

## Carnal Knowledge s 215

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### Legislation

Section 215 Carnal knowledge with or of children under 16 -

(1) Any person who has or attempts to have unlawful carnal knowledge with or of a child under the age of 16 years is guilty of an indictable offence.

(2) If the child is of or above the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for 14 years.

(3) If the child is under the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for life or, in the case of an attempt to have unlawful carnal knowledge, to imprisonment for 14 years.

(4) If the child is not the lineal descendant of the offender but the offender is the child's guardian or, for the time being, has the child under the offender's care, the offender is guilty of a crime, and is liable to imprisonment for life or, in the case of an attempt to have unlawful carnal knowledge, to imprisonment for 14 years.

(4A) If the child is a person with an impairment of the mind, the offender is guilty of a crime, and is liable to imprisonment for life.

(4B) The Penalties and Sentences Act 1992, section 161Q also states a circumstance of aggravation for an offence against this section.

(4C) An indictment charging an offence against this section with the circumstance of aggravation stated in the Penalties and Sentences Act 1992, section 161Q may not be presented without the consent of a Crown Law Officer.

(5) If the offence is alleged to have been committed in respect of a child of or above the age of 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of 16 years.

(5A) If the offence is alleged to have been committed with the circumstance of aggravation mentioned in subsection (4A), it is a defence to the circumstance of aggravation to prove that the accused person believed on reasonable grounds that the child was not a person with an impairment of the mind.

### Commentary

The term "carnal knowledge" is defined in s 6(2) *Criminal Code* as including anal intercourse.

Section 215(5) *Criminal Code* provides that, if the offence is alleged to have been committed in respect of a child of or above the age of 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of 16 years.

If the circumstance of aggravation in s 215(4A) is alleged, it is a defence to the circumstance of aggravation to prove that the accused believed on reasonable grounds that the child was not a person with an impairment of the mind: s 215(5A).

See also s 229 *Criminal Code* which provides that, “[e]xcept as otherwise expressly stated, it is immaterial ...that the accused did not know the person was under [the specified age] or believed that the person was not under that age.”

Circumstances of aggravation are in section 215(3),(4) and (4A) *Criminal Code*.

The offence is a prescribed offence under s 161Q *Penalties and Sentences Act 1992* so a serious organised crime circumstance of aggravation is applicable.

### **Suggested Draft directions.**

**The prosecution must prove that:**

**1 The defendant had carnal knowledge of the complainant.**

**Carnal knowledge means the insertion of the defendant’s penis into the vagina or vulva or anus (as the case may be) of the complainant;**

**i. the offence is complete upon penetration;**

**ii. penetration to the slightest degree is sufficient;**

**iii. ejaculation is not necessary.**

**2 The carnal knowledge was unlawful: that is, not authorised, justified or excused by law.**

**3 The complainant was under 16.**

**4 Refer to any circumstances of aggravation.**

**Consent to carnal knowledge by the complainant under 16 is irrelevant.**