Jury directions – an antipodean experiment

by Mark Weinberg

A number of common law countries have, in recent years, experienced difficulty with the length and complexity of jury directions. Australia is no exception. Indeed, in some respects, jury directions in that country had, until recently, become a major problem for the criminal justice system. The question of how to deal with this situation, and the solution that has been adopted, may be of interest to lawyers in England and Wales.

INTRODUCTION

In a 2006 survey of judges experienced in the conduct of criminal trials in Australia and New Zealand, it was found that in one State, Victoria, the average length of a charge to the jury following a ten day trial was 255 minutes, effectively an entire day. For a 20-day trial that figure increased to 349 minutes or about one and a half days. By contrast, the average length of a charge to the jury in New Zealand was 76 minutes for a ten day trial, and 108 minutes for a 20 day trial.

It must be said that Victoria, and New South Wales, the two most populous States in Australia, stood alone as having the longest and most complex set of jury directions, not just in that country, but perhaps in the entire common law world.

The brevity of jury instructions in Scotland put the matter into even starker contrast. Lord Justice Moses, who has spoken on the subject of jury directions on a number of occasions, observed that in Scotland the standard jury direction took between 15 and 18 minutes (Justice Mark Weinberg et al, *Simplification of Jury Directions Project Report: A Report to the Jury Directions Advisory Group,* 2012, at 2 fn 7 – the nature and scope of this report will be further elaborated upon in due course in this article).

Directions in the United States were also found to be substantially shorter than those given in Victoria. Typically, they took no more than about 30 minutes, and sometimes far less than that.

Not only were jury directions in Victoria regularly being delivered at inordinate length, they were also couched in extraordinarily complex terms. In some cases, juries must have found them to be all but incomprehensible.

Not surprisingly that situation prompted a number of calls for reform. It was noted that the sheer complexity of jury directions was productive of judicial error, and consequential miscarriages of justice. Errors in jury directions had resulted in many trials having to be conducted again. Perhaps even more worrying was the feeling that juries did not understand much of what they were being told they should do.

VICTORIAN LAW REFORM COMMISSION REPORT

In May 2009, the Victorian Law Reform Commission took the first step towards overcoming some of the problems associated with jury directions in that State. It published a report dealing with the law and practice of jury directions in criminal trials (Victorian Law Reform Commission, *Jury Directions*, Report No 17, 2009) ('VLRC Report'). That report noted that, at the time, the law of jury directions was scattered in common law and piecemeal legislation. The only organising principle found in the common law was that a trial judge should give all directions necessary to avoid "a perceptible risk of [a] miscarriage of justice" (*Longman v The Queen* (1989) 168 CLR 79, 86). The generality of that statement was said to render it difficult to apply to individual cases.

The aim of the VLRC Report was to review and make recommendations regarding legislative reform of jury directions in criminal trials. The author of the VLRC Report was the Honourable Geoffrey Eames QC, a retired judge of the Victorian Court of Appeal. His Honour had vast experience over many years of the conduct of criminal trials in Victoria, and elsewhere.

The VLRC Report made 52 recommendations. The most important of these was that there be enacted in Victoria a single statute which would "require all jury directions to be as clear, brief, simple and comprehensible as possible".

The VLRC Report recommended that the new statute should initially address directions that were known to have caused major problems, and address other directions more generally by setting out "guiding principles". Other common law rules, and already existing legislation located in other statutes, should gradually be incorporated into a new, all-embracing, Jury Directions Act.

In addition, the VLRC Report noted that trial judges had expressed uncertainty as to the extent of their duty to direct the jury regarding the law. They had also expressed concern as to the extent of their obligation to summarise for the jury the evidence that had been led at trial.

In that regard, the VLRC Report recommended that the extent of the obligation to sum up to a jury, whether as to the law, or the evidence, should be specifically set out in legislation. In particular, it recommended that a trial judge should only ever be required to direct the jury about the elements of charges brought, and any defences, that might be in issue. Moreover, a trial judge should only be obliged to refer to the evidence relevant to those elements and defences. There should no longer be any need to instruct the jury as to matters that were not, in fact, specifically in issue in the trial.

The VLRC Report recommended that a trial judge should, wherever practicable, provide an edited copy of the transcript of the evidence to the jury, thereby obviating the need to recite lengthy passages from what the various witnesses had said in court.

A key recommendation in the VLRC Report was that trial judges, when summing up, should focus as far as possible upon the questions of fact that the jury must decide, rather than, as they had been doing for many years, "lecturing" to the jury on abstract principles of law. To facilitate this change in practice, it was proposed that trial judges should be permitted, at the time of summing up, to give the jury a document setting out the elements of the offences, together with a "Jury Guide". That document would set out a series of factual questions that would have embedded within them all of the law necessary to guide the jury to its verdict. In colloquial terms, this would be described as a "question trail".

One of the major difficulties associated with the conduct of criminal trials in Australia lay in what was understood to be a common law obligation that required a trial judge to direct the jury not just about any defences specifically raised, but also upon alternative defences, as well as alternative verdicts, said to be open on the evidence (*Pemble v The Queen* (1971) 124 CLR 107). That obligation subsisted even where defence counsel had specifically eschewed any reliance upon such defences or verdicts (*Pemble v The Queen* (1971) 124 CLR 107).

The VLRC Report identified four evidentiary directions that were the source of many successful appeals against conviction. The law in these areas was said to be confusing, and in some cases even impenetrable. The areas in question were:

- what we, in Australia, at one time described as "lies as consciousness of guilt";
- identification evidence warnings;
- delayed complaint in sexual cases; and
- propensity evidence warnings (now known throughout most of Australia as "tendency" evidence, not to be confused with what is sometimes described as "coincidence" evidence).

At the time of the VLRC Report a trial judge in Australia was required to identify for the jury, in any case where the prosecution relied upon lies told by the accused as part of its case, precisely which lies were said to constitute "consciousness of guilt". In addition, the judge was required to give the most elaborate instructions as to how such evidence could, and could not, be used (*Edwards v The Queen* (1993) 178 CLR 193; see also *Baden-Clay v The Queen* (2016) 90 ALJR 1013; 334 ALR 234). The problem was that, some years ago, the High Court had laid down, in the most prescriptive of terms, exactly what directions should be given in such circumstances. The requisite directions, particularly in a case where there were many separate lies told, often ran to dozens of pages. In Victoria, failure to comply with that direction led to a number of convictions being quashed and retrials being ordered.

With regard to identification warnings, the VLRC Report recommended that the common law distinction recognised in Australia between "identification", "recognition" and "similarity" evidence be maintained. It further recommended that a warning continue to be mandatory for "identification" evidence where the reliability of that evidence was disputed. However, the trial judge should continue to have a discretion not to give a warning for "recognition" and "similarity" evidence, if there was a "good reason" not to do so. The VLRC Report also recommended that the proposed statute dealing with jury directions should set out the essential elements of the warning, and suggested what those elements should be. A judge should only be required to point to factors which affected the reliability of identification evidence in the particular case, and not at large.

With regard to delay in complaint, trial courts throughout Australia have, in recent years, been inundated with cases involving sexual offending against children. Many of these cases are historic in nature, with the events in question sometimes dating back decades. The VLRC Report noted that the law regarding delayed complaint was governed in most Australian States by both common law and statute. That, of itself, gave rise to unnecessary complexity.

A jury might require directions about the effect of delayed complaint because, on the one hand, the fact of lengthy delay could cast doubt upon the credibility of the complainant. On the other hand, such delay might result in significant forensic disadvantage to the accused.

The VLRC Report recommended that the law in this area should be exclusively statutory, and should be incorporated

into the proposed Jury Directions Act. Trial judges should not be permitted, or required, to say anything to the jury about delay affecting the credibility of the complainant unless satisfied that it was necessary to do so in order to ensure a fair trial. In these circumstances, trial judges should continue to direct juries that there may be good reason why a person may hesitate or delay in complaining about a sexual assault. They should also be empowered to correct statements made by counsel which were based on outdated stereotypes concerning victims of such assault.

Finally, as regards warnings relating to propensity evidence, the VLRC Report supported them being given. It acknowledged that, although propensity evidence can be relevant in establishing the truth of the allegations against an accused, such evidence can also impinge upon the right to a fair trial.

In addition to these particular evidentiary recommendations, the VLRC Report argued that existing pre-trial procedures relating to issue identification be maintained. In addition, it made a number of recommendations designed to promote such early identification.

Of critical importance was the fact that the VLRC Report recommended that the new Act provide that trial counsel has responsibility for seeking directions from the judge, or seeking that no such directions be given. It further recommended that the judge must give any direction requested by counsel unless there was 'good reason' not to do so.

Finally, the VLRC Report recommended that leave be required to argue a direction-based ground of appeal in circumstances where no exception was taken to the direction given at trial.

SIMPLIFICATION OF JURY DIRECTIONS PROJECT

After the publication of the VLRC Report in 2009, it was anticipated that there would soon follow action on the part of the legislature to give effect to its recommendations. After all, there seemed little reason for delay. As is all too often the case with law reform recommendations, inertia set in and, for several years, nothing tangible was done.

In 2012, both the Chief Justice of Victoria and the President of the Court of Appeal suggested that, given the legislature's inactivity, the court itself should take the lead in promoting reform of the law relating to jury directions.

In that connection, I was invited to lead a group of lawyers from the Judicial College of Victoria and the Department of Justice in seeing whether, after a close examination of some aspects of jury directions in Victoria, the law could be improved. The entire exercise was given the catchy title "Simplification of Jury Directions Project". After three months of intensive, full-time, work, it resulted in a 351 page report issued in August 2012 (the "Simplification Report").

The Simplification Report focused on four areas of law, relating to jury directions. Two of these had previously been considered in the VLRC Report, and two had not. All four areas were said to give rise to particular difficulties. These were directions as to:

- complicity;
- inferences and circumstantial evidence;
- evidence of other misconduct; and
- jury warnings – unreliable evidence.

The Simplification Report noted that the law of complicity was in particular need of reform. It described the mixture of common law and statute law that applied in that area as "haphazard and inconsistent" (at 18, citing Simon Bronitt and Bernadette McSherry, *Principles of Criminal Law*, Lawbook, 3rd ed, 2010, 381).

The Judicial College of Victoria has long produced a Bench Book, known as the *Victorian Criminal Charge Book*. This is a massive resource, available online, continually updated, containing lengthy, and usually scholarly, discussions on different aspects of the criminal law. With regard to complicity, the Charge Book contained a detailed analysis of what we in Australia sometimes call "acting in concert" or "joint criminal enterprise". It also dealt with the various traditional forms of complicity under common law nomenclature. Thus, there were lengthy expositions of "aiding", "abetting", "counselling" and "procuring". The Charge Book referred to literally hundreds of cases on point in relation to these concepts.

The Simplification Report recommended that a single, overriding, form of complicity be legislatively enacted, stating that a person who was "involved in" the commission of an offence would be taken to have committed that offence.

The proposed provision would make it clear that the accused need not be present at the scene of an offence in order to be liable as a secondary offender. It would also provide that the primary offender need not have been prosecuted or convicted of the offence in order for the secondary offender to be found guilty. It would provide protection for the victim of an offence who would not be exposed to potential liability as a secondary offender where the provision creating the offence was designed to protect persons of that kind. Finally, the new provision would abolish the current law relating to complicity, including specifically the doctrine of "extended common purpose", also sometimes described in Australia, albeit inaccurately, as "joint criminal enterprise". That doctrine had, for years, bedevilled the criminal law, and seemed to be in urgent need of reform.

It should be noted that, in 2016, the United Kingdom Supreme Court held that the doctrine of what might be termed extended joint criminal enterprise should no longer be regarded as part of the common law in England and Wales (*R v Jogee* [2016] 2 WLR 681 [2016] 1 Cr App R 31). Regrettably, the High Court of Australia, having been pressed to follow *Jogee*, has declined to do so (*Miller v The Queen* (2016) 90 ALJR 918; (2016) 334 ALR 1).

As regards circumstantial evidence, the Simplification Report noted the confusion that often surrounded this topic in jury directions. For one thing, it was important to dispel any notion that this class of evidence was in any way inherently less cogent than direct evidence.

The Simplification Report further noted some of the more systemic difficulties in this area, such as the lack of clarity as to when directions of any particular kind needed to be given. It put forward several options for reform. One was that a legislative amendment could be introduced that made it clear that the only matters that had to be proved beyond reasonable doubt were the elements of an offence and the negation of any defence. All other matters could be proved to a lesser degree.

Another option, which was that most favourably recommended by the Simplification Report, was to require the judge first to identify those facts which were plainly essential to the jury's verdict, and then direct the jury that they must be satisfied of them beyond reasonable doubt.

Regardless of which option was adopted, it was anticipated that the jury would be directed as to these matters as part of the general charge on standard of proof, rather than as part of the charge dealing with inferences.

The Simplification Report also considered directions that would warn juries of the dangers of drawing inculpatory inferences based upon evidence that was capable of innocent explanation. While such a direction might often be desirable, it ought not be mandatory. If such a direction were to be given, it might be useful to tell the jury that they must be satisfied that the accused's guilt was the "only reasonable conclusion" arising from the evidence, rather than using more archaic, 19th century language.

The Simplification Report noted that trial judges were required, under the law as it then stood, to give lengthy directions about the permissible, and impermissible, uses of tendency evidence, coincidence evidence and what is sometimes described as "context evidence". It recommended a two-fold approach to simplifying jury directions in this area. First, it suggested simplifying the language used in the model direction, which, of course, would not require any legislative amendment. Second, it recommended legislative reform of the necessary content of the warnings to be given. It proposed specific amendments, drafted in light of extensive empirical research which cast doubt upon the utility of "limited use warnings", and which suggested that any jury, given a warning of that kind was, in fact, more likely to reason in a prohibited manner than without the warning.

Finally, the Simplification Report considered the various warnings that were regarded as essential when dealing with "unreliable evidence" of various kinds. It observed that the dual system that existed at the time rendered the task of trial judges more difficult than it ought to be and had proved "a fertile ground for successful appeals". It recommended only minor amendments to the warnings that would, in future, be given.

JURDY DIRECTIONS ACTS 2013 AND 2015

The Jury Directions Act 2013 ("2013 Act") was introduced in response to both the VLRC Report and the Simplification Report. It enacted a number of the recommendations set out in both Reports into law.

The 2013 Act was subsequently repealed, and replaced by the Jury Directions Act 2015 ("2015 Act"). That Act incorporated virtually the entirety of the 2013 Act, but added other provisions and expanded into new areas.

The purposes of the 2015 Act, as stated in section 1, relevantly 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 provide for simplified jury directions in relation to specific issues; …

Section 5 of the 2015 Act sets out what are described as 'Guiding Principles'. These are as follows:

(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—

(d). has made jury directions increasingly complex, technical and lengthy; and

(e). has made it increasingly difficult for trial judges to comply with the law of jury directions and avoid errors of law; and

(f). has made it increasingly difficult for jurors to understand and apply jury directions; and

(g). 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.

(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).

Part 3 of the 2015 Act re-enacts a process first introduced in the 2013 Act. That process requires prosecution and defence counsel to assist trial judges in determining matters in issue in the trial, as well as the directions that should be given regarding those matters.

After the close of all evidence, but before final speeches, both prosecuting and defence counsel are required to inform the trial judge of any matters in issue. These include any elements of the offence, or offences charged, any alternative offences, any alternative basis upon which complicity is alleged, and any defence or defences (s 11, Jury Directions Act 2015). After these issues have been identified, both sides must request that the trial judge give, or not give, particular directions to the jury regarding the matters in issue, and the evidence in the trial relevant to those matters.

Importantly, under the 2015 Act, a trial judge must give the jury a requested direction unless there are "good reasons" for not doing so (s 14, Jury Directions Act 2015). It follows that the trial judge must not give a direction that has not been requested. However, he or she is required to give a direction that has not been requested if there are "substantial and compelling reasons" for doing so. Before giving such a direction in such circumstances, the matter must be fully debated with counsel.

A judge who is asked to give a particular direction may decline to do so if there are "good reasons" (s 14, Jury Directions Act 2015). When considering whether there are such reasons, the trial judge must have regard to the evidence at trial, and the manner in which the prosecution and defence have conducted their cases (s 14, Jury Directions Act 2015).

Part 4 of the Act deals with what is described as evidence of "incriminating conduct". Section 19 requires the prosecution to give notice that it proposes to rely on "incriminating conduct", and to identify what that conduct is. Further, section 21 sets out a series of directions that a trial judge must give when the Crown seeks to rely upon evidence of post-offence conduct, including lies. Section 22 provides for additional directions that an accused may request when such evidence is relied on, or where there is a risk that the jury may improperly use evidence in that manner.

The obligations imposed upon a trial judge when summing up to the jury are, in some respects, similar to those required under common law. A trial judge must explain so much of the law as is necessary for the jury to determine the issues in the trial, to refer to the way in which both parties have put their cases, and to identify the evidence that the judge considers necessary to assist the jury in determining the issues at trial.

One problem that has long bedevilled trial judges in Australia is how to respond to a question from the jury regarding the meaning of the term "beyond reasonable doubt". The High Court has repeatedly held that a trial judge should not elaborate upon that expression, limiting any explanation to the somewhat unhelpful comment that the words are ordinary English words which mean what they say (*Green v The Queen* (1971) 126 CLR 28).

The High Court's refusal to entertain any broader explanation of 'beyond reasonable doubt' has now been superseded. Pursuant to sections 63 and 64 of the 2015 Act, a

trial judge may now give an explanation of this phrase, but only if the jury ask a question which indicates, directly or indirectly, that they are uncertain of its meaning.

In that event, the trial judge may do one or more of the following:

- refer to the presumption of innocence;
- remind the jury that the prosecution's obligation is to prove that the accused is guilty;
- indicate that it is not enough for the prosecution to persuade the jury that the accused is probably or very likely to be guilty;
- indicate that:
    - it is almost impossible to prove anything with absolute certainty when reconstructing past events; and
    - the prosecution does not have to do so; or
- 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
- indicate that a reasonable doubt is not an imaginary or fanciful doubt, or an unrealistic possibility.

In addition, a 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. It would seem sensible, in the future, to permit trial judges to provide assistance of this kind to the jury without there first being a need to establish uncertainty on their part.

The 2015 Act also clarifies and simplifies important jury directions, such as those concerned with tendency and coincidence evidence, unreliable evidence, identification evidence, delay in complaint in sexual offence cases, forensic disadvantage, failure to give evidence, and what particular matters must be proved beyond reasonable doubt.

Significantly, a trial judge must now, pursuant to statute, correct any statement or suggestion made by counsel prohibited by the Act. Section 7 identifies three specific prohibitions. These are:

- children as a class being unreliable, and age alone being an indicator of reliability;
- where an accused does not give evidence;
- regarding sexual offence complaints being unreliable, or in relation to the delay in making the complaint.

Interestingly, the test for when a trial judge should give a direction, even though not requested by either party, changed from the 2013 Act's formulation, "to avoid a substantial miscarriage of justice", to that of the 2015 Act, "substantial and compelling reason". The change was brought about in order to remove the predictive aspect to this test, in which, under the earlier version, the trial judge was required, in effect, to predict how the Court of Appeal might deal with the issue (See *Xypolitos v The Queen* [2014] VSCA 339).

It should be noted that the third, and final, tranche of Jury Directions Act legislation, the Jury Directions and Other Acts Amendment Bill 2017 ("2017 Bill") has been introduced into the Victorian Parliament, and, if enacted, is expected to come into force by 1 October 2017.

The 2017 Bill addresses a number of problematic jury directions not dealt with in the 2015 Act. One significant feature of the 2017 Bill is that it deals with summary hearings, committal proceedings, appeals and other criminal proceedings, and requires the court's reasoning in any such case to be consistent with how a jury would be directed under the provisions of the 2015 Act.

The 2017 Bill provides that certain common law directions on previous representations are no longer required. These common law directions had often led juries into confusion. For example, trial judges were required to direct that evidence from a witness who heard a statement was not independent proof of the facts stated. This could have misled juries into believing that a complainant's evidence needed to be independently corroborated. Additionally, the 2017 Bill clarifies directions regarding a prosecution witness' motive to lie. The directions now focus on the burden of proof and make it clear that the accused need not show that the witness (including, in particular, the complainant) had a motive to lie.

Additionally, the 2017 Bill clarifies what can and cannot be said about an accused's evidence in relation to his or her interest in the outcome of a trial.

Finally, the trial judge will be permitted to give directions where there are differences in a complainant's account. These directions may include that people may not remember all the details of a sexual offence, or may not describe it in the same way each time, that trauma will affect people differently, that it is common for there to be differences in accounts of a sexual offence, and that both truthful and untruthful accounts of a sexual offence may contain differences.

In short, the 2017 Bill represents a "tidying up" process, rectifying some gaps in the law dealing specifically with sexual offences. It does not constitute a departure from the basic philosophy laid down in the 2015 Act, which is intended to simplify, and shorten, jury directions to the point where trials will still be conducted fairly, but now more efficiently.

THE CONTRAST BETWEEN THE CURRENT VICTORIAN AND ENGLISH APPROACHES TO JURY DIRECTION

The Crown Court Compendium ("Compendium"), produced in May 2016, provides guidance to English judges when directing juries in Crown Court trials, and when sentencing offenders. The Compendium is published by the Judicial College and its predecessor, the Judicial Studies Board. It consists of two separate parts. Part One deals with management of the jury and trial, and summing up. Part Two deals with sentencing in the Crown Court.

The "directions" found in the Compendium take the form of a checklist that a judge can refer to when summing up, depending on the facts and issues in a particular case. The Compendium also contains example directions that are intended to provide a starting point for framing legal and evidential directions that should, of course, be tailored to each particular case.

Additionally, the Compendium provides guidance as to the management of both the jury and the trial.

Some directions mentioned in the Compendium are in legislative form. For example, rule 25.14 of the Criminal Procedure Rules 2015 provides that a judge "must give the jury directions about the relevant law at any time at which to do so will assist the jurors to evaluate the evidence." Under rule 25.14(3), the judge must summarise the evidence that is relevant to the issues the jury must decide, and assist them by formulating such questions as will enable them to bring an appropriate verdict.

It is clear that there has been a parting of the ways between the approach to jury directions now taken in Victoria, and that which applies throughout the other Australian States and Territories, and, of course, in England and Wales.

For a number of years now, it has been recognised that, all too often, jury directions are couched in language that is verbose, highly prescriptive, and even sometimes all but incomprehensible.

In Victoria, it has been decided that nothing short of radical surgery can rectify the many problems that appellate courts, as well as legislatures acting on an ad hoc basis, have created for trial judges in this regard. Charge Books and their like have their place. Regrettably, however, they suffer from the same tendency that often afflicts appellate judgments. They grow in length, exponentially, and expand as new case law develops. They develop text book like qualities and soon become difficult for trial judges to use.

Moreover, there is no guarantee that if a judge directs in accordance with the Compendium, or, in Victoria, the Charge Book, he or she will be stating the law correctly. Of course the quality of the work itself suggests that mistakes will be few and far between. The real problem with the use of bench books of this kind is that they contribute little towards reducing the length and complexity of jury directions. Regrettably, they tend to be written in "legalese", and not with an eye towards comprehension, or the need to assist lay juries.

Part One of the Compendium currently runs to about 400 pages. That is bad enough. The Victorian Charge Book is infinitely worse. It currently runs to about 2500 pages. I doubt that anyone could describe it as "user friendly" so far as trial judges or juries are concerned.

Contrast the 2015 Act. Although it covers only a relatively small number of the topics dealt with in the Charge Book, it manages to do so in only 63 pages. The Act is described by all who have used it as well drafted, and immensely valuable.

Trial judges who use the Act on a daily basis have been particularly pleased with the changes to the conduct of criminal trials that it has brought about. Their feedback is that jury charges are now about half as long as they previously were. More importantly, their assessment is that juries find the new directions that are legislatively mandated easy to follow and apply. Since 2013, the number of appeals against conviction in Victoria based upon alleged misdirection has halved.

It is early days yet. Nevertheless, enough is now known about the workings of the new system in Victoria to be able to say that the signs are all promising. Unusually, this may be an example of current legislation actually improving the workings of our criminal justice system, rather than creating more problems than it solves.

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