

7. Protected Witnesses: s 21M Evidence Act 1977

7.1 Legislation

[Last reviewed: March 2025]

Evidence Act 1977

[Section 21M](#) – Meaning of protected witness

[Section 21N](#) – No cross-examination of protected witness by person charged

[Section 21O](#) – Procedure for cross-examination of protected witness if person charged has no legal representative

[Section 21R](#) – Jury direction

7.2 Commentary

[Last reviewed: March 2025]

If a witness is a 'protected witness' under s 21M of the *Evidence Act 1977* (Qld), the defendant may not personally cross-examine the witness: (s 21N). In such cases, if the defendant is unrepresented, the Court is obliged to inform him/her of the procedure provided for in s 21O(2).

If the defendant does not have a legal representative other than for the cross-examination of a protected witness, or does not have a legal representative for the cross-examination of a protected witness, the court must give the jury any warning necessary to ensure the defendant is not prejudiced by any inference that might be drawn from the fact that he/she has been prevented from cross-examining the protected witness in person: s 21R.

7.3 Suggested Direction

[Last reviewed: March 2025]

(Instruction to the Defendant: where the Defendant has elected not to have a lawyer to cross-examine the protected witness in the presence of the empanelled jury):

[Name of Defendant] you have elected to represent yourself. As you are aware, [name of protected witness] is a protected witness who will give evidence on behalf of the prosecution. As you also know, you are therefore prevented from personally cross-examining that witness. You are entitled to have a lawyer, either to represent you generally at the trial or only to

cross-examine [name of protected witness]. Legal Aid is available free of charge. It is your choice.

You have informed the Court before today that you wish to represent yourself and that you do not require a lawyer to cross-examine [name of protected witness]. Before the trial gets under way, I wish to give you a further opportunity to have a lawyer to represent you for the entire trial or else solely to cross-examine [name of protected witness]. Do you want a lawyer?

(Introductory direction to the jury where the Defendant has elected to represent himself/herself. Follow this direction with one of the two sets of directions below, depending on whether the Defendant has elected to have a lawyer for cross-examination):

It is a fundamental right of every person accused of a crime to represent [himself/herself] at [his/her] trial. The Defendant has elected to do so. You must not draw any adverse inference against [him/her] because [he/she] has exercised the right of every citizen.

However, if a Defendant elects to defend [himself/herself], the law prevents [him/her] from cross-examining any witness who is a 'protected witness'. [Name of witness] is a protected witness. That [name of witness] is a protected witness does not, by that fact alone, add to or detract from the witness's reliability and credibility.

(Depending on the nature of the prosecution's case and the evidence of the witness, the following paragraph may be added): **The evidence of [name of protected witness] is, you might think, essential to the prosecution case. Indeed, you will probably conclude that the prosecution case stands or falls on your assessment of her reliability and truthfulness. Keep in mind that you cannot convict unless satisfied beyond reasonable doubt that the evidence upon which the prosecution relies to support [the counts] is both truthful and reliable.**

(If the Defendant has elected to have a lawyer for the purpose of cross-examination):

While the Defendant has elected to represent [himself/herself], a lawyer will represent the Defendant for one purpose: to cross-examine [name of protected witness]. You might think that [name of lawyer] will be at somewhat of a disadvantage in that [he/she] has not been involved in the whole trial. However, the law provides for such a procedure in the trial of an unrepresented Defendant who chooses otherwise not to have a lawyer represent [him/her].

You must not draw any adverse inference against the Defendant because [he/she] is required to have a lawyer for the purpose of cross-examining [name of protected witness].

(Where the Defendant has elected not to have a lawyer for the purpose of cross-examination):

The Defendant has chosen not to have a lawyer to cross-examine [name of protected witness]. So [name of protected witness] will not be [was not] cross-examined, because the Defendant is not permitted to cross-examine [him/her]. Cross-examination tests whether a witness is truthful and reliable. It is often an important aid to a jury's assessment of where the truth lies. As [name of protected witness] has not been cross-examined, you will have to assess the accuracy of [his/her] evidence without the assistance cross-examination might have provided.

You must not draw any adverse inference against the Defendant because [he/she] has chosen not to have a lawyer, as a result of which the evidence of [name of protected witness] has not been tested by cross-examination.

(The above directions should be given at the time the witness is called and repeated, with any necessary modification, in the summing up).