

## Use Carriage Service to Procure Person Under 16 Years

s.474.26(1) (Cth) Criminal Code

s 474.26(1) A person (the sender) commits an offence if:

- (a) the sender uses a carriage service to transmit a communication to another person (the recipient); and
- (b) the sender does this with the intention of procuring the recipient to engage in sexual activity with the sender; and
- (c) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
- (d) the sender is at least 18 years of age.

**Maximum Penalty:** 15 years

**Commenced:** 1.3.2005

**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

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	Poynder (50) (2007) 171 A Crim R 544 <a href="#">[2007] NSWCCA 157</a>	2 x s.474.26(1)  Sched: 2 x Send offensive communication – s.474.17	PG (25%)	3y released after 1y 3m for 2y	Crown AD	Nil	Discussed sexual activity with male over telephone - believed male to be 15y – discussed sexual activity with female believed to be 15y – attended address given by female – 540 calls recorded over 18-19 days discussing sexual activity with children and animals – discussed raping young girls with female acquaintance – no evidence intended to follow through Legal practitioner – engaged in conversation for sexual satisfaction

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2.	<b>Tector</b> (41) (2008) 186 A Crim R 133 <a href="#">[2008] NSWCCA 151</a>	3 x s.474.26(1)	VG	11y NPP 7y	AA 8y NPP 5y	Child sexual offences	Sent message to 12y boy offering \$10 to play with penis – repeated request twice over mobile telephone – persistent offence
3.	<b>Gajjar</b> (28) (2008) 192 A Crim R 76 <a href="#">[2008] VSCA 268</a>	s.474.26(1)	PG	2y 6m NPP 8m	AD	Nil	Contacted 14y female through chat line (undercover officer) – posed as 20y female then 20y male– graphic and salacious communication – arranged meeting and waited at train station for sexual encounter – promised future gift Indian national living in Australia with wife – wife subsequently gave birth to son
4.	<b>Hizhnikov</b> (25) (2008) 192 A Crim R 69 <a href="#">[2008] VSCA 269</a>	s.474.26(1)  Possess child pornography – s.70(1) (VIC) <i>Crimes Act</i> 1958  2 minor offences	PG	22m immediate release for 4y	Crown AD	Nil	Communicated with 14y female through chat room (undercover police officer) – discussed sex and arranged to meet for sexual encounter – sent pornographic photos – waited at train station for meeting – 58 images and 7 movies containing child pornography found on computer Suffering depression at time of offence
5.	<b>Fuller</b> <a href="#">[2010] NSWCCA 192</a>	s.474.26(1)	PG (25%)	FT 6m	Crown AA 18m NPP 6m		Catholic priest – 13 communications with person representing themselves as 13y – sexually explicit conversations – encouraged masturbation – used web camera to transmit himself masturbating – arranged meeting and suggested further sexual activity

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6.	Cooper (25) <a href="#">[2012] VSCA 32</a>	2 x s.474.26(1)  2 x Use carriage service to groom - s.474.27(1)  Use carriage service to access child pornography: s.474.19(1)(a)(i)  2 x Use carriage service to transmit child pornography - s.474.19(1)(a)(iii)  Use carriage service to cause to be transmitted child pornography - s.474.19(1)(a)(ii)  Knowingly possess child pornography – s.70 (VIC) <u>Crimes Act</u> 1958	PG (approx. 25%)	4y  3y  1y  6m  1y  6m  <u>Total:</u> 7y NPP 5y	AA 3y  3y  1y  6m  1y  6m  <u>Total:</u> 5y NPP 3y 9m  (pre discount for guilty plea: 7y NPP 5y)	Indecent act with child	During chat session transmitted child pornography – engaged in communications of sexual nature with adults and children – had two males under 16y masturbate in front of computer camera – after questioned by police engaged in further sexual conversations with persons he believed to be under 16y – lower end of scale

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7.	Engeln (33-34) <a href="#">[2014] QCA 313</a>	3 x s.474.26  2 x Use carriage service to groom - s.474.27(1)  Use carriage service to transmit indecent communication to person under 16 - s.474.27A(1)  Knowingly possess child exploitation material: s 228D (QLD) <u>Code</u>	PG	3y released to recog after 9m (18m probation)  2y released to recog after 9m (18m probation)  2y released to recog after 9m (18m probation)  12m suspended after 4m	AD	nil	Engaged in sexually explicit conversation with two 14y girls over internet – undercover police officers – suggested meeting with each girl to engage in sexual activity – sent one girl images of himself masturbating – travelled to meet one girl at hotel – found in possession at home of 308 movie files of child pornography – 197 at Cat 4
8.	DPP (Cth) v Walls (25-26) <a href="#">[2014] VSCA 323</a>	s.474.26(1)  2 x Use carriage service to transmit indecent communication to person under 16 - s.474.27A(1)  Use carriage service to solicit child pornography - s.474.19(1)(a)(iv)	PG	18m  4m  6m  <u>Total:</u> 22m released to recog for 2y  (pre discount for guilty plea: 30m NPP 12m)	Crown AD		Over 9m sent sexually explicit messages through Facebook to three 14-15y complainants – sent picture of penis – requested one complainant send nude photo of self

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9.	<b>Gifford</b> (35) <a href="#">[2016] NSWCCA 302</a>	s.474.26(1) s.474.26(1)	PG (20%)	5y 7m 5y 2m  Total: 6y 1m NPP 3y 11m	AD	Using carriage service to harass female workmate – agg rob and detain	Made contact with and sent numerous messages to two complainants aged 13y and 14y over three months – made arrangements to meet second complainant but did not show up
10.	<b>Boyles</b> (26) <a href="#">[2017] VSCA 267</a>	s.474.26(1)  Use carriage service to solicit child pornography - s.474.19(1)(a)(iv)	PG	2y 6m Community Corrections Order	Crown AD	nil	Supervisor of 15y work experience student commenced Facebook messages on first day of placement – sent repeated and persistent messages becoming sexually explicit – complainant sent photo of someone in bra in response to repeated requests – offender sent naked photo of self – abuse of power – predatory and opportunistic – complainant vulnerable – no deception or deceit In manic phase of bipolar disorder at time of offending – remorse – involved in community activities On appeal: sentencing judge erred in finding mental state reduced culpability where offender had voluntarily ceased taking medication – despite inadequacy of sentence unjust to increase – mental state deteriorated – spent four months at liberty complying with order
11.	<b>Aboud</b> (46) <a href="#">[2017] NSWCCA 140</a>	'Multiple counts' s.474.26(1)  Use carriage service to groom - s.474.27(1)  Use carriage service in offensive manner - s.474.17(1)	PG (discount unstated but accepted as significant)	Total: 7y NPP 5y 3m	AD	Nil	Opened two Facebook accounts in false names – over 6 months contacted 8 girls aged 12-15y – conducted offensive and sexually explicit conversations largely unwanted and one sided – obtained naked photos from one complainant – threatened to reveal Facebook activity to parents of another complainant Remorse – good character – co-operation with police in relation to own offending

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12.	<b>DPP v Singh</b> (25) <a href="#">[2017] VSCA 146</a>	s.474.26(1)	PG	3y Community Correction Order  \$2000 fine	Crown AD	nil	Set up Facebook profile with false name and birthdate – accepted friend request from operative posing as 14y girl – exchanged numerous messages which became sexual – requested photos and arranged meeting to engage in sexual activity – low culpability – did not actively seek out young children and did not send or exchange images Student visa – immature and naïve – young offender – importance of rehabilitation On appeal – while remarkable lenient sentence not outside range
13.	<b>Moore</b> (54) <a href="#">[2018] NSWCCA 26</a>	s.474.26(1)  Possess child abuse material - s.91H(2) (NSW) <i>Crimes Act</i>	PG (25%)	4y NPP 2y 6m  2y  <u>Total:</u> 4y 6m NPP 3y	AD	priors for indecent assault child under 16y – of little significance	Exchanged sexually explicit communication with fictitious 14y over 10 weeks - described anticipated sexual acts in explicit detail - sent image of naked pubescent male - activated web cam and masturbated - sent prepaid mobile phone and organised meeting Child pornography images found on computer between 1-4 on CETS scale 1522-3490 images 59-83 videos Complex psychiatric background – prospects of rehabilitation unknown – lack of insight
14.	<b>Clarke-Jeffries</b> (18) <a href="#">[2019] NSWCCA 56</a>	s.474.26(1)  Use carriage service to solicit child pornography - s.474.19(1)(a)(iv)  Blackmail - s.249K(1)(a) (NSW) <i>Crimes Act</i>		4y NPP 2y  12m  13m	AA 2y released to recog after 9m  FT 7m  FT 7m (Released immediately)	Nil	Sent messages to 15y complainant to procure sexual activity – complainant sent photographs of her breasts at offender's request - sought money from complainant in exchange for destroying photographs - not grooming – lower end of scale – low number of photographs and not disseminated by offender Serious mental health issues at time of offending – difficult background – positive rehabilitation prospects – supportive family – medium low-risk reoffending

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15.	<b>Kebriti</b> (36) <a href="#">[2019] VSCA 275</a>	s.474.26(1)  Use carriage service to transmit indecent communication to person under 16 - s.474.27A(1)	VG	3y 6m  18m  <u>Total:</u> 4y NPP 2y 3m	AD	Nil record	40min conversation with 11y male over Skout – complainant’s age listed as 31 but offender became aware at least 12y – included exchanging messages and personal pictures of sexual nature – phone call made to arrange a meeting for sexual purpose Some assistance in facilitating trial - Iranian refugee – isolation in custody On appeal: no error in finding serious example of this type of offence - sentence within range
16.	<b>Wilson v Cth</b> (64) <a href="#">[2020] NSWCCA 211</a>	s.474.26(1)  Use carriage service to transmit child pornography - s.474.19(1)(a)(iii)  Possess child abuse material - s.91H(2) (NSW) <u>Crimes Act</u>	PG (25%)	3y 6m  18m  9m NPP 5m  <u>Total:</u> 4y NPP 2y 4m	AD	Minor – breached DVO	Placed advertisement on website for ‘naughty mothers with naughty daughters’ – over two months conducted separate text conversations with undercover police officer posing as mother of 10y daughter and 13y girl – discussed intimate sexual activity with underage girls – sent intimate photos and videos of offender and sought intimate photo from 13y girl – arranged to meet 13y girl – transmit offence restricted to text discussion – on arrest three images of Cat 2 child abuse found on computer Some health problems – became attracted to underage girls later in life On appeal: not outside range
17.	<b>Aboud</b> (56) <a href="#">[2021] NSWCCA 77</a>	s.474.26(1)  4 x Use carriage service to groom - s.474.27(1)  Use carriage service in offensive manner - s.474.17(1)	PG (25%)	4y  2y / 3y / 18m  1y  <u>Total:</u> 7y NPP 5y 3m	AD	Nil	Offences committed in 2011 over period of 6 months - created fake Facebook account / identity pretending to be a young male – made contact with complainants teenage girls aged 13-15 - flattered and bribed complainants to elicit sexually explicit photographs - on some occasions, would threaten to tell complainant’s parents about content of conversations - in some cases, promised accommodation, drinks and money to have sex with “an older friend” who was in fact the applicant - planned offences over period of time. CCA: <i>Xiao</i> (guilty plea) error- re-sentence: co-operation with police – delay – good prospects of rehabilitation – unlikely to reoffend.

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18.	<b>Veale</b> (45) <a href="#">[2022] NSWCCA 154</a>	s.474.26(1)  Use carriage service to threaten to kill - s.474.15(1)  Sched: Use carriage service in menacing, harassing or offensive way - s 474.17(1)	PG (20%)	3y 2m  2y 4m  <u>Aggregate</u> 3y 5m NPP 17m	3y  2y 4m  <u>Aggregate</u> 3y released to recognizance after 1y 9m	Offensive behaviour, AOABH (domestic violence), stalk/intimidate	Over 19-hour period sent over 200 text messages to complainant – sent text messages containing threats to kill – over previous earlier months sent numerous text messages expressing love and posted photos of complainant on his Facebook page, purchased gifts, including fake flowers and jumper. Schizoaffective disorder - substance abuse - involuntarily admitted to hospital on four occasions. CCA: Error as to application of Cth parole provisions - causal connection between mental illness and offending - little or no insight into nature of illness and offending behaviour justifies reduced assessment of criminality and moral culpability
19.	<b>Taylor</b> (35) <a href="#">[2022] NSWCCA 256</a>	s.474.26(1)	PG (25%)	3y released to recognizance after 18m	Crown AD	Indecent assault child under 10; film person in private act; produce child pornography; fail comply CPORA, act indecency - on bonds.	<b>Mandatory minimum term 4y</b> Online communication with police officer who took identity of 13y male - gradual escalation in suggestions of sexual activity – exchanged photographs – attended purported home of child to meet ADHD – long-standing depression – delay between offending and sentence – family support
20.	<b>Marai</b> (28) <a href="#">[2023] NSWCCA 224</a>	s.474.26(1)	PG	3y released to recognizance after 1y 8m	AA Sentence backdated. 3y released to recognizance after 1y 8m.	Driving offences.	Using different name, communicated by Facebook Messenger with police officer impersonating as 14-year-old girl - arranged to meet for sexual intercourse – arrested by police at meeting place. CCA: SJ failed to provide reasons for not taking into account time spent in immigration detention.

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