

Child Witnesses: 93A Statements

Most commonly, video and/or taped interviews with the child and a police officer are used for the purpose of the child's evidence in chief.¹

Section 102 of the *Evidence Act* 1977 authorises, in appropriate cases, directions to a jury on circumstances relevant to the weight to be given to a s 93A statement.² It provides:

"102. Weight to be attached to evidence

In estimating the weight (if any) to be attached to a statement rendered admissible as evidence by this part, regard shall be had to all the circumstances from which an inference can reasonably be drawn as to the accuracy or otherwise of the statement, including –

- (a) the question whether or not the statement was made, or the information recorded in it was supplied, contemporaneously with the occurrence or existence of the facts to which the statement or information relates; and*
- (b) the question whether or not the maker of the statement, or the supplier of the information recorded in it, had any incentive to conceal or misrepresent the facts."*

Suggested 93A Statement direction³

As you know, part of the complainant's evidence is comprised of her conversations with police at the ... police station on ...

These conversations were recorded and the recording has been played to you.

The presenting of the child's evidence in this way comprises the routine practice of the Court. This measure is adopted in every case involving children such as ...

¹ Statements admissible under s 93A are subject to exclusion as a matter of discretion under s 98. The judicial discretion under ss 98 and 130 should not, however, be exercised to frustrate the policy of s 93A: *R v FAR* [1996] 2 Qd R 49; *R v Morris; ex parte A-G* [1996] 2 Qd R 68.

² See *R v TQ* (2007) 173 A Crim R 385. Whether or not particular circumstances and references adverted to in s 102 must be called to the jury's attention by a trial judge depends on the circumstances of the particular case: see *R v Flynn* [2010] QCA 254 at [53]-[65]. A direction to the jury in terms of s 102(b) should not be given where no such issue arises on the evidence. A direction in those circumstances is unnecessary and unhelpful because it would distract the jury from focusing on the real issues: *R v HBN* [2016] QCA 341 at [23]-[30].

³ Where a direction to the jury in accordance with s 21AW(2) *Evidence Act* 1977 in relation to the pre-recorded evidence of an affected child witness is given, there is no need for a similar direction in relation to the evidence admitted pursuant to s 93A: *R v Lovell* [2016] QCA 151 at [139]-[140].

Although tendered as an exhibit, a statement admitted pursuant to s 93A should not, in ordinary circumstances, go into the jury room, for the jury may give undue weight to it as against other evidence.⁴

If the s 93A statement does go into the jury room, (for example by consent), the following direction may be given in the summing-up:

The video recording of the child’s evidence [and the transcript] will be with you when you consider your verdict.

Ordinarily, these documents remain in the courtroom, and are available for you to hear and view in the courtroom during your deliberations.⁵ But both counsel in this case wish you to have access to the exhibit [and the transcript] while you are deliberating in the jury room.

Keep in mind what I said earlier about the transcript. It is someone else’s impression of what was said during the recorded interview. The transcript is not evidence and was made available to you as an aid only. It is what you hear on the recording that matters, not what is in the transcript.⁶

As you will not have any other witnesses’ evidence with you in recorded or written form, be careful not to place undue weight on the child’s evidence because you are able to hear and read it on a number of occasions.

A finding that a child witness is not competent to give evidence in a proceeding precludes the admission of an earlier out of court statement by the child witness under section 93A of the Evidence Act 1977. However, a finding that a child witness is not competent to give evidence in a proceeding of itself does not preclude the admission of earlier out of court representations by that child witness under section 93B of the *Evidence Act* 1977.⁷

⁴ For example, that of the defendant which is not in written form: *R v H* [1999] 2 Qd R 283. See also *R v BAH* (2002) 135 A Crim R 150; *R v GAO* [2012] QCA 54; *R v KAH* [2012] QCA 154.

⁵ See *R v H* [1999] 2 Qd R 283; *R v KAH* [2012] QCA 154.

⁶ See Direction on “Tape Recordings and Transcripts”.

⁷ *R v SCJ; Ex parte Attorney General of Queensland* [2015] QCA 123.