

NORTHERN TERRITORY OF AUSTRALIA

**EVIDENCE (NATIONAL UNIFORM LEGISLATION) AMENDMENT
ACT 2021**

Act No. 2 of 2021

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 2 of 2021

An Act to amend the *Evidence (National Uniform Legislation) Act 2011*

[Assented to 5 March 2021]
[Introduced 12 November 2020]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Evidence (National Uniform Legislation) Amendment Act 2021*.

2 Commencement

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

3 Act amended

This Act amends the *Evidence (National Uniform Legislation) Act 2011*.

4 Section 94 amended (Application)

After section 94(3)

insert

- (4) To avoid doubt, any principle or rule of the common law or equity that prevents or restricts the admissibility of evidence about propensity or similar fact evidence in a proceeding is not relevant when applying this Part to tendency evidence or coincidence evidence about a defendant.

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- (5) In determining the probative value of tendency evidence or coincidence evidence for the purposes of section 97(1)(b), 97A(4), 98(1)(b) or 101(2), it is not open to the court to have regard to the possibility that the evidence may be the result of collusion, concoction or contamination.

5 Section 97A inserted

After section 97

insert

97A Admissibility of tendency evidence in proceedings involving child sexual offences

- (1) This section applies in a criminal proceeding in which the commission by the defendant of an act that constitutes, or may constitute, a child sexual offence is a fact in issue.
- (2) It is presumed that the following tendency evidence about the defendant will have significant probative value for the purposes of sections 97(1)(b) and 101(2):
- (a) tendency evidence about the sexual interest the defendant has or had in children (even if the defendant has not acted on the interest);
 - (b) tendency evidence about the defendant acting on a sexual interest the defendant has or had in children.
- (3) Subsection (2) applies whether or not the sexual interest or act to which the tendency evidence relates was directed at a complainant in the proceeding, any other child or children generally.
- (4) Despite subsection (2), the court may determine that the tendency evidence does not have significant probative value if it is satisfied that there are sufficient grounds to do so.
- (5) The following matters (whether considered individually or in combination) are not to be taken into account when determining whether there are sufficient grounds for the purposes of subsection (4) unless the court considers there are exceptional circumstances in relation to those matters (whether considered individually or in combination) to warrant taking them into account:
- (a) the sexual interest or act to which the tendency evidence relates (the **tendency sexual interest or act**) is different from the sexual interest or act alleged in the proceeding (the **alleged sexual interest or act**);

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- (b) the circumstances in which the tendency sexual interest or act occurred are different from circumstances in which the alleged sexual interest or act occurred;
 - (c) the personal characteristics of the subject of the tendency sexual interest or act (for example, the subject's age, sex or gender) are different to those of the subject of the alleged sexual interest or act;
 - (d) the relationship between the defendant and the subject of the tendency sexual interest or act is different from the relationship between the defendant and the subject of the alleged sexual interest or act;
 - (e) the period of time between the occurrence of the tendency sexual interest or act and the occurrence of the alleged sexual interest or act;
 - (f) the tendency sexual interest or act and alleged sexual interest or act do not share distinctive or unusual features;
 - (g) the level of generality of the tendency to which the tendency evidence relates.
- (6) In this section:

child means a person under 18 years of age.

child sexual offence means each of the following offences (however described and regardless of when it occurred):

- (a) an offence against, or arising under, a law of the Territory involving sexual intercourse with, or any other sexual offence against, a person who was a child at the time of the offence;
- (b) an offence against, or arising under, a law of the Territory involving an unlawful sexual act with, or directed towards, a person who was a child at the time of the offence;
- (c) an offence against, or arising under, a law of the Commonwealth that:
 - (i) if committed in the Territory – is an offence of a kind referred to in paragraph (a) or (b); or
 - (ii) if committed elsewhere – would be an offence of a kind referred to in paragraph (a) or (b);

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- (d) an offence against, or arising under, a law of another State, another Territory or a foreign country that, if committed in the Territory, would be an offence of a kind referred to in paragraph (a) or (b);

but does not include conduct of a person that has ceased to be an offence since the time when the person engaged in the conduct.

6 Section 98 amended (The coincidence rule)

After section 98(1)

insert

- (1A) To avoid doubt, subsection (1) includes the use of evidence from 2 or more witnesses claiming they are victims of offences committed by a person who is a defendant in a criminal proceeding to prove, on the basis of similarities in the claimed acts or the circumstances in which they occurred, that the defendant did an act in issue in the proceeding.

7 Section 101 amended (Further restrictions on tendency evidence and coincidence evidence adduced by prosecution)

Section 101(2)

omit

all words from "substantially" to "defendant"

insert

outweighs the danger of unfair prejudice to the defendant

8 Chapter 10 inserted

After section 219

insert

Chapter 10 Transitional matters for Evidence (National Uniform Legislation) Amendment Act 2021

220 Definitions

In this Chapter:

amending Act means the *Evidence (National Uniform Legislation) Amendment Act 2021*.

commencement means the day on which section 4 of the amending Act commences.

221 Application of amendments to sections 94, 98 and 101

- (1) Sections 94, 98 and 101, as amended by the amending Act, apply in relation to a proceeding in which the hearing commenced after the commencement.
- (2) Sections 94, 98 and 101, as in force immediately before the commencement, continue to apply in relation to a proceeding in which the hearing commenced before the commencement.

222 Application of section 97A

- (1) Section 97A, as inserted by the amending Act, applies in relation to a proceeding in which the hearing commenced after the commencement.
- (2) However, section 97A does not apply in relation to a proceeding in which the hearing commenced before the commencement.

223 Notices given before commencement

The validity of a notice given under a provision of this Act immediately before the commencement is not affected by the commencement.

9 Repeal of Act

This Act is repealed on the day after it commences.