

## 194. Using the Internet to Procure Children under 16: s 218A

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### 194.1 Legislation

[Last reviewed: March 2025]

*Criminal Code*

[Section 218A](#) – Using internet etc. to procure children under 16

### 194.2 Commentary

[Last reviewed: March 2025]

This offence was introduced by the *Sexual Offences (Protection of Children) Act 2003* (Qld) and commenced on 1 May 2003.

The Defendant (who must be an adult) must have:

- (1) Used electronic communication;
- (2) With intent to procure;
- (3) A person who is:
  - a. In fact under the age of 16 years or 12 years;
  - b. Or who the adult believes is under the age of 16 years or 12 years;
- (4) To engage in a sexual act.

This offence applies in Queensland and outside Queensland. Definitions of 'electronic communication' and 'procure' are included in s 218A(10). Section 218A(3) sets out conduct that equates to engaging in a sexual act.

For commentary and suggested directions on intention, see **Chapter 59 – Intention**.

In *R v Addley* [2019] 2 Qd R 46, [51] and *R v Webb* [2018] QCA 102, the Court of Appeal considered that s 218A(1) creates two offences: one where the element is that the person is actually under 16 or 12, and one where the offence depends on the Defendant's belief that the person is under these ages. The defence under s 218A(9), that the adult believed on reasonable grounds that the person was at least 16 years, only applies where the person is in fact under 16 or 12. Section 218A(8), on the other hand, facilitates proof of the belief element in s 218A(1) where, in fact, the person was fictitious or older than 16 or 12.

The directions derive in part from the decision in *R v Shetty* [2005] 2 Qd R 540.

*Aggravation*

It is a circumstance of aggravation if the person was under 12 years, or the Defendant believed the person was under 12 years, or the offence involved the adult intentionally meeting the person or going to a place with the intention of meeting the person.

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

### 194.3 Suggested Direction

[Last reviewed: March 2025]

1. **The Defendant is charged with committing the crime of using electronic communication contrary to the provisions of s 218A of the Criminal Code.**
2. **The section makes it an offence for an adult to use electronic communication with intent to procure a person who is in fact under the age of 16 years [or 12 years, as the case may be], or a person who the adult believes is under the age of 16 years [or 12 years, as the case may be] to engage in a sexual act, either in Queensland or elsewhere.**
3. **To prove the charge in this case, the prosecution must prove beyond reasonable doubt that:**
  - (a) **the Defendant was an adult at the time of the offence;**
  - (b) **the Defendant used electronic communication;**
  - (c) **in doing so, the Defendant had the intent to procure a person to engage in a sexual act, either in Queensland or elsewhere;**
  - (d) **(Refer to the alternatives as relevant): the person the Defendant intended to procure was aged under 16 years [or 12 years, as the case may be]; or, the Defendant at the time believed that the person was aged under 16 years [or 12 years, as the case may be].**
4. **I will now explain each of these elements that the prosecution must prove in a little more detail. With regard to the first element, an adult is a person of or above the age of 18 years.**
5. **Second, the prosecution must prove that the Defendant used electronic communication. Electronic communication means email, internet chat rooms, SMS messages, real time audio/video or other similar communication. The prosecution must prove it was the Defendant who used that communication.**

6. **Third, the prosecution must prove that, in using that electronic communication, the Defendant had the intent to procure a person to engage in a sexual act. To procure means knowingly to entice or persuade a person to engage in a sexual act. To procure a sexual act may mean that the person allows a sexual act to be done to the person's body, or that person does a sexual act to the person's own body or the body of another person, or engages in an act of an indecent nature.**

**The sexual act sought to be procured may be in Queensland or elsewhere. The prosecution does not have to prove that the sexual act the Defendant intended to procure was sexual intercourse or acts involving physical contact or any particular sexual act. It is not necessary for the prosecution to prove that the Defendant intended to procure the person to engage in any particular sexual act.**

**(See the general direction on intention at Chapter 59 – Intention).**

**(Where relevant): The word 'indecent' bears its ordinary everyday meaning, that is what the community regards as indecent. It is what offends against currently accepted standards of decency. Indecency must always be judged in the light of time, place and circumstance.**

**(Where relevant): It does not matter that, by reason of circumstances not known to the defendant it was impossible in fact for the person to engage in the sexual act intended to be procured.**

**(Paragraphs 7 and 8 are to be used where the person was in fact under 16 or 12 years of age).**

7. **The person intended to be procured was aged under 16 years [or 12 years, as the case may be].**
8. **It is a defence for the Defendant to prove on the balance of probabilities that the Defendant believed on reasonable grounds the person was at least 16 [or 12, as a defence to the circumstance of aggravation in subsection (2)(a)(i)].**

**(Paragraphs 9 and 10 are to be used where the person was fictitious, or in fact a person over 16, and the prosecution must prove the Defendant's belief beyond reasonable doubt).**

9. **The Defendant intended to procure a person the Defendant believed to be aged under 16 years [or 12 years, as the case may be].**

**(Where the child is fictitious): It does not matter that the child is a fictitious person represented to the Defendant to be a real person, provided the prosecution prove beyond reasonable doubt that the Defendant believed that the person being communicated with was a real person under the age of 16 [or 12 years, as the case may be].**

**(Where the child is a fictitious person, or a real person over 16): Evidence that the person was represented to the Defendant as being under the age of 16 [or 12 years, as the case may be] is, in the absence of evidence to the contrary, proof that the Defendant believed the person was under that age. Evidence to the contrary includes evidence that the Defendant did not believe the representation that the person was under 16. This could include evidence such as, that despite the representation, the Defendant had no belief either way whether the person was under or over 16. It is for you the jury to assess the credibility of any explanation raised by the Defendant as to [his/her] lack of belief as to the representation and for you to decide whether the prosecution has disproved that explanation beyond reasonable doubt.**

**Belief is concerned with the state of mind of the Defendant at the time of the communication and involves drawing an inference as to [his/her] state of mind, in the same way as drawing an inference as to [his/her] intention.**

**No offence against this provision is committed unless the Defendant is proved to have intended to procure a person the Defendant believed to be under 16 [or 12 years, as the case may be] to engage in a sexual act.**

**(Where relevant, direct on any circumstances of aggravation).**