

# Complainants in sexual offence matters: s 5 *Criminal Law (Sexual Offences) Act 1978*

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## Legislation –

### *Criminal Law (Sexual Offences) Act 1978* (Qld)

#### Section 5

#### Exclusion of Public

- (1) Whilst a complainant is giving evidence in any examination of witnesses or trial, the court shall cause to be excluded from the room in which it is then sitting all persons other than the following—
- (a) the counsel and solicitor of the complainant;
  - (b) the defendant and the defendant’s counsel and solicitor;
  - (c) a Crown law officer or a person authorised by a Crown law officer;
  - (d) the prosecutor;
  - (e) an intermediary under the Evidence Act 1977, part 2, division 4C for the complainant;
  - (f) any person whose presence is, in the opinion of the court, necessary or desirable for the proper conduct of the examination or trial;
  - (g) any person whose presence will provide emotional support to the complainant;
  - (h) where the complainant is under or apparently under the age of 17 years—the parent or guardian of the child unless, in the court’s opinion, the presence of that person would not be in the child’s interests;
  - (i) any person who makes application to the court to be present and whose presence, in the court’s opinion—
    - (i) would serve a proper interest of the applicant; and
    - (ii) would not be prejudicial to the interests of the complainant.
- (2) The provisions of subsection (1) shall be construed so as not to prejudice the power of the court had under any other provision or rule of law to exclude from the room in which it is sitting any person, including a defendant.

The definition section (section 3) defines complainant to mean “a person in respect of whom a sexual offence is alleged to have been committed”.

## Commentary

The Criminal Law (Sexual Offences) Act 1978 “regulates the admission of certain evidence in proceedings relating to sexual offences and the mode of taking evidence in such proceedings, to protect persons concerned in the commission of sexual offences from identification, and related purposes”.

One of the matters dealt with by the Act is the exclusion of the public whilst a sexual offence complainant is giving evidence. However, the court may permit members of the public to remain present in accordance with section 5(1).

Where a complainant is also a special witness under s 21A of the *Evidence Act* 1977, whether expressly declared to be so or not, the jury must be directed in accordance with s 21A(8).

However, if orders excluding the public are made solely on the basis of s 5 *Criminal Law (Sexual Offenders) Act* 1978 no such directions are necessary. Nevertheless, the interests of justice in the circumstances of the case may warrant a warning to the jury: *R v Samson* [2011] QCA 112 at [39]-[41].

## Suggested Direction

**I order that during the evidence of [name of complainant], all persons other than [as applicable: those referred to in s 5(1) of the Criminal Law (Sexual Offences) Act 1978], are to be excluded from the courtroom.**

Where the court permits persons named in subsections (e), (f), (g), (h) or (i) of section 5 to remain, they should be named in the order.