

Justice Committee

Abusive Behaviour and Sexual Harm (Scotland) Bill

Letter from the Scottish Government to the Convener

During evidence to the Justice Committee on the Abusive Behaviour and Sexual Harm (Scotland) Bill (“the Bill”) on Tuesday 5 January 2016, Christian Allard MSP asked if the Scottish Government was aware of any jurisdiction which has introduced jury directions in sexual offence cases and then gone on to introduce other types of jury directions more generally. We agreed to reply in writing.

Three examples of statutory jury directions cited in the policy memorandum for the Bill concerning how juries should consider the question of delay in reporting a sexual offence are those in place in the Australian States of New South Wales and the Northern Territory, and New Zealand.

New South Wales/Northern Territory

In respect of non-sexual offence trials, we are aware that section 116 of the Evidence Act 1995 (New South Wales) provides that where identification evidence has been admitted, the judge is to inform the jury that there is a special need for caution before accepting identification evidence, and of the reasons for that need for caution, both generally and in the circumstances of the case. This jury direction applies to offences generally and is not restricted to sexual offence cases.

While we are not aware of other legislation which makes provision for jury directions in New South Wales (or indeed any other statutory directions at all in the Northern Territory other than those relating specifically to sexual offence trials), we would caution that given the complexities of researching criminal laws in different jurisdictions, there may be other statutory jury directions in New South Wales and the Northern Territory that we have not identified.

The Committee may wish to note that in 2012, the New South Wales Law Reform Commission published a report on “Jury Directions in Criminal Trials” (see www.lawreform.justice.nsw.gov.au/Documents/r136.pdf) which considered, amongst other things, whether the content of jury directions should be codified. It concluded that *“the best course is to retain the existing approach that encourages the use of suggested directions contained in the Bench Book, as developed by the Bench Book Committee. This approach will preserve for judges the discretion to tailor their directions to the real issues in the individual case without the shackles of a codified or mandatory set of statutory directions.”* (see paragraph 2.39).

New Zealand

We note that statutory jury directions concerning “delayed complaint or failure to complain in sexual cases” in New Zealand law are contained at section 127 of the Evidence Act 2006 (see <http://www.legislation.govt.nz/act/public/2006/0069/latest/whole.html#DLM393959>).

Sub-part 6 of that Act makes provision for statutory jury directions on a number of matters, including evidence which may be unreliable, certain ways of offering evidence, children's evidence and identification evidence. These statutory jury directions cover both sexual offences and non-sexual offences.

Victoria

Although not cited in the policy memorandum, we note that the Australian state of Victoria legislated in 2015 to introduce a range of statutory jury directions covering both sexual offence cases and non-sexual offence cases. We understand they are intended to enable judges to provide clearer and simpler directions to juries and reduce the possibility of judicial errors.

These directions are contained in the Judicial Directions Act 2015 (see http://www5.austlii.edu.au/au/legis/vic/num_act/jda201514o2015243/).

I hope this information is helpful to the Committee in its consideration of the Bill.

Michael Matheson
Cabinet Secretary for Justice
12 January 2016