

Case study: Jury Directions

What was this project about?

The project focussed on the directions that judges give to juries during criminal trials.

After all the evidence has been heard, and after the counsel for the prosecution and the defence have made their final speeches, the judge makes a speech to the jury that includes 'jury directions'. The point of the directions is to ensure that the accused has a fair trial, and to help the jury reach a verdict.

The judge directs the jury on points of law they must understand. The directions include 'procedural directions' about how the trial is run, and 'substantive directions' about the elements of offences – for example, the difference between murder and manslaughter.

The judge provides 'evidentiary directions' about the particular evidence in the case. The evidentiary directions are supposed to prevent the jury from making errors in the way they consider the evidence.

The jury must follow the judge's directions on points of law, but make up its own mind on the guilt or innocence of the accused, based on the facts of the case.

Why did the law need to change?

The law of jury directions is located in legislation and in decisions of the courts ('the common law'). Over the years there had been many changes to the common law concerning jury directions. This body of law was disorganised and it was hard to know exactly what judges should say in their directions.

Jury directions had become too complex and technical, and therefore more and more difficult for juries to understand. Instead of helping juries to reach a verdict, the directions were confusing them, making their job harder. The directions often went on for so long that they made trials too long, and slowed down the process of justice.

There had been an increasing number of appeals against verdicts, based on the suggestion that judges had made an error in the directions. Verdicts in some high-profile cases were overturned on appeal, due to judicial errors related to very technical points of directions. Retrials are expensive, stressful for all concerned, and slow down the process of justice.

Some changes to statutes (laws passed by Parliament) also had an effect on jury directions. Changes to the law of sexual offences and the law of evidence had

added to the number and complexity of warnings that the judge had to give the jury.

Many people, including trial judges, believed that the law about jury directions needed to change. The Chief Justice of Victoria, Marilyn Warren, said there was an urgent need to simplify directions as the present state of the law imposed an unreasonable burden on judges and created an impossible task for juries.

Key dates

2 January 2008:	The Victorian Attorney-General asked the Victorian Law Reform Commission to review the law and practice concerning the directions and warnings that judges are required to give juries in criminal trials, and to make recommendations for reform.
February 2008	Retired Supreme Court judge Geoff Eames was appointed to the Commission to work as a consultant on the project.
September 2008:	The Commission published a consultation paper, suggesting various proposals for reform and calling for submissions.
December 2008:	The Commission published <i>Jury Directions: A Closer Look</i> , summarising and refining the proposals for reform.
30 January 2009:	Deadline for submissions.
29 July 2009:	The Commission's final report on jury directions, with 52 recommendations, was tabled in Parliament.
29 June 2015	The <i>Jury Directions Act 2015 (Vic)</i> came into force. Many of the Commission's recommendations were enshrined in this legislation. The 2015 Act stated that jury directions should be as clear, brief, simple and comprehensible as possible.

Terms of reference

The Victorian Law Reform Commission is to review and to recommend any procedural, administrative and legislative changes that may simplify, shorten or otherwise improve the charges, directions and warnings given by judges to juries in criminal trials. In particular, the Commission should:

- a) identify directions or warnings which may no longer be required or could be simplified;
- b) consider whether judges should be required to warn or direct the jury in relation to matters that are not raised by counsel in the trial;
- c) clarify the extent to which the judge need summarise the evidence for the jury.
- d) In conducting the review the Victorian Law Reform Commission should have regard to:

- the themes and principles of the Attorney-General's Justice Statement (2004);
- the rights enshrined in Victoria's Charter of Human Rights and Responsibilities
- the overall aims of the criminal justice system including:
- the prompt and efficient resolution of criminal trials; and
- procedural fairness for accused people.

Who worked on the project?

The division

For every reference the Commission receives from the Attorney-General, a 'division' is formed consisting of a number of Commissioners.

The division meets several times during the project, and works on developing the recommendations to be made in the report. However, all the Commissioners sign off on the final report, not just the division.

For the jury directions project, the division comprised:

- Prof. Neil Rees (chairperson of the Commission)
- Paris Aristotle AM
- Justice David Harper
- Judge Felicity Hampel
- Prof. Sam Ricketson
- Judge Iain Ross.

Policy and research team

A team of policy and research staff was employed by the Commission to work on the project and provide support to the division. Their job was to plan and co-ordinate the reference, conduct research, draft consultation papers and final reports, and conduct meetings and consultations with stakeholders.

Consultative committee

The Commission established a consultative committee consisting of experienced criminal lawyers and judges.

Consultation paper: the issues that were identified

The Commission identified that the law required judges to give too many directions, and they were too complex. This applied to directions in general. There were also some specific issues:

- the law in relation to sexual offences
- warnings about particular types of evidence. There are complex rules about directions concerning identification evidence, tendency evidence, 'consciousness of guilt' and other evidence
- the duty of the judge to instruct the jury about possible alternative defences, even if the defence did not mention them.

Submissions

The Commission received 18 submissions.

Consultations

The Commission held consultation meetings with judges from County and Supreme Courts; criminal barristers; the Office of Public Prosecutions and Victoria Legal Aid. The Commission also met with the NSW Law Reform Commission which was conducting a similar project.

Report and recommendations

The report contained 52 recommendations. The most important was the first: **The law concerning jury directions in criminal trials should be located in a single statute.**

The other recommendations included:

- The statute should guide judges about when to give directions and the content of directions.
- All directions should be clear, simple, brief, comprehensible, relevant.
- Judges should not restate all the evidence, only what is necessary to ensure a fair trial.
- Clarify what judges should tell juries about particular types of evidence.

Government response

In December 2012, the Victorian Government introduced a bill into Parliament that would enact the Commission's recommendations into law.

Attorney-General Robert Clark said: "Complex jury directions lead to unnecessary appeals and retrials that are a significant cause of delay in the court system, as well as unnecessary trauma and stress for victims, witnesses and others. That's why we committed to act on the VLRC's recommendations and other jury direction reforms."

A new law, the *Jury Directions Act 2013* came into force on 1 July 2013. This was repealed two years later and the *Jury Directions Act 2015* came into force, making some amendments and refinements to the 2013 Act.

The 2015 Act stated that jury directions should be as clear, brief, simple and comprehensible as possible. Judges should avoid technical legal language wherever possible, and should only direct the jury on points of law that the jury needs to know. The Act states that the judge need not use any particular form of words.

The changes also simplify and clarify important directions on:

- misconduct evidence (such as tendency and coincidence evidence)
- unreliable evidence
- identification evidence
- delay and forensic disadvantage
- the failure to give or call evidence
- delay and credibility
- what must be proved beyond reasonable doubt.

Expected outcomes

Simplifying jury directions will enable judges to provide clearer and simpler directions to juries. The new directions will also reduce judicial errors, resulting in fewer appeals and retrials.

Shorter trials and ensuring fewer costly appeals and retrials will help to reduce court delays.

Clearer directions help to make trials fairer for the community, the accused and victims of crime.

More information

More information about this project, including the report and the consultation paper, can be viewed on the Commission's website at <http://www.lawreform.vic.gov.au/all-projects/jury-directions>

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