

LEGISLATIVE COUNCIL

CRIMES AMENDMENT (SEXUAL OFFENCES AND OTHER MATTERS) BILL
2014

(Amendments to be moved by Ms Susan Pennicuik)

1. Clause 1, page 2, omit lines 16 to 18.
2. Clause 1, page 2, line 19, omit "(d)" and insert "(c)".
3. Clause 1, page 2, line 22, omit "(e)" and insert "(d)".
4. Clause 1, page 2, line 27, omit "(f)" and insert "(e)".
5. Clause 1, page 2, line 32, omit "(g)" and insert "(f)".
6. Insert the following New Clause to follow clause 3—

'AA Section 37AAA substituted

For section 37AAA of the **Crimes Act 1958** substitute—

"37AAA Jury directions on consent and reasonable belief

- (1) For the purposes of section 37, the matters relating to consent on which the judge must direct the jury are—
 - (a) 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) 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) that the fact that a person did not say or do anything to indicate consent to an act at the time at which the act took place is enough to show that the act took place without the person's consent; or
 - (d) 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.
- (2) For the purposes of section 37, the matters relating to the circumstances in which a person is taken not to have consented to an act on which the judge must direct the jury are—

- (a) the relevant circumstances in which the law provides that a person does not consent to an act; or

Note

Section 34C sets out these circumstances.

- (b) that if the jury is satisfied beyond reasonable doubt that a circumstance referred to in section 34C existed in relation to a person, the jury must find that the person did not consent to the act.
- (3) For the purposes of section 37, the matters relating to reasonable belief on which the judge must direct the jury are—
- (a) that if the jury concludes that the accused knew or believed that a circumstance referred to in section 34C 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) 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.".'.

7. Clause 4, page 9, after line 11 insert—

"(3) In determining whether or not a person reasonably believes that another person is consenting to an act, a finding that the person knows or believes that a circumstance referred to in section 34C exists in relation to the other person is enough to show that the person does not reasonably believe that the other person is consenting."

- 8. Clause 7, page 16, lines 17 and 18, omit "Sections 37, 37AAA and 37AA of the **Crimes Act 1958** are" and insert "Section 37AA of the **Crimes Act 1958** is".
- 9. Clause 7, page 17, line 18, omit "section 4" and insert "section 5".
- 10. Clause 7, page 17, line 25, omit "section 4" and insert "section 5".
- 11. Clause 9, page 21, line 22, omit "sections 3 and 7(2) and (3)" and insert "sections 3, 4 and 8(2) and (3)".
- 12. Clause 9, page 21, lines 30 and 31, omit "sections 3 and 7(2) and (3)" and insert "sections 3, 4 and 8(2) and (3)".
- 13. Clause 9, page 22, line 2, omit "section 6" and insert "section 7".
- 14. Clause 9, page 22, line 10, omit "section 6" and insert "section 7".

15. Clause 9, page 22, line 16, omit "section 8" and insert "section 9".
16. Clause 9, page 22, line 24, omit "section 8" and insert "section 9".
17. Clause 13, page 29, line 11, omit "section 4" and insert "section 5".
18. Omit Part 5.
19. Part heading preceding clause 23, omit "**PART 6**" and insert "**PART 5**".
20. Part heading preceding clause 28, omit "**PART 7**" and insert "**PART 6**".
21. Clause 29, page 48, line 25, omit "section 28" and insert "section 26".
22. Clause 29, page 48, line 33, omit "section 28" and insert "section 26".
23. Clause 30, page 49, line 18, omit "section 4" and insert "section 5".
24. Clause 30, page 49, line 26, omit "section 4" and insert "section 5".
25. Clause 30, page 49, line 33, omit "section 4" and insert "section 5".
26. Page 50, after line 2 insert the following heading—

"Division 3—Jury Directions Act 2013".

27. Insert the following New Clause to follow clause 30 and the heading proposed by amendment number 26—

'AA Minor amendment

For note 2 at the foot of section 19A of the **Jury Directions Act 2013**
substitute—

"2 Sections 37AAA(2)(b) and 45 of the **Crimes Act 1958** refer to specific matters that must be proved beyond reasonable doubt.".

28. Division heading preceding clause 31, omit "**Division 3**" and insert "**Division 4**".
29. Clause 31, line 15, omit "section 4" and insert "section 5".
30. Clause 31, line 22, omit "section 4" and insert "section 5".
31. Clause 31, line 29, omit "section 4" and insert "section 5".
32. Division heading preceding clause 32, omit "**Division 4**" and insert "**Division 5**".
33. Division heading preceding clause 33, omit "**Division 5**" and insert "**Division 6**".
34. Division heading preceding clause 34, omit "**Division 6**" and insert "**Division 7**".
35. Division heading preceding clause 35, omit "**Division 7**" and insert "**Division 8**".
36. Clause 35, line 15, omit "section 4" and insert "section 5".
37. Clause 35, line 22, omit "section 4" and insert "section 5".

- 38. Division heading preceding clause 36, omit "**Division 8**" and insert "**Division 9**".
- 39. Part heading preceding clause 37, omit "**PART 8**" and insert "**PART 7**".

AMENDMENT OF LONG TITLE

- 40. Long title, omit "**1995, the Working with Children Act 2005 and the Jury Directions Act 2013,**" and insert "**1995 and the Working with Children Act 2005,**".