***Statutory requirements: Jury Act* 1995**

The judge must ensure that the jury is informed in appropriate detail of:

(a) the charge contained in the indictment: *Jury Act* s 51

(b) the jury's duty on the trial: *Jury Act* s 51

(c) the prohibition upon jurors of inquiring about the defendant in the trial: *Jury Act* s 69A.

The judge may also give directions about:

(a) the elements of the offence(s) or as to the defence(s) (if there is consensus about them), so that the jury may focus primarily upon them.

(b) an opening statement by defence counsel after the prosecutor's opening, if defence counsel wishes to deliver such a statement: *R v Nona* [1997] 2 Qd R 436.

- In *R v Oulds* (2014) 244 A Crim R 443, the Court of Appeal discussed the parameters of an opening statement by defence counsel. Such a statement can identify the issues in dispute and those not in dispute. However, it is not the function of an opening statement to identify the evidence to be called in the defence case, because that is specifically provided for by *Criminal Code* s 619(3).

(c) the joint trial. For example:

> **More than one person is being tried. The separate cases against each of them must be decided solely on evidence admissible against that defendant. Some evidence may be admissible against one and not against the other(s), [or in respect of one charge and not another]. Later, I will give you detailed directions about the evidence in the respective cases.**

Body of Opening Remarks

Note to judges:

These draft opening remarks do not include information about circumstantial evidence.

You may consider it necessary to inform the jury about circumstantial evidence before they hear any evidence; or you may consider it more appropriate to instruct the jury about circumstantial evidence once the evidence has been led, so that your instructions have context.

The following is an example of an introductory instruction on circumstantial evidence if you wish to include such an instruction in your introductory remarks:

Your function is to decide whether the defendant is guilty or not guilty of the charge he faces. That involves considering the facts of the case based on the evidence to

be placed before you in this courtroom. The evidence will be presented to you by way of the oral testimony of witnesses, or via exhibits such as photographs or recordings.

You may find some facts are directly proved by the evidence presented to you.

And it may be that you decide during the course of your deliberations to accept that evidence and, therefore, to accept those facts that are directly proved by it.

It might be something a witness heard or saw, or it might be something depicted in a photograph, or something which you hear on a recording.

In addition to facts which are directly proved by the evidence, you may also draw reasonable inferences or reasonable conclusions from the facts which you find to be established by the evidence.

But whenever you are considering drawing a reasonable inference from facts which you find proved by the evidence, it is important you keep three things in mind:

- First, you may only draw *reasonable* inferences based on the facts you find to be proved by the evidence;
- Secondly, there must be a logical and rational connection between the facts you find and the inferences you draw; and
- Thirdly, if more than one inference is reasonably open, that is, an inference adverse to the defendant – in other words, pointing to his guilt – and an inference in his favour – in other words, pointing to his innocence – you must give the defendant the benefit of the inference in his favour.

Let me give you a relatively benign example of drawing a reasonable inference. If you see someone in Melbourne at 10.00 am one day, and then you see the same person in Brisbane at 5.00 pm that same day, the inference is that they have flown to Brisbane. You don't actually know that they have flown from Melbourne to Brisbane; you didn't see them boarding a flight in Melbourne or disembarking in Brisbane, but you may *reasonably infer* that they have flown based on the facts that you actually know, i.e. seeing them in Melbourne at 10.00 am and then in Brisbane at 5.00 pm. You are able to reasonably draw the *inference* that they flew from Melbourne to Brisbane because the only way to get from Melbourne to Brisbane in a few hours is to fly. So that is an example to inferring something from facts you do know and that you accept.

Introduction

Members of the jury, we will be working together during this trial although, as I will discuss shortly, we have different roles and tasks. My first task is to give you some information about how this trial will unfold, relevant legal principles and what is expected of you.

Being a juror may be entirely new to you. Some of you may have served on a jury before. You have, in any event, seen a film this morning about jury service and

received some printed material about your work as jurors. Some of what I say may sound familiar to you, but we recognise that you are being asked to digest a great deal of material in a short period of time and briefly repeating some of it will, we hope, assist your understanding.

You represent a very important institution in our community – the institution of trial by jury. Over many centuries our legal system has developed to guarantee to any individual charged with a criminal offence the right to have the case against them decided by twelve independent and open-minded members of the community.

In the course of these introductory remarks, I will, as I've mentioned, discuss your role and duty as jurors and the nature of this case.

I will explain in a general way the principles of law that apply in this case. Explaining the law to you, and giving you directions about how to apply it, is my task. My explanations and directions about legal matters are critical to the job you have to do and bear repeating, so as well as hearing something about them now and, possibly, during the trial, you will hear about them in more detail at the end of the trial before you finally retire to consider your verdict.

Introduction of lawyers, defendant(s)

The defendant [X] **is the person sitting in what is called the 'dock'. Don't read anything into the fact that** [X] **is sitting in the dock, with officers either side of him. That is just one of the historical traditions of our criminal law courts, as are our wigs and gowns. Where he is sitting communicates nothing about him. Importantly, it does not affect the fact that, under our law, he is presumed to be innocent until proven guilty.**

The barrister sitting […] is [Y]**, the Crown prosecutor. The barrister sitting […] is** [Z]**, who represents the defendant.**

In a criminal trial, the prosecutor presents the charges in the name of the State but that does not mean that anything the prosecutor says is more persuasive or important than defence counsel's submissions.

You must even-handedly exercise your own judgment about arguments and submissions from both the prosecutor and defence counsel, accepting or

rejecting them upon your evaluation of their merit and, importantly, how they sit with your own findings of fact, based upon the evidence.

Role of judge and jury

Your ultimate role in this case is to decide if the defendant is guilty or not guilty. That will be your decision alone, not mine. But it does involve us working together.

My job is to ensure the trial is conducted fairly, and in accordance with the law, and to explain the principles of law that you must apply to make your decision.

You are the sole judges of the facts in this case. That means that it is you and not me who resolves disputes or differences about matters of fact.

And you are to reach your decisions about the facts only on the basis of the evidence. You must ignore all other considerations. Emotion is to play no part. In particular, you must ignore any feelings of sympathy for, or prejudice against, the defendant or anyone else connected in any way to this trial.

You will make your decision solely on the basis of the evidence, and you alone will decide what evidence to accept, or reject.

The evidence will be what witnesses say from the witness box and any documents or other materials which are admitted during the trial. It is on that evidence – and nothing else – that you will decide if the Crown has proved the defendant's guilt, beyond reasonable doubt. (The statement about the witness box may need to be amended where a child witness's evidence is to be admitted pursuant to *Evidence Act* s 93A and a pre-recording of evidence is to be played during the trial.)

You will be the people deciding on the ultimate question in this case – whether the defendant is guilty or not guilty. And, as I have said, I have no role to play in that decision. So, while you must keep an open mind until all of the evidence has been placed before you, you will appreciate that you need to pay close attention to the evidence as it is being presented to you – from the first witness to the last.

You will need to pay close attention to *how* each witness gives evidence: how a witness presents to you and how they respond to questioning, especially in cross-examination where their factual assertions may be tested or challenged, may help you to decide if they are truthful and reliable (or accurate) witnesses – or, if you accept some of their evidence but not all of it, as you are entitled to do.

My role is to deal with legal matters. Sometimes a legal matter will arise that I can deal with on the spot. You may be familiar with barristers objecting to one another's questions. Often, that is a matter that I can deal with immediately. Sometimes though, I will not be able to deal with a legal matter on the spot and I will need to hear submissions from the lawyers about it.

If a legal matter of that kind arises, I am likely to ask you to retire to your jury room while I deal with it. I will do this to ensure that your mind is not cluttered by information which is not evidence. Your job is hard enough without exposing you to information which is unnecessary to it.

So if this happens, I ask for your patience and understanding; the lawyers and I will certainly try to minimise any time you have to spend away while we resolve questions like that. To limit your inconvenience, I may extend your morning tea time or ask you to take an early lunch break.

Burden and standard of proof

Now to some principles of law.

There are two fundamental principles which apply to every criminal trial. The first is that a defendant is presumed innocent. The second is that a jury may not find a defendant guilty of a criminal offence unless and until the prosecution has satisfied the jury that the defendant is guilty of the offence beyond a reasonable doubt.

A defendant, who is *presumed* innocent, does not have to prove *anything*, and is under no obligation to produce any evidence at any stage. They can give evidence and they can call evidence in their case – but they are not obliged to.

In reaching your verdict you must consider all of the evidence placed before you – whether it is placed before you by the prosecution or by the defendant. In reaching your verdict, you will ask yourself whether, on the whole of the evidence, the prosecution has satisfied you of the guilt of the defendant beyond a reasonable doubt. The defendant is entitled by law to the benefit of any reasonable doubt that may be left in your mind at the end of your deliberations. So it is important, and logical, that you keep an open mind as the case progresses.

Keeping deliberations confidential; no independent investigation

As I have said, you must pay careful attention to the evidence, and ignore anything you may hear or read about the case out of court. You may discuss the case amongst yourselves but only amongst yourselves. But you must not discuss it with anyone else and this includes using electronic means.

The reason is this: you are the 12 people who are to determine the outcome of this trial; and solely on the evidence presented here in the courtroom. Do not take the risk of any external influence on your minds. So do not speak to anyone who is not a member of this jury about the case. If anyone else attempts to talk to you about this trial, try to discourage them. Do not tell anyone else who is on this jury, but mention the matter to the bailiff when you get back to court so that it can be brought to my attention. In the same way, if, while you are outside this courtroom, you inadvertently overhear something about this trial, do not tell anyone else on the jury but tell the bailiff so that that can also be brought to my attention. And do not attempt to investigate it or to inquire about anyone involved in the case yourselves.[1]

It is unjust for you to act on information which is not in evidence and the prosecution and defence do not know you are acting on.

You will appreciate that information in the public arena is not always accurate. It may well be fake news. Or it may be information introduced into the public domain by someone who has a certain agenda. And the prosecution and the defence have not had the opportunity to test it. Also private inquiries may lead to inaccuracies, for example, a scene may well have changed dramatically over time.

There have been trials that have been aborted, or convictions quashed and re-trials ordered, because a jury has made private investigations. So do not view or visit the locations where the events of the case took place. Do not consult any source such as a newspaper, dictionary, reference manual or the internet for information about anyone or anything related to this case. Do not do your own

[1] This warning might be repeated at the end of the first day.

research on any matter of law.[2] If any member of the jury refers to information or matters not in evidence, please inform the Bailiff. [3]

If you have a question about the law or the evidence or need additional information about anything, I will attempt to assist you. Reduce your request to writing - pass it on to the bailiff. S/he will give it to me. I will discuss your request with the lawyers and respond to it as soon as possible.

The charge

Let me explain now the charge/s the defendant faces.

It is alleged by the Crown that [defendant's name] **committed the offence of** [details of offence]**.**

[Where appropriate**: Details of the charge appear in a document which my Associate will distribute to each of you.** (This may occur during the prosecution opening if the prosecutor has prepared the document. Canvass this issue with counsel before the judge's opening remarks.) **It contains some legal language which I will explain to you later.]**

The defendant has pleaded 'not guilty' to that charge. You have been given the responsibility of deciding or judging whether the defendant is guilty, or not guilty. You will do that by what is called 'returning a verdict' after the trial. Your final verdict will be your judgment as to whether the defendant is guilty or not guilty.

Criminal charges have elements or parts.

To find the defendant guilty of a charge, the Crown must prove every element of the offence beyond a reasonable doubt.

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[2] Where there has been pre-trial publicity, further emphasis may be required both at the beginning of the trial and in the summing-up: *R v Bellino & Conte* (1992) 59 A Crim R 322, 343; *R v Glennon* (1992) 173 CLR 592, 603-604, 616, 624. The following additional direction might be given in such a case:

> "**You must not use any aid, such as a textbook, to conduct research, and except in this courtroom you must not in any way seek or receive information about questions that arise in the trial or about the accused, or about any witnesses or the deceased, for example, by conducting research using the internet, or by communicating with someone by phone, email or Twitter, through any blog or website, including social networking websites such as Facebook, LinkedIn and YouTube.**"

The directions given by trial judges should underline unequivocally the collective responsibility of jurors for their own conduct: *R v Thompson* [2011] 1 WLR 200.

[3] In some cases a further warning may be given: "**Apart from the issue of unfairness, it is also a criminal offence to conduct your own inquiries about a defendant and I would not want to see any of you charged with an offence**": *Jury Act* 1995 (Qld), s 69A(1).

The charge of [XX] **has the following elements …**

[Explain the charge**]**

It is likely that the critical issues for you in this case will be [outline issues**].**

Where there are multiple charges:

You will see that the defendant has been charged with a number of offences. They are all being tried together. You will be required to consider each charge separately, and return a verdict on each of them. For the moment, you should know that your verdicts don't have to be the same on every charge. I will explain more about your verdicts later.

You must not be prejudiced against the defendant because he/she is facing a number of charges. All defendants are presumed innocent and treated as being not guilty of any offence unless and until they are proved guilty through your evaluation of all the evidence in the case and the application of the law as I explain it to you.

The charges are being tried together as a matter of convenience and also because the Crown alleges there is some connection between them; but that still means that you must consider each charge separately – and the Crown has to prove each of them beyond reasonable doubt.

Trial Procedure

Shortly, the prosecutor will give you an outline of the case, outlining the evidence the prosecution relies upon.

[If there is to be a defence opening at the start of the trial, add: **Defence counsel will then respond, and that should alert you to the factual disputes you will have to decide.]**

Then you will hear evidence from the prosecution witnesses. The prosecutor will call them one by one. When the prosecutor has finished questioning a witness, defence counsel can – but they do not have to – cross-examine the witness. Sometimes, after cross-examination, the prosecution may ask a few more questions.

When all the prosecution witnesses are finished, the prosecution will close their case. The defendant will be asked if he/she intends to give evidence or call

witnesses. Remember that a defendant has no obligation to give, or call, evidence but he/she may choose to.

If that happens, the procedure will be the same as for the prosecution witnesses. The witnesses will be called by defence counsel and questioned. They may be cross-examined by the prosecution and, if there is cross-examination, they may be re-examined by defence counsel.

Writing materials will be made available to you so that you can take notes if you wish. However, be careful not to let detailed note-keeping distract you from hearing and observing the witnesses. Any notes that you take must remain in the court precincts and must not be taken home. The Bailiff will ensure they remain confidential by having them destroyed at the end of the trial.

After all of the evidence has been given, counsel will address you and make submissions and present arguments to you about the evidence you have heard and seen.

Finally, I will 'sum up' the case to you, reminding you of the law that you have to apply during your deliberations and the issues you will need to consider. Then, you will retire to consider your verdict(s).

Daily sitting hours are 10.00 am until 1.00 pm, and 2.30 to 4.30 pm. There will be a break for morning tea about 11.30 am. At 1.00 pm we break for lunch until 2.30 pm. It may sound relaxed compared to your normal working day but you will find that paying very close attention to the evidence, as you must to do your job fairly, is tiring.

You will go home each evening; we no longer lock up juries, other than in exceptional circumstances. This is so even after you start your deliberations.

When you have reached your verdict, you will be brought back into court and your speaker will state that verdict, on behalf of all of you.

Assistance

If you experience a problem related to this trial, please let me know. I will help you as much as I can. If you wish to communicate with me while you are here in the courtroom, write the question down and ask the bailiff to give it to me, or attract my or the bailiff's attention so that the matter can be addressed.

If the problem arises when you are not in the courtroom, hand the bailiff a note of it, or else tell the bailiff that there is a matter you wish to raise with me. I will then decide how to deal with it. But do not disclose the voting numbers in favour of conviction or acquittal in any such communication.[4]

As you can see, these proceedings are being recorded. It is not the practice in Queensland for a jury to be supplied with a copy of the transcript of the evidence so recorded. If you need to be reminded of what any of the witnesses said, I can arrange for it to be read back to you. Just give the Bailiff a note identifying the evidence.[5]

Reserve jurors

I want to explain the role of our reserve jurors. The twelve of you who were first chosen are the jury in this case; but we also have […] reserve jurors. This is anticipated to be a long trial and, should it happen for whatever reason that any juror can't complete their jury service, they can be replaced. So our reserve jurors will be with the jury the whole time and must perform the same important work but, when the time comes for the jury to retire and consider the verdict, they may find themselves excused. I appreciate that may be frustrating (or, of course, a relief) but it is a precaution that, in light of the possible length of this trial and past experience, it is wise to take.

We will start the trial now. You will understand from what I have said that a fair trial – one which is fair to both sides – requires that you pay close attention to the evidence, keep an open mind, and weigh all the evidence in an unbiased and unprejudiced and rational way. It is an important and responsible task which I am confident that you will treat with the utmost seriousness.

Mr/Ms Prosecutor …

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4 Jury deliberations should remain confidential: *Smith v The Queen* (2015) 255 CLR 161; [2015] HCA 27 at [32] and [53].

5 *R v Rope* [2010] QCA 194. If the jury require reminding of the evidence, or parts of it, or elucidation of some questions of fact which the record of the trial could provide, it should be given to them.