

# 11. Special Witnesses

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## 11.1 Legislation

[Last reviewed: March 2025]

*Evidence Act*

[Section 21A](#) – Evidence of special witnesses

[Section 21AAA](#) – Exclusion of particular persons while particular evidence is presented

## 11.2 Commentary

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Who is a ‘special witness’ is set out in 21A(1) of the *Evidence Act 1977* (Qld) (noting the s 21A does not apply to a child to the extent that Division 4A applies: s21A(1A)).

If the evidence of a special witness is given under an order or direction in s 21A(2)(a) to (e), or under s 21AAA(2), the jury must be instructed in accordance with s 21A(8) that –

- (a) they should not draw any inference as to the defendant’s guilt from the order or direction; and
- (b) the probative value of the evidence is not increased or decreased because of the order or direction; and
- (c) the evidence is not to be given any greater or lesser weight because of the order or direction.

The failure to comply with the mandatory requirements of s 21A(8) is an error of law (see *R v Bisht* [\[2013\] QCA 238](#), [49]; *R v Little* [\[2013\] QCA 223](#), [24]). The directions to the jury must include all orders made under s 21A(2), including an order under s 21A(2)(d) that a person approved by the court be present to provide emotional support to the special witness.

The orders or directions that can be made under s 21A(2) include:

- (a) that the defendant be obscured from the view of the special witness;
- (b) that non-essential persons be excluded from the courtroom;
- (c) that the special witness give evidence from a remote witness room from which all persons other than those specified by the court are excluded;

- (d) that a person approved by the court be present to provide emotional support to the special witness;
- (e) that the evidence of the special witness be video-taped and played at the trial instead of direct testimony; and
- (f) another order or direction considered to be appropriate such as a direction that questions be kept simple or be limited by time.

### 11.3 Suggested Direction

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(Modify the directions below as necessary, depending on the orders/directions made)

1. **The evidence of [the witness] was taken on [insert date].**
2. **An order of the court permitted [his/her] evidence to be taken in the way it was. It is not uncommon for evidence to be given in this way.**
3. **[Name of witness] was in a room separate from the courtroom. [His/her] evidence was given by the use of an audio-visual link between the room in which [he/she] was seated and the courtroom.**
4. **[Name of witness]'s evidence was recorded as it was given, and that is the recording that was played to you.**
5. **When [name of witness] gave [his/her] evidence, there was a support person sitting in the room with [him/her], and no other person.**
6. **All non-essential persons were excluded from the courtroom itself.**
7. **The Defendant was present in the courtroom, but [he/she] was positioned in such a way that [name of witness] could not see [him/her] on the monitor or at all while [he/she] gave [his/her] evidence.**
8. **The procedure I have just outlined for taking [name of witness]'s evidence conformed with the court order.**
9. **In these circumstances:**
  - **You must not draw any inference as to the Defendant's guilt from the order.**
  - **The probative value of the evidence [name of witness] gave is not increased or decreased because of the order. To say that the probative value of the evidence is not increased or decreased because of the order, means it is not better evidence, or worse**

**evidence, than if the evidence had been given before you from the witness box.**

- **That evidence is not to be given any greater or lesser weight because of the order.**