



Combatting Child Sexual Exploitation Legislation Amendment Act 2019

No. 72, 2019

**An Act to amend various laws relating to child
sexual exploitation, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
Schedule 1—Failing to protect children from, or report, child sexual abuse offences		3
	<i>Crimes Act 1914</i>	3
	<i>Criminal Code Act 1995</i>	3
Schedule 2—Possession of child-like sex dolls etc.		13
	<i>Crimes Act 1914</i>	13
	<i>Criminal Code Act 1995</i>	13
	<i>Customs Act 1901</i>	15
	<i>Surveillance Devices Act 2004</i>	16
	<i>Telecommunications (Interception and Access) Act 1979</i>	16
Schedule 3—Possession or control of child abuse material obtained or accessed using a carriage service		17
	<i>Criminal Code Act 1995</i>	17
Schedule 4—Persistent sexual abuse of child outside Australia		19
	<i>Criminal Code Act 1995</i>	19
Schedule 5—Forced marriage		20
	<i>Criminal Code Act 1995</i>	20
Schedule 6—Restricted defence of marriage for child sex offences		22
	<i>Criminal Code Act 1995</i>	22
Schedule 7—Expanding the meaning of child abuse material		24
Part 1—Amendments		24
	<i>Crimes Act 1914</i>	24
	<i>Criminal Code Act 1995</i>	25
	<i>Customs Act 1901</i>	29

<i>Telecommunications (Interception and Access) Act 1979</i>	30
Part 2—Application and transitional provisions	32

<i>ii</i>	<i>Combatting Child Sexual Exploitation Legislation Amendment Act</i>	<i>No. 72, 2019</i>
	<i>2019</i>	



Combating Child Sexual Exploitation Legislation Amendment Act 2019

No. 72, 2019

An Act to amend various laws relating to child sexual exploitation, and for related purposes

[Assented to 17 September 2019]

The Parliament of Australia enacts:

1 Short title

This Act is the *Combating Child Sexual Exploitation Legislation
Amendment Act 2019*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	20 September 2019
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2	Immediately after the commencement of the provisions covered by table item 4.	21 September 2019
4. Schedules 3 to 7	The day after this Act receives the Royal Assent.	21 September 2019

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Failing to protect children from, or report, child sexual abuse offences

Crimes Act 1914

1 After paragraph 15Y(1)(cac)

Insert:

(cad) an offence against Division 273B of the *Criminal Code*
(protection of children);

Criminal Code Act 1995

2 Before paragraph 5(2)(m)

Insert:

(lb) Division 273B (protection of children);

3 Before Division 274 of the *Criminal Code*

Insert:

Division 273B—Protection of children

Subdivision A—Preliminary

273B.1 Definitions

In this Division:

child sexual abuse offence means:

- (a) a Commonwealth child sex offence within the meaning of the *Crimes Act 1914*; or
- (b) a State or Territory registrable child sex offence.

Commonwealth officer means any of the following:

- (a) a Minister;
- (b) a Parliamentary Secretary;
- (c) an individual who holds an appointment under section 67 of the Constitution;

- (d) an APS employee;
- (e) an individual employed by the Commonwealth otherwise than under the *Public Service Act 1999*;
- (f) a member of the Australian Defence Force;
- (g) a member or special member of the Australian Federal Police;
- (h) an individual (other than an official of a registered industrial organisation) who holds or performs the duties of an office established by or under a law of the Commonwealth, other than:
 - (i) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
 - (ii) the *Australian Capital Territory (Self-Government) Act 1988*; or
 - (iii) the *Corporations Act 2001*; or
 - (iv) the *Northern Territory (Self-Government) Act 1978*;
- (i) an officer or employee of a Commonwealth authority;
- (j) an individual who is:
 - (i) a contractor or subcontractor of the Commonwealth or a Commonwealth authority; or
 - (ii) an officer or employee of a contractor or subcontractor of the Commonwealth or a Commonwealth authority; or
 - (iii) assigned to work for the Commonwealth or a Commonwealth authority under a labour hire arrangement;
- (k) an individual (other than an official of a registered industrial organisation) who exercises powers, or performs functions, conferred on the person by or under a law of the Commonwealth, other than:
 - (i) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
 - (ii) the *Australian Capital Territory (Self-Government) Act 1988*; or
 - (iii) the *Corporations Act 2001*; or
 - (iv) the *Northern Territory (Self-Government) Act 1978*; or
 - (v) a provision specified in the regulations;

- (l) an individual who exercises powers, or performs functions, conferred on the individual by or under a law in force in Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands (whether the law is a law of the Commonwealth or a law of the Territory concerned).

State or Territory registrable child sex offence means an offence:

- (a) that a person becomes, or may at any time have become, a person whose name is entered on a child protection offender register (however described) of a State or Territory for committing; and
- (b) in respect of which:
 - (i) a person under 18 was a victim or an intended victim; or
 - (ii) the offending involved child abuse material.

273B.2 Geographical jurisdiction

Section 15.2 (extended geographical jurisdiction—category B) applies to each offence against this Division.

273B.3 Double jeopardy

If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Division in respect of that conduct.

Subdivision B—Offences relating to the protection of children

273B.4 Failing to protect child at risk of child sexual abuse offence

Failing to protect child at risk of child sexual abuse offence

- (1) A person (the ***defendant***) commits an offence if:
 - (a) the defendant is a Commonwealth officer; and
 - (b) there is another person aged under 18 (the ***child***) under the defendant's care, supervision or authority, in the defendant's capacity as a Commonwealth officer; and

- (c) the defendant knows there is a substantial risk that a person (the **potential offender**) will engage in conduct in relation to the child; and
- (d) such conduct, if engaged in, would constitute a child sexual abuse offence; and
- (e) the defendant, because of the defendant's position as a Commonwealth officer, has the actual or effective responsibility to reduce or remove the risk mentioned in paragraph (c); and
- (f) the defendant negligently fails to reduce or remove that risk.

Penalty: Imprisonment for 5 years.

Absolute liability

- (2) Absolute liability applies to paragraph (1)(d).

Note: For absolute liability, see section 6.2.

Certain matters not required to be proved

- (3) Subsection (1) applies:
- (a) whether or not the child can be identified as a specific person; and
 - (b) whether or not the potential offender can be identified as a specific person; and
 - (c) whether or not a child sexual abuse offence is or was actually committed in relation to the child.

273B.5 Failing to report child sexual abuse offence

Offence based on reasonable belief

- (1) A person (the **defendant**) commits an offence if:
- (a) the defendant is a Commonwealth officer; and
 - (b) there is another person aged under 18 (the **child**) under the care or supervision of the defendant, in the defendant's capacity as a Commonwealth officer; and
 - (c) the defendant knows of information that would lead a reasonable person to believe that a person (the **potential offender**):
-

- (i) has engaged in conduct in relation to the child; or
- (ii) will engage in conduct in relation to the child; and
- (d) such conduct, if engaged in, would constitute a child sexual abuse offence; and
- (e) the defendant fails to disclose the information, as soon as practicable after coming to know it, to:
 - (i) the police force or police service of a State or Territory; or
 - (ii) the Australian Federal Police.

Penalty: Imprisonment for 3 years.

Offence based on reasonable suspicion

- (2) A person (the **defendant**) commits an offence if:
- (a) the defendant is a Commonwealth officer; and
 - (b) there is another person aged under 18 (the **child**) under the care or supervision of the defendant, in the defendant's capacity as a Commonwealth officer; and
 - (c) the defendant knows of information that would lead a reasonable person to suspect that a person (the **potential offender**):
 - (i) has engaged in conduct in relation to the child; or
 - (ii) will engage in conduct in relation to the child; and
 - (d) such conduct, if engaged in, would constitute a child sexual abuse offence; and
 - (e) the defendant fails to disclose the information, as soon as practicable after coming to know it, to:
 - (i) the police force or police service of a State or Territory; or
 - (ii) the Australian Federal Police.

Penalty: Imprisonment for 2 years.

Absolute liability

- (3) Absolute liability applies to paragraphs (1)(d) and (2)(d).

Note: For absolute liability, see section 6.2.

Defences

- (4) Subsection (1) or (2) does not apply if:
- (a) the defendant reasonably believes that the information is already known:
 - (i) to the police force or police service of a State or Territory; or
 - (ii) to the Australian Federal Police; or
 - (iii) to a person or body to which disclosure of such information is required by a scheme established under, or for the purposes of, a law of a State or Territory, or of a foreign country (or part of a foreign country); or
 - (b) the defendant has disclosed the information to a person or body for the purposes of a scheme mentioned in subparagraph (a)(iii); or
 - (c) the defendant reasonably believes that the disclosure of the information would put at risk the safety of any person, other than the potential offender; or
 - (d) the information is in the public domain.

Note: A defendant bears an evidential burden in relation to a matter in this subsection: see subsection 13.3(3).

- (5) An individual is not excused from failing to disclose information as mentioned in paragraph (1)(e) or (2)(e) on the ground that disclosing the information might tend to incriminate the individual or otherwise expose the individual to a penalty or other liability.

Note: For the admissibility in evidence of such information if disclosed in the course of protected conduct, and any information obtained as an indirect consequence, see subsections 273B.9(10) and (11).

Certain matters not required to be proved

- (6) Subsection (1) or (2) applies:
- (a) whether or not the child can be identified as a specific person; and
 - (b) whether or not any person actually believes or suspects the matter mentioned in paragraph (1)(c) or (2)(c); and
 - (c) whether or not the potential offender can be identified as a specific person; and

- (d) whether or not a child sexual abuse offence is or was actually committed in relation to the child.

Alternative verdict

- (7) If, on a trial of a person for an offence against subsection (1), the trier of fact:
- (a) is not satisfied that the person is guilty of the offence against that subsection; and
 - (b) is satisfied beyond reasonable doubt that the person is guilty of an offence against subsection (2);
- it may find the person not guilty of the offence against subsection (1) but guilty of the offence against subsection (2).
- (8) Subsection (7) only applies if the person has been accorded procedural fairness in relation to the finding of guilt for the offence against subsection (2).

Subdivision C—Rules about conduct of trials

273B.6 Consent to commence proceedings

- (1) Proceedings for an offence against this Division must not be commenced without the consent of the Attorney-General.
- (2) However, a person may be arrested for, charged with, or remanded in custody or on bail in connection with, such an offence before the necessary consent has been given.

273B.7 Evidence relating to a person's age

- (1) In determining for the purposes of this Division how old a person is or was at a particular time, the trier of fact may have regard to any of the following matters:
 - (a) the person's appearance;
 - (b) medical or other scientific opinion;
 - (c) a document that is or appears to be an official or medical record from a country outside Australia;
 - (d) a document that is or appears to be a copy of such a record.

- (2) Subsection (1) does not make any other kind of evidence inadmissible, and does not affect a prosecutor's duty to do all the prosecutor can to adduce the best possible evidence for determining the question.
- (3) If, on a trial by jury for an offence against this Division, regard may be had to a matter because of subsection (1), the court must warn the jury that it must be satisfied beyond reasonable doubt in determining the question.

Subdivision D—Relationship with other laws

273B.8 Relationship with State and Territory laws

This Division applies to the exclusion of a law, or a provision of a law, of a State or Territory that has the effect of making a person liable to be prosecuted for an offence against any law for failing to:

- (a) reduce or remove a risk of a child being subjected to conduct constituting a child sexual abuse offence; or
- (b) disclose to a police force or a police service information relating to whether a person has engaged, or will engage, in conduct constituting a child sexual abuse offence;

to the extent that the law or provision would otherwise apply in relation to conduct in which the person engages in the person's capacity as a Commonwealth officer.

273B.9 Protection from other laws etc. for complying with this Division

Scope

- (1) A person engages in ***protected conduct*** if the person:
 - (a) engages in conduct in avoidance, or purported avoidance, of liability for an offence against this Division; and
 - (b) the conduct is genuine and proportionate for that purpose.
- (2) This section does not apply to liability in any civil, criminal or administrative proceedings (including disciplinary proceedings) (***relevant proceedings***) for knowingly making a statement that is false or misleading.

- (3) Without limiting subsection (2), this section does not apply to liability for an offence against any of the following provisions:
 - (a) section 137.1 (false or misleading information);
 - (b) section 137.2 (false or misleading documents);
 - (c) section 144.1 (forgery);
 - (d) section 145.1 (using forged document).
- (4) This section does not prevent a person from being liable in any relevant proceedings for conduct of the person that is revealed by a disclosure of information.

Protection against liability for engaging in protected conduct

- (5) If a person engages in protected conduct:
 - (a) the person is not subject to any liability in relevant proceedings for engaging in the protected conduct; and
 - (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the protected conduct being engaged in; and
 - (c) the person is not to be considered to have breached any professional ethics in respect of the protected conduct.
- (6) **Professional ethics** includes the following (without limitation):
 - (a) rules of professional conduct;
 - (b) rules of professional etiquette;
 - (c) a code of ethics;
 - (d) standards of professional conduct.
- (7) Without limiting subsection (5):
 - (a) if the person engages in protected conduct by disclosing information, the person:
 - (i) has qualified privilege in proceedings for defamation relating to the disclosure; and
 - (ii) is not liable to an action for defamation at the suit of another person relating to the disclosure; and
 - (b) a contract to which the person is a party may not be terminated on the basis that the protected conduct constitutes a breach of the contract.

- (8) Paragraphs (5)(a) and (7)(a) do not affect any other right, privilege or immunity the person has as a defendant in proceedings, or an action, for defamation.
- (9) Without limiting paragraphs (5)(b) and (7)(b), if a court is satisfied that:
- (a) a person (the *employee*) is employed in a particular position under a contract of employment with another person (the *employer*); and
 - (b) the employee engages in protected conduct; and
 - (c) the employer purports to terminate the contract of employment on the basis of the person engaging in protected conduct being engaged in;
- the court may:
- (d) order that the employee be reinstated in that position or a position at a comparable level; or
 - (e) order the employer to pay the employee an amount instead of reinstating the employee, if the court considers it appropriate to make the order.

Admissibility of evidence

- (10) If an individual engages in protected conduct by disclosing information, the information is not admissible in evidence against the individual in relation to liability in any relevant proceedings.
- (11) To avoid doubt, this section does not affect the admissibility of evidence in any relevant proceedings of any information obtained as an indirect consequence of a disclosure of information that constitutes protected conduct.

4 At the end of section 279.1 of the *Criminal Code*

Add:

- ; (e) Division 273B (protection of children).

5 Application

Subparagraphs 273B.5(1)(c)(i) and (2)(c)(i) of the *Criminal Code*, as inserted by this Schedule, apply in relation to conduct engaged in on or after the commencement of this item.

Schedule 2—Possession of child-like sex dolls etc.

Crimes Act 1914

1 Subsection 3(1) (after subparagraph (a)(ii) of the definition of *Commonwealth child sex offence*)

Insert:

(ia) Division 273A (Possession of child-like sex dolls etc.);

2 After paragraph 15GE(3)(a)

Insert:

(aa) Division 273A (Possession of child-like sex dolls etc.);

Criminal Code Act 1995

3 After paragraph 5(2)(l)

Insert:

(la) Division 273A (possession of child-like sex dolls etc.);

4 After Division 273 of the *Criminal Code*

Insert:

Division 273A—Possession of child-like sex dolls etc.

273A.1 Possession of child-like sex dolls etc.

A person commits an offence if:

- (a) the person possesses a doll or other object; and
- (b) the doll or other object resembles:
 - (i) a person who is, or appears to be, under 18 years of age;
or
 - (ii) a part of the body of such a person; and
- (c) a reasonable person would consider it likely that the doll or other object is intended to be used by a person to simulate sexual intercourse.

Penalty: Imprisonment for 15 years.

273A.2 Defences

- (1) A person is not criminally responsible for an offence against this Division because of engaging in particular conduct if the conduct:
- (a) is of public benefit; and
 - (b) does not extend beyond what is of public benefit.

In determining whether the person is, under this subsection, not criminally responsible for the offence, the question whether the conduct is of public benefit is a question of fact and the person's motives in engaging in the conduct are irrelevant.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3).

- (2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:
- (a) enforcing a law of the Commonwealth, a State or a Territory; or
 - (b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or
 - (c) the administration of justice; or
 - (d) conducting scientific, medical or educational research that has been approved by the AFP Minister in writing for the purposes of this section.
- (3) A person is not criminally responsible for an offence against this Division if:
- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of the officer's duties; and
 - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3).

- (4) An expression used in this section that is defined in Part 10.6 has the same meaning in this section as it has in that Part.

Note: These expressions include *AFP Minister*, *intelligence or security officer* and *law enforcement officer*.

273A.3 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

5 Application provision

Section 273A.1 of the *Criminal Code*, as in force on and after the commencement of this item, applies in relation to a doll or other object possessed on or after that commencement (whether the doll or other object was obtained before, on or after that commencement).

6 Section 473.1 of the *Criminal Code* (at the end of the definition of *child abuse material*)

Add:

- ; or (g) material that is a doll or other object that resembles:
 - (i) a person who is, or appears to be, under 18 years of age;
or
 - (ii) a part of the body of such a person;
if a reasonable person would consider it likely that the material is intended to be used by a person to simulate sexual intercourse.

Customs Act 1901

7 At the end of subsection 233BAB(4)

Add:

- ; or (g) that is a doll or other object that resembles:
 - (i) a person who is, or appears to be, under 18 years of age;
or
 - (ii) a part of the body of such a person;
if a reasonable person would consider it likely that the doll or other object is intended to be used by a person to simulate sexual intercourse (within the meaning of the *Criminal Code*).

Surveillance Devices Act 2004

8 Subparagraphs 30(1)(a)(viii) and (1A)(a)(iv)

Omit “or 273”, substitute “, 273 or 273A”.

Telecommunications (Interception and Access) Act 1979

9 Paragraph 5D(3B)(a)

Omit “or 273”, substitute “, 273 or 273A”.

Schedule 3—Possession or control of child abuse material obtained or accessed using a carriage service

Criminal Code Act 1995

1 After section 474.22 of the *Criminal Code*

Insert:

474.22A Possessing or controlling child abuse material obtained or accessed using a carriage service

- (1) A person commits an offence if:
- (a) the person has possession or control of material; and
 - (b) the material is in the form of data held in a computer or contained in a data storage device; and
 - (c) the person used a carriage service to obtain or access the material; and
 - (d) the material is child abuse material.

Penalty: Imprisonment for 15 years.

- (2) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2.

- (3) If the prosecution proves beyond reasonable doubt the matters mentioned in paragraphs (1)(a), (b) and (d), then it is presumed, unless the person proves to the contrary, that the person:
- (a) obtained or accessed the material; and
 - (b) used a carriage service to obtain or access the material.

Note: A defendant bears a legal burden in relation to the matters in this subsection: see section 13.4.

2 Subsections 474.24(1), (3) and (4) of the *Criminal Code*

Omit “474.22 (using a carriage service for child abuse material) or 474.23 (possessing etc. child abuse material for use through a carriage service)”, substitute “474.22, 474.22A or 474.23”.

3 After subparagraph 474.24A(1)(a)(iii) of the *Criminal Code*

Insert:

- (iia) section 474.22A (possessing or controlling child abuse material obtained or accessed using a carriage service);

4 Subsections 474.24A(2), (3), (5) and (7) of the *Criminal Code*

After “474.22”, insert “, 474.22A”.

5 Paragraph 474.24B(b) of the *Criminal Code*

After “474.22”, insert “, 474.22A”.

Schedule 4—Persistent sexual abuse of child outside Australia

Criminal Code Act 1995

1 Subsection 272.11(1) of the *Criminal Code*

Omit “3 or more”, substitute “2 or more”.

2 Paragraph 272.11(7)(a) of the *Criminal Code*

Omit “3 separate occasions”, substitute “2 separate occasions”.

3 Paragraph 272.11(7)(b) of the *Criminal Code*

Omit “3 such occasions”, substitute “2 such occasions”.

4 Paragraph 272.11(7)(c) of the *Criminal Code*

Repeal the paragraph, substitute:

- (c) if the trier of fact is a jury and more than 2 such occasions are relied on as evidence of the commission of an offence against this section—all the members of the jury must be so satisfied about the same 2 occasions.

5 Application of amendments

Section 272.11 of the *Criminal Code*, as amended by this Schedule, applies in relation to a charge for an offence against that section that specifies a period under subsection (6) of that section starting on or after the commencement of this item.

Schedule 5—Forced marriage

Criminal Code Act 1995

1 Subsection 270.7A(1) of the *Criminal Code*

Repeal the subsection, substitute:

- (1) A marriage is a *forced marriage* if:
 - (a) either party to the marriage (the *victim*) entered into the marriage without freely and fully consenting:
 - (i) because of the use of coercion, threat or deception; or
 - (ii) because the victim was incapable of understanding the nature and effect of the marriage ceremony; or
 - (b) when the marriage was entered into, either party to the marriage (the *victim*) was under 16.

2 Subsection 270.7A(3) of the *Criminal Code*

Omit “Paragraph (1)(a)”, substitute “Subparagraph (1)(a)(i)”.

3 Subsection 270.7A(4) of the *Criminal Code*

Repeal the subsection (including the note).

4 At the end of section 270.7B of the *Criminal Code*

Add:

Consent to commence proceedings if defendant under 18

- (5) Proceedings for an offence against subsection (1) or (2) must not be commenced without the consent of the Attorney-General if the defendant was under 18 at the time the defendant allegedly engaged in the conduct constituting the offence.
- (6) However, a person may be arrested for, charged with or remanded in custody or on bail in connection with, such an offence before the necessary consent has been given.

5 At the end of subsection 270.8(1) of the *Criminal Code*

Add:

Note: In the case of a slavery-like offence against section 270.7B involving a marriage that is a forced marriage because the victim was under 16 when the marriage was entered into (see paragraph 270.7A(1)(b)), the offence is also an aggravated offence because of paragraph (a) of this subsection.

Schedule 6—Restricted defence of marriage for child sex offences

Criminal Code Act 1995

1 Section 272.17 of the *Criminal Code*

Repeal the section, substitute:

272.17 Defence based on valid and genuine marriage

It is a defence to a prosecution for an offence against subsection 272.12(1) or 272.13(1) if the defendant proves that:

- (a) at the time of the sexual intercourse or sexual activity, there existed between the defendant and the young person a marriage that was valid, or recognised as valid, under the law of:
 - (i) the place where the marriage was solemnised; or
 - (ii) the place where the sexual intercourse or sexual activity is alleged to have taken place; or
 - (iii) the place of the defendant's residence or domicile; and
- (b) when the marriage was solemnised:
 - (i) the marriage was genuine; and
 - (ii) the young person had attained the age of 16 years.

Note 1: A defendant bears a legal burden in relation to the matter in this section: see section 13.4.

Note 2: Subsection 272.12(1) deals with engaging in sexual intercourse with a young person outside Australia. Subsection 272.13(1) deals with engaging in sexual activity (other than sexual intercourse) with a young person outside Australia. Both offences apply to defendants in a position of trust or authority in relation to the young person concerned.

2 Saving provision

Despite the repeal of section 272.17 of the *Criminal Code* by this Schedule, that section, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to offences alleged to have been committed before that commencement.

Schedule 7—Expanding the meaning of child abuse material

Part 1—Amendments

Crimes Act 1914

1 Subsection 3(1) (definition of *child pornography material*)

Repeal the definition.

2 Subsection 3(1) (subparagraph (a)(ii) of the definition of *Commonwealth child sex offence*)

Omit “child pornography material or”.

3 Subsection 3(1) (subparagraphs (a)(iii) and (iv) of the definition of *Commonwealth child sex offence*)

Omit “child pornography material,”.

4 Subsection 3(1) (note to the definition of *Commonwealth child sex offence*)

Repeal the note.

5 Paragraph 15GE(2)(w)

Repeal the paragraph, substitute:

(w) dealings in child abuse material;

6 Paragraphs 15GE(3)(b) and (d)

Omit “child pornography material or”.

7 Paragraph 15Y(1)(cac)

Omit “child pornography material or”.

8 Part IE (heading)

Repeal the heading, substitute:

Part IE—Forfeiture of child abuse material

9 Paragraph 23ZA(b)

Repeal the paragraph.

10 Paragraph 23ZA(c)

Omit “or child pornography material”.

11 Subparagraph 23ZC(1)(c)(ii)

Omit “or child pornography material”.

Criminal Code Act 1995

12 Paragraph 5(2)(l)

Omit “child pornography material or”.

13 Division 273 of the *Criminal Code* (heading)

Repeal the heading, substitute:

Division 273—Offences involving child abuse material outside Australia

14 Subsection 273.1(1) of the *Criminal Code* (note)

Repeal the note, substitute:

Note: One of those expressions is *child abuse material*.

15 Subdivision B of Division 273 of the *Criminal Code* (heading)

Repeal the heading, substitute:

Subdivision B—Offences committed overseas involving child abuse material

16 Section 273.5 of the *Criminal Code*

Repeal the section.

17 Paragraph 273.7(1)(a) of the *Criminal Code*

Repeal the paragraph, substitute:

- (a) the person commits an offence against section 273.6 (possessing etc. child abuse material outside Australia) on 3 or more separate occasions; and

18 Subsections 273.7(2), (3), (5) and (7) of the *Criminal Code*

Omit “273.5 or”.

19 Section 273.8 of the *Criminal Code*

Omit “273.5 or” (wherever occurring).

20 Subsections 273.9(1), (4) and (5) of the *Criminal Code*

Omit “273.5 or”.

21 Paragraph 279.1(d) of the *Criminal Code*

Omit “child pornography material or”.

22 Subsection 470.4(1) of the *Criminal Code* (note)

Repeal the note, substitute:

Note: One of those expressions is *child abuse material*.

23 Subdivision B of Division 471 of the *Criminal Code* (heading)

Repeal the heading, substitute:

Subdivision B—Offences relating to use of postal or similar service for child abuse material

24 Sections 471.16, 471.17 and 471.18 of the *Criminal Code*

Repeal the sections.

25 Paragraph 471.22(1)(a) of the *Criminal Code*

Omit “one or more”, substitute “either”.

26 Subparagraphs 471.22(1)(a)(i) and (ii) of the *Criminal Code*

Repeal the subparagraphs.

27 Subsections 471.22(2), (3), (5) and (7) of the *Criminal Code*

Omit “471.16, 471.17.”.

28 Paragraph 471.23(b) of the *Criminal Code*

Omit “471.16, 471.17.”.

29 Section 473.1 of the *Criminal Code* (at the end of the definition of *child abuse material*)

Add:

; or (c) material that depicts a person, or a representation of a person, who is, or appears to be, under 18 years of age and who:

(i) is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or

(ii) is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(d) material the dominant characteristic of which is the depiction, for a sexual purpose, of:

(i) a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; or

(ii) a representation of such a sexual organ or anal region; or

(iii) the breasts, or a representation of the breasts, of a female person who is, or appears to be, under 18 years of age;

in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(e) material that describes a person who is, or is implied to be, under 18 years of age and who:

(i) is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or

(ii) is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(f) material that describes:

(i) a sexual organ or the anal region of a person who is, or is implied to be, under 18 years of age; or

(ii) the breasts of a female person who is, or is implied to be, under 18 years of age;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.

30 Section 473.1 of the *Criminal Code* (definition of *child pornography material*)

Repeal the definition.

31 Section 473.1 of the *Criminal Code* (note to the definition of *private sexual material*)

Repeal the note, substitute:

Note: For material that relates to a person who is, or appears to be, under 18 years of age, see:

(a) the definition of *child abuse material*; and

(b) the offences relating to child abuse material in Subdivision D.

32 Subdivision D of Division 474 of the *Criminal Code* (heading)

Repeal the heading, substitute:

Subdivision D—Offences relating to use of carriage service for child abuse material

33 Sections 474.19, 474.20 and 474.21 of the *Criminal Code*

Repeal the sections.

34 Subparagraphs 474.24A(1)(a)(i) and (ii) of the *Criminal Code*

Repeal the subparagraphs.

35 Subsections 474.24A(2), (3), (5) and (7) of the *Criminal Code*

Omit “474.19, 474.20.”.

36 Paragraph 474.24B(b) of the *Criminal Code*

Omit “474.19, 474.20.”.

37 Paragraph 474.25(b) of the *Criminal Code*

Repeal the paragraph, substitute:

- (b) is aware that the service provided by the person can be used to access particular material that the person has reasonable grounds to believe is child abuse material; and

Customs Act 1901

38 Paragraph 233BAB(1)(h)

Omit “child pornography or of”.

39 Subsection 233BAB(3)

Repeal the subsection.

40 At the end of subsection 233BAB(4)

Add:

- ; or (c) that depicts a person, or a representation of a person, who is, or appears to be, under 18 years of age and who:
 - (i) is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or
 - (ii) is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity;and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
- (d) the dominant characteristic of which is the depiction, for a sexual purpose, of:
 - (i) a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; or

- (ii) a representation of such a sexual organ or anal region;
or
- (iii) the breasts, or a representation of the breasts, of a female person who is, or appears to be, under 18 years of age;
in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
- (e) that describes a person who is, or is implied to be, under 18 years of age and who:
 - (i) is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or
 - (ii) is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity;and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
- (f) that describes:
 - (i) a sexual organ or the anal region of a person who is, or is implied to be, under 18 years of age; or
 - (ii) the breasts of a female person who is, or is implied to be, under 18 years of age;and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.

41 Subsection 233BAB(4A)

Omit “subsections (3) and (4)”, substitute “subsection (4)”.

Telecommunications (Interception and Access) Act 1979

42 Subsection 5D(3B) (heading)

Repeal the heading, substitute:

Sexual offences against children and offences involving child abuse material or harm to children

43 Subparagraph 5D(3B)(b)(i)

Omit “child pornography”, substitute “child abuse material (within the meaning of Part 10.6 of the *Criminal Code*)”.

44 Subparagraph 5D(3B)(b)(ii)

Omit “child pornography”, substitute “such material”.

Part 2—Application and transitional provisions

45 Controlled operations

Paragraph 15GE(2)(w) of the *Crimes Act 1914*, as in force on and after the commencement of this item, applies in relation to a controlled operation authorised on or after that commencement (whether the offence was committed before, on or after that commencement).

46 Serious offences—*Telecommunications (Interception and Access) Act 1979*

Subsection 5D(3B) of the *Telecommunications (Interception and Access) Act 1979*, as in force on and after the commencement of this item, applies in relation to an offence committed on or after that commencement.

47 Aggravated offences involving conduct on 3 or more occasions and 2 or more people

The following table has effect:

Transitional—aggravated offences involving conduct on 3 or more occasions and 2 or more people			
Item	This provision of the <i>Criminal Code</i> has effect at and after the time this item commences ...	as if a reference in the provision to this provision of that Code ...	included a reference to this provision of that Code, as in force immediately before that time ...
1	sections 273.7 and 273.8	section 273.6	section 273.5
2	sections 471.22 and 471.23	section 471.19	section 471.16
3	sections 471.22 and 471.23	section 471.20	section 471.17
4	sections 474.24A and 474.24B	section 474.22	section 474.19
5	sections 474.24A and 474.24B	section 474.23	section 474.20

48 Section 7 of the *Acts Interpretation Act 1901* not limited

This Part does not limit the operation of section 7 of the *Acts Interpretation Act 1901*.

[*Minister's second reading speech made in—
House of Representatives on 24 July 2019
Senate on 12 September 2019*]

(146/19)
