

Possess Child Abuse Material Accessed Using Carriage Service s 474.22A (Cth) *Criminal Code*

s 474.22A Possess or control child abuse material obtained or accessed using a carriage service and in the form of data held in a computer or data storage device

Commenced: 21.9.2019

Maximum penalty: 15 years

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

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

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	Johnston (44) [2020] ACTSC 46 Mossop J	s.474.22A 2 x Use carriage service to transmit indecent communication to child under 16y: s.474.27A	PG	11m 6m 15d Total: 14m 15d released after 4m for 12m		nil	Indecent conversation with 10y girl via Instagram over two days – requested picture of body – conversation continued with police officer – not explicit and limited but deliberate grooming – low gravity - found in possession of 291 child abuse images on hard drive, computer and phone – review of sample found images from each Cat – lower end of mid-range Good character – reasonable prospects of rehabilitation

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2.	Logue (29) [2020] ACTSC 115 Elkiam J	s.474.22A Access child abuse material using carriage service– s.474.22(1)(a)(i) 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
3.	Davison (49) [2020] ACTSC 272 Eliakim J	s.474.22A	PG (25%)	9m released after 3m for 12m		Nil	827 files containing child abuse material found on computer: Cat 1: 496 images Cat 2: 8 videos Cat 3: 10 images Cat 4: 26 videos Cat 6: 280 images – 2 videos – 2 doc No evidence of distribution – period of possession unknown – mid range Serious mental health issues – no insight
4.	Burch (34) [2020] ACTSC 192 Murrell CJ	s.474.22A Transmit child pornography using carriage service: s.474.19(1)(a)(iii)	PG (25%)	2y GBB 100h CSO 12m ICO 200h CSO		nil	Five images of child abuse material found on computer Cat 1: 1 image Cat 2: 3 images Cat 4: 1 image Images not isolated but other possible material unrecoverable - conducted conversations with four people over messenger services discussing child abuse – each Cat 6 – below moderate seriousness Physical and mental health issues – became addicted to pornography as a juvenile

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5.	Armstrong (43) [2020] ACTSC 298 Robinson AJ	s.474.22A Access child pornography using carriage service: s.474.19(1)(a)(i) Access child abuse material using carriage service: 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
6.	AX (No.3) (23) [2020] ACTSC 334 Burns J	s.474.22A Access child abuse material using carriage service: s.474.22(1)(a)(i) 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
7.	Arnould (50) [2020] ACTSC 345 Elkiam J	s.474.22A Access child abuse material using carriage service: s.474.22(1)(a)(i)	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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8.	Ramsay-Feeney (34) [2021] ACTSC 5 Burns J [2022] ACTSC 82 Eliakim J	s.474.22A Access child pornography using carriage service: s.474.19(1)(a)(i) Access child abuse material using carriage service: s.474.22(1)(a)(i) Access child abuse material using carriage service: s.474.22(1) Breach ICO	PG (25%) PG (25%)	9m 12 9m 12d (concurrent – already served) 9m ICO 3y released to recognizance after 16m 9m (concurrent)			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 Voluntarily assisted police – mental illness requiring assistance for rehabilitation Mandatory Minimum Term: 4 years applied to s.474.22(1) offence 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 Co-operated with police – importance of recognizance to provide assistance in rehabilitation – mental illness issues – mandatory minimum reduced for guilty plea
9.	Cobcroft [2021] ACTSC 15 Murrell CJ	s.474.22A Access child pornography using carriage service: s.474.19(1)(a)(i) Access child abuse material using carriage service: s.474.22(1)(a)(i)	PG (25%)	15m 11m 11m <u>Total:</u> 21m released after 5m for 2y		Nil	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 Remorse and insight – very good prospects of rehabilitation – bail conditions restricted role as primary carer for child

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10.	Appleby (45) [2021] ACTSC 55 Loukas-Karlsson J	2 x s.474.22A Access child abuse material using carriage service: 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
11.	Cusak (42 at sentence) [2021] ACTSC 75 Eliakim J	s.474.22A Access child pornography using carriage service: s.474.19(1)(a)(i) Access child abuse material using carriage service: s.474.22(1)(a)(i)	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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12.	Barber (67 at sentence) [2021] ACTSC 78 Murrell CJ	2 x Access child pornography using carriage service: s.474.19(1)(a)(i) [15y] 2 x Access child abuse material using carriage service: s.474.22(1)(a)(i) s.474.22A s.474.22A	PG (25%)	4m / 11m 11m / 9m 2y 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
13.	Cox (48) [2021] ACTSC 98 Burns ACJ	s.474.22A 2 x Access child pornography using carriage service: s.474.19(1)(a)(i) [15y] Transmit child pornography using carriage service - s.474.19(1)(a)(ii) [15y]	PG (25%)	12m 12m / 15m 6w <u>Total:</u> 1y 7m 29d released after 5m for 2y		nil	Found in possession of 229 videos and 1 image of child abuse material on three devices – accessed 254 videos over 2 years and 1,349 items over later 4m period – transmitted 2 files from one email to another (both belonged to offender) - much overlap in material – mid range Assistance at time of arrest – reasonable prospects of rehabilitation - remorse
14.	Monday (a pseudonym) (59) [2021] ACTSC 99 Murrell CJ	s.474.22A	PG	2y GBB		nil	Attached two images of computer-generated child abuse material to email in preparation to send it to associate – unclear if email sent before suspended – very low objective seriousness – not isolated incident History of serious mental health issues – causally linked to offending – low risk of re-offending

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15.	Payne-Moore (32) [2021] ACTSC 125 Loukas-Karlsson J	s.474.22A Access child abuse material using carriage service – s.474.22(1)(a)(i)	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
16.	Hurt (30) [2019] ACTSC 148 Mossop J [2021] ACTSC 241 Mossop J [2022] ACTCA 49	Intentionally possess child exploitation material – s.65 (ACT) <i>Crimes Act</i> Distribute child pornography using carriage service - s.474.19(1)(a)(iii) Transmit child abuse material using carriage service - s.474.22(1)(a)(ii) Access child abuse material using carriage service - s.474.22(1)(a)(i) s.474.22A Breach bond (s.65 offence)	PG (25%) PG (25%)	15m suspended after 8m for 18m 2y recognisance 15m 15m 4y <u>Total:</u> 4y 8m NPP 2y 1m 7m <u>Total:</u> 5y 3m NPP 2y 8m	 Crown AA 15m 15m 4y 6m <u>Total:</u> 4y 8m NPP 2y 2m 7m <u>Total:</u> 5y 3m NPP 2y 9m	Nil relevant Earlier offences – breached bond	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 Alcohol and cannabis abuse – delay in prosecution Mandatory Minimum Term: 4 years (applied to s.474.22A offence only) 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 Prospects of rehabilitation guarded On appeal: mandatory minimum term provisions erroneously applied only to 25 photos of s.474.22A offence – applied to all material

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17.	Mertell (68) [2022] ACTSC 37 McWilliam AJ [2022] ACTCA 69	7 x s.474.22A 2 x Access child abuse material using carriage service: s.474.22(1)(a)(i)	PG (25%)	9m 9m <u>Total:</u> 6y 3m NPP 2y	AA 2m / 3m / 5m / 6m / 9m 3m / 8m <u>Total:</u> 30m released after 12m for 12m	nil	Over 6 months possessed 513 child abuse material files (56 duplicate) across seven devices – 25% Cat 1 and 75% Cat 2 ASD diagnosis contributed to obsessive behaviour – socially isolated – prospects of rehabilitation guarded – poor insight On appeal: failure to give adequate weight to totality
18.	Minson [2022] ACTSC 46 Mossop J	Access child abuse material using carriage service - s.474.22(1)(a)(i) s.474.22A s.474.22A s.474.22A 2 x s.474.22A	PG (20%)	4y 5m 5y 7m 4y 5m 2y 5m 2y <u>Total:</u> 7y 5m NPP 4y 5m		NSW - child pornography offence	Mandatory Minimum Term: 4 years (applied to s.474.22 and 2 x s.474.22A offences) 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

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19.	Delzotto [2022] NSWCCA 117	s.474.22A Access child abuse material using carriage service - 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	Mandatory Minimum Term: 4 years 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
20.	Kember (27-32) [2022] ACTSC 153 McCallum CJ	2 x Access child pornography using carriage service: s.474.19(1) Access child abuse material using carriage service s.474.22(1) 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> 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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21.	Hutchinson (52 at sentence) [2022] VSCA 217	s.474.22A Access child pornography using carriage service - s.474.19(1)(a)(i) Access child abuse material using carriage service - s.474.22(1)(a)(i)	PG	4y 3y 1y <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
22.	Ferns (27-28) [2022] QSC 220 Davis J	2 x s.474.22A Transmit child abuse material using carriage service - s.474.22(1)(a)(iii) Access child abuse material using carriage service - s.474.22(1)(a)(i) Solicit child abuse material using carriage service - 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]	PG	8y 10y 8y 4y 15y <u>Total:</u> 15y NPP 8y		nil	Mandatory Minimum Term: 7 years applies to s.474.24A offence 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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23.	Horner (45-48) [2023] ACTSC 23 Baker J	s.474.22A(1) Access child exploitation material using carriage service - s.474.19(1)(a)(i)	PG (25%)	15m 12m <u>Total:</u> 18m released immediately for 3y		Nil	Found in possession of three child abuse videos on computer – admitted accessing 50 child abuse files for purpose of reporting to eSafety Commissioner – limited quantity - lower end of range Exceptional circumstances permitting immediate release – clear link between childhood sexual abuse, mental illness and offending – remorse and insight – strong prospects of rehabilitation – importance of continued rehabilitation – prior good character – loss of job and position in society and separated from family

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