

# SUPREME COURT OF TASMANIA

## PRACTICE DIRECTION

No. 2 of 2013

8 November 2013

### JURY DIRECTIONS

The following Practice Direction is published by direction of the Chief Justice, the Honourable Justice Blow.

1. The purposes of this Practice Direction are in line with the *Jury Directions Act* (2013) Vic which include—
  - (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 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.
2. After the close of all evidence and before the closing address of the prosecution, counsel must inform the trial judge of the following matters in relation to the accused's case—
  - (a) what, if any, element of the offence charged is in dispute;
  - (b) any defence;
  - (c) any alternative offence which they wish to have left to the jury and what, if any, element of that alternative offence is in dispute;
  - (d) whether any alternative basis of complicity in the offence charged is said to be open and on what basis.
3. After the matters in issue have been identified in accordance with paragraph 2 hereof, 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) any matters in issue; and
  - b) the evidence in the trial relevant to the matters in issue.

4. Counsel are reminded of what was said by Bowen CJ and Forster J in *Chamberlain v R* (1983) FLR 1 at 13 as follows;

"We should mention that when asked by his Honour at the end of the summing up, 'Is there any further direction?', senior counsel for the appellants answered, 'No, I have no submissions'. It should also be pointed out that the summing up as a whole was favourable to the appellants as was conceded by senior counsel for the appellants before us, who was not the same counsel as appeared at the trial. The failure of counsel at the trial to seek a redirection, some amendment or addition to the summing up and his failure to object to the admissibility of evidence, cannot lead inevitably to the dismissal of an appeal based on alleged imperfections in the summing up or the wrongful admission of evidence. It is nevertheless a relevant factor to be considered. If experienced senior counsel at the trial is not moved to seek redirection or to object to the admissibility of evidence, his failure to do so carries a strong suggestion that in the atmosphere of the trial at which he was present, no miscarriage of justice occurred or was likely to occur because of matters later complained of."

5. In a similar vein Gleeson CJ observed in *Doggett v R* (2001) 208 CLR 343 at [2]-[3];

"2. The manner in which a trial is conducted, and in which the issues are shaped, especially where (as in the present case) an accused is represented by experienced and competent counsel, has a major influence upon the way in which the case is ultimately left to the jury, and upon the directions, comments and warnings, from the trial judge to the jury, that may be appropriate or necessary. Directions are not ritualistic formularies. Their purpose is to assist the jury in the practical task of resolving fairly the issues which have been presented to them by the parties.

3. When an accused person has been convicted, and appeals, there is often an attempt to present the defence case in a new way. This appeal provides an example of the necessity, when evaluating criticisms of a trial judge's directions to a jury, to relate those criticisms to the manner in which the trial was conducted."