Not-So-Uniform Evidence Law: Reforming Longman *Warnings*

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Abstract

The Australian, New South Wales and Victorian Law Reform Commissions recently conducted a joint inquiry into the uniform evidence legislation. The Commissions made unanimous recommendations regarding the majority of issues in their Final Report. However, reform of *Longman* warnings – given in sexual assault trials to warn the jury of the effect upon an accused of a delay between the alleged crime and trial – proved contentious. While the Australian and Victorian Law Reform Commissions favoured limiting judicial discretion over *Longman* warnings, the NSW Law Reform Commission believed that this would compromise the accused person's right to a fair trial. This article offers a critique of the NSW Law Reform Commission's dissent. The article commences by considering the Commission's approach to the fair trial principle. It suggests that the Commission's analysis is predicated on a narrow understanding of this principle, and asserts that fairness to an individual defendant cannot alone justify unfettered judicial discretion over *Longman* warnings if such warnings cause systemic prejudice to a class of victims. The article will then canvass several aspects peculiar to sexual assault trials that render warnings about delay problematic. Finally, evidence of the increasingly routine application of *Longman* warnings will be considered. In light of this evidence, the Commission's argument that such warnings are necessary to ensure fairness on the facts of individual cases is no longer convincing.

Recent years have seen progress towards the goal of a national, uniform law of evidence. A milestone was the joint Inquiry into Uniform Evidence Law[1] conducted by the Australian, New South Wales and Victorian Law Reform Commissions. The Terms of Reference for the Inquiry emphasised the need for 'greater clarity and effectiveness and ... greater harmonisation of the laws of evidence in Australia' (ALRC et al. 2005:7). Harmony was indeed achieved in nearly all of the recommendations made by the three Commissions in

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1 The Inquiry, which commenced in July 2004, culminated in the release of a joint report (ALRC et al. 2005) (hereafter the Report). The Report was submitted to the Commonwealth, New South Wales and Victorian Attorneys-General on 5 December 2005. A Model Uniform Evidence Bill has been prepared by the Parliamentary Counsel's Committee in light of the recommendations made in the Report, and was endorsed by the Standing Committee of Attorneys-General on 26 July 2007. It is based on the *Evidence Act* 1995 (NSW) as amended by the proposed Evidence Amendment Bill 2007. The Model Bill and proposed amending legislation are available at http://www.pco.nsw.gov.au/uniform_legislation.htm.

their joint report. Yet consensus proved unreachable on the issue of *Longman* warnings.[2] Judges commonly give such warnings in sexual assault trials to inform the jury of the detrimental effect on the accused of a delay between the alleged crime and the trial. The ALRC and VLRC jointly recommended limiting the circumstances in which such warnings are given.[3] Support for such a proposition has also come from other States:[4] in a separate report, the Tasmania Law Reform Institute strongly advocated reform of the *Evidence Act* 2001 (Tas) to implement similar restrictions (TLRI 2006:30).[5] The NSWLRC felt unable to take such a position. It rejected any attempt to curtail judicial discretion in this area, arguing that to do so would jeopardise the accused person's entitlement to a fair trial.

This article will suggest that the NSWLRC's dissent was unjustified. While the fair trial principle is of paramount importance, it is neither absolute, nor fixed in meaning. Much empirical research has found that the very nature of sexual assault often results in delayed (or no) complaint by the victim.[6] If this is the case, we condemn an entire class of victims by accepting that delay is inevitably productive of unfairness, and by telling juries the same. It is not necessary to accept anything less than a fair trial for the accused, but it *is* necessary to look critically at the specific meaning of fairness within the context of sexual assault.

Background

Historic Attitudes of the Court towards Sexual Assault Complainants

Jury warnings have historically been the rule rather than the exception in sexual assault trials. The maxim that rape allegations are 'very easy to fabricate, but extremely difficult to refute' (*R v Henry; R v Manning* at 153), and other gendered assumptions,[7] justified the requirement that judges warn the jury about the danger of convicting on the basis of a woman's uncorroborated evidence (Boniface 2005:265). In addition, sexual assault complainants are faced with the common law's archetype of the 'reasonable' rape victim (Bronitt 1998). The natural response of such a victim is to complain at the first available instance. An absence of, or delay in, complaint may therefore be used to attack her credibility (Bronitt 1998:43). These assumptions have persisted, although some judges have questioned their accuracy (McHugh J in *Papakosmas* at 320, citing Fitzgerald P in *R v King* at 54).

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2 The Commissions also failed to reach agreement on several other issues, including protection for vulnerable witnesses in cross-examination (ALRC et al. 2005:136-149) and certain proposed reforms to hearsay provisions (ALRC et al. 2005:208-209).

3 The proposed amendments to the Evidence Acts incorporate the ALRC and VLRC's recommendations on *Longman* warnings. If successful, the Bill will insert a new s165B into the uniform evidence legislation governing the circumstances in which warnings may be given regarding forensic disadvantage arising from delay.

4 In addition to its recommendations in the joint report, the VLRC had recommended limiting *Longman* warnings as part of its earlier inquiry into laws governing sexual offences (VLRC 2004:382-384). Similar proposals were also made by the New South Wales Legislative Council Standing Committee on Law and Justice (2002:132).

5 The TLRI participated in the Commissions' review of evidence law, providing a representative to the Advisory Committee and contributing to the drafting process for the Committee. While the proposals outlined by the TLRI in its report were consistent with the final recommendations of the Commissions (TLRI 2006:29), some divergence of approach is apparent, particularly with respect to earlier suggestions made by the Commissions (TLRI 2006:23-25).

6 See below at page 177.

7 For a more detailed discussion of these assumptions, see Naffine 1994; Young 1998.

Legislative Reform

In more recent times and against a background of very low conviction rates,[8] many legislatures have responded to the evidentiary barriers faced by sexual assault victims. In some jurisdictions, this has amounted to abolishing the requirement for judges to warn that it would be unsafe to convict on the complainant's evidence alone.[9] In addition, a number of States have countered the expectation of contemporaneous complaint by requiring judges to explain that there may be good reasons for any delay.[10]

The Longman *Warning*

Despite these reforms, several High Court decisions have re-instituted a requirement to warn in certain cases. *Longman v The Queen* concerned a woman who claimed that her stepfather had sexually assaulted her when she was a child. No independent evidence supported that of the complainant, and a delay of approximately 20 years separated her initial allegations from the events in question. The defendant was convicted, but appealed on the basis that the jury had not been warned of the deleterious effect of delay. The High Court allowed the appeal and reversed Longman's conviction. The majority held that the relevant statutory provision in Western Australia[11] had abolished the requirement to treat as inherently unreliable the uncorroborated evidence of sexual assault complainants as a *class* of witness. However, the provision had not abolished the general law requirement to warn in respect of a complainant's evidence if such a warning was justified in the circumstances of the case (*Longman* at 85-90).

The High Court found that the circumstances of this case *did* necessitate a comment by the judge, as the lengthy delay impaired the defendant's ability to test the case against him (*Longman* at 91). In separate judgments, Deane (*Longman* at 101) and McHugh JJ (*Longman* at 107-108) recognised an additional basis for comment: the potentially unreliable nature of the complainant's recollection of the alleged events. This particular ground received confirmation in the later case of *Crampton v The Queen*, when a majority of the High Court found that the trial judge had erred in not warning the jury of the potential unreliability of the complainant's memory (*Crampton* at 181-182). *Crampton* also emphasised that judges must be vigorous and unequivocal when giving a *Longman* warning (*Crampton* at 181).

In both *Longman* and *Crampton*, the complainant's evidence was uncorroborated. In the case of *Doggett v The Queen*, however, the complainant's evidence was corroborated by a number of sources. In a judgment that reinforced the potential breadth of *Longman's*

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8 The vast discrepancy between the number of sexual assaults estimated to occur and eventual conviction rates for such crimes has been widely acknowledged. For data and analysis relating to this attrition process, see Australian Institute of Criminology 2003:40-42.

9 The following provisions abolish the requirement to give a corroboration warning for *all* witnesses: *Evidence Act* 1995 (Cth) s164; *Evidence Act* 1995 (NSW) s164; *Criminal Code* 1899 (Qld) s632; *Evidence Act* 2001 (Tas) s164; *Evidence Act* 1906 (WA) s50. South Australia, Tasmania, Victoria and the Northern Territory have abolished the requirement specifically with respect to complainants in sexual assault cases: *Evidence Act* 1929 (SA) s341(5); *Criminal Code* 1924 (Tas) s136; *Crimes Act* 1958 (Vic) s61; *Sexual Offences (Evidence and Procedure) Act* 1993 (NT) s4(5)(a) (ALRC et al. 2005:605).

10 *Criminal Code* 1987 (Tas) s371A; *Crimes Act* 1958 (Vic) s61(1)(b); *Evidence Act* 1906 (WA) s36BD; *Sexual Offences (Evidence and Procedure) Act* 1993 (NT) s4.

11 At the time, this provision was s36BE(1) of the *Evidence Act* 1906 (WA).

application, a majority of the High Court found that the presence of corroboration did not obviate the need for a *Longman* warning (*Doggett* at 356-357, 378-380).[12]

The Commissions' Recommendations

In the Report, the ALRC and VLRC criticised several aspects of the *Longman* warning. According to the two Commissions, empirical evidence does not support the assumption that delay in complaint signifies a lack of credibility on the part of the complainant (ALRC et al. 2005:605, 610, 616-617).[13] The Commissions did accept, however, that a lengthy delay (such as that present in *Longman*) may present forensic difficulties for the accused, and that judges should retain some discretion to warn jurors on this point (ALRC et al. 2005:610, 614-615).

In light of these conclusions, the ALRC and VLRC proposed in Recommendation 18-3 that the Evidence Acts be amended to curtail, although not entirely abolish, the courts' power to give *Longman* warnings (ALRC et al. 2005:617-618). The NSWLRC prepared a separate submission on the issue (ALRC et al. 2005:618-622). It rejected the Commissions' recommendations, claiming that warnings about delay are most appropriately addressed by judges in the exercise of their discretion, rather than by Parliament (ALRC et al. 2005:618-619, 622).

This article's criticism of the approach taken by the NSWLRC should not be interpreted as support for the specific proposals advanced by the other two Commissions. While these proposals obviously provide the background to the NSWLRC's dissent, a detailed consideration of their merits is beyond the scope of this article. In a general sense, however, support for restrictions on, rather than total abolition of, *Longman* warnings may be assumed. A final point must also be made regarding the context of *Longman* warnings. They are most commonly given in sexual assault trials, and most of the discussion surrounding their validity has focused upon this application. However, there is nothing to prevent their use in other types of case. The criticisms levelled at *Longman* in this article relate to the specific nature of sexual assault trials. As such, the question of whether judges should retain full discretion to warn in other cases will remain open.

The Approach of the New South Wales Law Reform Commission

The essence of the NSWLRC's dissent was that the court's unfettered ability to give a *Longman* warning is inextricably linked to the defendant's right to a fair trial. In the Commission's words:

> The presumption of innocence requires that a person must be able to test the prosecution case against him or her. This is absolutely fundamental to the notion of what constitutes a fair trial. ... This is the underlying reason for the NSWLRC's support for the decision in *Longman*. The criticisms that have been made of *Longman* do not address this fundamental issue, but tend to focus on other arguments (ALRC et al. 2005:619).

While it is crucial to consider whether the codification or abolition of *Longman* warnings would lead to unfairness for individual defendants, the NSWLRC's analysis of this question suffers from three underlying problems. First, it proceeds on a narrow understanding of the

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12 Gleeson CJ and McHugh J each gave a vigorous dissent, finding that the circumstances of the case were not analogous to *Longman* and did not justify a warning: *Doggett* at 347-349 (Gleeson CJ), 364-367 (McHugh J).

13 Citing empirical research from VLRC 2003:[2.34]. Please note that in n143, the Report erroneously cites paragraph [2.43] of the VLRC's Interim Report.

fair trial principle. Secondly, and as a consequence of this narrow understanding, the Commission fails to consider the meaning of fairness within the specific context of sexual assault cases. Finally, its functional analysis of the court's role in giving jury warnings does not acknowledge the practical reality of how *Longman* warnings have been applied.

The Meaning of the Fair Trial Principle

Underpinning the NSWLRC's submission is the presumption that the fair trial principle is synonymous with fairness to the accused, with little analysis or justification as to why this is the case. As a consequence of this presumption, the Commission fails to address directly most of the 'other arguments' against *Longman* warnings. It does this by positing them as concerns that are external to, and therefore lesser than, the question of a fair trial. Again, this externality is assumed rather than demonstrated:

> [C]riticisms of *Longman* centre on its supposed undermining of legislative reforms dealing with delay in the making of complaints in sexual assault cases – reforms rightly designed to avoid placing witnesses into stereotypical classes with given results. But *Longman* is not directed to this point. It is not concerned with evidence but with the incidents of a fair trial (ALRC et al. 2005:619, footnote references omitted).

On the narrow approach adopted by the Commission, it is unsurprising that concerns about stereotyping of sexual assault complainants fall outside the parameters of the fair trial principle. A different result is reached if we pursue a more expansive analysis of fairness.

The fair trial principle is of paramount importance within the Australian criminal justice system (*Dietrich v The Queen* at 298, 326; *McKinney v The Queen* at 478; *Jago v District Court* at 29-30, 56). This does not mean, however, that its content is fixed or absolute: it does no violence to the significance we ascribe to the principle to recognise that 'the notion of what is fair is not written in stone for all time' (Mason 1995:7). Furthermore, the principle is a broad one. Its meaning is both located within, and shaped by, the many interests at play within the adversarial system and within society at large.[14]

The notion that the fair trial principle may encompass more than fairness to the accused person does *not* mean that we simply abandon the fundamental protections offered to such individuals in accordance with the presumption of innocence (Hunt 1999:19). Given that our system of criminal justice is accusatorial in nature (ALRC 1987:[35], cited Odgers 2006:[1.1.80]), fairness to the accused should be the touchstone for any assessment of whether a trial has been fair. However, we must recognise that fairness to the accused cannot be determined in isolation from wider concerns. Anthony Mason proffered similar words of caution in his analysis of the meaning of a fair trial, observing that 'to speak of an accused's *right* to a fair trial does tend to obscure other considerations which must be taken into account in determining whether an accused has been tried unfairly' (Mason 1995:7, original emphasis).

The 'other considerations' to which Mason refers may be general ones, such as public interest in the efficient use of the court's time and resources (Mason 1995:7). They may also be more specific, such as the effect on a rape victim of intrusive questioning about her sexual history. Both Parliament and the courts have limited the fundamental rights of

14 See, for example, Hunt 1999:19. Hunt suggests that when considering the fair trial principle, it is important to remember that the prosecution represents the legitimate interests of the community and of victims.

accused people, albeit with great caution, in light of these and other concerns.[15] If the principle of a fair trial is understood broadly, then such limitations should be seen to *enhance*, rather than *diminish* overall fairness.

Fairness within Sexual Assault Trials

The NSWLRC identifies the right of the accused to test the case against him as the primary right that *Longman* warnings protect (ALRC et al. 2005:619). Indeed, the potential forensic disadvantage caused by delay should not be understated, and the Commission devotes justifiable attention to this issue (ALRC et al. 2005:618-619). Yet this finding should not induce us to take a short cut to the conclusion that *Longman* warnings are essential to a fair trial. As advocated above, a contextual approach to fairness must be adopted. If we examine the right to test the prosecution case not in abstract isolation, but in the specific context of sexual assault trials, the profound unfairness of *Longman* warnings becomes apparent. Two key characteristics of sexual assault trials support such a conclusion.

Systemic Delay

Empirical research has indicated that it is common for sexual assault complainants to delay reporting the offence to police (VLRC 2003:71-75; TLRI 2006:2). Recent studies have found that this is especially so with respect to sexual offences committed against children (VLRC 2003:73-74; Judicial Commission NSW 2004:viii, 23-24). Delays in this category were of significant length: 37.9% of offenders received their sentences over 10 years after the offence occurred, 28.9% were sentenced more than 15 years after the offence, and 18.2% were sentenced over 25 years later (Judicial Commission NSW 2004:23). Past studies have yielded similar results: in 1997, it was found that the median delay in reporting for child sexual assault cases was six years (Judicial Commission NSW 1997, cited Flatman & Bagaric 1997/1998:1). In addition, research in the United Kingdom regarding sexual abuse of children in institutional care has found that the typical age of complainants is between 30 and 40 years (House of Commons Select Committee on Home Affairs 2002, cited Birch & Taylor 2003:840). Delay in sexual assault cases has been attributed to a variety of factors (Bronitt 1998:51-53; Lewis & Mullis 1999:265-273; Flatman & Bagaric 1997/1998:2-4), many of which are directly related to the nature of the crime. These include ongoing feelings of shame, unwillingness to revisit the experience of the crime, and, within the context of intra-familial offences, fear of reprisal or family breakdown.

In comparison to other crimes, therefore, delay within sexual assault trials is systemic rather than incidental. If this is accepted, then the fairness of warning the jury about such delay and thereby effectively penalising the complainant, must be seriously questioned. In the United Kingdom, several judges in sexual assault cases have refused requests to stay proceedings because the delay complained of was 'contributed to by the actions of the defendant himself' (*Attorney-General's Reference (No 1 of 1990)* at 644, cited Lewis & Mullis 1999:277), and was considered justifiable given the nature of the offence (*Attorney-General's Reference (No 1 of 1990)*; *Dutton*; *B*, cited Lewis & Mullis 1999:277-278). Several commentators have criticised this approach. Lewis and Mullis (1999:279), for example, argue that by attributing delay to the nature of the crime or the defendant's

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15 For example, through the introduction of rape shield provisions preventing the disclosure of a sexual assault complainant's sexual history (Kumar & Magner 1997:330). For a pithy articulation of the court's willingness to impose justifiable limits upon an accused person, see the exchange between McHugh J and defence counsel in the case of *Grills v R; PJE v R* (extracted Kumar & Magner 1997:311). For a discussion of the court's need to limit cross-examination occasionally because of time and resource constraints, see Mason 1995:7-8.

conduct, the courts assume that the crime occurred and was perpetrated by the accused. The NSWLRC similarly emphasises that the effect of delay on the defendant and on the fairness of the trial must be assessed from the standpoint of the defendant's innocence (ALRC et al. 2005:619).

Certainly, if a judge refuses a defendant's request for a warning or stay on the basis that the delay in question was justifiable, this impugns that particular defendant. This is precisely why it is advantageous to recognise the problem as a systemic one, and hence address it on a systemic level. Legislation that implements a general presumption against *Longman* warnings addresses the prevalence of delay in sexual assault complaints without directly attributing delay to any individual defendant.

Lack of Evidence

In its submission, the NSWLRC outlines the various forensic disadvantages that arise as a result of delay. These include the death of witnesses and the loss of important documents, as well as more general concerns about the defendant's impaired ability to investigate details of the alleged offence (ALRC et al. 2005:619). It would be foolish to contend that delay does not create these, and other, evidentiary challenges.[16] However, there is a real danger that *Longman* warnings falsely attribute a lack of evidence to the passage of time, when it is more appropriately linked to the nature of the offence itself.

Sexual assault trials have always been beset by the problem of proof. Unlike other types of crime, where physical evidence is used to link the offender to the offence, many rape cases revolve around the issue of consent. The former Law Reform Commission of Victoria conducted an inquiry examining (among other issues) the frequency and manner in which the issue of consent arose in sexual assault trials. Sixty-eight per cent of accused persons studied relied on a defence relating to consent. Only 11% denied having any contact with the accused, and a further 11% admitted contact but denied that a sexual act had occurred (Law Reform Commission of Victoria 1991, cited Brereton 1993:60). Unless there are aggravating circumstances such as violence, physical evidence is therefore often useless. It may prove that the defendant engaged in sexual intercourse with the complainant, but the question is whether such sexual intercourse constituted assault. Even where consent is not the central issue, the offence still presents unique evidentiary problems for both accused and accuser. It is a 'private' crime, and usually occurs without witnesses. Furthermore, given the high incidence of sexual assault perpetrated by someone known to the victim (Australian Institute of Criminology 2005:4), the offence is often shrouded within the double intimacy of the sexual act, and the family or intimate relationship.

Rape cases may therefore lack the amount of corroborative evidence present in other criminal trials. As such, it may be difficult to determine whether alleged 'forensic disadvantage' in a particular case actually results from delay, or merely reflects these general evidentiary inadequacies. The NSWLRC asserts that the 'effect of delay is ... known to the trial judge, whose experience enables him or her to identify the relevant forensic disadvantages' (ALRC et al. 2005:619). In fact, judges are *particularly* ill equipped to assess delay in the specific context of sexual assault cases. Given the past treatment of sexual assault complainants before the courts, we must acknowledge that 'judicial experience' is not epistemologically neutral. As Regina Graycar cautions, '[w]e need to pay careful attention to what judges know about the world, how they know the things they do, and how the things they know translate into their activity as judges' (Graycar 1995:267). Historically, courts have applied inappropriate evidentiary norms and expectations to

16 For further discussion of the evidentiary challenges posed by delay, see Flatman & Bagaric 1997/1998:6-7.

sexual assault cases. Judges have failed to recognise that evidence in such cases is qualitatively different to that found in other types of case, and victims have suffered for this. These problematic assumptions are woven into the fabric of the judiciary's common 'experience', and consequently, become normalised and invisible. Judges may unwittingly conflate the evidentiary problems that can legitimately be attributed to the passage of time with their general discomfort about the level of evidence in a particular sexual assault case, and hence overstate the effect of delay upon the accused.

The Role of Judicial Discretion in Ensuring Fairness

Having considered the substantive issue of whether *Longman* warnings are necessary to ensure a fair trial, we now turn to the functional aspect of the NSWLRC's submission. The Commission asserts that 'concerns about *Longman* warnings are not generally amenable to legislative solution' (ALRC et al. 2005:621), as these warnings belong within the trial judge's discretion to intervene on the facts of individual cases. This argument is derived from the reasoning in *Longman*. The High Court recognised Parliament's right to legislate with respect to a general class of witnesses, but maintained that judges must possess the residual authority to warn if this is necessary to prevent unfairness in a particular case (*Longman* at 85-86, 105-107).

As strong as this argument may be in principle, it cannot withstand significant evidence that *Longman* is being applied almost as a matter of course. In a recent report released by the New South Wales Criminal Justice Sexual Offences Taskforce, several sources commented on the increasing tendency of judges to give *Longman* warnings 'just-in-case' (Criminal Justice Sexual Offences Taskforce 2005:89). Similar findings were made by the VLRC in its investigation into sexual offences (VLRC 2004:379). This tendency was frequently attributed to trial judges' desire to ensure that convictions are not overturned on appeal because of an absence of warning.[17] The sheer number of cases in which *Longman* warnings have been considered necessary supports these comments: in its 2006 Report on warnings in sexual assault cases, the Tasmania Law Reform Institute compiled a non-exhaustive list of 64 appeals that succeeded on the basis of an inadequate *Longman* warning (TLRI 2006:9). Finally, judges themselves have noticed, and criticised, the increasing tendency to warn (*R v Mazzolini* at 130; Wood 2003:[21], cited VLRC 2004:372).

The NSWLRC offers no evidence to counter that offered by the other two Commissions in support of the above argument.[18] It merely states that it 'does not agree with the proposition that *Longman* warnings are, in any sense "ritualistic"' (ALRC et al. 2005:621).[19] This is a significant omission. It is unconvincing to disregard evidence of the problems surrounding *Longman*'s practical application and merely assert that its principle is sound. The very essence of the principle in *Longman* is its support for judicial intervention to prevent unfairness on the facts of *individual* cases: practice and principle cannot be separated. If a 'new category of case' (*Longman* at 96-97) has indeed been created, then this represents a dangerous deviation from the High Court's professed intention in *Longman*.

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17 See, for example, the comments of Dunford J in *R v LTP* at [47].

18 For the ALRC and VLRC's submission on this point, see ALRC et al. 2005:610-611.

19 In support of its argument, the NSWLRC refers to para [297] of *R v Jacobs*. However, para [297] merely contains a statement of principle by Wood CJ to the effect that jury warnings, including *Longman* warnings, should always be applied according to the individual circumstances of each case. It is in the nature of a normative pronouncement and does not serve to rebut the empirical assertion that *Longman* warnings are being applied in a ritualistic manner. This is especially the case given that Wood CJ himself has made extra-judicial comments criticising the increasingly routine application of *Longman* warnings (Wood 2003:[21]).

Conclusion

The Inquiry's consideration of *Longman* warnings represented an excellent opportunity for a collective step towards fairer sexual assault trials. It is disappointing that this opportunity was missed. Significant advancements have been made in the court's treatment of sexual assault victims over recent years. The routine application of *Longman* warnings represents an undesirable deviation from this progress. Given the prevalence of delay in sexual assault trials, and the increasing tendency of trial judges to warn as a matter of course, the fair trial principle is no longer a convincing justification for unfettered judicial discretion. For these reasons, *Longman* warnings should not become an obstacle on the path to greater uniformity in evidence law.

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