

# Jury Directions Bill 2012

## Introduction Print

### EXPLANATORY MEMORANDUM

#### Clause Notes

#### PART 1—PRELIMINARY

- Clause 1 sets out the purposes of the Bill. Jury directions in Victoria have become unnecessarily long, complex and unhelpful to jurors. This Bill will provide a new framework for giving jury directions in criminal trials. This framework is reflected in the purposes of the Bill, which are—
- to reduce the complexity of jury directions in criminal trials;
  - to simplify and clarify the issues that juries must determine in criminal trials;
  - to simplify and clarify the duties of the trial judge in giving jury directions in criminal trials;
  - 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;
  - to assist the trial judge to give jury directions in a manner that is as clear, brief, simple and comprehensible as possible;
  - to permit the trial judge to answer questions from the jury about the meaning of the phrase "beyond reasonable doubt"; and
  - to provide for simplified directions in relation to post-offence conduct.

- Clause 2 provides for the commencement of the Bill.
- Subclause (1) provides that the Act will commence on a day to be proclaimed.
- Subclause (2) provides that if the Act does not commence before 1 July 2013, it comes into operation on that day.
- Clause 3 defines various words and expressions used in the Bill.
- The definitions of *accused*, *legal practitioner* and *trial judge* adopt the meaning used in the **Criminal Procedure Act 2009**.
- Alternative offence* is defined to mean 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 the offence charged. For example, if the accused is charged with murder, the jury may find the accused guilty of manslaughter. This definition is relevant to Parts 3 and 6 of the Bill, which relate to the jury direction request provisions and post-offence conduct directions, respectively.
- Defence* is defined to include an exception, exemption, proviso, excuse or qualification to an offence, whether or not it accompanies any description of the offence in an enactment. This is a broad definition designed to avoid arguments about whether something is a defence or not. This is important for the operation of Part 3 of the Bill, which requires the parties to identify the directions they want in respect of any defences.
- Defence counsel* is defined to mean a legal practitioner representing an accused.
- Direction* is defined to include an explanation of the phrase "proof beyond reasonable doubt" under Part 5. It is an inclusive definition which will cover matters that may be referred to as "warnings" or "comments" by the trial judge, or information given by the trial judge. This inclusive definition ensures that no particular wording is required in explanations given under Part 5—see clause 6 of the Bill.
- General directions* is defined to mean directions concerning matters relating to the conduct of trials generally including the functions of the trial judge and jury, the burden and standard of proof and the drawing of conclusions. Clause 9 of the Bill provides that the jury direction request provisions in Part 3 of the Bill do not apply to these general directions.

***Requested direction*** is defined to mean a direction that the trial judge is requested to give under clause 11.

Clause 4 provides that the Bill applies despite any rule of law or practice to the contrary. The Bill will replace aspects of the common law on jury directions. Where the Bill abolishes a particular common law rule, a specific abolition provision is provided (see clauses 16 and 28).

## **PART 2—GENERAL**

Clause 5 sets out guiding principles for the Bill. The Bill signifies a new approach to jury directions and is designed to effect a cultural change. The guiding principles will facilitate and support this cultural change, as subclause (5) makes clear.

First, the principles recognise the role of the jury in a criminal trial, as the main purpose of jury directions is to assist the jury to determine the issues in dispute in the trial. This principle encourages jury directions that assist the jury to perform its role.

The principles recognise some of the particular problems with the law of jury directions that have made it difficult for the jury to perform this role. They acknowledge that the law of jury directions in criminal trials has become increasingly complex. This development—

- has made jury directions increasingly complex, technical and lengthy;
- has made it increasingly difficult for trial judges to comply with the law of jury directions and avoid errors of law; and
- has made it increasingly difficult for jurors to understand and apply jury directions.

The guiding principles recognise that research indicates that jurors find complex, technical and lengthy directions difficult to follow.

The principles also recognise that it is the responsibility of the trial judge to determine the matters in issue in the trial, and the directions that should be given to the jury (including the content of those directions), and that it is one of the duties of legal practitioners to assist the trial judge in determining these matters. This is designed to encourage dialogue between counsel and the

trial judge to determine what directions should be given. This principle is particularly reflected in the jury direction request provisions in Part 3.

This principle is also closely linked to the role of the jury to determine the issues in the trial. Counsel and the trial judge should be encouraged to work together to ensure that the directions given will help the jury perform its role.

Finally, the principles reflect that in giving directions, trial judges should give directions on only so much of the law as the jury needs to know to determine the issues in the trial, avoid technical legal language wherever possible, and be as clear, brief, simple and comprehensible as possible.

The principle that the trial judge should direct on only so much of the law that is necessary to determine the issues in the trial derives from in *R v AJS* [2005] VSCA 288. Clause 17, which sets out the trial judge's obligations when summing up, directly reflects this principle.

Encouraging the trial judge to avoid technical language and be clear, brief, simple and comprehensible reflects the fact that juries struggle with complex, technical and lengthy jury directions. For juries to be able to perform their role, it is important the trial judges deliver directions that they can understand and apply. Clauses 21, 25, 26 and 27, which set out the content of directions on "proof beyond reasonable doubt" and post-offence conduct follow this principle by avoiding complexity and technical language.

Subclause (5) provides that it is the intention of the Parliament that the Act be applied and interpreted having regard to these principles.

- Clause 6 provides that in giving directions, trial judges need not use any particular form of words. This will allow trial judges to tailor directions to the particular case, and ensures that trial judges do not commit an error if they do not follow the words in the legislation.
- Clause 7 allows the court to extend or abridge any time fixed by or under this Bill if the court considers that it is in the interests of justice to do so. This provision will apply to clause 23 of the Bill.

### PART 3—REQUEST FOR DIRECTIONS

This Part of the Bill provides a new framework for determining the directions that the trial judge should give to the jury and the content of those directions. It will encourage directions targeted to the issues in the trial as identified by counsel through discussion with the trial judge.

Clause 8 provides that the purposes of this Part are to assist the trial judge to discharge his or her duty to determine the matters in issue in the trial, the directions that he or she should give to the jury and the content of those directions and to ensure that legal practitioners discharge their duty to assist the trial judge to determine those matters. It is also a purpose to provide for directions that the trial judge should give if the accused is unrepresented.

Clause 9 makes it clear that this Part does not apply to "general directions" as defined in clause 3. Trial judges will continue to be required to give general directions irrespective of the jury direction request provisions in this Part.

This clause also makes it clear that this Part does not apply to a direction that the trial judge is required to give, or not to give, to the jury under any provision of this Bill or any other Act. Certain legislation contains mandatory directions, for example, sections 37, 37AAA and 37AA of the **Crimes Act 1958** in relation to consent. These directions will continue to be mandatory.

Clause 10 requires defence counsel to inform the trial judge which of the following matters are or are not in issue: the elements of the offence charged; any defence; any alternative offence (including an element of such an offence); and any alternative basis of complicity in the offence charged (and any alternative offence).

This will occur after the close of all evidence and before the prosecution's closing address.

In conjunction with clause 11, this provision is intended to prompt a discussion between the trial judge and counsel about which matters are in issue and, therefore, which directions are necessary and the content of such directions. This can be contrasted with the current law, where the trial judge has the sole responsibility for determining these matters.

Different rules apply if the accused is unrepresented—see clause 12.

Clause 11 requires the prosecution and defence counsel to request that the trial judge give, or not give, particular directions to the jury in respect of the matters in issue, and evidence in the trial relevant to the matters in issue. This will occur after the matters in issue have been identified under clause 10.

Counsel are best placed to determine which directions may be required in a particular case. Discussing these with the judge will further refine these issues, and assist to determine which directions are relevant and appropriate. These discussions will also minimise the risk of errors due to, for example, directions being overlooked or incomplete directions being given.

Different rules apply if the accused is unrepresented—see clause 12.

In most cases, trial judges will give directions that counsel has requested, and will not give directions that have not been requested or that counsel has requested not be given—see clauses 13 and 14. This is a significant change from the common law rules (see, for example, *Pemble v R* [1971] HCA 20).

Clause 12 applies if the accused is unrepresented. In such cases, the trial judge must generally comply with this Part as if the accused had informed the trial judge that all matters referred to in clause 10 are in issue and had requested every direction that it was open to the accused to request under section 11, had they been represented by a legal practitioner.

However, this general rule does not apply if the trial judge considers that there are good reasons for not giving the direction, or it is otherwise not in the interests of justice to give the direction.

The provision balances the right of the accused to conduct their own defence with protections to ensure that the accused is not disadvantaged because they are not aware of which directions they may request, or because they ask the trial judge not to give an important direction.

Clause 13 provides that the trial judge need not give a direction that relates to a matter that the accused's legal practitioner has indicated under clause 10 is not in issue or that has not been requested under clause 11.

As with the rest of this Part, this provision reflects that counsel are best placed to determine which directions are necessary in the particular case, and that their decisions should be respected (subject to clause 15). In contrast to the current law, it provides a much clearer test for the trial judge in determining which directions to give the jury.

Clause 14 provides that the trial judge must give a requested direction unless there are good reasons for not doing so.

Again, this reflects that counsel are best placed to determine which directions are necessary in the particular case, and that their decisions should be respected (subject to clause 15).

The Bill gives trial judges guidance in determining whether there are good reasons for not giving a requested direction, by listing matters that must be considered. These are the evidence in the trial and the manner in which the parties have conducted their cases. These matters emphasise that directions should be given where they are consistent with the case the accused has put before the jury and the forensic decisions of counsel.

Clause 15 requires trial judges to give a direction that is necessary in order to avoid a substantial miscarriage of justice.

This obligation applies even if the direction relates to a matter that defence counsel has indicated is not in issue, or has omitted to indicate is in issue under clause 10. It also applies even if counsel have requested that the direction not be given, or have not requested the direction, under clause 11.

It is anticipated that this provision will only be used in very limited circumstances. For example, it will provide a safeguard in the rare cases where the incompetence of counsel in not requesting a direction would result in a substantial miscarriage of justice.

It is appropriate to provide this safeguard at trial in order to protect the rights of the accused, and to minimise appeals given that the Court of Appeal has the power to set aside a conviction where a substantial miscarriage of justice has occurred.

However, before relying on this provision, the trial judge must inform the parties of his or her intention to do so, and allow the parties to make submissions on the proposed direction.

Clause 16 makes it clear that any common law rule under which a trial judge is required to direct the jury about any defences and alternative offences open on the evidence, but which have not been identified as such during the trial, is abolished. Any obligation on the trial judge to direct the jury on any alternative basis of complicity in the offence charged or any alternative offence, is also abolished.

As the note indicates, these rules are attributed to cases such as *Pemble v R* [1971] HCA 20 and *Gilbert v R* [2000] HCA 15. The rules attributed to such cases are problematic in theory and practice, and contribute to a significant number of appeals based on errors in jury directions.

This provision makes it clear that the reforms in this Part abolish those rules. However, this clause does not limit the obligation of the trial judge under clause 15.

#### **PART 4—TRIAL JUDGE'S SUMMING UP**

Clause 17 sets out the obligations of the trial judge when giving the summing up to the jury. The summing up occurs after the parties' final addresses to the jury and before the jury commences its deliberations. Most jury directions will be given to the jury as part of the summing up. The purpose of the reforms in this area is to encourage trial judges to give shorter, more relevant summings up which will better assist the jury.

The clause provides that the trial judge—

- must explain only so much of the law as is necessary to determine the issues in the trial;
- 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
- need not give a summary of the evidence, but must identify in accordance with clause 18 so much of the evidence as the trial judge considers necessary to assist the jury in determining the issues in the trial.



These obligations reflect aspects of the statement on the role of the trial judge in *R v AJS* [2005] VSCA 288. In particular, the obligations target the summing up to the law necessary to determine the issues in the trial. However, it also changes these obligations in important ways. For example, the clause makes it clear that the trial judge need not summarise the parties' closing addresses or summarise the evidence in the trial. This will help to reduce the length of the summing up.

The clause also clarifies that summings up can be given in a combination of oral and written forms. Research shows that jurors can struggle with lengthy oral directions and that their understanding increases when they are provided with written material. Providing part of the summing up in written form does not undermine the principle of open justice because the evidence and submissions have already been given orally in an open court.

Clause 18 provides that the trial judge is required to identify only so much of the evidence as the trial judge considers necessary to assist the jury in determining the issues in the trial.

Lengthy restatements of the evidence can be counterproductive and unhelpful. In most cases, the law currently requires a trial judge to summarise the evidence. Clarifying when, and to what extent, trial judges are required to identify evidence (rather than summarise evidence) will help to encourage shorter directions that are closely related to the issues in the trial.

This clause provides a list of matters to consider in determining whether identification of the evidence is necessary and if so, to what extent. The trial judge must have regard to—

- the facts in issue;
- the complexity of the facts in issue;
- the length of the trial;
- the complexity of the evidence;
- the submissions and the addresses of the parties;
- any reference to how the parties put their cases in relation to the issues in the trial;

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

The trial judge may also have regard to any other matter he or she considers appropriate.

Clause 19 provides that the trial judge may give integrated directions. An integrated direction is a way of presenting information to the jury in a more helpful, targeted way, in line with the obligations of the trial judge expressed in clause 17.

Integrated directions may contain factual questions which embed legal issues which the jury must consider or be satisfied of in order to reach a verdict. This type of direction focuses the jury on the factual issues, rather than expecting them to understand lengthy directions on the legal issues. Integrated directions will often remove the need for separate directions on the law. For example, an integrated direction could ask "Are you satisfied that A stabbed B with the knife?" and "Are you satisfied that B died as a result of the stabbing?", rather than "Did A cause the death of B?" with a separate direction explaining the law to the jury.

Integrated directions can also combine the factual questions with directions on the evidence and how it is to be assessed, references to how the prosecution and the accused have put their cases, and any evidence identified under clause 18.

The provision makes it clear that if a trial judge addresses a matter by a factual question, he or she is not required to address the matter in any other direction. Further, if a trial judge addresses a matter in an integrated direction, he or she is not required to also address the matter in directions that are not integrated directions (that is, traditional jury directions, which provide separate explanations on the law and the evidence). Addressing the same matter in more than one way is unlikely to be helpful to jurors, and would unnecessarily lengthen directions.

Integrated directions can be supported by the use of a written document known as a jury guide, which is provided for in clause 29 of the Bill.

## PART 5—PROOF BEYOND REASONABLE DOUBT

Clause 20 provides that a trial judge may explain the phrase "proof beyond reasonable doubt" when the jury directly or indirectly asks a question about the meaning of the phrase. The common law currently restricts the trial judge from explaining what this phrase means. Except in very limited circumstances, when asked such a question, the trial judge is only permitted to respond by explaining that such a doubt is one which the jury regards as reasonable (*R v Chatzidimitriou* (2000) 1 VR 493).

Research suggests that this phrase is often not well understood by jurors. Given that it is a fundamental concept in a criminal trial, it is useful for the trial judge to be able to explain it.

The intention is to allow trial judges to explain the meaning of the phrase where it is raised by the jury. For this reason, the provision applies where the jury directly or indirectly raises the issue. The provision is not intended to limit any other power of a trial judge to explain the meaning of the phrase.

Clause 21 sets out the matters the trial judge may include in an explanation of "proof beyond reasonable doubt" where the jury has asked a question about the meaning of the phrase. These elements are drawn from case law from Canada (*Lifchus* [1997] 3 SCR 320) and New Zealand (*R v Wanhalla* [2007] 2 NZLR 573). In the explanation the trial judge may—

- refer to the presumption of innocence and the prosecution's obligation 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 guilty 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;
- 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.

This list of matters reflects that in most cases, there is only so much that can be said that will assist a jury before a trial judge will necessarily reach the point that the further explanation becomes less helpful than no explanation or may actually be misleading.

Clause 6 provides that judges are not required to use a particular form of words in giving this direction. In addition, subclause (2) makes it clear that the trial judge may adapt his or her explanation of the phrase to respond to the particular question asked by the jury. For example, if a jury asks whether the phrase means that they must be "70 percent sure about guilt", the Bill is intended to allow the trial judge to answer "no", and to then go on to explain what the phrase does mean, using the matters in subclause (2) as guidance.

## **PART 6—POST-OFFENCE CONDUCT**

The current law on post-offence conduct or consciousness of guilt evidence has resulted in directions to the jury that are lengthy, complex, difficult to understand and prone to error. These problems can be attributed to cases such as *Edwards v R* [1993] HCA 63 and *Zoneff v R* [2000] HCA 28. This Part will abolish complex common law requirements and provide a new procedure for the giving of directions on post-offence conduct, which will result in shorter and clearer directions that are less susceptible to error. The provisions in this Part will provide for a mandatory direction (clause 25) that the trial judge must give if the prosecution relies on evidence of "conduct" as evidence of "incriminating conduct" and other directions that defence counsel may request (clauses 26 and 27).

Clause 22 defines the terms *conduct*, *incriminating conduct* and *offence charged*.

*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 the offence charged. It could, for example, include fleeing the location of the offence, concealing evidence in relation to the offence and so on. The broad definition acknowledges that the ways in which evidence may amount to an implied admission of guilt are not closed and that in most instances, post-offence conduct consists of lies.

*Incriminating conduct* is defined to mean conduct that amounts to an implied admission by the accused of having committed an offence charged or an element of an offence charged, or which

negates a defence to an offence charged. This is so the accused does not need to make an implied admission in relation to the specific offence charged. The advantage of using the term "implied admission of guilt" is that it will be readily recognised by practitioners and judges, as it is used in the **Evidence Act 2008** and is also used in cases concerning post-offence conduct.

*Offence charged* is defined to include any alternative offence. An alternative offence is defined in clause 3.

Clause 23 sets out the notice requirements for the prosecution where it seeks to rely on evidence of conduct as evidence of incriminating conduct. Clause 7 of the Bill gives the trial judge the discretion to change the notice requirements specified in this clause.

In conjunction with clause 24, this process requires early and careful identification of such evidence.

Clause 24 provides that the prosecution must not rely on evidence of conduct as evidence of incriminating conduct unless the prosecution has given notice in accordance with clause 23 and 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. In conjunction with clause 23, this clause recognises the need for the careful identification of this kind of evidence. This procedure departs from current law and will make clear that the prosecution is not relying on evidence of conduct as incriminating conduct whenever it does not comply with the procedure and the trial judge does not allow the evidence to be used in that way.

This applies even if the evidence of conduct may be admissible for another purpose—see subclause (2).

Clause 25 provides for a mandatory direction to be given by the trial judge where the prosecution relies on evidence of conduct as evidence of incriminating conduct. The direction requires the trial judge to tell the jury that it 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 negated a defence to the offence charged) only if it concludes that the conduct occurred and the only reasonable explanation of the conduct is that the accused held that belief.

The trial judge must further direct the jury that 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.

There is no need for the trial judge to refer to each act or omission of the accused under this clause. This is a departure from current common law requirements on the trial judge in relation to this type of evidence. For example, where the prosecution relies on a record of interview with the accused which contains hundreds of lies, there is no need for the trial judge to refer to each lie. The provision envisages that the trial judge could refer to the net effect of the numerous lies.

Clause 26 provides for an additional direction that may be given by the trial judge on evidence the prosecution relies on as evidence of incriminating conduct. The trial judge may give this direction if requested by defence counsel under clause 11.

Basing this direction on a request links this clause with Part 3 of the Bill, and reflects that the accused may not want the trial judge to give such a direction (because, for example, it may highlight to the jury that the accused has acted in a way that makes him or her look guilty).

If a direction is given, it will involve the trial judge telling the jury that—

- there are all sorts of reasons why a person might behave in a way that makes the person look guilty;
- the accused may have engaged in the conduct even though the accused is not guilty of the offence charged; and
- even if the jury thinks that the conduct makes the accused look guilty, that does not necessarily mean that the accused is guilty.

The three components of the direction capture the essence of existing cautionary directions in a way that will be understandable to the jury. The trial judge will not be required to direct the jury on other matters in addition to this. For example, in contrast to the current law, the trial judge need not identify possible motivations for the accused's incriminating conduct.

Clause 27 provides for a direction to avoid the risk of improper use of evidence where the prosecution does not rely on evidence as evidence of incriminating conduct, but defence counsel requests that a direction be given so that the jury will not impermissibly use the evidence in that way. As with the preceding clause, this direction is based on a request by defence counsel under clause 11.

The direction has two components—

- directing the jury that there are all sorts of reasons why a person might behave in a way that makes the person look guilty; and
- warning 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.

These directions protect against the risk that the jury may misuse post-offence conduct evidence. While similar in content to common law directions that warn against this line of reasoning, the provision operates on the basis that defence counsel is best placed to identify the potential harm to their case from such evidence.

In line with Part 3, the trial judge will not be obliged to give a direction if there are good reasons for not doing so. Subclause (2) provides that it is a good reason for not giving a direction requested under this clause if the trial judge considers that there is no substantial risk that the jury might use the evidence as evidence of incriminating conduct.

Clause 28 provides that the 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 except as provided by this Part. However, this Part does not prohibit a trial judge from doing so. The trial judge will not fall into error just because the trial judge provides some additional direction.

This provision is designed to ensure that all of the trial judge's obligations in relation to post-offence conduct, or incriminating conduct are set out in this Part. There is no residual application of the common law that the trial judge must apply. A direction given in accordance with the Part will be sufficient. This clause

abolishes rules based on *Edwards v R* [1993] HCA 63 and *Zoneff v R* [2000] HCA 28.

Subclause (2) specifically abolishes the rules created by *Shepherd v R* [1990] HCA 56 (*Shepherd*) as they relate to post-offence conduct. This subclause provides that a jury is not required to do certain things when considering whether evidence of incriminating conduct establishes, or assists in establishing, guilt.

Subclause (2)(a) links the reasoning process to where the fact is sought to be proved by evidence of incriminating conduct, thereby tying the abolition to this particular reform. The words "wholly or partly" cover situations where it is the incriminating conduct in combination with other evidence which is relied upon to prove the fact in question. This broader description will avoid difficult issues for trial judges and appellate courts concerning degrees of importance of evidence (e.g. if qualifiers such as "significant or primarily" were used) in what is already a complicated area of law.

Subclause (2)(b) is a safeguard to avoid the application of any special evidentiary standard to this kind of evidence (which would usually arise from the application of *Shepherd*) and therefore lends further support to achieve the desired outcome. There may be situations in which incriminating conduct must be proved beyond reasonable doubt, for example where the evidence is the only evidence which proves an element of the offence. Where that is the case, proof beyond reasonable doubt of the incriminating conduct will be required because it proves an element, but not because it proves an indispensable intermediate fact.

Subclause (2)(c) makes it clear that the reasoning process does not apply from the evidence to the fact.

This clause also abolishes common law rules to the contrary of this section.



## **PART 7—CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS**

Clause 29 amends section 223 of the **Criminal Procedure Act 2009** which provides that the trial judge may provide certain documents to the jury. This clause adds a new section 223(1)(ha) which states that the trial judge may provide a transcript of the evidence in the trial. Although sections 223(1)(i) and (j) already refer to transcripts, new section 223(1)(ha) will make it clear that a transcript of the evidence in the trial can be provided to the jury and will distinguish between transcripts (e.g. from those described in section 110(d)(ii) and (vi)). Provision of a transcript is a factor for the trial judge to consider when deciding whether identification of the evidence is required and if so, the extent of that identification.

This clause also inserts a new section 223(1)(ka) into the **Criminal Procedure Act 2009** to provide that the trial judge may provide a jury guide to the jury.

A jury guide may contain a list of questions to assist the jury to reach its verdict (including questions used in integrated directions under clause 19 of the Bill), directions on the evidence and how the evidence is to be assessed, references to the way in which the prosecution and the accused put their cases, any evidence identified under clause 18 of the Bill, or any other information. Jury guides may be used in conjunction with either traditional or integrated directions. This clause ensures that the key matters to be covered in integrated directions can be set out in written jury guides.

Clause 30 inserts a cross reference to the **Jury Directions Act 2012** at the foot of section 238 of the **Criminal Procedure Act 2009**. Section 238 provides that, at the end of closing addresses, the trial judge must give directions to the jury to enable the jury to properly consider its verdict.

Clause 31 amends section 419(1) of the **Criminal Procedure Act 2009** to provide that rules of court regulating practice and procedure of a court may be made in respect of any matter which is provided for under the **Jury Directions Act 2012**.

- Clause 32 inserts a new section 443 into the **Criminal Procedure Act 2009**. This new section contains a transitional provision in respect of the amendments to section 223 of that Act. It provides that the amended section 223 applies to a trial that commences on or after the day on which the **Jury Directions Act 2012** comes into operation.
- Clause 33 amends clause 1(1e) of Schedule 2 to the **Juries Act 2000** to remove unnecessary punctuation.
- Clause 34 provides that the Schedule has effect in respect of transitional provisions.

#### **SCHEDULE—TRANSITIONAL PROVISIONS**

- Clause 1 provides that the **Jury Directions Act 2012** will apply to a trial that commences (within the meaning of section 210 of the **Criminal Procedure Act 2009**) on or after the day on which the Act commences.