

52A. Directions About Domestic Relationships and Domestic Violence

52A.1 Legislation

[Last reviewed: March 2025]

Evidence Act 1977

[Section 103CB](#) – Evidence of domestic violence

[Section 103SA](#) – Judge may request indication from the parties

[Section 103T](#) – Request for direction to jury about domestic violence

[Section 103U](#) – Request for direction to jury about self-defence in response to domestic violence

[Section 103V](#) – Judge may direct jury about domestic violence on own initiative

[Section 103W](#) – Direction may be given before evidence is adduced and may be repeated

[Section 103X](#) – Application of subdivision 2 to trial by judge or magistrate sitting alone

[Section 103Y](#) – No limit of court's duty to direct jury

[Section 103Z](#) – Content of general direction about domestic violence

[Section 103ZA](#) – Direction about self-defence in response to domestic violence

[Section 103ZB](#) – Examples of behaviour, or patterns of behaviour, that may constitute domestic violence

[Section 103ZC](#) – Factors that may influence how a person addresses, responds to or avoids domestic violence

[Section 103ZD](#) - Direction about lack of complaint or delay in making complaint

52A.2 Commentary

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The *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (Qld) inserted a new Part 6A into the *Evidence Act 1977* (Qld). The *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (Qld) further amended this Part, adding ss

103SA and 103ZD. This Benchbook Chapter deals only with Part 6A, Division 3: Jury directions related to domestic violence.

It should be noted that relevant evidence of domestic violence is admissible as evidence in a criminal proceeding: *Evidence Act 1977*, s 103CB. See also **Chapter 70 - Evidence of Other Sexual or Discreditable Conduct of the Defendant**.

Section 103SA states that, before a trial by jury commences, the judge may request that the prosecution or defence inform the judge of whether it is likely that evidence will be adduced in the trial that may require the giving of a direction. The judge does not need to form a view at this time about whether to give a direction, and s 103SA does not prevent the prosecution or defence from later requesting or making a submission on the giving of a direction.

Section 103T stipulates that, in a trial by jury if domestic violence is an issue in the proceeding, directions about domestic violence may be given if the prosecution or defence ask for them to be given – unless there are good reasons for not doing so.

In addition, s 103U states that directions about self-defence in response to domestic violence may be given if the defence asks for them to be given – unless there are good reasons for not doing so.

Pursuant to s 103V, however, the judge retains a power to direct the jury about domestic violence, including self-defence in response to it, on the judge's own initiative.

Directions may be given before any evidence is adduced in a proceeding and the directions may be repeated, pursuant to s 103W. The sections in Subdivision 2 of Part 6A, Division 3 set out the content of the directions required: ss 103Z – 103ZD. For s 103ZD (which concerns directions about lack of complaint or delay), see also **Chapter 69 - Delay in Prosecution and Significant Forensic Disadvantage**.

Context to the introduction of Part 6A

The Explanatory Notes to the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022*, read in combination with Volume 3 of the 'Hear Her Voice' Report 2 of the Women's Safety and Justice Taskforce, explain the reasons for the insertion of these jury direction provisions into the *Evidence Act 1977*. At page 699 of the Report, the Taskforce explained that:

'Cases involving sexual offences or those committed in a domestic and family violence context often rely largely or entirely on evidence from the victim. This means that the jury must make an assessment about whether the victim is telling the truth and they are therefore satisfied of the guilt of the accused person beyond reasonable doubt. Therefore, it is important that jurors evaluate the competing narratives based upon evidence in a trial, without being influenced by incorrect stereotypes and misconceptions. Judicial directions addressing this are

necessary, as they ensure that juries make decisions based upon a correct foundation about the nature of domestic and family violence’.

The Explanatory Notes state that:

‘The Taskforce found that many members of the community do not understand how the dynamics of DFV may impact on the behaviour of victims of DFV, such as why a victim of DFV may remain in an abusive relationship. The Bill therefore provides the court with a discretion to give jury directions that address misconceptions and stereotypes about domestic violence. The amendments seek to enable juries and judicial officers to be better informed and able to consider evidence of domestic violence that has been raised during a trial. Consistent with the Taskforce’s recommendation 65, these provisions have been modelled upon the relevant provisions in the Western Australian Act’.

Noting that the provisions were modelled on those in Western Australia, in *Kritskikh v Director of Public Prosecutions* [\[2022\] WASC 130](#) Hall J said of the equivalent WA provisions:

‘The evident purpose of these provisions is to ensure that common misconceptions about the way in which victims of family violence may behave, for example that they will promptly report family violence to the police or will not remain with the perpetrator of violence, are dispelled and not taken into account in the reasoning process [of fact finders].’

The construction of the Western Australian equivalent provisions was also considered by Mazza and Mitchell JJA in *CDO v The State of Western Australia* [\[2022\] WASCA 58](#). In particular, their Honours considered whether the reference to ‘criminal proceedings in which family violence is an issue’ comprehended criminal proceedings where the alleged family violence constituted the charged offence or offences. In that case, it was the prosecutor who asked for the direction. The only evidence of family violence came from the complainants in their evidence of the charged acts. The appellant’s trial counsel objected to a family violence direction on the basis that it was unnecessary (because the jury were already receiving a direction about delay) and that the giving of both directions (delay and family violence) would unfairly bolster the complainants’ credibility. The appellant argued that family violence *other than that which is alleged to constitute the charged offence* was required to ground a request for a family violence direction. That argument was rejected. At [169], their Honours said:

‘[...] In a case where family violence constitutes the charged conduct as well as a pattern of behaviour that gives context to the evidence of the charged conduct, the section does not provide for a family violence direction to be confined to the latter conduct. Further, the directions about not uncommon reactions and responses to family violence will be most obviously directed to the jury’s assessment of a complainant’s reaction to charged conduct, and with whether

the complainant's conduct after the charged offending is consistent with the charged conduct having occurred. That context counts against an objective legislative intention to exclude charged conduct from the scope of a family violence direction.'

Judges may wish to compare the directions considered in *R v Cotic* [\[2003\] QCA 435](#), which was endorsed by the Court of Appeal decades ago, as an appropriate comment or suggestion by the trial judge to the jury that they should avoid pre-conceived notions of how a complainant should behave

52A.3 Suggested directions

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(Judges should refer to the direction content stipulated in Division 3, Part 6A of the *Evidence Act 1977* (Qld)).