

Procuring Prostitution: s 229G

Legislation

229G Procuring engagement in prostitution

- (1) A person who—
- (a) procures another person to engage in prostitution, either in Queensland or elsewhere; or
 - (b) procures another person—
 - (i) to leave Queensland for the purpose of engaging in prostitution elsewhere; or
 - (ii) to come to Queensland for the purpose of engaging in prostitution; or
 - (iii) to leave the other person's usual place of residence in Queensland for the purpose of engaging in prostitution, either in Queensland or elsewhere;

commits a crime.

Maximum penalty—imprisonment for 7 years.

- (2) If the procured person is not an adult or is a person with an impairment of the mind, the offender is liable to a maximum penalty of 20 years imprisonment.
- (2A) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.
- (2B) 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.
- (3) A licensee or approved manager of a licensed brothel, or his or her agent, does not contravene subsection (1) only because the licensee, manager or agent has employed an adult who is not a person with an impairment of the mind to work as a prostitute at the brothel in accordance with the brothel licence for the brothel.
- (4) For subsection (3), it does not matter whether the prostitute is employed under a contract of service or a contract for service.
- (5) In this section—

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

Commentary

Engaging in prostitution is not itself unlawful: see *Kelsey v Hill* [1995] 1 Qd R 182 (CA). However, it is unlawful to procure another person to engage in prostitution.

This section applies equally to males and females: s 229E(3).

Meaning of 'procure'

There are number of specific offences of procuring in the *Criminal Code* containing the same definition. For example, s 217 (Procuring a young person etc. for penile intercourse), and s 218 (Procuring sexual acts by coercion etc.). In relation to most of the offences of procuring under Chapter 22 (Offences against morality), each section provides a definition of 'procure' and it is suggested that in these cases the trial judge direct the jury specifically in terms of this definition.

Similarly, the offence of procuring prostitution (Under Chapter 22A) contains the same definition: s 229G. However, in relation to the offence of supplying drugs or instruments to procure abortion (s 226) the word 'procures' when it relates to an event rather than a person carries its dictionary meaning: 'to effect, cause, bring about'.

Meaning of 'engage in prostitution'

A person engages in prostitution if the person engages (or offers to engage) in the provision to another person, under an arrangement of a commercial character, of any of the following activities:

- (a) sexual intercourse;
- (b) masturbation;
- (c) oral sex;
- (d) any activity, other than sexual intercourse, masturbation or oral sex that involves the use of one person by another for his or her sexual satisfaction, involving physical contact (see s 229E – Meaning of *prostitution*).

A person does not engage in prostitution if:

- (a) the activity is any activity, other than sexual intercourse, masturbation or oral sex that involves the use of one person by another for his or her sexual satisfaction, involving physical contact.
- (b) the person is providing adult entertainment under a permit and is an adult and is not a person with an impairment of the mind. See s 1; and
- (c) the activity is authorised under the permit (see s229E(4)).

This offence is a prescribed offence under s 161Q *Penalties and Sentences Act 1992* so a serious organised crime circumstance of aggravation is applicable.

Suggested Direction

The prosecution must prove:

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

The prosecution must prove that the defendant knowingly recruited or enticed [the complainant] for the purposes of sexual exploitation.

- 2. To engage in prostitution.**

A person engages in prostitution if the person engages (or offers to engage) in the provision to another person, under an arrangement of a commercial character, of any of the following activities:

- (a) sexual intercourse;**
- (b) masturbation;**
- (c) oral sex;**
- (d) any activity, other than sexual intercourse, masturbation or oral sex that involves the use of one person by another for his/her sexual satisfaction, involving physical contact.**

[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.]