

## Possessing child abuse object: s 228J

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### Legislation

Section 228J of the Criminal Code relevantly provides –

- (1) A person who knowingly possesses a child abuse object commits a crime.

### Commentary

The offence of knowingly possess a child abuse object was inserted by *the Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld) and commenced on 15 September 2020.

It is a circumstance of aggravation (a serious organised crime circumstance of aggravation) for this offence that, at the time the offence was committed, or at any time during the course of the commission of the offence, the offender—

- (a) was a participant in a criminal organisation; and
- (b) knew, or ought reasonably to have known, the offence was being committed —
  - (i) at the direction of a criminal organisation or a participant in a criminal organisation; or
  - (ii) in association with 1 or more persons who were, at the time the offence was committed, or at any time during the course of the commission of the offence, participants in a criminal organisation; or
  - (iii) for the benefit of a criminal organisation.

An indictment charging an offence against this section with the serious organised crime circumstance of aggravation may not be presented without the consent of a Crown Law Officer.

It is a defence for a person charged with an offence against section 228J to prove that-

- (a) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational, legal, medical, scientific or public benefit purpose; and
- (b) the person's conduct was, in the circumstances, reasonable for that purpose: see s 228K.

Whether conduct was engaged in for a genuine artistic, educational, legal, medical, scientific or public benefit purpose is a question of fact.

### Sample direction

**The elements of the offence that the prosecution must prove beyond a reasonable doubt are –**

**First, the object is a child abuse object.**

**A child abuse object means a doll, robot or other object if —**

**(a) a reasonable adult would consider —**

- (i) the doll, robot or other object is a representation or portrayal of a person, or part of a person, who is a child under 16 years; or**
- (ii) the predominant impression conveyed by the doll, robot or other object is that it is a representation or portrayal of a person, or part of a person, who is a child under 16 years, irrespective of whether it has adult characteristics; and**

**(b) the doll, robot or other object has been used, or a reasonable adult would consider it is intended for use, in an indecent or sexual context including, for example, engaging in a sexual activity.**

**Secondly, the defendant possessed the object.**

**Possession includes having the object in a person's possession or custody.**

**Possession includes having under control in any place whatever, whether for the use or benefit of the person of whom the term is used or of another person, and although another person has the actual possession or custody of the thing in question.**

**Thirdly, the defendant knows that he or she possessed the object.**

**“Know” means the possession is conscious; intentional; or deliberate.**

**Fourthly, any circumstance of aggravation [see commentary].**