

Producing or supplying child abuse object: s 228I

Section 228I of the *Criminal Code*

Legislation

Section 228I of the *Criminal Code* relevantly provides-

- (1) A person who produces or supplies a child abuse object commits a crime.

Commentary

The offence of supplying or producing 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 that the production or supply is for a commercial purpose.

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 228I 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 [produces] or [supplies] it.

To produce includes-

- (a) prepare, manufacture or package;**
- (b) offer to produce; and**
- (c) do or offer to do any act in preparation for or furtherance of, or for the purpose of, an act of producing.**

To supply includes-

- (a) give, distribute, sell or transport;**
- (b) offer to supply; and**
- (c) do or offer to do any act in preparation for or furtherance of, or for the purpose of, an act of supply.**

Thirdly, the circumstance of aggravation [see commentary].