



NORTHERN TERRITORY OF AUSTRALIA

No. 69 of 1983

AN ACT

Relating to evidence and procedure in the examination of witnesses and the trial of persons in respect of sexual offences

[Assented to 28 November 1983]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Sexual Offences (Evidence and Procedure) Act 1983*.

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*;

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

"sexual offence" means an offence against section 189(k) or 192 of the Criminal Code;

"trial" means a trial of a defendant or 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.

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 a person other than the defendant,

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 sub-section (1)(b), evidence that relates to or tends to establish the fact that the complainant was accustomed to engage in sexual activities with a person or persons other than the defendant, 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 sub-section (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 sub-section (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. CERTAIN EXAMINATIONS OF WITNESSES TO BE IN PRIVATE

(1) While a complainant is giving evidence in an examination of witnesses, the Justice taking the examination shall cause to be excluded from the court or place where the examination is taken, all persons except -

- (a) the complainant and the legal practitioner representing the complainant;
- (b) the defendant and the legal practitioner representing the defendant;
- (c) the Crown Solicitor or a person authorized by him;
- (d) the prosecuting officer;
- (e) the member of the Police Force in charge of the case;
- (f) the officers assisting the Justice in taking the examination;
- (g) a person whose presence at the examination is, in the opinion of the Justice, necessary or desirable for its proper conduct and a person who makes application to the Justice to be present at the examination and whose presence, in the opinion of the Justice -
 - (i) would serve a proper interest of the applicant in the proceedings; and
 - (ii) would not be prejudicial to the interests of the complainant; and

(h) where a complainant or defendant is under or apparently under the age of 17 years -

- (i) in the case of a complainant - the parents, guardian or person having the custody of the complainant; and
- (ii) in the case of a defendant - persons who are required or permitted under the *Juvenile Justice Act* to be present.

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(2) Sub-section (1) does not derogate from the power the Justice has under any other law or rule to exclude from an examination of witnesses any person, including a defendant.

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 Department of Law, the Police Force of the Northern Territory or the Department of Community Development, for the purposes of the Department 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.

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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 \$2,000; and
- (b) in the case of an individual - to a fine of \$500 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.

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(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 sub-section 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 convicted of a sexual offence and who has given notice of appeal against the conviction, 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 sub-section 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 in publication in a newspaper, 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.