

Serial 146
Justice Legislation Amendment (Vulnerable Witnesses) Bill 2015
Mr Elferink

A Bill for an Act to amend legislation administered by the Attorney-General
and Minister for Justice relating to vulnerable witnesses

NORTHERN TERRITORY OF AUSTRALIA

JUSTICE LEGISLATION AMENDMENT (VULNERABLE WITNESSES)
ACT 2015

Act No. [] of 2015

Table of provisions

Part 1 Preliminary matters

1	Short title	1
2	Commencement	1

**Part 2 Amendment of Domestic and Family
Violence Act**

3	Act amended	1
4	Section 104 amended.....	2
5	Section 114 amended.....	2
6	Part 7.2 heading amended	3
7	Part 7.3 inserted	3
	Part 7.3 Transitional matters for Justice Legislation Amendment (Vulnerable Witnesses) Act 2015	
136	Proceedings already commenced	

Part 3 Amendment of Evidence Act

8	Act amended	3
9	Section 4 amended.....	4
10	Section 6A inserted	4
	6A Application of Criminal Code	
11	Section 21A amended	4
12	Section 21B amended	5
13	Section 21C amended	6
14	Section 21D amended	6
15	Section 49ZC replaced	6
	49ZC Contempt of interstate entity	
	49ZD Conduct constituting contempt of interstate entity	
16	Section 55 replaced.....	8
	55 Misleading testimony	
17	Section 59 replaced.....	8
	59 Contravention of order	
18	Part 10, Division 3 inserted.....	9

	Division 3	Justice Legislation Amendment (Vulnerable Witnesses) Act 2015	
	69	Definitions	
	70	Proceeding already commenced	
	71	Offence provisions – before and after commencement day	
Part 4		Amendment of Sexual Offences (Evidence and Procedure) Act	
19		Act amended	10
20		Part 1 heading inserted	10
	Part 1	Preliminary matters	
21		Sections 3AB, 3AC and Part 2 heading inserted	10
	3AB	Relationship with <i>Evidence (National Uniform Legislation) Act</i>	
	3AC	Application of Criminal Code	
	Part 2	Evidence and Procedure for Sexual Offences	
22		Section 5 amended.....	11
23		Section 11 replaced.....	12
	11	Publication or making of report	
	11A	Contravention of order	
	11B	Revealing identity of person	
	11C	Contempt	
24		Section 12 amended.....	13
25		Section 13 replaced.....	14
	13	Criminal liability of executive officer of body corporate – evidential burden of proof on defence	
26		Part 3 and Part 3, Division 1 headings inserted.....	16
27		Section 14 heading amended	16
28		Part 3, Division 2 inserted.....	16
	Division 2	Transitional matters for Justice Legislation Amendment (Vulnerable Witnesses) Act 2015	
	15	Definitions	
	16	Proceedings already started	
	17	Application of sections 11, 11A and 11B before and after commencement	
	18	Application of section 13 before and after commencement	
Part 5		Expiry	
29		Expiry of Act	18



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2015

An Act to amend legislation administered by the Attorney-General and
Minister for Justice relating to vulnerable witnesses

[Assented to [] 2015]
[Second reading [] 2015]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Justice Legislation Amendment (Vulnerable Witnesses) Act 2015*.

2 Commencement

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

Part 2 Amendment of Domestic and Family Violence Act

3 Act amended

This Part amends the *Domestic and Family Violence Act*.

4 Section 104 amended

- (1) Section 104, definitions **recorded statement** and **vulnerable witness**

omit

- (2) Section 104

insert (in alphabetical order)

recorded statement, see section 21A(1) of the *Evidence Act*.

vulnerable witness means:

- (a) an adult who is a protected person; or
- (b) a vulnerable witness as defined in section 21A(1) of the *Evidence Act*.

5 Section 114 amended

- (1) Section 114(3)(a)

omit

all words after "the question"

insert

(a **stated question**) to an appointed person for the defendant;

- (2) Section 114(3)(b)

omit

Court or authorised person must repeat the

insert

appointed person must repeat the stated

- (3) After section 114(3)

insert

- (3A) For subsection (3), the appointed person for a defendant is a person appointed by the Court for the purpose of a defendant's questioning of a witness.

- (3B) However, the appointed person for a defendant must not do either of the following:
- (a) ask the witness any other question except a stated question;
 - (b) give the defendant legal or other advice.
- (3C) If a defendant who is not represented by a legal practitioner does not question the witness, the Court 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 witness.
- (4) Section 114(4), after "the order"
- insert*
- mentioned in subsection (2)

6 Part 7.2 heading amended

Part 7.2, heading, at the end

insert

for Domestic and Family Violence Act 2007

7 Part 7.3 inserted

After section 135

insert

Part 7.3 Transitional matters for Justice Legislation Amendment (Vulnerable Witnesses) Act 2015

136 Proceedings already commenced

- (1) This section applies in relation to a proceeding mentioned in section 105 of this Act that started before the commencement of this section.
- (2) The provisions of this Act, as in force immediately before the commencement of this section, continue to apply to the proceeding.

Part 3 Amendment of Evidence Act

8 Act amended

This Part amends the *Evidence Act*.

9 Section 4 amended

Section 4

insert (in alphabetical order)

special sitting, for Part 3, see section 21A(1).

10 Section 6A inserted

After section 6

insert

6A Application of Criminal Code

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

Note for section 6A

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.

11 Section 21A amended

(1) Section 21A(1), definition **vulnerable witness**

omit

(2) Section 21A(1)

insert (in alphabetical order)

special sitting, of a court, means a sitting of the court held for the purpose of conducting an examination, or part of an examination, of a vulnerable witness in proceedings for a sexual offence or serious violence offence.

vulnerable witness means a witness in proceedings:

- (a) who is a child; or
- (b) who has a cognitive impairment or an intellectual disability; or
- (c) who is the alleged victim of a sexual offence to which the proceedings relate; or
- (d) whom a court considers to be vulnerable.

(3) After section 21A(1)

insert

(1A) In considering whether a witness is vulnerable, as mentioned in subsection (1), definition **vulnerable witness**, paragraph (d), the court may have regard to the following matters:

- (a) any relevant condition or characteristic of the witness, including age, education, ethnic and cultural background, gender, language background and skills, level of maturity and understanding and personality;
- (b) any mental or physical disability and to which the witness is, or appears to be, subject;
- (c) any relationship between the witness and the defendant to the proceedings;
- (d) any other matter the court considers relevant.

12 Section 21B amended

(1) Section 21B(1)

omit

of

insert

in respect of, or the hearing of a charge for,

(2) Section 21B(2)(b)(i)

omit

all words from "for" to "witness"

insert

in relation to the witness

(3) After section 21B(3)

insert

(3A) Without limiting subsection (3), when considering the prosecutor's request to admit a recorded statement or to hold a special sitting, the court must take into account whether a recorded statement can be played or a special sitting can be held in the courtroom for the

proceedings.

(4) Section 21B(5)

omit

to the jury

insert

in the courtroom

13 Section 21C amended

Section 21C(2)

omit

to take evidence from a vulnerable witness

14 Section 21D amended

(1) Section 21D(2)(d)

omit

possible.

insert

possible;

(2) After section 21D(2)(d)

insert

(e) all efforts must be made to ensure that matters that may delay or interrupt a child's evidence in a proceeding are determined before a special sitting or trial commences.

15 Section 49ZC replaced

Section 49ZC

repeal, insert

49ZC Contempt of interstate entity

(1) A person commits an offence if:

(a) the person intentionally engages in conduct; and

- (b) the conduct results in contempt of the interstate entity (as defined in section 49ZD) and the person is reckless as to the result.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

49ZD Conduct constituting contempt of interstate entity

- (1) A person's conduct results in **contempt** of the interstate entity if:
- (a) the interstate entity has made an order requiring the person to do or not do something; and
 - (b) the order:
 - (i) was made orally to the person during proceedings; or
 - (ii) has been served on the person; and
 - (c) the person does not comply with the order.
- (2) Also, a person's conduct results in **contempt** of the interstate entity if the person, while evidence is being given or a submission is being made in the Territory, by audiovisual link or audio link, in an interstate proceeding:
- (a) insults, threatens, intimidates or obstructs the following in relation to the person's performance of functions or exercise of powers under this Act:
 - (i) a judge or other person presiding at or otherwise taking part in the proceeding;
 - (ii) a Master, Registrar, Deputy Registrar or other officer of the interstate entity who is taking part in or assisting in the proceeding;
 - (iii) a person appearing in the proceeding as a legal practitioner;
 - (iv) a witness in the proceeding;
 - (v) a juror in the proceeding; or
 - (b) interrupts, obstructs or hinders a proceeding of the interstate entity; or

- (c) engages in any other conduct that, under a law of the Territory, would constitute contempt in the face of the court if the interstate proceeding were a Territory proceeding.

16 Section 55 replaced

Section 55

repeal, insert

55 Misleading testimony

- (1) A person who, in giving any testimony (either orally or in writing) otherwise than on oath where required to do so by an order under section 53, commits an offence if:
- (a) the person intentionally gives testimony to the court or tribunal; and
 - (b) the person knows the testimony is misleading.

Maximum penalty: Imprisonment for 14 years.

- (2) In this section:

misleading, in relation to testimony, means testimony that is misleading in a material particular or because of the omission of a material particular.

17 Section 59 replaced

Section 59

repeal, insert

59 Contravention of order

A person to whom an order under section 57 or 58 relates commits an offence if:

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

Maximum penalty: 40 penalty units or imprisonment for 12 months.

18 Part 10, Division 3 inserted

After section 68

insert

Division 3 Justice Legislation Amendment (Vulnerable Witnesses) Act 2015**69 Definitions**

In this Division:

amending Act means the *Justice Legislation Amendment (Vulnerable Witnesses) Act 2015*.

commencement day means the commencement of Part 3 of the amending Act.

70 Proceeding already commenced

- (1) If a proceeding commenced before the commencement day, the amending Act applies to that part of the proceeding that takes place on or after the commencement day.
- (2) However, subsection (1) does not apply in relation to a trial or hearing in the proceeding that commenced before the commencement day and:
 - (a) continued on or after the commencement day; or
 - (b) was adjourned until the commencement day or after the commencement day.
- (3) The provisions of this Act, as in force immediately before the commencement, apply to a trial or hearing mentioned in subsection (2).

71 Offence provisions – before and after commencement day

- (1) The offence provisions, as amended by the amending Act, apply only in relation to offences committed after the commencement day.
- (2) The offence provisions, as in force before the commencement day, continue to apply in relation to offences committed before the commencement day.
- (3) For this section, if any of the conduct constituting an offence occurred before the commencement day, the offence is taken to have been committed before the commencement day.

(4) In this section:

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

Part 4 Amendment of Sexual Offences (Evidence and Procedure) Act

19 Act amended

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

20 Part 1 heading inserted

Before section 1

insert

Part 1 Preliminary matters

21 Sections 3AB, 3AC and Part 2 heading inserted

After section 3

insert

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

22 Section 5 amended

- (1) Section 5(1)(a)
omit
shall not be
insert
is not
- (2) Section 5(1)(b)
omit, insert
(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.
- (3) After section 5(1)
insert
(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.
- (4) Section 5(2)
omit
shall cause a warning to be issued
insert
must issue a warning

(5) After section 5(2)

insert

- (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.

23 Section 11 replaced

Section 11

repeal, insert

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.

24 Section 12 amended

- (1) Section 12, heading
 - omit*
 - Authorized**
 - insert*
 - Authorised**
- (2) Section 12(1)
 - omit*
 - section 11
 - insert*
 - sections 11, 11A and 11B

(3) Section 12(1)

omit

authorized

insert

authorised

(4) Section 12(2) and (3)

omit

section 11(2)

insert

section 11B

25 Section 13 replaced

Section 13

repeal, insert

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.

26 Part 3 and Part 3, Division 1 headings inserted

After section 13

insert

Part 3 Transitional matters

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

27 Section 14 heading amended

Section 14, heading

omit

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

insert

Offences – before and after commencement

28 Part 3, Division 2 inserted

After section 14

insert

Division 2 Transitional matters for Justice Legislation Amendment (Vulnerable Witnesses) Act 2015

15 Definitions

In this Division:

amending Act means the *Justice Legislation Amendment (Vulnerable Witnesses) Act 2015*.

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.

Part 5 Expiry

29 Expiry of Act

This Act expires on the day after it commences.