

## Use Carriage Service for Child Abuse Material

### s 474.22 (Cth) Criminal Code

#### s 474.22(1) Use carriage service to

- (a)(i) access child abuse material
- (a)(ii) cause child abuse material to be transmitted to himself or herself
- (a)(iii) transmit, make available, publish, distribute, advertises or promote child abuse material
- (a)(iv) solicit child abuse material

**Commenced:** 1.3.2005

**Maximum penalty:** 10 years increased to 15 years on 15.4.2010

**Expanded:** 21.9.2019 (offences previously committed under s.474.19 now included under this section)

**Note:** Mandatory minimum penalty applies to offence committed on or after 23.6.2020 where offender convicted previously of child sexual abuse offence:

4 years head sentence: s.16AAB (Cth) Crimes Act 2014

May be reduced by up to 25% each for guilty plea and/or co-operation: s.16AAC

The definition of 'child abuse material' under s.273.1 expanded to include what was previously defined as child pornography. Offences involving child pornography prior to 21.9.2019 dealt with under s.474.19 Use Carriage Service for Child Pornography – see separate table

COPINE scale (Combating Paedophile Information Networks in Europe) / Australian National Victim Image Library (ANVIL) / Child Exploitation Tracking System (CETS).

Category 1	images depicting erotic posing of children with no sexual activity
Category 2	images depicting sexual activity between children, or solo masturbation by a child
Category 3	images depicting non-penetrative sexual activity between adults and children
Category 4	images depicting penetrative sexual activity between children and adults.
Category 5	images depicting sadism or bestiality
Category 6	animated or virtual depictions of children engaged in sexual poses or activity

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	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	<b>Gordon</b> (57) <a href="#">[2009] QCA 209</a>	Access - s.474.22(1)(a)(i) [10y]  Access child pornography using carriage service - s.474.19(1)(a)(i) [10y]  Knowingly possess child exploitation material s 228D (QLD) <u>Code</u>	PG	12m released to recog for 3y  12m released to recog for 3y  12m suspended for 3y	Crown AD	nil	3,290 images of child pornography and 2 images of child abuse found on hard drive of computer Cat 1 - 2,957 images Cat 2 - 87 images Cat 3 - 73 images Cat 4 - 161 Cat 5 - 2 images of sadism Pharmacist married with supportive wife
2.	<b>DPP v D'Alessandro</b> (24) (2010) 26 VR 477 <a href="#">[2010] VSCA 60</a>	Access - s.474.22(1)(a)(i)  Transmit - s.474.22(1)(a)(iii)  Access child pornography using carriage service: s.474.19(1)(a)(i) [10y]  Transmit child pornography using carriage service: s.474.19(1)(a)(iii) [10y]  Possess with intent – s.474.20(1)  Possess child abuse material with intent – s.474.23(1)	PG	<u>Total:</u> 2y released immediately to recognisance	Crown AA <u>Total:</u> 3y released to recog after 2y	nil	Exchanged 16,259 images with 44 people – some children depicted only babies – very high criminality

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3.	<b>Burrell</b> (33) <a href="#">[2013] VSCA 146</a>	Access – s.474.22(1)(a)(i) Make available - s.474.22(1)(a)(iii) 2 x Access child pornography using carriage service - s.474.19(1)(a)(i) [15y] Knowingly possess child pornography – s.70 (VIC) <u>Crimes Act</u> 1958	PG (early)	12m 12m 2y 12m  <u>Total:</u> 3y 6m NPP 2y 4m  (pre discount for guilty plea: 5y 3m NPP 3y 6m)	AD	nil	Downloaded 5,355 images, 816 videos, and 8 documents of child pornography - 7 images and 5 videos of child abuse material – across all categories – shared material – offending covers 12 months – children aged as young as three months 105 images / 9 videos / 1 document – Cat 5
4.	<b>Cook</b> (31-35) <a href="#">[2018] TASCCA 20</a>	Solicit – s.474.22(1)(a)(iv) [15y]  5 x Solicit child pornography using carriage service - s.474.19(1)(a)(iv) [15y]  6 x Cause to be transmitted using carriage service - s.474.19(1)(a)(iii) [15y]  2 x Transmit indecent communication to person under 16 - s.474.27A(1)  Possess child exploitation material – s.130C (TAS) <u>Code</u>  Sched: s.474.27A(1)	PG	15m  15m  3m  no sentence  4m  <u>Total:</u> 15m released to recog after 10m for 2 years	Crown AA 4y NPP 2y  4y NPP 2y  4y NPP 2y  4m  (all concurrent)	minor	Committed offences through online chat services over four years – communicated with what he believed were young females aged between 8y and 16y – sexually explicit conversations – requested and sometimes received sexually explicit photos – live streamed himself masturbating – images found in computer Cat 1 – 120 images / 1 video Cat 2 – 12 images Cat 3 – 14 images Cat 4 – 7 images / 1 video Cat 6 – 236 images Repeated conduct – language very explicit and graphic – sought sexual gratification Diagnosed with Aspergers – emotionally immature and socially isolated

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5.	Logue (29) <a href="#">[2020] ACTSC 115</a> Elkiam J	Access - s.474.22(1)(a)(i)  Possess child abuse material obtained by carriage service: s.474.22A  Prepare / plan to engage in sexual act with child outside Australia: s.272.8 / 272.20	PG (25%)	12m  12m  6m  <u>Total:</u> 18m 28d released after 3m for 18m		Nil	Made contact with unknown persons in three countries using Tinder, phone application and internet – circumstances suggest would not have acted on request for sexual activity with young girl – below mid-range – videos of child abuse material found on phone – found in possession of videos of child abuse material, one in Cat 5 and seven in Cat 4 – mid range Prior good character – some insight and remorse – limited risk of re-offending – prospects of rehabilitation
6.	Armstrong (43) <a href="#">[2020] ACTSC 298</a> Robinson AJ	Possess child abuse material obtained by carriage service: s.474.22A  Access child pornography using carriage service – s.474.19(1)(a)(i) [15y]  Access – s.474.22(1)(a)(i)	PG (20%)	13m  6m  6m  <u>Total:</u> 18m released after 6m for 12m		nil	66 videos containing child abuse found on computer – accessed material over 15m Cat 1: 22 videos Cat 2: 11 videos Cat 3: 1 videos Cat 4: 31 videos Cat 5: 1 video Suffers social anxiety

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7.	AX (No.3) (23) <a href="#">[2020] ACTSC 334</a> Burns J	Access – s.474.22(1)(a)(i)  Possess child abuse material obtained by carriage service: s.474.22A   Failure to notify change of circumstances under child Sex Offenders legislation  Breach suspended sentences	PG (25%)	12m  12m  <u>Total:</u> 14m released after 6m for 2y  8m (suspended)  6m  <u>Total:</u> 20m released after 12m for 2y		Breached suspended sentence for possession child pornography committed as a juvenile	1,915 files containing child abuse material found on phone – admitted downloading and masturbating to material: Cat 1: 1,471 images – 3 videos Cat 2: 77 images - 8 videos Cat 3: 147 images – 30 videos Cat 4: 107 images - 59 videos Cat 5: 8 images – 1 video Cat 6: 3 images – 1 videos No suggestion possessed for distribution – between low and mid-range seriousness - used five online accounts not reported under registration requirements Developed pornography addiction as a juvenile – aboriginal – drug abuse and mental health issues – sexually abused as a child – remorse – reasonable prospects of rehabilitation
8.	Arnould (50) <a href="#">[2020] ACTSC 345</a> Elkiam J	Access – s.474.22(1)(a)(i)  Possess child abuse material obtained by carriage service: s.474.22A	PG (25%)	9m  9m  <u>Total:</u> 9m released after 3m fir 12m		Nil record	Accessed and downloaded 370 images and videos of child abuse material – deleted after viewing – found in possession of child abuse material in computer cache – most images in Cat 1 but some from Cat 4 – medium seriousness Prospects of rehabilitation – some insight

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9.	<p><b>Ramsay-Feeney</b> (34) <a href="#">[2021] ACTSC 5</a> Burns J</p> <p><a href="#">[2022] ACTSC 82</a> Eliakim J</p>	<p>Possess child abuse material obtained by carriage service: s.474.22A</p> <p>Access – s.474.19(1)(a)(i) [15y]</p> <p>Access – s.474.22(1)(a)(i)</p> <p>Access - s.474.22(1)</p> <p>Breach ICO</p>	<p>PG (25%)</p> <p>PG (25%)</p>	<p>9m 12</p> <p>9m 12d (concurrent – already served)</p> <p>9m ICO</p> <p>3y released to recognizance after 16m</p> <p>9m (concurrent)</p>			<p>5,370 files containing child abuse material found on phone – accessed over two years: Cat 1: 4,385 images Cat 2: 364 images Cat 3: 138 images Cat 4: 260 images Cat 5: 21 images Cat 6: 202 images</p> <p>Voluntarily assisted police – mental illness requiring assistance for rehabilitation</p> <p><b>Mandatory Minimum Term: 4 years</b></p> <p>Accessed 148 images of child abuse – 95% animated or cartoon – lower end of range – less serious than earlier offence - breached ICO imposed in earlier case</p> <p>Co-operated with police – importance of recognizance to provide assistance in rehabilitation – mental illness issues – mandatory minimum reduced for guilty plea</p>
10.	<p><b>Cobcroft</b> <a href="#">[2021] ACTSC 15</a> Murrell CJ</p>	<p>Access - s.474.22(1)(a)(i)</p> <p>Access child pornography using carriage service - s.474.19(1)(a)(i) [15y]</p> <p>Possess child abuse material obtained using carriage service – s.474.22A</p>	<p>PG (25%)</p>	<p>11m</p> <p>11m</p> <p>15m</p> <p><u>Total:</u> 21m released after 5m for 2y</p>		<p>Nil</p>	<p>Accessed child abuse material using several electronic devices – accessed 147 files over 15m and 564 files over 12m – found in possession of 21,149 files (some duplicates) – all computer generated animations with no real children – very realistic and highly offensive with degraded text – no further distribution</p> <p>Remorse and insight – very good prospects of rehabilitation – bail conditions restricted role as primary carer for child</p>

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11.	<b>Appleby</b> (45) <a href="#">[2021] ACTSC 55</a> Loukas-Karlsson J	2 x Possess child abuse material obtained using carriage service – s.474.22A  Access - s.474.22(1)(a)(i)  15 x Capture visual data of another person: s.61B(1) (ACT) <u>Crimes Act</u>	PG (25%)	14m  14m  <u>Total</u> 2y 1m released after 10m for 2y  <u>Total:</u> 11m  <u>Total:</u> 2y 9m released after 1y 6m for 2y		nil	Found in possession of images and videos of child abuse material on phone and computer – several thousand videos and hundreds of images (although not all reviewed) – installed and used hidden camera to take photos of people on toilet and in shower of previous and current residence - pre-meditated offences Prospects of rehabilitation
12.	<b>Cardwell</b> (69) <a href="#">[2021] QCA 112</a>	Access - s.474.22(1)(a)(i) [15y]  Access child pornography using carriage service: s.474.19(1)(a)(i) [15y]  Possess child exploitation material: s.228D (QLD) <u>Code</u>	PG	<u>Total</u> 12m release to recog for 2y  15m suspended after 3m for 2y	AD	Nil	Found in possession of child abuse material on lap top and computer – accessed and saved over several months – 520 images found 88% of which in most serious category Prior good character – co-operated with police – steps taken in rehabilitation – support of family and friends – extra-curial punishment of public shaming
13.	<b>Cusak</b> (42 at sentence) <a href="#">[2021] ACTSC 75</a> Eliakim J	Access - s.474.22(1)(a)(i)  Access child pornography using carriage service: s.474.19(1)(a)(i) [15y]  Possess child abuse material obtained using carriage service – s.474.22A	PG (25%)	9m  9m  9m  <u>Total:</u> 12m released after 2m for 18m		Nil	2,517 files accessed over 5y and kept in possession – well above mid-range Good character – remorse and insight – addressing rehabilitation – depression and suicide risk

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14.	<b>Barber</b> (67 at sentence) <a href="#">[2021] ACTSC 78</a> Murrell CJ	2 x Access child pornography using carriage service - s.474.19(1)(a)(i) [15y]  Access - s.474.22(1)(a)(i)  Possess child abuse material obtained using carriage service – s.474.22A  Access - s.474.22(1)(a)(i)  Possess child abuse material obtained using carriage service – s.474.22A	PG (25%)	4m / 11m  11m  2y  9m  9m  <u>Total:</u> 2y 6m released		nil	Offending during four distinct time periods: s.474.19: 2011 accessed 10 Cat 1 images s.474.19: 2019 s.474.22 / s.474.22A: early 2020 – 4,500 images found on 5 devices – most serious offence Cat 1: 2,226 images / 89 videos Cat 2: 495 images / 46 videos Cat 3: 571 images / 29 videos Cat 4: 700 images / 230 videos Cat 5: 219 images / 5 videos s.474.22 / s.474.22A: late 2020 and on bail for earlier offences – seven cat 1 files Isolated life – significant depression – impact of custody on mental health - remorse
15.	<b>Payne-Moore</b> (32) <a href="#">[2021] ACTSC 125</a> Loukas-Karlsson J	Access – s.474.22(1)(a)(i)  Possess child abuse material obtained using carriage service s.474.22A	PG (20%)	12m  12m  <u>Total:</u> 15m released after 4m for 2y		nil	Used two computers to access 7 child abuse material files - stored 137 files on mobile phone and 2 computers over 15m Cat 1: 82 files Cat 2: 7 files Cat 3: 15 files Cat 4: 26 files Cat 5: 7 files Extra curial punishment taken into account

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16.	<p><b>Hurt</b> (30) <a href="#">[2019] ACTSC 148</a> Mossop J</p> <p><a href="#">[2021] ACTSC 241</a> Mossop J</p> <p><a href="#">[2022] ACTCA 49</a></p>	<p>Intentionally possess child exploitation material – s.65 (ACT) <i>Crimes Act</i></p> <p>Distribute child pornography using carriage service - s.474.19(1)(a)(iii)</p> <p>Transmit - s.474.22(1)(a)(ii)</p> <p>Access - s.474.22(1)(a)(i)</p> <p>Possess child abuse material obtained by carriage service: s.474.22A</p> <p>Breach bond (s.65 offence)</p>	<p>PG (25%)</p> <p>PG (25%)</p>	<p>15m suspended after 8m for 18m</p> <p>2y recognisance</p> <p>15m</p> <p>15m</p> <p>4y</p> <p><u>Total:</u> 4y 8m NPP 2y 1m</p> <p>7m</p> <p><u>Total:</u> 5y 3m NPP 2y 8m</p>	<p>Crown AA 15m</p> <p>15m</p> <p>4y 6m</p> <p><u>Total:</u> 4y 8m NPP 2y 2m</p> <p>7m</p> <p><u>Total:</u> 5y 3m NPP 2y 9m</p>	<p>Nil relevant</p> <p>Earlier offences – breached bond</p>	<p>Child exploitation material found on two mobile phones – thousands of images and hundreds of videos – mid-range – distribute offences involved sharing one image – low range</p> <p>Alcohol and cannabis abuse – delay in prosecution</p> <p><b>Mandatory Minimum Term: 4 years (applied to s.474.22A offence only)</b></p> <p>Within months of being released on bond commenced downloading child abuse material – transmitted to self 357 images and 7 videos from 20 websites – accessed further 104 images – possession offence encompassed material from s.474.22 offences and additional 25 images and 48 videos – mid range – intentional acts - material not held for distribution – committed in breach of bond – specific deterrence important</p> <p>Prospects of rehabilitation guarded</p> <p>On appeal: mandatory minimum term provisions erroneously applied only to 25 photos of s.474.22A offence – applied to all material</p>
17.	<p><b>Mertell</b> (68) <a href="#">[2022] ACTSC 37</a> McWilliam AJ</p> <p><a href="#">[2022] ACTCA 69</a></p>	<p>7 x Possess child abuse material obtained by carriage service: s.474.22A</p> <p>2 x Access - s.474.22(1)(a)(i)</p>	<p>PG (25%)</p>	<p>9m</p> <p>9m</p> <p><u>Total:</u> 6y 3m NPP 2y</p>	<p>AA 2m / 3m / 5m / 6m / 9m</p> <p>3m / 8m</p> <p><u>Total:</u> 30m released after 12m for 12m</p>	<p>nil</p>	<p>Over 6 months possessed 513 child abuse material files (56 duplicate) across seven devices – 25% Cat 1 and 75% Cat 2</p> <p>ASD diagnosis contributed to obsessive behaviour – socially isolated – prospects of rehabilitation guarded – poor insight</p> <p>On appeal: failure to give adequate weight to totality</p>

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18.	Minson <a href="#">[2022] ACTSC 46</a> Mossop J	Access - s.474.22(1)(a)(i)  5 x Possess child abuse material obtained using carriage service – s.474.22A  3 x Possess child abuse material obtained using carriage service – s.474.22A	PG (20%)	4y 5m  5y 7m / 4y 5m  2y / 2y 5m  <u>Total:</u> 7y 5m NPP 4y 5m		NSW - child pornography offence	<b>Mandatory Minimum Term: 4 years (applied to s.474.22 and 2 x s.474.22A offences)</b> Over 18 days used computer program to access 24 child abuse files – moderate sophistication and deliberate search - found in possession of 2,107 videos and 14,103 images files of child abuse material on five electronic devices – admitted accessing child abuse material over many years – ‘library’ of material but no evidence of further distribution – above mid-range Health issues of wife. Mandatory minimum provisions applied to three of six offences only
19.	Delzotto <a href="#">[2022] NSWCCA 117</a>	Possess child abuse material obtained using carriage service – s.474.22A  Access - s.474.22(1)(a)(i)  Sched: Access - s.474.19(1)(a)(i) Access – s.474.22(1)(a)(i)	PG (30%)	<u>Indicative:</u> 2y 9m  18m  <u>Aggregate:</u> 3y 3m NPP 2y 2m	Crown AA <u>Indicative</u> 4y 2m  1y  <u>Aggregate:</u> 4y 6m NPP 3y	Qld – aggravated indecent treatment child under 16y	<b>Mandatory Minimum Term: 4 years applied to s.474.22A offence</b> 2,653 files containing child abuse material found on four devices – used carriage service to access 7 files located on laptop – additional offences involved accessing 33 files in 2019 and accessing website containing four written stories describing child abuse material – acted alone – no plans to distribute Major depressive disorder – co-operated with police – sexually abused as a child – isolated socially – extra-curial punishment – prospects of rehabilitation – remorse On appeal: sentence for s.474.22A offence manifestly inadequate – discussion about application of mandatory minimum provisions

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20.	Glasheen <a href="#">[2022] NSWCCA 191</a>	Access - s.474.22(1)(a)(i)	PG (30% on appeal)	4y NPP 2y 8m	AA 3y 1m NPP 2y 4m	Previous child sexual offences	<b>Mandatory Minimum Term: 4 years</b> Registrable person found in possession of 64 child abuse images: Cat 1 – 30 images Cat 2 – 34 images Rolled up charge – not isolated offending – actual and prepubescent children depicted – oral and penetrative intercourse No genuine remorse – prospects of rehabilitation guarded – limited insight – above average risk of re-offending On appeal: erred in application of discounts under mandatory minimum sentence provisions
21.	Kember (27-32) <a href="#">[2022] ACTSC 153</a> McCallum CJ	2 x Access child pornography using carriage service - s.474.19(1) [15y]  s.474.22(1) [15y]  Use carriage service to procure - s.474.26(1) (Cth) <u>Code</u>  Use carriage service to transmit indecent communication to child under 16 – s.474.27A(1) (Cth) <u>Code</u>  Possess child abuse material obtained using carriage service – s.474.22A	PG	16m / 10m  8m  6m  3m  6m  <u>Total:</u> 3y released after 8m for 2y		nil	Requested and received naked photo from younger sister of partner when complainant aged 13-15y – requested and received photo of exposed breasts from 16y complainant met through cheerleading – significant impact on complainant – accessed Instagram account of younger sister of partner and saved 8 photos of complainant in swimmers – supplied alcohol to 15y complainant at school after receiving promise of oral sex – discussed sexual experience with younger sister of sexual partner over Snapchat – found in possession of material from above offences – mostly Cat 1 and one Cat 2 image – all at lower end of range or below mid-range – not isolated offences Difficult childhood – good prospects of rehabilitation – father suffering with Alzheimer's

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22.	Hutchinson (52 at sentence) <a href="#">[2022] VSCA 217</a>	Access child pornography using carriage service: s.474.19(1)(a)(i) [15y]  Access - s.474.22(1)(a)(i)  Possess child abuse material obtained using carriage service: s.474.22A(1)	PG	3y  1y  4y  <u>Total:</u> 5y NPP 3y  Pre discount for guilty plea: 7y NPP 5y	AD	nil	Found in possession of 317,003 files of child abuse material downloaded from internet over 7y Cat 1: 304,596 images / 906 videos Cat 2: 4,619 images / 410 videos Cat 3: 2,758 images / 87 videos Cat 4: 2,162 images / 676 videos Cat 5: 112 images / 24 videos Cat 6: 613 images / 12 videos Careful organisation of images electronically – objective seriousness very high Plea at first opportunity – good character – physical and mental health issues – good prospects rehabilitation – remorse – difficult childhood – family hardship On appeal: sentence not excessive in view of large number of images
23.	Ferns (27-28) <a href="#">[2022] QSC 220</a> Davis J	Transmit - s.474.22(1)(a)(iii)  Access - s.474.22(1)(a)(i)  Solicit - s.474.22(1)(a)(iv)  Agg s.474.22 – conduct involving 3 or more occasions with 2 or more people: s.474.24A(1) [25y]  2 x Possess child abuse material obtained by carriage service: s.474.22A	PG	10y  8y  4y  15y  8y  <u>Total:</u> 15y NPP 8y		nil	<b>Mandatory Minimum Term: 7 years applies to s.474.24A offence</b> Transmitted child abuse material over one month to 17 users – included obscene text conversations – sourced child abuse material over one year and requested material from two different users – found in possession of 198 videos and 118 images – s.474.24A most serious offence – depraved conversations and transmission of material to two other users over two days Difficult childhood – early drug abuse – good work record

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24.	<b>Woods</b> <a href="#">[2023] NSWCCA 37</a>	Solicit - s.474.22(1)  Sched: 1 offence	PG	9m, released under recognizance release order	AD	Nil	No actual child victim - police officer with assumed online identity of a 14y old female - offending of short duration - references to sexual activity but not otherwise particularly depraved - sent naked image of self and requested naked image of intended victim - sought to groom by referring to sexual concepts - attempted to conceal offending by asking intended victim to delete messages. Compelling subjective case - long-standing mental health conditions - degree of cognitive impairment - mild intellectual disability, attention deficit hyperactivity disorder, Tourette's syndrome, learning and speech difficulties.
25.	<b>Stiller</b> (31-37) <a href="#">[2023] QCA 51</a>	Access – s.474.22(1)(a)(i)  Sched: Access – s.474.19(1)(a)(i) Access - s.474.22(1)(a)(i)	PG	3y 6m NPP 12m	AD	Prior conviction for accessing child pornography – reached recognizance by current offending	<b>Mandatory Minimum Term: 4 years</b> Over 6 years used two computers to access material – accessing moved to downloading – 140 images from Cat 1 found on computer – did not knowingly possess images Remorse – some hope for rehabilitation

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