

TASMANIA

**CRIMINAL CODE AMENDMENT (CONSENT)
BILL 2003**

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**CRIMINAL CODE AMENDMENT (CONSENT)
BILL 2003**

*(Brought in by the Minister for Justice and Industrial
Relations, the Honourable Judith Louise Jackson)*

A BILL FOR

An Act to amend the *Criminal Code Act 1924*

Be it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled,
as follows:

Short title

1. This Act may be cited as the *Criminal Code
Amendment (Consent) Act 2003*.

Commencement

2. This Act commences on the day on which this Act
receives the Royal Assent.

Principal Act

3. In this Act, the *Criminal Code Act 1924** is referred to
as the Principal Act.

*No. 69 of 1924

Schedule 1 amended (*Criminal Code*)

4. Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting section 2A and substituting the following section:

Consent

2A. (1) In the Code, unless the contrary intention appears, “**consent**” means free agreement.

(2) Without limiting the meaning of “free agreement”, and without limiting what may constitute “free agreement” or “not free agreement”, a person does not freely agree to an act if the person –

- (a) agrees or submits because of force, or the fear of force, to him or her or to another person; or
- (b) agrees or submits because of a threat of any kind against him or her or against another person; or
- (c) agrees or submits because he or she or another person is unlawfully detained; or
- (d) agrees or submits because he or she is overborne by the nature or position of another person; or
- (e) agrees or submits because of the misrepresentation or fraud of another person; or

- (f) is mistaken about the nature or purpose of the act or the identity of another person; or
- (g) is asleep, unconscious or so affected by alcohol or another drug as to be unable to form a rational opinion in respect of the matter for which consent is required; or
- (h) is incapable of understanding the nature of the act.

(3) If a person, against whom a crime is alleged to have been committed under chapters XIV or XX, suffers grievous bodily harm as a result of, or in connection with, such a crime, the grievous bodily harm so suffered is evidence of the lack of consent on the part of that person unless the contrary is shown.

- (b) by inserting the following section after section 14:

Mistake as to consent in certain sexual offences

14A. In proceedings for an offence against section 124, 125B, 127, 127A or 185 where consent is in issue, the mistaken belief of the accused may not be taken to be honest and reasonable if –

- (a) the accused's belief arose out of self-induced intoxication, recklessness or wilful disregard; or
- (b) the accused did not take reasonable steps, in the circumstances known to him or

her at the time of the offence, to ascertain that the complainant was consenting to the act.

- (c) by inserting the following section after section 371:

Special direction to jury

371AA. In proceedings for an offence against section 124, 125B, 127, 127A or 185, the judge when instructing the jury as required by section 371(j) must, in a relevant case, include the following directions or directions that have the same effect and substance as the following directions:

Directions to Jury

1. The complainant is not to be regarded as having consented to the sexual act only because she or he –
 - (a) did not say or do anything to indicate that she or he did not consent; or
 - (b) did not protest or physically resist; or
 - (c) was not physically injured; or
 - (d) on that or an earlier occasion, consented to another sexual act of the same type as the subject of the complaint, or another type, with the defendant or another person.
2. The fact that the complainant did not say or do anything to indicate that she or he was consenting to the sexual act which is the subject of the complaint is normally enough to indicate that she or he did not consent.