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What are We Doing Here?

An Analysis of the Content and Process of Juror Orientation Australia

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Abstract

Jury duty poses a daunting prospect for most people, due to limited understanding of the law, legal concepts and Court procedures. The Courts attempt to assist jurors by providing orientation and information prior to trial. The article presents a systematic review of the jury orientation content and processes implemented across Australia. The review included an analysis based on content areas developed from American research as well as the literature on workforce orientation. 30 discrete topics were utilised for the purpose of the content analysis. The nature and extent of application for each topic varied from one jurisdiction to another. Providing two modes of orientation - visual and verbal - ensured that jurors were oriented to more of the relevant topics outlined, and repetition of the topic areas increased juror satisfaction and confidence. A readability analysis was also conducted to ascertain whether the written materials provided were in "Plain English". Results from the readability analysis revealed that most documents were within the range for most standard consumer communications and newspapers. The results suggest that jurors in Victoria and South Australia will be more satisfied and more confident than jurors in the other states and territories.

Introduction

Recent years have seen a resurgence of interest in the centuries-old institution of the jury. In common law countries, although the role of the jury has diminished over time, it remains a central feature of the criminal justice system, particularly in serious cases. The role of the jury is not limited to countries with a common law heritage. The use of lay-decision makers is a feature of many legal systems, and is being increasingly utilised around the world¹. At the same time, greater willingness by governments and the courts to allow access to juries has facilitated jury research²

Of particular interest to researchers has been the ability of jurors to perform their task. While those brought up in a common law tradition may take the idea of a jury for granted, it is, in many respects, an extraordinary proposition. Members of the public are selected, at random and with no prior training, to sit in judgement in our most serious cases, applying principles of law, the understanding of which learned counsel and judges have spent many years perfecting. Jurors perform this task by sitting and listening to material presented over days, weeks or months, in an environment which is completely foreign to them. It may therefore be anticipated that jury duty poses a daunting prospect for many potential jurors with little prior understanding of the law, legal terms and court procedures.

One way that Courts attempt to assist jurors is to orient them to the trial process by providing information prior to trial regarding the role of the jury and jurors' obligations. This is a juror's first human contact with the system, and the time at which they are likely to be most overwhelmed by their surroundings. Impressions formed, and knowledge gained, at this stage are likely to impact on their perception of the process as a whole, and their ability to perform their

¹ Hans, *Jury Systems Around the World*. (in press) Annual Review of Law and Social Sciences.

² See for example Horan, *The Expert and the Juror of the 21st Century*. Experts and Lawyers: Surviving in the Brave New World, International Institute of Forensic Studies, Broome, Western Australia, 2005; Goodman-Delahunty, Brewer, Clough, Horan, Ogloff and Tait, *Practices, Policies and Procedures that Influence Juror Satisfaction in Australia*, Report to the Criminology Research Council (2007)

task. Yet, while there is a plethora of research on juror comprehension and juror decision making,³ the literature on juror orientation is virtually nonexistent.⁴ Given the dearth of juror orientation literature, it was necessary to look to other orientation methods that have been better researched, and which are based on similar principles, to form a second frame of reference for our analysis. The comparison chosen was workforce orientations which was the most similar context in which orientations are conducted.

This article addresses this gap in the research, at least in part, by conducting an analysis of juror orientation materials in seven Australian jurisdictions.⁵ The first step in the analysis was to determine what materials should be covered in juror orientation materials. Drawing upon the materials from the various jurisdictions, a list was compiled of all items covered. This provided an indication, based on practice, of those items considered to be important for juror orientation across a range of jurisdictions. These items were also analysed in the context of workplace orientation literature and the limited literature in the area. A content analysis was then performed to examine how comprehensively these issues were addressed in each jurisdiction. The second step was to conduct a readability analysis to determine whether the orientation material could be understood by a broad cross-section of the community. Finally, we considered modes of presentation to determine whether the orientation process adopted optimal methods of multi-modal presentations with repetition of key points.

³ See for example Elwork, Sales and Alfini, MAKING JURY INSTRUCTIONS UNDERSTANDABLE (Michie, 1982); Frank and Applegate, *Assessing Juror Understanding of Capital-sentencing Instructions*, 44 Crime and delinquency 412 (1998); Ogloff, *Judicial Instructions and the Jury: A Comparison of Alternative Strategies*, Final Report (British Columbia Law Foundation, 1998); Severance and Loftus, *Improving the Ability of Jurors to Comprehend and Apply Criminal Jury Instructions*, 17 Law and Society Review 153 (1982); Young, Cameron and Tinsley, *Juries in Criminal Trials, Report 69*, Wellington, NZ: New Zealand Law Commission (2001).

⁴ A rare example is an article listing briefly some key content areas aimed at making the orientation process more informative, more inspirational and more consistent; Munsterman, *Jury News*, 19 The Court Manager 40 (2004).

⁵ Victoria (VIC), New South Wales (NSW), South Australia (SA), Western Australia (WA), Australian Capital Territory (ACT), Northern Territory (NT) and Queensland (Qld). The state of Tasmania does not currently provide orientation material to its jurors.

Juror Orientation Material

The nature of information provided to jurors during orientation differs dramatically in the seven jurisdictions, as can be seen in Table 1.⁶ All jurisdictions provide information in video form and all except two (NT and WA) provide information in written form. Only two jurisdictions (SA and VIC) present information in an oral presentation. All modes of presentation were analysed by two or three independent evaluators to determine which content areas were addressed. When there was disagreement between evaluators as to a content item, the majority response was chosen or a further review was performed to reach consensus.

Jurors in all states except the Northern Territory and Western Australia are provided with handbooks, which are easily carried throughout jury duty. The handbooks answer common questions jurors may have about their duty and the trial process. Many of the handbook topics are also addressed in either video presentations or oral presentations.⁷ In addition to the handbook, South Australian, jurors are provided with a separate handout containing information for employers, and *Notes for Guidance of Jurors Attending Criminal Sessions*. In Queensland, jurors are also provided with two separate handbooks titled *A guide to jury deliberations* and *Juror Support Program*. Like Queensland, upon completion of their service, jurors in New South Wales receive a brochure providing information about the Juror Support Program and how to access the service if a juror is distressed after jury duty.

The videos used to orient jurors ranged from 10 to 30 minutes in length.⁸ They also vary in currency; the most recent being from 2006 (Vic), the oldest 1998 (NT).⁹ The presentation format typically includes information provided by a narrator, a judge and actors role-playing jurors. The interest level was enhanced in a number of jurisdictions¹⁰ by having information conveyed by a

⁶ This study focused on material provided to jurors on their first day of jury service, as opposed to material provided in advance.

⁷ See discussion at p. 7.

⁸ (ACT = 15 min, NSW = 16 min, NT = 12 min, QLD = 17 min, SA = 30 min, VIC = 23 min, WA = 10 min)

⁹ ACT: 2003, NSW: 2002, NT: 1998, QLD: 2004, SA: 2001, VIC: 2006, WA: 10 min). New South Wales is in the process of evaluating its video to determine whether a new video is needed.

¹⁰ ACT, NSW, QLD, VIC and WA

variety of actors portraying a diverse group of jurors. By comparison, the majority of the information in the Northern Territory and South Australian videos was conveyed by only one person. This can make it difficult to maintain concentration, with few variations in the presentation format, although some effective use was made of written ‘pop up’ information to complement the oral information presented by the judge.

An in-person oral presentation is delivered by the Sheriff, in South Australia, and a Jury Pool Supervisor in Victoria. These are the only two states which adopt this approach. Both cover a number of topics including administrative details, remuneration, the process of taking an oath or affirmation, note-taking during the trial, questions during the trial, and deliberation. In South Australia, a judge is made available to attend the jury pool room to answer any questions jurors may have prior to empanelment. At the conclusion of the presentation, jurors are taken to a courtroom to familiarise themselves with the environment.

Table 1

Information Provided to Jurors in Australian States and Territories

Orientation Material	ACT	SA	NSW	NT	Queensland	VIC	WA
Pre trial	Jury duty handbook Video	Jury information handout Video Oral presentation Courtroom visit	A guide for jurors Video	Video	Juror’s handbook Guide to jury deliberations Video	Juror’s handbook Video Oral presentation	Video
Post trial			Jury support program		Jury support program		
Total Items	2	4	3	1	4	3	1

Content analysis of information provided to jurors

Our analysis of the written, oral and video presentations to jurors in each state identified 30 discrete topics covered; although the nature and extent of the coverage of each topic varied considerably between jurisdictions. Table 2 provides a summary of this analysis as marked by the evaluators either Present (✓), Absent (x) or Partially Present (p). These content areas were further divided into (three) key distinct areas:

1. Instilling pride and inspiration in jury service
2. Orientation to the jury environment
3. Explaining court procedure and the law

Instilling Pride and Inspiration in Jury Service

The jury has been a central feature of the common law for centuries, and remains one of the few opportunities for members of the community to directly participate in significant decision making. Several jurisdictions incorporate, in some form, an attempt to instil pride in the institution of the jury, and emphasise the importance of the task that jurors are to undertake. These may be divided into a number of distinct categories.

Perspectives on the History of Trial by Jury

The tradition and history of the jury system, was not a significant feature in any of the orientation programs. Only two states (NSW and WA) referred to the fact that juries have been a part of the justice system in Australia for 200 years, while in Victoria there is a brief mention at the outset that the role of the jury was developed through centuries of tradition.

Instilling Pride in the Jury and its Place in a Democracy.

Jurors do not necessarily need to know the history of juries to understand its importance in a liberal democratic society, A number of jurisdictions prefer to remind jurors that the jury system

protects personal liberties and acts as a safeguard for the community (NSW, SA and WA) and holds a pivotal place in the criminal justice system (ACT, NT, Qld, Vic, WA). Further, in Victoria jurors are reminded that they bring common sense and varied experiences of life to the deliberation room. In addition, Northern Territory the video states that the jury system has a practical and symbolic function as a democratic institution.

Reminding jurors of the value of the jury.

Both New South Wales and South Australia remind jurors that they represent the community and are the voice of the community. The handbook provided in New South Wales further suggests that “your decision will have a significant effect on the lives of other people.” The Victorian video states that it is preferable to have many opinions in a case rather than the opinion of one judge. In ACT and Queensland jurors are informed that they are a key part of our legal system and make the most important decision in any court case. The video in the Northern Territory reiterates this point and states that “the use of juries keeps the criminal justice system in step with the standards of the community.” Finally, in Western Australia jurors are told that the jury system protects personal liberties and that jurors are greatly valued.

Representation of Jurors Diverse in Age, Gender, Race, Disability.

The importance of a plurality of views is also implicitly reinforced by the orientation videos depicting jurors of different ethnic groups, ages and gender (ACT, NSW, Qld, VIC and WA). Less diversity was represented in the South Australian materials, while the Northern Territory video did not represent diverse ethnic and age groups. No persons with disabilities were represented [in any of the jurisdictions].

Orientation to the Jury Environment

The majority of jurors will have had no previous experience of a court environment and may find it an intimidating, or at least unfamiliar, experience. Some are also likely to be anxious about their role, what is expected of them, what they should bring, etc. This next category of

information seeks to address some of these concerns by familiarising jurors with the court environment. Again, these may be broken down into a number of distinct categories.

Introducing Jurors to the Court Facilities (Tea Room/Toilets/Reading Area, etc.).

The majority of jurisdictions (ACT, NSW, NT and WA) do not introduce jurors to Court facilities. The South Australian presentation briefly refers to the coffee and toilet facilities located in the lounge. The Victorian video displays the court facilities, shows jurors where they can find tea and coffee, play a game of pool or read books, newspapers, etc. The handbook provides similar information.

Explaining what Jurors Should and Should Not Bring to Court.

In the ACT and New South Wales, potential jurors are instructed not to bring mobile phones and this warning is reiterated in the handbook. The South Australian handbook explains that jurors are not required to bring anything specific, and outlines what jurors should not bring, for example, sharp objects. The Victorian handbook instructs jurors to bring their summons and personal identification. The Queensland handbook also suggests that jurors' carry their summons with them at all times. It further states that jurors do not need to bring food as this is usually provided; however, they should bring some money in the chance that the judge allows jurors to go out of the court building during the lunch break. In Northern Territory and Western Australia, jurors are not provided with any information pertaining to this topic.

Explaining what jurors should wear.

In the New South Wales and South Australian orientation material, jurors are reminded to wear neat and comfortable clothes. The ACT and Queensland orientation also suggest that jurors should look "neat and tidy". The Queensland handbook further suggests that jurors bring overwear as temperatures in the courtroom can be cold. The Northern Territory and Western Australia orientations do not include this information, whilst Victorian jurors receive information about what to wear to court attached to their summons.

Explaining how Long Jurors Will be Required.

Some jurisdictions provide some information of the length of jury service. For example, the Victorian handbook informs jurors that if not empanelled they will be required initially for one to two days in city courts, three to four days in country courts. If empanelled, the amount of time will depend on the length of the trial. In South Australia jurors are informed that they are required to be available for one sitting month, and may be empanelled at any stage during that month. The *Queensland Juror's Handbook* informs jurors that their summons outlines how long they will be required although it would not usually be more than four weeks. In the ACT jurors are not oriented as to the length of time they will be required for their entire service however they are oriented to the hours they are required to attend Court. Orientation materials in New South Wales, the Northern Territory and Western Australia do not provide any additional information to jurors about the length of time that they may be needed.

Payment details

The New South Wales orientation mentions jurors will be reimbursed travel allowance and will be paid based on a sliding scale increasing, if necessary, on days five and ten. Details of rates are not provided at any stage, which is similar to the ACT orientation. The South Australian orientation provides details regarding pay per day plus travel expenses. It also provides information about claiming child care costs and reimbursement for lost income. The Victorian and Queensland orientations describe the amount of reimbursement jurors will receive in the handbook or provide a website address in which they can find the specific amount with the Queensland handbook further stating that jurors will be reimbursed for public transport fares and provided with a lunch allowance if permitted by the judge to leave the court building. The Northern Territory and Western Australian orientations do not provide any information regarding payment for jury service.

Allaying Jurors' Concerns About Jury Service

The New South Wales and South Australian videos depict individual jurors presenting their concerns about participating in jury duty and provide information intended to allay these concerns. Specific topics addressed include the wearing of robes by barristers and judges and the slim chances of sitting on a murder trial. The remaining states do not specifically address juror's concerns regarding their role and their participation in jury service.

Balloting Process

A jury is chosen by a process of random selection, ensuring that the process is fair. Once a trial is ready for a jury, the jury pool supervisor will draw names or numbers at random to form a panel of people from whom the jury will be selected in the courtroom. New South Wales provides little information on balloting, although the video indicates that in some trials, numbered cards are provided to jurors to maintain anonymity during empanelment. The limited information may be due to the fact that in New South Wales jurors are generally pre-selected for a trial based on their availability¹¹. The ACT, South Australia, Queensland, Victoria and Western Australia orientations all demonstrate the random balloting process and the selection of jurors for a trial.

Introducing Jurors to the Courtroom

Neither New South Wales nor the Northern Territory orient jurors to the courtroom. The Victorian video displays the exterior design of different courts, showing the more modern County Court and the older, more traditional, Supreme Court, the latter being likened to rural courts. The narrator emphasizes that despite differences in the appearance of the courts, the jury process is the same. A diagram of the courtroom layout is also provided in the handbook. The SA video makes reference verbally and visually to the location of every relevant party in the trial. The ACT, Queensland and Western Australian orientations depict a diagram of a courtroom either in the video or the handbook.

¹¹ Goodman-Delahunty et al., above n 2

Introducing Jurors to Judges, Counsel and Court Personnel

Most jurisdictions provide some introduction to the key personnel in the court room such as the judge, judge's associate, counsel and tipstaff. The New South Wales handbook describes the role and location of each person in the courtroom, and the video provides limited information on the attire of the judge and counsel, and their role in the courtroom. In Victoria, key figures are introduced and each person's role described, with the handbook providing more detail than the video. The South Australian orientation provides an extensive introduction, describing their roles and their location in the courtroom. Although the ACT and Western Australian videos provide a depiction of some of the relevant people, no overt explanation of their role is provided, whilst the Queensland handbook provides definitions of the key personnel. The Sheriff's office in the Northern Territory does not orient jurors to key figures in the courtroom.

Explaining Where Participants will be located in the Courtroom

In terms of where the jury are located, in ACT, New South Wales, South Australia and Western Australia jurors are shown on the video that they will be seated in the jury box. In Queensland and Victoria, the video and handbook provide a visual representation showing where jurors will be seated and where the foreperson will sit in relation to the other jurors. No information of this nature is provided in the Northern Territory.

Explanation as to Where the Defendant will be Seated.

All jurisdictions other than the Northern Territory demonstrate where the defendant will be seated during the trial.

Explaining Court Procedures and the Law

As stated previously, many jurors who have never sat on a trial will be unfamiliar with the court. As such, several jurisdictions incorporate, in some form, an attempt to explain court procedures and to a lesser degree the law in which they must apply to the facts of a case. These explanations may be divided into a number of distinct categories.

Pre-Trial Processes.

In the ACT, WA and the NT, jurors are oriented to the process of being taken into the courtroom and being present for the arraignment of the accused. They are also shown the process of taking an oath or affirmation. In New South Wales, the video demonstrates how jurors are empanelled and the process of taking an oath or affirmation. The video prepares jurors to be sent to the jury deliberation room prior to the commencement of the trial while legal arguments ensue before the judge. Both the Queensland and Victorian handbooks provide a brief but effective explanation of the process that transpires in the courtroom. For example, Victorian jurors are informed that the case often opens with technical argument before the judge, and that this information can be quite complex. After these preliminary legal arguments, the judge will call for a jury to start the trial. The video demonstrates that once the jury has been chosen, jurors are sworn by oath or affirmation. The narrator explains that the jury must select a foreperson before the trial begins. South Australia provides little information in its orientation on these processes.

Peremptory Challenges and Challenges for Cause

All jurisdictions provide some explanation of the process by which jurors may be challenged. The Victorian explanation is the most comprehensive. Jurors are informed that the accused and the prosecution may each challenge six potential jurors for no particular reason. Although jurors are told they may be asked to “stand aside” and that this process is important to create an unbiased jury, no explanation is provided as to what this means. The handbook also provides information on challenges, but does not describe challenges for cause. Some jurisdictions (NT, SA, VIC and WA) make a point of reassuring jurors that they should not feel embarrassed if challenged.

Excusal from Jury Duty After Selection

The video in New South Wales provides very little information on this topic other than to state that an employer cannot excuse his or her employee from jury duty. This is also addressed in the Queensland handbook, which also explains how a juror should apply to be excused or partially

accused. The Northern Territory video demonstrates how to deal with employers pressuring jurors to ask to be excused.

The ACT, Northern Territory, South Australian and Victorian orientations accurately represent some of the circumstances in which a juror can be excused from jury duty; for example, if a juror knows the accused, a witness or something about the accused or the circumstances of the case. This is also briefly touched upon the Western Australian video. In Victoria, another example of a circumstance eligible for excusal is if a trial is expected to be lengthy and a juror can provide an adequate reason as to why this will cause hardship.

Both the Northern Territory and Victorian videos provide the most comprehensive explanations of the excusal process. For example, the Victorian video explains that if, later in the trial, a juror realises or the court becomes aware that he or she knows the accused, a witness or circumstances related to the case, the judge must be informed as sometimes a trial may need to be stopped and a new jury empanelled. The video demonstrates how a juror who seeks to be excused must apply to be excused and respond to questions from the judge under oath. One illustration is offered of a juror whose excuse did not appear adequate. In Victoria, jurors are also provided with the ineligibility and disqualification categories pursuant to the *Juries Act 2000* (Vic) in written form.

The Stages of the Trial

In New South Wales, the Northern Territory, Queensland and Western Australia, relatively little information is provided on this topic. For example, the handbook in New South Wales states that counsel will make opening addresses to provide the jury with an overview of the case. The video demonstrates that the judge will provide directions as to the law and that jurors will not be required to provide a sentence following their verdict. In Victoria, although the content in relation to the proceedings of the trial in the video was brief, it was more thoroughly outlined in the handbook. The information is similar to that provided in the South Australian video. This provides an in-depth, step-by-step outline of the trial proceedings, including jury selection, opening

addresses, examination of witnesses, the accused giving evidence, objections by counsel, legal argument in the absence of the jury, final addresses and the judge's charge. This explanation was more detailed and thorough than that contained in any other video presentations, although the ACT handbook provided an equally thorough explanation.

Selecting a Foreperson

In New South Wales, jurors who would like to be foreperson are told that they must volunteer by raising their hand. The duties of the foreperson are not described in the video but a brief outline is presented in the handbook. The narrator of the Victorian video describes how the judge asks jurors to select a foreperson and outlines where the foreperson will sit and his or her duty to the Court and to other jurors. The handbook also provides an in-depth explanation of this process. No information about selecting a foreperson is mentioned in the South Australian video although the oral presentation and written material provides information about when the foreperson should be selected and the foreperson's role in the trial. Similar information is contained in the ACT and Queensland handbooks. Although the Western Australian video informs jurors that a foreperson is chosen and that they deliver the verdict, no explanation is provided on how to select the foreperson. The Northern Territory orientation does not provide any information regarding selecting a foreperson.

Informing Jurors of the Deliberation Process

In the Northern Territory and Western Australia, jurors are not oriented to the deliberation process. In New South Wales, jurors are directed to discuss a verdict only in the deliberation room and to vote guilty or not guilty. In Victoria, a thorough explanation is provided about deliberation and some guidance on how to commence deliberations is given in the handbook. The South Australian video informs jurors to consider real life situations and draw on their own life experiences. Jurors are instructed not to carry bias and/or prejudice into the deliberation room. Similar advice is provided in the ACT. One of the handouts explains majority verdicts (SA).

Queensland provides a handbook titled *Guide to Jury Deliberations* which provides a thorough explanation of the deliberation process and provides some useful information to alleviate jurors' concerns such as asking for assistance from the court if needed. No guidance on what to do in the event of an impasse is provided in any of the states with the exception of Queensland which suggests that jurors ask the judge for advice on how to proceed.

Exhibits

The Victorian handbook informs jurors that exhibits are evidence and that the jury's verdict must be based solely on the evidence presented during the trial. In New South Wales the video indirectly refers to using physical evidence, i.e., a letter as evidence without identifying it as an exhibit. The South Australian video informs jurors that they will be able to examine exhibits in the courtroom and in the jury deliberation room, if needed, but no reference is made to the importance of exhibits or how they can be used as evidence. The remaining jurisdictions do not provide any information on how to approach exhibits in their orientation.

Avoiding Bias/Keeping an Open Mind

All the states' and territories' videos discuss the importance of keeping an open mind and refraining from bringing bias to the courtroom. In Victoria, the handbook goes into detail about the key qualities for a juror; namely, to bring an open mind, to be fair and impartial, to be objective, etc. In South Australia the judge briefly mentions that jurors must keep an open mind and judge the evidence without bias, but does not explain the consequences if jurors fail to do so. The ACT and Queensland handbooks inform jurors that they must keep an open mind throughout the trial and that they must remain impartial and fair. This is further reiterated in the Queensland video. Finally, the Northern Territory and Western Australian orientations briefly mention that jurors must bring a "fair" "unbiased" and "impartial" mind to the trial process.

Appropriate Conduct Inside and Outside the Courtroom.

New South Wales jurors are instructed to discuss the trial only with other jurors and only in the jury room. This instruction is reiterated in the handbook. Similar information is provided in the

ACT video. The Victorian video and handbook instruct jurors not to talk to the general public, the accused or lawyers while they are escorted from the County Court to sit on a trial in the Supreme Court. Jurors are not informed of appropriate conduct in the courtroom or following discharge from a trial. South Australian jurors are told that it is an offence to disclose anything about the case outside the jury room, including after the jury has been discharged. They may consult with other jurors sitting on the same trial outside of the deliberation room as long as this consultation does not occur in a public place. This information is repeated in all three modes of communication. Northern Territory, Queensland and Western Australia do not orient jurors to appropriate conduct inside and outside of the courtroom, although the Queensland orientation does suggest that if they are to be selected as a juror, the judge will explain how a juror must conduct themselves during a trial.

Seeking Assistance and Responding to Juror Misconduct

In all jurisdictions other than the Northern Territory jurors are told to seek clarification from the judge if they need to during their deliberation, and are informed of the procedure to do this. In Victoria, the handbook also informs jurors that “if something arises that make the juror think it would be improper to continue” they should inform the judge immediately by giving a note to the tipstaff. Examples are given to illustrate improper conduct and include hearing something confidential about the trial, being contacted by someone or being aware that you or someone knows one of the witnesses. In New South Wales, South Australia and Western Australia jurors are told to seek clarification from the judge if they need to during the deliberation and are informed of the procedure to do this however are not informed about responding to juror misconduct. In ACT and Queensland jurors are informed that if they require assistance or have any concerns, they may speak with the Sheriff’s Officer in the ACT or the bailiff in Queensland.

Juror Support/Counselling

New South Wales, Queensland and Victoria all inform jurors that they have the option to seek support or counselling by contacting the Sheriff/ Juries Commissioner in the event that an

individual feels depressed, upset or has difficulty coping with the experience of the trial. This information is provided in the handbook, and in Queensland is contained in a separate handbook. Jurors in South Australia are provided with this information during the oral presentation, and through posters in the jury deliberation rooms. The remaining jurisdictions do not provide information regarding support/counselling services.

Distinguishing Reality from Media and Fictional Portrayals of Juries

The New South Wales orientation briefly comments that jurors cannot be questioned as seen on TV, while the video states that its jury system is nothing like portrayals in American television shows. The Victorian orientation instructs jurors not to allow anything they might have seen in films or on TV to play a role in their decision, and South Australian jurors are informed that the jury system differs from what is portrayed in the newspapers and on television. The judge informs jurors that the media have access to courtrooms and selectively report what they think is of public interest, which is not necessarily the same as what jurors hear. The remaining states and territories do not provide any information to their jurors regarding this topic.

Information Regarding “Beyond Reasonable Doubt”.

The Victorian handbook outlines that in all criminal trials the prosecution must prove that the accused is guilty beyond reasonable doubt. It also provides a brief explanation about what this means in accordance with the law (ie. if the jury has a reasonable doubt about whether the person is guilty, then the verdict must be “not guilty.”). The South Australian video states that the burden of proof lies on the prosecution to prove the defendant’s guilt beyond a reasonable doubt. Although the ACT video mentions the words ‘beyond reasonable doubt’, no further explanation is provided. No other jurisdiction orients jurors to the burden or standard of proof in criminal trials.

Procedural Law (i.e., Burden of Proof, Function of Jury).

In ACT and Victoria, the video explains that the judge is the judge of the law and that the jury is to judge the facts. It further explains that jurors must listen carefully to the evidence and that the accused is only guilty if the jury finds him or her culpable. The handbook in Victoria also

mentions “the presumption in our legal system that an accused person is innocent until proven guilty and that the accused does not need to prove his or her innocence”. Similar information is provided in South Australia. No other jurisdictions provide information about procedural aspects of the law.

The Criminal Justice System

Only South Australia and Victoria provide jurors with some understanding of where a criminal trial fits within the criminal justice system. In South Australia, jurors are informed that every accused person who pleads ‘not guilty’ is tried by the criminal justice system and that no member of the community can be found guilty of a serious offence except by a jury. A report of each crime is recorded and the police gather all the evidence including statements. After a charge has been laid the accused is brought before the magistrate for a preliminary hearing and it is the magistrate that decides if there is enough evidence to start a trial. Similar, the Victorian narrator states that a defendant is tried because the police have alleged that he/she has committed a crime, and that the accused is not guilty when he/she has been charged. The judge presides over the trial to ensure the evidence is presented fairly so that the jury can render a verdict of guilty or not guilty. Examples of types of offences that are heard in the County and Supreme Court are provided.

Table 2
Information provided to jurors at orientation by: written form and oral form (1), video (2) and total (T).

Theme	Content area	NSW			VIC			SA			ACT			NT		Queensland			WA		
		1	2	T	1	2	T	1	2	T	1	2	T	2	T	1	2	T	2	T	
Instilling pride and inspiration in jury service	1 History of trial by jury	p	p	p	x	p	p	x	x	x	x	x	x	x	x	x	p	p	p	p	
	2 Pride in the jury trial and its place in a democracy	p	✓	✓	✓	✓	✓	x	✓	✓	p	p	p	p	p	x	x	x	x	x	
	3 The value of being a juror	✓	✓	✓	✓	✓	✓	x	✓	✓	p	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	4 Representation of jurors diverse in age, gender, race, disability	n/a	✓	✓	n/a	✓	✓	n/a	p	p	n/a	✓	✓	x	x	n/a	✓	✓	✓	✓	
Orientation to the jury environment	5 Introducing court facilities (lea room/toilets/reading area, etc.)	x	x	x	✓	✓	✓	✓	p	✓	x	x	x	x	x	p	x	p	x	x	
	6 What jurors should/should not bring to court	x	x	x	✓	x	✓	✓	x	✓	p	x	p	x	x	✓	x	✓	x	x	
	7 What jurors should wear to court	p	x	✓	p	x	p	✓	x	✓	✓	x	✓	x	x	✓	x	✓	x	x	
	8 How long jurors are required	x	x	x	✓	x	✓	✓	x	✓	p	x	p	x	x	✓	x	✓	x	x	
	9 Pay details	p	x	p	✓	x	✓	✓	x	✓	✓	x	✓	x	x	✓	x	✓	x	x	
	10 Allaying jurors concerns about jury service	x	✓	✓	x	x	x	x	✓	✓	x	x	x	x	x	x	x	x	x	x	
	11 Balloting process	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	12 Introducing the courtroom	x	x	x	✓	✓	✓	✓	✓	✓	x	✓	✓	x	x	✓	✓	✓	p	p	
	13 Introducing judges, counsel and court personnel	✓	✓	✓	✓	p	✓	p	✓	✓	x	✓	✓	x	x	✓	✓	✓	✓	✓	
	14 Where the participants will be located in the court room	✓	✓	✓	✓	✓	✓	p	✓	✓	x	✓	✓	x	x	✓	✓	✓	✓	✓	
	15 Where the defendant will be seated	✓	✓	✓	✓	✓	✓	p	✓	✓	x	✓	✓	x	x	✓	✓	✓	✓	✓	
	Explaining court procedures and the law	16 Pre-trial processes	x	✓	✓	p	✓	✓	x	p	p	p	✓	✓	✓	✓	x	x	p	✓	✓
		17 Challenges to jurors	x	p	p	✓	✓	✓	✓	✓	✓	p	✓	✓	✓	✓	✓	✓	✓	✓	✓
		18 Excuse from jury duty after selection	x	p	p	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
		19 Stages of the trial	p	p	p	✓	✓	✓	x	✓	✓	✓	p	✓	p	p	p	p	p	✓	✓
20 Selecting a foreperson		p	✓	✓	✓	✓	✓	✓	x	✓	✓	✓	✓	✓	x	x	✓	✓	✓	✓	
21 The deliberation process		p	✓	✓	✓	x	✓	p	p	✓	✓	✓	✓	x	x	✓	✓	✓	p	p	
22 Exhibits		x	p	p	✓	x	✓	x	x	x	x	x	x	x	x	x	x	x	x	x	
23 Avoiding bias/keeping an open mind		p	p	p	✓	✓	✓	x	✓	✓	p	✓	✓	✓	✓	✓	✓	✓	p	p	
24 Appropriate conduct inside and outside the courtroom		✓	p	✓	✓	✓	✓	✓	✓	✓	x	✓	✓	x	x	✓	x	✓	x	x	
25 Seeking assistance and responding to juror misconduct		✓	✓	✓	✓	p	✓	✓	x	✓	x	✓	✓	x	x	✓	p	✓	p	p	
26 Juror support services		✓	x	✓	✓	x	✓	✓	x	✓	x	x	x	x	x	✓	x	✓	x	x	
27 Distinguishing reality from media		x	p	p	✓	x	✓	x	✓	✓	x	x	x	x	x	x	x	x	x	x	
28 'Beyond reasonable doubt'		x	x	x	✓	x	✓	x	✓	x	x	p	p	x	x	x	x	x	x	x	
29 Procedural law		x	x	x	✓	x	✓	x	✓	✓	x	✓	✓	x	x	x	x	x	x	x	
30 The criminal justice system		x	x	x	p	p	p	x	p	p	p	p	p	p	p	p	p	p	p	p	

✓ = present x = absent p = partially present

The coverage of these topics varied considerably between jurisdictions. Victoria oriented jurors to most of the important aspects in the greatest detail, namely 28 of these topics, two of which were partially represented.¹² The coverage in other jurisdictions was SA (28/30, 5 partial), New South Wales (24/30, 11 partial), ACT (24/ 30, 6 partial), Queensland (23/30, 4 partial), WA 16/ 30, 7 partial) and NT (9/30, 4 partial).

Overall, all states and territories provided information (present or partially present) on the following areas: balloting process, the process before the trial starts, stages of the trial, the value of being a juror, the challenging process, excuse from jury duty after selection and avoiding bias in the courtroom. All states and territories either did not mention history of trial by jury or only partially mentioned this topic in their orientation. New South Wales was the only state not to mention any aspect of the criminal justice system although New South Wales and South Australia were the only two states to allay concerns in relation to being a juror. In addition, Victoria (present) and New South Wales (partial) were the only two states to provide information on exhibits. Only Victoria also provided some orientation to the concept of beyond reasonable doubt whilst the ACT and South Australia used the term in their orientation material although failed to expand on its meaning in the courtroom. Furthermore, ACT, South Australia and Victoria were the only jurisdictions to provide information on some of the procedural aspects of the law. Although the ACT, Northern Territory and Western Australia did not provide information on juror support services, it may be that juror support services are not available as part of jury duty. Finally, all jurisdictions excluding the Northern Territory provided some orientation on the following key areas: introducing judges, counsel, and court personnel, introducing jurors to the defendant's location and their

¹² The two partially represented topics were: (a) history of trial by jury and (b) the criminal justice system.

positions in the courtroom, selecting a foreperson, the deliberation process, and how to get assistance from the court and respond to juror misconduct.

This analysis provides a useful checklist of those issues which are included in juror orientation across seven jurisdictions. The relative frequency with which they occur, and the depth of coverage provides a limited indication of their relative significance, at least in the minds of those designing these programs. For those jurisdictions implementing or reviewing such programs, it may assist by providing the full spectrum of issues for possible inclusion.

More difficult is the process of evaluating content against an objective benchmark given the lack of literature in the area. Munsterman¹³ itemised some key content areas for American jurors such as reminding jurors of the positive features of a jury system, acknowledging the citizen's time, and acknowledging their contribution to the administration of justice. As discussed, most jurisdictions included items of this nature. It is worth noting however, that the areas Munsterman itemised were relatively brief therefore difficult to set as a benchmark in which to objectively evaluate the content areas.

The second and more thorough point of reference was a comparison with workplace orientation which provides a comparable framework.¹⁴ At the commencement of a new job, employees often seek confirmation that they have made the right decision in accepting the position. If the employee arrives at orientation with a negative impression of the company, the orientation process can assist in changing this impression.¹⁵ The

¹³ Munsterman, above n 4.

¹⁴ Davis and Kleiner, *How to Orient Employees in New Positions Successfully*, 24 Management Research News 43(2001).

¹⁵ Ibid.

importance of first impressions may be equally important for jurors. Many people view jury duty as an inconvenience;¹⁶ therefore, reinforcing the importance of their role and the value of jury duty at the outset may help dispel such concerns.¹⁷

Inspiration is necessary for a successful orientation and performance.¹⁸ A positive orientation experience provides an opportunity for the employer to maintain or inspire motivation within the employee, which in turn leads to heightened productivity and success for the company. This can be done by providing new employees with corporate history, instilling pride in tradition, and emphasising the importance of each individual employee. Similarly, reminding jurors of their role in the criminal justice process and of the long-standing tradition of a jury system may be an effective way to inspire jurors and increase their willingness to serve.

Workplace orientation should also include the establishment of new relationships with co-workers and management of anxiety and stress that often accompany the new experience.¹⁹ Addressing employee expectations, company intentions and clarifying the responsibility of both parties are crucial to establishing mutual trust between employee and employer. For juror orientation, this includes establishing an environment where jurors feel comfortable and trust the Court personnel, including administrators, tipstaff and judges. This is integral in building a positive attitude towards jury duty and inspiring a willingness to participate in the process.

¹⁶ Boatright, *Generational and Age-based Differences in Attitudes Towards Jury Service*, 19 Behavioral Sciences & the Law 285 (2001).

¹⁷ Goodman-Delahunty et al., above n 2

¹⁸ Davis and Kleiner, above n 14

¹⁹ Wanous and Reichers, *New Employee Orientation Programs*, 10 Human Resource Management Review 435 (2000).

Readability Analysis

One of the professed strengths of the jury system is that it draws upon as representative a cross-section of the community as possible. Accordingly, it is essential that material provided to jurors is capable of being understood by jurors with relatively low literacy skills. The “readability” of the orientation material can be tested to determine whether a document is written in plain English. The Flesch formula²⁰ is well-researched, and calculates ease of reading based on the average length of words and sentences in a text or text sample.²¹ The Flesch formula is a predictive device in the sense that no actual participation by readers is needed.²² It is designed for general adult reading matter, and provides proper attention to abstract words as well as sentence length. The Flesch formula is a means of predicting text difficulty, and is not simply based on short words and/or sentence. Therefore altering words or sentence length, of themselves, can provide no assurance of improving readability.²³

The formula produces a readability score between 0-100; 100 being the easiest, 0 the hardest. Each reading age level is associated with a verbal descriptor ranging from “easy” to “difficult.”²⁴ A score of 90 to 100 is deemed to be easy for those with five years of schooling, a score of 60 to 70 is considered easy for those with eight to nine years of schooling and documents scoring anywhere between 0-30 would only be within the grasp of a university graduate. Standard consumer communications typically conform

²⁰ Flesch, MARKS OF READABLE STYLE: A STUDY IN ADULT EDUCATION (Bureau of Publications, Teachers College, Columbia University, 1943).

²¹ Eagleson, Jones and Hassall, *Writing in Plain English*, (Canberra, Australian Government Publishing Service, 1990); Hayes, Jenkins and Walker, *Readability of the Flesch Readability Formulas*, 34 *Journal of Applied Psychology* 22 (1950).

²² Klare, *Assessing Readability*, 10 *Reading Research Quarterly* 62 (1974-75).

²³ *Ibid.*

to a reading age level equivalent to early high school competence, or 13-14 years of age.²⁵

A readability analysis was conducted on each written document used in the seven states and territories to convey information to jurors. Table 3 summarises those findings. In summary, the courts in each jurisdiction provide potential jurors with information that is at a level accessible to most jurors, within the reading capacity expected of early high school age students. The exception to this rule is the *Juror Support Program* brochures in Queensland and New South Wales which both achieved a reading age of 16 years old, which is more difficult to read than any of the materials analysed and beyond the consumer recommended level of eight years of schooling.²⁶ However, this is possibly explained by the fact that both brochures pertain to support and counselling and terms such as anxiety, emotional distress, nausea, withdrawal, and confidential may be too difficult to read and are not necessarily common to everyday language for those with a reading level below 16 years of age. Despite these minor differences, most jurors who participate in a trial in any of these states should be able to read and understand the material.

²⁴ Flesch, above n 20.

²⁵ Eagleson et al, above n 21 ; Streiff, *Can Clients Understand Instruction?*, 18 Image Journal of Nursing Scholarship 48 (1986).

²⁶ Eagleson et al, above n 21; Streiff, above n 25.

Table 3

Readability Analysis of Written Material Provided to Jurors in Australian Capital Territory, New South Wales, South Australia, Queensland and Victoria

State	Written material	Reading age equivalent	Text difficulty
ACT	Jury duty	13-14 years	Standard
NSW	A guide for jurors – welcome to jury service	12 years	Fairly easy
	Juror support program	16 years	Difficult
SA	Jury service information booklet	13-14 years	Standard
	Notes for guiding jurors attending criminal sessions	13-14 years	Standard
Queensland	Juror's handbook	12 years	Fairly easy
	Guide to jury deliberations	13 years	Standard
	Juror support program	16 years	Difficult
VIC	Juror's handbook	12 years	Fairly easy

Mode of Presentation

The ability to learn and remember the required task may also assist jurors to feel comfortable and willing to participate in jury service. Empirically supported theories on human learning suggest that people use separate (dual) channels for processing auditory and visual information, and that each channel is limited in the amount of information it can process at any one time.²⁷

²⁷ Mayer, MULTIMEDIA LEARNING (University Press, 2001).

Our working memory processing system is divided into at least two partially independent sub-processors: an auditory system devoted heavily to language, and a visual system for handling images, including writing. Because both systems can be used simultaneously, limited working memory capacity might be effectively increased if information that must be stored or simultaneously processed is presented in a manner that permits it to be divided between the two systems, rather than processed in one system alone.²⁸

Proponents of multimedia learning argue that people learn more accurately when information is presented both visually and verbally, as this reduces the cognitive load on each channel.²⁹ The dual code processing theory predicts that learners will remember and transfer material better if it is encoded both visually and verbally, resulting in two possible paths of finding the information in memory. In one study, when presented with written instructions or written instructions and a diagram, the participants who received words with pictures performed substantially better than those who received words only.³⁰

Research-based principles for designing multimedia instruction have improved learning in people with low prior knowledge on a topic and in people who are “visualisers”;³¹ that is, those who have a preference for visually rather than verbally

²⁸ Paivio, *MENTAL REPRESENTATIONS: A DUAL CODING APPROACH* (Oxford University Press, 1990).

²⁹ Mayer, above n 27; Sweller and Chandler, *Why Some Material is Difficult to Learn* 12 *Cognition and Instruction* 185 (1994).

³⁰ Mayer and Anderson, *Animations Need Narrations: An Experimental Test of a Dual Coding Hypothesis*, 83 *Journal of Educational Psychology* 484 (1991).

³¹ Chun and Plass, *Research on Text Comprehension in Multimedia Environments*, 1 *Language, Learning & Technology* 60 (1997); Mayer and Massa, *Three Facets of Visual and Verbal Learners: Cognitive Ability, Cognitive Style, and Learning Preference*, 95 *Journal of Educational Psychology* 833 (2003).

presented information.³² It is therefore desirable that juror orientation material utilise multimodal communications.

In addition, repetition further improves comprehensibility of the task at hand. In a simulated grand larceny trial, multiple exposures to the law assisted mock-jurors to understand the rules and assisted in their comprehension levels.³³ Repetition influences both recollection and familiarity,³⁴ suggesting that repeated exposure to information during orientation will assist jurors to perform their task.

All states and territories presented information using at least two modes of presentation - visual and verbal - with the exception of the Northern Territory and Western Australia. South Australia and Victoria were the only two jurisdictions to include an in-person oral presentation, however this did not seem to impact on repetition of the content areas.³⁵ Repetition of material is summarised in Table 4 and varied considerably between jurisdictions. Victoria showed the highest level of repetition with 17 of the 30 content areas repeated (57%) across the two modes alone without inclusion of the in-person oral presentation.³⁶ Next was Queensland (50%), New South Wales (40%) the ACT (37%) and SA (33%) across three orientation modes (written, video and oral presentation).

³² Felder and Spurlin, *Applications, Reliability and Validity of the Index of Learning Styles*, 21 International Journal of Engineering Education 103 (2005).

³³ Cruse and Browne, *Reasoning in a Jury Trial: The Influence of Instructions*, 114 Journal of General Psychology 129 (1987).

³⁴ Jacoby, Jones and Dolan, *Two Effects of Repetition: Support for a Dual Process Model of Knowledge Judgements and Exclusion Errors*, 5 Psychonomic Bulletin & Review 705 (1998).

³⁵ The fact that different actors were used in one mode of presentation, ie video, did not affect the analysis of repetition across modes.

³⁶ This was not included because despite SA including an oral presentation in the orientation, other jurisdictions that did not such as ACT, NSW and Queensland repeated more of the content areas with only two modes.

These results suggest that the orientations in VIC and Queensland ensure the key communications received by potential jurors are reinforced. An oral presentation or additional handouts does not necessarily mean that information will be repeated although the less information jurors receive e.g. handouts, it seems the more often key content items are not included in the orientation. Victoria, in particular, is likely to be most effective by utilising three modes of communication with a moderately high level of repetition.

Although the literature does not suggest factors that makes up a good level of repetition, it does suggest as stated previously that it does increase familiarity and recollection³⁷ Given this, it is important that if jurors are not receiving repetition during orientation, they are receiving additional information from the Judge, which should link with information provided during the orientation to ensure continuity and increase the likelihood of remembering previously learned information during orientation.

Table 4

A Summary of the Number of Information Categories that are Absent, Partially Present, Fully Present and Repeated in Each State.

	Absent	Partially present	Present	Repeated
State				
ACT	6	6	18	11
NSW	6	11	13	12
NT	21	4	5	0
SA	2	5	23	10
Queensland	8	4	18	15
VIC	2	2	26	17
WA	14	7	9	0

³⁷ Jacoby et al, above n 34.

Conclusion

Given the paucity of research in this area, the following analysis is an initial attempt to provide some suggested ‘best practices’ in juror orientation. In summary, a juror orientation program should provide a comprehensive introduction across the thirty content areas, utilising repetition of key issues across at least two modes of communication. Written material should be at a readability level suitable for 13-14 year olds which conforms to standard consumer recommendations.

Against this background, the Victorian orientation was the most comprehensive, providing more information regarding the fundamentals of an orientation program, including information aimed at inspiring jurors and forming a positive impression of jury service.³⁸ On this basis, the Victorian orientation may be expected to be more effective than other jurisdictions in inspiring juror confidence and increasing juror willingness to serve. South Australia also provided jurors with most of the content topics identified as key aspects of the juror orientation process.

An area that seems to be less developed in all orientation processes is that pertaining to legal principles, both procedural and substantive. Only the ACT, South Australia and Victoria provided some information on procedural aspects of the law, and even this was limited. Particularly lacking were explanations of legal terms such as “beyond reasonable doubt”, record of interview, presentment, submission and the like. Only Victoria provided a brief explanation of “beyond reasonable doubt” (current law restricts further information being provided). Although it is the trial judge’s responsibility to instruct jurors on the relevant legal principles, as already noted repetition influences

³⁸ Davis and Kleiner, above n 14; Wanous and Reichers, above n 19.

both recollection, familiarity and increases comprehension of material.³⁹ This suggests that it may be helpful for jurors to be introduced to some common legal terms during the orientation process. Repetition of these explanations during the trial would likely be beneficial in assisting comprehension and application.

In addition, cognitive load theory⁴⁰ suggests that providing jurors with instructions on the law prior to the trial will provide them with some framework – or schema – through which they can consider and process the evidence as it is presented during the course of the trial, thus facilitating learning and problem solving.

Victoria and Queensland provided for most repetition of information, and in Victoria, this is further complemented by multi-modal presentation, being one of the only two jurisdictions to also provide oral presentations. The orientation in the NT and WA covered fewer key topics and was less substantial than other jurisdictions, and this is in part explained by the fact that orientation in these jurisdictions utilised only one mode of communication.

Although not adopted in any jurisdiction, it may be desirable for such presentations to involve an address by a judge. This would serve the dual purpose of alleviating jurors' tensions about the formal nature of the criminal justice system, and also remind jurors of their integral role in the criminal justice system. At the very least, jurors should be oriented to a courtroom via video as occurs in a number of jurisdictions, however South Australia goes further and incorporates a visit to an actual courtroom as part of the orientation.

³⁹ Cruse and Browne, above n 33; Jacoby et al, above n 34.

⁴⁰ Sweller, *Cognitive Load during Problem Solving: Effects on Learning*, 12 Science 257 (1998).

In each jurisdiction the written information provided was of a suitable level for the majority of jurors. However, the information provided to jurors varied considerably. It is suggested that the orientation video should illustrate aspects such as taking an oath/affirmation, being excused, the challenge process, choosing a foreperson, the process of asking for assistance from the judge and other relevant courtroom practices. The brochures issued to jurors in each state and territory ensures that jurors can readily access the required information, and should be as comprehensive as possible, drawing upon the key topics identified in this analysis. All of which would go towards ensuring that juror orientation creates a positive impression to those serving, thereby reinforcing the importance of their role and the value of jury duty at the outset. This may assist in alleviating anxiety and discomfort associated with a new experience.