

# What is 'Beyond Reasonable Doubt'?

If you have been charged with a criminal offence, it is normally up to the prosecution to prove each 'element' (or ingredient) of that offence "beyond reasonable doubt."

But what exactly do those words mean?

"Beyond reasonable doubt" is the tried and true formula used to determine guilt for centuries. But did you know it has no legal definition at all?

According to the [Criminal Trial Courts Bench Book in NSW](#), the standard "beyond reasonable doubt... [is] an ancient one... and it needs no explanation from trial judges."

This may seem baffling, as it is arguably one of the most important phrases in criminal law. Not only this, but coming up with a definition has actually been found time and time again to be perilous.

When criminal cases are heard in the [District Court in NSW](#), defendants have the right to a jury trial – and it is a jury's job to decide whether or not the prosecution has proved the offence "beyond reasonable doubt."

And even when cases come before magistrates and judges-alone, they too must determine guilt or innocence against that test.

It seems logical, then, that fact-finders such as juries, magistrates and judges would want to know the precise meaning of the term – especially given that the future of the person on trial depends so heavily upon it.

## Attempts to define the phrase

Judges who have tried to explain the phrase have consistently

had their judgments overturned.

This happened in the case of [Green v The Queen \(1971\) 126 CLR 28.](#)

In that case, Mr Green appealed his conviction on the basis that the trial judge's explanation of "beyond reasonable doubt" was an error of law.

During Mr Green's trial, the judge gave a lengthy explanation of the term to the jury.

On appeal, the High Court found that this was an error because the 'explanation' may, at best, have led to confusion amongst jurors and, at worst, caused them to convict where they may otherwise have acquitted.

The High Court found that: "a reasonable doubt is a doubt which the particular jury entertain in the circumstances. Jurymen themselves set the standard of what is reasonable in the circumstances."

Because of the error, Mr Green's conviction was overturned and a new trial was ordered.

### **Looking for a definition**

The lack of a concrete definition is unfortunate because it may lead to uncertain jury members doing their own research into the term, which is against the law and lead the trial being "aborted" and a new trial ordered.

Under [section 68C of the NSW Jury Act NSW](#) , it is an offence punishable by two years imprisonment and/or a \$5,500 fine to ask anyone a question, use the Internet to research, conduct an experiment or conduct an inquiry about the accused or anything to do with the trial.

But even this hasn't stopped jurors from conducting their own investigations – one juror in Victoria caused a mistrial by

looking up the definition of “a reasonable doubt” on the Internet.

### **Defining the indefinable?**

Throughout legal jurisprudence, any attempts to define the phrase, or substitute it with other words, have been doomed to fail and condemned by judges in higher courts.

In fact, one judge described trying to define or rephrase it as [“embark\[ing\] on a dangerous sea.”](#)

The phrase has been described as something so commonplace, and such a traditional formula, that it needs no explanation because everyone already knows what it means.

But given the fact that trial judges feel the need to (erroneously) explain it, and jurors continue to seek definitions, it would seem that those assumptions are not quite accurate.

Instead, we have decisions being overturned and jurors facing criminal prosecution – all for wanting to do the right thing.