

Authorised Version No. 001
Jury Directions Act 2013

No. 12 of 2013

Authorised Version as at
1 July 2013

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The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are—

- (a) to reduce the complexity of jury directions in criminal trials; and
- (b) to simplify and clarify the issues that juries must determine in criminal trials; and
- (c) to simplify and clarify the duties of the trial judge in giving jury directions in criminal trials; and
- (d) to clarify that it is one of the duties of legal practitioners appearing in criminal trials to assist the trial judge in deciding which jury directions should be given; and
- (e) to assist the trial judge to give jury directions in a manner that is as clear, brief, simple and comprehensible as possible; and
- (f) to permit the trial judge to answer questions from the jury about the meaning of the phrase "proof beyond reasonable doubt"; and
- (g) to provide for simplified jury directions in relation to post-offence conduct.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day to be proclaimed.
- (2) If this Act does not come into operation before 1 July 2013, it comes into operation on that day.

3 Definitions

In this Act—

accused has the same meaning as in the **Criminal Procedure Act 2009**;

alternative offence means an offence in respect of which the jury may, in accordance with any Act or any other law, find the accused guilty if the jury is not satisfied that the accused is guilty of an offence charged;

defence includes an exception, exemption, proviso, excuse or qualification to an offence, whether or not it accompanies any description of the offence in an enactment;

defence counsel means a legal practitioner representing an accused;

direction includes an explanation under Part 5;

general directions means directions concerning matters relating to the conduct of trials generally, including—

- (a) the roles of the trial judge, the jury and counsel; and
- (b) the empanelment of a jury and the selection of a foreperson; and
- (c) trial procedure; and
- (d) the need to decide issues on the basis of admissible evidence only; and

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- (e) the need to decide each charge separately according to the evidence relating to that charge; and
 - (f) the assessment of witnesses; and
 - (g) the presumption of innocence and the burden and standard of proof; and
 - (h) the drawing of conclusions and the distinction between direct and circumstantial evidence; and
 - (i) jury deliberations and verdicts;

legal practitioner has the same meaning as in the **Criminal Procedure Act 2009**;

requested direction means a direction that the trial judge is requested to give to the jury under section 11;

trial judge has the same meaning as in the **Criminal Procedure Act 2009**.

4 Application of Act

This Act applies despite any rule of law or practice to the contrary.

PART 2—GENERAL

5 Guiding principles

- (1) The Parliament recognises that—
- (a) the role of the jury in a criminal trial is to determine the issues that are in dispute between the prosecution and the accused; and
 - (b) in recent decades, the law of jury directions in criminal trials has become increasingly complex; and
 - (c) this development—
 - (i) has made jury directions increasingly complex, technical and lengthy; and
 - (ii) has made it increasingly difficult for trial judges to comply with the law of jury directions and avoid errors of law; and
 - (iii) has made it increasingly difficult for jurors to understand and apply jury directions; and
 - (d) research indicates that jurors find complex, technical and lengthy jury directions difficult to follow.
- (2) The Parliament further recognises that it is the responsibility of the trial judge to determine—
- (a) the matters in issue in the trial; and
 - (b) the directions that the trial judge should give to the jury; and
 - (c) the content of those directions.

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- (3) The Parliament further recognises that it is one of the duties of legal practitioners appearing in a criminal trial to assist the trial judge in his or her determination of the matters referred to in subsection (2).
- (4) It is the intention of the Parliament that a trial judge, in giving directions to a jury in a criminal trial, should—
- (a) give directions on only so much of the law as the jury needs to know to determine the issues in the trial; and
 - (b) avoid using technical legal language wherever possible; and
 - (c) be as clear, brief, simple and comprehensible as possible.
- (5) It is the intention of the Parliament that this Act is to be applied and interpreted having regard to the matters set out in this section (to be known as the *guiding principles*).

6 Particular form of words not required for direction

In giving a direction to the jury, the trial judge need not use any particular form of words.

7 Power to extend or abridge time

- (1) The court, by order, may extend or abridge any time fixed—
- (a) by or under this Act; or
 - (b) by any order extending or abridging time made under this section—

if the court considers that it is in the interests of justice to do so.

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- (2) It is not necessary that an order be made under subsection (1) if a ruling made, or direction given, by the court provides for the extension or abridgement of time.
 - (3) The court may extend time under subsection (1) before or after the time expires.
 - (4) More than one extension of time may be granted under subsection (1).
 - (5) Unless the court otherwise orders, no material in support of an order under subsection (1) need be filed.
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PART 3—REQUEST FOR DIRECTIONS

8 Purposes of Part

The purposes of this Part are—

- (a) to assist the trial judge to discharge his or her duty to determine—
 - (i) the matters in issue in the trial; and
 - (ii) the directions that he or she should give to the jury; and
 - (iii) the content of those directions; and
- (b) to ensure that legal practitioners appearing in a criminal trial discharge their duty to assist the trial judge in his or her determination of the matters referred to in paragraph (a); and
- (c) to provide for the directions that the trial judge should give to the jury if the accused is not represented by a legal practitioner.

9 Application of Part

This Part does not apply to—

- (a) general directions; or
- (b) a direction that the trial judge is required to give, or not to give, to the jury under any provision of this or any other Act.

10 Defence counsel must inform trial judge of matters in issue

After the close of all evidence and before the closing address of the prosecution, defence counsel must inform the trial judge whether the following matters are or are not in issue—

- (a) each element of the offence charged;
- (b) any defence;

- (c) any alternative offence, including an element of any alternative offence;
- (d) any alternative basis of complicity in the offence charged and any alternative offence.

11 Legal practitioners must request that particular directions be given or not given

After the matters in issue have been identified in accordance with section 10, the prosecution and defence counsel must each request that the trial judge give, or not give, to the jury particular directions in respect of—

- (a) the matters in issue; and
- (b) the evidence in the trial relevant to the matters in issue.

12 Unrepresented accused

- (1) Subject to subsection (2), if the accused is not represented by a legal practitioner, the trial judge must comply with this Part as if the accused had informed the trial judge that all matters referred to in section 10 were in issue and had requested every direction that it was open to the accused to request under section 11, had the accused been represented by a legal practitioner.
- (2) The trial judge need not give the jury a direction if the trial judge considers that—
 - (a) there are good reasons for not giving the direction; or
 - (b) it is otherwise not in the interests of justice to give the direction.

Note

Section 14 sets out the matters the trial judge must have regard to in determining whether there are good reasons for not giving a direction.

13 Trial judge need not give direction that relates to matter not in issue or not requested

The trial judge need not give the jury a direction that—

- (a) relates to a matter that defence counsel has indicated under section 10 is not in issue; or
- (b) has not been requested under section 11.

14 Trial judge must give requested directions

- (1) The trial judge must give the jury a requested direction unless there are good reasons for not doing so.
- (2) In determining whether there are good reasons for not giving a requested direction to the jury, the trial judge must have regard to—
 - (a) the evidence in the trial; and
 - (b) the manner in which the prosecution and the accused have conducted their cases, including—
 - (i) whether the direction concerns a matter not raised or relied on by the accused; and
 - (ii) whether the direction would involve the jury considering the issues in the trial in a manner that is different from the way in which the accused has presented his or her case.

15 When trial judge must give direction regardless of parties' views

- (1) Despite sections 13 and 14, the trial judge must give the jury any direction that is necessary to avoid a substantial miscarriage of justice even though—

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- (a) the direction relates to a matter that defence counsel—
 - (i) has indicated under section 10 is not in issue; or
 - (ii) has omitted to indicate under section 10 is in issue; and
 - (b) the prosecution or defence counsel—
 - (i) has requested under section 11 that the trial judge not give the direction; or
 - (ii) has omitted to request under section 11 that the trial judge give the direction.
- (2) Before giving a direction under this section, the trial judge must—
- (a) inform the prosecution and defence counsel (or, if the accused is unrepresented, the accused) that the trial judge intends to give the direction; and
 - (b) invite submissions from the prosecution and defence counsel (or the accused, as the case may be) about the direction and whether the direction is necessary to avoid a substantial miscarriage of justice.

Note

Under section 276 of the **Criminal Procedure Act 2009**, a substantial miscarriage of justice can be the reason for a successful appeal against conviction.

16 Abolition of common law obligation to give certain directions

- (1) Any rule of common law under which a trial judge in a criminal trial is required to direct the jury about—
 - (a) any defences and alternative offences open on the evidence but which have not been identified as such during the trial; or

(b) any alternative basis of complicity in the offence charged and any alternative offence in issue—

is abolished.

(2) Nothing in subsection (1) limits the obligation of the trial judge under section 15(1) to give directions.

Notes

- 1 This provision abolishes the rule attributed to *Pemble v R* [1971] HCA 20; (1971) 124 CLR 107 and the application of *Pemble* in the context of complicity, for example *Gilbert v R* [2000] HCA 15; 201 CLR 414 and *R v Nguyen* [2010] HCA 38; (2010) 242 CLR 491.
- 2 Section 4 applies generally to override any rule of law or practice to the contrary of this Act.

PART 4—TRIAL JUDGE'S SUMMING UP

17 Trial judge's obligations when summing up

In his or her summing up to the jury, the trial judge—

- (a) must explain only so much of the law as is necessary for the jury to determine the issues in the trial; and
- (b) must refer the jury to the way in which the prosecution and the accused have put their cases in relation to the issues in the trial but need not summarise the closing addresses of the prosecution and the accused; and
- (c) need not give a summary of the evidence but, in accordance with section 18, must identify so much of the evidence as the trial judge considers necessary to assist the jury to determine the issues in the trial; and
- (d) may use a combination of oral and written components.

18 Trial judge required to identify only evidence necessary for determination of issues

- (1) The trial judge is required to identify only so much of the evidence given in the trial as the trial judge considers necessary to assist the jury to determine the issues in the trial.
- (2) In determining whether and if so to what extent identification of evidence is necessary under subsection (1), the trial judge must have regard to—
 - (a) the facts in issue; and
 - (b) the complexity of the facts in issue; and
 - (c) the length of the trial; and
 - (d) the complexity of the evidence; and

- (e) the submissions and addresses of the prosecution and the accused; and
- (f) any reference to the way in which the prosecution and the accused have put their cases in relation to the issues in the trial; and

Note

See section 17(b).

- (g) any special needs or disadvantages of the jury in understanding or recalling the evidence; and
- (h) any transcript of the evidence in the trial or any other document provided to assist the jury to understand the evidence.

Note

Section 223 of the **Criminal Procedure Act 2009** provides for the trial judge to give the transcript of the evidence in the trial and certain other documents to the jury for the purpose of helping the jury to understand the issues or the evidence.

- (3) In addition to the requirements of subsection (2), the trial judge may have regard to any other matter that he or she considers appropriate.

19 Trial judge may give integrated directions

- (1) In this section—

integrated directions means directions referred to in subsection (3).

- (2) The trial judge may give to the jury directions that contain, or are in the form of, factual questions that address matters that the jury must consider or be satisfied of in order to reach a verdict, including the elements of the offence and any relevant defences.

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- (3) The trial judge may give integrated directions that combine the factual questions referred to in subsection (2) with—
- (a) directions on the evidence and how the evidence is to be assessed; or
 - (b) references to the way in which the prosecution and the accused have put their cases in relation to the issues in the trial; or
 - (c) any evidence identified under section 18.
- (4) A trial judge who addresses a matter—
- (a) by a factual question need not also address the matter in any other direction; or
 - (b) in integrated directions need not also address the matter in directions that are not integrated directions.
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PART 5—PROOF BEYOND REASONABLE DOUBT

20 When trial judge may explain "proof beyond reasonable doubt"

- (1) A trial judge may give the jury an explanation of the phrase "proof beyond reasonable doubt" if the jury asks the trial judge—
 - (a) a direct question about the meaning of the phrase; or
 - (b) a question that indirectly raises the meaning of the phrase.
- (2) Subsection (1) does not limit any other power of a trial judge to give the jury an explanation of the phrase "proof beyond reasonable doubt".

21 How explanation may be given in response to jury question

- (1) If the jury has asked a direct question about the meaning of the phrase, or a question that indirectly raises the meaning of the phrase, "proof beyond reasonable doubt", the trial judge may—
 - (a) refer to—
 - (i) the presumption of innocence; and
 - (ii) the prosecution's obligation to prove that the accused is guilty; or
 - (b) indicate that it is not enough for the prosecution to persuade the jury that the accused is probably guilty or very likely to be guilty; or
 - (c) indicate that—
 - (i) it is almost impossible to prove anything with absolute certainty when reconstructing past events; and
 - (ii) the prosecution does not have to do so; or

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- (d) indicate that the jury cannot be satisfied that the accused is guilty if the jury has a reasonable doubt about whether the accused is guilty; or
 - (e) indicate that a reasonable doubt is not an imaginary or fanciful doubt or an unrealistic possibility.
- (2) The trial judge may adapt his or her explanation of the phrase "proof beyond reasonable doubt" in order to respond to the particular question asked by the jury.

Note

In addition, section 6 provides that the trial judge need not use any particular form of words in giving a direction to the jury.

PART 6—POST-OFFENCE CONDUCT

22 Definitions

In this Part—

conduct means the telling of a lie by the accused, or any other act or omission of the accused, which occurs after the event or events alleged to constitute an offence charged;

incriminating conduct means conduct that amounts to an implied admission by the accused—

- (a) of having committed an offence charged or an element of an offence charged; or
- (b) which negates a defence to an offence charged;

offence charged includes any alternative offence.

23 Prosecution notice of evidence to be relied on as evidence of incriminating conduct

- (1) The prosecution must give notice of evidence of conduct that it proposes to rely on as evidence of incriminating conduct by serving on the accused and filing in court at least 28 days before the day on which the trial of the accused is listed to commence—
 - (a) a notice of intention to rely on evidence of incriminating conduct, in the form required by rules of court, if any; and
 - (b) a copy of the evidence on which the prosecution intends to rely.

- (2) A notice under subsection (1) must be served in accordance with Part 8.3 of Chapter 8 of the **Criminal Procedure Act 2009**.

Note

See section 7 for extension or abridgment of time.

24 Evidence of incriminating conduct

- (1) The prosecution must not rely on evidence of conduct as evidence of incriminating conduct unless—
- (a) the prosecution has given notice in accordance with section 23; and
 - (b) the trial judge determines that, on the basis of the evidence as a whole, the evidence of conduct is reasonably capable of being viewed by the jury as evidence of incriminating conduct.

Note

A trial judge may make a determination under paragraph (b) even where the evidence of conduct relates only to an alternative offence.

- (2) Subsection (1) applies even if the evidence of conduct may be admissible for another purpose.

25 Mandatory direction on use of evidence of incriminating conduct

- (1) If the prosecution relies on evidence of conduct as evidence of incriminating conduct, the trial judge must direct the jury that—
- (a) the jury may treat the evidence as evidence that the accused believed that he or she had committed the offence charged or an element of the offence charged, or that he or she had negated a defence to the offence charged, only if it concludes that—

- (i) the conduct occurred; and
 - (ii) the only reasonable explanation of the conduct is that the accused held that belief; and
- (b) even if the jury concludes that the accused believed that he or she had committed the offence charged, it must still decide, on the basis of the evidence as a whole, whether the prosecution has proved the guilt of the accused beyond reasonable doubt.
- (2) In giving a direction under this section, a trial judge need not refer to each act or omission of the accused.

Note

Section 6 provides that a trial judge need not use any particular form of words in giving a direction to the jury. For example, in relation to the direction referred to in subsection (1)(a)(ii), if the evidence concerns an element of an offence, the trial judge could refer to "knew" rather than "believed" to better describe what the incriminating conduct, if accepted, may prove.

26 Additional direction on incriminating conduct

If the trial judge gives, or proposes to give, a direction under section 25, defence counsel may request under section 11 that the trial judge also direct the jury that—

- (a) there are all sorts of reasons why a person might behave in a way that makes the person look guilty; and
- (b) the accused may have engaged in the conduct even though the accused is not guilty of the offence charged; and

- (c) even if the jury thinks that the conduct makes the accused look guilty, that does not necessarily mean that the accused is guilty.

Note

Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 15 requires the trial judge to give a direction that is necessary to avoid a substantial miscarriage of justice.

27 Direction to avoid risk of improper use of evidence

- (1) If evidence is given of conduct but the prosecution does not rely on the evidence as evidence of incriminating conduct, defence counsel may request under section 11 that the trial judge—
- (a) direct the jury that there are all sorts of reasons why a person might behave in a way that makes the person look guilty; and
 - (b) warn the jury that even if the jury thinks that the accused engaged in the conduct, it must not conclude from that evidence that the accused is guilty of the offence charged.

Note

Section 14 requires the trial judge to give this direction, if requested, unless there are good reasons for not doing so. Section 15 requires the trial judge to give a direction that is necessary to avoid a substantial miscarriage of justice.

- (2) Without limiting section 14, it is a good reason for not giving the requested direction if the trial judge considers that there is no substantial risk that the jury might use the evidence as evidence of incriminating conduct.

28 Abolition of common law rules

- (1) Except as provided by this Part, a trial judge is not required to give the jury a direction regarding evidence because it is evidence of incriminating conduct or may be improperly used as evidence of incriminating conduct.

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- (2) In considering whether evidence of incriminating conduct establishes, or assists in establishing, guilt, a jury is not required—
- (a) to reason from an indispensable intermediate fact where that fact is proved, wholly or partly, by evidence of incriminating conduct; or
 - (b) to be satisfied beyond reasonable doubt of the incriminating conduct because it proves, or assists in proving, an indispensable intermediate fact; or
 - (c) to reason from the incriminating conduct to an indispensable intermediate fact.
- (3) Any rule of common law to the contrary of this section is abolished.

Notes

- 1 This provision addresses rules based on *Edwards v R* [1993] HCA 63; (1993) 178 CLR 193 and *Zoneff v R* [2000] HCA 28; (2000) 200 CLR 234 and the application of *Shepherd v R* [1990] HCA 56; (1990) 170 CLR 573 to post-offence conduct.
 - 2 Section 4 applies generally to override any rule of law or practice to the contrary of this Act.
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**PART 7—CONSEQUENTIAL AMENDMENTS AND
TRANSITIONAL PROVISIONS**

29 Criminal Procedure Act 2009—Jury documents

(1) After section 223(1)(h) of the **Criminal Procedure Act 2009** insert—

"(ha) the transcript of the evidence in the trial;"

(2) After section 223(1)(k) of the **Criminal Procedure Act 2009** insert—

"(ka) a jury guide;"

(3) After section 223(1) of the **Criminal Procedure Act 2009** insert—

"(1A) A jury guide referred to in subsection (1)(ka) may contain any of the following—

- (a) a list of questions to assist the jury in reaching a verdict (including questions that are included in integrated directions within the meaning of section 19 of the **Jury Directions Act 2013**);
- (b) directions on the evidence and how the evidence is to be assessed;
- (c) references to the way in which the prosecution and the accused have put their cases in relation to the issues in the trial;
- (d) any evidence identified under section 18 of the **Jury Directions Act 2013**;
- (e) any other information."

30 Criminal Procedure Act 2009—Judge's directions to the jury

At the foot of section 238 of the **Criminal Procedure Act 2009** insert—

"Note

See the **Jury Directions Act 2013**."

31 Criminal Procedure Act 2009—Rules of court

In section 419(1) of the **Criminal Procedure Act 2009**, after "under" (where secondly occurring) insert "the **Jury Directions Act 2013** or".

32 Criminal Procedure Act 2009—New section 443 inserted

After section 442 of the **Criminal Procedure Act 2009** insert—

"443 Transitional provision—Jury Directions Act 2013

Section 223 as amended by the **Jury Directions Act 2013** applies to a trial that commences on or after the day on which that Act comes into operation."

33 Juries Act 2000—statute law revision

In Schedule 2 to the **Juries Act 2000**, in clause 1(1e), for '2011;'. substitute "2011;".

34 Transitional provisions

The Schedule has effect.

SCHEDULE

TRANSITIONAL PROVISIONS

1 Jury Directions Act 2013

This Act applies to a trial that commences (within the meaning of section 210 of the **Criminal Procedure Act 2009**) on or after the day on which this Act comes into operation.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 13 December 2012

Legislative Council: 21 February 2013

The long title for the Bill for this Act was "A Bill for an Act to simplify and clarify the law on jury directions in criminal trials and for other purposes."

The **Jury Directions Act 2013** was assented to on 13 March 2013 and came into operation on 1 July 2013: section 2(2).

Endnotes

2. Table of Amendments

There are no amendments made to the **Jury Directions Act 2013** by Acts and subordinate instruments.

3. Explanatory Details

No entries at date of publication.