

Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024

Amendments during consideration in detail to be moved by
The Honourable the Attorney-General and Minister for Justice and Minister
for the Prevention of Domestic and Family Violence

1 Clause 2 (Commencement)

Page 6, line 10—

omit, insert—

- (c) sections 8, 9, 10 and 11;

2 Clause 8 (Insertion of new s 210A)

Page 12, lines 13 to 15—

omit, insert—

- (g) a person associated with a residential care service that provides accommodation where the child resides.

3 Clause 8 (Insertion of new s 210A)

Page 13, lines 18 to 30—

omit, insert—

associated, in relation to a residential care service, means—

- (a) owns, or is involved in the management or control of, the service; or
- (b) is employed or engaged by the service; or
- (c) works as a volunteer for the service.

chief executive (child safety) means the chief executive of the department in which the *Child Protection Act 1999* is administered.

health practitioner means a person registered under the Health Practitioner Regulation National Law to practise in a health profession, other than as a student.

4 Clause 8 (Insertion of new s 210A)

Page 13, after line 33—

insert—

residential care service means a service whose main purpose is to provide accommodation to children who are in the custody, or under the guardianship, of the chief executive (child safety) under the *Child Protection Act 1999*.

5 After clause 9

Page 15, after line 17—

insert—

9A Amendment of s 315A (Choking, suffocation or strangulation in a domestic setting)

Section 315A—

insert—

(1A) For subsection (1) and without limiting the subsection, a person is taken to choke, suffocate or strangle another person if the person applies pressure to the other person's neck that completely or partially restricts the other person's respiration or blood circulation, or both.

6 Clause 39 (Amendment of s 21AZJ (Meaning of *relevant proceeding*))

Page 37, lines 21 to 23—

omit.

7 Clause 40 (Insertion of new pt 7A)

Page 38, line 5 to page 43, line 24—

omit, insert—

129AA Application

- (1) This part applies to criminal proceedings.
- (2) Despite subsection (1), this part does not apply to—
 - (a) bail or sentencing proceedings; or
 - (b) evidence that relates only to the credibility of a witness; or
 - (c) evidence of the character, reputation or conduct of a person, or a tendency that a person has or had, to the extent that the character, reputation, conduct or tendency is a fact in issue.
- (3) To avoid doubt, any principle or rule of the common law that prevents or restricts the admissibility of evidence about propensity or similar fact evidence in a proceeding is not relevant when applying this part to tendency evidence or coincidence evidence about a defendant.
- (4) In determining the probative value of tendency evidence or coincidence evidence for the purpose of this part, it is not open to the court to have regard to the possibility that the evidence may be the result of collusion, concoction or contamination.

129AB Definitions for part

- (1) In this part—

coincidence evidence—

 - (a) means evidence that 2 or more events occurred that is adduced or to be adduced to prove, that a person did a particular act or had a particular state of mind on the basis that, having regard to any similarities in the events or circumstances in which they

occurred, or any similarities in both the events and the circumstances in which they occurred, it is improbable that the events occurred coincidentally; and

- (b) includes evidence from multiple witnesses claiming to be victims of offences committed by a defendant, that is adduced or to be adduced to prove, on the basis of similarities in the claimed acts or the circumstances in which they occurred, that the defendant did an act in issue.

probative value, of evidence, means the extent to which the evidence could rationally affect the assessment of the probability of the existence of a fact in issue.

tendency evidence means evidence of the character, reputation or conduct of a person, or a tendency that a person has or had, that is adduced or to be adduced to prove that a person has or had a tendency, whether because of the person's character or otherwise, to act in a particular way or to have a particular state of mind.

tendency rule means the rule of evidence expressed in section 129AD(1).

- (2) A reference in this part to an act includes a reference to an omission.

129AC Use of evidence for other purposes

- (1) Evidence that under this part is not admissible to prove a particular matter must not be used to prove that matter even if it is relevant for another purpose.
- (2) Evidence that under this part can not be used against a party to prove a particular matter must not be used against the party to prove that matter even if it is relevant for another purpose.

129AD The tendency rule

- (1) Evidence of the character, reputation or conduct of a person, or a tendency that a person has or had, is not admissible to prove that a person has or had a tendency, whether because of the person's character or otherwise, to act in a particular way, or to have a particular state of mind unless—
 - (a) the party seeking to adduce the evidence gave reasonable notice in writing to each other party of the party's intention to adduce the evidence; and
 - (b) the court considers that the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, have significant probative value.
- (2) Subsection (1)(a) does not apply if—
 - (a) the evidence is adduced in accordance with any directions made by the court under section 129AH; or
 - (b) the evidence is adduced to explain or contradict tendency evidence adduced by another party.

Note—

The tendency rule is subject to specific exceptions concerning the character of, or expert opinion about, accused persons, see section 129AJ. (Other provisions of this Act may also operate as further exceptions.)

129AE Admissibility of tendency evidence in proceedings involving certain child sexual offences

- (1) This section applies in a proceeding in which the commission by the defendant of an act that constitutes, or may constitute, a relevant child sexual offence is a fact in issue.

- (2) It is presumed that the following tendency evidence about the defendant will have significant probative value for the purposes of sections 129AD(1)(b) and 129AI(1)—
 - (a) tendency evidence about the sexual interest the defendant has or had in children, even if the defendant has not acted on the interest;
 - (b) tendency evidence about the defendant acting on a sexual interest the defendant has or had in children.
- (3) Subsection (2) applies whether or not the sexual interest or act to which the tendency evidence relates was directed at a complainant in the proceeding, any other child or children generally.
- (4) Despite subsection (2), the court may determine that the tendency evidence does not have significant probative value if it is satisfied that there are sufficient grounds to do so.
- (5) The following matters are not to be taken into account when determining whether there are sufficient grounds for the purposes of subsection (4) unless the court considers there are exceptional circumstances in relation to those matters to warrant taking them into account—
 - (a) the sexual interest or act to which the tendency evidence relates (the *tendency sexual interest or act*) is different from the sexual interest or act alleged in the proceeding (the *alleged sexual interest or act*);
 - (b) the circumstances in which the tendency sexual interest or act occurred are different from circumstances in which the alleged sexual interest or act occurred;
 - (c) the personal characteristics of the subject of the tendency sexual interest or act, for example, the subject's age, sex or gender,

- are different to those of the subject of the alleged sexual interest or act;
- (d) the relationship between the defendant and the subject of the tendency sexual interest or act is different from the relationship between the defendant and the subject of the alleged sexual interest or act;
 - (e) the period of time between the occurrence of the tendency sexual interest or act and the occurrence of the alleged sexual interest or act;
 - (f) the tendency sexual interest or act and alleged sexual interest or act do not share distinctive or unusual features;
 - (g) the level of generality of the tendency to which the tendency evidence relates.
- (6) In this section—
- child* means a person under 16 years of age.
- relevant child sexual offence*—
- (a) means an offence of a sexual nature committed in relation to a child under 16, including an offence against a provision of the Criminal Code, chapter 22 or 32; but
 - (b) does not include conduct of a person that has ceased to be an offence since the time when the person engaged in the conduct.

129AF The coincidence rule

- (1) Evidence that 2 or more events occurred is not admissible to prove that a person did a particular act or had a particular state of mind on the basis that, having regard to any similarities in the events or the circumstances in which they occurred, or any similarities in both the events and the circumstances in which they occurred, it is

improbable that the events occurred coincidentally unless—

- (a) the party seeking to adduce the evidence gave reasonable notice in writing to each other party of the party's intention to adduce the evidence; and
- (b) the court considers that the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, have significant probative value.

Note—

One of the events referred to in this subsection may be an event the occurrence of which is a fact in issue in the proceeding.

- (2) To avoid doubt, subsection (1) includes the use of evidence from 2 or more witnesses claiming they are victims of offences committed by a person who is a defendant in a criminal proceeding to prove, on the basis of similarities in the claimed acts or the circumstances in which they occurred, that the defendant did an act in issue in the proceeding.
- (3) Subsection (1)(a) does not apply if—
 - (a) the evidence is adduced in accordance with any directions made by the court under section 129AH; or
 - (b) the evidence is adduced to explain or contradict coincidence evidence adduced by another party.

129AG Requirements for notices

- (1) A notice given under section 129AD(1)(a) or 129AF(1)(a) must be given in accordance with any requirement prescribed by regulation.
- (2) To remove any doubt, it is declared that a

regulation may prescribe a minimum notice period for the purpose of section 129AD(1)(a) or 129AF(1)(a).

129AH Court may dispense with notice requirements

- (1) The court may dispense with the requirement to give notice under section 129AD(1)(a) or 129AF(1)(a) as the case may be—
 - (a) on the application of a party; or
 - (b) on its own initiative if the court considers it appropriate to do so.
- (2) To remove any doubt, it is declared that an application under subsection (1) may be made before or after the time that notice would otherwise be required to be given.
- (3) A direction under subsection (1) may be—
 - (a) subject to any conditions the court thinks fit; and
 - (b) given at or before the hearing in which the evidence is to be adduced.
- (4) Without limiting the court's power to impose conditions under this section, those conditions may include 1 or more of the following—
 - (a) a condition that the party give notice of its intention to adduce the evidence to a specified party, or to each other party other than a specified party;
 - (b) a condition that the party give notice only in respect of specified tendency evidence, or all tendency evidence that the party intends to adduce other than specified tendency evidence;
 - (c) a condition that the party give notice only in respect of specified coincidence evidence,

or all coincidence evidence that the party intends to adduce other than specified coincidence evidence.

129AI Further restrictions on tendency evidence and coincidence evidence adduced by prosecution

- (1) Tendency evidence about a defendant, or coincidence evidence about a defendant, that is adduced by the prosecution can not be used against the defendant unless the probative value of the evidence outweighs the danger of unfair prejudice to the defendant.
- (2) However, this section does not apply to—
 - (a) tendency evidence that the prosecution adduces to explain or contradict tendency evidence adduced by the defendant; or
 - (b) coincidence evidence that the prosecution adduces to explain or contradict coincidence evidence adduced by the defendant.

129AJ Exceptions to tendency rule—evidence about character of an accused person

- (1) The tendency rule does not apply to—
 - (a) evidence adduced by a defendant to prove, directly or indirectly, that the defendant is, generally or in a particular respect, a person of good character; or
 - (b) evidence adduced to refute evidence of the kind referred to in paragraph (a).
- (2) The tendency rule also does not apply to—
 - (a) evidence of the defendant's character adduced by another defendant if—
 - (i) the evidence is an opinion about the defendant; and

- (ii) the person whose opinion it is has specialised knowledge based on the person's training, study or experience; and
 - (iii) the opinion is wholly or substantially based on that knowledge; or
- (b) if evidence of the kind referred to in paragraph (a) is admitted, evidence adduced to prove that that opinion evidence should not be accepted.

129AK Standard of proof for tendency evidence or coincidence evidence

- (1) Tendency evidence or coincidence evidence need not be proved beyond reasonable doubt to the extent that it is adduced as tendency evidence or coincidence evidence unless—
- (a) the court is satisfied that there is a significant possibility that the jury will rely on the evidence as being essential to its reasoning in reaching a finding of guilt; or
 - (b) the evidence is adduced as both tendency evidence or coincidence evidence and as proof of an element or essential fact of a charge.
- (2) If tendency evidence or coincidence evidence is adduced as both tendency evidence or coincidence evidence and as proof of an element or essential fact of a charge, the evidence need only be proved beyond reasonable doubt to the extent that it is adduced as proof of the element or essential fact.

8 Clause 43 (Amendment of sch 3 (Dictionary))

Page 44, lines 9 to 11—

omit.

9 Clause 43 (Amendment of sch 3 (Dictionary))

Page 44, lines 12 to 14, ‘129AA’—

omit, insert—

129AB(1)

10 Clause 43 (Amendment of sch 3 (Dictionary))

Page 44, after line 14—

insert—

tendency rule, for part 7A, see section 129AB(1).

11 Schedule 1 (Other amendments)—

Page 50, after line 11—

insert—

**Part 4 Consequential
amendments in relation
to Part 5 (Evidence)**

Criminal Code

1 Section 590AA(2)(l), ‘or part 6A’—

omit, insert—

, part 6A, part 6B, or part 7A

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