

AUSTRALIAN CAPITAL TERRITORY

Evidence (Amendment) Ordinance (No. 2) 1985

No. 61 of 1985

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 21 November 1985.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

LIONEL BOWEN
Attorney-General

An Ordinance to amend the *Evidence Ordinance 1971*

Short title

1. This Ordinance may be cited as the *Evidence (Amendment) Ordinance (No. 2) 1985*.¹

Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Evidence Ordinance 1971*.²

Competency and compellability of witnesses in criminal proceedings

3. Section 66 of the Principal Ordinance is amended by inserting in paragraph (3) (a) "or Part IIIA" after "Part III".

4. After Part X of the Principal Ordinance the following Part is inserted:

PART XA—EVIDIENCE IN SEXUAL OFFENCE PROCEEDINGS

Applicant of Part

“76A. This Part applies to a proceeding in the Supreme Court or the Court of Petty Sessions and to an inquest or inquiry under the *Coroners Ordinance 1956*.

Interpretation

“76B. In this Part, unless the contrary intention appears—

‘accused person’, in relation to any proceedings, means the person who stands, or any of the persons who stand, charged in the proceedings with a prescribed sexual offence;

‘complainant’, in relation to any proceedings, means the person, or any of the persons, in relation to whom the accused person is alleged to have committed a prescribed sexual offence;

‘Crimes Act’ means the Crimes Act, 1900 of the State of New South Wales in its application to the Territory;

‘prescribed sexual offence’ means—

- (a) an offence against a provision of Part IIIA of the Crimes Act; and
- (b) where a person charged with any offence is alleged, as an element of that offence, to have intended to commit an offence against a provision of Part IIIA of that Act—the offence with which the person is charged;

‘prescribed sexual offence proceedings’ means proceedings in which a person stands charged with a prescribed sexual offence, whether the person stands charged with that offence alone or together with any other offence (as an additional or alternative count) and whether or not the person is liable, on the charge, to be found guilty of any other offence.

Evidence of complaint

“76C. (1) Any rule of law or practice permitting evidence to be admitted in any proceedings in respect of a sexual offence, being evidence relating to the making of a complaint, or the terms of a complaint, by the complainant, is abolished and no such evidence shall be admitted in any prescribed sexual offence proceedings.

“(2) Nothing in this section affects the admissibility of evidence in relation to a complaint, or the terms of a complaint, by the complainant in prescribed sexual offence proceedings where that evidence is otherwise admissible under any other rule of law or practice.

Proceedings *in camera*

“76D. (1) Any evidence given by the complainant in prescribed sexual offence proceedings (including evidence given under cross-examination) shall, if the court so directs, be given in *camera*.

“(2) Where the complainant in prescribed sexual offence proceedings gives evidence *in camera* under sub-section (1), a person nominated by the complainant is entitled to be present in court when the complainant gives that evidence in those proceedings.

Prohibition of publication of identity of complainant

“76E. A person shall not, without the consent of the complainant in any prescribed sexual offence proceedings, publish the name of that complainant or any reference or allusion by which the identity of that complainant is disclosed or from which the identity of that complainant might reasonably be inferred.

Penalty: \$1,000 or imprisonment for 6 months, or both.

Abolition of rules of law or practice requiring corroboration

“76F. (1) Any rule of law or practice requiring the corroboration of evidence or requiring the judge to give a warning to the jury in criminal proceedings to the effect that it is unsafe to convict a person on uncorroborated evidence is abolished in so far as the rule applies to or in relation to evidence given by the complainant in the trial of a person for a prescribed sexual offence.

“(2) Nothing in this section shall affect the right of the judge in prescribed sexual offence proceedings to comment on any evidence that may be unreliable but the judge shall not, in such proceedings, give a warning to the jury to the effect that it is unsafe to convict the accused person on the uncorroborated evidence of the complainant.

“(3) Nothing in this section affects the operation of any rule of law or practice which requires—

- (a) a judge, on the trial of a person for a sexual offence alleged to have been committed before the commencement of this section, to give the jury a warning as referred to in sub-section (1); or

- (b) a judge, on the trial of any person, to give the jury a warning to the effect that it is unsafe to convict a person on the uncorroborated sworn evidence of a child.

Admissibility of evidence relating to sexual experience, &c.

“76G. (1) In prescribed sexual offence proceedings, evidence relating to the sexual reputation of the complainant is inadmissible.

“(2) No evidence may be adduced and no question may be asked in prescribed sexual offence proceedings, except with the leave of the judge, relating to any sexual experience of the complainant with a person other than the accused person.

“(3) The judge shall not give leave in pursuance of sub-section (2) for any evidence to be adduced or any question to be asked unless—

- (a) an application for leave is made to the judge, in the absence of the jury; and
- (b) the judge is satisfied that a refusal to allow the evidence to be adduced or the question to be asked would prejudice the fair trial of the accused person.

“(4) Nothing in this section authorizes the admission of evidence of a kind which was inadmissible immediately before the commencement of this section.

Limitation on dock statements

“76H. (1) In prescribed sexual offence proceedings, the accused person may not, in any statement made by him or her under section 405 of the Crimes Act, make reference to any matter relating to—

- (a) the sexual reputation of the complainant;
- (b) any sexual experience of the complainant with the accused person (other than the acts alleged to constitute the prescribed sexual offence), except where evidence of that experience has been given earlier in the proceedings; or
- (c) any sexual experience of the complainant with any other person, except where evidence of that experience has been given earlier in the proceedings with the leave of the judge.

“(2) Before an accused person in prescribed sexual offence proceedings makes a statement under section 405 of the Crimes Act, the judge shall warn

the person of the matters to which he or she may not refer in the statement by virtue of sub-section (1).

“(3) Where an accused person makes reference in a statement made by him or her under section 405 of the Crimes Act to a matter of the kind referred to in sub-section (1) contrary to that sub-section, the judge may, if in the opinion of the judge the interests of justice so require, discharge the jury and, where the judge is not of that opinion, shall direct the jury to disregard that matter.”.

Penalty for non-compliance with order under section 83

5. Section 84 of the Principal Ordinance is amended by omitting from sub-section (1) “Two hundred dollars” and substituting “\$1,000”.

Certain questions not to be published

6. Section 85 of the Principal Ordinance is amended by omitting “Two hundred dollars” and substituting “\$1,000”.

Witnesses failing to attend when required to do so by subpoena or recognizance

7. Section 97 of the Principal Ordinance is amended by omitting from sub-section (2) “Two hundred dollars” and substituting “\$1,000”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 28 November 1985.
2. No. 4, 1971 as amended by Nos. 9 and 19, 1985.