

Reasonable Doubt

The issue of explaining the concept of reasonable doubt to a jury was considered by the High Court in *R v Dookhea*.¹ The High Court there said that although it is, general speaking, unwise for a trial judge to attempt any explication of the concept of reasonable doubt, trial judges should be encouraged to contrast the standard of proof beyond reasonable doubt with the lower civil standard of proof on the balance of probabilities.

An appropriate direction is:

For the prosecution to discharge its burden of proving the guilt of the defendant, it is required to prove beyond reasonable doubt that he is guilty. This means that in order to convict you must be satisfied beyond reasonable doubt of every element that goes to make up the offences charged.

Proof beyond reasonable doubt is the highest standard of proof known to the law. It can be contrasted with the lower standard of proof that is required in a civil case where matters need only be proved on what is called the “balance of probabilities.” That is, the case must be proved to be more likely than not.

In a criminal trial, the standard of satisfaction is much higher; the prosecution must prove the guilt of the defendant beyond reasonable doubt.

It is for you to decide whether you are satisfied beyond reasonable doubt that the prosecution has proved the elements of the offences. If you are left with a reasonable doubt about guilt, your duty is to acquit: that is, to find the defendant not guilty. If you are not left with any such doubt, your duty is to convict: that is, to find the defendant guilty.

¹ [\(2017\) 91 ALJR 960](#); [2017] HCA 36 at [41]: “Secondly, although, as authority stands, it is generally speaking unwise for a trial judge to attempt any explication of the concept of reasonable doubt beyond observing that the expression means what it says and that it is for the jury to decide whether they are left with a reasonable doubt (and in certain circumstances explaining that a reasonable doubt does not include fanciful possibilities), the practice ordinarily followed in Victoria, as it was in this case, and often followed in New South Wales, includes contrasting the standard of proof beyond reasonable doubt with the lower civil standard of proof on the balance of probabilities.⁵⁹ That practice is to be encouraged. It is an effective means of conveying to a jury that being satisfied of guilt beyond reasonable doubt does not simply mean concluding that the accused may have committed the offence charged or even that it is more likely than not that the accused committed the offence charged. What is required is a much higher standard of satisfaction, the highest known to the law: proof beyond reasonable doubt.”

The references in footnote 59 are: Judicial College of Victoria, [Victorian Criminal Charge Book](#), (2017) at 1.7. See also Judicial Commission of New South Wales, [Criminal Trial Courts Bench Book](#), (2017) at [1.480], [1.490]; *R v Ho* (2002) 130 A Crim R 545 at 548 [15] per Bell J (Meagher JA and Hidden J agreeing at 562 [66], [67]); *Ward v The Queen* [2013] NSWCCA 46 at [54] per McClellan CJ at CL (Latham J and Adamson J agreeing at [246], [247]).