

NORTHERN TERRITORY OF AUSTRALIA

SEXUAL OFFENCES (EVIDENCE AND PROCEDURE) AMENDMENT
ACT 2020

Act No. 22 of 2020

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 22 of 2020

An Act to amend the *Sexual Offences (Evidence and Procedure) Act 1983*
and for related purposes

[Assented to 1 July 2020]
[Introduced 28 November 2019]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Sexual Offences (Evidence and Procedure) Amendment Act 2020*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Sexual Offences (Evidence and Procedure) Act 1983

3 Act amended

This Part amends the *Sexual Offences (Evidence and Procedure) Act 1983*.

4 Sections 6 to 12 replaced

Sections 6 to 12

repeal, insert

6 Disclosing identity of complainant

(1) A person commits an offence if:

- (a) the person intentionally publishes or makes a statement or representation; and
- (b) the publication or making of the statement or representation results in the disclosure of any of the following particulars at any time:
 - (i) the name, address, school or place of employment of a complainant;
 - (ii) any other particular likely to lead to the identification of a complainant; and
- (c) the person is reckless in relation to the result referred to in paragraph (b).

Maximum penalty: 50 penalty units or imprisonment for 6 months.

(2) It is a defence to a prosecution for an offence against subsection (1) if:

- (a) no proceeding in relation to the sexual offence that was alleged to have been committed is pending in a court when the statement or representation is published or made; and
- (b) the affected complainant or, if there is more than one affected complainant, each affected complainant:
 - (i) consented in writing to the publication or making of the statement or representation before it was published or made; and
 - (ii) was an adult with capacity to consent when consenting.

(3) Subsection (1) does not apply to a statement or representation exempted under section 8.

(4) In this section:

affected complainant means a complainant whose particular referred to in subsection (1)(b) is disclosed as a result of the publication or making of the statement or representation.

capacity, for a person to consent, means the person:

- (a) is capable of freely and voluntarily consenting; and
- (b) is not incapable of consenting because of mental impairment as defined in section 43A of the Criminal Code.

7 **Disclosing identity of defendant**

(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 published or made before a defendant is committed for trial or sentence on a charge of having committed the sexual offence to which the statement or representation relates; and
- (c) the publication or making of the statement or representation results in the disclosure of any of the following particulars:
 - (i) the name, address, school or place of employment of a defendant;
 - (ii) any other particular likely to lead to the identification of the defendant; and
- (d) the person is reckless in relation to the circumstance referred to in paragraph (b) and the result referred to in paragraph (c).

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

(2) Subsection (1) does not apply to a statement or representation exempted under section 8.

8 **Exempted statements and representations**

(1) For sections 6(3) and 7(2), a statement or representation is exempted if it is published or made:

- (a) in a report made verbatim of a judgment or decision delivered in a trial or an appeal proceeding arising from a trial and published in a recognised series of law reports; or

- (b) in a report for or to any of the following entities for the purposes of the entity:
 - (i) the Agency primarily responsible for law and the administration of justice;
 - (ii) the Director of Public Prosecutions;
 - (iii) the Police Force of the Northern Territory;
 - (iv) an Agency primarily responsible for health, welfare and community services; or
 - (c) for an investigation into a complaint made by or on behalf of a complainant; or
 - (d) for the purposes of preparing for or conducting an examination of witnesses, a trial or an appeal proceeding arising from a trial; or
 - (e) in accordance with a court order or direction made under section 9.
- (2) For section 7(2), a statement or representation is also exempted if:
- (a) it is published or made in a report about an examination of witnesses that discloses any particular of a defendant referred to in section 7(1)(c) who, as a result of the examination, is committed for trial or sentence on a charge of having committed a sexual offence; and
 - (b) it is published or made after the committal order is made; and
 - (c) it does not disclose any particular of any other defendant who is not committed.

9 Court may authorise disclosure

- (1) A court may order that a person is authorised to publish or make a statement or representation that would otherwise be an offence against section 6 or 7.
- (2) The court must consider the wishes of a complainant when making an order in relation to a statement or representation that discloses any particular that is likely to lead to the identification of the complainant.
- (3) The order may specify the particulars that may be disclosed and the extent to which publication or making of the statement or representation is permitted.

- (4) Before the commencement of an examination of witnesses or a trial, a court may direct that section 6(1) or 7(1) does not apply in relation to a specified complainant or defendant if:
- (a) a defendant applies to the court for a direction under this subsection; and
 - (b) the court is satisfied that:
 - (i) 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
 - (ii) 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.
- (5) A court may direct that section 6(1) does not apply in relation to a specified complainant if:
- (a) a defendant who is found guilty of committing a sexual offence:
 - (i) gives notice of appeal or an application for leave to appeal against the finding of guilt to the court; and
 - (ii) applies to the court for a direction under this subsection; and
 - (b) the court is satisfied that:
 - (i) the direction is required for the purpose of obtaining evidence in support of the appeal; and
 - (ii) the applicant is likely to suffer substantial injustice if the direction is not given.

10 Contravention of order

A person who is required to comply with an order made under section 9(1) 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 in relation to the result.

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

11 Contempt

If a person is charged with or found guilty of an offence against section 6, 7 or 10, the court may also deal with the person for contempt of court.

12 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.

5 Section 13 amended (Criminal liability of executive officer of body corporate – evidential burden of proof on defence)

Section 13(9), definition ***declared provision***, paragraph (a)

omit

11, 11A or 11B

insert

6, 7 or 10

6 Part 3, Division 4 inserted

After section 19

insert

Division 4 Transitional matters for Sexual Offences (Evidence and Procedure) Amendment Act 2020**20 Definitions**

In this Division:

amending Act means the *Sexual Offences (Evidence and Procedure) Amendment Act 2020*.

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

21 Offence provisions – before and after commencement

- (1) The offence provisions, as amended by the amending Act, apply only in relation to offences committed after the commencement.

- (2) The offence provisions, as in force before the commencement, continue 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.
- (4) For section 6(2), consent must be given after the commencement.
- (5) In this section:

offence provisions means the provisions of this Act that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

22 Court orders and directions

- (1) The following orders and directions continue in force after the commencement as if they had been made in accordance with section 9 of this Act:
 - (a) an order made under section 6 or 7 of the former Act;
 - (b) a direction made under section 12(2) or (3) of the former Act.
- (2) If an application for an order or direction was made under the former Act but was not determined before the commencement, the court may determine the application under this Act as amended by the amending Act.
- (3) In this section:

former Act means this Act as in force immediately before the commencement.

Part 3 Consequential amendment of Youth Justice Act 2005

7 Act amended

This Part amends the *Youth Justice Act 2005*.

8 Section 50 amended (Restriction of publication)

- (1) Section 50(2)(b)

omit

youth.

insert

youth; or

(2) After section 50(2)(b)

insert

(c) a person publishes a report or information:

- (i) containing particulars likely to lead to the identification of a witness in the proceeding who is a complainant as defined in section 3 of the *Sexual Offences (Evidence and Procedure) Act 1983* and who consents to the publication in accordance with section 6(2)(b) of that Act; and
- (ii) that does not contain particulars likely to lead to the identification of the youth who is the subject of the proceeding and who has not consented to the publication; and
- (iii) that does not contain particulars likely to lead to the identification of another witness in the proceeding who is a complainant as defined in section 3 of the *Sexual Offences (Evidence and Procedure) Act 1983* and who has not consented to the publication in accordance with section 6(2)(b) of that Act.

(3) After section 50(2)

insert

(2A) For proceedings for a sexual offence in which the youth is a defendant, the youth may not give consent under subsection (2)(b) to publish a report or information containing particulars of the youth until the youth has turned 18 years of age.

(4) Section 50(7)

insert

sexual offence, see section 3 of the *Sexual Offences (Evidence and Procedure) Act 1983*.

9 Part 17, Division 7 inserted

After section 238

insert

Division 7 Transitional matters for Sexual Offences (Evidence and Procedure) Amendment Act 2020

239 Publications allowed under section 50(2)

- (1) Section 50(2), as amended by the *Sexual Offences (Evidence and Procedure) Amendment Act 2020*, applies only in relation to a report or information published after the commencement of section 8 of that Act (the **commencement**).
- (2) For section 50(2)(c), consent must be given after the commencement.

Part 4 Repeal of Act

10 Repeal of Act

This Act is repealed on the day after it commences.