

# Media Statement

24 August 2023

## Responding to misconceptions about sexual offending: Example directions for judges and lawyers

Te Kura Kaiwhakawā | The Institute of Judicial Studies\* today published [\*Responding to misconceptions about sexual offending: Example directions for judges and lawyers\*](#) (the misconceptions material).

Following the introduction of s 126A of the Evidence Act\*, judges are now required to direct juries on misconceptions about sexual offending in certain situations. The misconceptions material published today has been prepared to assist judges with these directions. It is provided publicly at the recommendation of the Law Commission to help prosecution and defence lawyers prepare for sexual violence hearings.

Sexual offending is commonly misunderstood. Research has shown that people carry with them assumptions about sexual offending that are not true. These false assumptions about sexual offending – about how often it happens, when it happens, where it happens, and what a victim looks like or how a victim should act – are widely held and do not reflect the reality of sexual offending. This can affect how jurors consider the evidence in sexual cases.

The misconceptions material brings together current research about sexual offending to identify what should be considered a misconception, and to provide evidence-based information about the behaviour and responses of victims and offenders. The material contains example directions\* for the jury that judges can tailor to use in a sexual case to address any misconceptions about sexual offending that are relevant to that case. The purpose of giving a direction is to reduce the risk that jurors will engage in improper reasoning.

If there is an issue raised on the facts and evidence, it will be for the judge to decide the nature of any direction that may be required. The example directions are provided as *a guide only* and the wording will need to be adapted to the circumstances of the particular case.

Senior representatives from the defence bar, representatives from the judiciary, and academic subject-matter experts have been consulted on the misconceptions material.

The publication of the misconceptions material on the Courts of New Zealand website follows the earlier publication of the question trails, which are used by judges and lawyers in criminal trials. Both resources form part of Te Kura's *Criminal Jury Trials Bench Book*, which will be publicly released in 2024.

### **\*About Te Kura Kaiwhakawā**

Te Kura Kaiwhakawā provides judicial education and professional development for the judiciary throughout their judicial careers. Te Kura Kaiwhakawā is a judge-led organisation which supports continuing learning by way of courses and updates and via the provision of bench books

### **\*Section 126A of the Evidence Act 2006**

Section 126 A of the Evidence Act 2006 requires judges in sexual cases to direct juries on misconceptions about sexual offending. Section 126A of the Evidence Act 2006 was introduced in response to the Law Commission's recommendations contained in *The Second Review of the Evidence Act 2006 — Te Arotake Tuarua i te Evidence Act 2006* and includes a non-exhaustive list of examples of potentially relevant misconceptions.

### **\*About jury directions**

Many different jury directions are used in criminal trials to ensure that jurors reach their decision according to the law. They inform jurors about the relevant law, and how they should (or should not) use or assess the evidence in the trial.

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