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Mr Bruce Gardner PSM
Acting Chair, Victorian Law reform Commission
Level 3, 333 Queens Street
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Dear Mr Gardner,

RE: SUBMISSION – CONTEMPT OF COURT CONSULTATION PAPER

Thank you for the opportunity to make this submission to the Victorian Law Reform Commission's review of the law relating to contempt of court. This submission will address Chapter 5 of the Commission's Consultation Paper (Juror Contempt).

Enquiries about trial matters (s.78A)

On any day when a jury trial is due to commence, prospective jurors attend a jury pool room as summoned. There, a jury pool supervisor provides an orientation, which is a combination of 3 short videos, a verbal presentation and an opportunity for Q&A. It's at this time prospective jurors are *formally* advised for the first time of the s.78A prohibition on making enquiries about trial matters. I emphasise 'formally', as the Notice of Selection urges people to go to the Juries Victoria website for further information about jury service, as does the Information Sheet that accompanies a summons.

In no uncertain terms, prospective jurors are told not to conduct their own research and advised of the possible consequences should they do so (including they could be charged and prosecuted). This warning is given in the jury pool room, prior to a panel being brought to a courtroom for the jury selection process, because the s.78A provision applies *'from the time a person is selected or allocated as part of a panel for a trial.'*

In court, preliminary judicial directions will include a warning to the empanelled jurors against making their own enquiries about trial matters and while the practice may vary from one judge to another, it is not uncommon for judges to remind jurors of the s.78A prohibition a number of times throughout the trial (especially before the jury enters its deliberations). By the time a jury is in deliberations, jurors would have heard the s.78A warning on multiple occasions.

Given the proliferation of smart phone technology since the s.78A provision was included in the Act, and our increasing expectation of instantaneous information coupled with the ease by which we can access it, there is a certain inevitability that these warnings will occasionally go unheard, be misunderstood or frankly be ignored. Simply, the s.78(A) provision is inconsistent with contemporary human behaviour, where almost every piece of information is questioned (just consider the 'fake news' phenomenon and the common use of websites such as snopes.com).

There is no argument that, in the interest of trial fairness, this provision must be preserved. The challenge is to communicate to jurors in a consistent way that ensures they respect and adhere to the provision. A seamless and consistent message from the jury pool room to every courtroom is needed. This message must not only be 'don't google', it must include the reasons *why you must not google*.

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Confidentiality of jury's deliberations (s.78)

In the 7 years as Juries Commissioner, I have no knowledge or record of there being a concern with respect to a juror or former juror and s.78(2).

My only comment is about the message routinely given to jurors, being: do not talk to anyone, ever, about anything that went on in the deliberation room. This is entirely unreasonable bordering on humanly impossible and, by my reading of the Act, not entirely correct. The s.78(2) provision ends with *'if the person has reason to believe that information is likely to be or will be published to the public'*.

Restriction on publishing names of jurors (s.77)

Social conditions and community expectations have changed dramatically in the 19 years since the Act was introduced. Today, a smart phone is as common as a wrist-watch, and a balance needs to be struck between 21st Century expectations and the legislative intent.

As I understand this restriction on publishing *'any information or image that identifies or is capable of identifying a person attending for jury service'*, it was written at a time when 'publish' had a very narrow definition [see s.77(2)]. It could be argued that since 2006, when Facebook came along, we are all 'publishers'. Therefore, the first question to be asked is: Are jurors in breach of s.77 if they tweet, post or check in?

If the intent of this provision was to protect the identity of jurors; if social media users are now deemed publishers; and if jurors who 'check in' to a court or jury pool room, or post a 'selfie' in front of a sign that reads '*Only those summoned for jury service beyond this point'* (it happens!), then s.77 needs to reviewed and rewritten and, as mentioned above, our communication with jurors must be consolidated and reinforced.

Other juror-related misconduct

Juror misconduct can manifest itself in other ways, of which the following are worthy of review and consideration:

s.67	Failure to complete a juror questionnaire
s.71(1)	Failure to attend for jury service as summoned
s.71(3)	Failure to attend for jury service when empanelled as a juror

While not in epidemic proportions, it is not uncommon for citizens to test the boundaries of one or all of these provisions. When this occurs, it requires a disproportionate amount of effort from, and resources of, the Juries Commissioner and Deputy Juries Commissioners (and sometimes a court) to address the recalcitrant behavior.

Mode and manner of prosecuting a suspected breach of the Juries Act

The decision to report suspected breaches of s.78(A), and the procedure for investigating and prosecuting once reported, is ad-hoc. The usual practice is that the Juries Commissioner, at the request of a judge, will report the suspected breach to Victoria Police and request that the matter be investigated. However recently, a judge referred a suspected breach of s.78(A) directly to the Director of Public Prosecutions.

In terms of sections 67, 71(1) and 71(3), suspected breaches of these provisions are ideally suited to be dealt with through the infringements process (Fines Victoria). That is, the binary nature of the breach (a person either showed up for jury service or didn't) is enough to trigger the fine. Courts may not agree with respect to s.71(3), which is understandable, but

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certainly the other two breaches would be best dealt with through Fines Victoria.

This VLRC Reference could be an opportunity to confirm the different agencies' roles and responsibilities. This would allow the Juries Commissioner to monitor what, if any, action was taken and report back to a judge, if asked to do so, or report more broadly (to a VLRC Reference, for example).

Closing

Thank you again for the invitation to make this submission. As you note in the Consultation Paper, juries play a critical role in the administration of justice in Victoria. We ask a lot of citizens as jurors. This VLRC Reference addresses the 21st Century juror experience, which is commendable.

I look forward to the Commission's final Report to Government later this year.

Sincerely,

Paul Dore
Juries Commissioner