

Queensland



CRIMINAL LAW (SEXUAL OFFENCES) ACT 1978

**Reprinted as in force on 9 February 1998
(includes amendments up to Act No. 83 of 1997)**

Reprint No. 1B

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Information about this reprint

This Act is reprinted as at 9 February 1998. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



CRIMINAL LAW (SEXUAL OFFENCES) ACT 1978

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CRIMINAL LAW (SEXUAL OFFENCES) ACT 1978

[as amended by all amendments that commenced on or before 9 February 1998]

An Act to regulate the admission of certain evidence in proceedings relating to sexual offences and the mode of taking evidence in such proceedings, to protect persons concerned in the commission of sexual offences from identification, and for related purposes

Short title

1. This Act may be cited as the *Criminal Law (Sexual Offences) Act 1978*.

Meaning of terms

3. In this Act—

“**complainant**” means a person in respect of whom a sexual offence is alleged to have been committed, but does not include a person who was of or above the age of 17 years at the time a sexual offence is alleged to have been committed in respect of that person and who is an accomplice in its commission.

“**defendant**” means a person charged with having committed a sexual offence.

“**examination of witnesses**” means an examination of witnesses in relation to an indictable offence, being a sexual offence, commenced after the commencement of this Act and taken pursuant to the *Justices Act 1886*.

“**prescribed sexual offence**” means any of the following offences—

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- (a) rape;
- (b) attempt to commit rape;
- (c) assault with intent to commit rape;
- (d) a sexual assault defined in the Criminal Code, section 337.

“report” means an account in writing and an account broadcast or distributed in any way in or as sound or visual images.

“sexual offence” means any offence of a sexual nature, and includes a prescribed sexual offence.

“the court” includes justices taking an examination of witnesses.

“trial” means a trial of a defendant and 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.

Special rules of evidence concerning sexual offences

4. The following rules shall apply in relation to any examination of witnesses or trial in relation to a prescribed sexual offence whether or not the examination or trial relates also to a charge of an offence other than a prescribed sexual offence against the same or any other defendant—

- 1.** The court shall not receive evidence of and shall disallow any question as to the general reputation of the complainant with respect to chastity.
- 2.** Without leave of the court—
 - (a) cross-examination of the complainant shall not be permitted as to the sexual activities of the complainant with any person other than the defendant;
 - (b) evidence shall not be received as to the sexual activities of the complainant with any person other than the defendant.
- 3.** The court shall not grant leave under rule 2 unless it is satisfied that the evidence sought to be elicited or led has substantial relevance to the facts in issue or is proper matter for cross-examination as to credit.
- 4.** Evidence that relates to or tends to establish the fact that the

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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 any 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 confidence in the reliability of the evidence of the complainant.

Without prejudice to the substantial relevance of other evidence, evidence of an act or event that is substantially contemporaneous with any offence with which a defendant is charged in an examination of witnesses or a trial or that is part of a sequence of acts or events that explains the circumstances in which such an offence was committed shall be regarded as having substantial relevance to the facts in issue.

- 5. An application for leave under rule 2 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 evidence (sworn or unsworn) as the court considers necessary for the determination of the application.

Exclusion of public

5.(1) Whilst a complainant is giving evidence in any examination of witnesses or trial, the court shall cause to be excluded from the room in which it is then sitting all persons other than—

- (a) the counsel and solicitor of the complainant;
- (b) the defendant and the defendant's counsel and solicitor;
- (c) a Crown law officer or a person authorised by a Crown law officer;
- (d) the prosecutor;
- (e) any person whose presence is, in the opinion of the court,

necessary or desirable for the proper conduct of the examination or trial;

- (f) any person whose presence will provide emotional support to the complainant;
- (g) where the complainant is under or apparently under the age of 17 years—the parent or guardian of the child unless, in the court’s opinion, the presence of that person would not be in the child’s interests;
- (h) any person who makes application to the court to be present and whose presence, in the court’s opinion—
 - (i) would serve a proper interest of the applicant; and
 - (ii) would not be prejudicial to the interests of the complainant.

(2) The provisions of subsection (1) shall be construed so as not to prejudice the power of the court had under any other provision or rule of law to exclude from the room in which it is sitting any person, including a defendant.

Publication at large of complainant’s identity prohibited

6.(1) Any report made or published concerning an examination of witnesses or a trial, other than a report specified in section 8(1), shall not reveal the name, address, school or place of employment of a complainant therein or any other particular likely to lead to the identification of a complainant therein unless the court, for good and sufficient reason shown, orders to the contrary.

- (2) If the court makes an order to the contrary it may therein specify—
- (a) the particulars that may be revealed; and
 - (b) the extent to which publication of the report made is permitted.

Publication prematurely of defendant’s identity prohibited

7.(1) Any report made or published concerning an examination of witnesses in relation to a prescribed sexual offence, other than a report specified in section 8, shall not reveal the name, address, school or place of employment of a defendant therein or any other particular likely to lead to

identification of a defendant therein unless the justices taking the examination, for good and sufficient reason shown, order to the contrary.

- (2) If justices make an order to the contrary they may therein specify—
- (a) the particulars that may be revealed; and
 - (b) the extent to which publication of the report made is permitted.

Exempted reports

8.(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 recognised series of law reports;
- (c) a report made to or on behalf of the Department of Justice and Attorney-General, the commissioner of the Police Service, the Board of Teacher Registration or the department for the time being administering the *Children's Services Act 1965* for the purposes of the department or other entity 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 any particular referred to in that section of a defendant therein who as a result of the examination is committed for trial or sentence upon a charge of 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 therein who is not so committed.

Act affords additional protection

9. Sections 6 and 7 shall be construed to be in addition to and not to prejudice any other provision or rule of law directed towards the protection of witnesses or other persons in an examination of witnesses or a trial from identification.

Offences and penalty

10.(1) A person who makes or publishes a report to which section 6 or 7 applies that contravenes the applicable section commits an offence against this Act.

(2) Where the making or publication of a report to which section 6 or 7 applies is permitted by order of the court a person who makes or publishes such a report that does not comply in all respects with the order of the court commits an offence against this Act.

(3) 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 charged with a prescribed sexual offence to which the statement or representation relates, before the defendant is committed for trial or sentence upon that charge;

commits an offence against this Act except where the statement or representation is made or published for an authorised purpose referred to in section 11.

(4) A person who commits an offence against this Act is liable—

- (a) in the case of a body corporate—to a penalty not exceeding \$2 000; and
- (b) in the case of an individual—to a penalty not exceeding \$500 or to 6 months imprisonment.

(5) The fact that a person is liable to a penalty prescribed by subsection (4) in respect of an offence defined in subsection (2) shall not prevent the person being dealt with for contempt of court evidenced by the person's offence.

Authorised purposes

11.(1) For the purposes of section 10 an authorised purpose is one authorised by or pursuant to this section.

(2) The following purposes are authorised by this section—

- (a) the purpose of an investigation into the complaint made by or on

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behalf of a complainant;

- (b) the purpose of preparing for or conducting an examination of witnesses or a trial or a proceeding on appeal arising from a trial.

(3) If, before the commencement of an examination of witnesses or a trial, a defendant makes application to a judge of the Supreme Court for a direction pursuant to this subsection and satisfies the judge 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 or trial is likely to be substantially prejudiced if the direction is not given;

the judge shall direct that section 10(3) shall 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.

(4) If a person who has been convicted of a sexual offence and has given notice of appeal to the Court of Appeal against the conviction or notice of an application for leave to so appeal applies to that court or to a judge of the Supreme Court for a direction pursuant to this subsection and satisfies the court or judge 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 or judge shall direct that section 10(3) shall 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.

Liability of directors etc. of body corporate

12. Where a body corporate has committed an offence against this Act a person who, at the time the offence is committed, is a director or member of the governing body of the body corporate or the manager of or an officer concerned in the management of the business in Queensland 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 therefor unless the person proves that the offence occurred without his or her consent or connivance and that the person exercised all due diligence to prevent the commission of the offence.

Proceedings for offences

13. A proceeding in respect of an offence against this Act shall be taken in a summary way under the *Justices Act 1886* upon the complaint of a person authorised in writing in that behalf by the Minister whose signature shall, for this purpose, be judicially noticed.

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 9 February 1998. Future amendments of the Criminal Law (Sexual Offences) Act 1978 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key**Key to abbreviations in list of legislation and annotations**

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 37 of 1995	21 March 1996
1A	to Act No. 3 of 1997	4 July 1997

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed names and titles	1
Obsolete and redundant provisions	1
Renumbered provisions	1

6 List of legislation

Criminal Law (Sexual Offences) Act 1978 No. 28

date of assent 2 June 1978

commenced 31 July 1978 (proc pubd gaz 17 June 1978 p 878)

Note—This Act was to have been repealed by the Criminal Code No. 37 of 1995 s 460(1) sch 4 (automatic commencement under AIA s 15DA(2) deferred to 14 June 1997) (1996 SL No. 84 s 2(2)) but the 1995 Code was never proclaimed into force and was repealed by 1997 No. 3 s 121

as amended by—

Family Services Act 1987 No. 32 s 69(1) sch (prev Family and Youth Services Act)

date of assent 30 April 1987

commenced 9 June 1987 (proc pubd gaz 30 May 1987 p 846)

Criminal Code, Evidence Act and other Acts Amendment Act 1989 No. 17 pt 9

date of assent 30 March 1989

commenced 3 July 1989 (proc pubd gaz 24 June 1989 p 1821 (as amd by proc pubd gaz 1 July 1989 p 2190))

Public Service (Administrative Arrangements) Act (No. 2) 1990 No. 80 s 3 sch 1

date of assent 14 November 1990

commenced 31 August 1989 (see s 2(2)(b))

Criminal Code and Another Act Amendment Act 1990 No. 93 s 15

date of assent 7 December 1990

commenced 19 January 1991 (proc pubd gaz 19 January 1991 p 174)

Criminal Law Amendment Act 1997 No. 3 ss 1, 2(2), 122 sch 2

date of assent 3 April 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 152)

Education and Other Legislation Amendment Act 1997 No. 83 pts 1, 4

date of assent 5 December 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1998 (1997 SL No. 464)

7 List of annotations

Commencement of Act

s 2 om R1 (see RA s 37)

Meaning of termss 3 def “**complainant**” sub 1989 No. 17 s 83(a)def “**Minister**” ins 1990 No. 80 s 3 sch 1

om R1 (see RA s 39)

def “**prescribed sexual offence**” ins 1989 No. 17 s 83(b)

amd 1990 No. 93 s 15

sub 1997 No. 3 s 122 sch 2

def “**report**” sub 1997 No. 3 s 122 sch 2def “**sexual offence**” sub 1989 No. 17 s 83(c)**Special rules of evidence concerning sexual offences**

s 4 amd 1989 No. 17 s 84

Exclusion of public

s 5 amd 1987 No. 32 s 69(1) sch

sub 1989 No. 17 s 85

Publication prematurely of defendant’s identity prohibited

s 7 amd 1989 No. 17 s 86

Exempted reports

s 8 amd 1987 No. 32 s 69(1) sch; 1997 No. 83 s 8

Offences and penalty

s 10 amd 1989 No. 17 s 87

Proceedings for offences

s 13 amd 1990 No. 80 s 3 sch 1