

Statutory Provisions for Child Pornography / Child Abuse Offences

(Cth) Criminal Code

Section	Change	Amending Act	Date of Operation	Summary of Amendments
Chapter 8—Offences against humanity and related offences				
Division 273— Offences involving child pornography material and child abuse material outside Australia				
s.273.1 Definitions	Inserted	2010 – No.42	15.4.2010	Definition for possess, control, produce, distribute and obtain
	Amended	2019 – No.72	21.9.2019	Definition for child pornography and child abuse material same as Pt 10.6 Removed ‘child pornography’ from Note
s.273.2 Who can be prosecuted for an offence committed outside Australia	Inserted	2010 – No. 42	15.4.2010	Requirement accused is Australian resident or citizen
s.273.5 - Offence Possess, control, produce, distribute or obtain child pornography outside Australia	Inserted	2010 – No.42	15.4.2010	Possess or control, produce, distribute or obtain, facilitate production or distribution child pornography outside Australia – <u>penalty 15y</u>
	Repealed	2019 - No.72	21.9.2019	Repealed section
s.273.6 – Offence Possess, control, produce, distribute or obtain child abuse material outside Australia	Inserted	2010 – No.42	15.4.2010	Possess or control, produce, distribute or obtain, facilitate production or distribution child abuse material outside Australia – <u>penalty 15y</u>

Section	Change	Amending Act	Date of Operation	Summary of Amendments
s.273.7 – Offence Aggravated offence	Inserted	2010 – No.42	15.4.2010	Offence under ss.273.5 / 273.6 aggravated if committed on 3 or more occasions – <u>penalty 25y</u>
	Amended	2019 – No.72	21.9.2019	Removed references to ‘child pornography’ and s.273.5
	Amended	2020 – No.70	23.6.2020	Increased <u>penalty 30y</u>
s.273.9 Defences	Inserted	2010 – No.42	15.4.2010	Defences to offences under Division 273
	Amended	2015 – No.25	1.7.2015	‘Aust Communications and Media Authority’ replaced by ‘Children’s e-Safety Commissioner’
	Amended	2017 – No.51	23.6.2017	"Children's e-Safety Commissioner", replaced by "eSafety Commissioner".
	Amended	2019 – No.72	21.9.2019	Removed reference to s.273.5 and "child pornography material"
	Amended	2021 – No.77	23.1.2022	Amended (5) defence of performing functions under <i>Online Safety Act 2021</i>
Chapter 8—Offences against humanity and related offences				
Division 273A— Possession of child-like sex dolls etc				
s.273A.1 – Offence Possession of child-like sex dolls	Inserted	2019 – No.72	21.9.2019	Possession of child-like sex doll - <u>penalty 15y</u>
s.273A.2 Defences	Inserted	2019 – No.72	21.9.2019	Defence to offence under s.273A.1
Chapter 10—National infrastructure				
Part 10.5—Postal services				
s.470.4 Meaning of expressions used	Inserted	2010 – No.42	15.4.2010	Definition of possess, control, produce, supply and obtain
		2019 – No.72	21.9.2019	Definition of child pornography and child abuse material same as Pt 10.6 Removed ‘child pornography’ from Note

Section	Change	Amending Act	Date of Operation	Summary of Amendments
s.471.16 - Offence Using postal service for child pornography	Inserted	2010 – No.42	15.4.2010	Cause child pornography material to be carried through postal or similar service – <u>penalty 15y</u>
	Repealed	2019 – No.72	21.9.2019	Sections repealed
s.471.17 - Offence Possess, control, produce, distribute or obtain child pornography for use through postal service	Inserted	2010 – No.42	15.4.2010	Possess, control, produce, supply or obtain child pornography material with intent to Commit offence against s.471.16 – <u>penalty 15y</u>
	Repealed	2019 – No.72	21.9.2019	Section repealed
s.471.18 Defences	Inserted	2010 – No.42	15.4.2010	Defences in respect of ss.471.16 and 471.17
	Amended	2018 – No.31	11.5.2018	Replaced ‘Minister’ with ‘AFP Minister’ in (2)(d)
	Repealed	2019 – No.72	21.9.2019	Section repealed
s.471.19 – Offence Using postal service for child abuse material	Inserted	2010 – No.42	15.4.2010	Cause child abuse material to be carried through postal or similar service – <u>penalty 15y</u>
s.471.20 – Offence Possess, control, produce, supply or obtain child abuse material for use through postal service	Inserted	2010 – No.42	15.4.2010	Possess, control, produce, supply or obtain child abuse material with intent to commit offence against s.471.19 – <u>penalty 15y</u>
s.471.21 Defences	Inserted	2010 – No.42	15.4.2010	Defences in respect of ss.471.19 and 471.20
	Amended	2018 – No.31	21.9.2019	Replaced ‘Minister’ with ‘AFP Minister’ in (2)(d)
s.471.22 – Offence Aggravated offence	Inserted	2010 – No.42	15.4.2010	Offence under ss.471.16, 471.17, 471.19 and 471.20 aggravated if committed on three or more occasions and involves 2 or more persons – <u>penalty 25y</u>
	Amended	2019 – No.72	21.9.2019	Removed references to s.471.16 and 471.17 (repealed child pornography offences)
	Amended	2020 – No.70	23.6.2020	Increased <u>penalty 30y</u>

Section	Change	Amending Act	Date of Operation	Summary of Amendments
s.471.31 Definition of ‘carry by post’ does not apply	Inserted	2010 – No.42	15.4.2010	Definition of ‘carry by post’ under s.470.1 does not apply to Subdivision B of Division 471
Chapter 10—National infrastructure				
Part 10.6—Telecommunications Services				
s.473.1 Definitions	Inserted	2004 – No.127	1.3.2005	Definition for Part 10.6 - includes definition of ‘child abuse material’ and ‘child pornography material’
	Amended	2010 – No. 42	15.4.2010	Added <i>use</i> carriage service, has meaning affected by s.473.5
	Amended	2012 - No.44	1.7.2012	Added definition of ‘National Relay Service’ and replaced definition of ‘NRS provider’
	Amended	2019 – No.72	21.9.2019	Amend definition of child sexual abuse (to include child-like sex doll) and remove definition of child pornography material
	Amended	2021 – No.77	23.1.2022	Added ‘Australia hosting service provider’, removed ‘internet host provider’ and amended ‘internet service provider’
s.473.2 Possession control of data or material	Substituted	2004 – No.127	1.3.2005	Definition of possess or control of data / material
s.473.3 Producing, supplying or obtaining data or material	Substituted	2004 – No.127	1.3.2005	Definition of produce, supply or obtain data / material
s.473.4 Determining whether material is offensive	Inserted Amended	2004 – No.127 2018 – No.96	1.3.2005 1.9.2018	Definition of ‘offensive’ (2) added in relation to private sexual material
s.473.5 Use of a carriage service	Inserted	2010 – No. 42 2021 – No.77	15.4.2010 23.1.2022	Exclusion of carrier, carriage service provider, internet service provider and internet content host acting in that capacity ‘internet host’ replaced by ‘Australian Hosting Service Provider’

Section	Change	Amending Act	Date of Operation	Summary of Amendments
s.474.19 – Offence Use carriage service for child pornography material	Inserted	2004 - No.127	1.3.2005	Offence of access, transmit, cause to transmit, make available, publish or otherwise distribute child pornography material – <u>penalty 10y</u>
	Amended	2010 – No.42	15.4.2010	Reworded offence adding advertise, promote, solicit - made use of carriage service absolute liability – increased <u>penalty 15y</u>
	Amended	2016 – No.4	10.3.2016	‘is guilty of’ replaced by ‘commits’
	Repealed	2019 – No.72	21.9.2019	Repealed section
s.474.20 – Offence Possess, control, produce, distribute or obtain child pornography material through carriage service	Inserted	2004 - No.127	1.3.2005	Possess, control, produce, supply or obtain with intent to commit offence against .474.19 <u>penalty 10y</u>
	Amended	2010 – No.42	15.4.2010	Increased <u>penalty 15y</u>
	Amended	2016 – No.4	10.3.2016	‘is guilty of’ replaced by ‘commits’
	Repealed	2019 – No.72	21.9.2019	Repealed section
s.474.21 Defences	Inserted	2004 - No.127	1.3.2005	Defences to 474.19 and 474.20
	Amended	2005 – No.45	1.7.2005	ABC changed to Australian Communications and Media Authority (ACMA)
	Amended	2007 – No.124	20.1.2008	Minor change to functions of ACMA
	Amended	2015 – No.25	1.7.2015	ACMA replaced by ‘Children’s e-Safety Commissioner’
	Amended	2017 – No.51	23.6.2017	"Children's e-Safety Commissioner", replaced by "eSafety Commissioner".
	Amended	2018 – No.31	11.5.2018	Replaced ‘Minister’ with ‘AFP Minister’ in (2)(d)
	Repealed	2019 – No.72	21.9.2019	Repealed section

Section	Change	Amending Act	Date of Operation	Summary of Amendments
s.474.22 – Offence Use carriage service for child abuse material	Inserted	2004 - No.127	1.3.2005	Offence of access, transmit, cause to transmit, make available, publish or otherwise distribute – <u>penalty 10y</u>
	Amended	2010 – No.42	15.4.2010	Reworded offence – added advertise, promote, solicit - made use of carriage service absolute liability – increased <u>penalty 15y</u>
	Amended	2016 – No.4	10.3.2016	‘is guilty of’ replaced by ‘commits’
s.474.22A – Offence Possessing or controlling child abuse material obtained or accessed using a carriage service.	Inserted	2019 – No.72	21.9.2019	Possessing or controlling child abuse material obtained or accessed using a carriage service - <u>penalty 15y</u>
s.474.23 - Offence Possess, control, produce, supply or obtain child abuse material for use through carriage service	Inserted	2004 - No.127	1.3.2005	Offence of possess, control, produce, supply or obtain with intent to commit offence against s.474.19 – <u>penalty 10y</u>
	Amended	2010 – No.42	15.4.2010	Increased <u>penalty 15y</u>
	Amended	2016 – No.4	10.3.2016	‘is guilty of’ replaced by ‘commits’
s.474.23A - Offence Conduct for purposes of electronic service used for child abuse material	Inserted	2020 – No.70	23.6.2020	Offence of creating, developing etc electronic service for use in commission of offence against ss.474.22 and 474.23 – <u>penalty 20y</u>

Section	Change	Amending Act	Date of Operation	Summary of Amendments
s.474.24 Defences	Inserted	2004 - No.127	1.3.2005	Defences to 474.22 / 474.23
	Amended	2005 – No.45	1.7.2005	ABC changed to Australian Communications and Media Authority (ACMA)
	Amended	2007 – No.124	20.1.2008	Minor change to functions of ACMA
	Amended	2015 – No.25	1.7.2015	ACMA replaced by ‘Children’s e-Safety Commissioner’
	Amended	2017 – No.51	23.6.2017	"Children's e-Safety Commissioner" replaced by "eSafety Commissioner".
	Amended	2018 – No.31	11.5.2018	Replaced ‘Minister’ with ‘AFP Minister’ in (2)(d)
	Amended	2019 – No.72	21.9.2019	Added s.474.22A
	Amended	2020 – No.70	23.6.2020	Added s.474.23A
	Amended	2021 – No.77	23.1.2022	Amended defence under (4) - defence of performing functions under <i>Online Safety Act</i> 2021
s.474.24A - Offence Aggravated offence	Inserted	2010 – No.42	15.4.2010	Offence under ss.474.19, 474.20, 474.22 and 474.23 aggravated if committed on three or more occasions and involves 2 or more persons – <u>penalty 25y</u>
	Amended	2019 – No.72	21.9.2019	Removed reference to ss.474.19 and 474.20 (repealed child pornography offences) – added s.474.22A
	Amended	2020 – No.70	23.6.2020	Increased <u>penalty 30y</u>
s.474.25 – Offence Obligations of internet service providers and internet content hosts	Inserted	2004 – No.127	1.3.2005	Offence of failure of internet service provider or internet content provider to refer details of existence of child abuse material - <u>100 penalty units</u> .
	Amended	2010 – No.8	1.3.2010	Capital removed from ‘Internet’
	Amended	2019 - No 38	6.4.2019	Penalty increased to <u>800 penalty units</u>
	Amended	2019 - No 72	21.9.2019	Removed reference to child pornography material in (b)
	Amended	2021 - No 77	23.1.2022	"Internet content host" replaced by "Australian hosting service provider".

Section	Change	Amending Act	Date of Operation	Summary of Amendments
s.475.1A Defences for NRS employees and emergency call persons	Inserted	2010 – No.42	15.4.2010	No offence where NRS provider or emergency call person acts in good faith in course of duties
s.475.1B Provisions relating to use of a carriage service	Inserted	2010 – No.42	15.4.2010	Presumption that person used carriage service in commission of offence – absolute liability applies to physical element of use of carriage service
Dictionary (selected)				
Dictionary	Inserted	2004 – No.127	1.3.2005	Inserted ‘carriage service’ / ‘communication’ / ‘data’ / ‘data held in a computer’ / ‘data storage device’

Amending Acts

[Crimes Legislation Amendment \(Telecommunications Offences and Other Measures\) Act \(No.2\)](#) 2004 No.127 – commenced 1.3.2005

[Australian Communications and Media Authority \(Consequential and Transitional Provisions\) Act 2005](#) No.45 – commenced 1.7.2005

[Communications Legislation Amendment \(Content Services\) Act](#) 2007 No.124 – commenced 20.1.2008

[Statute Law Revision Act](#) 2010 No.8 – commenced 1.3.2010

[Crimes Legislation Amendment \(Sexual Offences Against Children\) Act](#) 2010 No.42 – commenced 15.4.2010

[Enhancing Online Safety for Children \(Consequential Amendments\) Act](#) 2015 No.25 – commenced 1.7.2015

[Statute Law Revision Act \(No. 1\)](#) 2016 No. 4 – commenced 10.3.2016

[Enhancing Online Safety for Children Amendment Act](#) 2017 No.51 – commenced 23.6.2017

[Home Affairs and Integrity Agencies Legislation Amendment Act](#) 2018 No.31 – commenced 11.5.2018

Enhancing Online Safety (Non-consensual Sharing of Intimate Images) Act 2018 No.96 – commenced 1.9.2018

Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019 No.38 – commenced 6.4.2019

Combatting Child Sexual Exploitation Legislation Amendment Act 2019 No.72 – commenced 21.9.2019

Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020 No.70 – commenced 23.6.2020

Online Safety (Transitional Provisions and Consequential Amendments) Act 2021 No.77 – commenced 23.1.2022

Statutory Provisions for Child Pornography / Child Abuse Offences

(Cth) Customs Act

Section	Change	Amending Act	Date of Operation	Summary of Amendments
s.233BAB Special Offence relating to tier 2 goods	Inserted	2000 – No.23	26.5.2000	Offence of knowingly or recklessly importing prohibited ‘tier 2 goods’ – includes child pornography and child abuse material – <u>penalty 10y</u>
	Amended	2001 – No.24	15.12.2001	Changes made to mental element of offence – intentionally import / export – reckless as to goods – absolute / strict liability as to prohibition of goods being imported / exported
	Amended	2002 – No.82	10.10.2002	Maximum fine \$250,000 changed to 2500 penalty units
	Amended	2004 – No.127	1.3.2005	Definition of child pornography and child abuse replaced in (3) and (4)
	Amended	2015 – No.12	6.3.2015	Double jeopardy provisions in (7) extended to Div 361 Criminal Code (firearms trafficking)
	Amended	2016 – No.4	10.3.2016	‘is guilty of’ replaced by ‘commits’
	Amended	2016 – No.61	21.10.2016	Penalty provisions reworded
	Amended	2019 – No.72	21.9.2019	Removed (3) child pornography - amended definition of child sexual abuse to include definition of child pornography material and child-like sex doll

Amending Acts

[Customs Legislation Amendments \(Criminal Sanctions and Other Measures\) Act](#) 2000 No.23 – commenced 26.5.2000

[Law and Justice Legislation Amendment \(Application of Criminal Code\) Act](#) 2001 No.24 – commenced 15.12.2001

[Customs Legislation Amendment Act \(No.1\)](#) 2002 No.82 – commenced 10.10.2002

[Crimes Legislation Amendment \(Telecommunications Offences and Other Measures\) Act \(No.2\)](#) 2004 No.127 – commenced 1.3.2005

[Crimes Legislation Amendment \(Psychoactive Substances and Other Measures\) Act](#) 2015 No.12 – commenced 6.3.2015

[Statute Law Revision Act \(No. 1\)](#) 2016 No. 4 – commenced 10.3.2016

[Statute Update Act](#) 2016 No.61 – commenced 21.10.2016

[Combatting Child Sexual Exploitation Legislation Amendment Act](#) 2019 No.72 – commenced 21.9.2019

Time Chart of Offences

Offence	26.5.2000	1.3.2005	15.4.2010	6.4.2019	21.9.2019	23.6.2020
Customs Act						
<u>s.233BAB</u> Import prohibited tier 2 goods (including child pornography and child abuse material)	10y					
Criminal Code						
<u>s.273.5</u> Possess, control, produce, distribute, obtain child pornography outside Australia			15y			
<u>s.273.6</u> Possess, control, produce, distribute, obtain child abuse material outside Australia			15y			
<u>s.273.7</u> Aggravated offence			25y			30y
<u>s.273A.1</u> Possess child-like sex doll					15y	
<u>s.471.16</u> Using postal service for child pornography			15y			
<u>s.471.17</u> Possess, control, produce, distribute, obtain child pornography for use through postal service			15y			
<u>s.471.19</u> Use postal service for child abuse material			15y			
<u>s.471.20</u> Possess, control, produce, distribute, obtain child abuse material for use through postal service			15y			
<u>s.471.22</u> Aggravated offence			25y			30y
<u>s.474.19</u> Use carriage service for child pornography		10y	15y			
<u>s.474.20</u> Possess, control, produce, distribute, obtain child pornography for use through carriage service		10y	15y			
<u>s.474.22</u> Use carriage service for child abuse material		10y	15y			

Offence	26.5.2000	1.3.2005	15.4.2010	6.4.2019	21.9.2019	23.6.2020
<u>s.474.22A</u> Possess or control child abuse material obtained or accessed using carriage service					15y	
<u>s.474.23</u> Possess, control, produce, distribute, obtain child abuse material for use through carriage service		10y	15y			
<u>s.474.23A</u> Create, develop etc electronic service for use in commission of offence against ss.474.22 and 474.23						20y
<u>s.474.24A</u> Aggravated offence			25y			30y
<u>s.474.25</u> Failure of to refer details of existence of child abuse material		100pu		800pu		