

**Authorised Version**  
**Jury Directions Act 2015**  
**No. 14 of 2015**

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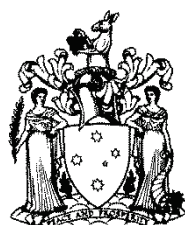
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**Authorised Version**



**Victoria**

# **Jury Directions Act 2015<sup>†</sup>**

**No. 14 of 2015**

[Assented to 12 May 2015]

**The Parliament of Victoria enacts:**

## **Part 1—Preliminary**

### **1 Purposes**

The purposes of this Act are—

- (a) to reduce the complexity of jury directions in criminal trials; and
- (b) to simplify and clarify the issues that juries must determine in criminal trials; and
- (c) to simplify and clarify the duties of the trial judge in giving jury directions in criminal trials; and

- (d) to clarify that it is one of the duties of legal practitioners appearing in criminal trials to assist the trial judge in deciding which jury directions should be given; and
- (e) to assist the trial judge to give jury directions in a manner that is as clear, brief, simple and comprehensible as possible; and
- (f) to provide for simplified jury directions in relation to specific issues; and
- (g) to re-enact the **Jury Directions Act 2013** with amendments; and
- (h) to amend the **Evidence Act 2008** in relation to corroboration directions; and
- (i) to make consequential and other amendments.

## 2 Commencement

- (1) Section 1, Division 4 of Part 10 and this section come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Division 1 of Part 5 comes into operation on the same day as section 3 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014** comes into operation.
- (3) Subject to subsection (4), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (4) If a provision referred to in subsection (3) does not come into operation before 29 June 2015, it comes into operation on that day.

## 3 Definitions

In this Act—

*accused* has the same meaning as in the **Criminal Procedure Act 2009**;

***alternative offence*** means an offence in respect of which the jury may, in accordance with any Act or any other law, find the accused guilty if the jury is not satisfied that the accused is guilty of an offence charged;

***defence*** includes an exception, exemption, proviso, excuse or qualification to an offence, whether or not it accompanies any description of the offence in an enactment;

***defence counsel*** means a legal practitioner representing an accused;

***direction*** includes an explanation under section 63 or 64;

***general directions*** means directions concerning matters relating to the conduct of trials generally, including—

- (a) the roles of the trial judge, the jury and counsel; and
- (b) the empanelment of a jury and the selection of a foreperson; and
- (c) trial procedure; and
- (d) the need to decide issues on the basis of admissible evidence only; and
- (e) the need to decide each charge separately according to the evidence relating to that charge; and
- (f) the assessment of witnesses; and
- (g) the presumption of innocence and the burden and standard of proof, including what must be proved beyond reasonable doubt; and

(h) the drawing of conclusions and the distinction between direct and circumstantial evidence; and

(i) jury deliberations and verdicts;

*legal practitioner* has the same meaning as in the **Criminal Procedure Act 2009**;

*requested direction* means a direction that the trial judge is requested to give to the jury under section 12;

*trial judge* has the same meaning as in the **Criminal Procedure Act 2009**.

#### **4 Application of Act**

This Act applies despite any rule of law or practice to the contrary.



## **Part 2—General**

### **5 Guiding principles**

- (1) The Parliament recognises that—
  - (a) the role of the jury in a criminal trial is to determine the issues that are in dispute between the prosecution and the accused; and
  - (b) in recent decades, the law of jury directions in criminal trials has become increasingly complex; and
  - (c) this development—
    - (i) has made jury directions increasingly complex, technical and lengthy; and
    - (ii) has made it increasingly difficult for trial judges to comply with the law of jury directions and avoid errors of law; and
    - (iii) has made it increasingly difficult for jurors to understand and apply jury directions; and
  - (d) research indicates that jurors find complex, technical and lengthy jury directions difficult to follow.
- (2) The Parliament further recognises that it is the responsibility of the trial judge to determine—
  - (a) the matters in issue in the trial; and
  - (b) the directions that the trial judge should give to the jury; and
  - (c) the content of those directions.
- (3) The Parliament further recognises that it is one of the duties of legal practitioners appearing in a criminal trial to assist the trial judge in his or her

determination of the matters referred to in subsection (2).

- (4) It is the intention of the Parliament that a trial judge, in giving directions to a jury in a criminal trial, should—
- (a) give directions on only so much of the law as the jury needs to know to determine the issues in the trial; and
  - (b) avoid using technical legal language wherever possible; and
  - (c) be as clear, brief, simple and comprehensible as possible.
- (5) It is the intention of the Parliament that this Act is to be applied and interpreted having regard to the matters set out in this section (to be known as the *guiding principles*).

## **6 Particular form of words not required for direction**

In giving a direction to the jury, the trial judge need not use any particular form of words.

## **7 Correction of statements or suggestions that are contrary to Act**

- (1) Subject to subsection (2), the trial judge must—
- (a) correct a statement or suggestion by the prosecution or defence counsel (or, if the accused is unrepresented, the accused) that is prohibited by this Act; and
  - (b) correct a statement or suggestion prohibited by this Act that is in a question from the jury.

### **Note**

Sections 33, 42 and 51(1) prohibit certain statements and suggestions.

- (2) The trial judge need not correct a statement or suggestion referred to in subsection (1) if there are good reasons for not doing so.

**Example**

A good reason may be that counsel has already corrected a prohibited statement or suggestion at the invitation of the trial judge.

**8 Power to extend or abridge time**

- (1) The court, by order, may extend or abridge any time fixed—

(a) by or under this Act; or

(b) by any order extending or abridging time made under this section—

if the court considers that it is in the interests of justice to do so.

- (2) It is not necessary that an order be made under subsection (1) if a ruling made, or direction given, by the court provides for the extension or abridgement of time.
- (3) The court may extend time under subsection (1) before or after the time expires.
- (4) More than one extension of time may be granted under subsection (1).
- (5) Unless the court otherwise orders, no material in support of an order under subsection (1) need be filed.

## **Part 3—Request for directions**

### **9 Purposes of Part**

The purposes of this Part are—

- (a) to assist the trial judge to discharge his or her duty to determine—
  - (i) the matters in issue in the trial; and
  - (ii) the directions that he or she should give to the jury; and
  - (iii) the content of those directions; and
- (b) to ensure that legal practitioners appearing in a criminal trial discharge their duty to assist the trial judge in his or her determination of the matters referred to in paragraph (a); and
- (c) to provide for the directions that the trial judge should give to the jury if the accused is not represented by a legal practitioner.

### **10 Application of Part**

- (1) This Part does not apply to—
  - (a) general directions; or
  - (b) a direction that the trial judge is required to give, or not to give, to the jury under any provision of this or any other Act.
- (2) This Part does not preclude the giving of a direction, that is consistent with this Act, that the trial judge considers necessary at any time before the close of all evidence.
- (3) In determining under subsection (2) whether a direction is necessary, the trial judge must have regard to the submissions, if any, of the prosecution and defence counsel.

## **11 Counsel to assist in identification of matters in issue**

After the close of all evidence and before the closing address of the prosecution—

- (a) the prosecution must inform the trial judge whether it considers that the following matters are open on the evidence and, if so, whether it relies on them—
  - (i) any alternative offence, including an element of any alternative offence;
  - (ii) any alternative basis of complicity in the commission of the offence charged and any alternative offence; and
- (b) defence counsel must then inform the trial judge whether he or she considers that the following matters are or are not in issue—
  - (i) each element of the offence charged;
  - (ii) any defence;
  - (iii) any alternative offence, including an element of any alternative offence;
  - (iv) any alternative basis of complicity in the commission of the offence charged and any alternative offence.

## **12 Legal practitioners must request that particular directions be given or not given**

After the matters in issue have been identified in accordance with section 11, the prosecution and defence counsel must each request that the trial judge give, or not give, to the jury particular directions in respect of—

- (a) the matters in issue; and
- (b) the evidence in the trial relevant to the matters in issue.

### **13 Unrepresented accused**

- (1) Subject to subsection (2), if the accused is not represented by a legal practitioner, the trial judge must comply with this Part as if the accused had informed the trial judge that all matters referred to in section 11(b) were in issue and had requested every direction that it was open to the accused to request under section 12, had the accused been represented by a legal practitioner.
- (2) The trial judge need not give the jury a direction if the trial judge considers that—
  - (a) there are good reasons for not giving the direction; or
  - (b) it is otherwise not in the interests of justice to give the direction.

#### **Note**

Section 14 sets out the matters the trial judge must have regard to in determining whether there are good reasons for not giving a direction.

### **14 Trial judge must give requested directions**

- (1) The trial judge must give the jury a requested direction unless there are good reasons for not doing so.
- (2) In determining whether there are good reasons for not giving a requested direction to the jury, the trial judge must have regard to—
  - (a) the evidence in the trial; and
  - (b) the manner in which the prosecution and the accused have conducted their cases, including—

- (i) whether the direction concerns a matter not raised or relied on by the accused; and
- (ii) whether the direction would involve the jury considering the issues in the trial in a manner that is different from the way in which the accused has presented his or her case.

**15 Trial judge must not give direction that has not been requested**

Subject to section 16, the trial judge must not give the jury a direction that has not been requested under section 12.

**16 When trial judge must give direction regardless of parties' views**

- (1) The trial judge must give the jury a direction if the trial judge considers that there are substantial and compelling reasons for doing so even though the direction has not been requested under section 12.
- (2) Before giving a direction under this section, the trial judge must—
  - (a) inform the prosecution and defence counsel (or, if the accused is unrepresented, the accused) that the trial judge is considering giving the direction; and
  - (b) invite submissions from the prosecution and defence counsel (or the accused, as the case may be) about the direction and whether there are substantial and compelling reasons for giving the direction.

**17 Abolition of common law obligation to give certain directions does not limit section 16(1)**

The abolition by section 16(1) of the **Jury Directions Act 2013** of the common law obligation on a trial judge to give certain directions does not limit the obligation of the trial judge under section 16(1) of this Act to give directions.

**Notes**

- 1 Section 16(1) of the **Jury Directions Act 2013** abolished any rule of common law under which a trial judge in a criminal trial was required to direct the jury about—
  - (a) any defences and alternative offences open on the evidence but which had not been identified as such during the trial; or
  - (b) any alternative basis of complicity in the offence charged and any alternative offence in issue.
- 2 Section 16 of the **Jury Directions Act 2013** abolished the rule attributed to *Pemble v R* [1971] HCA 20; (1971) 124 CLR 107 and the application of *Pemble* in the context of complicity, for example *Gilbert v R* [2000] HCA 15; 201 CLR 414 and *R v Nguyen* [2010] HCA 38; (2010) 242 CLR 491.
- 3 By virtue of section 14(2)(c) of the **Interpretation of Legislation Act 1984** the repeal of section 16 of the **Jury Directions Act 2013** by this Act does not revive anything not in force or existing at the time of the repeal.
- 4 Section 4 applies generally to override any rule of law or practice to the contrary of this Act.



## **Part 4—Evidential directions**

### **Division 1—Post-offence conduct**

#### **18 Definitions**

In this Division—

***conduct*** means the telling of a lie by the accused, or any other act or omission of the accused, which occurs after the event or events alleged to constitute an offence charged;

***incriminating conduct*** means conduct that amounts to an implied admission by the accused—

- (a) of having committed an offence charged or an element of an offence charged; or
- (b) which negates a defence to an offence charged;

***offence charged*** includes any alternative offence.

#### **19 Prosecution notice of evidence to be relied on as evidence of incriminating conduct**

- (1) The prosecution must give notice of evidence of conduct that it proposes to rely on as evidence of incriminating conduct by serving on the accused and filing in court at least 28 days before the day on which the trial of the accused is listed to commence—
  - (a) a notice of intention to rely on evidence of incriminating conduct, in the form required by rules of court, if any; and
  - (b) a copy of the evidence on which the prosecution intends to rely.

- (2) A notice under subsection (1) must be served in accordance with Part 8.3 of Chapter 8 of the **Criminal Procedure Act 2009**.
- (3) The trial judge may dispense with the requirements of subsection (1)(a) or (b) if—
  - (a) during a trial the prosecution first becomes aware of evidence of conduct that it proposes to rely on as evidence of incriminating conduct; and
  - (b) the prosecution gives oral notice to the court and the accused of its intention to rely on evidence of incriminating conduct; and
  - (c) it is in the interests of justice to dispense with those requirements.
- (4) If under subsection (3) the trial judge dispenses with the requirement of subsection (1)(b), the prosecution must identify orally to the court and the accused the evidence of conduct that it proposes to rely on as evidence of incriminating conduct.

**Note**

See section 8 for extension or abridgment of time.

**20 Evidence of incriminating conduct**

- (1) The prosecution must not rely on evidence of conduct as evidence of incriminating conduct unless—
  - (a) the prosecution has given notice in accordance with section 19; and

- (b) the trial judge determines that, on the basis of the evidence as a whole, the evidence of conduct is reasonably capable of being viewed by the jury as evidence of incriminating conduct.

**Note**

A trial judge may make a determination under paragraph (b) even where the evidence of conduct relates only to an alternative offence.

- (2) Subsection (1) applies even if the evidence of conduct may be admissible for another purpose.

**21 Mandatory direction on use of evidence of incriminating conduct**

- (1) If the prosecution relies on evidence of conduct as evidence of incriminating conduct, the trial judge must direct the jury that—
- (a) the jury may treat the evidence as evidence that the accused believed that he or she had committed the offence charged or an element of the offence charged, or that he or she had negated a defence to the offence charged, only if it concludes that—
- (i) the conduct occurred; and
- (ii) the only reasonable explanation of the conduct is that the accused held that belief; and
- (b) even if the jury concludes that the accused believed that he or she had committed the offence charged, it must still decide, on the basis of the evidence as a whole, whether the prosecution has proved the guilt of the accused beyond reasonable doubt.

- (2) In giving a direction under this section, a trial judge need not refer to each act or omission of the accused.

**Note**

Section 6 provides that a trial judge need not use any particular form of words in giving a direction to the jury. For example, in relation to the direction referred to in subsection (1)(a)(ii), if the evidence concerns an element of an offence, the trial judge could refer to "knew" rather than "believed" to better describe what the incriminating conduct, if accepted, may prove.

**22 Additional direction on incriminating conduct**

If the trial judge gives, or proposes to give, a direction under section 21, defence counsel may request under section 12 that the trial judge also direct the jury that—

- (a) there are all sorts of reasons why a person might behave in a way that makes the person look guilty; and
- (b) the accused may have engaged in the conduct even though the accused is not guilty of the offence charged; and
- (c) even if the jury thinks that the conduct makes the accused look guilty, that does not necessarily mean that the accused is guilty.

**Note**

Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 16 requires the trial judge to give a direction if the trial judge considers that there are substantial and compelling reasons for doing so.

**23 Direction to avoid risk of improper use of evidence**

- (1) If evidence is given of conduct but the prosecution does not rely on the evidence as evidence of incriminating conduct, defence counsel may request under section 12 that the trial judge—

- (a) direct the jury that there are all sorts of reasons why a person might behave in a way that makes the person look guilty; and
- (b) warn the jury that even if the jury thinks that the accused engaged in the conduct, it must not conclude from that evidence that the accused is guilty of the offence charged.

**Note**

Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 16 requires the trial judge to give a direction if the trial judge considers that there are substantial and compelling reasons for doing so.

- (2) Without limiting section 14, it is a good reason for not giving the requested direction if the trial judge considers that there is no substantial risk that the jury might use the evidence as evidence of incriminating conduct.

**24 Abolition of common law rules continues**

Except as provided by this Division, a trial judge is not required to give the jury a direction regarding evidence because it is evidence of incriminating conduct or may be improperly used as evidence of incriminating conduct.

**Notes**

- 1 Section 28(3) of the **Jury Directions Act 2013** abolished rules of common law based on *Edwards v R* [1993] HCA 63; (1993) 178 CLR 193 and *Zoneff v R* [2000] HCA 28; (2000) 200 CLR 234.
- 2 By virtue of section 14(2)(c) of the **Interpretation of Legislation Act 1984** the repeal of section 28 of the **Jury Directions Act 2013** by this Act does not revive anything not in force or existing at the time of the repeal.
- 3 Section 4 applies generally to override any rule of law or practice to the contrary of this Act.
- 4 Section 28(2) of the **Jury Directions Act 2013** has been superseded by sections 61 and 62 of this Act.

## **Division 2—Other misconduct evidence**

### **25 Application of Division**

This Division applies despite any obligation arising from section 95 of the **Evidence Act 2008**.

### **26 Definitions**

In this Division—

*coincidence evidence* has the same meaning as in the **Evidence Act 2008**;

*other misconduct evidence* means—

- (a) coincidence evidence; or
- (b) tendency evidence; or
- (c) evidence of other discreditable acts and omissions of an accused that are not directly relevant to a fact in issue; or
- (d) evidence that is adduced to assist the jury to understand the context in which the offence charged or any alternative offence is alleged to have been committed;

*tendency evidence* has the same meaning as in the **Evidence Act 2008**.

### **27 Direction on other misconduct evidence adduced by the prosecution**

- (1) Defence counsel may request under section 12 that the trial judge direct the jury on other misconduct evidence adduced by the prosecution.
- (2) In giving a direction referred to in subsection (1), the trial judge must—
  - (a) identify how the other misconduct evidence is relevant (whether directly or indirectly) to the existence of a fact in issue in the trial and

- direct the jury not to use the evidence for any other purpose; and
- (b) if the evidence forms only part of the prosecution case against the accused, inform the jury of that fact; and
  - (c) direct the jury that it must not decide the case based on prejudice arising from what the jury has heard about the accused.
- (3) In giving a direction referred to in subsection (1), the trial judge need not—
- (a) explain further what the jury should consider in deciding whether to use the other misconduct evidence; or
  - (b) identify impermissible uses of the other misconduct evidence; or
  - (c) refer to any other matter.

**Note**

Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 16 requires the trial judge to give a direction if the trial judge considers that there are substantial and compelling reasons for doing so.

**28 Direction on other misconduct evidence adduced by accused about a co-accused**

- (1) The prosecution or counsel for a co-accused may request under section 12 that the trial judge direct the jury on other misconduct evidence adduced by the accused about the co-accused.
- (2) In giving a direction referred to in subsection (1), the trial judge must—
  - (a) identify how the other misconduct evidence is relevant (whether directly or indirectly) to the existence of a fact in issue in the trial and direct the jury not to use the evidence for any other purpose; and

- (b) direct the jury that it must not decide the case based on prejudice arising from what the jury has heard about the co-accused.
- (3) In giving a direction referred to in subsection (1), the trial judge need not—
  - (a) explain further what the jury should consider in deciding whether to use the other misconduct evidence; or
  - (b) identify impermissible uses of the other misconduct evidence; or
  - (c) refer to any other matter.

**Note**

Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 16 requires the trial judge to give a direction if the trial judge considers that there are substantial and compelling reasons for doing so.

**29 Direction to avoid risk of improper use of other misconduct evidence**

- (1) If other misconduct evidence (other than tendency evidence) is adduced, the prosecution or defence counsel may request under section 12 that the trial judge warn the jury not to use the evidence as tendency evidence.

**Note**

Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 16 requires the trial judge to give a direction if the trial judge considers that there are substantial and compelling reasons for doing so.

- (2) Without limiting section 14, it is a good reason for not giving the requested direction if the trial judge considers that there is no substantial risk that the jury might use the evidence as tendency evidence.



### **30 Abolition of common law rules**

- (1) Except as provided by this Division, a trial judge is not required to direct the jury regarding the use of other misconduct evidence.
- (2) Any rule of common law to the contrary of this section is abolished.

#### **Note**

Section 4 applies generally to override any rule of law or practice to the contrary of this Act.

## **Division 3—Unreliable evidence**

### **31 Definition**

In this Division—

*evidence of a kind that may be unreliable*  
includes—

- (a) evidence in relation to which Part 3.2 (hearsay evidence) or 3.4 (admissions) of the **Evidence Act 2008** applies; and
- (b) evidence the reliability of which may be affected by age, ill health (whether physical or mental), injury or the like; and
- (c) evidence given by a witness who might reasonably be supposed to have been criminally concerned in the events giving rise to the trial; and
- (d) evidence given by a witness who is a prison informer; and
- (e) oral evidence of questioning by an investigating official (within the meaning of the **Evidence Act 2008**) of an accused where the questioning has not been acknowledged by the accused.

### **32 Direction on unreliable evidence**

- (1) The prosecution or defence counsel may request under section 12 that the trial judge direct the jury on evidence of a kind that may be unreliable.
- (2) In making a request referred to in subsection (1), the prosecution or defence counsel (as the case requires) must specify—
  - (a) the significant matters that may make the evidence unreliable; or
  - (b) if the request concerns evidence given by a child, the significant matters (other than solely the age of the child) that may make the evidence of the child unreliable.
- (3) In giving a direction referred to in subsection (1), the trial judge must—
  - (a) warn the jury that the evidence may be unreliable; and
  - (b) inform the jury of—
    - (i) the significant matters that the trial judge considers may cause the evidence to be unreliable; or
    - (ii) if the direction concerns evidence given by a child, the significant matters (other than solely the age of the child) that the trial judge considers may make the evidence of the child unreliable; and
  - (c) warn the jury of the need for caution in determining whether to accept the evidence and the weight to be given to it.

#### **Notes**

- 1 Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 16 requires the trial judge to give a direction if the trial judge considers that there are substantial and compelling reasons for doing so.

- 2 Section 115(7) of the **Evidence Act 2008** and Division 4 of this Part provide for warnings and information about identification evidence.
- 3 Section 164(4) of the **Evidence Act 2008** provides that in a criminal proceeding the judge must not—
  - (a) warn the jury that it is dangerous to act on uncorroborated evidence or give a warning to the same or similar effect; or
  - (b) give a direction relating to the absence of corroboration.
- 4 Section 164(5) of the **Evidence Act 2008** provides that in a criminal proceeding for the offence of perjury or a similar or related offence, the judge must direct the jury that it may find the accused guilty only if it is satisfied that the evidence proving guilt is corroborated.

### **33 Prohibited statements and suggestions in relation to children's evidence**

The trial judge, the prosecution and defence counsel (or, if the accused is unrepresented, the accused) must not say, or suggest in any way, to the jury that—

- (a) children as a class are unreliable witnesses; or
- (b) the evidence of children as a class is inherently less credible or reliable, or requires more careful scrutiny, than the evidence of adults; or
- (c) a particular child's evidence is unreliable solely on account of the age of the child; or
- (d) it would be dangerous to convict on the uncorroborated evidence of a witness because that witness is a child.

#### **Notes**

- 1 Section 7 provides for correction of statements or suggestions to the contrary of this provision.
- 2 Section 164 of the **Evidence Act 2008** relates to corroboration.

### 34 Abolition of common law rules

- (1) Except as provided by this Division, a trial judge is not required to direct the jury regarding evidence of a kind that may be unreliable.
- (2) Any rule of common law to the contrary of subsection (1) is abolished.

#### Note

Section 4 applies generally to override any rule of law or practice to the contrary of this Act.

## Division 4—Identification evidence

### 35 Definition

In this Division—

*identification evidence* means an assertion by a person, or a report of an assertion by a person, to the effect that—

- (a) he or she recognises, or does not recognise, a person or object as the person or object that he or she saw, heard or perceived on the relevant occasion; or
- (b) the general appearance or characteristics of a person or object are similar, or are not similar, to the general appearance or characteristics of the person or object that he or she saw, heard or perceived on the relevant occasion—

and includes—

- (c) visual identification evidence within the meaning of section 114 of the **Evidence Act 2008**; and

- (d) picture identification evidence within the meaning of section 115 of the **Evidence Act 2008**.

**Note**

Section 115(7) of the **Evidence Act 2008** requires particular jury directions in relation to picture identification evidence.

**36 Direction on identification evidence**

- (1) The prosecution or defence counsel may request under section 12 that the trial judge direct the jury on identification evidence.
- (2) In making a request referred to in subsection (1), the prosecution or defence counsel (as the case requires) must specify the significant matters that may make the evidence unreliable.
- (3) In giving a direction referred to in subsection (1), the trial judge must—
  - (a) warn the jury of the need for caution in determining whether to accept the evidence and the weight to be given to it; and
  - (b) inform the jury of the significant matters that the trial judge considers may make the evidence unreliable; and
  - (c) inform the jury that—
    - (i) a witness may honestly believe that his or her evidence is accurate when the witness is, in fact, mistaken; and
    - (ii) the mistaken evidence of a witness may be convincing; and
  - (d) if relevant, inform the jury that a number of witnesses may all be mistaken; and

- (e) if relevant, inform the jury that mistaken identification evidence has resulted in innocent people being convicted.

**Note**

Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 16 requires the trial judge to give a direction if the trial judge considers that there are substantial and compelling reasons for doing so.

**37 Abolition of common law rules**

- (1) Except as provided by this Division, a trial judge is not required to direct the jury regarding the unreliability of identification evidence.
- (2) Any rule of common law to the contrary of subsection (1) is abolished.

**Note**

Section 4 applies generally to override any rule of law or practice to the contrary of this Act.

**Division 5—Delay and forensic disadvantage**

**38 Definition**

In this Division—

*forensic disadvantage* means a disadvantage (that is more than the mere existence of delay) to the accused in—

- (a) challenging, adducing or giving evidence; or
- (b) conducting his or her case—

because of the consequences of delay due to the period of time that has elapsed between the alleged offence and the trial.

### **39 Direction on significant forensic disadvantage**

- (1) Defence counsel may request under section 12 that the trial judge direct the jury on forensic disadvantage experienced by the accused.
- (2) The trial judge may direct the jury as referred to in subsection (1) only if the trial judge is satisfied that the accused has experienced a significant forensic disadvantage.
- (3) In giving a direction referred to in subsection (1), the trial judge—
  - (a) must inform the jury of—
    - (i) the nature of the disadvantage experienced by the accused; and
    - (ii) the need to take the disadvantage into account when considering the evidence; and
  - (b) must not say, or suggest in any way, to the jury that—
    - (i) it would be dangerous or unsafe to convict the accused; or
    - (ii) the complainant's evidence should be scrutinised with great care.

#### **Note**

Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 39(2) qualifies the threshold for giving a requested direction. Section 16 requires the trial judge to give a direction if the trial judge considers that there are substantial and compelling reasons for doing so.

#### **40 Abolition of common law rules**

Any rule of common law under which a trial judge is required or permitted to direct the jury on a disadvantage to the accused in challenging, adducing or giving evidence or conducting his or her case because of delay is abolished.

##### **Notes**

- 1 This provision abolishes the rule attributed to *Longman v R* [1989] HCA 60; (1989) 168 CLR 79, followed in *Crompton v R* [2000] HCA 60; (2000) 206 CLR 161 and applied in relation to the corroborated evidence of a complainant in *Doggett v R* [2001] HCA 46; (2001) 208 CLR 343.
- 2 Section 4 applies generally to override any rule of law or practice to the contrary of this Act.

### **Division 6—Failure to give evidence or call witness**

#### **41 Direction on accused not giving evidence or calling witness**

- (1) If the accused does not give evidence or call a particular witness, defence counsel may request under section 12 that the trial judge direct the jury on that fact.
- (2) In giving a direction referred to in subsection (1), the trial judge must explain—
  - (a) the prosecution's obligation to prove that the accused is guilty; and
  - (b) that the accused is not required to give evidence or call a witness (as the case requires); and
  - (c) that the jury should not guess or speculate about what might have been contained in—
    - (i) the evidence that was not given by the accused; or



(ii) the evidence that might have been given by a witness who was not called—

as the case requires; and

(d) that the fact that the accused did not give evidence or call a witness (as the case requires)—

(i) is not evidence against the accused; and

(ii) is not an admission by the accused; and

(iii) must not be used to fill gaps in the evidence adduced by the prosecution; and

(iv) does not strengthen the prosecution case.

**Note**

Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 16 requires the trial judge to give a direction if the trial judge considers that there are substantial and compelling reasons for doing so.

**42 Prohibited statements and suggestions in relation to accused who does not give evidence or call witness**

The trial judge, the prosecution and defence counsel (or, if the accused is unrepresented, the accused) must not say, or suggest in any way, to the jury that, because an accused did not give evidence or call a particular witness (as the case requires), the jury may—

(a) conclude that the accused is guilty from that fact; or

(b) use the failure of the accused to provide an explanation of facts, which must be within the knowledge of the accused, to more safely draw an adverse inference based on those

facts which, if drawn, would prove the guilt of the accused; or

- (c) draw an inference that the accused did not give evidence or call a witness (as the case requires) because that would not have assisted his or her case.

**Note**

Section 7 provides for correction of statements or suggestions to the contrary of this provision.

**43 Direction on prosecution not calling or questioning witness**

- (1) If the prosecution does not call or question a particular witness, defence counsel may request under section 12 that the trial judge direct the jury on that fact.
- (2) The trial judge may direct the jury as referred to in subsection (1) only if the trial judge is satisfied that the prosecution—
  - (a) was reasonably expected to call or question the witness; and
  - (b) has not satisfactorily explained why it did not call or question the witness.
- (3) In giving a direction referred to in subsection (1), the trial judge may inform the jury that it may conclude that the witness would not have assisted the prosecution's case.

**Note**

Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 43(2) qualifies the threshold for giving a requested direction. Section 16 requires the trial judge to give a direction if the trial judge considers that there are substantial and compelling reasons for doing so.

#### **44 Abolition of common law rules**

- (1) Except as provided by this Division, a trial judge is not required to direct the jury—
  - (a) when the accused does not give evidence or call a witness; or
  - (b) when the prosecution does not call or question a witness.
- (2) Any rule of common law to the contrary of subsection (1) is abolished.

#### **Notes**

- 1 This provision abolishes directions based on the rule attributed to *Weissensteiner v R* [1993] HCA 65; (1993) 178 CLR 217 and applied in *Azzopardi v R* [2001] HCA 25; (2001) 205 CLR 50 and the rule attributed to *Jones v Dunkel* [1959] HCA 8; (1959) 101 CLR 298 and applied to the accused and prosecution in criminal cases in *Dyers v R* [2002] HCA 45; (2002) 210 CLR 285.
- 2 Section 4 applies generally to override any rule of law or practice to the contrary of this Act.

## **Part 5—Sexual offences**

### **Division 1—Consent and reasonable belief in consent**

#### **45 Application of Division**

This Division applies to a criminal proceeding that relates (wholly or partly) to a charge for an offence against any provision in Subdivision (8A), (8B), (8C) or (8D) of Division 1 of Part I of the **Crimes Act 1958**.

#### **46 Direction on consent**

- (1) The prosecution or defence counsel may request under section 12 that the trial judge direct the jury on consent.
- (2) In making a request referred to in subsection (1), the prosecution or defence counsel (as the case requires) must specify—
  - (a) in the case of a request for a direction on the meaning of consent—one or more of the directions set out in subsection (3); or
  - (b) in the case of a request for a direction on the circumstances in which a person is taken not to have consented to an act—one or more of the directions set out in subsection (4).

#### **Note**

Section 34C of the **Crimes Act 1958** provides that consent means free agreement. That section also sets out circumstances in which a person has not consented to an act.

- (3) For the purposes of subsection (2)(a), the prosecution or defence counsel may request that the trial judge—

- (a) inform the jury that a person can consent to an act only if the person is capable of consenting and free to choose whether or not to engage in or allow the act; or
  - (b) inform the jury that where a person has given consent to an act, the person may withdraw that consent either before the act takes place or at any time while the act is taking place; or
  - (c) warn the jury that evidence of the following alone is not enough to regard a person as having consented to an act—
    - (i) evidence that the person did not protest or physically resist; or
    - (ii) evidence that the person did not sustain physical injury; or
    - (iii) evidence that on any particular occasion the person consented to another act that is sexual in nature (whether or not of the same type) with the accused or with another person.
- (4) For the purposes of subsection (2)(b), the prosecution or defence counsel may request that the trial judge—
- (a) inform the jury of the relevant circumstances in which the law provides that a person does not consent to an act; or

**Note**

Section 34C of the **Crimes Act 1958** sets out these circumstances.

- (b) direct the jury that if the jury is satisfied beyond reasonable doubt that a circumstance referred to in section 34C of the **Crimes Act 1958** existed in relation to a person, the jury must find that the person did not consent to the act.

**Note**

Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 16 requires the trial judge to give a direction if the trial judge considers that there are substantial and compelling reasons for doing so.

**47 Direction on reasonable belief in consent**

- (1) The prosecution or defence counsel may request under section 12 that the trial judge direct the jury on reasonable belief in consent.
- (2) In making a request referred to in subsection (1), the prosecution or defence counsel (as the case requires) must specify one or more of the directions set out in subsection (3).
- (3) For the purposes of subsection (2), the prosecution or defence counsel may request that the trial judge—
- (a) direct the jury that if the jury concludes that the accused knew or believed that a circumstance referred to in section 34C of the **Crimes Act 1958** existed in relation to a person, that knowledge or belief is enough to show that the accused did not reasonably believe that the person was consenting to the act; or
- (b) direct the jury that in determining whether the accused who was intoxicated had a reasonable belief at any time—

- (i) if the intoxication was self-induced, regard must be had to the standard of a reasonable person who is not intoxicated and who is otherwise in the same circumstances as the accused at the relevant time; and
- (ii) if the intoxication is not self-induced, regard must be had to the standard of a reasonable person intoxicated to the same extent as the accused and who is in the same circumstances as the accused at the relevant time.

**Note**

Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 16 requires the trial judge to give a direction if the trial judge considers that there are substantial and compelling reasons for doing so.

**Division 2—Delay and credibility**

**48 Application of Division**

This Division applies to a criminal proceeding that relates (wholly or partly) to a charge for a sexual offence.

**49 Part 3 does not apply**

Part 3 does not apply to this Division (except section 53).

**50 Definitions**

In this Division—

*delay in making a complaint* includes where—

- (a) the complainant has not pursued, or continued to pursue, the complaint in a timely manner; and

- (b) the complainant has not made a complaint at the first, or a subsequent, reasonable opportunity to complain;

*sexual offence* has the same meaning as in the **Criminal Procedure Act 2009**;

*sexual offence case* means a criminal proceeding referred to in section 48.

### **51 Prohibited statements and suggestions in relation to complainants**

- (1) The trial judge, the prosecution and defence counsel (or, if the accused is unrepresented, the accused) must not say, or suggest in any way, to the jury that—
- (a) the law regards complainants in sexual offence cases as an unreliable class of witness; or
  - (b) complainants in sexual offence cases are an unreliable class of witness; or
  - (c) complainants who delay in making a complaint or do not make a complaint are, as a class, less credible or require more careful scrutiny than other complainants.
- (2) The trial judge must not say, or suggest in any way, to the jury that, because the complainant delayed in making a complaint or did not make a complaint—
- (a) it would be dangerous or unsafe to convict the accused; or



- (b) the complainant's evidence should be scrutinised with great care.

**Notes**

- 1 The trial judge is not required to inform the jury about the matters set out in this section.
- 2 Section 7 provides for correction of statements or suggestions to the contrary of section 51(1).
- 3 The trial judge, the prosecution and defence counsel (or, if the accused is unrepresented, the accused) may say or suggest that the particular complainant's delay in making a complaint or lack of a complaint does, or may, affect the complainant's credibility.

**52 Direction on delay in complaint or lack of complaint**

- (1) If, before any evidence is adduced in the trial and after hearing submissions from the prosecution and defence counsel (or, if the accused is unrepresented, the accused), the trial judge considers that there is likely to be evidence in the trial that suggests that the complainant delayed in making a complaint or did not make a complaint, the trial judge—
  - (a) must direct the jury in accordance with subsection (4) before any evidence about delay in making a complaint or lack of complaint is adduced; and
  - (b) may give the direction before any evidence is adduced in the trial.
- (2) If, at any other time during the trial, the trial judge considers that there is evidence in the trial that suggests that the complainant delayed in making a complaint or did not make a complaint, the trial judge must direct the jury in accordance with subsection (4) as soon as is practicable.
- (3) The trial judge may repeat a direction under this section at any time in the trial.

- (4) In giving a direction under this section, the trial judge must inform the jury that experience shows that—
- (a) people may react differently to sexual offences and there is no typical, proper or normal response to a sexual offence; and
  - (b) some people may complain immediately to the first person they see, while others may not complain for some time and others may never make a complaint; and
  - (c) delay in making a complaint in respect of a sexual offence is a common occurrence.
- (5) This section does not limit any direction that the trial judge may give the jury in relation to evidence given by an expert witness.

**53 Additional direction on delay in complaint or lack of complaint**

The prosecution may request under section 12 that the trial judge direct the jury that there may be good reasons why a person may not complain, or may delay in complaining, about a sexual offence.

**Note**

Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 16 requires the trial judge to give a direction if the trial judge considers that there are substantial and compelling reasons for doing so.

**54 Abolition of common law rules**

Any rule of common law under which a trial judge is required to direct the jury that—

- (a) a complainant's delay in making a complaint or lack of complaint may cast doubt on the reliability of the complainant's evidence; and

(b) the jury should take this into account when evaluating the credibility of the allegations made by the complainant—

is abolished.

**Notes**

- 1 This provision abolishes the rules attributed to *Kilby v R* [1973] HCA 30; (1973) 129 CLR 460 and *Crofts v R* [1996] HCA 22; (1996) 186 CLR 427.
- 2 Section 4 applies generally to override any rule of law or practice to the contrary of this Act.

## **Part 6—Family violence**

### **55 Application of Part**

This Part applies to a criminal proceeding in which self-defence or duress in the context of family violence is in issue.

### **56 Part 3 does not apply**

Part 3 does not apply to this Part.

### **57 Definition**

In this Part—

*family violence* has the same meaning as in section 322J(2) of the **Crimes Act 1958**.

### **58 Request for direction on family violence**

- (1) Defence counsel (or, if the accused is unrepresented, the accused) may request at any time that the trial judge direct the jury on family violence in accordance with section 59 and all or specified parts of section 60.
- (2) The trial judge must give the jury a requested direction on family violence, including all or specified parts of section 60 if so requested, unless there are good reasons for not doing so.
- (3) If the accused is unrepresented and does not request a direction on family violence, the trial judge may give the direction in accordance with this Part if the trial judge considers that it is in the interests of justice to do so.
- (4) The trial judge—
  - (a) must give the direction as soon as practicable after the request is made; and
  - (b) may give the direction before any evidence is adduced in the trial.

- (5) The trial judge may repeat a direction under this Part at any time in the trial.
- (6) This Part does not limit any direction that the trial judge may give the jury in relation to evidence given by an expert witness.

### **59 Content of direction on family violence**

In giving a direction under section 58, the trial judge must inform the jury that—

- (a) self-defence or duress (as the case requires) is, or is likely to be, in issue in the trial; and
- (b) as a matter of law, evidence of family violence may be relevant to determining whether the accused acted in self-defence or under duress (as the case requires); and
- (c) in the case of self-defence, evidence in the trial is likely to include evidence of family violence committed by the victim against the accused or another person whom the accused was defending; and
- (d) in the case of duress, evidence in the trial is likely to include evidence of family violence committed by another person against the accused or a third person.

### **60 Additional matters for direction on family violence**

In giving a direction requested under section 58, the trial judge may include any of the following matters in the direction—

- (a) that family violence—
  - (i) is not limited to physical abuse and may include sexual abuse and psychological abuse;
  - (ii) may involve intimidation, harassment and threats of abuse;

- (iii) may consist of a single act;
  - (iv) may consist of separate acts that form part of a pattern of behaviour which can amount to abuse even though some or all of those acts may, when viewed in isolation, appear to be minor or trivial;
- (b) if relevant, that experience shows that—
- (i) people may react differently to family violence and there is no typical, proper or normal response to family violence;
  - (ii) it is not uncommon for a person who has been subjected to family violence—
    - (A) to stay with an abusive partner after the onset of family violence, or to leave and then return to the partner;
    - (B) not to report family violence to police or seek assistance to stop family violence;
  - (iii) decisions made by a person subjected to family violence about how to address, respond to or avoid family violence may be influenced by—
    - (A) family violence itself;
    - (B) cultural, social, economic and personal factors;
- (c) that, as a matter of law, evidence that the accused assaulted the victim on a previous occasion does not mean that the accused could not have been acting in self-defence or under duress (as the case requires) in relation to the offence charged.

## Part 7—General directions

### 61 What must be proved beyond reasonable doubt

Unless an enactment otherwise provides, the only matters that the trial judge may direct the jury must be proved beyond reasonable doubt are—

- (a) the elements of the offence charged or an alternative offence; and
- (b) the absence of any relevant defence.

#### Notes

- 1 If the trial judge directs the jury about a matter referred to in paragraph (a) or (b) in the form of a factual question under section 67(2) or (3), the trial judge must direct the jury that it must be satisfied of that matter beyond reasonable doubt.
- 2 Section 46(4)(b) of this Act and section 45 of the **Crimes Act 1958** refer to specific matters that must be proved beyond reasonable doubt.

#### Examples

The trial judge may relate the evidence in the trial to directions under section 61 in many different ways, for example—

- when directing the jury that an element must be proved beyond reasonable doubt, the trial judge may refer to the evidence relied on by the prosecution to prove that element and direct the jury that it must be satisfied that that evidence proves that element beyond reasonable doubt; or
- where the only evidence relied on by the prosecution to prove an element is an alleged admission made by the accused, the trial judge may refer to the alleged admission and direct the jury that it must be satisfied that that evidence proves that element beyond reasonable doubt.

## **62 Abolition of common law obligation to give certain directions**

Any rule of common law under which a trial judge in a criminal trial is required to direct the jury that a matter, other than a matter referred to in section 61, must be proved beyond reasonable doubt is abolished.

### **Notes**

- 1 This provision abolishes—
  - the rule attributed to *Shepherd v R* [1990] HCA 56; (1990) 170 CLR 573 that in appropriate cases a jury must be directed that it must be satisfied beyond reasonable doubt of an indispensable intermediate fact; and
  - the rule attributed to *R v Sadler* [2008] VSCA 198 that a jury must be directed that it must be satisfied beyond reasonable doubt of uncharged acts that the jury would use as a step in their process of reasoning towards guilt; and
  - any other rule that requires a jury to be directed that it must be satisfied beyond reasonable doubt of any matter other than a matter referred to in section 61.
- 2 Section 4 applies generally to override any rule of law or practice to the contrary of this Act.

## **63 When trial judge may explain "proof beyond reasonable doubt"**

- (1) A trial judge may give the jury an explanation of the phrase "proof beyond reasonable doubt" if the jury asks the trial judge—
  - (a) a direct question about the meaning of the phrase; or
  - (b) a question that indirectly raises the meaning of the phrase.
- (2) Subsection (1) does not limit any other power of a trial judge to give the jury an explanation of the phrase "proof beyond reasonable doubt".



**64 How explanation may be given in response to jury question**

- (1) If the jury has asked a direct question about the meaning of the phrase, or a question that indirectly raises the meaning of the phrase, "proof beyond reasonable doubt", the trial judge may—
  - (a) refer to—
    - (i) the presumption of innocence; and
    - (ii) the prosecution's obligation to prove that the accused is guilty; or
  - (b) indicate that it is not enough for the prosecution to persuade the jury that the accused is probably guilty or very likely to be guilty; or
  - (c) indicate that—
    - (i) it is almost impossible to prove anything with absolute certainty when reconstructing past events; and
    - (ii) the prosecution does not have to do so; or
  - (d) indicate that the jury cannot be satisfied that the accused is guilty if the jury has a reasonable doubt about whether the accused is guilty; or
  - (e) indicate that a reasonable doubt is not an imaginary or fanciful doubt or an unrealistic possibility.
- (2) The trial judge may adapt his or her explanation of the phrase "proof beyond reasonable doubt" in order to respond to the particular question asked by the jury.

## **Part 8—Trial judge's summing up**

### **65 Trial judge's obligations when summing up**

In his or her summing up to the jury, the trial judge—

- (a) must explain only so much of the law as is necessary for the jury to determine the issues in the trial; and
- (b) must refer the jury to the way in which the prosecution and the accused have put their cases in relation to the issues in the trial but need not summarise the closing addresses of the prosecution and the accused; and
- (c) need not give a summary of the evidence but, in accordance with section 66, must identify so much of the evidence as is necessary to assist the jury to determine the issues in the trial; and
- (d) may use a combination of oral and written components.

### **66 Trial judge required to identify only evidence necessary for determination of issues**

- (1) The trial judge is required to identify only so much of the evidence given in the trial as is necessary to assist the jury to determine the issues in the trial.
- (2) In determining whether and if so to what extent identification of evidence is necessary under subsection (1), the trial judge must have regard to—
  - (a) the facts in issue; and
  - (b) the complexity of the facts in issue; and
  - (c) the length of the trial; and
  - (d) the complexity of the evidence; and

- (e) the submissions and addresses of the prosecution and the accused; and
- (f) any reference to the way in which the prosecution and the accused have put their cases in relation to the issues in the trial; and

**Note**

See section 65(b).

- (g) any special needs or disadvantages of the jury in understanding or recalling the evidence; and
- (h) any transcript of the evidence in the trial or any other document provided to assist the jury to understand the evidence.

**Note**

Section 223 of the **Criminal Procedure Act 2009** provides for the trial judge to give the transcript of the evidence in the trial and certain other documents to the jury for the purpose of helping the jury to understand the issues or the evidence.

- (3) In addition to the requirements of subsection (2), the trial judge may have regard to any other matter that he or she considers appropriate.

**67 Trial judge may give integrated directions**

- (1) In this section—

*integrated directions* means directions referred to in subsection (3).

- (2) The trial judge may give to the jury directions that contain, or are in the form of, factual questions that address matters that the jury must consider or be satisfied of in order to reach a verdict, including the elements of the offence and any relevant defences.

- (3) The trial judge may give integrated directions that combine the factual questions referred to in subsection (2) with—
- (a) directions on the evidence and how the evidence is to be assessed; or
  - (b) references to the way in which the prosecution and the accused have put their cases in relation to the issues in the trial; or
  - (c) any evidence identified under section 66.
- (4) A trial judge who addresses a matter—
- (a) by a factual question need not also address the matter in any other direction; or
  - (b) in integrated directions need not also address the matter in directions that are not integrated directions.

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Part 9—Transitional provisions

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## **Part 9—Transitional provisions**

### **68 Transitional provisions**

Schedule 1 has effect.

## **Part 10—Consequential and other amendments**

### **Division 1—Consequential amendments**

#### **69 Consequential amendments**

- (1) The **Jury Directions Act 2013** is repealed.
- (2) In section 3 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**—
  - (a) in new section 34C(2)(j) of the **Crimes Act 1958**, for 'purposes.'" substitute "purposes;"
  - (b) after new section 34C(2)(j) of the **Crimes Act 1958** insert—
    - (k) the person does not say or do anything to indicate consent to the act;
    - (l) having initially given consent to the act, the person later withdraws consent to the act taking place or continuing.".
- (3) Part 5 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014** is repealed.
- (4) In section 223(1A) of the **Criminal Procedure Act 2009**—
  - (a) in paragraph (a), for "section 19 of the **Jury Directions Act 2013**" substitute "section 67 of the **Jury Directions Act 2015**";
  - (b) in paragraph (d), for "section 18 of the **Jury Directions Act 2013**" substitute "section 66 of the **Jury Directions Act 2015**".

- (5) For the note at the foot of section 238 of the **Criminal Procedure Act 2009** substitute—  
**"Note**  
See the **Jury Directions Act 2015**".
- (6) In section 419(1) of the **Criminal Procedure Act 2009**, for "**Jury Directions Act 2013**" substitute "**Jury Directions Act 2015**".
- (7) In note 1 at the foot of section 4A of the **Crimes Act 1958**, for "section 10 of the **Jury Directions Act 2013**" substitute "section 11 of the **Jury Directions Act 2015**".
- (8) In note 2 at the foot of section 4A of the **Crimes Act 1958**, for "section 11 of the **Jury Directions Act 2013**" substitute "section 12 of the **Jury Directions Act 2015**".

## **Division 2—Amendment of Evidence Act 2008**

### **70 Comment on failure to give evidence**

- (1) Section 20 of the **Evidence Act 2008** (other than the section number and the heading) is **repealed**.
- (2) At the foot of section 20 of the **Evidence Act 2008** insert—

**"Note**

Section 20 of the Commonwealth Act and New South Wales Act requires the judge to give certain directions to the jury relating to the failure to give evidence or call witnesses in a criminal proceeding for an indictable offence. Division 6 of Part 4 of the **Jury Directions Act 2015** contains provisions relating to the failure to give evidence or call a witness that apply in criminal trials."

### **71 Tendency and coincidence**

After the heading to Part 3.6 of the **Evidence Act 2008 insert—**

**"Note**

See also Division 2 of Part 4 of the **Jury Directions Act 2015**".

### **72 Exclusion of evidence of identification by pictures**

For the note at the foot of section 115(7) of the **Evidence Act 2008 substitute—**

**"Note**

Division 4 of Part 4 of the **Jury Directions Act 2015** also deals with warnings about identification evidence."

### **73 Directions to jury**

- (1) Section 116 of the **Evidence Act 2008** (other than the section number and the heading) is **repealed**.
- (2) At the foot of section 116 of the **Evidence Act 2008 insert—**

**"Note**

Section 116 of the Commonwealth Act and New South Wales Act requires the judge to give certain directions to the jury relating to identification evidence. Division 4 of Part 4 of the **Jury Directions Act 2015** contains provisions relating to identification evidence that apply in criminal trials."

### **74 Corroboration requirements**

- (1) In section 164(3) of the **Evidence Act 2008**, after "jury" (where first occurring) **insert** "in a civil proceeding".



(2) After section 164(3) of the **Evidence Act 2008**  
**insert—**

"(4) Subject to subsection (5), if there is a jury in a criminal proceeding, the judge must not—

- (a) warn the jury that it is dangerous to act on uncorroborated evidence or give a warning to the same or similar effect; or
- (b) direct the jury regarding the absence of corroboration.

(5) In a criminal proceeding for the offence of perjury or a similar or related offence, the judge must direct the jury that it may find the accused guilty only if it is satisfied that the evidence proving guilt is corroborated.

(6) The principles and rules of the common law that relate to jury directions or warnings on corroboration of evidence, or the absence of corroboration of evidence, in criminal trials to the contrary of this section are abolished.

**Note**

Subsections (4), (5) and (6) do not appear in the Commonwealth Act and New South Wales Act."

**75 Unreliable evidence**

(1) In section 165(1) of the **Evidence Act 2008—**

- (a) after "evidence" (where first occurring)  
**insert** "in a civil proceeding that is evidence";
- (b) paragraphs (d), (e) and (f) are **repealed**.

(2) At the foot of section 165(1) of the **Evidence Act 2008 insert—**

**"Note**

Subsection (1) differs from section 165(1) of the Commonwealth Act and New South Wales Act."

- (3) At the foot of section 165 of the **Evidence Act 2008 insert—**

**"Note**

This section applies only to civil proceedings. Divisions 3 and 4 of Part 4 of the **Jury Directions Act 2015** contain provisions relating to unreliable evidence and identification evidence that apply in criminal trials."

**76 Warnings in relation to children's evidence**

- (1) In section 165A(1) of the **Evidence Act 2008—**

- (a) for "any proceeding" **substitute** "any civil proceeding";
- (b) in paragraph (c), for "child;" **substitute** "child.";
- (c) paragraph (d) is **repealed**.

- (2) At the foot of section 165A(1) of the **Evidence Act 2008 insert—**

**"Note**

Subsection (1) differs from section 165A(1) of the Commonwealth Act and New South Wales Act."

- (3) At the foot of section 165A of the **Evidence Act 2008 insert—**

**"Note**

This section applies only to civil proceedings. Division 3 of Part 4 of the **Jury Directions Act 2015** contains provisions relating to children's evidence that apply in criminal trials."

**77 Delay in prosecution**

- (1) Section 165B of the **Evidence Act 2008** (other than the section number and the heading) is **repealed**.

- (2) For the note at the foot of section 165B of the **Evidence Act 2008** substitute—

**"Note**

The Commonwealth Act and New South Wales Act include a section requiring the judge to give certain directions to the jury relating to delay and forensic disadvantage. Division 5 of Part 4 of the **Jury Directions Act 2015** contains provisions relating to delay and forensic disadvantage that apply in criminal trials."

**78 New Part 6 of Schedule 2 inserted**

After clause 22 of Schedule 2 to the **Evidence Act 2008** insert—

**"Part 6—Transitional provisions  
for Jury Directions Act 2015**

**23 Application of Act as amended**

This Act as amended by Division 2 of Part 10 of the **Jury Directions Act 2015** applies to a trial that commences (within the meaning of section 210 of the **Criminal Procedure Act 2009**) on or after the day on which Division 2 of Part 10 of that Act comes into operation."

**Division 3—Amendment of Crimes Act 1958**

**79 Jury warnings**

For section 61 of the **Crimes Act 1958** substitute—

**"Note**

Subdivision (8F) previously provided for jury directions concerning delay in sexual offence cases. Those matters are now provided for by the **Jury Directions Act 2015**. In particular—

- for directions concerning delay and forensic disadvantage, see Division 5 of Part 4 of that Act; and

- for directions concerning delay and credibility, see Division 2 of Part 5 of that Act."

#### **Division 4—Minor amendment of Criminal Procedure Act 2009**

##### **80 Time limits on prosecuting certain former sexual offences removed**

In section 7A(2) of the **Criminal Procedure Act 2009**, for "the commencement of section 11 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**" substitute "the day after the day on which the **Jury Directions Act 2015** receives the Royal Assent".

#### **Division 5—Repeal of amending Part**

##### **81 Repeal of Part**

This Part is **repealed** on 29 June 2016.

##### **Note**

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

## **Schedule 1—Transitional provisions**

### **1 Jury Directions Act 2015**

- (1) A provision of this Act (other than Division 1 of Part 5) applies to a trial that commences (within the meaning of section 210 of the **Criminal Procedure Act 2009**) on or after the day on which that provision comes into operation.
- (2) Division 1 of Part 5 applies to a proceeding that relates to a charge for an offence alleged to have been committed on or after the commencement of that Division.
- (3) For the purposes of subclause (2), if an offence is alleged to have been committed between 2 dates, one before and one on or after the commencement of Division 1 of Part 5, the offence is alleged to have been committed before that commencement.
- (4) Notes inserted in the **Evidence Act 2008** by Division 2 of Part 10 of this Act do not form part of that Act.

## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

<sup>†</sup> *Minister's second reading speech—*

*Legislative Assembly: 18 March 2015*

*Legislative Council: 16 April 2015*

The long title for the Bill for this Act was "A Bill for an Act to simplify and clarify the law on jury directions in criminal trials and for other purposes."