

## Distressed Condition

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Where evidence is led in support of a complainant's evidence that he or she was raped or sexually assaulted.

**Evidence has been placed before you of the distressed condition of the complainant (describe evidence, including time etc).<sup>1</sup> The prosecutor submits that you can use this evidence in support of the evidence that the complainant was raped/assaulted by the defendant. It is a matter for you as the sole judges of the facts whether you accept the evidence relating to the complainant's distressed condition. If you do, then you have to ask yourself: was the distressed condition genuine or was the complainant pretending? Was he or she putting on the condition of distress? Was there any other explanation for the distressed condition at the time? It is customary for judges to warn juries that you ought to attach little weight to distressed condition because it can be easily pretended. If you find that the distress was genuine then it may be used by you as evidence that supports the complainant's account.**

Where the evidence is led as part of the narrative, but is not led in support of the complainant's evidence of being raped.

**Evidence has been placed before you of the distressed condition of the complainant (here describe evidence, including time etc). The prosecution have led that evidence as part of the narrative of events which it alleges surrounds the act of rape/assault. It is not led in support of the complainant's evidence that he or she was raped/assaulted and must not be used by you for that purpose. It has no relevance to the defendant's guilt. There may be many innocent reasons for the condition at that time, such as: regret after consensual intercourse or sexual contact, or concern about some other issue entirely unrelated to the alleged sexual activity. The complainant's condition may be feigned or exaggerated, and as a matter of commonsense and human experience you may think of other reasons<sup>2</sup> based on the evidence. You should therefore disregard the evidence of distressed condition except to the extent that it is part of the narrative of events of that particular day.**

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<sup>1</sup> If the circumstances are such that the causal connection or apparent relationship between the distressed condition and the alleged assault is tenuous or remote, the duty of the trial judge is to withdraw it from the jury as a circumstance capable of supporting the complainant: *R v Roissetter* [1984] 1 Qd R 477 per McPherson J at 482. See also *R v Williams* [2010] 1 Qd R 276.

<sup>2</sup> See *R v Rutherford* [2004] QCA 481, where the trial judge was held to have erred by not giving such a direction where evidence of this kind had been led.