

181A. Threats to Distribute Intimate Image or Prohibited Visual Recording: s 229A

181A.1 Legislation

[Last reviewed: January 2025]

Criminal Code

[Section 229A](#) – Threats to distribute intimate image or prohibited visual recording.

[Section 207A](#) – Definition of ‘*distribute*’, ‘*intimate image*’, ‘*prohibited visual recording*’ and relevant to that definition – the terms ‘*visually record*’, ‘*private act*’ and ‘*private place*’.

Evidence Act 1977 (Qld)

[Part 6B Division 3](#) – Jury directions related to ‘*sexual offences*’.

181A.2 Commentary

[Last reviewed: January 2025]

Section 229A was inserted by the *Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Act 2019* (Qld) and commenced on 21 February 2019.

Section 229A contains two offence provisions:

- Pursuant to s 229A(1), it is an offence to threaten to distribute an intimate image or a prohibited visual recording of another person, without the other person’s consent, and in a way that would cause the other person distress, and also cause the other person fear of the threat being carried out, where such distress and such fear is reasonably arising in all the circumstances.
- Pursuant to s 229A(2), an offence is also committed where a threat to distribute an intimate image or a prohibited visual recording of another person, without that other person’s consent, is made to a third party, and is made in a way that would cause either the other person or the third party distress, and would also cause the third party fear of the threat being carried out, where such distress and such fear is reasonably arising in all the circumstances.

It is immaterial whether the image or recording in fact exists: s 229A(3)(a).

It is also immaterial whether the person who makes the threat intends to cause, or actually causes, the relevant person fear of the threat being carried out: s 229A(3)(b).

Each of the offence provisions within s 229A contain, by way of example, a non-exhaustive list of circumstances to be considered in determining whether distress, or fear of the threat being carried out, would be reasonably arising.

Consent – offences committed on or after 23 September 2024

Section 229A(5) contains a definition of ‘consent’ for the purposes of s 229A. The definition was amended by the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (Qld), effective 23 September 2024. It states that:

‘Consent’ means free and voluntary agreement by a person with the cognitive capacity to make the agreement.

While consent for the purposes of s 229A is not ‘consent’ as defined more broadly in s 348 for the purpose of offences in Chapter 32, the definition of ‘consent’ in s 229A(5) reflects the wording of s 348(1), with the addition of an express requirement that the person must have the cognitive capacity to make the agreement. See further **Chapter 59B – Consent Offences after September 2024** as applicable.

Section 229A(4) provides that a child under the age of 16 years is incapable of giving consent for the purposes of s 229A.

Consent – offences committed prior to 23 September 2024

The *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (Qld) does not contain a transitional provision as concerns the amendments to the offence provisions in Chapter 22 of the *Criminal Code*, including s 229A. The transitional provision enacted as s 761 of the *Criminal Code* refers to ‘former provisions’ and ‘new provisions’ with reference to Chapter 32 of the *Criminal Code* only. Nonetheless, the definition of ‘consent’ in s 229A(5), as currently in force, would be understood to apply only to offences committed on or after 23 September 2024 when the amendments to that provision commenced. Prior to that date, the definition of ‘consent’ in s 229A(5) had also reflected the wording in s 348(1) of the *Criminal Code*, as it then was.

Further Jury Directions related to ‘sexual offences’ – Part 6B Division 3 of the Evidence Act 1977 (Qld)

[Part 6B Division 3](#) of the *Evidence Act 1977* (Qld), as enacted by the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (Qld), applies in relation to a trial that relates wholly or partially to a ‘sexual offence’, irrespective of when the offence was committed, when the defendant was charged or when the proceeding started (see s 161 of the *Evidence Act 1977* (Qld)). ‘Sexual offence’ is defined in the [Schedule 3](#) Dictionary to the *Evidence Act 1977* (Qld) to include an offence against a provision of Chapter 22 of the *Criminal Code*. Section 229A is an offence in Chapter 22.

See further **Chapter 66A – Jury directions related to sexual offences** as applicable.

181A.3 Suggested Directions

[Last reviewed: January 2025]

Suggested direction for s 229A(1)

The prosecution must prove each of the following elements of the offence beyond a reasonable doubt –

1. **The defendant made a threat to [the complainant] to distribute [an intimate image / a prohibited visual recording] of [the complainant].**

[Refer to the definition of ‘distribute’ in s 207A, as applicable].

[Refer to the definition of ‘intimate image’ or ‘prohibited visual recording’ (and related definitions) in s 207A, as applicable].

(Where applicable, add the following): **It does not matter whether the [intimate image / prohibited recording] actually existed.**

2. **The threatened distribution was without [the complainant]’s consent.**

‘Consent’ means free and voluntary agreement by a person with the cognitive capacity to make the agreement.

(Where the factual circumstances may warrant a more fulsome direction on issues relevant to a consideration of this element, reference to **Chapter 59B – Consent Offences after 23 September 2024** as applicable, may assist).

(If applicable, add the following): **A child under the age of 16 years is incapable of giving consent to the distribution of [an intimate image/ a prohibited visual recording] of themselves.**

3. **The threat was made in a way that would cause [the complainant] distress reasonably arising in all the circumstances.**

[Refer to circumstances as may be relevant to a consideration of whether the distress would be reasonably arising in all the circumstances]

(See the examples contained within s 229A(1) under the heading *Examples of circumstances for subsection (1)*).

4. **The threat was made in a way that would cause [the complainant] fear, reasonably arising in all the circumstances, that the threat would be carried out.**

It is not necessary for the prosecution to prove that the defendant intended to cause [the complainant] to fear that the threat would be carried out, or that [the complainant] was in fact caused to fear that the threat would be carried out. The prosecution must satisfy you that fear that the threat would be carried out was reasonably arising in all the circumstances.

[Refer to circumstances as may be relevant to a consideration of whether the fear would be reasonably arising in all the circumstances].

(See the examples contained within s 229A(1) under the heading *Examples of circumstances for subsection (1)*).

Suggested direction for s 229A(2)

The prosecution must prove each of the following elements of the offence beyond a reasonable doubt –

1. **The defendant made a threat to [A] to distribute [an intimate image / a prohibited visual recording] of another person [B].**

[Refer to the definition of ‘distribute’ in s 207A, as applicable].

[Refer to the definition of ‘intimate image’ or ‘prohibited visual recording’ (and related definitions) in s 207A, as applicable].

(Where applicable, add the following): **It does not matter whether the [intimate image / prohibited recording] actually existed.**

2. **The threatened distribution was without [B]’s consent.**

‘Consent’ means free and voluntary agreement by a person with the cognitive capacity to make the agreement.

(Where the factual circumstances may warrant a more fulsome direction on issues relevant to a consideration of this element, reference to **Chapter 59B – Consent Offences after 23 September 2024** as applicable, may assist).

(If applicable, add the following): **A child under the age of 16 years is incapable of giving consent to the distribution of [an intimate image / a prohibited visual recording] of themselves.**

3. **The threat was made in a way that would cause either [A] or [B] distress, reasonably arising in all the circumstances.**

[Refer to circumstances as may be relevant to a consideration of whether the distress would be reasonably arising in all the circumstances]

(See the examples contained within s 229A(2) under the heading *Examples of circumstances for subsection (2)*).

4. **The threat was made in a way that would cause [A] fear, reasonably arising in all the circumstances, that the threat would be carried out.**

It is not necessary for the prosecution to prove that the defendant intended to cause [A] to fear that the threat would be carried out, or that [A] was in fact caused to fear that the threat would be carried out. The prosecution must satisfy you that fear that the threat would be carried out was reasonably arising in all the circumstances.

[Refer to circumstances as may be relevant to a consideration of whether the fear would be reasonably arising in all the circumstances].

(See the examples contained within s 229A(2) under the heading *Examples of circumstances for subsection (2)*).