



**Issues Paper 6.4 – Legislated jury directions about delay
and the Longman direction**



It would be dangerous or unsafe to convict the accused; or
The complainant's evidence should be scrutinised with great care.

The amended Victorian Jury Directions Act will also require the judge to inform the jury that experience shows that:

People react differently to sexual offences, and there is no typical, proper, or normal response to a sexual offence;
Some people may complain immediately to the first person they see, while others may not complain for some time and others may never make a complaint;
Delay in making a complaint in respect of a sexual offence is a common occurrence; and
There may be good reasons why a person may not complain, or may delay in complaining, about a sexual offence.

The Longman direction—delay resulting in forensic disadvantage: In WA, where there is evidence that suggests that the accused has suffered a forensic disadvantage as a result of a delay in a complaint being made, the judge may be required to give a direction known as a Longman direction or Longman warning that:

Due to a substantial delay in the making of a complaint, the accused has lost the chance to adequately test the complainant's evidence and the chance to adequately marshal a defence; and
Although the jury can convict the accused solely on the basis of the complainant's evidence, if it is satisfied beyond reasonable doubt of the truth and accuracy of the evidence, it must scrutinise their evidence with great care and take into account any facts and circumstances (including the forensic disadvantage suffered by the accused as a result of the substantial delay) which have a logical bearing on the truth and accuracy of that evidence.

soon after the alleged event, it would have been possible to explore in detail the alleged circumstances attendant upon its occurrence and perhaps to adduce evidence throwing

delay this is no longer possible, disadvantaging the accused.

bound to follow

and
long experience of the courts that the impact of delay on the forensic process makes it dangerous or unsafe to convict on the uncorroborated testimony of a complainant unless the jury is completely satisfied of the veracity of that evidence, evaluated with an appreciation of the forensic disadvantages suffered by an accused where the trial occurs many years after the alleged offences.

It will usually (although not always) be necessary for a judge to give examples of the way in

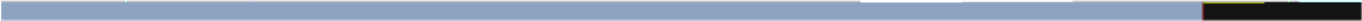
a positive defence. The disadvantages may be the loss of the chance to identify the occasion of the allegations with any specificity, the loss of the chance to identify or locate witnesses or documents, the loss of a chance of a medical or forensic examination of the complainant reW*nB-01)-2 or)CG, and the loss of the chance to establish an alibi.

The Longman direction has attracted significant criticism over recent years, including that:

to an irrebuttable presumption that the delay has prevented the accused from adequately ^{rise} required to give the warning irrespective of whether the accused has in fact been prejudiced or suffered a forensic disadvantage.

The length of delay which necessitates the giving of a Longman warning is unclear.

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merely by the existence of a delay between the occurrence of and reporting of the alleged offence. The factors that may be regarded as establishing a significant forensic delay include, but are not limited to, the fact that any potential witnesses have died or are not able to be located, and the fact that any potential evidence has been lost or is otherwise unavailable.

