

Procuring young person etc for penile intercourse: s 217(1)

(Offences charged after 1 August 2023)

Note that the former provision continues to apply where the person was charged before 1 August 2023.

Legislation

217 Procuring young person etc. for penile intercourse

- (1) A person who procures a person who is not an adult or is a person with an impairment of the mind to engage in penile intercourse (either in Queensland or elsewhere) commits a crime.

Maximum penalty—imprisonment for 14 years.

- (1A) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.
- (1B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.
- (2) In this section—

procure means knowingly entice or recruit for the purposes of sexual exploitation.

756 Offences charged before or after the commencement

- (1) Despite the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023*, the former provisions continue to apply in relation to a person charged with an offence before the commencement.
- (2) The new provisions apply in relation to a person charged with an offence after the commencement, whether the charge is for an offence committed before or after the commencement.
- (3) In this section—

former provisions means the provisions of this Code as in force from time to time before the commencement.

new provisions means the provisions of this Code as in force from the commencement.

Commentary

The *Domestic and Family Violence Protection (Combating Coercive Control and Other Legislation Amendment Act) 2023* amended s 217 of the *Criminal Code* (procuring young person etc. for carnal knowledge) to describe the offence as procuring young person etc. for penile intercourse. The Amendment Act commenced on 1 August 2023. The transitional provision in s 756 *Criminal Code* states that the former provisions continue to apply where the person is charged before the commencement date. The new provisions apply where the person is charged after the commencement date, whether the charge is for an offence committed before or after the commencement.

An adult is “a person of or above the age of 18 years”: s 1.

A “person with an impairment of the mind” is defined in s 1 to mean:

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.

The meaning of engage in penile intercourse is set out in s 6:

6 Meaning of engage in penile intercourse

- (1) **Penile intercourse** is the penetration, to any extent, of the vagina, vulva or anus of a person by the penis of another person.
- (2) A person **engages** in penile intercourse with another person if—
 - (a) the person penetrates, to any extent, the vagina, vulva or anus of another person with the person’s penis; or
 - (b) the person’s vagina, vulva or anus is penetrated, to any extent, by the penis of another person.

Suggested Direction

In order for the prosecution to prove the offence, it must establish each of the following elements beyond reasonable doubt:

- 1. That the defendant procured the complainant.**

To procure means knowingly entice or recruit for the purposes of sexual exploitation. A dictionary definition of “exploitation” is “selfish utilisation”.

- 2. (a) That the complainant was not an adult which means the complainant was not a person of or above the age of 18 years.**

or

- (b) That the complainant was a person with an impairment of the mind.**

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

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

and

results in –

a substantial reduction of the person’s capacity for communication, social interaction or learning;

and

the person needing support.

[Outline the evidence relevant to proof of this element]

- 3. That the complainant was procured (by the defendant) to engage in penile intercourse (either in Queensland or elsewhere).**

Penile intercourse is the penetration, to any extent, of the vagina/vulva/anus (as the case may be) of another person.

A person engages in penile intercourse with another person if:

- (a) the person penetrates to any extent, the vagina/vulva/anus (as the case may be) of another person with the person’s penis.**

This means that the defendant penetrated to any extent, the vagina/vulva/anus (as the case may be) of the complainant with his penis.

or

(b) the person's vagina/vulva/anus (as the case may be) is penetrated, to any extent, by the penis of another person.

This means that the defendant's vagina/vulva/anus (as the case may be) was penetrated, to any extent, by the complainant's penis.

The following matters may be relevant to the issue of penetration:

- (a) penetration to the slightest degree is sufficient;**
- (b) the offence is complete the moment that penetration is achieved;**
- (c) there is no requirement for proof that penetration was effected for any particular period of time;**
- (d) whether or not ejaculation occurred is irrelevant; and**
- (e) whether or not the complainant consented to the act of penetration is irrelevant.**

[Where a circumstance of aggravation is charged under s 161Q of the *Penalties and Sentences Act 1992* (serious organised crime circumstance of aggravation), see Part 9D, Division 1 of the *Penalties and Sentences Act 1992* for relevant definitions.]