



# **Criminal Law (Sexual Offences) Act 1978**

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Queensland

# Criminal Law (Sexual Offences) Act 1978

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# Criminal Law (Sexual Offences) Act 1978

**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**

## Part 1 Preliminary

### 1 Short title

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

### 3 Definitions

In this Act—

***accredited media entity*** means an entity listed as an accredited media entity in the Supreme Court's media accreditation policy.

***complainant*** means a person in respect of whom a sexual offence is alleged to have been committed.

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

***eligible person***, in relation to a charge of a prescribed sexual offence, means the complainant, the defendant or the prosecution.

***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*.

***executive officer***, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

***identifying matter***, in relation to a defendant, means—

- (a) the name, address, place of employment or another particular of the defendant or another person that is likely to lead to the identification of the defendant; or
- (b) a photograph, picture, videotape, digital image or other visual representation of the defendant or another person that is likely to lead to the identification of the defendant.

***interim order*** see section 7D(1).

***non-publication order*** see section 7(2).

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

- (a) rape;
- (b) attempt to commit rape;
- (c) assault with intent to commit rape;
- (d) an offence defined in the Criminal Code, section 352.

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

***sentenced*** means sentenced by a Magistrates Court.

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

***Supreme Court's media accreditation policy*** means the media accreditation policy in effect and made under or appended to a practice direction of the Supreme Court.

***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

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offence, which in either case is commenced after the commencement of this Act.

## Part 2 Evidence

### 4 Special rules limiting particular evidence about sexual offences

The following rules shall apply in relation to any examination of witnesses or trial in relation to a sexual offence whether or not the examination or trial relates also to a charge of an offence other than a 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; and
  - (b) evidence shall not be received as to the sexual activities of the complainant with any person.
- 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 relating to or tending to establish the fact that the complainant has engaged in sexual activity with a person or persons must not be regarded as having substantial relevance to the facts in issue only because of any inference it may raise about general disposition.

*Example of inference about general disposition—*

an inference that the complainant, because of having engaged in conduct of a sexual nature, is more likely to have consented to the conduct involved in the offence

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 Evidence relating to or tending to establish the fact that the complainant has engaged in sexual activity with a person or persons is not proper matter for cross-examination as to credit unless, because of special circumstances, the court considers the evidence would be likely to materially impair confidence in the reliability of the complainant's evidence.

The purpose of this rule is to ensure that a complainant is not regarded as less worthy of belief as a witness only because the complainant has engaged in sexual activity.

- 6 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.

#### **4A Evidence of complaint generally admissible**

- (1) This section applies in relation to an examination of witnesses, or a trial, in relation to a sexual offence.
- (2) Evidence of how and when any preliminary complaint was made by the complainant about the alleged commission of the offence by the defendant is admissible in evidence, regardless of when the preliminary complaint was made.
- (3) Nothing in subsection (2) derogates from the power of the court in a criminal proceeding to exclude evidence if the court is satisfied it would be unfair to the defendant to admit the evidence.



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- (4) If a defendant is tried by a jury, the judge must not warn or suggest in any way to the jury that the law regards the complainant's evidence to be more reliable or less reliable only because of the length of time before the complainant made a preliminary or other complaint.
  - (5) Subject to subsection (4), the judge may make any comment to a jury on the complainant's evidence that it is appropriate to make in the interests of justice.

*Note—*

See also the Criminal Code, section 632 and the *Evidence Act 1977*, section 132BA.

- (6) In this section—

***complaint*** includes a disclosure.

***preliminary complaint*** means any complaint other than—

- (a) the complainant's first formal witness statement to a police officer given in, or in anticipation of, a criminal proceeding in relation to the alleged offence; or
- (b) a complaint made after the complaint mentioned in paragraph (a).

*Example—*

Soon after the alleged commission of a sexual offence, the complainant discloses the alleged commission of the offence to a parent (***complaint 1***). Many years later, the complainant makes a complaint to a secondary school teacher and a school guidance officer (***complaints 2 and 3***). The complainant visits the local police station and makes a complaint to the police officer at the front desk (***complaint 4***). The complainant subsequently attends an appointment with a police officer and gives a formal witness statement to the police officer in anticipation of a criminal proceeding in relation to the alleged offence (***complaint 5***). After a criminal proceeding is begun, the complainant gives a further formal witness statement (***complaint 6***).

Each of complaints 1 to 4 is a preliminary complaint. Complaints 5 and 6 are not preliminary complaints.

## Part 3                      Limit on publicity

### 5            Exclusion of public

- (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 the following—
  - (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) an intermediary under the *Evidence Act 1977*, part 2, division 4C for the complainant;
  - (f) any person whose presence is, in the opinion of the court, necessary or desirable for the proper conduct of the examination or trial;
  - (g) any person whose presence will provide emotional support to the complainant;
  - (h) 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;
  - (i) 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.

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## **6 Publication at large of complainant's identity prohibited**

- (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.
- (3) A person must not make or publish a report that contravenes subsection (1).

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1,000 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 12, to have also committed the offence.

- (4) If the court makes an order under subsection (2) about the making or publishing of a report, a person who makes or publishes a report that contravenes the order commits an offence.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1,000 penalty units.

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*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 12, to have also committed the offence.

- (5) The fact that a person is liable to a penalty for an offence under subsection (4) does not prevent the person being dealt with for contempt of court evidenced by the person's offence.

## **7 Application for non-publication order, and notice of application**

- (1) This section applies if a defendant is charged with a prescribed sexual offence.
- (2) An eligible person may apply to a Magistrates Court for an order (a ***non-publication order***) prohibiting the publication, before the defendant is committed for trial or sentence or sentenced on the charge, of identifying matter relating to the defendant.
- (3) The applicant must give 3 business days' notice of their intention to make the application to—
  - (a) the court; and
  - (b) each other eligible person.
- (4) However, the court may hear an application for a non-publication order despite the failure of the applicant to give notice under subsection (3) if the court is satisfied—
  - (a) there is a good reason for notice not having been given under subsection (3); or
  - (b) it is in the interests of justice that the court hear the application without notice having been given under subsection (3).
- (5) Also, if the applicant is the defendant, notice to the complainant—
  - (a) must not be given personally by the defendant; and
  - (b) must be given by the prosecution giving a copy of the notice to the complainant or another person nominated

to receive correspondence on the complainant's behalf in relation to the matter.

- (6) Notice under subsection (5) may be given by electronic communication.

## **7A Notifications to accredited media entities**

- (1) On receiving a notice under section 7(3), the court must take reasonable steps to ensure that each accredited media entity is notified of the application.
- (2) The notification may be by electronic communication or any other way the court considers appropriate.

## **7B Grounds for non-publication order**

The court may make a non-publication order if satisfied of one or more of the following grounds—

- (a) the order is necessary to prevent prejudice to the proper administration of justice;
- (b) the order is necessary to prevent undue hardship or distress to a complainant or witness in relation to the charge;
- (c) the order is necessary to protect the safety of any person.

## **7C Procedure for making non-publication order**

- (1) Each of the following persons may appear and be heard by the court on an application for a non-publication order—
  - (a) the applicant;
  - (b) an eligible person in relation to the charge to which the application relates;
  - (c) an accredited media entity;
  - (d) any other person whom the court considers has sufficient interest in the question of whether the order should be made.

- (2) The court may order that the application be heard in closed court.
- (3) In hearing the application the court—
  - (a) may receive and take into account evidence of any kind that it considers credible or trustworthy in the circumstances; and
  - (b) must consider the following—
    - (i) the primacy of the principle of open justice;
    - (ii) the public interest;
    - (iii) any submissions made or views expressed by or on behalf of the complainant about the application;
    - (iv) any special vulnerabilities of the complainant or the defendant;
    - (v) any cultural considerations relating to the complainant or the defendant;
    - (vi) the potential effect of publication in a rural or remote community;
    - (vii) the potential to prejudice any future court proceedings;
    - (viii) the history and context of any relationship between the complainant and the defendant (including, for example, any domestic violence history);
    - (ix) any other matter the court considers relevant.
- (4) If the court grants the application, the court must state in the order—
  - (a) the grounds on which the order is made; and
  - (b) any identifying matter that is not covered by the order; and
  - (c) the extent to which publication of identifying matter is prohibited; and
  - (d) that the order ceases to have effect when the defendant is committed for trial or sentence or sentenced on the

charge or when the charge is withdrawn, whichever happens first.

## **7D Interim orders**

- (1) If an application is made to the court for a non-publication order, the court may, without determining the merits of the application, make an order (an *interim order*) prohibiting the publication of identifying matter relating to the defendant.
- (2) An interim order has effect until—
  - (a) it is revoked by the court; or
  - (b) the court finally decides the application.
- (3) If the court makes an interim order, the court must hear and decide the application as a matter of urgency and, where practicable, within 72 hours after making the interim order.

## **7E Review of non-publication order**

- (1) The court may review a non-publication order made by the court—
  - (a) on the court's own motion; or
  - (b) on the application of a person mentioned in section 7C(1)(a) to (d).
- (2) Each of the persons mentioned in section 7C(1)(a) to (d) is entitled to appear and be heard by the court on the review.
- (3) On a review the court may confirm, vary or revoke the order.

## **7F Contravention of interim order or non-publication order**

- (1) A person must not contravene an interim order or a non-publication order.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or

- (b) for a corporation—1,000 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 12, to have also committed the offence.

- (2) However, a person does not commit an offence against subsection (1) merely because of a statement or representation made or published by the person—
  - (a) in a report specified in section 8(1); or
  - (b) for an authorised purpose mentioned in section 11.

## 8 Exempted reports

- (1) Sections 6 and 7F(1) 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; or
  - (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; or
  - (c) a report made to or on behalf of the Department of Justice and Attorney-General, the commissioner of the police service, the Queensland College of Teachers or the department for the time being administering the *Child Protection Act 1999* for the purposes of the department or other entity to or on behalf of which it is made; or
  - (d) a report made to or on behalf of a relevant education entity for the purposes of the entity to or on behalf of which it is made, if the report relates to a defendant mentioned in column 1, item 5(1) or 7A of the table in the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 9A; or
  - (e) a report made to or on behalf of the Crime and Corruption Commission.



(3) In this section—

*relevant education entity* means—

- (a) the department in which the *Education (General Provisions) Act 2006* is administered; or
- (b) TAFE Queensland established under the *TAFE Queensland Act 2013*.

## 9 Act affords additional protection

Sections 6 and 7F 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.

## 10 When other publication of complainant's identity is prohibited

- (1) 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, or any other particular that is likely to lead to the identification of a complainant commits an offence except where the statement or representation is made or published for an authorised purpose referred to in section 11.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1,000 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 12, to have also committed the offence.

- (2) It is a defence to a proceeding for an offence against subsection (1) for a person to prove that, before the relevant statement or representation was made or published—

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- (a) the complainant authorised in writing the making or the publishing of the statement or representation; and
  - (b) when the complainant authorised the making or the publishing of the statement or representation, the complainant—
    - (i) was at least 18 years; and
    - (ii) had capacity to give the authorisation.
- (3) In this section—  
*capacity* see the *Guardianship and Administration Act 2000*, schedule 4.

## 10A Provisions do not affect other laws

Sections 6, 7F and 10 are not intended to prevent a person from giving information that is permitted or required to be given under another law.

## 11 Authorised purposes

- (1) For the purposes of sections 7F(2) and 10(1) 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 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) 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(1) 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(1) 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.

## **12 Executive officer may be taken to have committed offence**

- (1) If a corporation commits an offence against a deemed executive liability provision, each executive officer of the corporation is taken to have also committed the offence if—
- (a) the officer authorised or permitted the corporation's conduct constituting the offence; or  
(b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct.
- (2) The executive officer may be proceeded against for, and convicted of, the offence against the deemed executive liability provision whether or not the corporation has been proceeded against for, or convicted of, the offence.

- (3) This section does not affect either of the following—
- (a) the liability of the corporation for the offence against the deemed executive liability provision;
  - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the deemed executive liability provision.

- (4) In this section—

*deemed executive liability provision* means any of the following provisions—

- section 6(3)
- section 6(4)
- section 7F(1)
- section 10(1).

### **13 Proceedings for offences**

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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## **Part 4                      Transitional provisions**

### **Division 1                      Transitional provisions for Criminal Law Amendment Act 2000 and Evidence (Protection of Children) Amendment Act 2003**

#### **14                      Transitional provision for Criminal Law Amendment Act 2000**

The reference in the definition of *prescribed sexual offence* in section 3 to a sexual assault defined in the Criminal Code, section 352 is, in relation to an offence that was committed before the commencement of this section, a reference to a sexual assault defined in the Criminal Code, section 337 as in force at any time before the commencement of this section.

#### **15                      Transitional provision for Evidence (Protection of Children) Amendment Act 2003**

- (1) Section 4A only applies in relation to an examination of witnesses, or a trial, in relation to a sexual offence, that starts or continues after the commencement of this section.
- (2) Subsection (1) applies even if the sexual offence was committed, or the complaint was made, before the commencement of this section.

### **Division 2                      Transitional provisions for Justice and Other Legislation Amendment Act 2023**

#### **16                      Existing proceedings**

- (1) Despite the *Acts Interpretation Act 1954*, section 20—

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- (a) a proceeding on a charge of an offence against former section 7 or 10(1)(b), including a proceeding under former section 12, may not be started or continued; and
  - (b) on the commencement, a charge of an offence against former section 7 or 10(1)(b) made but not dealt with before the commencement is taken to be withdrawn.
- (2) In this section—
- former*, in relation to a provision of this Act, means the provision as in force before the commencement.

## 17 Application of amended Act

- (1) The amended Act applies in relation to a defendant charged with a prescribed sexual offence whether the defendant was charged before or after the commencement.
- (2) In this section—
- amended Act* means this Act as amended by the *Justice and Other Legislation Amendment Act 2023*.