

## 150. Wilfully exposing a child under 16 years to an indecent act: s 210(1)(d)

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### 150.1 Legislation

[Last reviewed: November 2024]

*Criminal Code*

[Section 210\(1\)\(d\)](#) – Indecent treatment of children under 16

[Section 229](#) – Knowledge of age immaterial

[Section 636](#) – Evidence of blood relationship

### 150.2 Commentary

[Last reviewed: November 2024]

The defendant must have:

- (1) Wilfully and unlawfully exposed;
- (2) A child under the age of 16;
- (3) To an indecent act by the defendant or another person.

Relevant definitions for this offence are at s 1 of the *Criminal Code* ('Crown Law Officer' and 'person with an impairment of the mind'). Note that the extended definitions of 'lineal descendant' at s 222(5), (7A) and (7B) apply only to the offence of incest, and therefore do not apply to s 210.

The facilitation of proof provision at s 636 of the *Criminal Code* applies to facilitate proof that a complainant is the lineal descendent of the defendant.

The sample direction on the term 'wilfully' for the purposes of s 210(1)(d) and (e) has been taken from the ruling in *R v Lockwood; ex-parte Attorney-General* [1981] Qd R 209 which was concerned with the meaning of the term for the purposes of s 469 of the *Criminal Code* (wilful damage). While there is some debate as to whether the term should be extended to recklessness for the purposes of these provisions, there is no known case determining the issue. In any event, the usual allegation is of deliberation.

In *R v T* [1997] 1 Qd R 623, 630 it was confirmed that for the purposes of the recklessness direction, the word 'likely' means a substantial chance, one that is real and not remote.

See s 210(5) and subs (5A) for defences available to a person charged with this offence. The onus of proving the defence is on the defendant on the balance of

probabilities. Note however that the defence at s 210(5A) provides a defence to liability on the circumstance of aggravation only.

By the operation of s 229, a defendant cannot raise an excuse concerning the age of the complainant based on the operation of s 24 of the *Criminal Code*, which would have left the onus of proof on the prosecution.

The sample direction concerning 'under care' has been drawn from *R v FAK* (2016) 263 A Crim R 322; [\[2016\] QCA 306](#), [71]-[78].

The sample direction concerning guardianship is drawn from *R v G* [\(1997\) 91 A Crim R 590](#), 599.

Pursuant to s 210(4B), a circumstance of aggravation under s 161Q of the *Penalties and Sentences Act 1992* (Qld) applies. See Part 9D, Division 1 of the *Penalties and Sentences Act 1992* (Qld) for relevant definitions.

### 150.3 Suggested Direction

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**In order for the prosecution to prove this offence, it must prove each of the following matters beyond reasonable doubt:**

1. **That there was an indecent act by the defendant [or other person].**

[Outline here the particularised indecent act by the defendant or the other person].

**It is a matter for you to determine if that act is indecent. 'Indecent' bears its ordinary everyday meaning, that is what the community regards as indecent. It is what offends against currently accepted standards of decency. Indecency must always be judged in the light of time, place and circumstances.**

2. **That the defendant wilfully exposed the complainant to that indecent act.**

**The word 'wilfully' means that the defendant deliberately or intentionally exposed the complainant to the indecent act [or, as the case may be, that the defendant deliberately did the indecent act, aware at the time that the result charged (i.e. exposing the complainant to that act) was a likely consequence of the doing of the indecent act and yet recklessly proceeded regardless of that risk].**

**'Exposed' is an ordinary English word and means 'showed'.**

(Or, if appropriate, add the following): **‘Exposed’ usually means ‘showed’, but here the allegation is that the exposure was not visual but through another means (e.g. sound). In this case, ‘exposed’ means that the defendant in (the particularised manner) made the complainant aware of the act.**

[Outline here the evidence relevant to proof of this element].

3. **That wilfully exposing the complainant to that indecent act was unlawful.**

**The third element is concerned with proof of unlawfulness. Wilfully exposing a child under 16 years of age to an indecent act is unlawful unless authorised, justified or excused by law, or is the subject of a specific legal defence.**

[Here outline any authorisation, justification or excuse raised on the evidence and which must be negated by the prosecution, or outline any defence under s 216(4) the onus of which lies on the defendant to prove on the balance of probabilities].

(If appropriate): **In this trial there is no authorisation, justification, excuse or defence raised on the evidence and you will find this element to have been proven.**

4. **That the complainant was under 16 [or as the case may be, under 12] years.**

[If necessary, outline here the evidence relevant to proof of this element].

(Where a circumstance of aggravation is charged under s 210(4)):

5. **That the defendant was at the time the guardian of the complainant.**

**The prosecution must prove that the defendant was the complainant’s guardian in that [he/she] had a duty by law to protect the complainant. That is, that the defendant was required to protect the complainant’s property or rights in circumstances in which the complainant was not capable of managing [his/her] affairs, as opposed to voluntarily taking on any such responsibility.**

(Or, as the case may be):

6. **That the complainant was under the defendant’s care for the time being.**

**The prosecution must prove that the defendant had the complainant under [his/her] care at the time of the charged conduct, that is, [he/she] had assumed the responsibility of looking after the complainant at the time. The prosecution does not have to prove that [he/she] was the only person looking after the complainant at the relevant time.**

(Or, as the case may be):

**7. That the complainant was the defendant's lineal descendant.**

**The prosecution has to prove that the complainant was a direct descendent of the defendant.**

**(As appropriate): A complainant is the direct descendant of [his/her] biological parents and biological grandparents, etc but is not the direct descendant of, for example, any step-parents, step-grandparents, aunts, uncles or cousins.**

(Where a circumstance of aggravation is charged under s 210(4A)):

**8. That the complainant was a person with an impairment of the mind at the relevant time;**

**The phrase '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.**

**[Outline here the evidence relevant to proof of this element, if it is in dispute].**