent to which publication of the report made is permitted.

9 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;
 - (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 recognized series of law reports; or
 - (c) a report made to or on behalf of the Agency primarily responsible for law and the administration of justice, the Director of Public Prosecutions, the Police Force of the Northern Territory or the Agency primarily responsible for health, welfare and community services, for the purposes of the Department, the Director or Police Force to or on behalf of

which it is made.

- (2) Section 7 does not apply to a report made concerning an examination of witnesses that reveals a particular, referred to in that section, of a defendant who, as a result of the examination, is committed for trial or sentence on a charge of having committed 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 who is not so committed.

10 Protection additional

Sections 6 and 7 do not derogate from any other law directed towards the protection from identification of a witness or other person in an examination of witnesses or a trial.

11 Offences

- (1) A person who publishes a report in contravention of section 6 or 7 or, where the publication of the report is permitted by an order of the Justice or of the court, otherwise than in accordance with the terms of that order, is guilty of an offence.
- (2) 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 of:
- (a) a complainant, at any time; or
 - (b) a defendant, before the defendant is committed for trial or sentence upon a charge of having committed the sexual offence to which the statement or representation relates,
- is guilty of an offence, except where the statement or representation is made or published for an authorized purpose referred to in section 12.
- (3) A person who is guilty of an offence against this section is liable:
- (a) in the case of a body corporate – to a fine of \$25,000; and
 - (b) in the case of an individual – to a fine of \$5,000 or imprisonment for 6 months.
- (4) This section does not derogate from the power of the court to deal with a person, who has committed an offence against this section, for contempt of court.

12 Authorized purposes

- (1) For the purposes of section 11:
- (a) an investigation into a complaint made by or on behalf of a complainant; and
 - (b) preparing for or conducting an examination of witnesses or a trial or proceeding or appeal arising from a trial,

are authorized purposes.

- (2) Where, before the commencement of an examination of witnesses or a trial, a defendant makes application to the Supreme Court for a direction pursuant to this subsection and satisfies it that:

- (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) that the conduct of the applicant's defence at the examination of witnesses or trial is likely to be substantially prejudiced if the direction is not given,

the Court shall direct that section 11(2) does 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.

- (3) Where a person who has been found guilty of a sexual offence and who has given notice of appeal against the finding of guilt, or notice of an application for leave to so appeal, applies to the court to which the appeal is made for a direction pursuant to this subsection and satisfies it 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 shall direct that section 11(2) does 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.

13 Liability of directors, &c., of body corporate

Where a body corporate has committed an offence against this Act, a person who, at the time the offence was committed, was a

director, or a member of the governing body, of the body corporate, or the manager or an officer concerned in the management of the business in the Territory of the body corporate (including, where the offence consists of publication in a newspaper or other periodical, the editor thereof) shall be deemed to have committed a like offence and be liable therefore, unless he proves that the offence occurred without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence.

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Sexual Offences (Evidence and Procedure) Act 1983 (Act No. 69, 1983)***

Assent date	28 November 1983
Commenced	1 January 1984 (s 2, s 2 <i>Criminal Code Act 1983</i> (Act No. 47, 1983) <i>Gaz</i> G46, 18 November 1983, p 11 and <i>Gaz</i> G8, 26 February 1986, p 5)

Sexual Offences (Evidence and Procedure) Amendment Act 1984 (Act No. 11, 1984)

Assent date	29 June 1984
Commenced	29 June 1984

Law Officers Amendment Act (No. 2) 1986 (Act No. 48, 1986)

Assent date	10 December 1986
Commenced	19 December 1986 (<i>Gaz</i> S87, 17 December 1986)

Statute Law Revision Act 1987 (Act No. 9, 1987)

Assent date	27 May 1987
Commenced	27 May 1987

Sexual Offences (Evidence and Procedure) Amendment Act 1989 (Act No. 69, 1989)

Assent date	12 December 1989
Commenced	12 December 1989

Director of Public Prosecutions (Consequential Amendments) Act 1990 (Act No. 29, 1990)

Assent date	11 June 1990
Commenced	21 January 1991 (s 2, s 2 <i>Director of Public Prosecutions Act 1990</i> (Act No. 35, 1990) and <i>Gaz</i> G2, 16 January 1991, p 9)

Sexual Offences (Evidence and Procedures) Amendment Act 1994 (Act No. 23, 1994)

Assent date 18 April 1994
 Commenced 1 August 1994 (s 2)

Amending Legislation

Statute Law Revision Act 1994 (Act No. 50, 1994)

Assent date 20 September 1994
 Commenced 20 September 1994 (s 14(2))

Statute Law Revision Act 1995 (Act No. 14, 1995)

Assent date 23 June 1995
 Commenced 23 June 1995

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date 19 April 1996
 Commenced s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and Gaz S15, 13 June 1996)

Statute Law Revision Act 1996 (Act No. 42, 1996)

Assent date 17 September 1996
 Commenced 17 September 1996

Sexual Offences (Evidence and Procedure) Amendment Act 2001 (Act No. 36, 2001)

Assent date 19 July 2001
 Commenced 26 September 2001 (s 2)

Statute Law Revision Act (No. 2) 2002 (Act No. 59, 2002)

Assent date 7 November 2002
 Commenced 7 November 2002

3 LIST OF AMENDMENTS

- s 3 amd No. 11, 1984, s 3; No. 23, 1994, s 4; No. 17, 1996, s 6; No. 36, 2001, s 3
- s 4 amd No. 23, 1994, s 5; No. 14, 1995, s 12
- s 5 amd No. 48, 1986, s 9; No. 29, 1990, s 7
 sub No. 23, 1994, s 6
- s 9 amd No. 9, 1987, s 2; No. 29, 1990, s 7; No. 42, 1996, s 6; No. 59, 2002, s 5
- s 11 amd No. 69, 1989, s 2; No. 23, 1994, s 7
- s 12 amd No. 17, 1996, s 6
- s 13 amd No. 23, 1994, s 8