



# **Sexual Offence Expert Evidence Panel ("the Panel")**

## **PROCEDURE MANUAL**

**Version 4 (January 2026)**

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## Foreword

The Women’s Safety and Justice Taskforce (WSJT) was established by the Queensland Government in March 2021 as an independent, consultative taskforce. WSJT was tasked with examining and providing reports and recommendations in relation to how best to legislate against coercive control as a form of domestic and family violence, the need for a specific offence of ‘domestic violence’, and women and girls’ experiences across the criminal justice system.<sup>1</sup> In response to recommendations made by WSJT, the Queensland Government introduced two key legislative reforms - a criminal offence of coercive control and an affirmative model of consent. The [Criminal Law \(Coercive Control and Affirmative Consent\) and Other Legislation Amendment Act 2024](#) (the Act) was introduced to Parliament on 11 October 2023 and passed on 6 March 2024.

Recommendation 80 of the WSJT [Hear her voice - Report Two](#) released on 1 July 2022, proposed that the Department of Justice (DoJ) establish a sexual offence expert evidence panel (“the Panel”) for sexual offence proceedings that can be used by the prosecution, defence or court. Recommendation 80 also provided that the independent sexual violence case review board (Board) should be involved in offering advice on the establishment and maintenance of the Panel. Additionally, recommendation 43 of the WSJT Report proposed amendments to the [Criminal Code](#) to introduce affirmative consent, changes to the mistake of fact defence and an affirmative consent safeguard provision.<sup>2</sup>

The Queensland Government’s response to the WSJT [Hear her voice - Report Two](#) indicated support of the intent of recommendation 80 and committed to trial a pilot Sexual Offence Expert Evidence Panel in Brisbane and Townsville. Accordingly, the Sexual Offence Expert Evidence Panel will be piloted in specified courts in Brisbane and Townsville.

This procedural manual has been developed to provide guidance to suitably qualified experts, parties to relevant proceedings, and DoJ staff around processes related to the Panel.

### Queensland Government Response

*Queenslanders have the right to feel safe and be safe. Domestic, family, and sexual violence are violations of this basic human right. The Queensland Government is committed to ending domestic, family, and sexual violence in our community.*

To learn more visit [The Domestic and family violence prevention strategy 2016-2026](#)

<sup>1</sup> Women’s Safety and Justice Taskforce (2022). *Hear her voice: Report 1*. Queensland Government. <https://www.womenstaskforce.qld.gov.au/submissions/discussion-paper-1>  
<sup>2</sup> Women’s Safety and Justice Taskforce (2022). *Hear her voice: Report 2*. Queensland Government. <file:///C:/Users/stevensTr/Downloads/Hear-her-voice-Report-2-Volume-1.pdf>

# Introduction

## Overview of the Panel

The [Evidence Act 1977](#) empowers the chief executive to establish and maintain a panel of persons the chief executive is satisfied are suitable to give relevant evidence in a sexual offence criminal proceeding in the following circumstances:

- A party to a relevant proceeding (offence against [chapter 32](#) of the [Criminal Code](#)) may engage a person who is included on the Panel to give relevant evidence about the defendant in the proceeding. Specifically, in matters where the defendant's cognitive and/or mental health impairment at the time of the act was a substantial cause of the person not saying or doing anything to ascertain whether the other person consented to the act.
- (*Subject to commencement of the relevant provisions*) When requested by the prosecution, defence or court to give counterintuitive evidence about the nature of sexual offences and evidence about the social, psychological and cultural factors that may affect the behaviour of a person who has been the victim, or who alleges that they have been the victim<sup>3</sup> of a sexual offence (offences against [chapter 22](#) and [32](#) of the [Criminal Code](#)).

## Why is the Panel important?

### Affirmative consent safeguard provision

A defence is available for sexual assault or rape offences under the [Criminal Code](#) if the act was done under an honest and reasonable, but mistaken, belief that the complainant consented ([section 348A](#)). The mistake must be honestly and reasonably held and there must be evidence which raises this possibility. [Section 348A\(3\)](#) of the [Criminal Code](#) provides that a defendant's belief that another person consented to an act is not reasonable if the defendant did not immediately before or at the time of the act, say or do something to ascertain whether the other person consented to the act. In spite of this, [section 348A\(4\)](#) provides that this additional requirement to say or do something to ascertain consent, will not apply where a defendant had a cognitive or mental health impairment at the time of the sexual act, and the impairment was a substantial cause of the defendant not saying or doing anything. This is known as the affirmative consent safeguard provision. The defendant will be required to prove the impairment was a substantial cause of them not saying or doing anything, on the balance of probabilities.



### Note

Recommendation 43 is aimed at ensuring that people with cognitive and mental health impairments are not unfairly disadvantaged by the introduction of a requirement that they demonstrate that they took reasonable steps to say or do something to affirm consent. The WSJT noted that reports from suitably qualified experts would be required for the affirmative consent safeguard provision to ascertain the extent of any cognitive or mental health impairment and its impacts.

### Counterintuitive evidence

There are many commonly held misconceptions about the reasons why people are sexually offended against, where and by whom, who is at fault, and can include factual errors regarding how many sexual offences go unreported and how rare false reporting of sexual offending is.<sup>4</sup> They also include

<sup>3</sup> Wording of the Evidence Act 1977 (as amended by the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024, passed by Parliament on 10 September 2024) but hereon referred to as "alleged victim".

<sup>4</sup> Our Watch (2020). Men in Focus: Unpacking Masculinities and engaging men in the prevention of violence against women: Practice Guide. Melbourne Australia. Our Watch. Men in focus practice guide: Addressing masculinities and working with men in the prevention of men's violence against women (ourwatch.org.au)

misconceptions that only women get sexually assaulted and how a complainant should and shouldn't respond during and after an assault.<sup>5</sup>



### Note

Although men experience sexual violence, women and children are victimised at significantly higher rates, predominantly by a man known to them and often in the context of domestic and family violence<sup>6</sup>. Sexual crimes are under-reported and when they are victim-survivors are often retraumatised by the criminal justice system through misconceptions that they are somehow responsible for their assault.<sup>7</sup>

## The Panel objectives

The Panel's key objective is to support the introduction of affirmative consent in Queensland and the government's response to recommendations 43 and 80 of the WSJT Report. The Panel is committed to appointing suitability qualified experts who:

- Have specialist knowledge and expertise in assessing mental health and cognitive impairments with the aim of ensuring that people with mental health and cognitive impairments are not unfairly disadvantaged by the introduction of a requirement that they say or do something to affirm consent.
- Have specialist knowledge and expertise about the social, psychological and cultural factors that may affect the behaviour of a person who is the alleged victim of a sexual offence.
- Are competent in addressing misconceptions about consent and sexual violence with the aim of reducing the risk that juries will use their own biases to reach conclusions not supported by evidence.
- Understand how culture, race, ethnicity, age, disability and other intersectionality's impact upon individuals and the community generally.
- Have specialist knowledge and experience in dealing with matters that involve sexual offending.

## How to use this manual

This procedural manual has been developed to provide overarching guidance to suitably qualified experts, parties to relevant proceedings, and DoJ staff around processes related to the Panel. It is acknowledged that some chapters will have relevance to different persons dependent upon the role they have in the proceeding, and some will not. It encompasses the standardised procedures around the prequalification process and appointment of suitably qualified experts to the Panel, and the engagement of a Panel member to give relevant evidence in a criminal proceeding for sexual offences against a provision of chapter [22](#) and [32](#) of the [Criminal Code](#).

[Chapter 32](#) of the [Criminal Code](#) contains the following sexual offences:

- rape;
- attempt to commit rape;
- assault with intent to commit rape; and
- sexual assaults.

<sup>5</sup> The Institute of Judicial Studies (2023). Responding to Misconceptions about sexual Offending: Example directions for Judges and Lawyers. New Zealand Government. <https://www.courtsfnz.govt.nz/assets/Uploads/Addressing-misconceptions-final-version.pdf>

<sup>6</sup> Lowik, V., George, A., Suzuki, M., and Corbett-Jarvis, N. (2024). The 'Trauma-Informed' Court: Specialist Approaches to Managing Sexual Offence Proceedings (Part 1). *Journal of Judicial Administration*, 33(29). 29-41. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4777412](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4777412)

<sup>7</sup> Lowik, V., George, A., Suzuki, M., and Corbett-Jarvis, N. (2024). The 'Trauma-Informed' Court: Specialist Approaches to Managing Sexual Offence Proceedings (Part 1). *Journal of Judicial Administration*, 33(29). 29-41. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4777412](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4777412)

[Chapter 22](#) of the [Criminal Code](#) contains “Offences against morality” including:

- indecent treatment of children;
- engaging in penile intercourse with child under 16;
- abuse of persons with an impairment;
- making, distributing, and possessing child exploitation material; and
- repeated sexual conduct with a child.

These guidelines are intended to be used in conjunction with the following legislation:

- [Criminal Law \(Coercive Control and Affirmative Consent\) and Other Legislation Amendment Act 2024](#)
- [Criminal Justice Legislation \(Sexual Violence and Other Matters\) Amendment Act 2024](#)
- [Criminal Code](#)
- [Evidence Act 1977](#)
- [Evidence Regulation 2017](#)
- [Domestic and Family Violence Protection Act 2012](#)
- [Domestic and Family Violence Protection Regulation 2023](#)

In addition, several resources and readings have been included to provide further context around the establishment of the Panel and the need for improved systemic responses to sexual violence matters in the criminal justice system.

**This manual reflects the position when the Panel commences on 3 February 2025 and its role is limited to the affirmative consent safeguard provision. Whilst the Panel’s counterintuitive evidence stream is discussed in this manual; the relevant provisions have not yet commenced.**



### Further resources - the need for criminal justice reform

ANROWS (2021). [National Community Attitudes Towards Violence Against Women Survey \(NCAS\)](#). ANROWS.

George, R and Ferguson, S (2021). [Review into the Criminal Justice System response to adult rape and serious sexual offences across England and Wales Research Report](#). HM Government.

Horan, J and Goodman-Delahunty (2020). [Expert Evidence to Counteract Jury Misconceptions about Consent in Sexual Assault Cases: Failures and Lessons Learned](#). *UNSW Law Journal*, 43(2), 707-737.

King, M. (2021). [Guys, you can stop worrying about false rape allegations. They’re extremely rare](#). Triple J Hack.

Mortimer, S., Powell, A., and Sandy, L. (2019) [‘Typical scripts’ and their silences: Exploring myths about sexual violence and LGBTQ people from the perspectives of support workers](#). *Criminal Justice* 31(3).

Lowik, V., George, A., Suzuki, M., and Corbett-Jarvis, N. (2024). The ‘Trauma-Informed’ Court: Specialist Approaches to Managing Sexual Offence Proceedings (Part 1). *Journal of Judicial Administration*, 33(29). 29-41. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4777412](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4777412)

Ministry of Justice (2019). [Evaluation of the Sexual Violence Court Pilot](#). New Zealand Government.

Rachel Loney-Howes, R. (2020) – [Online anti-rape activism: Exploring the politics of the personal in the age of digital media](#). Emerald Group Publishing.

The Institute of Judicial Studies (2023). [Responding to Misconceptions about sexual Offending: Example directions for Judges and Lawyers](#). New Zealand Government.

Tidmarsh, P. and Hamilton, G. (2020). [Misconceptions of sexual crimes against adult victims: Barriers to justice. Trends and issues in crime and criminal justice no. 611.](#) Canberra: Australian Institute of Criminology.

Qld Human Rights Commission. (2023). [Criminal Law \(Coercive Control and Affirmative Consent\) and Other Legislation Amendment Bill 2023: Submission to Legal Affairs and Safety Committee.](#) QHRC.

See Appendix 1 for relevant statistics and sexual violence prevalence rates in Australia.

## Who is an expert?

### Who is a suitable person to give relevant evidence as an expert on the Panel?

An **expert** on the Panel is a person who can demonstrate specialist knowledge, gained by their training, study or experience, in the subject matter relevant to aspects of the sexual offence which is the subject of a criminal trial. **Expert evidence** is truthful evidence given by the expert which is derived from their field of expertise.

#### *Affirmative consent safeguard provision*

An expert is a **suitable person** to give relevant evidence about a defendant in a relevant proceeding if the person can demonstrate specialised knowledge gained by training, study, or experience in:

- psychiatry;
- neuro-cognitive psychology; or
- a field of knowledge relevant to assessing the cognitive impairment of a person within the meaning of section 348B of the [Criminal Code](#), or mental health impairment of a person within the meaning of section 348C of the [Criminal Code](#), and the effect of such an impairment on the person's ability to communicate.

#### *Counterintuitive evidence*

An expert is a **suitable person** to give relevant evidence about the nature of sexual offences and evidence about the social, psychological, and cultural factors that may affect the behaviour of a person who has been the victim, or who alleges that they have been the victim of a sexual offence. For example, if the person can demonstrate specialised knowledge gained by training, study or experience in sexual violence or a related field.

#### *Who is not a suitable person to give relevant evidence as an expert on the Panel?*

A person is **not suitable** to give relevant evidence in a relevant proceeding if:

- the person has been the subject of professional discipline;
- the person has been denied, or removed from, professional registration; or
- the person has a criminal history that indicates a lack of suitability to give relevant evidence about a defendant in a relevant proceeding.

#### *Criminal history report*

In deciding whether a person is suitable to give relevant evidence the chief executive may ask the police commissioner for a written report about the criminal history of the person and a brief description of the circumstances of a conviction mentioned in the criminal history.





### Note

The chief executive may make a request for a person's criminal history only if the person has given the chief executive written consent.

Due to the nature of expert's role, experts may be subject to **criminal record checking** at any time. Experts have a responsibility to disclose any change in circumstances that may cause any level of concern to the Program Team and must do so as soon as the change becomes known to them.

### *Confidentiality of criminal history information*

A person who possesses criminal history information because the person is or was an officer, employee, or agent of the DoJ, must not, directly or indirectly, disclose the criminal history information to another person except when:

- necessary to perform the person's functions under the [Evidence Act 1977](#);
- the disclosure is authorised under an Act;
- the disclosure is otherwise required or permitted by law;
- the person to whom the information relates consents to the disclosure; or
- the disclosure is in a form that does not identify the person to whom the information relates; or the information is, or has been, lawfully accessible to the public.

### *What is an excluded person?*

A person is an **excluded person** and cannot be engaged to give relevant evidence if the person is a relative, friend or acquaintance of a party to a proceeding; is a party to the relevant proceeding; a complainant or defendant; or is a potential witness in the relevant proceeding (other than for the provision of expert evidence).

The expert is **required** to confirm that they are not an excluded person to give relevant evidence for each engagement by agreeing to the Letter of Engagement (see Appendix 2, Letter of Engagement).

### **Removal of person from the Panel**

If the chief executive decides a person included on the Panel is no longer suitable to give relevant evidence, the chief executive must remove the person from the Panel and give the person a written notice stating the reasons for the decision.

Reasons why a person may be removed from the panel include:

- a) if they have been charged or convicted of an offence that bears upon their suitability to be engaged as an expert;
- b) removal from professional registration;
- c) a breach of the Scheme Rules and Code of Conduct;
- d) the person's reports are not meeting the expected standards outlined within this procedure manual;
- e) if they contravene any directions of the court, such as failure to meet court filing deadlines;
- f) if the chief executive no longer has confidence that they can competently discharge their duties as an expert; and/or
- g) failure to meet any other requirement of the role.



Prior to a decision to remove a person from the Panel, the chief executive will provide the person affected by the decision a show cause notice, so they are afforded an opportunity to respond to any adverse material or findings.

An expert may also decide to self-select out of the panel for any reason in which case they will be administratively removed from the panel.

## The Panel Procedures

### Role of the Sexual Offence Panel Program Team (the Program Team)

The Program team will be responsible for:

- recruiting and maintaining a list of experts to be included on the Panel;
- screening experts during the prequalification process (including conducting criminal history checks);
- matching experts to matters based on the expert's field of expertise and the facts of a case;
- management of the Panel referral process;
- development and delivery of training packages;
- deciding which, if any, of the training components indicated during the prequalification process are relevant to which expert;
- setting out the schedule of fees for the remuneration of experts;
- ongoing development and updates of this procedure manual and related documents;
- administrative functions associated with all aspects of the Panel, such as co-ordination of the referral process, maintaining databases, remuneration of experts, and general enquiries.

### Panel processes – being appointed to the Panel

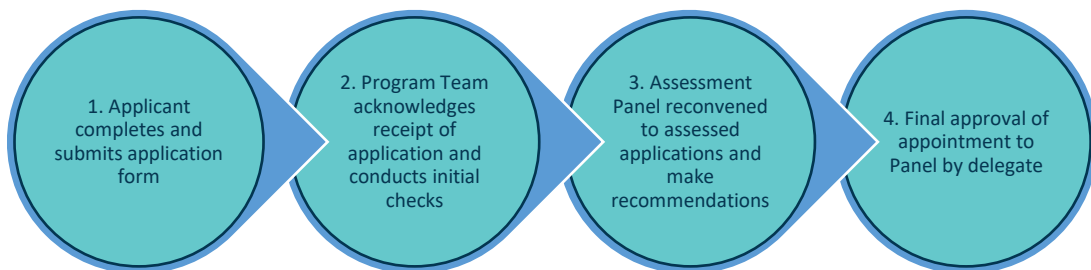


Figure 1: Ongoing process for Panel applications

The initial rounds of recruitment to appoint members to each Stream of the Panel (i.e. affirmative consent safeguard provision and counterintuitive evidence) will be advertised via QTender. Outside of these initial, time-limited opportunities, ongoing recruitment will be undertaken via the process outlined below.

Mandatory criteria and evaluation processes are consistent across all application processes, and applications lodged via a QTender process are assessed by an Assessment Panel comprising of members of the Program Team and the Queensland Intermediary Scheme with the input of a subject matter expert, against the same standards as those applications that are submitted by lodging an application form via the ongoing recruitment process,

### *Step 1: Lodging an application via the website*

Any person who is interested in being appointed to the Panel should familiarise themselves with the documentation on the Queensland Courts website, including this Procedure Manual, the Scheme Rules and Code of Conduct, and the application form, paying particular attention to any mandatory qualifications relevant to the Stream. To proceed to application, the interested person must complete the application form and provide documentary evidence as directed in the form. Applications will be lodged via email to [SDLCS.EEP@justice.qld.gov.au](mailto:SDLCS.EEP@justice.qld.gov.au)

### *Step 2. Program Team undertakes initial steps*

On receipt of individual applications, the Program Team will ensure that all the necessary paperwork has been lodged:

- application form;
- resume;
- certified copies of proof of identity documents;
- certified copies of any relevant qualifications;
- details of any professional registrations and memberships;
- Blue Card or exemption card details (if applicable);
- Australian Business Number (ABN), or check to see if applicant is willing to apply for an ABN;
- consent for national criminal history check; and
- signed Ethical Supplier Threshold document.

The Program Team will acknowledge the receipt of the application and will inform the applicant that they will be advised when the application is to be processed.

The Program Team will keep a register of all incoming applications. When approximately five applications have been registered, the Program Team will make the necessary arrangements to reconvene the Assessment Panel.

### *Step 3: Assessment Panel reconvened*

On receiving approximately five applications the Assessment Panel will meet to review the applications for appointment to the Panel. When reviewing the information provided the Assessment Panel will consider whether each applicant:

- has relevant qualifications and a level of professional experience that demonstrates specialised knowledge and skills in their relevant area of expertise;
- can demonstrate cultural competence;
- can demonstrate an ability to apply a trauma informed lens to their role;
- has been the subject of professional discipline;
- has been denied or removed from professional registration (if applicable);
- has a criminal history that indicates a lack of suitability to give relevant evidence;
- agrees to the Panel's Scheme Rules and Code of Conduct; and
- has read and understood this Procedure Manual.

The Assessment Panel will provide their recommendations to the delegate who has the legislative mandate to appoint members to the Sexual Offence Expert Evidence Panel. All applicants will be advised in writing of the outcome of their application.



#### *Step 4: Appointment of suitable person to Panel*

The Assistant Director-General of the Supreme District and Lands Courts Service is the delegate for final approval of appointments to the Panel. The applicants will be notified in writing of the outcome and if accepted for appointment will be requested to sign and return a copy of the Obligations form contained in the Scheme Rules and Code of Conduct. The applicant will also be advised of any identified training that must be completed prior to being allocated matters as a Panel Expert.

#### **Panel Scheme Rules and Code of Conduct**

Please refer to the Panel's Scheme Rules and Code of Conduct which provide explicit detail, information, and expectations around issues such as, but not limited to:

- confidentiality
- schedule of fees
- conduct
- response times
- training

Should an expert be appointed to the Panel, appointment will be conditional upon a signed declaration that the expert will abide by the Scheme Rules and Code of Conduct.

#### **Blue Cards**

In Queensland you **must** have a blue card or exemption card to work or volunteer in regulated child-related employment or operate a regulated child-related business. In the course of their work on the Panel, experts may have contact with children. The blue card system is regulated by the [Working with Children \(Risk Management and Screening\) Act 2000](#) and the [Working with Children \(Risk Management and Screening\) Regulation 2020](#).

#### **Professional accreditations**

Experts **must** ensure professional accreditations and memberships to relevant professional bodies are maintained and must advise the Program Team immediately if they lapse.

#### **Insurance**

Experts must have and maintain professional indemnity insurance whilst their appointment to the panel is active.



#### **Note:**

Appointment to the Panel may be conditional upon reference checking and completion of necessary training identified by the Program Team



## Engaging the Panel

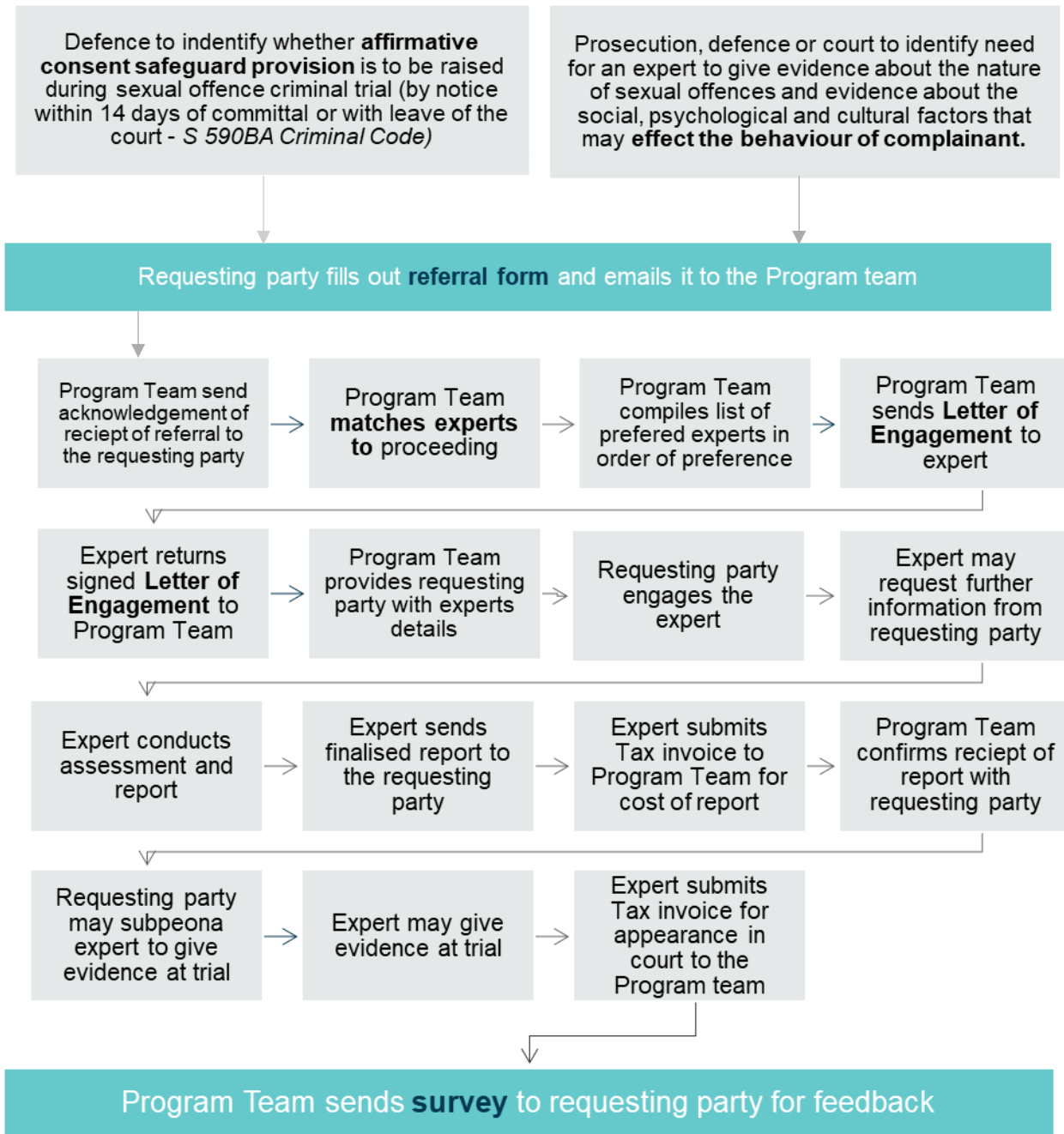


Figure 2: Engagement Pathway

### Referral process

A party to a relevant proceeding can refer a relevant proceeding to the Program Team once they:

- identify whether **affirmative consent safeguard provision** is to be raised; and/or
- the need for an expert to give **counterintuitive evidence**.





### Note

Requesting parties must consider the utility of the evidence when making a referral to the Panel. Including as much detail in the way of a brief as possible will ensure that the Program Team matches the most suitable expert to the case.

## Eligibility

To be an eligible referral the following must apply:

- a. the matter must be a relevant proceeding (offence against [chapter 32](#) for the affirmative consent safeguard provision and chapters [22](#) and [32](#) of the Code for counterintuitive evidence and).
- b. The referral must be for the purposes of either:
  - i. engaging an expert to give evidence about the defendants cognitive and/or mental health and whether this had a substantial impact upon the defendant's ability to affirm consent; and/or
  - ii. engaging an expert for the purposes of giving general counterintuitive evidence about how the behaviour of the complainant before, during or after the alleged sexual violence and how it may be common among people who experience sexual violence; or,
  - iii. in exceptional circumstances, engaging an expert to give complainant specific expert evidence about how the behaviour of the complainant before, during or after the alleged sexual violence may be influenced by social, cultural, or psychological factors.
- c. the requesting party must be a relevant party (defence, prosecution, the court or a self-represented defendant);
- d. the proceeding must be held before:
  - i. the Supreme, District or Childrens Court in Brisbane or Townsville for evidence as to affirmative consent safeguard provision; or
  - ii. the Supreme, District and Childrens Court of Queensland in the Brisbane or Townsville and the Magistrates Courts, including Childrens Court (Magistrates Court), at Brisbane, Caboolture, Cleveland, Redcliffe and Townsville where the expert is giving counterintuitive evidence.

Note – this is inclusive of matters which have been transferred to these Courts from another jurisdiction.

## Matching

Referrals will be reviewed by Program Team, who will identify the most appropriate expert based on the information provided by the requesting party in the referral. Considerations will include, but not be limited to, the expert's field of expertise, their availability, and other matters specific to the facts of the case, such as the cultural or diversity factors or conflicts of interest.

Expert/s will be matched to a case within **10 days**. The Program Team will then provide the details of the matter and a **Letter of Engagement to the expert**. Once the expert has returned the signed Letter of Engagement, the Program Team will provide the relevant party with the contact details of the expert.



### Note

A party to a relevant proceeding is not prevented from engaging an expert other than a person who is included on the Panel to give relevant evidence in the proceeding. However this would be at their own cost and not covered by the pilot.



### Information to be given to expert by the requesting party

The Program Team will provide the expert with a Letter of Engagement enclosing information obtained from the referral. Detailed instructions, information, and other material relevant to the expert's assessment, report or testimony will be provided to the expert by the requesting party. The expert engaged for a matter may also ask the requesting party to give them additional information relevant to their engagement. If after receipt of detailed instructions and further information it becomes apparent that additional time, over and above the capped hours is required, the Program Team must be contacted, and necessary approvals obtained to ensure that invoicing reflects the approved service/s provided by the expert.

To clarify, questions/queries and discussion regarding the subject matter of the engagement, or the outcome of assessments, should be had between the engaged expert and the requesting party, whereas issues relating to funding for additional hours; travel arrangements and interpreter engagement are the types of matters that should be discussed with the Program Team.



#### Note

A document does not have to be provided in circumstances whereby information contained in a document is sensitive evidence under the [Criminal Code](#); if the prosecution would be prevented under another Act or law from giving to the defendant or a lawyer acting for the defendant the documents; or a document contains the contact details for witnesses to the alleged commission of the offence.

### Translators and Interpreters

The National Accreditation Authority for Translators and Interpreters ("NAATI") is the national standards and accreditation body for translators and interpreters in Australia. NAATI was established in 1977 and is jointly owned by the Commonwealth, State and Territory governments. NAATI accreditation is the only officially recognised credential for translation and interpreting in Australia.

The Program Team will utilise information that a requesting party provides in the referral form about the defendant's English proficiency, languages spoken, and the need for an interpreter or other support to determine whether the services of a translator or interpreter are required for an engagement. However, should an expert identify at any stage that a translator or interpreter is needed, and this has not been identified by the requesting party or Program Team, the expert **must** notify the Program Team as soon as possible to avoid any undue delay to the efficient conduct and resolution of the engagement.

In cases where English proficiency or a hearing difficulty has been identified as an issue and once the requesting party (or expert in cases where the need for an interpreter/translator has been identified by them) advises the Program Team of the date, time and location of the scheduled interview or assessment, the Program Team will use their best endeavours to engage a NAATI qualified interpreter to attend the interview or assessment. Interpreters engaged by the Program Team for such engagements will be bound by a Code of Conduct which deals with conflicts of interest and confidentiality requirements.

Requesting parties and experts will be advised once an interpreter has been engaged.

The Program Team requests that they are notified of any changes to, or cancellations of, interviews or assessments where an interpreter has been booked as soon as possible to minimise cancellation fees and enable alternative dates to be booked.



#### Note

A need for caution has been expressed with respect to assessing credibility of a witness who gives evidence via an interpreter. This is both because the witness's body language may be influenced by



their cultural background, as elsewhere discussed, and because it is impossible to gauge a witness's demeanor from the tone of an interpreter's speech. The court also has express power under [section 131A of the Evidence Act 1977 \(Qld\)](#) to order the State to provide an interpreter in a criminal case, whether for a complainant, witness, or defendant, if the interests of justice so require it.

### Assessment

A Panel expert report may be based on the following:

- documentary review of referral information provided by the requesting party, which may include,
  - an indictment or bench charge sheets
  - summaries or particulars of allegations
  - witness statements, including Evidence Act section 93A statements
  - exhibits or photographs of exhibits
  - transcripts of proceedings
  - a record of interview or transcript of a record of interview
  - the defendant's criminal history
  - education and work records, and,
- a face to face or online interview with the defendants for Stream 1. In exceptional circumstances, Stream 2 Complainant Specific evidence may also require a Panel expert to conduct an interview with the complainant. This interview will assist the Panel expert to better understand the social, cultural, or psychological factors relevant to the complainant which may have influenced their behaviour before, during and after the sexual violence.

The expert and the requesting party will liaise directly about key dates, any required interviews, or assessments, and anything else required by the expert for the preparation of the report.

The expert will then prepare a written report of their assessment /documentary review and the evidence they are likely to provide which they will then give **directly to the requesting party**. The report is **not** to be provided to the Program Team, the court, or other parties to the prosecution.



#### Note

It is essential that the Program Team is kept up to date about the progress and the completion of any assessments and reports as well as any issues that arise to ensure the monitoring and smooth operation of the pilot.

### Giving evidence at trial

The expert may be required to give evidence at trial. Please refer to the court processes section of this manual for further information regarding giving evidence and court processes.

### Expert invoices the Program Team

Please refer to the invoicing section of this manual for further information regarding invoicing and scheduling of fees.

### *Criminal record checking*

Due to the nature of expert's role, experts may be subject to criminal record checking at any time. Experts have a responsibility to disclose any change in circumstances and must do so as soon as the change becomes known to them.

### *Expertise*

If the expert concludes that they do not have the appropriate expertise to conduct an assessment of a defendant or to give the expert evidence they have been engaged to provide, they **must** inform the Program Team immediately so that another expert can be engaged.

### *Availability*

An expert **must not** accept a referral from the Program team if their availability to prepare and complete a report is likely to cause undue delay to the efficient conduct and resolution of a proceeding. If an expert's availability changes after being matched to a relevant proceeding, they are to **immediately** notify the Program Team.

Experts on the Panel may be called to give evidence in court. Due to the time-sensitive nature of court proceedings it is important that experts **keep the Program Team, and the requesting party, up to date** with their availability including scheduled leave or other commitments and their availability and capacity for engagement in Brisbane and Townsville jurisdictions.



#### **Note**

To maintain efficient conduct and resolution of a proceeding if an expert is contacted by the Program Team via email, please endeavor to respond within 48 hours or within 24 hours if contacted by telephone.

The Program Team is available by calling **(07) 3564 7748** or via email on [SDLCS.EEP@justice.qld.gov.au](mailto:SDLCS.EEP@justice.qld.gov.au)

## **Change in Legal Representatives**

If at any time there is a change in legal representatives and a referral to the Panel is still active, it is essential that the Panel and expert are advised immediately of the change by the former (outgoing) legal representative.

## **Self-represented defendants**

Self-represented defendants are eligible to self-refer to the Panel. The Program Team can provide additional support and guidance for self-represented defendants who want access to an expert on the Panel. Additional assistance may also be sought through support services already engaged with self-represented defendants. For example, NDIS support workers, Youth Justice or other community and advocacy services.

Sensitive evidence is unable to be passed on to self-represented defendants and in some circumstances the handling of sensitive evidence between the defendant and the expert may require the support of the Office of the Director of Public Prosecutions.

For further information please see the Self-represented brochure or contact the Program Team on – **(07) 3564 7748**



## The Panel Scope of Practice

### Writing of expert reports

It is a **requirement** that the expert on the Panel provide an **expert report directly to the requesting party** and not to the Program Team or other third party.

By expert report we mean a report prepared by an expert in their field of expertise and relevant to the facts of case or matters in issue. For example, experts are engaged to provide an expert assessment and opinion of:

- the extent of any cognitive or mental health impairment; its impacts upon the defendant; and whether the impairment was at the time of the act a substantial cause of the defendant not saying or doing anything to ascertain whether the other person consented to the act; or
- an assessment and report of fact regarding the nature of sexual offences and evidence about the social, psychological and cultural factors that may affect the behaviour of a complainant of a sexual offence.

### Content of Reports<sup>8</sup>

Generally speaking, the most useful expert reports are those which:

- are clearly structured, easy to follow and lead logically to a conclusion;
- are written in an objective, unbiased and professional way;
- are clear and concise and not overly verbose;
- are informed by facts of a case and address directly the issues in dispute;
- contain facts, opinions and assessments that are credible to others in the same field of expertise because they have logical, theoretical, and experiential foundations;
- only give evidence and opinions which are within the experts field of expertise;
- contain a statement of background material of observed facts and reported facts on which each opinion was based; and
- clearly articulate the difference between observed, reported, and assumed facts and any assumptions made.

The expert's written report must include written confirmation that:

- they understand their duty to the court and had complied with that duty (consistent with the Scheme Rules and Code of Conduct);
- they have made all inquiries considered appropriate;
- the factual matters stated in the report are, as far as the expert knows, true; and
- the opinions stated in the report are genuinely held by them.

Specifically, the expert's report must include the following information:

- (a) the expert's qualifications and place of employment;
- (b) all material facts, whether written or oral, on which the report is based;
- (c) the expert's reasons for each opinion expressed in the report;
- (d) references to any literature or other material relied on by the expert to prepare the report;
- (e) reference to any matter the expert considers significant;
- (f) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report—
  - (i) a description of what was done; and

<sup>8</sup> Cochrane, W (1999). *Expert Evidence the view from the bench*. Australian Lawyer. [https://www.courts.qld.gov.au/\\_data/assets/pdf\\_file/0007/583459/lc-sp-wc-expert-evidence-the-view-from-the-bench-201511.pdf](https://www.courts.qld.gov.au/_data/assets/pdf_file/0007/583459/lc-sp-wc-expert-evidence-the-view-from-the-bench-201511.pdf)



- (ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision; and
- (iii) the name and qualifications of any other person involved; and
- (iv) the result;
- (g) if there is a range of opinion on matters dealt with in the report—a summary of the range of opinion, and the reasons why the expert adopted a particular opinion;
- (h) if the expert believes the report may be incomplete or inaccurate without a qualification—the qualification;
- (i) a summary of the conclusions reached by the expert;
- (j) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion; and
- (k) if the expert believes an opinion expressed in the report is not a concluded opinion – the reason for the expert's belief (for example, that there is insufficient research or data).



#### Reminder

The purpose of evidence regarding the nature of sexual offences is to assist juries to understand complainant behaviour that may seem counterintuitive, for example a complainant maintaining a relationship with the accused after an alleged sexual offence, a delay in making a complaint, or a complainant's response to non-consensual sexual activity.

In most cases, counterintuitive expert evidence will be general in nature and not specific to the complainant. It will serve an educative function, assisting the jury to understand that certain behaviours may be common among people who experience sexual violence. When testifying there is a need for the expert to speak broadly as to the recognised behaviours of victims, rather than giving evidence which is directed at explaining why the particular complainant in the matter for which you have been engaged acted or behaved in a certain way.

In exceptional circumstances, a Panel expert may be engaged to provide complainant specific counterintuitive expert evidence about how the complainant's specific social, psychological, or cultural factors influenced their behaviour before, during or after the alleged sexual offence.

#### Weblink

Further Reading - [Expert evidence the view from the bench \(courts.qld.gov.au\)](https://courts.qld.gov.au)

### Permitted use of Artificial Intelligence (AI) scribes when conducting assessments

The use of AI by Panel experts is currently being considered. In the interim, it is a requirement that the Expert on the Panel obtain approval from the Program Team before using AI tools, such as AI scribes and chatbots, in relation to their work for the Panel.

### Preparation of expert evidence

In preparation of expert evidence:

- the Program Team will not retain an expert whose availability to prepare and complete a report is likely to cause undue delay to the efficient conduct and resolution of the proceeding;
- the requesting parties are expected to give early consideration to whether expert evidence is to be called in the proceeding; and
- questions for an expert should be framed with a view to addressing issues in contention between the parties.

## When multiple reports are required

The Program Team will determine if multiple reports are required in relation to a matter based on the initial information provided by the relevant party in the referral from. There may be a requirement for joint reports in situations when the defendant has comorbidities outside of the expertise of one single expert.

In circumstances whereby a joint report is required:

- the experts engaged will prepare a joint report that includes:
  - a. the matters upon which they were directed to confer;
  - b. that they have met and discussed each matter upon which they have been directed to confer;
  - c. the matters on which they agree;
  - d. the matters on which they disagree; and
  - e. a concise statement of the reasons for any disagreement.
- the unnecessary duplication of information will be avoided;
- consideration will be given to whether the two or more experts present their evidence concurrently.

## Supplementary reports

There may be circumstances where a supplementary or secondary written report is required, for example in response to an expert report sought and disclosed by the other party to the criminal proceeding. In such cases, the requesting parties should contact the Program Team to advise that such a report is required so that necessary arrangements can be made. If a Panel expert is contacted directly by a requesting party, they should notify the Program Team of the request before providing services.

## Giving expert evidence at trial

Please refer to the court section of this manual for detailed information regarding giving evidence, cross examination, and court protocols.

# Other expectations of experts

## Cultural Competence

Cultural awareness involves the ability to look outside yourself and be aware of other people's cultural values. Building on cultural awareness, cultural competence involves being able to interact and communicate effectively with people of different cultures and backgrounds. Understanding and respecting the perspective of other people's cultures and applying that understanding when working with them forms part of cultural competence.



### Note

In determining whether to appoint a person to the expert evidence panel, the Program team **may** have regard to the cultural competence and capability of the person, including whether the person can demonstrate knowledge and understanding of a particular cultural group.



## A trauma informed approach

Trauma-informed practice refers to frameworks and strategies to ensure that the practices, policies, and culture of organisations, understand, recognise, and respond to the effects of trauma on a person's wellbeing and behaviour. It is a systemic approach which acknowledges trauma and its prevalence, alongside awareness and sensitivity to its dynamics, in all aspects of service delivery.



### Note

In determining whether to appoint a person to the expert evidence panel, the Program Team may have regard to the expert's ability to apply trauma informed practice to their role.

## A domestic, family, and sexual violence informed lens

Broadly, under Queensland law, domestic and family violence is behaviour that is physically, sexually, emotionally, psychologically, or economically abusive, threatening, coercive or aimed at controlling or dominating another person through fear. The violence or abuse can be physical, emotional and/or sexual and includes financial control, isolation from family and friends, threats of self-harm or harm to pets or loved ones, constant monitoring of whereabouts or stalking<sup>9</sup>. The Queensland Government is committed to ending domestic, family, and sexual violence and is implementing a 10-year reform program to eliminate domestic, family, and sexual violence in our community. Given that sexual violence often occurs in the context of domestic and family violence<sup>10</sup>, it is expected that experts will understand the dynamics and drivers of domestic, family, and sexual violence and how it impacts upon individuals and the community.



### Note

The Program Team will be providing training for experts on expectations regarding the application of a domestic, family, and sexual violence lens to their role.

## Impartiality

An expert has an overriding duty to assist the Court impartially, by giving objective, unbiased opinion on matters within the expert's specialised knowledge. An expert's duty overrides any obligation to the commissioning party or to the person by whom the expert is paid or employed.

At all times the expert **must** ensure they are truthfully expressing their expert opinion in both reports and when giving evidence on matters within their specialised knowledge. This overrides any obligation to the requesting party or the Program Team.



### Note

<sup>9</sup> Domestic and Family Violence Prevention Strategy 2016-2026. Qld Government. <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/008db60d-06e9-4702-bb87-48be367edf93/dfv-prevention-strategy.pdf?ETag=ef56a614ca32eedadca2acfc3f37578>

<sup>10</sup> Lowik, V., George, A., Suzuki, M., and Corbett-Jarvis, N. (2024). The 'Trauma-Informed' Court: Specialist Approaches to Managing Sexual Offence Proceedings (Part 1). *Journal of Judicial Administration*, 33(29), 29-41. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4777412](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4777412)

An expert has an obligation to inform all parties and the Court promptly if, and whenever, the expert's opinion changes from that contained in a report served as evidence or given in a statement.

## Confidentiality

Experts must act in accordance with Queensland and national privacy laws as well as proper practices advised by their own professional body, where applicable.

The [Information Privacy Act 2009 \(Qld\)](#) regulates how Queensland public sector agencies handle individuals' personal information. The primary object of the Act is to provide for the fair collection and handling in the public sector environment of personal information; and a right of access to, and amendment of, personal information in the government's possession or under the government's control, unless, on balance, it is contrary to the public interest to give the access or allow the information to be amended.

Experts will receive information from the Program Team as part of the engagement process or from the requesting party. Whilst experts are permitted under sections [103ZZG](#) and [103ZZGF](#) of the [Evidence Act 1977](#) to seek information from the prosecution, this should not occur unless the prosecution is the requesting party.

Experts must treat personal information received verbally or in writing with utmost confidentiality in accordance with the law. It is noted that it is an offence for a panel expert to disclose or make use of the information obtained from a prosecutor pursuant to sections [103ZZG](#) and [103ZZGF](#) of the [Evidence Act 1977](#), unless it is for the purpose of giving relevant evidence under the scheme. Failure to comply with this requirement is an offence that carries a maximum penalty of 100 penalty units or 2-year imprisonment.

As a guiding principle, outside of the courtroom experts should only discuss details of their engagement with their staff (for coordination purposes), members of the Program team or a requesting party. Failure to strictly comply with confidentiality requirements places experts at risk of divulging information or opinion that may compromise aspects of legal proceedings, with potentially significant legal consequences.

Experts may receive requests for information from criminal justice stakeholders and others. If an expert is uncertain about how to respond to a request for information, they must promptly raise this with the Program Team for advice and guidance. This is particularly important when the request for information relates to the content of your engagement. If an expert is concerned regarding any aspect of confidentiality while undertaking their role, the expert **must** immediately inform the Program Team.



### Note

It is an **offence** for a person to publish identifying matter in relation to a person in relation to whom a sexual offence has been, or is alleged to have been, committed (the complainant).

## Conflict of interest

A conflict of interest can be:

- **Actual** – where there is a direct conflict between an expert's duties and their personal interests.
- **Perceived** – where a reasonable person, knowing the facts, would consider a conflict may exist (whether that is the case).



- **Potential** – where an expert has personal interests that could conflict with their duties as an expert in the future.

It is the **responsibility** of the expert to identify any conflicts of interest and inform the Program team as soon as possible even where the conflict of interest becomes evident after engagement has commenced. The Program team will assess the conflict and identify if the engagement of another expert is required.

Some examples of conflicts of interest could be:

- a profession relationship for example arising from the provision of counselling or other support service to the witness or defendants;
- the expert knowing the defendant or complainant through professional and/or personal association; or
- the expert is a friend of a witness.

## Propriety

Experts **must not** use information or knowledge gained through the course of their work to benefit themselves or others improperly. This includes as part of claiming and remuneration.

## Invoicing

### Schedule of fees

Please refer the Scheme rules for the schedule of fees.

The rates are set by the DoJ and paid by the Program Team. An expert is an external contractor, not a DoJ employee, who is engaged via the Letter of Engagement to conduct work under a contractual arrangement.

The expert is required to submit the details of services provided on a tax invoice to the Program Team via email. Once services are confirmed by the referrer, payment is made through System Analysis Program (SAP) by electronic funds transfer (EFT). Invoices should be rounded up or down to the closest quarter of an hour interval.

An expert remains personally responsible for fulfilling any obligations in terms of submitting an annual self-assessment tax return for any income received.

### Travel

Payment of travel expenses to and from engagements within your nominated geographical region is included in the specified rates of remuneration. Travel allowance is paid as per the Public Service Commission's directive: *Domestic Travelling and Relieving Expenses (Directive 13/23)*. Clause 19.5 of the Scheme Rules states that remuneration rates include all costs of the panel member including subsistence and travel costs to and within the geographical area of nominated work. Clause 19.6 of the Scheme Rules and Code of Conduct states that should a panel member be engaged outside their selected geographical area (refer to Appendix 2 for the Brisbane and Townsville regional maps), subsistence and travel expenses outside the Brisbane or Townsville metropolitan areas are to be charged at actual cost or at the rates specified in the Directive whichever is the lesser. All charges must be approved by the Program Team in advance of the expense being incurred and must be accompanied by receipts. Payment per hour relates to actual time (excluding travel time). <sup>11</sup>

<sup>11</sup> <https://www.forgov.qld.gov.au/system/files/documents/2011-09-domestic-travelling-and-relieving-expenses.pdf?v=1447991623>



## Traveling to Townsville

Should an expert need to travel to Townsville to provide a service, the Program Team will only cover the costs of travel within reason. All travel costs must be approved by the Program Team.

## Insurance

As contracted experts, it is the expert's individual responsibility to ensure they have, and maintain, adequate and appropriate personal indemnity insurance to cover their practice in the role. Experts may be guided by their professional body.

## Additional costs

If there are any additional costs incurred by the expert for any reason, the Program Team must be notified. For example, if additional costs are incurred because an expert needs to ask a requesting party additional questions or gather additional information, the Program Team must be made aware.

## Recordkeeping

Experts must maintain accurate, up-to-date, contemporary, and legible records that include all relevant details of their assessment and interaction with any party, and any communications with any party about the case. These may be required to be produced in court at the request of the parties.

Experts must ensure that all types of records are held securely and are not subject to unauthorised access or release.

Experts must identify the sources of information used in their reports.



### Note

If experts are unsure of their roles and obligations relating to records, they should contact the Program Team for clarification.

## Performance and evaluation of the pilot

### The Panel Steering Committee

The Steering Committee (the Committee) consists of representatives from the judiciary, key legal and community stakeholders and departmental representatives. The Committee provides a dual function:

- the support of sound governance and reporting on the performance of the pilot through critical consultation, guidance and decision making regarding the overall direction of the pilot; and
- a forum for communication with key stakeholders, the wider legal profession.

Organisation	Role
Judge/s of The District Court of Queensland	Judge and Chair
The Supreme District and Land Courts Service	Assistant Director-General, Deputy Chair

Evidence Services	Director and Pilot Lead
Office of the Director of Public Prosecutions	Consultant Crown Prosecutor
Queensland Police Service	Detective A/Superintendent
Queensland Police Service	Director, Police Prosecutions Corp
Victims Assist Queensland	Director, Strategy and Engagement
Office of the Victims Commissioner	Director Policy and Systemic Review
Department of Youth Justice	Director, Quality and Improvement
Legal Aid Queensland	Director, Criminal Law Services
Strategic Policy and Legislation	A/Director, Women's Safety and Justice Team
First Nations Justice Office	First Nations Justice Officer
Queensland Law Society	Member of the profession
Bar Association of Queensland	Member of the Bar
Aboriginal and Torres Strait Islander Legal Services	Director, Criminal Law
Corrective Services Queensland	Director, Psychological Services Unit, Queensland Corrective Services
Queensland Health	Senior Psychologist, Court Liaison Service, Metro North Hospital and Health Service

Figure 3: Steering Committee

### Program Team Members

The Program Team manages the day to day functioning of the Panel and is responsible for reporting back to the Steering Committee regarding the ongoing performance of the pilot.

Key performance measures for the Panel include:

- number and quality of referrals for an expert;
- responsiveness to communication from the Program Team;
- quality of expert reports;
- ability to attract and recruit experts with a variety of expertise;
- availability of experts; and
- cultural competence of experts and their ability to apply cultural competence in reports.

Embedded within the Program Team will be two in-house experts for the purposes of providing advice, training, quality assurance and other support to experts, requesting parties and other stakeholders.

The Program Team is available by calling **(07) 3564 7748** or via email on [SDLCS.EEP@justice.qld.gov.au](mailto:SDLCS.EEP@justice.qld.gov.au)



Position	Role description
Director Evidence Services	Pilot Lead/design/Governance/Reporting
Program Manager	Program Team leader
In-house Expert	Affirmative consent safeguard provision advice
In-house Expert	Impact of sexual offences on complainant and general community
Principal Policy Officer	To develop policies and procedures for the Panel and Program Team.
Principal Training Officer	To develop and deliver training programs to experts
Administrative Officer	Intake officer for referrals
Administrative Officer	Intake officer for referrals

Figure 4: Program Team Members

## Evaluation

In response to recommendations of WSJT, amendments were made to [Criminal Law \(Coercive Control and Affirmative Consent\) and Other Legislation Amendment Act 2024](#) to ensure a review is carried out into the operation and effectiveness of all legislative amendments. It is the responsibility of the Attorney-General to determine the terms of reference of the review. However, it must:

- start as soon as practicable 5 years after commencement;
- consider the outcomes and effect of the amendments on alleged victims and perpetrators of sexual violence and domestic and family violence;
- consider the outcomes for, and the effects of the amendments on, Aboriginal and Torres Strait Islander peoples; and
- consider whether the amendments are operating as intended.

The Attorney-General will table the review in the Legislative Assembly as soon as practicable after the review is completed.

Evaluation, continuous monitoring, improvement, articulation, and measurement of benefits realised is critical to determining the pilot's success. In addition to regular reporting on progress to the Taskforce Response Unit and to oversight functions, including the Independent Implementation Supervisor throughout the pilot, there will be a final evaluation of the pilot to measure its success and future direction as well as inform the review of all legislative amendments. The following are the evaluation objectives:

- ensure that systems and processes provide a sound foundation for program delivery;
- determine if the Panel is being implemented as intended (process evaluation);
- identify ways to improve the operation of the Panel (process evaluation);
- determine if the Panel is achieving outcomes (outcome evaluation);
- consider the outcomes and effect of the Panel on alleged victims and perpetrators of sexual violence (outcome evaluations);
- consider the outcomes for, and the effects of the Panel on, Aboriginal and Torres Strait Islander peoples (outcome evaluations); and



identify what elements of the Panel are working or not working (process and outcome evaluations).

## Overview of the Criminal Justice System

### The Australian criminal justice system

The criminal justice system is a system of laws and rulings which protect community members and their property. It determines which events causing injury or offense to community members, are criminal. People guilty of criminal offences may be punished by fines, imprisonment, and community-based orders.

### Commonwealth and State responsibilities

Australia has nine legal systems, comprising eight State or Territory systems and one federal system.

Under the Australian Constitution, the Commonwealth of Australia is empowered to make laws on certain matters such as trade and commerce, taxation, defence, and external affairs. The States and Territories have independent legislative power for all matters that are not specifically mentioned in the Constitution. It is the laws of State and Territory governments that primarily govern the day-to-day lives of most Australians.

All societies develop systems of maintaining order, often through legislation and common law. Australia inherited its criminal justice system from England at the time of colonisation. From that time, Australian judges have interpreted, applied, and developed these laws, and Australian parliaments have also added to them through legislation.

While similar in character, each State and Territory has its own criminal justice system. Therefore, laws, penalties and corrections for offenders, and arrangements for administering justice differ across State/Territory boundaries.

Cases progress through the criminal justice system in three stages:

1. the investigative component (State or Territory police or Australian Federal Police);
2. the adjudicative component (courts); and
3. the penal or correctional component (prisons and other correctional systems).

Appendix 3 provides an overview of Queensland's court processes for serious indictable offences. In referring to the diagram, please note that there may be exceptions to the process as it is represented. For example, some matters proceed to trial and sentence in the Magistrates Court, while other matters may include ex officio indictments, and so forth.

### Indictable offences - Sexual offences

[Chapter 32](#) of the [Criminal Code](#) contains definitions of “**Rape and sexual assaults**”.

[Chapter 22](#) of the [Criminal Code](#) contains “**Offences against morality**” including indecent treatment of a child under 16; engaging in penile intercourse with child under 16; abuse of persons with an impairment of the mind; taking a child for immoral purposes; indecent acts; and involving child in making child exploitation material.

All sexual offences are indictable offences, however some offences are designated as crimes and others as misdemeanors. Whilst most sexual offences under the [Criminal Code](#) must proceed on indictment to be dealt with by a Judge and/or jury in the higher courts, there are some which can be dealt with



summarily in the Magistrates Court for example offences relating to indecent acts, or in relation to intimate, prohibited or obscene images or publications.

### Rape

Rape includes penetrating the vulva, vagina, or anus to any extent without consent (e.g., penetration can be with a penis, fingers, object etc.) or the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.

### Sexual assault

A sexual assault includes kissing a person or grabbing their breast or buttocks without consent.

### Child sexual offence

A child sexual offence is a sexual offence against a child.

## Evidence in sexual offences

It is necessary to understand the different elements and particulars involved in sexual offences.

### Elements

An element of an offence is an essential requirement that needs to be established to prove an offence. Each offence (rape, assault, etc.) is made up of a basic set of elements which must be proven. The bench charge sheet or indictment (which comes later in the prosecution) is a formal written accusation charging a person with an offence/s. Evidence establishing the elements of the offence set out in the indictment is presented at a trial.

### Particulars

The bench charge sheet or indictment (which comes later in the prosecution) will set out *certain* particulars of the offence; that is the details of the offence and includes the date, alleged offence and who is alleged to have committed the offence and on whom. An example of the particulars included on the indictment is as follows: *On 28<sup>th</sup> day of January 2021 [date] at Brisbane [location], Joe Blow [Defendant name] raped Jane Doe [Complainant's name].*

The particulars are generally obtained during a police investigation, including an interview with a complainant.

The accused person is entitled to particulars that identify the "act, matter or thing" that provides the foundation for the charge. As such, all particulars are provided to the accused so they are informed of the case he or she will face and that allow the fact finder to link evidence given with the allegations charged. The provision of particulars also enables an accused to establish a defence (for example alibi evidence).<sup>12</sup>



### Example

If a child reported their tutor "fingered them" on a day after a class, the alleged offence would be that of rape under [s 349](#) of the [Criminal Code](#). The elements would be that the defendant:

1. Penetrated the vulva, vagina, or anus of the other person.
2. To any extent.
3. With a thing or part of the defendant's body that is not a penis.
4. Without the consent of the other person.

The date, place and identification of the tutor are the particulars of the offence.

12. *Johnson v Miller* (1937) 59 CLR 467; [1937] HCA 77; *R v Magistrates' Court at Heidelberg: ex parte and Karasiewicz* [1976] VR 680; *Glenister Magistrates' Court of Victoria* [2014] VSC 265, [65]. <https://jade.io/j?a=outlineandid=64002>

# Police Investigation

## Investigation and criminal prosecution

The purpose of an investigation is for police to gather information and evidence from witnesses as well as any forensic or physical evidence. This helps determine whether a criminal offence has been committed and assists to decide what course of action to take and what offences to charge. Police officers have obligations to prevent, investigate and detect crime; uphold the law; administer the law fairly and efficiently; and bring offenders to justice.

Whilst **experts will play no role in the investigation process**, on occasion they may have contact with police prosecutors and will receive documentation pertaining to the investigation.

## Complaint

In many cases a criminal investigation begins when a person (known as a complainant) makes a report (known as complaint) to police. Investigators may require the complainant to participate in a police interview which may be reduced to writing (for most adult complainants) or electronically recorded. This police interview is used to obtain information relating to the particulars of the complaint.

## Police interview with child complainant and/or vulnerable witness

Police will make a video recording of their conversation with a child or vulnerable witness which can later be played in court. For child sexual offences this is referred to as an s93A interview (admissible under [s93A of the Evidence Act 1977](#)), or ICARE interview (Interviewing Children and Recording Evidence). When preparing to interview the child or vulnerable witness the officer will obtain background information about the witness, and information relating to the purpose of the interview (e.g., criminal offence, child protection concerns). The officer may limit the number of persons present for the interview for many reasons.

## Investigation

When police receive a report, they may commence an investigation. Sexual offence investigations are undertaken by trained police investigators. Investigations of offences against adults are generally managed by the Criminal Investigation Branch (CIB) and offences against children are generally conducted by the Child Protection and Investigation Units (CPIU). Detectives attached to the CPIU undertake additional training specific to child sexual offence investigations.

## Charge

After police have completed their investigation, they will decide what happens next. A police officer will decide if charges should be laid and what those charges are. They may decide to:

- Take no further action – e.g. where there is not sufficient evidence.
- Caution or offer diversion to the offender.
- Issue a Notice to Appear (NTA) to attend court at a future date.
- Arrest the offender.

## Bail

Bail refers to the release of a person into the community whilst they await trial and an agreement, sometimes described as an “undertaking”, to turn up to court. A person on bail may be required to abide by certain conditions.



## Brief of evidence

If an investigation leads to charges, the police are responsible for preparing a brief of evidence. The brief contains all witness statements, forensic evidence, and any other material such as CCTV footage, that relates to the charges. The brief is sent to the defence team and the Office of the Director of Public Prosecutions (ODPP) (prior to the committal hearing for matters in the Brisbane Magistrates Court or after committal in other parts of the State). The prosecutor, whether a police prosecutor or prosecutor from the ODPP, is the person who will make the decision as to whether there is enough evidence to prosecute a person, and if so, they will present the evidence in court.<sup>13</sup> The role of the ODPP will be explored further in Roles and Responsibilities.

## Children or Adults referred to PACT

For almost 40 years, [Protect all Children Today Inc. \(PACT\)](#)<sup>14</sup> has been working with Queensland Police Service (QPS) providing support to vulnerable complainants and witnesses of all ages who have to give evidence. PACT and its community network of over 100 volunteers educates, empowers and supports victims, helping them understand the legal system and being present while they give their best evidence. As a small not-for-profit organisation, PACT services are available state-wide, ranging from in-person support to remote support provided via phone or video conferencing.

Police and prosecutors can refer matters involving child and adult complainants and witnesses to PACT. PACT offers a range of programs aimed at supporting children and adults, and their families, through the court process. PACT aims to reduce trauma experienced throughout the criminal justice system by arranging things such as court familiarisation visits, explaining the court process including giving evidence, and being a support person in court.

PACT has spent significant effort providing age-appropriate educational resources for both children and adults, demystifying the complex court process in easy-to-understand ways that are culturally sensitive helping to reduce the fear of giving evidence and educating victims and their families on the key stages and what to expect during their justice journey.

PACT continues to provide a reassuring presence for children and adults as they prepare to give evidence including by being by their side when they view their initial police statement. A PACT volunteer also sits next to the child or adult complainants or witness when they give evidence from the pre-recording room or in the court, helping them stay calm, attentive and focussed with the aim of reducing their anxiety and any feelings of isolation or vulnerability.



### Reading

For further reading see:  
[QPS Operational Procedures Manual](#)<sup>15</sup>.

## Court System

### Australia's court system

Australia's court system is a tiered system with State and Territory courts each having higher and lower courts for cases of varying seriousness. The High Court of Australia, a Commonwealth Court, is the final court of appeal from all State courts and can hear federal offences such as those relating to immigration and terrorism.

<sup>13</sup> Go To Court (2024). *What Happens After an Arrest*. Go To Court. <https://www.gotocourt.com.au/criminal-law/qld/what-happens-arrest>

<sup>14</sup> PACT. *Support, Educate, Empower (2024)*. Home. PACT. <https://pact.org.au/>

<sup>15</sup> Queensland Police Service (2024). *Operational Procedures Manual*. Qld Government. <https://www.police.qld.gov.au/qps-corporate-documents/operational-policies/operational-procedures-manual>

Each State and Territory court system operates independently. All States have Supreme Courts, and some also have a Court of Appeal which is the highest court of appeal in a State.

The Supreme Court is the highest level of court in Queensland. It comprises the trial division and the Court of Appeal. The Court of Appeal hears all appeals from the Supreme and District Courts, and many tribunals. The court does not hear entire cases or have a jury. It deals only with the subject matter of the appeal. The Court of Appeal comprises three or five judges of the Supreme Court. Supreme Court judges are formally referred to as “Justices”.

The trial division of the Supreme Court deals with the most serious criminal offences, including major drug offences, attempted murder, manslaughter, and murder – often criminal offences where a defendant may be sentenced to life imprisonment. The trial division also deals with civil disputes between people and organisations over money or property involving amounts greater than \$750,000.

The District Court is the second tier of the court system, sitting below the Supreme Court. The District Court hears serious cases such as rape, sexual assault, armed robbery, and dangerous driving. The court also hears civil matters with a value of between \$150,000 and \$750,000. The District Court also has other areas of responsibility, being:

- the Childrens Court of Queensland —which deals with serious cases involving defendants under 18 years of age; and
- the Planning and Environment Court —which hears disputes about town planning, land subdivision and rezoning.

In Queensland, trials in the Supreme and District Court are generally held in front of a jury, together with a judge.

In jury trials, the role of the judge is to determine issues of law and the role of the jury is to determine issues of fact. An example of an issue of law to be dealt with by the judge is whether an alleged confession by the accused should be excluded from evidence (i.e., ruled inadmissible) because of a failure by police to provide an adequate warning before an interview. Using the same example, if the judge allowed the evidence to be admitted, the jury would then consider the alleged confession and determine what weight should be given to it. This is an issue of fact. In essence, the jury determines whether that evidence, in conjunction with all other evidence, proves that the defendant committed the alleged offence.

In special cases, a Supreme or District Court trial may be heard by the judge only (judge alone or judge only trial) where it is “in the interests of justice” to do so. The legislation is silent as to the available reasons for a court to find that it is in the interests of justice to grant a no jury order, therefore each application is considered on a case-by-case basis. Some common examples of grounds for a no jury order include:

- the complexity or length of the trial is likely to be too significant a burden for a jury; and significant pre-trial publicity may impact jury deliberations, such as the 2008 Queensland District Court trial of notorious sex offender Dennis Ferguson.

The Court hierarchy also includes the Magistrates Court. The Magistrates Court is the first level of the Queensland Courts system and hears about 95% of court cases. Most criminal cases are first heard in this court in some form. Civil actions where the monetary value is less than \$150,000 are also heard here. The Court also includes the Childrens (Magistrates) Court which deal with matters involving defendants under 18 years of age.

The Magistrates Court deals with a range of offences including:

- Less serious offences known as summary offences, for example traffic infringements.



- Minor offences, such as shoplifting or disorderly behaviour.
- More serious offences, such as burglary, assault, fraud, drugs, and some sexual offences.

Where the offence is more serious, the magistrate may commit the case to the District Court or Supreme Court for sentence or trial. The purpose of the 'committal hearing' is for the magistrate to determine if there is sufficient evidence to require the defendant (accused person) to stand trial. In some cases, trials are conducted in the Magistrates Court and are determined by a magistrate without a jury.

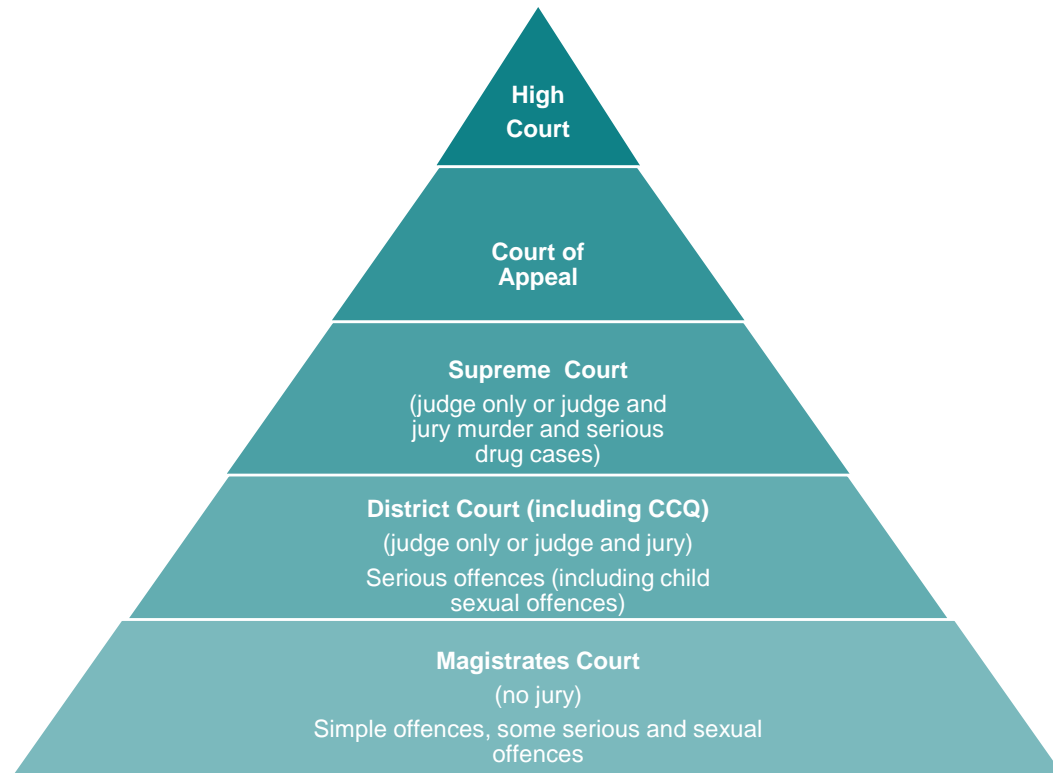


Figure 5: Queensland court system

### Important principles of law

There are some important features of the Queensland court system that experts should be aware of.

They include:

- Judicial power over proceedings.
- Prima facie case.
- Presumption of innocence.
- Burden and standard of proof (beyond reasonable doubt and balance of probabilities).

Each are outlined in more detail below.

#### *Judicial power over proceedings*

Judges have a responsibility to control court proceedings to ensure the rules of evidence are followed and that the accused receives a fair trial.

#### *Prima facie case*

Prima facie case translates from Latin as essentially, "the case at first appearance". A prima facie case is one which, on first appearance, contains sufficient evidence to prove the elements of the offence. A magistrate will determine whether there is a prima facie case and if so, the magistrate will commit the matter to the District Court for trial or sentence.

### *Presumption of innocence*

The accused is presumed to be innocent until proven guilty. This presumption of innocence is the most fundamental principle of the criminal justice system. It means that the prosecution in criminal matters bears the burden of proving the accused is guilty of the charged offences beyond a reasonable doubt. It is not the defendant's responsibility to prove that they are not guilty.

### *Burden and standard of proof - beyond reasonable doubt*

The burden and standard of proof in Queensland for criminal offence is "beyond reasonable doubt". The burden of proof refers to the prosecution's legal burden to prove every element of an offence relevant to the guilt of the person charged, i.e., the prosecution has the burden of proving, beyond reasonable doubt, that the defendant is guilty.

Proof beyond reasonable doubt is the highest standard of proof known to the law. A defendant cannot be found guilty of a criminal offence unless and until the prosecution has satisfied the jury or judge (in judge alone trials) that the defendant is guilty of the offence beyond a reasonable doubt.

A defendant, who is presumed innocent, does not have to prove anything, and is under no obligation to produce any evidence at any stage of the proceeding. They can give evidence and they can call evidence in their case – but they are not obliged to do so.

### *Burden and standard of proof – balance of probabilities*

In addition to civil trials, a lower standard of proof - "balance of probabilities" – applies in respect of certain criminal charges where a defendant is intending to establish a defence or excuse to their criminal activity. When applying this standard of proof, the defence only needs to show that it is more likely than not that what the defendant asserts is so.

As indicated above, for sexual assault or rape offences under the [Criminal Code](#) the defence of mistake of fact applies if the act was done under an honest and reasonable, but mistaken, belief that the complainant consented ([section 348A](#)). [Section 348A](#) of the [Criminal Code](#) provides that a defendant's belief that another person consented to an act is not reasonable if the defendant did not immediately before or at the time of the act, say or do something to ascertain whether the other person consented to the act. However, the requirement to say or do something to affirm consent does not apply where a defendant proves on the balance of probabilities that they had a cognitive or mental health impairment at the time of the sexual act, and the impairment was a substantial cause of the defendant not saying or doing anything. The legislation mandates that evidence from a suitably qualified expert or experts is required to prove both the impairment and the substantial cause, on the balance of probabilities.

The onus on the defendant only applies to the proof of the impairment and the substantial cause. So, where those matters are established on the balance of probabilities, the prosecution can only prove the charge where it proves beyond reasonable doubt that, notwithstanding the existence of the impairment and the substantial cause, the stated belief as to the consent of the complainant was either not honestly held or not one based on reasonable grounds, in all of the circumstances.

### **Offence types**

Offences are classed as simple offences or crimes and misdemeanors (indictable offences):

Simple offences can be dealt with by the Magistrate in a summary hearing. Examples of simple offence include driving offences; creating a public nuisance; trespassing; and minor drug offences.

In contrast, indictable offences are more serious in nature and include sexual offences; serious assaults; burglary; and fraud and assault occasioning bodily harm.



**Note:**

Most trials involving sexual offences are heard in the District Court

## Court Process

### Magistrates Court

#### *The first mention*

A person charged with a criminal offence must be brought before the Magistrates Court as a soon as possible after being charged – this is what we refer to as the “first mention”. The charges against the defendant will be read out and the defendant (or their lawyer) will enter a plea of guilty or not guilty. There are no witnesses at this court event.

#### *Indictable offences*

For minor indictable offences the defendant may plead guilty and the magistrate may either impose a sentence or set a date for a sentence hearing. For other indictable offences (such as child sexual offences), the magistrate sets a date for a committal hearing to determine if there is enough evidence to commit the defendant to trial in the Supreme or District Court.

#### *Committal hearing (Magistrate Court)*

Generally, the first appearance for all criminal offence(s) is before a magistrate in the Magistrates Court.

At a committal hearing, the magistrate must decide whether to commit the matter to trial or sentence in the District Court or Supreme Court. This decision is based on whether there is enough evidence on which a jury could convict a defendant or if the defendant has pleaded guilty to an indictable offence. The defendant must not be committed for trial unless there is prima facie evidence such that a properly instructed jury could find the person guilty of the charge(s).

A committal can proceed by way of an oral committal hearing or a hand-up committal, including committals via the registry or the defendant consents to the charge being committed to a higher court.

#### *Committals without an oral hearing*

In most cases, an indictable offence will be committed to a higher court without an oral committal hearing. A defence solicitor will review the brief of evidence, and if there is sufficient evidence to proceed the matter will be committed by consent. This can occur in two ways:

1. ‘Full hand up’ committal which consists of the prosecution handing up the brief of evidence to the magistrate, who will review it to ensure sufficient evidence for the matter to be committed to a higher court, and then commit the matter; or
2. Registry Committal which is an administrative avenue of committing charges outside of court. The defence must have been served with all evidence and witness statements beforehand and the magistrate will adjourn the matter to allow for the full brief of evidence to be provided. The next court date will be vacated once the Registry Committal has occurred, and the matter transferred to the District or Supreme Court.

### District Court

District Court sits in 32 locations across Queensland and matters are presided over by a judge. Judges also travel throughout the state to hear matters in regional and remote areas (referred to as circuit courts).

There are three general different types of hearings and trials that are dealt with in the District Court:



- Criminal trials.
- Civil trials.
- Appeal hearings.

### Indictment and Plea

Indictments must be “presented” to the Supreme and District Court within six months of committal. Once the indictment has been prepared, it will be presented by the ODPP in the District or Supreme Court. Most sexual offence matters proceed in the District Court.

The accused will be asked if they intend to enter a plea of guilty or not guilty to the charge/s. If the accused indicates an intention to plead guilty, a date will be listed for a sentence hearing. If the accused indicates an intention not to plead guilty, the matter will be listed for trial. The accused can change his/her plea from not guilty to guilty at any point of the proceeding – for example on the morning of trial or just before a jury or judge (for judge alone trials) is set to deliver a verdict. However, it is difficult to change a guilty plea to not guilty.

### Roles and responsibilities

There are several different parties involved in court matters in Queensland including:

- Office of the Director of Public Prosecutions (ODPP)
- Police Prosecutions.
- Defence Counsel.
- Solicitors.
- Magistrates.
- Judges.
- Jury

#### *Role of the ODPP (prosecutors)*

The [Director of Public Prosecutions Act 1984 \(Qld\)](#) (‘the Act’) created the independent Director of Public Prosecutions, who is responsible to the Attorney-General. The ODPP is a business unit of the DoJ.

The Director, with the assistance of officers appointed under the [Act](#) and the [Public Service Act 2008 \(Qld\)](#), has the primary function of prosecuting on behalf of the State of Queensland people charged with criminal offences in the High Court of Australia, Court of Appeal, Supreme Court, District Court, Childrens Court of Queensland, Magistrates Court (limited) and Mental Health Court. The ODPP has responsibility for appearing at committal hearings in the Brisbane Magistrates Court.

In prosecuting criminal offences on behalf of the State of Queensland, the ODPP works to protect the community’s interests and ensure the guilty are brought to justice and the innocent not be wrongly convicted.

There are three aspects to the work of the ODPP, including:

<b>Legal preparation</b>	Preparing an indictment based on information in a Brief of Evidence prepared by the police and conferencing with witnesses to prepare them for trial.
<b>Court appearances</b>	Presenting indictments, attending all court discussions of matters such as listings, mentions, hearings and trials.



### Victim liaison work

Assisting victims of crime and their families in their interactions with the criminal justice system, primarily by providing information on court events and referral services.

The ODPP can exercise discretion at different points in the prosecution process which may result in a complaint being withdrawn from court – for example if prosecutors assess there is no “reasonable prospect” of securing a conviction in court.



### Reading

For further reading a full copy of the ODPP Guidelines can be accessed online here.

[ODPP Guidelines](#)<sup>16</sup>

### *Role of police prosecutions*

QPS prosecutors provide general prosecution services in Queensland's Magistrates and Childrens Courts across the state. QPS prosecutors may be either legally qualified and admitted civilian lawyers, or sworn police officers who have completed the Prosecutor Training Course. They routinely appear on applications, summary trials, sentences and committal proceedings in the Magistrates and Childrens Courts, and from time to time their civilian lawyers appear on applications in the Supreme Court.

### *Role of defence counsel*

The accused person in a sexual offence matter is entitled to be legally represented. Defence representatives can include an instructing solicitor from a law firm, or from organisation such as Legal Aid Queensland or the Aboriginal and Torres Strait Islander Legal Service (ATSILS) and/or the barrister who they instructed. The barrister is called “defence counsel” and their role is to advocate for the defendant during certain court hearings on the matter.

### *Role of the magistrate in Magistrates Court for serious criminal offences*

At the committal hearing, the magistrate considers the prosecution case against the accused and assesses whether there is sufficient evidence for a jury to find them guilty. The magistrate has the power to “commit” the matter to the District or Supreme Court for trial or for sentence, depending on the plea of the accused person. Magistrates also conduct summary trials and deliver sentences.

### *Role of the judge in District/Supreme Court*

The judge has a duty to ensure a fair trial. During a trial, the judge determines any legal questions. They must instruct the jury about laws relevant to their deliberations – the jury always remain the sole judges of the facts (unless it is a judge only trial). In judge alone trials, the judge will determine a defendant’s guilt or innocence. Where the accused is found guilty, the judge determines the sentence according to Queensland law.

### *Role of the jury*

In a criminal trial, a jury of 12 people selected at random decides whether an accused person is guilty or not guilty based on the evidence presented. The exception to this is where a judge only trial is ordered. The role of the jury when used is to determine the facts, apply relevant principles of law to those facts as explained by the judge, and return a verdict.

<sup>16</sup> Director of Public Prosecutions (2024). *Guidelines*. Qld Government. [https://www.justice.qld.gov.au/\\_\\_data/assets/pdf\\_file/0015/16701/directors-guidelines.pdf](https://www.justice.qld.gov.au/__data/assets/pdf_file/0015/16701/directors-guidelines.pdf)

# Trial – Giving Evidence and Cross Examination

## Criminal trial overview

In a criminal trial, most matters are heard by a judge and jury, although a judge alone trial may occur in special circumstances as outlined above. In a traditional judge and jury trial, a jury of 12 people selected at random decides whether an accused is guilty or not guilty based on the facts of the case. A judge makes all other decisions, including issues affecting the admissibility of evidence and penalties. If a criminal trial is held without a jury, the judge decides whether an accused is guilty.

In nearly all criminal trials, the defendant is presumed innocent until proven guilty; that is, the prosecution has the burden of proving each offence beyond a reasonable doubt. This can be changed by specific legislation. Where a defendant is required to prove anything in a criminal trial, they must do so on the balance of probabilities.

At a criminal trial:

1. *Court is opened*
  - The prosecutor and defence counsel announce their appearances.
  - The prosecutor mentions the indictment – either by presenting it or advising it is already before the court (or, by asking for its return for the purposes of amendment).
2. *Arraignment*
  - The defendant is “arraigned”, a process whereby the charges on the indictment are read and the defendant is asked to enter a plea.
3. *Jury empanelment* – for jury trials.
4. *Judge’s opening remarks* (for jury trials) which inform the jury of trial procedure; the function of the jury; the role of the people in the court room; and the charges the defendant faces.
5. *Opening address by prosecutor* where they outline the case and the evidence the prosecution relies upon.
6. *Optional: opening address by defence* where counsel will alert the court to the factual matters in issue.
7. *Evidence from prosecution witnesses*
  - The prosecutor will call their witnesses one by one. The prosecutor will question their witness (evidence-in-chief) and the defence counsel may then question that witness (cross-examination). Sometimes, after cross-examination, the prosecution may ask a few more questions (re-examination).
  - Once all prosecution witnesses are called, the prosecution case is closed. At the closing of the prosecution case, defence may make a submission to the judge (in the absence of the jury) that there is ‘no case to answer’ by the defendant. A no case submission is made when the defence considers that the prosecution case does not support a finding of guilt and the court should dismiss the charge without the defence having to present a case. A ‘no case to answer’ submission will be successful where the prosecution case, taken at its highest, is insufficient to support a finding of guilt. If any ‘no case submission’ is unsuccessful the defence may then present their case as outlined below.



### 8. *Defence case*

- The defendant will be asked if he/she intends to give or call evidence – they are not required to.
- If the defendant does call evidence, the same procedure that occurred for the prosecution witnesses will occur for the defence witnesses. They may be cross-examined by the prosecution and, if there is cross-examination, they may be re-examined by defence counsel.

### 9. *Closing remarks by both parties*

10. *Judge's summing up* (for jury trials) where the judge “sums up” the case to the jury and reminds the jury of the law that they must apply during their deliberations and the issues they must consider.

11. *Jury deliberations* (for jury trials) s– these occur when the jury retires to consider their verdict/s.

12. *Verdict delivered* - If the jury (or judge) finds the accused:

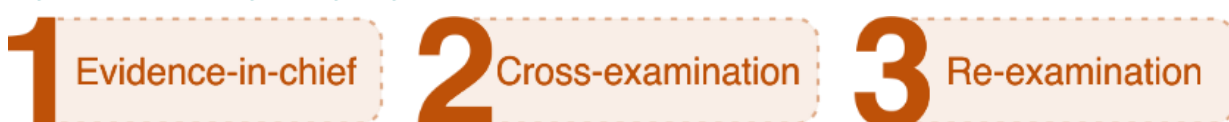
- not guilty— the defendant has been found not guilty, they are discharged, and the proceeding has ended; and/or
- guilty—the defendant is convicted, and the judge passes sentence on the defendant.

## Giving evidence

During a criminal trial, the evidence forms the basis of the party's respective cases. Evidence is the body of facts and information that proves whether a belief or proposition is true; it is what the judge or jury uses to reach their verdict.

In a criminal trial, evidence is presented by way of the oral testimony of witnesses, or via exhibits such as photographs or recordings. Witnesses are ‘called’ to give evidence by a party to the case – either the prosecution or defence. Unlike civil proceedings, expert reports won't be tendered during a criminal trial to represent the expert's evidence-in-chief. Instead, experts are required to orally provide their expert opinion, and the basis for it.

Figure 6: Three stages to giving evidence in court:



### *Evidence-in-chief*

Evidence-in-chief is when a witness is asked questions by the party who calls them to give evidence. For example, for expert evidence as to the affirmative consent safeguard provision, experts will usually be called by defence counsel and give their evidence in chief as part of the defence case.

The purpose of evidence-in-chief is to enable the witness to tell their story and give evidence to support the case being put forward. Counsel will facilitate this by generally asking open (or, non-leading)

questions. For vulnerable witnesses, the police interview will often be played to the court and constitute their evidence-in-chief.

### *Cross-examination*

After evidence-in-chief, the witness is asked questions by counsel for the opposing party. This is known as cross-examination and is very important to the concept of a fair trial.

When cross-examining a prosecution witness, defence counsel must present the defence's version of the facts to the witness and give the witness the chance to respond to anything in the defence's case that contradicts the witness's evidence. The witness must be given a chance to justify or explain any contradiction.

For experts called by defence counsel to give evidence as to the affirmative consent safeguard provision, they will be cross-examined by the prosecution. In this scenario, the purpose of cross-examination is to illicit information or get concessions from the expert that are favourable to the prosecution's case and to cast doubt on the accuracy of the expert's evidence-in-chief.

### *Re-examination*

The final stage of a witness' evidence is called 're-examination'. This is a chance for the party that called the witness first to further explain things that may have become confused or unclear during cross-examination. Because the witness is not allowed to provide the court with new information or evidence, re-examination is often very short. In particular circumstances, new evidence may only be introduced with the permission of the court, but this then enables the opposing party to cross-examine the witness again about that new evidence.

## **Trial (Verdict)**

The trial will result in a jury or judge finding the accused either guilty (convicted) or not guilty (acquitted) of the charge/s. A verdict of guilty means the prosecution has proved beyond reasonable doubt that the person is guilty. If the accused is convicted, the matter proceeds to sentence.

For jury trials, if a jury advises the court that it is unable to reach a verdict after deliberations, the judge will give the jury what is known as a 'Black Direction'. The Black Direction derives its name from the High Court of Australia case of *Black v The Queen* [1993] HCA 71; (1993) 179 CLR 44 and is intended to encourage juries to reach unanimous verdicts. There is also provision in the [Jury Act 1995](#) to permit majority verdicts in certain cases (that is, 11 jurors have to agree on the verdict instead of 12). Where a jury still cannot reach a verdict, a "hung jury" will be declared and the prosecution will then decide whether it is in the public interest to retry the case. A hung jury is a form of mistrial.

## **Mistrial**

A mistrial is a trial that has been terminated and declared void before a verdict is returned. The termination of a trial prematurely nullifies the proceedings, so it is as if it had not taken place. Therefore, should another trial on the same charges with the same defendant/s, be ordered, that trial would start from the beginning, with the previous testimony or other findings not necessarily relevant in the new court proceedings.

There are several factors that can result in a mistrial, including:

- a remark that would be highly prejudicial to a party and that the judge may feel cannot, despite instructions, be ignored by the jury;
- an expert providing evidence outside the scope of their engagement or area of expertise; or
- the discovery that members of the jury had discussed the case contrary to court instructions.



Most often, a mistrial may be declared if the jury itself cannot arrive at a verdict after repeated attempts (i.e., if it is a hung jury).

Of note, a mistrial may be ordered if an expert does something that prejudices the trial. This may include:

- if an expert enters into discussions, gives advice or express opinions concerning the evidence of the witness; or
- if an expert advocates for any witness, or the defendant, in any way.

If a mistrial is declared, there can be a retrial, or the ODPP may choose to terminate the criminal proceedings.

## Appeal

An appeal is an application to a higher court after a conviction and/or sentence, when a defendant believes there are grounds for appeal. The prosecution also has a limited right of appeal, usually concerning points of law or the asserted inadequacy of the sentence(s) imposed. The grounds for an appeal are essentially the reasons why the party thinks the judge or jury made the wrong decision, or the trial wasn't conducted according to the law.

Appeals by the defendant can only be made in criminal cases where the outcome was a guilty verdict. A not guilty verdict is final. In criminal cases, only those parties directly involved in the case can appeal a sentence —the defendant and the Crown (ODPP). The Crown can only appeal a sentence if they believe it is inadequate, but a defendant can appeal a guilty verdict and/or apply for leave to appeal against a sentence if they believe it to be too harsh. During an appeal, the Crown's case will usually be presented by a Crown prosecutor from the ODPP.<sup>17</sup>

Usually for an appeal against a conviction to be successful the defendant must prove that there was a mistake made in the original case that affected the outcome.

## Court protocols

### Overview

The court is a formal environment. Experts who are called to give evidence in court should ensure they comply with the following:

- When arriving at court let the requesting party know you are present.
- Standing when the judge enters and leaves the courtroom (court staff will direct when this occurs).
- It is customary to bow to the court when entering or leaving the courtroom. As judges are the official representatives of the Crown, we are not bowing to the judge but to the Coat of Arms to show respect. The Coat of Arms is in every courtroom above the seat of the judge and is symbolic of justice and law.
- Addressing judges and magistrates as 'Your Honour.'
- Ensuring all electronic devices (e.g., phones) are turned off.
- Not eating or drinking (except water) inside the courtroom.
- Removing sunglasses and/or hats when inside the courtroom.

<sup>17</sup> Legal Aid Queensland, *Appeals in Criminal Matters*. Legal Aid Qld. <https://www.legalaid.qld.gov.au/Find-legal-information/Criminal-justice/Criminal-court-process/Appeals-in-criminal-law-matters#toc-appealing-from-the-district-or-supreme-court-2>  
<https://www.courts.qld.gov.au/courts/court-of-appeal/the-appeal-process/how-to-appeal>



## Dress requirements

Courts are formal environments with significant history and culture. All persons must conduct and present themselves in a professional manner.

Experts **must** ensure choices they make regarding personal presentation is professional and positively reflects their role.

Attire such as collared shirts with a plain blazer are usually expected in a court setting.

The following are some examples of what is considered **acceptable** clothing to reflect a professional image:



### Essential Reading

[Equal Treatment Benchbook](#)

- Clean, neat, tidy, presentable clothes consistent with conventional office dress standards. Examples of such clothing include trousers/pants, collared shirts, skirts, dresses, and tops that cover chest and back.
- Shoes, appropriate to an office environment, must be worn at all times. Thongs and flipflop type shoes are not appropriate.

The following are some examples of what is considered **unacceptable** clothing to reflect a professional image:

- Clothing that reveals cleavage or underwear.
- Casual/home/active wear such as singlets, camisoles, leggings, and exercise pants.
- Jeans and shorts.
- Clothing with offensive motifs or alcohol, smoking or political slogans.

## Cultural awareness and diversity

### Introduction

Working as an expert will involve working with a diverse group of people. To work effectively, it is necessary to understand different perspectives and foster a culturally safe environment.

It is important that all work practices are culturally appropriate – non-discriminatory and free of bias, stereotyping, racism, or prejudice.

### Importance of cultural awareness

A culturally safe environment places the focus on the value of diversity, life experiences and situations rather than a pre-defined definition of what is typical or expected.

Some key areas of diversity include:

- Family and how the family works – its hierarchy and obligations.
- Culture, race, and ethnicity.
- Disability.
- Religious or spiritual beliefs.
- Gender – including transgender, nonbinary, and intersex people.



- Generational.
- Sexual orientation or sexual identity – lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) people.

While people from the same cultural background may share many similarities, they will also have individual preferences and differences.

Cultural competence means that all people are treated respectfully, as individuals, with their own set of needs and values.

Culturally appropriate work practices must always be applied when working as an expert. It is particularly important to apply these work practices when working with people who have behaviours, interpersonal relationships, and social expectations that are different to your own.



### **Weblink**

Our Watch and Diversity Council of Australia – [\*Myth busting domestic and family violence at work: Using evidence to debunk common myths and assumptions\*](#)



# Working with Aboriginal and Torres Strait Islander peoples



## Note:

The following sections have been reproduced from Key points taken from: [Two Laws: One Land, by Colin Bourke and Helen Cox in Aboriginal Australia](#)<sup>18</sup>, An Introductory Reader in Aboriginal Studies, Second Edition (Edited by Colin Bourke, Eleanor Bourke and Bill Edwards). University of Queensland Press. 1998, 2004.

## Two laws, one land (The Law and The Lore)

“The Aboriginal peoples of Australia had a complex system of law long before the establishment of British law in Australia. Their system of law is often referred to as “traditional law,” however “rules of law and norms of politically appropriate behaviour were probably not distinguished” (Meggitt, 1962).

The term ‘law’ is a British concept that was first introduced to the Aboriginal peoples during the colonisation period, whereby they were expected to abide by this new justice system.

The term ‘lore’ refers to the customs and stories the Aboriginal peoples learned from the Dreamtime. It refers to the common features of acceptable and unacceptable behaviour in Aboriginal communities. Aboriginal lore was passed on through the generations through songs, stories and dance and it governed all aspects of traditional life.

It is common to see the terms ‘law’ and ‘lore’ being used interchangeably. As a worker it is useful to remember that there is a distinction, although law is more commonly used.

Traditional lore is connected to ‘The Dreaming’ and provides rules on how to interact with the land, kinship, and community. Aboriginal children learned the lore from childhood, by observing customs, ceremonies, and song cycles.

Traditional lore is comparable with the ten commandments, it has rules regarding “homicide, sacrilege, sorcery, incest, abduction of women, adultery, physical assault, theft, insult, including swearing, and the usurpation or ritual privileges and duties” however traditional lore also makes not doing things an offence, for example not sharing food is an offence under traditional lore.

There were no formal courts like British courts under traditional lore, instead problems regarding traditional law were handled by elders - the oldest peoples in the community. Despite the complex Aboriginal system of lore(law) that was in place before 1788, England declared Australia terra nullius - not inhabited by peoples with settled laws or customs.

## Indigenous populations

In 2021, Queensland had just over 273,000 Indigenous residents, which is 5.2% of the Queensland population (Australian Bureau of Statistics 2021). Although Aboriginal and/or Torres Strait Islander peoples were more likely to be living in non-remote areas of Australia in 2021, they made up a greater proportion of the remote and very remote (25%) than non-remote (2%) population. One quarter of Indigenous Queenslanders were living in remote or very remote locations in 2021.<sup>19</sup>

<sup>18</sup> Working with Indigenous Australians First Nations People (2024) [http://www.workingwithindigenoustralian.info/content/Culture\\_4\\_The\\_Law\\_and\\_the\\_Lore.html](http://www.workingwithindigenoustralian.info/content/Culture_4_The_Law_and_the_Lore.html)

<sup>19</sup> Australian Bureau of Statistics (2021). *Estimates of Aboriginal and Torres Strait Islander Australians*. <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/jun-2016>

## Communication

### *Language:*

There is no universal Aboriginal or Torres Strait Islander language. Each nation has its own distinct language and/or dialect. It has been suggested that there are up to 300 Aboriginal and Torres Strait Islander nations throughout the country, speaking about 250 different traditional languages with up to 600 dialects. Past assimilation policies prohibited Aboriginal and Torres Strait Islander peoples from using their language, which contributed to the breakdown in the teaching of language between generations. Aboriginal and Torres Strait Islander culture is an oral culture, so this practice had a devastating effect on the preservation of language and knowledge, and many languages have been lost as a result. However, in some communities, traditional languages are still strong and are being revived, taught at schools, and published in books.

### *Aboriginal and Torres Strait Islander English:*

Aboriginal and Torres Strait Islander English is the first language of most Indigenous Queenslanders, especially those from non-metropolitan areas. This language uses English words combined with the grammar of traditional languages. The differences in traditional Aboriginal and Torres Strait Islander languages may be on a continuum ranging from being almost indistinguishable from Standard Australian English (SAE) to the uninformed listener, or slightly different. While there is a commonality with SAE, accent, grammar, words, meanings, and language use will differentiate Aboriginal and Torres Strait Islander English or 'lingo' from SAE and slang. There are also similarities between Aboriginal and Torres Strait Islander English and traditional Aboriginal and Torres Strait Islander languages. Just as similarities between traditional Aboriginal and Torres Strait Islander languages and dialects vary between areas, the use and meaning of Aboriginal and Torres Strait Islander English also varies according to geographic location.

Aboriginal and Torres Strait Islander English makes considerable use of non-verbal signs, especially when discussing direction. These are an integral part of the communication process and should not be ignored. Differences between Aboriginal and Torres Strait Islander non-verbal features and those of other cultures provide additional scope for misinterpretations. This is especially so for peoples of Anglo-Celtic descent who usually downplay non-verbal communication.

Non-verbal communication includes hand and facial gestures, eye contact and silence. Be sensitive to the use of nonverbal communication cues which are a part of Aboriginal and Torres Strait Islander communication patterns. The use of silence does not mean Aboriginal and Torres Strait Islander peoples do not understand, they may be listening, remaining non-committal, or waiting for community support. Remember that language issues are extremely sensitive because so many Aboriginal and Torres Strait Islander languages have been lost and many of those that survive are endangered.<sup>20</sup>

There may be significant cultural and linguistic differences between those using Aboriginal and Torres Strait Islander English and those using Standard Australian English.<sup>21</sup>

A publication by the Department of Justice, 2020, "*Aboriginal English in the Courts: a handbook*", based on the work of Dr Diana Eades, in association with community organisations, the judiciary and the legal profession, was designed to improve access to Indigenous Queenslanders by helping overcome communication breakdowns in the courts. Intended for judges, magistrates and the legal profession, the handbook provides essential reading for anyone who undertakes work within the Australian context.<sup>22</sup>

<sup>20</sup> Lauchs, M, 2010. *Rights vs Reality: the difficulty of providing "Access to English"* in Queensland Courts. <https://eprints.qut.edu.au/216131/>

<sup>21</sup> Lauchs, M, 2010. *Rights vs Reality: the difficulty of providing "Access to English"* in Queensland Courts. <https://eprints.qut.edu.au/216131/>

<sup>22</sup> Eades, Diana, 1953- and Queensland. Department of Justice. *Court Strategy and Research Branch*. (2000). *Aboriginal English in the courts: a handbook*. [Brisbane]: Dept. of Justice <https://catalogue.nla.gov.au/catalog/2123038>



## Community Justice Groups (CJG)

### *About CJGs*

Community Justice Groups (CJGs) currently operate in over 41 communities throughout Queensland. CJGs are non-government organisations providing practical support to Aboriginal and/or Torres Strait Islander peoples who come into contact with Queensland's justice system. In some communities, CJGs also play an advisory role in Alcohol Management Plans.

CJGs were first introduced in Queensland in 1993 under a pilot program designed to address key recommendations of the Royal Commission into Aboriginal Deaths in Custody. The pilot program was later expanded to a state-wide program underpinned by the goal of reducing the overrepresentation of Aboriginal and/or Torres Strait Islander peoples in the criminal justice system.

The DoJ provides grant funding to CJGs. The grant includes funding to employ a CJG Coordinator who assists the CJG members (local Elders and Respected Persons) to deliver the justice-related services within their community.

### *Role of CJGs*

CJGs are run by members of the local Aboriginal and Torres Strait Islander community and provide a community-based response to local issues, working cooperatively with magistrates, police, corrective services personnel and staff from other government agencies and community organisations. CJGs adopt a person-centered approach to addressing crime and justice-related issues in their community utilising cultural leadership and capability to contribute to whole of system outcomes.

### *CJG service delivery*

CJGs deliver a number of core court related activities including:

- preparation of bail and sentence submissions to the court;
- attending court sittings;
- supporting complainants and defendants through the court process;
- referring complainants and defendants to support and legal services;
- Youth Court (Townsville);
- providing cultural advice and community input on justice related issues; and
- supporting the operation of Murri Courts.

CJGs established in discrete Aboriginal communities under the [Aboriginal and Torres Strait Islander Communities \(Justice, Land and Other Matters\) Act 1984](#) are referred to as 'statutory' CJGs. Statutory CJGs perform the same important functions as other CJGs and have an additional role providing advice regarding alcohol management.

Membership appointments to statutory CJGs are made under [section 20\(2\) of the Aboriginal and Torres Strait Islander Communities \(Justice, Land and Other Matters\) Act 1984](#) and are published on the Queensland Courts website. For more information go to [Qld Courts website](#)



### **Weblinks**

For a map of Indigenous Australia go to – [Map of Indigenous Australia | AIATSIS corporate website](#)

For an Interactive Queensland Aboriginal and Torres Strait Islander language map go to - [Aboriginal and Torres Strait Islander languages | State Library of Queensland \(slq.qld.gov.au\)](#)

For a list of Indigenous communities in Australia go to - [Communities List | Indigenous.gov.au](#)

## The role of CJGs and the Panel

There may be scope for CJGs to provide cultural support and guidance to self-represented defendants and experts in cases where the defendant and/or complainant is Aboriginal or Torres Strait Islander. When the support of CJGs may be of assistance, the Program Team will liaise with the relevant CJG to determine availability and the nature and level of support that can be provided. Any additional costs associated with cultural support and guidance will be the responsibility of the Program Team.

## Considering the unique culture and historical context of Aboriginal and Torres Strait Islander peoples

When interacting with or addressing issues related to Aboriginal and Torres Strait Islander peoples, it is essential to approach with respect, sensitivity, and awareness of their unique cultural perspectives and historical contexts.

### Key Considerations when working with Aboriginal and Torres Strait Islander Peoples

Enhance cultural capability and cultural safety	<ul style="list-style-type: none"> <li>• acknowledge and respect traditional customs and protocols;</li> <li>• recognise the diversity among different Aboriginal and Torres Strait Islander groups, each with its own distinct traditions and practices;</li> <li>• encourage participation of Aboriginal and Torres Strait Islander Elders and Respected Persons to:               <ul style="list-style-type: none"> <li>○ support defendants and complainants; and</li> <li>○ for advice, guidance, and support about how to assist defendants and complainants to feel culturally safe.</li> </ul> </li> <li>• consider setting up the interview room in a culturally safe way by displaying Aboriginal and Torres Strait Islander flags and artwork and Acknowledgement of Traditional Owners;</li> <li>• use appropriate language and terminology that is easily understood and ensure your communication is clear and culturally appropriate. Do not use jargon;</li> <li>• ensure Aboriginal and Torres Strait Islander peoples have access to interpreters in their native language when necessary; and</li> <li>• undertake cultural capability training.</li> </ul>
Historical Context	<ul style="list-style-type: none"> <li>• have awareness and understanding of the historical experiences of Aboriginal and Torres Strait Islander peoples and the lasting impacts of these experiences on communities today;</li> <li>• overlapping forms of oppression for Aboriginal and Torres Strait Islander peoples has contributed to intergenerational trauma and some Aboriginal and Torres Strait Islander peoples may still have a high level of mistrust towards government institutions due to the trauma of historical events such as the stolen generations, and ongoing systemic issues regarding over representation in the criminal justice system and Aboriginal deaths in custody;</li> <li>• Some Aboriginal and Torres Strait Islanders do not know their families' histories;</li> <li>• a person of Aboriginal or Torres Strait Islander descent may not identify as Aboriginal or Torres Strait Islander; and</li> <li>• seek out awareness and understanding of the local Aboriginal and Torres Strait Islander peoples and communities.</li> </ul>



Elders and Respected Persons	<ul style="list-style-type: none"> <li>• recognise the important role of Aboriginal and Torres Strait Islander Elders and Respected Persons as knowledge holders in preserving and teaching cultural knowledge and practices;</li> <li>• respect the cultural and intellectual property rights of Aboriginal and Torres Strait Islander peoples, including cultural knowledge;</li> <li>• seek permission before using or sharing cultural symbols, stories, or artifacts; and</li> <li>• reimbursement of Elders and Respected Persons for time and advice must be sought from the Program Team.</li> </ul>
Holistic approach	<ul style="list-style-type: none"> <li>• understand the holistic worldview of many cultures, which often emphasise the interconnectedness and deep connection to country;</li> <li>• recognise that health and well-being are viewed by Aboriginal and Torres Strait Islander peoples holistically, encompassing physical, emotional, spiritual, and cultural aspects;</li> <li>• Family kinship structures are very important in Aboriginal and Torres Strait Islander cultures and there may be times when non-Indigenous people are asked to leave the room so that matters can be discussed in private; and</li> <li>• support community-led initiatives that are culturally appropriate.</li> </ul>
Consultation and Consent	<ul style="list-style-type: none"> <li>• ensure meaningful consultation and obtain informed consent when making decisions that affect Aboriginal and Torres Strait Islander communities;</li> <li>• acknowledge the principle of Free, Prior, and Informed Consent as outlined in the United Nations Declaration on the Rights of Indigenous Peoples; and</li> <li>• in circumstances where trust has not already been established, it is preferable for men to speak to men, and women to speak to women.</li> </ul>
Legal Rights and Representation	<ul style="list-style-type: none"> <li>• ensure access to culturally competent legal representation/advice and lawyers and advocates who understand Aboriginal and Torres Strait Islander cultures and the specific challenges faced by individuals with disabilities, such as providing assistive technologies or modified procedures as necessary; and</li> <li>• reach out to the Program Team about consulting with the local CJG.</li> </ul>

Things to consider when communicating with Aboriginal and Torres Strait Islander Peoples



Suggestibility (gratuitous concurrence)	This term refers to the act of saying “yes” to a question regardless of whether the speaker agrees with the proposition being questioned or whether they even understand it. Western legal process may often include methods of obtaining information by testing a person’s truthfulness by putting conflicting propositions and see what they agree to <sup>23</sup> . Conflicting answers in an interview often indicate to the questioner a speaker’s dishonest and untrustworthy character, while Aboriginal and Torres Strait Islander peoples have a cultural inclination not to challenge another person’s or their own claims as to the truth of the matter.
Misinterpretation of silence	In many western societies a pause of more than one second in an interview is generally taken to mean that the speaker has nothing to say or could be trying to invent an answer. In contrast, in much Aboriginal interaction, silence is used as a positive and productive part of communication. Silence is not seen as awkward but rather valuable thinking time <sup>24</sup> . Silence should not be misunderstood. It should be respected. The person may be reflecting on what you have said and may want more time to think about the answer.
Avoidance of eye contact:	Avoiding eye contact is a form of respect in Indigenous culture which is mistaken by Westerners as a sign of sullenness, dishonesty and guilt. An Aboriginal witness who avoids eye contact is an easy target for a savvy defence counsel <sup>25</sup> . In some communities, direct eye contact can be a sign of disrespect and in other communities, direct eye contact will be expected.
Methods of giving specific information	There is an assumption in western culture that the most effective way of finding out information is to ask questions. In contrast, Aboriginal cultures rely on indirect techniques to obtain information such, as talking around a topic, or introducing the topic and waiting until the other person is ready to share information. Aboriginal and Torres Strait Islander peoples rarely make direct requests for information. They may discuss a topic generally while gauging other’s views before stating their own. Aboriginal culture values collaboration and community <sup>26</sup> .
Meaning from context	Context is highly influential in determining what needs to be spoken about and the manner it is to be spoken. If the context is evident to both speakers, the Aboriginal person may not see the importance of explaining it explicitly, for example, non-specific vocabulary “thing” may be used frequently where prior knowledge is assumed <sup>27</sup> .

<sup>23</sup> The Rule in Browne v Dunn (2022). Qld Government. [https://www.courts.qld.gov.au/\\_data/assets/pdf\\_file/0019/86032/sd-bb-32-the-rule-in-browne-v-dunn.pdf](https://www.courts.qld.gov.au/_data/assets/pdf_file/0019/86032/sd-bb-32-the-rule-in-browne-v-dunn.pdf)

<sup>24</sup> Eades, D. (2016). Judicial understandings of Aboriginality and language use. *The Judicial Review*, 12, 479-490. <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/judicial-understanding-aboriginality-language-12jr-.pdf>

<sup>25</sup> Eades, D. (1995). *Language in Evidence: Issues confronting Aboriginal and Multicultural Australia*. Sydney University of NSW Press. Xii1. <https://doi.org/10.1558/ijll.v3i2.328>

<sup>26</sup> Eades, Diana, 1953- and Queensland. Department of Justice, Court Strategy and Research Branch. (2000). *Aboriginal English in the courts: a handbook*. [Brisbane]: Dept. of Justice <https://catalogue.nla.gov.au/catalog/2123038>

<sup>27</sup> Gould, J. (2008). The Affects of Language Assessment Policies in Speech-Language Pathology on the Educational Experiences of Indigenous Students. *Current Issues in Language Planning*, 9(3), 299-316. <http://dx.doi.org/10.1080/14664200802139562>



Shame	The concept of shame in Aboriginal English is very different to the concept of Standard Australian English (SAE) shame. The concept of shame in Aboriginal English is broader than the non-Indigenous use of the word. The meaning of shame extends to include embarrassment in certain situations <sup>28</sup> and often due to attention or circumstances rather than the result of an action by oneself <sup>29</sup> . The feeling of shame can totally overwhelm and disempower a person.
Reluctance to speak on some matters	Aboriginal and Torres Strait Islander peoples may show reluctance to share personal information about themselves, their families, their culture or their local history. Many Aboriginal and Torres Strait Islander communities still operate according to the principles of men's business and women's business, whereby specific traditions and customs are performed separately by men and women.
Language	In Aboriginal English, the way language is used and interpreted (pragmatics), pronunciation, grammar and vocabulary (linguistic features) as well as gestures, eye contact and use of silence (non-verbal features) may differ markedly from their use in SAE and may lead to miscommunication.

Be curious about culture and if you are unsure ask.



### Resources and weblinks:

The drivers of men's violence against Aboriginal women can be found in [Changing the picture](#).

Our Watch and Diversity Council of Australia – [Myth busting domestic and family violence at work: Using evidence to debunk common myths and assumptions](#)

Sexual violence prevalence rates for Aboriginal and Torres Strait Islander women can be found at Australian Institute of Health and welfare - [Family, domestic and sexual violence in Australia](#).

[FASD in Indigenous adults and the role of psychology](#)

[Working with Indigenous Australians First Nations People](#)

Working with Aboriginal People and Communities – A practice resource

[FASD and Aboriginal and Torres Strait Islander men](#)

[The Torres Strait Island Regional Council](#)

[Culture, protocols and heritage | Torres Strait Island Regional Council](#)

The Plain English Legal Dictionary, Northern Territory Criminal Law 2015

<sup>28</sup> Leitner, G. and Malcolm, I. G. (2007). *The habitat of Australia's aboriginal languages: past, present and future*, Mouton de Gruyter, Berlin. [https://books.google.com.au/books?id=jpbPqKrj6mUCandpg=PA169andlpg=PA169anddq=Indigenous+meaning+of+shameandsource=blandots=D0sZWz00Wandsig=N\\_Ck59SoeUzbZblUrB74sBYnJilIandhl=enandei=JpOjTdvoGcXorAfQONSHAwandsa=Xandoi=book\\_resultandct=resultandresnum=6andved=0CDoQ6AEwBQ#v=onepageandq=Indigenous%20meaning%20of%20shameandf=false](https://books.google.com.au/books?id=jpbPqKrj6mUCandpg=PA169andlpg=PA169anddq=Indigenous+meaning+of+shameandsource=blandots=D0sZWz00Wandsig=N_Ck59SoeUzbZblUrB74sBYnJilIandhl=enandei=JpOjTdvoGcXorAfQONSHAwandsa=Xandoi=book_resultandct=resultandresnum=6andved=0CDoQ6AEwBQ#v=onepageandq=Indigenous%20meaning%20of%20shameandf=false)

<sup>29</sup> Vallance, R., % Tchacos, E. (2001). A Cultural Bridge. University of Notre Dame. <https://www.aare.edu.au/data/publications/2001/val01102.pdf>

[The State Library of Queensland: Aboriginal and Torres Strait Islander languages](#)

[The World Atlas of Varieties of English](#)

[Malcolm, I. \(2013\). Aboriginal English: Some grammatical features and their implications. Australian Review of Applied Linguistics, 36\(3\), 267-284.](#)

For further information about Aboriginal women's perspective of the criminal justice system - [In search of justice for domestic and family violence: Indigenous and non-Indigenous Australian women's perspectives.](#)

For more information about the impact upon Aboriginal and Torres Strait Islander peoples from the stolen generations see - [Tracing the History. Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families.](#)

## Charter of Victims' Rights

When a person suffers harm because of violent crime (including domestic, family and sexual violence) they have rights. All government agencies as well as agencies that receive money from the government and provide services to victims must also uphold these rights (including experts).

The [Charter of Victims' Rights](#) outlines **the Department's responsibilities** when working with victims of violent crime in Queensland.

## Human Rights

The [Human Rights Act 2019](#) commenced in its entirety on 1 January 2020 and forms part of the administrative law obligations and oversight mechanisms that hold government to account. The [Human Rights Act 2019](#) protects fundamental human rights drawn from international human rights law, including the right to privacy and reputation.

Under the [Human Rights Act 2019](#), government decision makers have an obligation to act and make decisions in a way that is compatible with human rights, and when making a decision under the scheme, to give proper consideration to human rights.

More information can be found here: <https://www.qld.gov.au/law/your-rights/human-rights>.

## Fraud Prevention

The DoJ is committed to ensuring robust governance and the ethical conduct of all employees by preventing, detecting, and investigating all forms of fraud and corruption that may occur. It is the responsibility of all Queensland Government employees and contractors to report all suspected cases of fraud or corruption.

Fraud is any deceitful conduct or omission to cause actual or potential loss to any person or entity for the benefit of any person or entity. The risk of fraud may be:

- internal (performed by an employee or contractor of an organisation), or
- external (performed by a customer or an external service provider or third party).



Fraud can relate to theft, false representations, concealment, destruction, and unauthorised use of information. In complex fraudulent activity, there may be collaboration between employees, contractors and/or external service providers. Refer to the [Fraud and Corruption Control Policy](#) for more information.

## Complaint process

The DoJ is committed to delivering high quality services that respond to clients' needs. An effective complaints management process serves as a valuable accountability measure and contributes to improving our service delivery. The Program Team encourages client feedback both positive and negative because it provides our team with opportunities to learn and improve service delivery of the Panel. This helps ensure continued development and delivery of people-focused, high-quality services. This is particularly important to the Program Team given we are operating a pilot program and would like to ensure that the Panel achieves its objectives, and the reforms have the desired impact upon our community.

In line with the Queensland Public Service Customer Complaint Management Framework, the DoJ's guiding complaints management principles are:

- **Customer focused** – People should be able to make a complaint via clear and accessible agency complaint management systems, with complainants respected and responses addressing all issues raised.
- **Timely and fair** – Complaint handling processes are clear, impartial, and confidential, with timely acknowledgements and responses.
- **Clear communication** – There are clear and communicated expectations and standards for all parties involved in a complaint.
- **Accountable** – Agency roles and responsibilities for complaint management are clear and publicly available.
- **Improving services** – Complaints improve existing, and inform new, quality services, with CMSs helping agencies prevent potential ongoing disputes.

Our client complaints approach is based on a three-tiered approach for accountability:

- Level 1 – **Initial complaint** handling by a member of the Program Team
- Level 2 – If the complaint remains unresolved or you are unsatisfied then an **internal review** will occur; and
- Level 3 – If the complaint remains unresolved after an internal review you can request an **external review** be conducted by a relevant external oversight body.

Please refer to the - [Client complaint form](#).



## Definitions

**Coercive control** is when a person in a domestic relationship with another person engages in a course of conduct against the other person that consists of domestic violence occurring on more than one occasion with the intention to coerce or control the other person and in the course of that conduct would, in all the circumstances, be reasonably likely to cause the other person harm.

**Cognitive impairment** means the person has an ongoing impairment in adaptive functioning and the person has an ongoing impairment in comprehension, reason, judgment, learning or memory so as to affect functioning in daily life to a material extent and the impairment/s result from damage to or dysfunction, developmental delay or deterioration of the person's brain or mind.

**Consent** means free and voluntary agreement.

**complainant** means a person in relation to whom a criminal offence, such as a sexual offence, has been, or is alleged to have been, committed.

**Criminal history**, of a person, means the person's criminal history as defined under the [Criminal Law \(Rehabilitation of Offenders\) Act 1986](#), other than spent convictions.

**Criminal proceeding** includes a proceeding wherein a person is charged with a simple offence, and an examination of witnesses in relation to an indictable offence.

**Document** includes, in addition to a document in writing:

- any part of a document in writing or of any other document such as any book, map, plan, graph or drawing;
- any photograph, any label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means whatever;
- any disc, tape, soundtrack, or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;
- any film, negative, tape or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced; and
- any other record of information whatever.

**Domestic violence** means behaviour by a person towards another person with whom the person is in a domestic relationship that is physically, sexually, emotionally, psychologically, or economically abusive or is threatening, coercive or in any other way controls or dominates the person and causes them to fear for their safety or wellbeing or that of someone else.

**Harm** to a person means any detrimental effect on the person's physical, emotional, financial, psychological, or mental wellbeing, whether temporary or permanent.

**Identifying matter**, in relation to a complainant, means the name, address, place of employment or another particular of the complainant or another person that is likely to lead to the identification of the complainant as a victim of a sexual offence or an alleged sexual offence.

**Mental health impairment**, within the meaning of section [348C](#), is a temporary or ongoing disturbance of thought, mood, volition, perception or memory and the disturbance would be regarded as significant for clinical diagnostic purposes and the disturbance impairs the emotional wellbeing, judgment, or behaviour of the person so as to affect functioning in daily life to a material extent.

**Party** includes a person who is named in court proceedings and is a member, a representative (other than a legal representative) or a nominee of an organisation that is a party to the proceeding.

**Proceeding** means any civil, criminal, or other proceeding or inquiry, reference, or examination in which by law or by consent of the parties' evidence is or may be given and includes an arbitration.



**Publish** means disseminate or provide access to the public or a section of the public by any means.

**Relevant evidence**, about a defendant, is evidence about a cognitive impairment of the defendant within the meaning of section [348B](#) of the [Criminal Code](#), or a mental health impairment of the defendant within the meaning of section [348C](#) of the [Criminal Code](#), or the effect of an impairment mentioned in paragraph (a) or (b) on the defendant's ability to communicate, including whether the impairment was a substantial cause of the person not saying or doing anything as mentioned in the [Criminal Code](#), section [348A\(4\)\(b\)](#).

**Relevant proceeding** means a criminal proceeding relating wholly or partly to a sexual offence or a domestic violence offence.

**Statement** includes any representation of fact, whether made in words or otherwise and whether made by a person, computer or otherwise.



## Document history and contact details

### 1.1 Document details

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### 1.2 Revision History

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### 1.3 Contact Details

Owner: The Panel Program Team

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# Appendices

## APPENDIX 1

### Sexual Violence Statistics and Prevalence rates

Prevalence of Sexual violence	
Women	Men
Prevalence of Sexual violence	
22% (2.2 million) experienced sexual violence	6.1% (582,400) experienced sexual violence
20% (2.0 million) experienced sexual assault	5.1% (483,800) experienced sexual assault
5.5% (544,700) experienced sexual threat	1.4% (137,900) experienced sexual threat
17% (1.7 million) experienced partner violence (physical and/or sexual)	5.5% (526,600) experienced partner violence (physical and/or sexual)
23% (2.3 million) have experienced partner emotional abuse	14% (1.3 million) experienced partner emotional abuse
16% (1.6 million) have experienced partner economic abuse	7.8% (745,000) experienced partner economic abuse
Prevalence of Childhood Sexual Abuse	
11% (1.1 million) who experienced sexual abuse	3.6% (343,500) who experienced sexual abuse

Table 1. Sexual Violence prevalence rates for Australian Men and Women (ABS, 2023). 30

Who Uses Sexual Violence	
Women	Men
<b>Violence in general</b>	
In 2012 5% of men and 6% of women who experienced violence did so at the hands of women (Our Watch, 2021)	In 2012, 95% of men and 94% of women who experienced violence did so at the hands of men (Our Watch, 2021)
In 2021 and 2022, 11% of women had experienced violence by a stranger (ABS, 2023).	In 2021 and 2022, 30% of men had experienced violence by a stranger (ABS, 2023).
In 2021 and 2022, 35% of women experienced violence by a person known to them (ABS, 2023).	In 2021 and 2022, 25% of men experienced violence by a person known to them (ABS, 2023).
<b>Sexual Violence</b>	
<ul style="list-style-type: none"> <li>• Young Australian men aged 15-19 have the highest offending rate of sexual assault (Our Watch, 2021)</li> <li>• In 2016 and 2017, 95% of sexual offences in Qld were committed by males (QPS, 2017).</li> <li>• Sexual offences unlike other offences against a person are unique in that the rate of offending does not decrease with increasing age (QPS, 2017).</li> <li>• Most sexual violence perpetration starts in men's teenage years (Flood, et al, 2022).</li> <li>• Studies identify associations between intergenerational exposure to violence and the perpetration of sexual violence (Flood et al., 2022).</li> </ul>	

30 Australian Bureau of Statistics (2023). *Personal Safety Survey: Rates of physical and sexual assault, family and domestic violence, economic and emotional abuse, stalking, sexual harassment, and childhood abuse.* <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>

Rape and attempted rape	
In 2016 and 2017, 644 men committed rape or attempted rape in Qld, men aged between 30 – 39 years had the highest offending rates (QPS, 2017)	In 2016 and 2017, 16 women committed rape or attempted rape in Qld, 6 of whom were aged between 30 – 39 years (QPS, 2017)
In 2021 and 2022, 925 men committed rape or attempted rape in Qld, men aged between 30-39 years had the highest offending rates (Queensland Treasury, 2023).	In 2021 and 2022, 14 women committed rape or attempted rape in Qld, 5 of whom were child offenders aged between 10-17 years (Queensland Treasury, 2023).
Other sexual offences	
In 2016 and 2017, 1643 men committed other sexual offences in Qld, 932 of whom were aged over 30, 266 were aged over 60 years (QPS, 2017).	In 2016 and 2017, 103 women committed other sexual offences in Qld, 35 of them were child offenders aged 10 – 17 years (QPS, 2017).
In 2021 and 2022, 1950 men committed other sexual offences in Qld, men aged between 30 – 39 years had the highest offending rates (Queensland Treasury, 2023).	In 2021 and 2022, 96 women committed other sexual offences in Qld, the majority of whom were child offenders aged between 10-17 years (Queensland Treasury, 2023).
Image-based sexual abuse	
12% of Australian males had reported having threatened to distribute a nude or sexual image of another person, 9.1% distributed the image (Flood et al., 2022).	6.2% of Australian females had reported having threatened to distribute a nude or sexual image of another person, 4% distributed the image (Flood et al., 2022).
<b>Note:</b> Most of the domestic, family, and sexual violence is committed by individuals who will probably never be sanctioned by the authorities (Flood et al, 2022), and therefore are unable to be captured in this table.	

**Table 2.** Who uses Sexual Violence in Queensland. (Our Watch, 2021)<sup>31</sup>, Our Watch (2022)<sup>32</sup>, Australian Bureau of Statistics (2023)<sup>33</sup>, Flood et al (2022)<sup>34</sup>, Queensland Police Service (2017)<sup>35</sup>, Queensland Treasury (2023)<sup>36</sup>.

31 Our Watch. (2021). *Change the story: A shared Framework for the primary prevention of violence against women in Australia*. Our Watch <https://www.ourwatch.org.au/resource/change-the-story-a-shared-framework-for-the-primary-prevention-of-violence-against-women-in-australia/>

32 Our Watch (2022). *National Primary Prevention report: Enabling and creating change*. <https://www.ourwatch.org.au/report/national-primary-prevention-report-3/>

33 Australian Bureau of Statistics (2023). *Personal Safety Survey: Rates of physical and sexual assault, family and domestic violence, economic and emotional abuse, stalking, sexual harassment, and childhood abuse*. <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>

34 Flood, M., Brown, C., Dembele, L., and Mills, K (2022). *Who uses domestic, family, and sexual violence, how, and why? The State of Knowledge Report on Violence Perpetration*. Brisbane: Queensland University of Technology. <https://research.qut.edu.au/centre-for-justice/wp-content/uploads/sites/304/2023/01/Who-uses-domestic-family-and-sexual-violence-how-and-why-The-State-of-Knowledge-Report-on-Violence-Perpetration-2023.pdf>

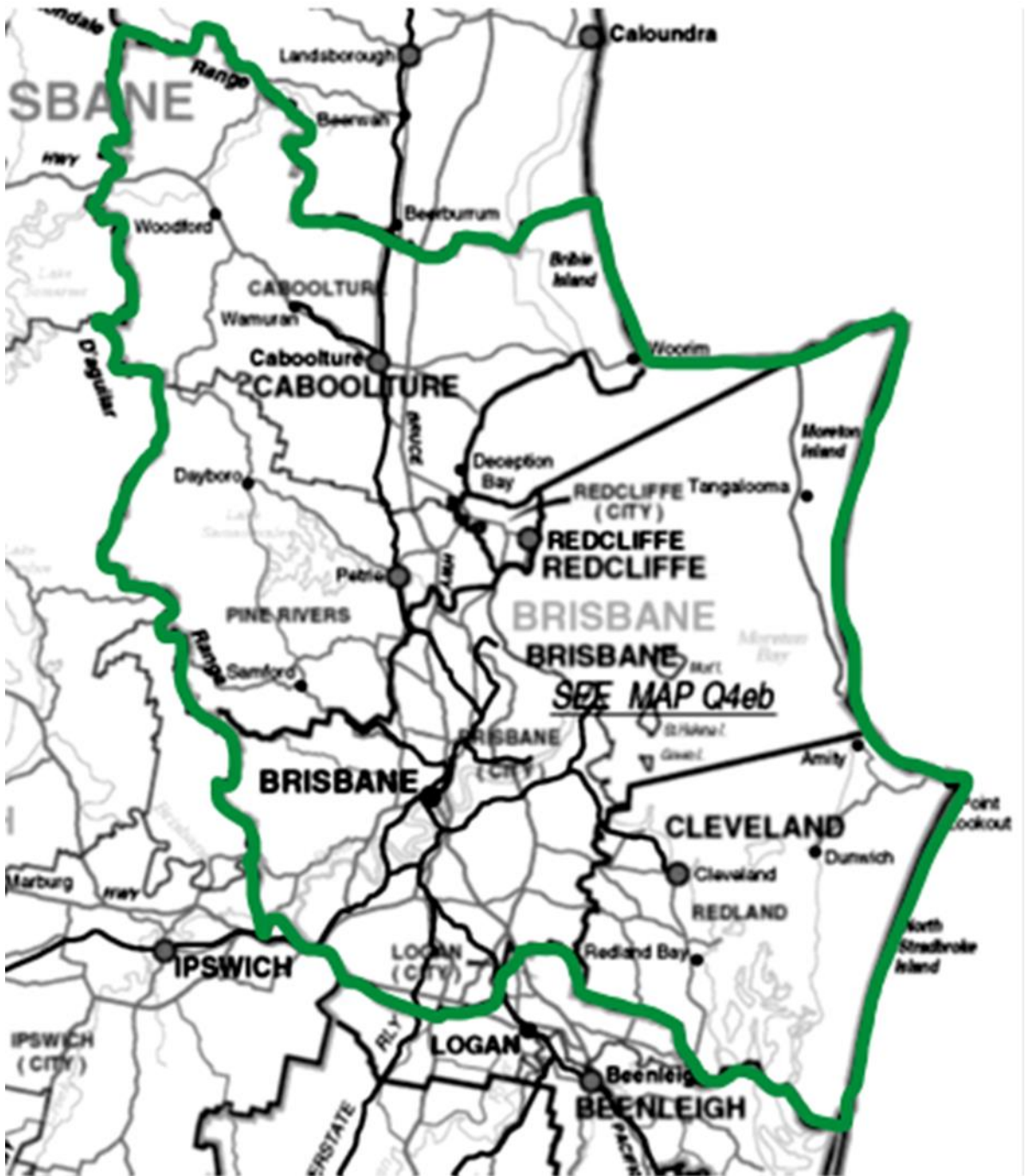
35 Queensland Police Service (2017). *Annual Statistical Review*. Queensland Government [https://www.police.qld.gov.au/sites/default/files/2019-01/AnnualStatisticalReview\\_2016-17.pdf](https://www.police.qld.gov.au/sites/default/files/2019-01/AnnualStatisticalReview_2016-17.pdf)

36 Queensland Treasury (2023). *Queensland Treasury, Crime Report Queensland 2021 – 2022, Recorded Crimes Statistics*. Queensland Government. [www.qgso.qld.gov.au/statistics/theme/crime-justice/crime-justice-statistics/reported-crime](http://www.qgso.qld.gov.au/statistics/theme/crime-justice/crime-justice-statistics/reported-crime)

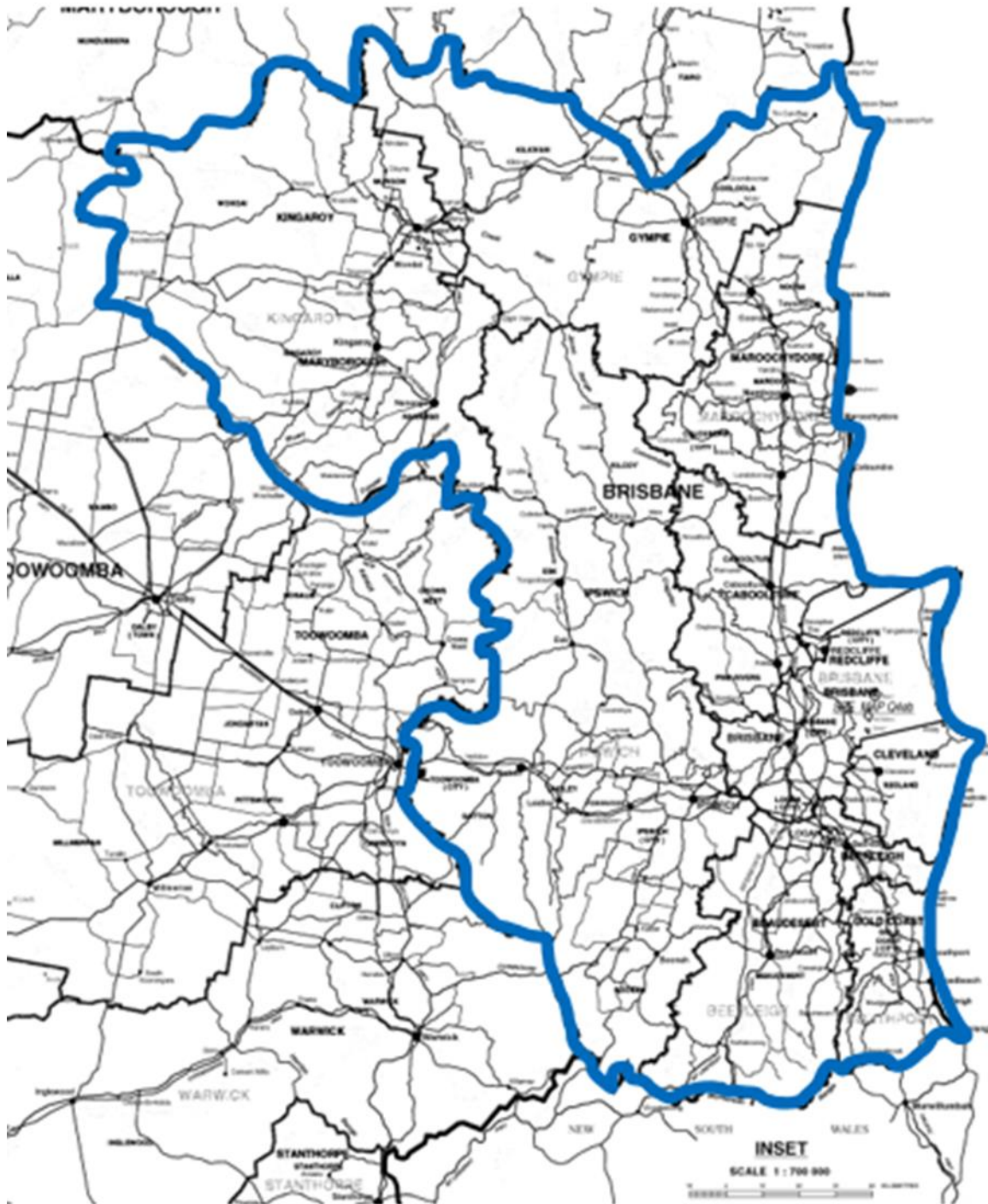


APPENDIX 2

Brisbane District Court Jurisdiction



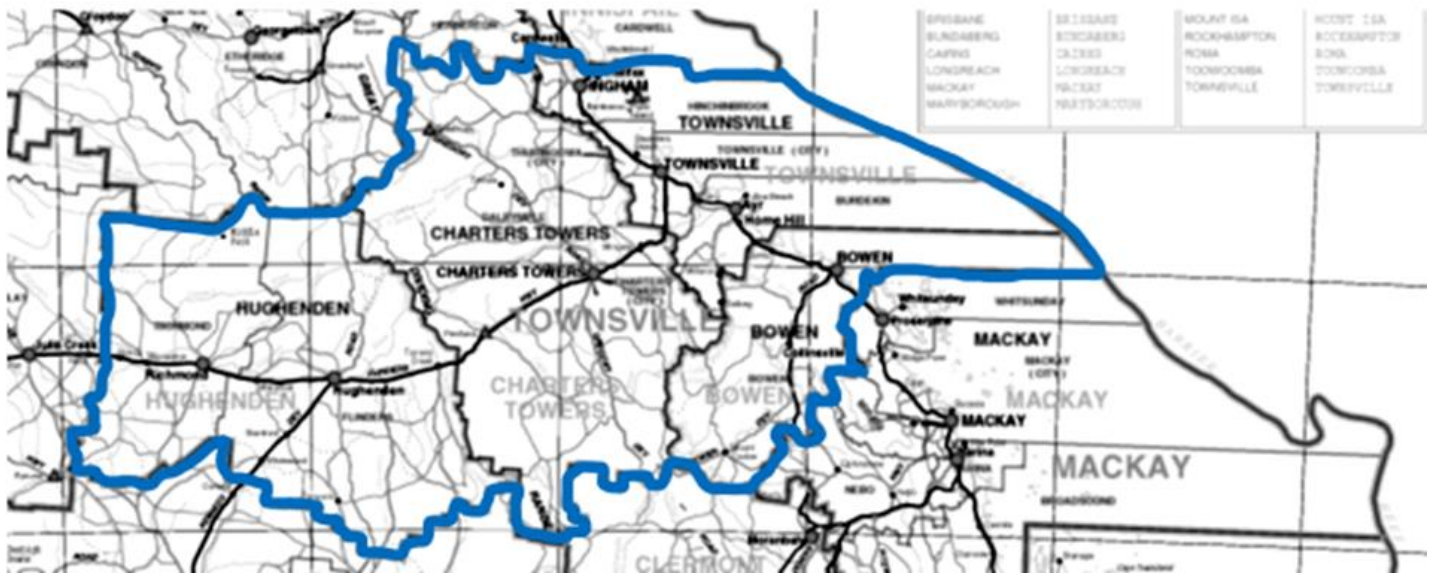
Brisbane Supreme Court Jurisdiction



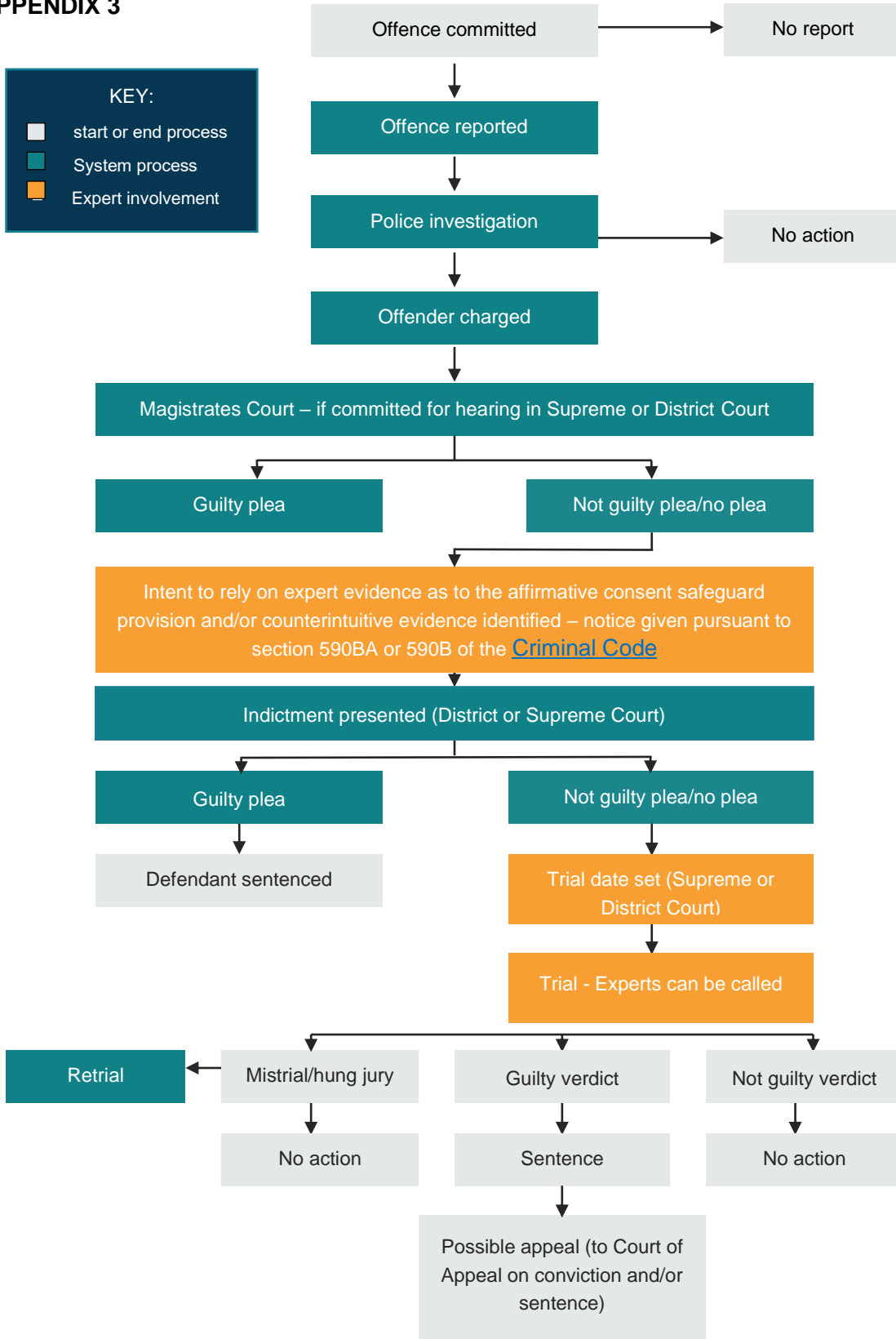
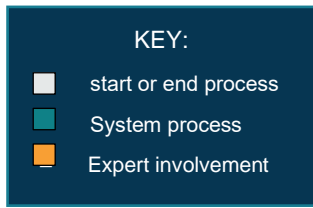
Townsville District Court Jurisdiction



Townsville Supreme Court Jurisdiction



APPENDIX 3



<sup>37</sup> Section 590AB includes a specific requirement for advance notice of a party's intention to call expert evidence as to the affirmative consent safeguard provision, however there is no similar requirement applicable to counterintuitive expert evidence. Section 590B of the [Criminal Code](#) is a provision which generally deals with circumstances where an accused person intends to adduce expert evidence in their trial and requires notice as soon as practicable. Section 590AB of the [Criminal Code](#) regarding the prosecution's fundamental disclosure obligation will also be relevant.

