

## Motive<sup>1</sup>

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1. The prosecution relies on the evidence of [witness] as part of its [circumstantial] case. You have heard reference to the defendant’s motive, and the prosecution relies on this evidence to prove that the defendant had a motive to [do the acts the subject of the charge]. I direct you that the motive by which a person is induced to do an act or form intent is immaterial to the question of criminal responsibility. If in fact you decide that the evidence is not evidence of motive, that does not necessarily mean that the prosecution has failed to prove guilt because of lack of motive. In that event, you would have to base your verdict on the evidence that you do accept. However, the existence of motive can be an important factual issue, particularly in a circumstantial case where the prosecution asks you to infer guilt (or infer that the defendant did the act intentionally). If there is motive then what might otherwise be inexplicable becomes explicable. You must bear in mind that the existence of motive without any more would not be sufficient to found a finding of guilt.
2. Positive evidence that the accused lacked motive is clearly a matter to be taken into account by a jury, particularly in a case based on circumstantial evidence.<sup>2</sup>

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<sup>1</sup> See *R v Heath* [1991] 2 Qd R 182 at 188

<sup>2</sup> *De Gruchy v The Queen* (2002) 211 CLR 85; 190 ALR 441 at [28] – [30]. See also discussion in *R v Reid* [2007] 1 Qd R 64. See also *R v Gaskell* [2016] QCA 302. This direction may not be appropriate in all cases. Some may require a direction such as that in *De Gruchy v The Queen* (2002) 190 ALR 441 at [57], “the jury may therefore need to be reminded that allowance should be made for the fact that having a motive, and even expressing it, does not, as such, constitute proof of involvement in a crime”. Further, some cases may require a direction that “the suggested motive provided a relatively *unlikely* explanation of the offence,” *R v Gaskell* [2016] QCA 302 [40].