

NORTHERN TERRITORY OF AUSTRALIA

SEXUAL OFFENCES (EVIDENCE AND PROCEDURE) ACT

As in force at 23 March 2016

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 23 March 2016

SEXUAL OFFENCES (EVIDENCE AND PROCEDURE) ACT

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

Part 1 Preliminary matters

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 an indictable offence involving:

- (a) sexual intercourse or sexual penetration; or
- (b) a sexual relationship; or
- (c) sexual abuse; or

- (d) indecent touching or an indecent assault; or
- (e) any other indecent act directed against a person or committed in the presence of a child; or
- (f) the making, collection, exhibition or display of an indecent object or indecent material; or
- (g) sexual servitude or any other form of sexual exploitation; or
- (h) an attempt to commit, an act of procuring, or any other act preparatory to the commission of, any of the above.

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.

3AB Relationship with *Evidence (National Uniform Legislation) Act*

This Act applies in addition to, and does not affect the operation of, the *Evidence (National Uniform Legislation) Act*.

3AC Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 3AB

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Evidence and Procedure for Sexual Offences

3A Time limit on prosecutions

- (1) If a person is to be tried summarily for a sexual offence, the trial must be commenced within 3 months of the matter being first mentioned in court.
- (2) If a person is charged with an indictable offence that is a sexual offence, a preliminary investigation under Part V, Division 1 of the *Justices Act* must be commenced within 3 months of the matter being first mentioned in court.
- (3) If a person is to be tried on indictment for a sexual offence, the trial must be commenced within 3 months of the person being committed for trial.

- (4) The court in which the person is to be tried, or which is to conduct a preliminary examination (as the case may be) may, if it thinks fit, at any time and despite that the period fixed by subsection (1), (2) or (3) (as the case may be) has expired, grant an extension, not exceeding 3 months, of the period.
- (5) More than one extension may be granted under subsection (4).

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.
- (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 evidence, given on oath or otherwise, 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; or
 - (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) is not entitled to cross-examine the complainant directly; and
 - (b) must not put any question (a ***stated question***) to an appointed person for the defendant, and the appointed person must accurately repeat the question to the complainant.

- (1A) For subsection (1)(b), the appointed person for a defendant is a person appointed by the Court for the purpose of a defendant's cross-examination of a complainant.
- (1B) However, the appointed person for a defendant must not do either of the following:
- (a) ask the complainant any other question except a stated question;
 - (b) give the defendant legal or other advice.
- (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 must issue a warning to the jury in accordance with section 21A(3) of the *Evidence Act*.
- (3) If a defendant who is not represented by a legal practitioner does not cross-examine the complainant, the Judge must warn the defendant that the defendant will not be permitted to adduce evidence in relation to a fact in issue in order to contradict the evidence of the complainant.

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 Publication or making of report

A person commits an offence if:

- (a) the person intentionally publishes or makes a report concerning an examination of witnesses or a trial; and
- (b) the conduct mentioned in paragraph (a) results in a contravention of section 6 or 7 and the person is reckless as to the result.

Maximum penalty: 40 penalty units or imprisonment for 6 months.

11A Contravention of order

A person who is required to comply with an order in relation to the publication or making of a report concerning an examination of witnesses or a trial commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct results in contravention of the order and the person is reckless as to the result.

Maximum penalty: 40 penalty units or imprisonment for 6 months.

11B Revealing identity of person

(1) A person commits an offence if:

- (a) the person intentionally publishes or makes a statement or representation; and
- (b) the statement or representation is not in a report mentioned in section 6 or 7; and
- (c) the conduct mentioned in paragraph (a) results in revealing the name, address, school or place of employment of the following, and the person is reckless as to the result:
 - (i) a complainant, at any time;
 - (ii) 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.

Maximum penalty: 40 penalty units or imprisonment for 6 months.

(2) Strict liability applies to subsection (1)(b).

(3) Subsection (1) does not apply if the statement or representation is made or published for an authorised purpose mentioned in section 12.

11C Contempt

If a person is charged with, or found guilty of committing, an offence against section 11, 11A or 11B, a court may also deal with the person for contempt of court.

12 Authorised purposes

- (1) For the purposes of sections 11, 11A and 11B:
- (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 authorised 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 11B 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 11B 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 Criminal liability of executive officer of body corporate – evidential burden of proof on defence

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) An offence against subsection (1) is an offence of absolute liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if:
- (a) the defendant was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) the defendant took reasonable steps to prevent the contravention; or
 - (c) the defendant did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.

- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

declared provision means:

- (a) section 11, 11A or 11B; or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

Part 3 Transitional matters

Division 1 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015

14 Offences – before and after commencement

- (1) Section 13, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 35 of that Act (the **commencement**) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 13, as in force before the commencement:
 - (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 2 Transitional matters for Justice Legislation Amendment (Vulnerable Witnesses) Act 2016

15 Definitions

In this Division:

amending Act means the *Justice Legislation Amendment (Vulnerable Witnesses) Act 2016*.

commencement means the commencement of Part 4 of the amending Act.

16 Proceedings already started

- (1) If a proceeding in relation to a prosecution of a sexual offence started before the commencement, the amending Act applies only to the part of the proceeding that takes place after the commencement.
- (2) However, subsection (1) does not apply in relation to an examination of witnesses or a trial started in the proceeding before the commencement if:
 - (a) the examination or trial continues after the commencement; or
 - (b) the proceeding was adjourned before the commencement during the examination or trial and continues after the commencement.
- (3) The provisions of this Act, as in force immediately before the commencement, continue to apply to an examination of witnesses or a trial mentioned in subsection (2) as if the amending Act had not commenced.

17 Application of sections 11, 11A and 11B before and after commencement

- (1) Sections 11, 11A and 11B, as inserted by the amending Act, apply only in relation to offences committed after the commencement.
- (2) Section 11, as in force before the commencement, continues to apply in relation to offences committed before the commencement.
- (3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

18 Application of section 13 before and after commencement

- (1) Section 13, as inserted by the amending Act, (the *new section*) applies in relation to a relevant offence committed by a body corporate after the commencement only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 13, as in force before the commencement:
 - (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

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

Evidence Reform (Children and Sexual Offences) Act 2004 (Act No. 56, 2004)

Assent date 4 November 2004
Commenced 8 December 2004 (Gaz G49, 8 December 2004, p 3)

Evidence of Children Amendment Act 2007 (Act No. 16, 2007)

Assent date 18 September 2007
Commenced 10 October 2007 (Gaz G41, 10 October 2007, p 4)

Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)

Assent date 18 November 2010
Commenced 1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and Gaz G7, 16 February 2011, p 4)

Penalties Amendment (Miscellaneous) Act 2013 (Act No. 23, 2013)

Assent date 12 July 2013
Commenced 28 August 2013 (Gaz G35, 28 August 2013, p 2)

Statute Law Amendment (Directors' Liability) Act 2015 (Act No. 26, 2015)

Assent date 18 September 2015
Commenced 14 October 2015 (Gaz G41, 14 October 2015, p 3)

Justice Legislation Amendment (Vulnerable Witnesses) Act 2016 (Act No. 2, 2016)

Assent date 2 March 2016
Commenced 23 March 2016 (Gaz G12, 23 March 2016, p 6)

3 LIST OF AMENDMENTS

pt 1 hdg	ins No. 2, 2016, s 20
s 3	amd No. 11, 1984, s 3; No. 23, 1994, s 4; No. 17, 1996, s 6; No. 36, 2001, s 3; No. 56, 2004, s 16; No. 16, 2007, s 15
ss 3AB – 3AC	ins No. 2, 2016, s 21
pt 2 hdg	ins No. 2, 2016, s 21
s 3A	ins No. 56, 2004, s 17
s 4	amd No. 23, 1994, s 5; No. 14, 1995, s 12; No. 40, 2010, s 118
s 5	amd No. 48, 1986, s 9; No. 29, 1990, s 7 sub No. 23, 1994, s 6 amd No. 2, 2016, s 22
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; No. 23, 2013, s 8 sub No. 2, 2016, s 23
ss 11A – 11C	ins No. 2, 2016, s 23
s 12	amd No. 17, 1996, s 6; No. 2, 2016, s 24
s 13	amd No. 23, 1994, s 8 sub No. 26, 2015, s 108; No. 2, 2016, s 25
pt 3 hdg	ins No. 2, 2016, s 26
pt 3	
div 1 hdg	ins No. 2, 2016, s 26
s 14	ins No. 26, 2015, s 108 amd No. 2, 2016, s 27
pt 3	
div 2 hdg	ins No. 2, 2016, s 28
ss 15 – 18	amd No. 2, 2016, s 28