

SVENSON  
BARRISTERS



# Ground Rules Hearings in summary matters

---

24 NOVEMBER 2023

JACK KELLY

*BENDIGO LAW ASSOCIATION*

# Ground Rules Hearings

---

- Explanatory memorandums
- Legislation
- Practice Directions
- Cases
- Why do we do them?

# *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022.*

---

## Second reading speech:

*The Bill will make ground rules hearings mandatory for all sexual offence complainants, implementing recommendation 84 of the VLRC report. At ground rules hearings, the court and counsel discuss the questioning of witnesses, to help ensure questioning is respectful and fair, and to encourage the best evidence from the witness. They are currently only available in sexual offence and other limited matters that involve a witness (other than the accused) who is a child or has a cognitive impairment. Expanding the availability of these hearings will fairly and effectively meet the needs of a broader cohort of complainants.*

# Criminal Procedure Act (Vic) 2009

---

S 389A – Application

S 389AB – Ground Rules Hearings

S 389B – Ground Rules Hearings to be held

S 389C – Time limits for Ground Rules Hearings

S 389D – Attendance for Ground Rules Hearings

S 389E – Directions which may be given for Ground Rules Hearings

# Intermediaries

---

S 389F – Application of division

S 389G – Participating venues of courts

S 389H – Panel for intermediaries

S 389I – function of intermediary

S 389J – Appointment of intermediaries

S 389K – Witness to give evidence in presence of intermediary

# Practice Directions

---

## Practice Direction No 4 of 2023

- Ground Rules Hearings for adult complainants
- Ground Rules Hearing **questionnaire** to be completed by Informant

## Practice Direction No 5 of 2023

- Ground Rules Hearings for child & cognitively impaired witnesses
- Heard before the **same Magistrate** who hears the contest

# *Ramsay Alec (A pseudonym) v The King [2023] VSCA 208*

---

At [25]:

*During the ground rules hearing, the intermediary informed the judge that TB — with whom both counsel had met — ‘would be one of the most anxious young men that I’ve come across in my time of doing this work’, and indicated that if it was possible for the judge ‘to have a brief chat with him’ before he gave evidence ‘that would be ideal’. The judge then said that what he had done in the past with ‘particularly anxious people’ was to ‘go and show them a picture of my big fat ginger cat which breaks the ice’.*

At [26]:

In any event, the judge did have a private meeting with the complainant the following day, no part of which was recorded (albeit, in the course of the special hearing, the judge articulated some, but not all, of the conversation he had with TB).<sup>12</sup> The process by which TB came to give evidence at the special hearing was tainted as a result.

# *Roger Ward (A pseudonym) v The Queen [2017] VSCA 37*

---

At [109]:

*There are numerous reported decisions in which apparent inconsistencies in the evidence have been attributed to the inherent difficulties in cross-examining children, rather than to any specific deficiencies in the evidence itself.*

At [117]:

*Counsel will not wish to cross-examine aggressively, first because they will not wish to unduly distress the witness, and second because such cross-examination is likely to have a negative effect on the tribunal of fact.*



# Discussion

---

- Why do we do Ground Rules Hearings?
- Who are Ground Rules Hearings for?
- How can we use Ground Rules Hearings as an advocacy tool?
- How can we use the intermediary as an advocacy tool?