

## 66A. Jury directions related to sexual offences

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### 66A.1 Legislation

[Last reviewed: January 2025]

*Evidence Act 1977*

[Section 103ZO](#) – Application of division

[Section 103ZQ](#) – When directions under subdivisions 3 and 4 must be given

[Section 103ZS](#) – Direction about circumstances in which non-consensual sexual activity occurs

[Section 103ZT](#) – Direction about responses to non-consensual sexual activity

[Section 103ZU](#) – Direction on lack of physical injury, violence or threats

[Section 103ZV](#) – Direction on responses to giving evidence

[Section 103ZW](#) – Direction on behaviour and appearance of complainant

[Section 103ZX](#) – Direction on mistake of fact in relation to consent

[Section 103ZY](#) – Direction on differences in complainant's account

[Section 103ZZ](#) – Direction on lack of complaint or delay in making complaint

[Section 103ZZA](#) – Direction on evidence of post-offence relationship

### 66A.2 Commentary

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The *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (Qld) substantially amended the *Evidence Act 1977* (Qld). It inserted Part 6B, Division 3, which commenced by proclamation on 23 September 2024. Pursuant to s 161 of the *Evidence Act 1977* (Qld) Division 3 applies, with one exception, to a criminal proceeding regardless of when the offence the subject of the proceeding was committed, the Defendant was charged, or the proceeding was started.

The exception is s 103ZX 'Direction on mistake of fact in relation to consent', which specifically relates to the newly introduced s 348AA 'Circumstances in which there is no consent', a section which, per s 761 *Criminal Code*, only operates in respect of an offence committed wholly after 23 September 2024. The operation of s 103ZX is dealt with in Chapter 80A 'Mistake of fact in Sexual Offences – offending after 23 September 2024'.

Pursuant to section 103ZO, Division 3 applies to a trial by jury (or a judge sitting alone), which relates, wholly or partly, to a charge of a sexual offence. A 'sexual offence' is defined in the dictionary to the *Evidence Act* as 'an offence of a sexual nature'. It includes, but is not limited to, offences against a provision in Chapters 22 and 32 of the *Criminal Code*. These include indecent treatment of a child (s 210), engaging in penile intercourse with a child (s 215), repeated sexual conduct with a child (s 229B), rape (s 349) and sexual assault (s 352).

Whether or not some other alleged offence is 'of a sexual nature' will depend on the circumstances of the case.

The directions are divided into subdivision 3 'Directions to jury – consent and mistake of fact' and subdivision 4 'Directions to jury – other'. Section 103ZQ requires that one or more of the directions in subdivision 3 must be given: (a) if there is a good reason to give it; or (b) if a party requests the direction, unless there is a good reason not to give it. The directions in subdivision 4 must be given where there is, or is likely to be, evidence or a question tending to suggest a matter mentioned in the provisions. In either case, the direction is to be given at the earliest time the judge determines is appropriate, which may be from before the adducing of evidence through to during the summing up. It may also be repeated.

If the trial concerns a 'domestic violence offence' (s 103B) as well as a sexual offence, and there is delay or absence of complaint, a single direction may be given to address both types of offences (s 103ZD(4), s 103ZZ(3)).

The explanatory notes indicate the directions are calculated at reducing the extent to which 'rape myths', i.e. common misconceptions about sexual violence, may influence juries.

### **66A.3 Suggested direction**

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**The reactions of people who allege they have been offended against will inevitably vary. Different people may behave differently in response to the same circumstances. The same person may be affected differently at different times by similar circumstances. There is no rule book dictating how a person will be affected if offended against. Despite this, in sex cases people sometimes apply pre-conceived expectations about how the Complainant should react, behave and be affected. You should of course apply your own wisdom and knowledge of the human condition in considering the facts of this case. However, it is important that you do not judge the case based on pre-conceived expectations about how an alleged victim of a sexual offence should or should not react, behave or be affected. To guard against that risk, I give you the following direction[s] of law.**

[Direct in accordance with the provisions of subdivisions 3 and 4, listed above in 66A.1 Legislation, to the extent they apply to the case].