

## Statutory Provisions for Child Pornography / Child Abuse Offences

### (NSW) Crimes Act 1900

Section	Change	Amending Act	Date of Operation	Summary of Amendments
s.310A – Offence Possession of child pornography	Inserted	<a href="#">1995 – No.49</a>	31.12.1995	Possession of child pornography – <u>penalty 12m</u> – including defences Meaning of ‘child pornography’ – film or computer game refused classification or prohibited publication
	Omitted	<a href="#">1995 – No.63</a>	1.1.1996	Moved to s.578B
s.578B – Offence Possession of child pornography	Inserted	<a href="#">1995 – No.63</a>	1.1.1996	Moved from s.310A – wording of section changed – <u>penalty 12m</u> – including defences Meaning of ‘child pornography’ – film, computer game or publication that is or would be refused classification – reference to child under 16y
	Amended	<a href="#">1997 – No.142</a>	25.1.1998	Increased <u>penalty 2y</u>
	Amended	<a href="#">1998 – No. 149</a>	8.2.1999	(4A) added to allow arrest before classification of film, publication or game
	Amended	<a href="#">2001 – No.117</a>	21.12.2001	Time limitation period increased from 6m to 2y – defence of no reasonable knowledge amended
	Amended	<a href="#">2001 – No.121</a>	7.7.2003	Local Court procedural change
	Omitted	<a href="#">2004 – No.95</a>	1.1.2005	See s.91H (below)
s.578C – Offence Publishing indecent articles	Amended	<a href="#">1997 – No.142</a>	25.1.1998	Section amended to include publishing child pornography – <u>penalty 5y</u>
	Amended	<a href="#">2001 – No.117</a>	21.12.2001	Time limitation imposed – 2 years
	Amended	<a href="#">2001 – No.121</a>	7.7.2003	Local Court procedural change
	Amended	<a href="#">2004 – No.95</a>	1.1.2005	Amended to remove publishing child pornography

Section	Change	Amending Act	Date of Operation	Summary of Amendments
<b>Division 15</b> <b>Child prostitution and child pornography</b>	Inserted Amended Amended	<a href="#">1988 – No.115</a> <a href="#">2000 – No.53</a> <a href="#">2008 – No.105</a>	12.2.1989 29.6.2000 1.1.2009	ss.91C-91G inserted under heading ‘Child prostitution and pornography’ Heading renamed: Division 15 Child prostitution and pornography Removed ‘and pornography’ from title of Division (pornography sections removed to new Div 15A – see below)
<b>s.91C</b> Definitions	Inserted Amended Amended	<a href="#">1988 – No.115</a> <a href="#">2004 – No.95</a> <a href="#">2008 – No.105</a>	12.2.1989 1.1.2005 1.1.2009	Definitions for purposes of ss.91C-91G – included: ‘child’ means person under 18y Specified application of definitions to ‘this division’ (Div 15) to include new s.91H Added definition of ‘material’ Amended to remove definition of ‘material’ (definitions no longer apply to pornography provisions moved to new Div 15A)
<b>s.91G - Offence</b> Children not to be employed / used for pornographic purposes	Inserted Amended Substituted Moved	<a href="#">1988 – No.115</a> <a href="#">1997 – No.142</a> <a href="#">2004 – No.95</a> <a href="#">2008 – No.105</a>	12.2.1989 25.1.1998 1.1.2005 1.1.2009	Children not to be employed for porn purposes - <u>penalty 5y / 7y</u> (child under 14y) Required payment of money or other material things s.91C definition of child as person under 18y applied ‘Employed’ changed to ‘used’ – requirement of payment removed Offence reworded – <u>penalty 10y / 14y</u> (child under 14y) Moved unchanged to new Division 15A Child pornography (see below)
<b>s.91H – Offence</b> Production, dissemination or possession of child pornography	Inserted Moved	<a href="#">2004 – No.95</a> <a href="#">2008 – No.105</a>	1.1.2005 1.1.2009	(2) Produce / disseminate child pornography – <u>penalty 10y</u> (3) Possess child pornography – <u>penalty 5y</u> Includes definitions (note s.91C definition of child as under 18y applied) and defences Moved to new Division 15A Child pornography (see below) and amended

Section	Change	Amending Act	Date of Operation	Summary of Amendments
<b>Division 15A</b> <b>Child abuse material (child pornography)</b>	Inserted Amended	<a href="#">2008 – No.105</a> <a href="#">2010 – No.9</a>	1.1.2009 17.9.2010	Heading inserted as ‘Child pornography’ ‘Child Pornography’ changed to ‘Child abuse material’
<b>s.91FA</b> Definitions	Inserted Amended Amended Amended	<a href="#">2008 – No.105</a> <a href="#">2010 – No.9</a> <a href="#">2018 No.33</a> <a href="#">2018 No.30</a>	1.1.2009 17.9.2010 1.12.2018 1.1.2022	Definition of ‘child’ (changed to under 16y) and ‘material’ (unchanged from s.91C) Definition of ‘data’ added – ‘electronic’ removed from definition of ‘material’ Reference to meaning of ‘child abuse material’ in s.91FB added Definition of ‘young person’ added – of or above 16y and under 18y Added definition of ‘deal’ in relation to child abuse material
<b>s.91FB</b> Child abuse material - meaning	Inserted Amended	<a href="#">2010 – No.9</a> <a href="#">2018 No.29</a>	17.9.2010 21.6.2018	Meaning of ‘child abuse material’ Definition of ‘private parts’ in (4) amended to add “whether bare or covered by underwear” after “anal area” and “or transgender or intersex person identifying as female, whether or not the breasts are sexually developed” after “person”
<b>s.91G - Offence</b> Children not to be used for production of child abuse material	Moved Amended Amended Amended	<a href="#">2008 – No.105</a> <a href="#">2010 – No.9</a> <a href="#">2018 No.33</a> <a href="#">2018 No.30</a>	1.1.2009 17.9.2010 1.12.2018 1.1.2022	Moved unchanged from Div 15 Child prostitution and pornography (see above) Definition of child as under 16y from s.91FA now applies Replaced ‘pornographic purposes’ with ‘child abuse material’ Removed (3) definition of ‘used for pornographic purposes’ Requirement of approval of DPP if proceedings brought against child or young person Added (3)-(3C) – committing offence in circumstance of aggravation: <u>penalty 20y</u>

Section	Change	Amending Act	Date of Operation	Summary of Amendments
<b>s.91H – Offence</b> Production, dissemination or possession of child abuse material	Moved	<a href="#">2008 – No.105</a>	1.1.2009	Moved from Div 15 Child prostitution and pornography (see above)
	Amended	<a href="#">2008 – No.105</a>	1.1.2009	Offence of produce, disseminate and possess combined in (2) – <u>penalty 10y</u> Definition of ‘child pornography’ amended – definition of ‘produce’ added Added (6) to include altered images
	Substituted	<a href="#">2010 – No.9</a>	17.9.2010	Definition of ‘child’ as under 16y from s.91FA now applies Section simplified - defences moved to s.91HA (see below) Offence of produce, disseminate or possess child abuse material – <u>penalty 10y</u> Removed definition and reference to child pornography
	Amended	<a href="#">2018 No.33</a>	1.12.2018	Definition of ‘disseminate’ and ‘produce’ retained – ‘definition’ of possess added Requirement of approval of DPP if proceedings brought against child or young person
<b>s.91HAA</b> Exception	Inserted	<a href="#">2018 No.33</a>	1.12.2018	(Old s.91HAA) Acceptable possession of material by person under 18 years
	Amended	<a href="#">2018 No.30</a>	1.1.2022	Section renumbered unchanged to s.91HB (see below)
<b>s.91HAA - Offence</b> Administer digital platform used to deal with child abuse material	Inserted	<a href="#">2018 No.30</a>	1.1.2022	(New s.91HAA) Administer digital platform intending or aware its is used by another person to deal with child abuse material – <u>penalty 14y</u>
<b>s.91HAB - Offence</b> Encourage use of digital platform to deal with child abuse material	Inserted	<a href="#">2018 No.30</a>	1.1.2022	Encourage use of digital platform intending it be used by another person to deal with child abuse material – <u>penalty 14y</u>
<b>s.91HAC - Offence</b> Provide information about avoiding detection	Inserted	<a href="#">2018 No.30</a>	1.1.2022	Provide information about avoiding detection for offence against ss.91HAA or 91HAB – <u>penalty 14y</u>

Section	Change	Amending Act	Date of Operation	Summary of Amendments
s.91HA Defences	Inserted	<a href="#">2010 – No.9</a>	17.9.2010	Defences moved from s.91H, reworded and expanded
	Amended	<a href="#">2018 No.33</a>	1.12.2018	Added (9)-(12) defence of depiction of self
	Amended	<a href="#">2018 No.30</a>	1.1.2022	Added (1A): defence to s.91HAA of reasonable steps to prevent dealing with child abuse material Expanded availability of defences under (3), (6), (7), (8) to ss.91HAA, 91HAB, 91HAC
s.91HB Exception	Renumbered	<a href="#">2018 No.30</a>	1.1.2022	Renumbered unchanged from s.91HAA (see above)

### ***Amending Acts***

[Crimes \(Child Prostitution\) Amendment Act](#) 1988 No.115 – commenced 12.2.1989

[Crimes Amendment \(Child Pornography\) Act](#) 1995 No.49 – commenced 31.12.1995

[Classifications \(Publications, Films and Computer Games\) Enforcement Act](#) 1995 No.63 – commenced 1.1.1996

[Crimes Amendment \(Child Pornography\) Act](#) 1997 No.142 – commenced 25.1.1998

[Crimes Legislation Further Amendment Act](#) 1998 No.149 – commenced 8.2.1999

[Statute Law \(Miscellaneous Provisions\) Act](#) 2000 No 53 – commenced 29.6.2000

[Criminal Legislation Amendment Act](#) 2001 No.117 – commenced 21.12.2001

[Justice Legislation Repeal and Amendment Act](#) 2001 No.121 – commenced 7.7.2003

[Crimes Amendment \(Child Pornography\) Act](#) 2004 No.95 – commenced 1.1.2005

[Crimes Amendment \(Sexual Offences\) Act](#) 2008 No.105 – commenced 1.1.2009

[Crimes Amendment \(Child Pornography and Abuse Material\) Act](#) 2010 No.9 – commenced 17.9.2010

[Justice Legislation Amendment Act \(No 2\)](#) 2018 No 29 – commenced 21.6.2018

[Criminal Legislation Amendment \(Child Sexual Abuse\) Act](#) 2018 No.33 – commenced 1.12.2018

[Modern Slavery Act](#) 2018 No.30 – commenced 1.1.2022

## Time Chart of Offences

Offence	12.2.1989	13.12.1995	1.1.1996	25.1.1998	1.1.2005	1.1.2009	1.1.2022
<b>Crimes Act</b>							
<u>s.310A</u> Possess child pornography		12m					
<u>s.575B</u> Possess child pornography			12m	2y			
<u>s.578C</u> Publishing indecent articles (including child pornography)				5y			
<u>s.91G</u> Children not to be employed for pornographic purposes / Used for production of child abuse material	5y / 7y				10y / 14y		
<u>s.91G (3)-(3C)</u> Children not to be used for production of child abuse material – aggravated offence							20y
<u>s.91H</u> Produce, disseminate, possess child pornography / child abuse material					10y / 5y	10y	
<u>s.91HAA</u> Administer digital platform used to deal with child abuse material							14y
<u>s.91HAB</u> Encourage use of digital platform to deal with child abuse material							14y
<u>s.91HAC</u> Provide information about avoiding detection							14y