

46. Prior Inconsistent Statements

46.1 Legislation

[Last reviewed: September 2024]

Evidence Act 1977 (Qld)

[Section 17](#) – How far a party may discredit the party's own witness

[Section 18](#) – Proof of previous inconsistent statement of witness

[Section 19](#) – Witness may be cross-examined as to written statement without being shown it

[Section 101](#)- Witness's previous statement, if proved, to be evidence of facts stated

[Section 102](#) – Weight to be attached to evidence

Section 103ZO – Application of division

Section 103ZY – Direction on differences in complainant's account

Section 161 - Application of part 6B, divs 1–3 to criminal proceedings

46.2 Commentary

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The first direction below deals with statements admitted under s 17(1) (concerning hostile witnesses) of the *Evidence Act 1977 (Qld)*. It may be adapted for prior inconsistent statements admitted under ss 18 and 19 of the Act.

Sections 17, 18 and 19 set out circumstances in which, and how, a prior inconsistent statement may be proved. Sections 101 and 102 deal with the use to which a prior inconsistent statement may be put and the weight to be attached to it.

See *R v Collins* [\[2018\] 1 Qd R 364](#) for a comprehensive discussion of ss 18, 19, 101 and 102 by Burns J. For a brief, but more recent discussion, on these sections see *R v WCD* [\[2024\] QCA 120](#).

The first part of the first direction below addresses the matters referred to in *R v Perera* [\[1986\] 2 Qd R 431](#). The last part of the first direction below addresses the matters referred to in *R v Nguyen* [\[1989\] 2 Qd R 72](#).

Differences in a complainant's account

The Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024 (Qld) introduced s 103ZY into the *Evidence Act 1977*. This provision took effect on proclamation on 23 September 2024. The transitional provision (s 161 of the *Evidence Act*) means that s 103ZY applies to all proceedings on or after the date of proclamation, regardless of when the proceeding commenced, the offending is alleged to have occurred, or the defendant was charged.

Section 103ZY applies (by effect of s 103ZO) in a trial by jury or judge sitting alone, that relates wholly or partly to a charge of a sexual offence.

A direction along the lines of the second suggested direction below must be given where evidence is given, or likely to be given, or a question is asked, or likely to be asked, of a witness that tends to suggest a difference in the complainant's account that may be relevant to the complainant's truthfulness or reliability.

46.3 Suggested Directions

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First direction: general direction where there are prior inconsistent statements

The prosecution relies on a statement by [A] to the police on [the event] that [describe statement]. The witness gave evidence on oath before you that the statement was made but was not true, and [summarise evidence].

The previous statement made by the witness is evidence of any fact stated in it. It is a question for you whether you accept the evidence and, if so, what weight you attach to it.

In estimating the weight that can be attached to the statement, have regard to all the circumstances from which an inference can reasonably be drawn as to its accuracy or otherwise.

You should consider whether the statement was made around about the same time as the occurrence of the facts to which it relates.

Bear in mind both that the statement was not given on oath (if applicable) and that you did not have the advantage of seeing and hearing the witness make the statement, as you do have when witnesses give their evidence before you.

In dealing with a statement such as this - made out of court and more damaging to the defendant than the evidence the witness gave here in court - greater care is needed. The statement is not in the same category as sworn evidence before you.

[Consider also whether [A] had any incentive to conceal or misrepresent the facts. Consider also any specific factors that may call the reliability of the prior statement into question].

You should take into account the reasons [A] gave for giving the statement in the first place and then for changing [his/her] version of events.

If you find that there are significant differences between the prior statement of the witness and the evidence the witness gave in this Court, and you find that no acceptable explanation has been provided for the inconsistency, it may cause you to be hesitant about the witness's accuracy, honesty, reliability and credibility generally.

(OR, where appropriate, the following may be said):

The only evidence against the defendant is [A's] previous statement, which [he/she] has retracted in [his/her] evidence on oath before you. In those circumstances, you should only act on the statement if you are satisfied beyond reasonable doubt both that it was made and that its contents are true.

Second direction: differences in complainant's account

The defence relies on differences in the complainant's account to support the submission to you that the complainant is not a truthful or a reliable witness. You might think there are other differences.

(It is up to individual trial judges, and it may depend on the case, but consider at this point whether you might identify the differences (inconsistencies) that have been highlighted in the case – or differences (inconsistencies) that may not have been highlighted).

A difference, in an account, includes:

- (a) a gap in the account; and**
- (b) an inconsistency in the account; and**
- (c) a difference between the account and another account.**

It is up to you as the jury to decide whether (or not) there are any differences in the complainant's account and if there are, whether any such differences are important in assessing the complainant's truthfulness and reliability.

But in making that assessment, I direct you that experience shows the following four things:

- 1. People may not remember all the details of a sexual offence or may not describe a sexual offence in the same way each time; and**

- 2. Trauma may affect people differently, including affecting how they recall events; and**
- 3. It is common for there to be differences in accounts of a sexual offence; and**
- 4. Both truthful and untruthful accounts of a sexual offence may contain differences.**