HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 05 Jun 2025 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number:	M20/2025
File Title:	Farshchi v. The King
Registry:	Melbourne
Document filed:	Form 27C - (A-G VIC) Intervener's submissions
Filing party:	Intervener
Date filed:	05 Jun 2025

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

SEYYED ABDOLZADEH FARSHCHI
Appellant

and

THE KING
Respondent

SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE STATE OF VICTORIA (INTERVENING)

PARTS I, II & III: CERTIFICATION AND INTERVENTION

1. These submissions are in a form suitable for publication on the internet.

2. The Attorney-General for the State of Victoria (**Victoria**) intervenes pursuant to s 78A of the *Judiciary Act 1903* (Cth) in support of the respondent.

PART IV: ARGUMENT

A. INTRODUCTION AND SUMMARY

3. Victoria submits that the direction in s 64(1)(e) of the *Jury Directions Act 2015* (Vic) (**JDA**) does not diminish the "beyond reasonable doubt" standard of proof (**BRD standard**). The direction given in this proceeding, considered as a whole, was consistent with s 13.2 of the *Criminal Code* (Cth) and was therefore picked up and applied by s 68 of the *Judiciary Act* to the appellant's trial.

4. If, contrary to the above submission, the Court holds that the direction given in accordance with s 64(1)(e) did diminish the BRD standard, it would be inconsistent with s 13.2 of the *Criminal Code* and incapable of being picked up and applied by s 68 of the *Judiciary Act*. The respondent has accepted that if the jury was directed contrary to s 13.2, the trial judge's direction would have resulted in a substantial miscarriage of justice.

5. In either of the above circumstances, it would not be necessary to decide the question of whether the BRD standard is an essential element of a trial by jury of an indictable offence against a law of the Commonwealth for the purpose of s 80 of the *Constitution* and, in

accordance with this Court's long-standing prudential principle, the Court should not do so.

6. In any event, if it were necessary to reach that question, and if the direction given in accordance with s 64(1)(e) did diminish the BRD standard, that provision would not be inconsistent with s 80 of the *Constitution* because the BRD standard is not an essential element of a trial by jury for the purpose of s 80.

7. Victoria otherwise respectfully adopts the respondent's written submissions.

B. THE PURPOSE AND EFFECT OF S 64(1)(E) OF THE JDA, UNDERSTOOD IN CONTEXT

8. Parliament's evident purpose in enacting s 64(1)(e) was to facilitate trial judges explaining the BRD standard to juries, not to diminish it. That is especially so when, as in this case, the direction is given in combination with the other permissible directions contemplated by s 64(1) or with other directions which correctly explain how the BRD standard is to be applied to the evidence presented at trial.

9. Whether the impugned direction achieved that purpose ultimately turns on the effect of the directions actually given in the trial, considered as a whole, rather than on the meaning of the words "unrealistic possibility" in s 64(1)(e) considered in the abstract. When regard is had to the whole of the summing up and directions given in this case, it is clear that the impugned direction had its intended effect and was not affected by error.

B.2 The explanatory purpose of s 64(1) of the JDA, and its legislative history

10. Section 64(1) of the JDA was enacted in the context of a contemporary research-based understanding of the need to assist juries to understand the BRD standard. Indeed, attention to the legislative history of s 64(1) reveals that it was intended, in part, to be beneficial to accused persons, because jurors may have been applying a lesser standard of proof than that required by the BRD standard.

Historical willingness, then reluctance, of trial judges to explain the BRD standard

11. The BRD standard crystallised in the common law over time (AS [49]).[1] Even after the standard came to be established, the common law was not always hostile to an explanation of the standard being given to the jury and did not require it to be explained in a uniform way. By the late 1800s, English judges had developed various ways to explain to the jury the level of confidence they needed to have in an accused's guilt before they could

[1] See, further, *R v Dookheea* (2017) 262 CLR 402 at [30]-[34] (the Court).

convict. For example, in what Barton A-CJ in *Brown v The King* described as "an adequate condensation of the principle",[2] Martin B in *R v White* directed a jury that: "in order to enable them to return a verdict against the prisoner, they must be satisfied, beyond any reasonable doubt, of his guilt; and this as a conviction created in their minds, not merely as a matter of probability; and if it was only an impression of probability, their duty was to acquit".[3]

12. The position in the United States of America at around this time was to similar effect. In *Hopt v Utah*, it was observed:

> … an instruction to the jury that they should be satisfied of the defendant's guilt beyond a reasonable doubt had often been held sufficient without further explanation. In many cases it may undoubtedly be sufficient. It is simple, and as a rule to guide the jury, is as intelligible to them generally as any which could be stated with respect to the conviction they should have of the defendant's guilt to justify a verdict against him. **But in many instances, especially where the case is at all complicated, some explanation or illustration of the rule may aid in its full and just comprehension.** As a matter of fact, it has been the general practice in this country of courts' holding criminal trials to give such explanation or illustration.[4]

13. Early post-Federation case law demonstrated a tolerance for different explanations of the BRD standard. For example, in *R v Roberts*, Cohen J referred to *White* and to learned scholarly explanations of the BRD standard and said: "It appears, therefore, to be clear that when a Judge directs a jury in a criminal case, it is not only his duty to tell them that they must be satisfied of the prisoner's guilt beyond reasonable doubt, but to explain to them what a reasonable doubt is."[5]

14. It appears that the first case in this Court to consider the matter in any detail was *Brown v The King*.[6] That case is sometimes cited as an early authority on the undesirability of explaining the BRD standard.[7] However, while each member of the Court expressed caution about explaining the standard, each allowed that such explanation could on occasions be desirable. Barton A-CJ said that "one embarks on a dangerous sea if he

---

2 (1913) 17 CLR 570 at 586 (Barton A-CJ); see also 595 (Isaacs and Powers JJ).

3 *Brown* (1913) 17 CLR 570 at 585-586 (Barton A-CJ), quoting *White* (1865) 4 F & F 383 at 385ff; see also 595 (Isaacs and Powers JJ), quoting *Manners' Case* (1849) CCC; Wills 195 (Pollock CB) as quoted in *White* (1865) 4 F & F 383 at 388.

4 120 US 430 (1887) at 440 (Field J, for the Court) (emphasis added).

5 (1910) 10 SR (NSW) 612 at 616; see also 616 (Pring J), who said that it was not necessary to use the exact words "beyond reasonable doubt"; and 617 (Gordon J, concurring).

6 (1913) 17 CLR 570. See also *Peacock v The King* (1911) 13 CLR 619 at 652 (Barton J), 661-662, 670-671 (O'Connor J).

7 See, eg, *R v Southammavong* [2003] NSWCCA 312 at [12] (Spigelman CJ, O'Keefe and Greg James JJ agreeing).

attempts to define with precision a term which is in ordinary and common use with relation to this subject matter, and which is usually stated to a jury without embellishment as a well understood expression."[8] Nevertheless, his Honour went on to endorse, as "a good and sufficient guide as to the nature of the reasonable doubt which should prevent a jury from convicting in a criminal case", the following explanation:

> … the persuasion of guilt ought to amount to a moral certainty or, as an eminent Judge expressed it, 'such a moral certainty as convinces the minds of the tribunal, as reasonable men, beyond all reasonable doubt'.[9]

15. Similarly, Isaacs and Powers JJ said that "[t]he words 'reasonable doubt' are in themselves so far self-explanatory that no further explanation is considered strictly necessary. Usually attempts to elucidate them do not add to their clearness."[10] However, their Honours qualified that general proposition, saying: "The issues which depend upon a correct apprehension of the phrase are, however, sometimes so great that Judges have naturally, and on occasions most desirably, endeavoured to convey its true and real meaning in terms which leave no possibility of error."[11] Further, their Honours said: "We are fully conscious that the expression 'reasonable doubt,' though it can be amplified, cannot be simplified. Still, there are cases where amplification is necessary."[12] Their Honours then went on to offer such an amplification:

> Where a jury, with minds directed to the single object of performing their duty by arriving at a true verdict, and unswayed by any ulterior consideration which might divert them from the truth, investigate and weigh all the circumstances of the case fully and fairly, and, after doing so, find that notwithstanding any possible balance of their opinion against the accused there nevertheless exists in their minds a residuum of doubt as to his guilt — not a mere conjectural, visionary doubt, or a doubt arising from the bare possibility of his innocence, but a real doubt created by the operation of the circumstances before them upon their reason and common sense, then their doubt is a reasonable doubt within the meaning of the rule.[13]

16. Later authorities took a somewhat stronger line against any elaboration of the BRD standard. In *Thomas v The Queen*, Windeyer J surveyed the authorities, including those discussed above, and said that attempts to paraphrase or embellish the BRD standard are

---

8 (1913) 17 CLR 570 at 584.
9 (1913) 17 CLR 570 at 585, quoting Best, *Best on Evidence* (9th ed, 1902) at §95.
10 (1913) 17 CLR 570 at 594.
11 (1913) 17 CLR 570 at 594.
12 (1913) 17 CLR 570 at 596.
13 (1913) 17 CLR 570 at 596.

not always helpful or necessary, given the expression "conveys a meaning without lawyers' elaborations".[14] Nevertheless, his Honour allowed:

> Of course, if the trial judge thinks that, influenced by advocacy or for some other reason, the jury may conjure up mere chimeras of doubt, he may well emphasize that for a doubt to stand in the way of a conviction of guilt it must be a real doubt and a reasonable doubt — a doubt which after a full and fair consideration of the evidence the jury really on reasonable grounds entertain.[15]

17. In *Dawson v The Queen*, Dixon CJ likewise said that it is wise to avoid explanations of the BRD standard because the phrase "is understood well enough by the average man in the community".[16]

18. In *Green v The Queen*, a unanimous Court, after referring to the more restrictive aspects of the above quotations, said that it was "remarkable" that the trial judge in that case had embarked upon "a new endeavour to explain that which requires no explanation and to improve upon the traditional formula."[17] The particular explanation given by the trial judge (see RS [29]) was held to be a misdirection because, among other things, it required the jury "to submit their processes of mind to objective analysis" and conveyed the impression "that a comfortable satisfaction of the accused's guilt was enough to warrant conviction."[18] Even in *Green*, however, the Court acknowledged that there may be circumstances in which "the judge can properly instruct the jury that fantastic and unreal possibilities ought not to be regarded by them as the source of reasonable doubt."[19]

19. To similar effect, in *La Fontaine v The Queen*, Barwick CJ cited *Green* in support of the observation "that it is both unnecessary and unwise for a trial judge to attempt explanatory glosses on the classical and, as I think, popularly understood formula which expresses the extent of the onus resting on the Crown in its attempt to establish the commission of a crime".[20]

Concerns about the lack of assistance offered to juries as to the BRD standard

20. It can thus be seen that the judicial resistance to giving any explanation to jurors as to the meaning of the phrase "beyond reasonable doubt" was grounded, at least in part, in a view

---

14 (1960) 102 CLR 584 at 604-605; see also 593 (Fullagar J), 595 (Kitto J).
15 (1960) 102 CLR 584 at 605-606.
16 (1961) 106 CLR 1 at 18.
17 (1971) 126 CLR 28 at 32.
18 (1971) 126 CLR 28 at 33.
19 (1971) 126 CLR 28 at 33.
20 (1976) 136 CLR 62 at 71; see also 87 (Mason J relevantly agreeing).

that the phrase was readily understood by them. More recently, however, concerns were expressed in the case law and research literature about the dangers of leaving the jury unassisted as to the BRD standard.

21. In *Darkan v The Queen*, Gleeson CJ, Gummow, Heydon and Crennan JJ observed that "[t]he stand which this Court has taken on the expression 'beyond reasonable doubt' — that it alone must be used, and nothing else — has not been shared elsewhere. Even in Australia it is an extreme and exceptional stand."[21]

22. The appropriateness of judicial explanation of the BRD standard again arose for this Court's consideration in *R v Dookheea*.[22] In that case, the trial judge had directed the jury that the prosecution did not have to satisfy them of the accused's guilt "beyond any doubt, but beyond reasonable doubt". This Court noted that the line of authority against providing explanations of the BRD standard was "open to question".[23] Ultimately, the Court in *Dookheea* was not asked to depart from that line of authority,[24] but made the following observation:

> Today, views might reasonably differ as to whether "proof beyond reasonable doubt" is a well-understood expression in ordinary and common use with relation to the subject matter. On the one hand, it might be supposed that generally increased standards of education and increased exposure to film, television and digital media would have made the concept of proof beyond reasonable doubt better understood today than it was considered to be a century ago. But, on the other hand, the relative frequency with which juries these days are known to ask trial judges to define "reasonable doubt" or to provide some other form of guidance as to how they should decide if they have a reasonable doubt suggests that the concept of proof beyond reasonable doubt is not as well known or well understood as it was once supposed to be. And significantly, it appears that the experience in the United Kingdom, Canada and New Zealand is that juries today do have difficulties with the concept of proof beyond reasonable doubt, and, accordingly, that more is required by way of explication.[25]

23. These observations reflected those of other experienced criminal judges, writing extra-curially, and research conducted into jurors' understanding of the BRD standard. For example, in 2010, the then-Chief Justice of the Northern Territory observed:

> It is the experience of many trial judges that … not infrequently juries seek a further explanation as to the meaning of this standard of proof. Constrained by repeated admonitions not to embark upon explanations that depart from the standard direction in

---

21 (2006) 227 CLR 373 at [69]; see also [131] (Kirby J).
22 (2017) 262 CLR 402.
23 (2017) 262 CLR 402 at [23].
24 It was submitted, and the Court accepted, that the trial judge's direction did not cause a substantial miscarriage of justice: see [28], [39].
25 (2017) 262 CLR 402 at [27].

> other than special circumstances, trial judges frequently struggle to answer sensibly such inquiries about a fundamental aspect of the system of criminal justice.[26]

24. Similarly, the then-Chief Justice of New South Wales explained that the BRD standard "is one of the most common sources of juror confusion and complaint".[27]

25. Empirical studies bore out those observations. In New South Wales, the Bureau of Crime Statistics and Research compiled data from 1,225 of the 1,344 jurors from 112 Supreme Court and District Court criminal trials in that State between July 2007 and February 2008.[28] The data revealed that approximately[29] 55% of jurors believed that the phrase "beyond reasonable doubt" meant "sure" that the accused is guilty, 23% believed it meant "almost sure", 12% believed it meant "very likely", and 10% believed it meant "pretty likely".[30]

26. This reflected the findings of an earlier study in New South Wales, which found that jurors disagreed about the meaning of "beyond reasonable doubt", and were frustrated about the limited guidance given by trial judges.[31] That study revealed that when the trial judge declined to provide assistance as to the BRD standard, "the foreperson of one jury looked up the words in a dictionary at home and the jury used the dictionary definitions to inform their deliberations the following day."[32]

---

26 Martin, "Beyond Reasonable Doubt" (2010) 1 *Northern Territory Law Journal* 225 at 226. See also, eg, Eames, "Tackling the Complexity of Criminal Trial Directions: What Role for Appellate Courts?" (2007) 29 *Australian Bar Review* 161 at 179-183; Vincent, *Inquiry into the Circumstances that Led to the Conviction of Mr Farah Abdulkadir Jama,* (Report, 2010) at 40; Wood, "Summing Up in Criminal Trials - A New Direction?" (Conference on Jury Research, Policy and Practice, Sydney, 11 December 2007).

27 Bathurst, "Community Participation in Criminal Justice" (Opening of Law Term Dinner, Law Society of NSW, 30 January 2012) at 17.

28 Trimboli, "**Juror Understanding** of Judicial Instructions in Criminal Trials" (2008) 119 *Crime and Justice Bulletin* 1.

29 Percentages have been rounded to the nearest whole number, and are percentages of those who responded to the relevant question in the survey (noting that some respondents did not respond to every question).

30 Trimboli, "Juror Understanding" at 6.

31 Chesterman, Chan and Hampton, ***Managing Prejudicial Publicity****: An Empirical Study of Criminal Jury Trials in New South Wales* (Law and Justice Foundation of NSW, 2001) at [449]-[454].

32 Chesterman et al, *Managing Prejudicial Publicity* at [451].

27. Similar surveys were conducted in Tasmania[33] and Queensland,[34] which affirmed the difficulty of jurors in understanding and applying the BRD standard. There have also been a number of studies in overseas jurisdictions which have made similar findings, although many have involved mock jurors.[35] In New Zealand, a 1998 survey of 312 jurors by the New Zealand Law Commission observed that:

> [M]any jurors said that they, and the jury as a whole, were uncertain what "beyond reasonable doubt" meant. They generally thought in terms of percentages, and debated and disagreed with each other about the percentage certainty required for "beyond reasonable doubt", variously interpreting it as 100 per cent, 95 per cent, 75 per cent, and even 50 per cent. Occasionally this produced profound misunderstandings about the standard of proof.[36]

28. The New Zealand Law Commission's findings were referred to by the Supreme Court of New Zealand in *R v Wanhalla*, where it was said to be "alarming that New Zealand jurors could act on the basis that probabilities of guilt expressed in percentage terms as low as 75% or 50% are enough to warrant conviction."[37] This concern is part of what led the Court in *Wanhalla* to permit trial judges to offer more guidance on the BRD standard than was previously permitted.

29. Summarising the state of that literature as at 2012, the New South Wales Law Reform Commission concluded:

---

33 Warner, Davis and Underwood, "The Jury Experience: Insights from the Tasmanian Jury Study" (2011) 10 *The Judicial Review* 333 at 345-347.

34 McKimmie, Antrobus and Davis, "Jurors' Trial Experiences: The Influence of Directions and Other Aspects of Trials" (University of Queensland and Queensland Law Reform Commission, November 2009) at 13-15.

35 Simon and Mahan, "Quantifying Burdens of Proof: A View from the Bench, the Jury and the Classroom" (1971) 5(3) *Law and Society Review* 319; London School of Economics Jury Project, "Juries and the Rules of Evidence" [1973] *Criminal Law Review* 208; Kerr et al, "Guilt Beyond Reasonable Doubt: Effects of Concept Definition and Assigned Decision Rule on the Judgments of Mock Jurors" (1976) 34(2) *Journal of Personality and Social Psychology* 282; Horowitz and Kirkpatrick, "A Concept in Search of a Definition: The Effects of Reasonable Doubt Instructions on Certainty of Guilt Standards and Jury Verdicts" (1996) 20(6) *Law and Human Behavior* 655; Koch and Devine, "Effects of Reasonable Doubt Definition and Inclusion of a Lesser Charge on Jury Verdicts" (1999) 23(6) *Law and Human Behavior* 653; Dhami, "On Measuring Quantitative Interpretations of Reasonable Doubt" (2008) 14(4) *Journal of Experimental Psychology: Applied* 353; Devine, *Jury Decision Making: The State of the Science* (2012) 87-88; Essex and Goodman-Delahunty, "Judicial Directions and the Criminal Standard of Proof: Improving Juror Comprehension" (2014) 24(2) *Journal of Judicial Administration* 75; Smith, "The Beyond a Reasonable Doubt Standard of Proof: Juror Understanding and Reform" (2022) 26(4) *The International Journal of Evidence & Proof* 291 at 294-296.

36 New Zealand Law Commission, *Juries in Criminal Trials Part Two: A Summary of the Research Findings* (Preliminary Paper 37, 1999) Vol 2 at [7.16].

37 [2007] 2 NZLR 573 at [41]-[42] (William Young P, Chambers and Robertson JJ).

> Studies conducted in several other jurisdictions also suggest jurors may not sufficiently and consistently understand the phrase. … No single conclusion can be drawn with any degree of certainty from these studies, although it is of interest that they have been consistent in their observation that definitional variations of reasonable doubt have affected individual and group verdicts and that the meaning of the concept, particularly when unexplained, has not necessarily been obvious to the study participants.[38]

Legislative history of s 64(1) of the JDA

30. That fact that, as the High Court said in *Dookheea,* "the concept of proof beyond reasonable doubt is not as well known or well understood as it was once supposed to be", possibly reflected the increasing length and complexity of many criminal trials and consequently the increasing length and complexity of the trial judge's charge to the jury.[39]

31. In Victoria, concerns of this nature led to the Victorian Law Reform Commission being asked to review the law and practice of jury directions in criminal trials.[40] There was a concern that jury directions were often lengthy but "not particularly helpful" to juries.[41] The Commission's 2009 report relevantly recommended that legislation be introduced to "govern the content of all directions of a procedural nature … [including the] burden and standard of proof".[42]

32. A 2013 report on jury directions by the Criminal Law Review branch of the Victorian Department of Justice recommended the enactment of legislation that relevantly provided for "explanations of proof beyond reasonable doubt".[43] That recommendation was in large part concerned to ensure maintenance of the protection to an accused afforded by

---

38 New South Wales Law Reform Commission, *Jury Directions* (Report 136, November 2012) at [4.42]-[4.43].

39 Law Reform Committee, Parliament of Victoria, *Jury Service in Victoria* (Final Report, December 1997) Vol 3 at [2.31], [2.199]ff; V M Bell, "Jury Directions: the Struggle for Simplicity and Clarity" (Banco Court Lecture, Supreme Court of Queensland, 20 September 2018) at 1. See also, generally, Weinberg, "Jury Directions on Trial – A Pathway Through the Labyrinth?" (Supreme and Federal Court Judges' Conference, Darwin, 5–9 July 2014).

40 The Commission consulted widely, including with judges of the Supreme and County Courts, the Office of Public Prosecutions, the Criminal Bar Association, other legal organisations, and the broader public: Victorian Law Reform Commission, *Jury Directions* (Final Report 17, 2009) (**2009 VLRC Report**) at 7.

41 2009 VLRC Report at 4; see also 8.

42 2009 VLRC Report at 13, 73. Following the publication of the Commission's report there was judicial endorsement of the need to simplify the directions which judges were required to give "if the Victorian community is to continue to have confidence in the operation of jury trials": *Wilson v The Queen* (2011) 33 VR 340 at [5] (Maxwell P).

43 Criminal Law Review, Department of Justice, *Jury Directions: A New Approach* (January 2013) (**2013 DoJ Report**) at [3.4]. See also Department of Justice, *Simplification of the Jury Directions Project: A Report to the Jury Directions Advisory Group* (August 2012) at [1.15].

proper application of the BRD standard.[44] The report surveyed some of the social science research discussed above showing juror misunderstandings of the BRD standard.[45] The report also referred to the directions endorsed in Canada and New Zealand in *R v Lifchus*[46] and *Wanhalla*[47] respectively, and recommended directions incorporating elements from each.[48] The wording of s 64(1)(e) appears to have been adapted, "to reflect modern Australian language", from the words "imaginary or frivolous doubt" in the *Lifchus* direction, as it was considered that "frivolous doubt" "is not a commonly used phrase"[49] (see RS [30]).

33. These reports informed the drafting of what became the *Jury Directions Act 2013* (Vic). Section 21(1) of that Act is in substantively the same terms as what is now s 64(1) of the JDA, although its operation depended upon the jury first asking a question about the meaning of the BRD standard. The Explanatory Memorandum stated that the rationale for the inclusion of s 21 was based on the fact that "[r]esearch suggests that ["beyond reasonable doubt"] is often not well understood by jurors.[50] In the Second Reading Speech, the then Attorney-General said:

> While "proof beyond reasonable doubt" is a commonly used term, its meaning is not always clear or well understood. Research from New Zealand, Queensland and New South Wales indicates that a significant number of jurors either have difficulty with the concept or apply either too low or too high a test. It is also not uncommon for Victorian juries to ask questions about the meaning of the term.
>
> However, if jurors ask what "proof beyond reasonable doubt" means, judges in Victoria are confined by case law to advising that it is a common English expression that means what it conveys, save for limited and exceptional circumstances. This circular definition is unlikely to provide much guidance to jurors.
>
> Given its importance, judges should be able to assist jurors to understand the concept of "proof beyond reasonable doubt".[51]

34. Accordingly, the Bill provided that if a jury asks the trial judge a question about the meaning of the concept of beyond reasonable doubt, the judge may answer the question

---

44 2013 DoJ Report at [7.3].
45 2013 DoJ Report at [7.3].
46 [1997] 3 SCR 320.
47 [2007] 2 NZLR 573.
48 2013 DoJ Report at [7.5].
49 2013 DoJ Report at [7.5.2].
50 Explanatory Memorandum, Jury Directions Bill 2012 (Vic) at 11.
51 Victoria, *Parliamentary Debates*, Legislative Assembly, 13 December 2012, Robert Clark MP at 5559-5560.

by providing the guidance set out in the legislation. Both the Explanatory Memorandum and the Second Reading Speech said that the proposed guidance was "drawn from" *Lifchus* and *Wanhalla*.[52]

35. In March 2015, a further report by the Victorian Department of Justice and Community Safety into a prospective new jury directions statute concluded that provisions of the 2013 Act dealing with the "beyond reasonable doubt" standard "appear[ed] to be working well" and recommended that they be retained.[53] The explanation of the proposed provisions — in particular the "unrealistic possibility" limb — was provided in the same terms as the January 2013 report of the Criminal Law Review.[54]

36. Those provisions from the 2013 Act were duly replicated in ss 63 and 64 of the JDA in 2015.

37. In September 2021, the Victorian Law Reform Commission recommended that s 63 of the 2015 Act be amended to require that explanations of "beyond reasonable doubt" should be given as set out in s 64 of the 2015 Act.[55] The Commission cited, and agreed with, the Victorian Court of Appeal's observation that it was not clear why the power of a judge to assist a jury in this respect should depend upon the jury first having asked a question.[56] While the Commission's terms of reference limited its review to trials of sexual offences, its observations suggested that the rationale underlying its recommendation likely applied to all jury trials.[57]

38. In 2022, s 63 of the 2015 Act was accordingly amended to require a trial judge to give the jury an explanation of the phrase "proof beyond reasonable doubt" in all criminal trials "unless there are good reasons for not doing so", with consequential amendments made to s 64. A prior question from the jury was no longer required. No substantive amendments were made to the list of potential directions in s 64(1) that a trial judge could use to explain the phrase "proof beyond reasonable doubt".

---

52 Explanatory Memorandum, Jury Directions Bill 2012 (Vic) at 12; Victoria, *Parliamentary Debates*, Legislative Assembly, 13 December 2012, Robert Clark MP at 5560.

53 Department of Justice and Community Safety, *Jury Directions: a Jury-Centric Approach* (March 2015) (**2015 DJCS Report**) at [15.2.7].

54 2015 DJCS Report at [15.2.7] which substantially replicates the 2013 DoJ Report at [7.5].

55 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (September 2021) (**2021 VLRC Report**), recommendation 82.

56 *Dookheea v The Queen* [2016] VSCA 67 at [91], quoted in 2021 VLRC Report at [20.100].

57 2021 VLRC Report at [20.100]-[20.103].

39. In the Second Reading Speech, the then Minister for Corrections, Youth Justice and Victim Support said that the amendment reflected "the fundamental importance of this concept in criminal trials," while affording appropriate discretion and flexibility to the judge about whether the explanation is to be given and the timing for the explanation.[58]

40. Research subsequently published by the Australian Institute of Judicial Administration confirmed that judges in Victoria overwhelmingly consider that s 64(1), and its predecessor, have enhanced their ability to explain the BRD standard to jurors.[59]

B.3 The text of s 64(1) of the JDA

41. Although he disclaims the suggestion (AS [13]), the appellant's argument relies on viewing the words "unrealistic possibility" in s 64(1)(e) in isolation from the whole of the charge actually given in this case (RS [34]). The submission appears to be that, whenever a judge uses those words to explain the BRD standard to a jury, that will necessarily, and in every case, diminish that standard and result in a misdirection. That submission should be rejected.

42. *First*, while the appellant fixes upon the last two words in s 64(1)(e), the effect of those words need to be understood in light of the other limbs of the explanation provided for in s 64(1) and of the whole of paragraph (e), rather than by dictionary definitions of the particular words.[60]

43. Those other limbs commence in paragraph (a) by emphasising the presumption of innocence and the burden of proof, which instruction has been said by this Court to be important to ensuring a fair trial.[61] Paragraph (b) is particularly important. The effect of a direction given in the terms of that paragraph, by making clear that a conclusion that an accused is "probably guilty or very likely to be guilty" is not enough, is to communicate clearly to the jury not just that the BRD standard is higher than the civil standard, but that it is considerably higher. Paragraph (c) is unremarkable, and consistent with authority, in clarifying that the BRD standard is not an impossible standard. Paragraph (d) then

---

58 Victoria, *Parliamentary Debates*, Legislative Assembly, 4 August 2022, Sonya Kilkenny MP at 2908.

59 Clough et al, *The Jury Project 10 Years On – Practices of Australian and New Zealand Judges* (April 2019) at 58.

60 *Weiss v The Queen* (2005) 224 CLR 300 at [10] (Gleeson CJ, Gummow, Kirby, Hayne, Callinan and Heydon JJ); *Sea Shepherd Australia Ltd v Federal Commissioner of Taxation* (2013) 212 FCR 252 at [34] (Gordon J).

61 *RPS v The Queen* (2000) 199 CLR 620 at [41] (Gaudron A-CJ, Gummow, Kirby and Hayne JJ).

reinforces the fundamental aspect of the BRD standard, and the accused's entitlement to an acquittal if there is a reasonable doubt.

44. It is within that context that paragraph (e) appears. That paragraph adopts the familiar model of explicating the concept of "reasonable doubt" negatively, by reference to what it is *not*. For example, in *Brown*, Isaacs and Powers JJ spoke of a reasonable doubt by what it was not: it is "not a mere conjectural, visionary doubt, or a doubt arising from the bare possibility of his innocence".[62] Similarly, in *Green*, as noted above, this Court acknowledged that in some circumstances "the judge can properly instruct the jury that fantastic and unreal possibilities ought not to be regarded by them as the source of reasonable doubt."[63] Parliament in paragraph (e) has employed three different adjectives, qualifying the nouns "doubt" and "possibility", and reflecting the modernisation of the language drawn from the common law. Viewing the whole paragraph (or direction) in context, it is plain that the nouns "doubt" and "possibility" were intended as close synonyms, as were the accompanying adjectives "imaginary", "fanciful" and "unrealistic". While the appellant attempts to give the adjective "unrealistic" a markedly different meaning to the other adjectives, that submission is unsustainable when the meaning of those words is informed by those immediately surrounding it.

45. Further, the appellant's suggestion that the word "unrealistic" may have been understood to mean something like "unlikely" (AS [47]) ignores the express statement in paragraph (b) that a conclusion that the accused is "very likely" guilty is not sufficient. Contrary to the appellant's submission (AS [50]), the mere use of the word "unrealistic" does not convey to the jury that they must subject their mental processes to objective analysis. It is very different from the direction that was impugned for that reason in *Green* (RS [29]).

46. *Secondly*, it is apparent from the legislative history described above that the purpose and likely effect of the directions in s 64(1) of the JDA, particularly paragraphs (b) and (e), is to ensure that the BRD standard is properly understood and applied by jurors in their deliberations. By legislating standardised directions reflecting the established elements of the explanations permitted at common law, the JDA ensures that trial judges do not venture upon "a new endeavour" to formulate their own explanation, which was deprecated in *Green*, and ensures that jurors do not apply, through misunderstanding, their own — potentially lower — standard. Standardisation of jury directions in this way

---

62 (1913) 17 CLR 570 at 596.

63 (1971) 126 CLR 28 at 33 (the Court).

reduces the risk of misdirections and improves juror comprehension.[64] The directions thus operate to reinforce the BRD standard, not to diminish it.

47. *Thirdly*, it remains to emphasise, as has the respondent at RS [34]-[36], that the ultimate assessment of a misdirection on appeal is determined by reference to how the impugned direction would have been understood by the jury in light of the directions as a whole and in the context of the issues at trial and the parties' respective closing addresses. The wisdom of that approach is demonstrated by the authorities of this Court cited by the respondent and by the experience of intermediate appellate courts dealing with complaints that the BRD standard has been diminished.[65]

48. The appellant's submission that the words "unrealistic possibility" necessarily, and always, diminish the BRD standard, regardless of the context in which they are delivered is contrary to those authorities. It is also contrary to common sense ideas about how people receive spoken communication. People, and thus jurors, do not give meaning to spoken words in discrete units of analysis, but rather give meaning to them in the context in which they are spoken and received.[66]

49. The impugned direction in this case, which was given together with the other directions contemplated by s 64(1) and with guidance as to how the jury should apply the BRD standard to the evidence and arguments in the case, cannot be said to have had the effect of diminishing the required standard of proof.

---

64 Law Reform Committee, Parliament of Victoria, *Jury Service in Victoria* (Final Report, December 1997) Vol 3 at [2.207]-[2.210].

65 See, eg, *R v Ho* (2002) 130 A Crim R 545 at [32] (Bell J, Meagher JA and Hidden J agreeing); *R v Southammavong* [2003] NSWCCA 312 at [23] (Spigelman CJ, O'Keefe and Greg James JJ agreeing); *Ladd v The Queen* (2009) 27 NTLR 1 at [155] (Martin (BR) CJ), special leave to appeal refused *Ladd v The Queen* [2010] HCATrans 46; *R v Daniel* (2010) 207 A Crim R 449 at [25] (Sulan J, David J agreeing); *Lin v Tasmania* (2015) 252 A Crim R 64 at [108] (Porter J, Wood and Pearce JJ agreeing); *Hadchiti v The Queen* (2016) 93 NSWLR 671 at [68] (the Court); *Moore v The Queen* [2016] NSWCCA 185 at [23] (Basten JA), [125] (R A Hulme J), special leave to appeal refused in *Moore v The Queen* [2016] HCASL 323; *Towney v The Queen* [2018] NSWCCA 65 at [67] (Hoeben CJ at CL, Johnson and N Adams JJ agreeing); *Beattie v The Queen* [2021] NSWCCA 291 at [26] (the Court); *Cliff v The King* [2023] NSWCCA 15 at [11]-[12], [18] (Kirk JA, Harrison and Wright JJ agreeing).

66 Stalnaker, *Context and Content: Essays on Intentionality in Speech and Thought* (1999) at 96-102. See, further, as to the importance of context to implications, *Babet v Commonwealth of Australia; Palmer v Commonwealth of Australia* [2025] HCA 21 at [129]-[130] (Edelman J).

C. APPROPRIATE DISPOSITION OF THE APPEAL AND PRUDENTIAL CONSIDERATIONS

50. If, contrary to the above submissions, the Court concludes that the direction in s 64(1)(e) of the JDA diminishes the BRD standard, the consequence would be that s 64(1)(e) is incapable of being picked up and applied by s 68(1) of the *Judiciary Act* for trials on indictment for offences against laws of the Commonwealth because it would be inconsistent with s 13.2(1) of the *Criminal Code*.[67] It would also follow that the trial judge's direction, being inconsistent with the standard of proof applied to the offence by Commonwealth law, would have involved error or irregularity.

51. Further, on reaching such a conclusion, it would be inappropriate to proceed further to address the constitutional question of whether s 64(1)(e) is consistent with s 80 of the *Constitution*. This Court ordinarily does not decide constitutional questions where it is not necessary to do so to determine the appropriate orders to be made on, relevantly, an appeal.[68] Here, the respondent accepts that if s 64(1)(e) of the JDA diminishes the BRD standard and thus the jury was directed contrary to s 13.2 of the *Criminal Code*, then the giving of that direction in the appellant's trial resulted in a substantial miscarriage of justice (RS [43]). In those circumstances, consideration of the constitutional question could not alter the manner in which the appeal is to be determined.[69] The appellant accepts as much, submitting that both the statutory and constitutional questions "should be answered essentially in the same way" (AS [21], see also [80]-[81]).

D. SECTION 80 OF THE *CONSTITUTION*

52. If, contrary to the above submissions, the Court considers it necessary to reach the constitutional question, Victoria submits that the BRD standard is not an essential feature of a jury trial for the purpose of s 80 of the *Constitution*. The appellant's argument is based on two limbs: authority and constitutional purpose. Neither limb supports his argument.

---

67 *Attorney-General (Cth) v Huynh* (2023) 97 ALJR 298 at [58] (Kiefel CJ, Gageler and Gleeson JJ), [149] (Gordon and Steward JJ), [194] (Edelman J). It is noted that s 68(1)(a) and (b) of the *Judiciary Act* also provides a mechanism for picking up and applying State law to summary and committal proceedings for offences against laws of the Commonwealth, as to which see s 4A(1)(a) of the JDA.

68 As to the application of these principles on an appeal, see *Clubb v Edwards* (2019) 267 CLR 171 at [34]-[39] (Kiefel CJ, Bell and Keane JJ). See also, in the Court's original jurisdiction, *Zhang v Commissioner of the Australian Federal Police* (2021) 273 CLR 216 at [20]-[21] (the Court).

69 *Cesan v Director of Public Prosecutions (Cth)* (2007) 230 FLR 185 at [97]-[98], [112]-[121] (Basten JA).

D.2 Authority

53. The appellant relies upon two authorities — *Cheatle v The Queen*[70] and *Brownlee v The Queen*[71] — which are said to lend significant weight to the contention that s 80 entrenches the BRD standard (AS [55]). However, that question was not in issue in either case and they provide no authority for the proposition for which the appellant contends.[72]

54. The issue in *Cheatle* was whether unanimity was an essential feature of a trial by jury for the purpose of s 80. It was in that context that the Court observed that "unanimity reflects a fundamental thesis of our criminal law, namely, that a person accused of a crime should be given the benefit of any reasonable doubt".[73] That observation does no more than emphasise the proposition that where an accused has been convicted by majority verdict it necessarily follows that those jurors who did not join in the verdict were not satisfied of the accused's guilt to the relevant standard — which was assumed to be beyond reasonable doubt — and that the accused has thus not had the benefit of the doubt held by those jurors (cf AS [56]).[74] Even if the Court was purporting to identify a logical link between the BRD standard and unanimity, in the sense that standard may be thought logically to require unanimity, *Cheatle* does not stand for the inverse proposition that unanimity requires the application of a BRD standard. Nor does *Cheatle* suggest that *all* fundamental theses of our criminal law are necessarily imported into s 80 of the *Constitution* as immutable and essential features of a jury trial.

55. In *Brownlee*, Gleeson CJ and McHugh J accepted that a unanimous verdict of only ten jurors was "not inconsistent with … the need to maintain the prosecution's obligation to prove its case beyond reasonable doubt".[75] That statement appears to have been directed to emphasising the prosecutorial **onus** of proof (the "obligation" on the prosecution to "prove its case"); the standard of proof to which that case must be proved was assumed in their Honours' analysis, and was not essential to it. Again, the case does not suggest that a requirement to prove a case beyond reasonable doubt is itself a requirement of s 80; it was simply the standard applying to the offence in the case on appeal.

---

70 (1993) 177 CLR 541.
71 (2001) 207 CLR 278.
72 Cf *Povey v Qantas Airways Ltd* (2005) 223 CLR 189 at [76] (McHugh J); *Condon v Pompano Pty Ltd* (2013) 252 CLR 38 at [137] (Hayne, Crennan, Kiefel and Bell JJ); *Vanderstock v Victoria* (2023) 279 CLR 333 at [274] (Gordon J).
73 (1993) 177 CLR 541 at 553 (the Court).
74 See, to similar effect, *Brownlee* (2001) 207 CLR 278 at [143] (Kirby J).
75 (2001) 207 CLR 278 at [22].

56. Beyond those authorities, there are a number of other relevant authorities that are contrary to the submission that s 80 requires the prosecution to prove an accused's guilt beyond reasonable doubt in respect of any indictable offence against a Commonwealth law. The respondent has drawn attention to the line of authority establishing that Parliament may reverse the burden of proof (RS [52]-[59]), which would appear to be a larger departure from the BRD standard than the difference (if any) between an "unreal" and an "unrealistic" possibility. To those authorities might be added Kirby J's statement in *Cassell v The Queen* that the "fundamental principle of the criminal law in Australia" that "the burden rests on the prosecution to prove beyond reasonable doubt every element necessary to establish the criminal offence charged" is subject to "those rare exceptions where a legislature has provided otherwise".[76]

D.3 The purpose of s 80, and the purpose of the BRD standard

57. The appellant recognises by reference to *Brownlee* (AS [60]) that "[c]lassification as an essential feature or fundamental of the institution of trial by jury involves an appreciation of the objectives that institution advances or achieves."[77] That is why attention must be placed on "the purpose which s 80 was intended to serve".[78] However, where it is contended that a particular common law principle is required by s 80, it is also necessary to attend to the purpose of that principle. The question is not just as to the compatibility of constitutional and common law purpose, but whether the former *requires* the latter.

The purpose(s) of s 80 of the Constitution

58. Turning first to the purpose s 80 was intended to serve, the appellant identifies two: "democratic representation and the protection of individual liberty" (AS [62]). It is not yet settled whether those are, or are the only, animating purposes of s 80 (RS [60]).[79] However, even if those two purposes are accepted, neither requires the application of the BRD standard.

---

76 (2000) 201 CLR 189 at [24].

77 (2001) 207 CLR 278 at [54] (Gaudron, Gummow and Hayne JJ).

78 *Ng v The Queen* (2003) 217 CLR 521 at [9] (Gleeson CJ, Gummow, Hayne, Callinan and Heydon JJ).

79 See also the four purposes identified in Law Reform Committee, Parliament of Victoria, *Jury Service in Victoria* (Final Report, December 1997) Vol 3 at [2.2].

59. The representative purpose of s 80 to "place[] the people, or at least a class of the people in the judgment seat"[80] is equally served whether the standard is the BRD standard or some other standard. The point of the "fundamental reservation of power" to the people by s 80 is to "ensure their control in the judiciary",[81] not to ensure that convictions are easier or harder to obtain. The modification of the standard of proof by a democratically elected Parliament does not detract from the representative purpose of s 80 (cf AS [64]-[66]).

60. The liberty-protective purpose of s 80 is — even on the appellant's conception (AS [66]) — essentially linked to the representative purpose: it is by reserving power to the people in a criminal trial that s 80 protects liberty, not in any direct sense analogous to a right[82] held by an individual accused.[83] For that reason, the operation of s 80 as a protection against "oppression by the Government",[84] and a "safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge",[85] is maintained so long as there remains "the interposition between the accused and [their] accuser of the commonsense judgment of a group of lay [persons]"[86] (AS [67]-[69]). Statutory modification of the standard of proof, like statutory modification of the burden of proof (RS [52]-[59]), does not detract from that purpose (cf AS [74]). Rather, that purpose will be advanced so long as the jury remain the ultimate arbiter of the facts necessary for the imposition of criminal liability. That, after all, is the basal function of the jury — they are "[j]udges of the facts".[87] So long as Parliament does not detract from the jury's province to judge "the truth in questions of fact",[88] any liberty-protective purpose of s 80 will be properly maintained.

---

80 *Alqudsi v The Queen* (2016) 258 CLR 203 at [129] (Gageler J), quoting De Tocqueville, *Democracy in America* (Saunders and Otley, 1835).

81 *Blakely v Washington*, 542 US 296 (2004) at 305-306 (Scalia J, for the Court).

82 *Alqudsi* (2016) 258 CLR 203 at [94], [116] (Kiefel CJ, Bell and Keane JJ).

83 In this respect, s 80's protection of liberty is analogous to the way in which faithful application of the principles derived from the separation of powers also results, indirectly, in the protection of individual liberty: *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 99 ALJR 1 at [15] (Gageler CJ, Gordon, Gleeson and Jagot JJ). See also *Garlett v Western Australia* (2022) 277 CLR 1 at [132] (Gageler J).

84 *Brownlee* (2001) 207 CLR 278 at [21] (Gleeson CJ and McHugh J), quoting *Williams v Florida*, 399 US 78 (1970) at 100 (White J, for the Court).

85 *Duncan v Louisiana*, 391 US 145 (1968) at 156 (White J, for the Court).

86 *Brownlee* (2001) 207 CLR 278 at [21] (Gleeson CJ and McHugh J), quoting *Williams v Florida*, 399 US 78 (1970) at 100 (White J, for the Court).

87 Evatt, "The Jury System in Australia" (1936) 10 *Australian Law Journal* (Supplement) 49 at 54.

88 *Cheatle* (1993) 177 CLR 541 at 549 (the Court), quoting *Huddart, Parker & Co Pty Ltd v Moorehead* (1909) 8 CLR 330 at 375 (O'Connor J).

61. For those reasons, the BRD standard is not essential to the purposes of s 80 on which the appellant relies. This Court could reach that conclusion without finally deciding whether those purposes are, or are the only, proper purposes of s 80.

The purpose(s) of the BRD standard

62. The above analysis is confirmed by attending to the purpose of the BRD standard, as it was developed by the common law. The appellant contends that the purpose of the BRD standard is to give effect to an "error-preference", namely, a preference that can be approximated by the idea "it is better that ten guilty persons escape, than that one innocent suffer"[89] (AS [34], [35], [74]).

63. It may be accepted that such an "error-preference" is one of the purposes of the BRD standard, although others have been identified.[90] However, identification of that purpose reveals that at its heart the BRD standard involves the striking of a balance between competing societal values — the value of securing the conviction of persons who have committed crimes and the value of avoiding wrongful convictions. The fact that that balance has been struck in a particular way by the courts adopting and applying the common law test does not require the conclusion that that balance is essential to the proper function of a jury trial in the context of the democratic system of Government established by the *Constitution*. In fact, it would better reflect the democratic design of the *Constitution* for Parliament to retain the ability to adjust that "error-preference", noting that Parliament is best positioned to make assessments of societal values and "evils",[91] and to be democratically accountable for those assessments.[92]

64. To accept the contrary proposition would be to freeze in time the BRD standard, contrary to authority that s 80 permits of changes in the institution of trial by jury.[93] Judges have at times expressed the view that the BRD standard is the only standard appropriate to the

---

89 Blackstone, *Commentaries on the Laws of England* (1765–9) Book IV, Ch 27 at 352. The 1:10 ratio is not shared by all: see Twining, *Theories of Evidence: Bentham and Wigmore* (1985) at 95-96.

90 *Dookheea* (2017) 262 CLR 402 at [30] (the Court).

91 *Brown* (1913) 17 CLR 570 at 584-5 (Barton A-CJ) quoting Best, *Best on Evidence* (9th ed, 1902). See also *Brown* (1913) 17 CLR 570 at 595 (Isaacs and Powers JJ).

92 See and compare *Vella v Commissioner of Police (NSW)* (2019) 269 CLR 219 at [191] (Gordon J).

93 As to s 80's tolerance of changes in the institution of trial by jury, see *Brownlee* (2001) 207 CLR 278 at [12] (Gleeson CJ and McHugh J), [34] (Gaudron, Gummow and Hayne JJ), quoting Scott, "Trial by Jury and the Reform of Civil Procedure" (1918) 31 *Harvard Law Review* 669 at 669-670. See also *Ng* (2003) 217 CLR 521 at [9] (Gleeson CJ, Gummow, Hayne, Callinan and Heydon JJ); *Alqudsi* (2016) 258 CLR 203 at [191]-[192] (Nettle and Gordon JJ).

determination of criminal guilt.[94] Ultimately, "a standard of proof represents an attempt to instruct the factfinder concerning the degree of confidence our society thinks [they] should have in the correctness of factual conclusions".[95] Over time societal views may change in light of experience that certain crimes have been shown to be, in society's view, too difficult to prove. Whether society thinks that the BRD standard is the only standard appropriate for the elements of a criminal offence — even where those elements may entail difficult to prove matters such as those peculiarly within the knowledge of an accused[96] — is ultimately a matter that Parliament is best positioned to address.

PART V: ESTIMATE OF TIME

65. The Attorney-General for Victoria estimates that she will require approximately 20 minutes for the presentation of her oral submissions.

Dated: 5 June 2025

ALISTAIR POUND SC
Solicitor-General for Victoria
(03) 9225 8249
alistair.pound@vicbar.com.au

ELIZABETH H RUDDLE KC
Senior Crown Prosecutor
(03) 9603 7666
elizabeth.ruddle@opp.vic.gov.au

JULIAN R MURPHY
William Street Chambers
(03) 9225 7777
julian.murphy@vicbar.com.au

94 See, eg, *Thomas v The Queen* (1960) 102 CLR 584 at 605 (Windeyer J).

95 *In re Winship*, 397 US 358 (1970) at 370 (Harlan J), quoted with approval in *Victor v Nebraska*, 511 US 1 (1994) at 14 (the Court).

96 See, in respect of reverse onus provisions, *Williamson v Ah On* (1926) 39 CLR 95 at 112-115 (Isaacs J).

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

SEYYED ABDOLZADEH FARSHCHI

Appellant

and

THE KING

Respondent

ANNEXURE TO VICTORIA'S SUBMISSIONS

No	Description	Version	Provisions	Reason for providing this version	Applicable dates
Commonwealth					
1.	*Commonwealth Constitution*	Current	s 80	In force during trial	20 September 2023 to 30 October 2023: appellant's second trial
2.	*Criminal Code* (Cth)	Compilation No 149 (21 September 2023 - 24 November 2023)	s 13.2	In force during trial, relevant provisions unchanged in subsequent versions	20 September 2023 to 30 October 2023: appellant's second trial
3.	*Judiciary Act 1903* (Cth)	Compilation No 49 (18 February 2022 - 11 June 2024)	s 68	In force during trial, relevant provisions unchanged in subsequent versions	20 September 2023 to 30 October 2023: appellant's second trial
State					
4.	*Jury Directions Act 2013* (Vic)	As made	ss 20, 21	For illustrative purposes only	N/A

No	Description	Version	Provisions	Reason for providing this version	Applicable dates
5.	*Jury Directions Act* (2015) (Vic)	As made	ss 63, 64	For illustrative purposes only	N/A
6.	*Jury Directions Act* (2015) (Vic)	No 13 (30 July 2023 - 11 October 2023)	ss 4A, 63, 64	In force at start of trial, relevant provisions unchanged in subsequent versions	20 September 2023 to 30 October 2023: appellant's second trial