

## **Prior Inconsistent Statements<sup>1</sup>** ***Evidence Act 1977: ss 17, 18, 19, 101, 102<sup>2</sup>***

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**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.<sup>3</sup>**

**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 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**

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<sup>1</sup> This direction deals with statements admitted under s 17(1) (hostile witness). It may be adapted for prior inconsistent statements admitted under ss 18 and 19.

<sup>2</sup> Sections 17, 18 and 19 set out circumstances in which, and the means by which, 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.

<sup>3</sup> The direction takes up the matters referred to in *R v Perera* [1986] 2 Qd R 431.

**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 only evidence against the defendant is (A)'s previous statement, which he has retracted in his 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.<sup>4</sup>**

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<sup>4</sup> *R v Nguyen* [1989] 2 Qd R 72.