

66. Direction Where a Defence is Not Raised by Counsel but Raised on the Evidence

66.1 Legislation

[Last reviewed: January 2025]

Nil.

66.2 Commentary

[Last reviewed: January 2025]

A judge is obliged to instruct the jury about any defence (even one not raised or pressed by a party or indeed disclaimed by the parties) that fairly arises on the evidence and therefore needs to be considered by the jury in reaching their verdict (see *Stevens v The Queen* [\(2005\) 227 CLR 319](#); [\[2005\] HCA 65](#); *Fingleton v The Queen* [\(2005\) 227 CLR 166](#); [\[2005\] HCA 34](#), [77] – [80]; *Murray v The Queen* [\(2002\) 211 CLR 193](#); [\[2002\] HCA 26](#), [78], [151]; *Stingel v The Queen* [\(1990\) 171 CLR 312](#), [333] – [334]; [\[1990\] HCA 61](#)).

66.3 Suggested Direction

[Last reviewed: January 2025]

I wish to say something to you about a further possible defence that arises for your consideration. It concerns the defence of [provocation etc]. It is my duty to direct you about all possible defences which arise and therefore need to be considered by you in reaching your verdict, even where they are not addressed by defence counsel. However, the fact that I am mentioning this matter does not mean I have some particular view about it. It is for you to consider this additional matter, as with all matters.

(If relevant, the following may need to be added): You will not, however, need to consider it, should you find the Defendant not guilty on the basis that the prosecution has not [e.g. excluded self-defence] beyond a reasonable doubt.