

## **Abuse of persons with an impairment of the mind s 216**

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The prosecution must prove that:

- 1. The complainant was a person with an impairment of the mind at the relevant time.**

**A person with an impairment of the mind means a person with a disability that -**

**(a) is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these; and**

**(b) results in –**

**(i) a substantial reduction of the person’s capacity for communication, social interaction or learning; and**

**(ii) the person needing support.<sup>1</sup>**

- 2. The defendant had (or attempted to have) unlawful carnal knowledge <sup>2</sup> of the complainant.**

**or**

**The defendant dealt with the complainant.<sup>3</sup>**

**The term “deals with” includes a touching of the person.**

**It does not have to be a touching of the person by the defendant’s hand – it can be a touching of the person by any part of the defendant’s body.**

- 3. The dealing was indecent. The word “indecent” bears its ordinary everyday meaning, that is what the community regards as indecent<sup>4</sup>. It is what offends**

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<sup>1</sup> See s 1, for the meaning of a person with an impairment of the mind.

<sup>2</sup> In this section, “carnal knowledge” does not include sodomy: s 216 (5).

<sup>3</sup> Section 216(5) defines “deals with” in this section as doing any act which, if done without consent, would constitute an assault as defined by the *Code*. It is ordinarily unnecessary to inform the jury of this definition, as the issue is usually the truth and reliability of the complainant person. The expression “deals with” is capable of wide application and includes a situation in which a person at his own request has a complainant touch and suck his penis: *R v S* [1996] 1 Qd R 559. However now see s 216(1) (c).

<sup>4</sup> The use of terms such as “moral turpitude” and an “offence against morality” as used by members of the Court of Criminal Appeal in *R v Bryant* [1984] 2 Qd R 545, are not essential to the meaning of ‘indecenty’. See *R v Schneiders* [2007] QCA 210. See also *Attorney-General v Huber* (1971) 2 SASR 142.

against currently accepted standards of decency. Indecency must always be judged in the light of time, place and circumstances.<sup>5</sup>

4. The carnal knowledge (or attempted carnal knowledge) was unlawful.

or

The dealing was unlawful.

Unlawful means not justified authorised or excused by law.<sup>6</sup>

It is a defence to prove on the balance of probabilities –

- (a) that the defendant believed, on reasonable grounds, that the person was not “a person with an impairment of the mind”;<sup>7</sup> or
- (b) that the act that was the offence did not, in the circumstances, constitute sexual exploitation of the “person with an impairment of the mind”.

It is a circumstance of aggravation if the person with an impairment of the mind is, to the knowledge of the defendant, his lineal descendant.

It is a circumstance of aggravation if the person with an impairment of the mind is not the lineal descendant of the offender but the offender is the guardian of that person or, for the time being, has the person under his care.<sup>8</sup>

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<sup>5</sup> *R v Dunn* [1973] 2 NZLR 481.

<sup>6</sup> Refer to any relevant issue raised on the evidence.

<sup>7</sup> *R v Libke* [2006] QCA 242.

<sup>8</sup> See s 216(3), (3A).