

NORTHERN TERRITORY OF AUSTRALIA
SUPREME COURT AMENDMENT (SEXUAL OFFENCES EVIDENCE)
RULES 2005

Regulations No. 52 of 2005

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NORTHERN TERRITORY OF AUSTRALIA

Regulations No. 52 of 2005*

Supreme Court Amendment (Sexual Offences Evidence) Rules 2005

WE, the undersigned Judges of the Supreme Court of the Northern Territory of Australia, pursuant to section 86 of the *Supreme Court Act*, make the following Rules of Court.

Dated 7 December 2005.

B. MARTIN CJ

D. MILDREN J

S. G. THOMAS J

T. J. RILEY J

S. R. SOUTHWOOD J

Judges of the Supreme Court
of the Northern Territory of Australia

* Notified in the *Northern Territory Government Gazette* on 25 January 2006.

1. Citation

These Rules may be cited as the *Supreme Court Amendment (Sexual Offences Evidence) Rules 2005*.

2. Principal Rules amended

These Rules amend the *Supreme Court Rules*.

3. New Chapter 1A, Order 81A, Part 6A

After rule 81A.27 –

insert

Part 6A – Special hearing to pre-record evidence

81A.27A Special hearing

If the prosecution intends to elect under section 21B(2)(b) of the *Evidence Act* to present the whole of the evidence of a witness by video-tape or other audio-visual means –

- (a) the prosecution must give notice of its intention to the accused and the Court as soon as reasonably practicable after the accused has been committed for trial; and
- (b) the criminal registrar must allocate a date for the special hearing; and
- (c) to the extent possible, the Judge allocated to conduct the special hearing must be the Judge allocated to conduct the trial; and
- (d) the Registrar must ensure the recording equipment necessary for the special hearing is available and reserved for the hearing.

81A.27B Accused to plead

At the commencement of the special hearing, the accused must be arraigned and he or she must plead guilty or not guilty.

81A.27C Objection to admissibility of evidence

(1) The Judge conducting the special hearing must hear and decide all objections to the admissibility of evidence at the time of the special hearing.

(2) An objection can be reactivated at the time of trial (or re-trial) with leave of the Judge conducting the proceedings.

(3) If an objection is upheld in relation to the admissibility of evidence that has been recorded, the recording must be edited before being presented at the trial.

81A.27D Special hearing may be re-opened

(1) A special hearing stands adjourned at the completion of the recording of evidence.

(2) If the Court considers it necessary in the interests of justice, the Court may re-open the special hearing of its own volition or on application by the prosecution or defence.

(3) The special hearing may be re-opened at any time before the jury retires to consider its verdict (including in a re-trial).

(4) Unless the Judge otherwise orders, the prosecution and defence can question the witness at a re-opened special hearing only in respect of any issue that gave rise to the re-opening.

(5) If the Judge who presided over a special hearing was not the trial Judge, the re-opened hearing may be conducted by another Judge whether or not that Judge is the trial Judge.

81A.27E Duplicate of recording to be made

(1) At the completion of the special hearing, the Sheriff must make a duplicate copy of the recording.

(2) The original recording must be marked as such and given to the Registrar for safe-keeping.

(3) The duplicate recording must, unless required for editing in accordance with this Part, also be given to the Registrar for safe-keeping.

81A.27F Editing of recording

(1) If the recording of the evidence requires editing, the Judge may make the orders that he or she thinks fit.

(2) An order under subrule (1) may include an order that the duplicate tape is to be given to the prosecution to effect the editing.

(3) The order may also include directions for the means by which the edited recording is to be validated as correctly edited for use at the trial.

(4) The edited version of the recording must be marked as such and, once validated, must be given to the Sheriff.

(5) The Sheriff must make a duplicate copy of the edited tape and mark the duplicate as "trial copy".

(6) The edited recording and the trial copy, along with the duplicate unedited recording (if such a version still exists) must be given to the Registrar for safe-keeping.

81A.27G Access to recording

(1) Each version of the recording of a special hearing is the property of the Court and, subject to the necessity to edit in accordance with this Part, must remain in the custody of the Court at all times.

(2) No copies of the pre-recorded evidence are to be given to the parties (except for editing in accordance with rule 81A.27F), but the prosecution and defence may, on request, view the trial copy under the supervision of the Sheriff or Registrar.

(3) The Sheriff must produce the trial copy of the recording of the special hearing at the trial.

(4) The trial copy of the pre-recorded evidence must be played to the jury at the trial but not tendered as an exhibit.

81A.27H Transcript

(1) A transcript must be made of the trial copy of the recording of the special hearing.

(2) The transcript must be made available to all parties.

81A.27J Other matters

(1) The Judge who conducts a special hearing may make any directions that he or she considers necessary for the efficient conduct of the trial.

(2) Without limiting subrule (1), directions may include making an order under section 21A(2A) of the *Evidence Act*.

4. Amendment of Schedule 2

Schedule 2, question 31 –

omit, substitute

31. Does the prosecution intend to elect under section 21B(2)(a) of the *Evidence Act* for evidence in chief of a witness to be pre-recorded and given by video-tape or other audio-visual means?

32. Does the prosecution intend to elect under section 21B(2)(b) of the *Evidence Act* for the whole of the evidence of a witness to be given by video-tape or other audio-visual means at a special hearing of the Court in accordance with section 21B(4)(a) of that Act?
33. Does the prosecution intend to apply to the Court to admit evidence of a statement to another person as evidence of the facts in issue under section 26E(1) of the *Evidence Act*?
34. Are there any other significant matters that might affect the proper and convenient trial of the issues?
