

LEGISLATIVE COUNCIL

JURY DIRECTIONS AND OTHER ACTS AMENDMENT BILL 2017

(Amendments and New Clauses to be proposed in Committee by Ms PENNICUIK)

1. Clause 1, page 2, line 3, omit "victim" and insert "complainant".
2. Clause 1, page 2, line 11, after "directions" insert "relating to sexual offences, including directions".
3. Clause 2, line 10, omit "21 and 23" and insert "24 and 26".
4. Clause 4, omit this clause.
5. Clause 5, page 6, line 10, omit "victim of" and insert "complainant for".
6. Clause 5, page 6, line 16, omit "victim's" and insert "complainant's".
7. Clause 5, page 6, line 24, omit "victim of" and insert "complainant for".
8. Clause 5, page 7, line 14, omit "**victim's**" and insert "**complainant's**".
9. Clause 5, page 7, line 17, omit "**victim's**" and insert "**complainant's**".
10. Clause 5, page 7, line 21, omit "victim's" and insert "complainant's".
11. Clause 5, page 7, line 24, omit "victim's" and insert "complainant's".

NEW CLAUSES

12. Insert the following New Clauses to follow clause 5—

'A New section 45A inserted

After section 45 of the **Jury Directions Act 2015** insert—

"45A Part 3 does not apply

Part 3 does not apply to this Part (except section 47A)."

B Direction on consent

- (1) For section 46(1) of the **Jury Directions Act 2015** substitute—

"(1) If relevant to the facts in issue, the trial judge must direct the jury on consent."

- (2) In section 46(2) of the **Jury Directions Act 2015**, for "In making a request referred to in subsection (1), the prosecution or defence counsel (as the case requires) must specify" **substitute** "In directing the jury on consent, the trial judge must give".

- (3) In section 46(2)(a) and (b) of the **Jury Directions Act 2015** omit "a request for".

- (4) In section 46(3) and (4) of the **Jury Directions Act 2015**, for "the prosecution or defence counsel may request that the trial judge" **substitute** "the trial judge must if relevant".
- (5) The note at the foot of section 46 of the **Jury Directions Act 2015** is **repealed**.

C Direction on reasonable belief in consent

- (1) For section 47(1) of the **Jury Directions Act 2015** **substitute**—
"(1) If relevant to the facts in issue, the trial judge must direct the jury on reasonable belief in consent."
- (2) Section 47(2) of the **Jury Directions Act 2015** is **repealed**.
- (3) In section 47(3) of the **Jury Directions Act 2015**, for "For the purposes of subsection (2), the prosecution or defence counsel may request that the trial judge" **substitute** "In directing the jury on reasonable belief in consent, the trial judge must if relevant".
- (4) In section 47(3)(d) of the **Jury Directions Act 2015**, for "consent; or" **substitute** "consent."
- (5) Section 47(3)(e) of the **Jury Directions Act 2015** is **repealed**.
- (6) Section 47(4) of the **Jury Directions Act 2015** is **repealed**.
- (7) The note at the foot of section 47 of the **Jury Directions Act 2015** is **repealed**.

D New section 47A inserted

- (1) After section 47 of the **Jury Directions Act 2015** **insert**—
"47A Additional direction on reasonable belief in consent
 - (1) If the trial judge gives, or proposes to give, a direction under section 47, the prosecution or defence counsel may request under section 12 that the trial judge direct the jury that in determining whether the accused had a reasonable belief in consent, the jury may take into account any personal attribute, characteristic or circumstance of the accused.
 - (2) A good reason for not giving the requested direction is that the personal attribute, characteristic or circumstance—
 - (a) did not affect, or is not likely to have affected, the accused's perception or understanding of the objective circumstances; or
 - (b) was something that the accused was able to control; or
 - (c) was a subjective value, wish or bias held by the accused, whether or not that value, wish or bias was informed by any particular culture, religion or other influence.

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.".'. .

13. Clause 15, line 22, omit "11 and 12" and insert "14 and 15".
14. Clause 15, line 27, omit "13 and 14" and insert "16 and 17".
15. Clause 17, line 20, omit "victim of" and insert "complainant for".
16. Clause 18, line 8, omit "17" and insert "20".
17. Clause 18, line 14, omit "17" and insert "20".
18. Clause 18, line 19, omit "17" and insert "20".
19. Clause 20, line 12, omit "19" and insert "22".
20. Clause 20, line 17, omit "19" and insert "22".
21. Clause 23, line 7, omit "21" and insert "24".
22. Clause 23, line 11, omit "21" and insert "24".
23. Clause 23, line 13, omit "22" and insert "25".
24. Clause 23, line 17, omit "22" and insert "25".