

161A. Possessing child abuse object: s 228J

161A.1 Legislation

[Last reviewed: March 2025]

Criminal Code

[Section 228J](#) – Possessing child abuse object

[Section 228K](#) – Defence for ss 228I and 228J

161A.2 Commentary

[Last reviewed: March 2025]

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.

To be guilty of the offence under s 228J, the Defendant must have:

- (1) Knowingly;
- (2) Possessed;
- (3) A child abuse object.

‘Child abuse object’ is defined in s 207A.

Section 228K states a defence for a Defendant charged with an offence against s 228J, which requires them to prove that-

- (a) The Defendant 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 Defendant’s conduct was, in the circumstances, reasonable for that purpose.

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

Section 161Q of the *Penalties and Sentences Act 1992* (Qld) states a circumstance of aggravation for this offence.

161A.3 Suggested Direction

[Last reviewed: March 2025]

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/she] possessed the object.

'Know' means the possession is conscious, intentional, or deliberate.

(Where relevant, direct on the circumstance of aggravation).