





# **Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020**

**No. 70, 2020**

**An Act to amend legislation relating to the criminal  
law, and for related purposes**

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



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*No. 70, 2020 Crimes Legislation Amendment (Sexual Crimes Against Children and  
Community Protection Measures) Act 2020*

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# **Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020**

**No. 70, 2020**

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**An Act to amend legislation relating to the criminal law, and for related purposes**

*[Assented to 22 June 2020]*

The Parliament of Australia enacts:

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*No. 70, 2020      Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020      1*

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## 1 Short title

This Act is the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020*.

## 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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	22 June 2020
2. Schedules 1 and 2	The day after this Act receives the Royal Assent.	23 June 2020
3. Schedule 3	The 28th day after this Act receives the Royal Assent.	20 July 2020
4. Schedule 4, Part 1	The day after this Act receives the Royal Assent.	23 June 2020
5. Schedule 4, Part 2	The later of: (a) immediately after the commencement of the provisions covered by table item 4; and (b) the commencement of Schedule 3 to the <i>Combatting Child Sexual Exploitation Legislation Amendment Act 2019</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	23 June 2020 (paragraph (a) applies)
6. Schedule 5	The day after this Act receives the Royal Assent.	23 June 2020

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
7. Schedule 6, Parts 1 and 2	The day after this Act receives the Royal Assent.	23 June 2020
8. Schedule 6, Part 3, Division 1	The later of: (a) immediately after the commencement of the provisions covered by table item 7; and (b) the commencement of Schedule 2 to the <i>Combatting Child Sexual Exploitation Legislation Amendment Act 2019</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	23 June 2020 (paragraph (a) applies)
9. Schedule 6, Part 3, Division 2	The later of: (a) immediately after the commencement of the provisions covered by table item 7; and (b) the commencement of Schedule 3 to the <i>Combatting Child Sexual Exploitation Legislation Amendment Act 2019</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	23 June 2020 (paragraph (a) applies)
10. Schedule 7, Part 1, Division 1	The day after this Act receives the Royal Assent.	23 June 2020
11. Schedule 7, Part 1, Division 2	The later of: (a) immediately after the commencement of the provisions covered by table item 10; and (b) the commencement of Schedule 1 to the <i>Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Act 2019</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	23 June 2020 (paragraph (a) applies)

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
12. Schedule 7, Part 2	The day after this Act receives the Royal Assent.	23 June 2020
13. Schedule 8	The 28th day after this Act receives the Royal Assent.	20 July 2020
14. Schedules 9 to 12	The day after this Act receives the Royal Assent.	23 June 2020
15. Schedule 13	The 28th day after this Act receives the Royal Assent.	20 July 2020
16. Schedules 14 and 15	The day after this Act receives the Royal Assent.	23 June 2020

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—Revocation of parole order or licence to protect safety**

### ***Crimes Act 1914***

#### **1 After paragraph 19AU(3)(b)**

Insert:

- (ba) in the opinion of the Attorney-General it is necessary to revoke the parole order or licence without giving notice to the person in the interests of ensuring the safety and protection of the community or of another person; or

#### **2 Application provision**

The amendment made by this Schedule applies in relation to a revocation made on or after the commencement of this Schedule (whether the parole order was made, or the licence was granted, before, on or after that commencement).

## Schedule 2—Use of video recordings

### *Crimes Act 1914*

#### **1 Subsection 15YM(1)**

Repeal the subsection, substitute:

- (1) A video recording of an interview of a person to whom subsection (1A) applies in a proceeding may be admitted as evidence in chief if a constable, or a person of a kind specified in the regulations, conducted the interview.

#### **2 Subsections 15YM(2) and (3)**

Repeal the subsections.

#### **3 Application and saving provisions**

- (1) The amendments made by this Schedule apply in relation to proceedings begun on or after the commencement of this Schedule.
- (2) A regulation made for the purposes of paragraph 15YM(1)(a) of the *Crimes Act 1914* and in force immediately before the commencement of this Schedule has effect, on and after that commencement, as if it had been made for the purposes of subsection 15YM(1) of that Act, as amended by this Schedule.

## **Schedule 3—Cross-examination of vulnerable persons at committal proceedings**

### *Crimes Act 1914*

#### **1 After paragraph 15YAB(3)(b)**

Insert:

(ba) section 15YHA (about cross-examinations at committal proceedings);

#### **2 At the end of subsection 15YF(1)**

Add:

Note: A person is not to cross-examine certain persons at committal proceedings or proceedings of a similar kind—see section 15YHA.

#### **3 At the end of subsection 15YG(1)**

Add:

Note: A person is not to cross-examine certain persons at committal proceedings or proceedings of a similar kind—see section 15YHA.

#### **4 At the end of subsection 15YH(1)**

Add:

Note: A person is not to cross-examine certain persons at committal proceedings or proceedings of a similar kind—see section 15YHA.

#### **5 At the end of Division 3 of Part IAD**

Add:

#### **15YHA Committal proceedings—cross-examination of vulnerable persons**

- (1) A person is not to cross-examine, at committal proceedings or proceedings of a similar kind, a person to whom subsection (2) applies.
- (2) This subsection applies to the following persons:
  - (a) for a child proceeding—a child witness;

- (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
- (c) for a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section.

**6 Subsection 15YM(4)**

Omit “The”, substitute “Subject to Division 3, the”.

**7 Subsection 15YM(4) (note)**

Omit “Note”, substitute “Note 1”.

**8 At the end of subsection 15YM(4)**

Add:

Note 2: Division 3 imposes limitations on cross-examinations. For example, a person is not to cross-examine certain persons at committal proceedings or proceedings of a similar kind—see section 15YHA.

**9 Application provision**

The amendments made by this Schedule apply in relation to proceedings begun on or after the commencement of this Schedule.

## **Schedule 4—Strengthening child sex offences**

### **Part 1—Main amendments**

#### ***Criminal Code Act 1995***

##### **1 After paragraph 272.5(3)(b) of the *Criminal Code***

Insert:

- (ba) section 272.15A (“grooming” person to make it easier to engage in sexual activity with a child outside Australia); or

##### **2 Subsection 272.9(1) of the *Criminal Code* (before the penalty)**

Insert:

- Note: A person is taken to engage in sexual activity if the person is in the presence of another person (including by a means of communication that allows the person to see or hear the other person) while the other person engages in sexual activity: see the definition of *engage in sexual activity* in the Dictionary.

##### **3 Section 272.10 of the *Criminal Code* (heading)**

Repeal the heading, substitute:

##### **272.10 Aggravated offence—sexual intercourse or other sexual activity with child outside Australia**

##### **4 Paragraph 272.10(1)(b) of the *Criminal Code***

Repeal the paragraph, substitute:

- (b) one or more of the following apply:
  - (i) the child has a mental impairment at the time the person commits the underlying offence;
  - (ii) the person is in a position of trust or authority in relation to the child, or the child is otherwise under the care, supervision or authority of the person, at the time the person commits the underlying offence;

- (iii) the child is subjected to cruel, inhuman or degrading treatment in connection with the sexual activity referred to in subsection 272.8(1) or (2) or 272.9(1) or (2);
- (iv) the child dies as a result of physical harm suffered in connection with the sexual activity referred to in subsection 272.8(1) or (2) or 272.9(1) or (2).

## 5 Subsection 272.13(1) of the *Criminal Code* (before the penalty)

Insert:

Note: A person is taken to engage in sexual activity if the person is in the presence of another person (including by a means of communication that allows the person to see or hear the other person) while the other person engages in sexual activity: see the definition of *engage in sexual activity* in the Dictionary.

## 6 After section 272.15 of the *Criminal Code*

Insert:

### 272.15A “Grooming” person to make it easier to engage in sexual activity with a child outside Australia

- (1) A person (the *defendant*) commits an offence if:
  - (a) the defendant engages in conduct in relation to another person (the *third party*); and
  - (b) the defendant does so with the intention of making it easier to procure a person (the *child*) to engage in sexual activity (whether or not with the defendant) outside Australia; and
  - (c) the child is someone:
    - (i) who is under 16; or
    - (ii) who the defendant believes to be under 16; and
  - (d) one or more of the following apply:
    - (i) the conduct referred to in paragraph (a) occurs wholly or partly outside Australia;
    - (ii) the third party or the child (or both) is outside Australia when the conduct referred to in paragraph (a) occurs;
    - (iii) the conduct referred to in paragraph (a) occurs wholly in Australia and both the third party and the child are in Australia when that conduct occurs.

Penalty: Imprisonment for 15 years.

- (2) Absolute liability applies to subparagraph (1)(c)(i) and paragraph (1)(d).

Note 1: For absolute liability, see section 6.2.

Note 2: For a defence based on belief about age, see section 272.16.

- (3) A person may be found guilty of an offence against subsection (1) even if it is impossible for the sexual activity referred to in that subsection to take place.
- (4) For the purposes of subsection (1), it does not matter that the third party or the child is a fictitious person represented to the person as a real person.

### **7 Subsection 272.16(3) of the *Criminal Code* (heading)**

Repeal the heading, substitute:

*Procuring and “grooming” offences—belief that child at least 16*

### **8 Subsection 272.16(3) of the *Criminal Code***

Omit “or 272.15”, substitute “, 272.15 or 272.15A”.

### **9 After section 471.25 of the *Criminal Code***

Insert:

#### **471.25A Using a postal or similar service to “groom” another person to make it easier to procure persons under 16**

- (1) A person (the *sender*) commits an offence if:
- (a) the sender causes an article to be carried by a postal or similar service to another person (the *recipient*); and
  - (b) the sender does this with the intention of making it easier to procure a person (the *child*) to engage in sexual activity with the sender; and
  - (c) the child is someone who is, or who the sender believes to be, under 16; and
  - (d) the sender is at least 18.

Penalty: Imprisonment for 15 years.

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- (2) A person (the *sender*) commits an offence if:
- (a) the sender causes an article to be carried by a postal or similar service to another person (the *recipient*); and
  - (b) the sender does this with the intention of making it easier to procure a person (the *child*) to engage in sexual activity with another person (the *participant*); and
  - (c) the child is someone who is, or who the sender believes to be, under 16; and
  - (d) the participant is someone who is, or who the sender believes to be, at least 18.

Penalty: Imprisonment for 15 years.

- (3) A person (the *sender*) commits an offence if:
- (a) the sender causes an article to be carried by a postal or similar service to another person (the *recipient*); and
  - (b) the sender does this with the intention of making it easier to procure a person (the *child*) to engage in sexual activity with another person; and
  - (c) the child is someone who is, or who the sender believes to be, under 16; and
  - (d) the other person referred to in paragraph (b) is someone who is, or who the sender believes to be, under 18; and
  - (e) the sender intends that the sexual activity referred to in paragraph (b) will take place in the presence of:
    - (i) the sender; or
    - (ii) another person (the *participant*) who is, or who the sender believes to be, at least 18.

Penalty: Imprisonment for 15 years.

#### **10 Subsection 471.27(1) of the *Criminal Code***

After “Subdivision”, insert “(other than section 471.25A)”.

#### **11 After subsection 471.27(1) of the *Criminal Code***

Insert:

- (1A) For the purposes of an offence against section 471.25A, absolute liability applies to the physical element of circumstance of the offence that the child is someone who is under 16.

Note 1: For absolute liability, see section 6.2.

Note 2: For a defence based on belief about age, see section 471.29.

**12 Subsection 471.27(2) of the *Criminal Code***

Omit “or 471.25(2) or (3)”, substitute “, 471.25(2) or (3) or 471.25A(2) or (3)”.

**13 Subsections 471.27(3) and (4) of the *Criminal Code***

Repeal the subsections, substitute:

*Proof of belief about age—evidence of representation*

- (3) For the purposes of this Subdivision, evidence that a person was represented to the defendant as being under, of, at least or over a particular age is, in the absence of evidence to the contrary, proof that the defendant believed the person to be under, of, at least or over that age (as the case requires).

**14 Subsection 471.28(1) of the *Criminal Code***

Omit “or 471.25”, substitute “, 471.25 or 471.25A”.

**15 Subsection 471.28(2) of the *Criminal Code* (heading)**

Repeal the heading, substitute:

*Fictitious persons*

**16 After subsection 471.28(2) of the *Criminal Code***

Insert:

- (2A) For the purposes of an offence against section 471.25A, it does not matter that the child is a fictitious person represented to the sender as a real person.

**17 Subsection 471.28(3) of the *Criminal Code***

Omit “or 471.25”, substitute “, 471.25 or 471.25A”.

**18 Subsection 471.29(1) of the *Criminal Code* (heading)**

Repeal the heading, substitute:

*Belief that certain persons at least 16*

**19 Subsection 471.29(1) of the *Criminal Code***

After “Subdivision”, insert “(other than section 471.25A)”.

**20 After subsection 471.29(1) of the *Criminal Code***

Insert:

- (1A) It is a defence to a prosecution for an offence against section 471.25A if the defendant proves that, at the time he or she caused the article to be carried, the defendant believed that the child was at least 16.

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

**21 Subsection 471.29(2) of the *Criminal Code* (heading)**

Repeal the heading, substitute:

*Procuring and “grooming” offences involving child engaging in sexual activity with other participant—belief that participant under 18*

**22 Subsection 471.29(2) of the *Criminal Code***

Omit “or 471.25(2) or (3)”, substitute “, 471.25(2) or (3) or 471.25A(2) or (3)”.

**23 Subsection 471.29(3) of the *Criminal Code***

After “(1)”, insert “, (1A)”.

**24 After section 474.23 of the *Criminal Code***

Insert:

**474.23A Conduct for the purposes of electronic service used for child abuse material**

- (1) A person commits an offence if:
-

- (a) the person engages in any of the following conduct:
  - (i) creating, developing, altering or maintaining an electronic service;
  - (ii) controlling or moderating an electronic service;
  - (iii) making available, advertising or promoting an electronic service;
  - (iv) assisting in doing anything covered by a preceding subparagraph; and
- (b) the person does so with the intention that the electronic service be used:
  - (i) by that person; or
  - (ii) by another person;in committing, or facilitating the commission of, an offence against section 474.22 or 474.23.

Penalty: Imprisonment for 20 years.

- (2) A person may be found guilty of an offence against subsection (1) even if:
  - (a) committing the offence against section 474.22 or 474.23 is impossible; or
  - (b) the electronic service is incapable of being used as mentioned in paragraph (1)(b):
    - (i) at the time the person engages in the conduct mentioned in paragraph (1)(a); or
    - (ii) at any other time.
- (3) It is not an offence to attempt to commit an offence against subsection (1).
- (4) In this Code:

***electronic service*** means a service a purpose of which is to:

- (a) allow persons to access material using a carriage service; or
- (b) deliver material to persons having equipment appropriate for receiving that material, where the delivery of the service is by means of a carriage service;

but does not include:

- (c) a broadcasting service (within the meaning of the *Broadcasting Services Act 1992*); or
- (d) a datacasting service (within the meaning of that Act).

**25 Subsection 474.25A(1) of the *Criminal Code* (before the penalty)**

Insert:

- Note: Because of the definition of *engage in sexual activity* in the Dictionary, this offence covers (for example):
- (a) a person using a carriage service to see or hear, in real time, a person under 16 engage in sexual activity; and
  - (b) a person engaging in sexual activity that is seen or heard, in real time, by a person under 16 using a carriage service.

**26 Subsection 474.25A(2) of the *Criminal Code* (before the penalty)**

Insert:

- Note: Because of the definition of *engage in sexual activity* in the Dictionary, this offence covers (for example) causing a person under 16:
- (a) to engage in sexual activity that is seen or heard, in real time, by another person using a carriage service; or
  - (b) to use a carriage service to see or hear, in real time, another person engage in sexual activity.

**27 Section 474.25B of the *Criminal Code* (heading)**

Repeal the heading, substitute:

**474.25B Aggravated offence—using a carriage service for sexual activity with person under 16 years of age**

**28 Paragraph 474.25B(1)(a) of the *Criminal Code***

After “an offence”, insert “(the *underlying offence*)”.

**29 Paragraph 474.25B(1)(b) of the *Criminal Code***

Repeal the paragraph, substitute:

- (b) one or more of the following apply:
  - (i) the child has a mental impairment at the time the person commits the underlying offence;

- (ii) the person is in a position of trust or authority in relation to the child, or the child is otherwise under the care, supervision or authority of the person, at the time the person commits the underlying offence;
- (iii) the child is subjected to cruel, inhuman or degrading treatment in connection with the sexual activity referred to in subsection 474.25A(1) or (2);
- (iv) the child dies as a result of physical harm suffered in connection with the sexual activity referred to in subsection 474.25A(1) or (2).

### **30 After section 474.27 of the *Criminal Code***

Insert:

#### **474.27AA Using a carriage service to “groom” another person to make it easier to procure persons under 16 years of age**

- (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 making it easier to procure a person (the *child*) to engage in sexual activity with the sender; and
  - (c) the child 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.

Penalty: Imprisonment for 15 years.

- (2) 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 making it easier to procure a person (the *child*) to engage in sexual activity with another person (the *participant*); and
  - (c) the child is someone who is, or who the sender believes to be, under 16 years of age; and
  - (d) the participant is someone who is, or who the sender believes to be, at least 18 years of age.

Penalty: Imprisonment for 15 years.

- (3) 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 making it easier to procure a person (the *child*) to engage in sexual activity with another person; and
  - (c) the child is someone who is, or who the sender believes to be, under 16 years of age; and
  - (d) the other person referred to in paragraph (b) is someone who is, or who the sender believes to be, under 18 years of age; and
  - (e) the sender intends that the sexual activity referred to in paragraph (b) will take place in the presence of:
    - (i) the sender; or
    - (ii) another person (the *participant*) who is, or who the sender believes to be, at least 18 years of age.

Penalty: Imprisonment for 15 years.

**31 Paragraph 474.28(1)(a) of the *Criminal Code***

After “474.25A”, insert “or 474.27AA”.

**32 Subsection 474.28(2) of the *Criminal Code***

Omit “or 474.27(2) or (3)”, substitute “, 474.27(2) or (3) or 474.27AA(2) or (3)”.

**33 Subsections 474.28(3) and (4) of the *Criminal Code***

Repeal the subsections, substitute:

*Proof of belief about age—evidence of representation*

- (3) For the purposes of sections 474.26, 474.27, 474.27AA and 474.27A, evidence that a person was represented to the defendant as being under, of, at least or over a particular age is, in the absence of evidence to the contrary, proof that the defendant believed the person to be under, of, at least or over that age (as the case requires).

**34 Subsection 474.28(8) of the *Criminal Code***

Omit “or 474.27”, substitute “, 474.27 or 474.27AA”.

**35 Subsection 474.28(9) of the *Criminal Code* (heading)**

Repeal the heading, substitute:

*Fictitious persons*

**36 Subsection 474.28(9) of the *Criminal Code***

After “474.27”, insert “, 474.27AA”.

**37 After subsection 474.28(9) of the *Criminal Code***

Insert:

- (9A) For the purposes of an offence against section 474.27AA, it does not matter that the child is a fictitious person represented to the sender as a real person.

**38 Subsection 474.28(10) of the *Criminal Code***

Omit “or 474.27”, substitute “, 474.27 or 474.27AA”.

**39 Subsection 474.29(4) of the *Criminal Code* (heading)**

Repeal the heading, substitute:

*Procuring and “grooming” offences involving child engaging in sexual activity with other participant—belief that participant under 18 years of age*

**40 Subsection 474.29(4) of the *Criminal Code***

Omit “or 474.27(2) or (3)”, substitute “, 474.27(2) or (3) or 474.27AA(2) or (3)”.

**41 Subsection 474.29(5) of the *Criminal Code* (heading)**

Repeal the heading, substitute:

*Offences involving transmission of communication—belief that certain persons at least 16 years of age*

**42 After subsection 474.29(5) of the *Criminal Code***

Insert:

- (5A) It is a defence to a prosecution for an offence against section 474.27AA if the defendant proves that, at the time the communication was transmitted, the defendant believed that the child was at least 16 years of age.

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

**43 Dictionary in the *Criminal Code***

Insert:

*electronic service* has the meaning given by subsection 474.23A(4).

**Part 2—Amendments contingent on the Combatting  
Child Sexual Exploitation Legislation  
Amendment Act 2019**

*Criminal Code Act 1995*

**44 Paragraph 474.23A(1)(b) of the *Criminal Code***

After “474.22”, insert “, 474.22A”.

**45 Paragraph 474.23A(2)(a) of the *Criminal Code***

After “474.22”, insert “, 474.22A”.

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

Omit “or 474.23”, substitute “, 474.23 or 474.23A”.

## Schedule 5—Increased penalties

### *Criminal Code Act 1995*

**1 Subsection 272.8(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 25 years.

**2 Subsection 272.8(2) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 25 years.

**3 Subsection 272.9(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 20 years.

**4 Subsection 272.9(2) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 20 years.

**5 Subsection 272.10(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for life.

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

Repeal the penalty, substitute:

Penalty: Imprisonment for 30 years.

**7 Subsection 272.15(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 15 years.

**8 Subsection 272.18(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 25 years.

**9 Subsection 272.19(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 25 years.

**10 Subsection 273.7(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 30 years.

**11 Subsection 471.22(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 30 years.

**12 Subsection 471.25(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 15 years.

**13 Subsection 471.25(2) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 15 years.

**14 Subsection 471.26(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 10 years.

**15 Subsection 474.24A(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 30 years.

**16 Subsection 474.25A(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 20 years.

**17 Subsection 474.25A(2) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 20 years.

**18 Subsection 474.25B(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 30 years.

**19 Subsection 474.27(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 15 years.

**20 Subsection 474.27(2) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 15 years.

**21 Subsection 474.27A(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 10 years.

## Schedule 6—Minimum sentences

### Part 1—Main amendments

#### *Crimes Act 1914*

##### **1 At the end of subsection 16A(1)**

Add:

Note: Minimum penalties apply for certain offences—see sections 16AAA, 16AAB and 16AAC.

##### **2 After section 16AA**

Insert:

##### **16AAA Minimum penalties for certain offences**

Subject to section 16AAC, if a person is convicted of an offence described in column 1 of an item in the following table, the court must impose a sentence of imprisonment of at least the period specified in column 2 of that item.

<b>Minimum penalty</b>		
<b>Item</b>	<b>Column 1 Offence</b>	<b>Column 2 Sentence of imprisonment</b>
1	offence against subsection 272.8(1) of the <i>Criminal Code</i>	6 years
2	offence against subsection 272.8(2) of the <i>Criminal Code</i>	6 years
3	offence against subsection 272.9(1) of the <i>Criminal Code</i>	5 years
4	offence against subsection 272.9(2) of the <i>Criminal Code</i>	5 years
5	offence against section 272.10 of the <i>Criminal Code</i>	7 years
6	offence against section 272.11 of the <i>Criminal Code</i>	7 years
7	offence against section 272.18 of the <i>Criminal Code</i>	6 years

**Schedule 6** Minimum sentences

**Part 1** Main amendments

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<b>Minimum penalty</b>		
<b>Item</b>	<b>Column 1 Offence</b>	<b>Column 2 Sentence of imprisonment</b>
	<i>Criminal Code</i>	
8	offence against section 272.19 of the <i>Criminal Code</i>	6 years
9	offence against section 273.7 of the <i>Criminal Code</i>	7 years
10	offence against section 471.22 of the <i>Criminal Code</i>	7 years
11	offence against section 474.23A of the <i>Criminal Code</i>	5 years
12	offence against section 474.24A of the <i>Criminal Code</i>	7 years
13	offence against subsection 474.25A(1) of the <i>Criminal Code</i>	5 years
14	offence against subsection 474.25A(2) of the <i>Criminal Code</i>	5 years
15	offence against section 474.25B of the <i>Criminal Code</i>	7 years

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**16AAB Second or subsequent offence**

- (1) This section applies in respect of a person if:
  - (a) the person is convicted of a Commonwealth child sexual abuse offence (a **current offence**); and
  - (b) the person has, at an earlier sitting, been convicted previously of a child sexual abuse offence.
- (2) Subject to section 16AAC, if the person is convicted of a current offence described in column 1 of an item in the following table, the court must impose for the current offence a sentence of imprisonment of at least the period specified in column 2 of that item.

<b>Minimum penalty</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Current offence</b>	<b>Sentence of imprisonment</b>
1	offence against subsection 272.12(1) of the <i>Criminal Code</i>	3 years
2	offence against subsection 272.12(2) of the <i>Criminal Code</i>	3 years
3	offence against subsection 272.13(1) of the <i>Criminal Code</i>	2 years
4	offence against subsection 272.13(2) of the <i>Criminal Code</i>	2 years
5	offence against subsection 272.14(1) of the <i>Criminal Code</i>	4 years
6	offence against subsection 272.15(1) of the <i>Criminal Code</i>	4 years
7	offence against subsection 272.15A(1) of the <i>Criminal Code</i>	4 years
8	offence against subsection 272.20(1) of the <i>Criminal Code</i>	3 years
9	offence against subsection 272.20(2) of the <i>Criminal Code</i>	1 year
10	offence against subsection 273.6(1) of the <i>Criminal Code</i>	4 years
11	offence against subsection 471.19(1) of the <i>Criminal Code</i>	4 years
12	offence against subsection 471.19(2) of the <i>Criminal Code</i>	4 years
13	offence against subsection 471.20(1) of the <i>Criminal Code</i>	4 years
14	offence against subsection 471.24(1) of the <i>Criminal Code</i>	4 years
15	offence against subsection 471.24(2) of the <i>Criminal Code</i>	4 years
16	offence against subsection 471.24(3) of the <i>Criminal Code</i>	4 years
17	offence against subsection 471.25(1) of the <i>Criminal Code</i>	4 years

**Schedule 6** Minimum sentences**Part 1** Main amendments

<b>Minimum penalty</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Current offence</b>	<b>Sentence of imprisonment</b>
	of the <i>Criminal Code</i>	
18	offence against subsection 471.25(2) of the <i>Criminal Code</i>	4 years
19	offence against subsection 471.25(3) of the <i>Criminal Code</i>	4 years
20	offence against subsection 471.25A(1) of the <i>Criminal Code</i>	4 years
21	offence against subsection 471.25A(2) of the <i>Criminal Code</i>	4 years
22	offence against subsection 471.25A(3) of the <i>Criminal Code</i>	4 years
23	offence against subsection 471.26(1) of the <i>Criminal Code</i>	3 years
24	offence against subsection 474.22(1) of the <i>Criminal Code</i>	4 years
25	offence against subsection 474.23(1) of the <i>Criminal Code</i>	4 years
26	offence against subsection 474.26(1) of the <i>Criminal Code</i>	4 years
27	offence against subsection 474.26(2) of the <i>Criminal Code</i>	4 years
28	offence against subsection 474.26(3) of the <i>Criminal Code</i>	4 years
29	offence against subsection 474.27(1) of the <i>Criminal Code</i>	4 years
30	offence against subsection 474.27(2) of the <i>Criminal Code</i>	4 years
31	offence against subsection 474.27(3) of the <i>Criminal Code</i>	4 years
32	offence against subsection 474.27AA(1) of the <i>Criminal Code</i>	4 years

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<b>Minimum penalty</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Current offence</b>	<b>Sentence of imprisonment</b>
33	offence against subsection 474.27AA(2) of the <i>Criminal Code</i>	4 years
34	offence against subsection 474.27AA(3) of the <i>Criminal Code</i>	4 years
35	offence against subsection 474.27A(1) of the <i>Criminal Code</i>	3 years

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### **16AAC Exclusions and reductions—minimum penalties**

#### *People aged under 18*

- (1) Section 16AAA and subsection 16AAB(2) do not apply to a person who was aged under 18 years when the offence that the relevant provision specifies a minimum penalty for was committed.

#### *Reduction of minimum penalty*

- (2) A court may impose a sentence of imprisonment of less than the period specified in column 2 of an item of a table in section 16AAA or subsection 16AAB(2) only if the court considers it appropriate to reduce the sentence because of either or both of the following:
- (a) the court is taking into account, under paragraph 16A(2)(g), the person pleading guilty;
  - (b) the court is taking into account, under paragraph 16A(2)(h), the person having cooperated with law enforcement agencies in the investigation of the offence or of a Commonwealth child sex offence.
- (3) If a court may reduce a sentence, the court may reduce the sentence as follows:
- (a) if the court is taking into account, under paragraph 16A(2)(g), the person pleading guilty—by an

amount that is up to 25% of the period specified in column 2 of the applicable item in the relevant table;

- (b) if the court is taking into account, under paragraph 16A(2)(h), the person having cooperated with law enforcement agencies in the investigation of the offence or of a Commonwealth child sex offence—by an amount that is up to 25% of the period specified in column 2 of the applicable item in the relevant table;
- (c) if the court is taking into account both of the matters in paragraphs (a) and (b)—by an amount that is up to 50% of the period specified in column 2 of the applicable item in the relevant table.

### 3 Application provisions

- (1) Subject to subitem (2), the amendments made by this Part apply in relation to conduct engaged in on or after the commencement of this Part.
- (2) Section 16AAB of the *Crimes Act 1914*, as inserted by this Part, applies in relation to a conviction for a Commonwealth child sexual abuse offence where the relevant conduct was engaged in on or after the commencement of this Part (regardless of whether the relevant previous conviction of the person for a child sexual abuse offence occurred before, on or after that commencement).

## **Part 2—Technical amendments**

### ***Crimes Act 1914***

#### **4 Subsection 16(1) (definition of *victim impact statement*)**

Omit “16AAA”, substitute “16AAAA”.

#### **5 Section 16AAA**

Renumber as section 16AAAA.

#### **6 Paragraph 16A(2)(h)**

Omit “co-operated”, substitute “cooperated”.

#### **7 Saving provision**

An instrument in force immediately before the commencement of this item, that was made for the purposes of a provision of the *Crimes Act 1914* referred to in column 1 of an item in the following table, remains in force on and after that commencement as if it had been made for the purposes of the provision of that Act referred to in column 2 of that item.

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<b>Saving of instruments</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Old provision</b>	<b>Renumbered provision</b>
1	Subsection 16AAA(3)	Subsection 16AAAA(3)
2	Subsection 16AAA(4)	Subsection 16AAAA(4)

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**Part 3—Amendments contingent on the Combatting  
Child Sexual Exploitation Legislation  
Amendment Act 2019**

**Division 1—Amendments relating to the offence of  
possession of child-like sex dolls etc.**

*Crimes Act 1914*

**8 Subsection 16AAB(2) (after table item 10)**

Insert:

10A offence against section 273A.1 of 4 years  
the *Criminal Code*

**Division 2—Amendments relating to the offence of  
possessing or controlling child abuse material  
obtained or accessed using a carriage service**

*Crimes Act 1914*

**9 Subsection 16AAB(2) (after table item 24)**

Insert:

24A offence against 4 years  
subsection 474.22A(1) of the  
*Criminal Code*

## **Schedule 7—Presumption against bail**

### **Part 1—Court records**

#### **Division 1—Main amendments**

##### *Crimes Act 1914*

#### **1 After subsection 15AA(3)**

Insert:

(3AAA) If the bail authority is a court and it grants bail, the court must:

- (a) state its reasons; and
- (b) cause those reasons to be entered in the court's records.

#### **2 Application provision**

The amendment made by this Division applies in relation to a decision, made on or after the commencement of this Division, by a bail authority to grant bail to a person charged with, or convicted of, an offence (whether the person was charged with, or convicted of, the offence before, on or after that commencement).

#### **Division 2—Amendments contingent on the Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Act 2019**

##### *Crimes Act 1914*

#### **3 Before subsection 15AA(3AAA)**

Insert:

*Entering reasons in court records if court grants bail*

## Part 2—Commonwealth child sex offenders

### *Crimes Act 1914*

#### 4 After section 15AA

Insert:

#### **15AAA Bail not to be granted to various persons charged with, or convicted of, certain Commonwealth child sex offences**

- (1) Despite any other law of the Commonwealth, a bail authority must not grant bail to a person who:
  - (a) is charged with, or convicted of, an offence described in column 1 of an item in the table in section 16AAA; or
  - (b) is charged with, or convicted of, an offence described in column 1 of an item in the table in subsection 16AAB(2) and who has previously been convicted of a child sexual abuse offence;unless the bail authority is satisfied by the person that circumstances exist to grant bail.
- (2) In addition to any other matters, in determining whether the bail authority is satisfied that circumstances exist to grant bail to a person, the bail authority must take into account such of the following matters as are relevant and known to the bail authority:
  - (a) whether the bail authority considers that the person would be likely to fail to appear at any proceedings for the offence if the person were granted bail;
  - (b) whether the bail authority considers that the person would be likely to commit a further offence if the person were granted bail;
  - (c) whether the bail authority considers that the person would be likely to put at risk the safety of the community or cause a person to suffer any harm if the person were granted bail;
  - (d) whether the bail authority considers that the person would be likely to conceal, fabricate or destroy evidence or intimidate a witness if the person were granted bail;

- (e) whether the person was aged 18 years or over when the offence was committed;
  - (f) if the person has pleaded guilty to the charge in respect of the offence or been convicted of the offence—whether the bail authority considers that the person would not be likely to undertake a rehabilitation program, or not be likely to comply with any bail conditions relating to rehabilitation or treatment, while released on bail.
- (3) If the bail authority is a court and it grants bail, the court must:
- (a) state its reasons; and
  - (b) cause those reasons to be entered in the court’s records.
- (4) Despite any law of the Commonwealth, the Director of Public Prosecutions or the person may appeal against a decision of a bail authority:
- (a) to grant bail to the person despite subsection (1) on the basis that the bail authority is satisfied that circumstances exist to grant bail; or
  - (b) to refuse to grant bail to the person on the basis that the bail authority is not satisfied that circumstances exist to grant bail.
- (5) An appeal under subsection (4):
- (a) may be made to a court that would ordinarily have jurisdiction to hear and determine appeals (however described) from directions, orders or judgments of the bail authority referred to in subsection (4), whether the jurisdiction is in respect of appeals relating to bail or appeals relating to other matters; and
  - (b) is to be made in accordance with the rules or procedures (if any) applicable under a law of the Commonwealth, a State or a Territory in relation to the exercise of such jurisdiction.
- (6) If:
- (a) a bail authority decides to grant bail to the person; and
  - (b) immediately after the decision is made, the Director of Public Prosecutions notifies the bail authority that he or she intends to appeal against the decision mentioned in subsection (4);

the decision to grant bail is stayed with effect from the time of the notification.

- (7) A stay under subsection (6) ends:
- (a) when a decision on the appeal is made; or
  - (b) when the Director of Public Prosecutions notifies:
    - (i) the bail authority; or
    - (ii) if an appeal has already been instituted in a court—the court;  
that he or she does not intend to proceed with the appeal; or
  - (c) 72 hours after the stay comes into effect;
- whichever occurs first.
- (8) To avoid doubt, except as provided by subsections (1), (4), (5), (6) and (7), this section does not affect the operation of a law of a State or a Territory.

Note: These provisions indirectly affect laws of the States and Territories because they affect section 68 of the *Judiciary Act 1903*.

## **5 Application provisions**

- (1) The amendment made by this Part applies in relation to a decision, made on or after the commencement of this Part, by a bail authority whether to grant bail to a person charged with, or convicted of, an offence (whether the person was charged with, or convicted of, the offence before, on or after that commencement).
- (2) If conduct that occurred before the commencement of this Part:
- (a) constituted a Commonwealth child sex offence before that commencement; and
  - (b) does not constitute a Commonwealth child sex offence on or after that commencement;
- section 15AAA of the *Crimes Act 1914* as inserted by this Part applies in relation to that conduct as if, on or after that commencement, that conduct constituted a Commonwealth child sex offence.

## **Schedule 8—Matters court has regard to when passing sentence etc.**

### ***Crimes Act 1914***

#### **1 Paragraph 16A(2)(g)**

Repeal the paragraph, substitute:

- (g) if the person has pleaded guilty to the charge in respect of the offence:
  - (i) that fact; and
  - (ii) the timing of the plea; and
  - (iii) the degree to which that fact and the timing of the plea resulted in any benefit to the community, or any victim of, or witness to, the offence;

#### **2 After paragraph 16A(2)(m)**

Insert:

- (ma) if the person's standing in the community was used by the person to aid in the commission of the offence—that fact as a reason for aggravating the seriousness of the criminal behaviour to which the offence relates;

#### **3 After subsection 16A(2)**

Insert:

- (2AAA) In determining the sentence to be passed, or the order to be made, in respect of any person for a Commonwealth child sex offence, in addition to any other matters, the court must have regard to the objective of rehabilitating the person, including by considering whether it is appropriate, taking into account such of the following matters as are relevant and known to the court:
  - (a) when making an order—to impose any conditions about rehabilitation or treatment options;
  - (b) in determining the length of any sentence or non-parole period—to include sufficient time for the person to undertake a rehabilitation program.

**4 Subsection 16A(2A)**

After “subsection (1) or (2)”, insert “, other than paragraph (2)(ma),”.

**5 Subsection 16A(3)**

Omit “subsections (1) and (2)”, substitute “subsections (1), (2) and (2AAA)”.

***Criminal Code Act 1995***

**6 Subsection 272.30(2) of the *Criminal Code***

Omit “subsection 16A(2)”, substitute “section 16A”.

**7 Application provision**

The amendments made by this Schedule apply in relation to determining, on or after the commencement of this Schedule, a sentence to be passed, or an order to be made, in respect of a person for a federal offence that the person was charged with, or convicted of, on or after that commencement.

## **Schedule 9—Additional sentencing factors for certain offences**

### ***Criminal Code Act 1995***

#### **1 Subsection 272.30(1) of the *Criminal Code***

Omit all the words after “the court” (first occurring), substitute:

must take into account the following matters:

- (a) the age and maturity of the person in relation to whom the offence was committed;
- (b) if that person was under 10 when the offence was committed—that fact as a reason for aggravating the seriousness of the criminal behaviour to which the offence relates;
- (c) the number of people involved in the commission of the offence.

#### **2 After subsection 272.30(1) of the *Criminal Code***

Insert:

- (1A) However, the court need only take into account a matter mentioned in subsection (1) so far as the matter is known to the court and, for a matter mentioned in paragraph (1)(a) or (c), relevant.

#### **3 At the end of Subdivision C of Division 471 of the *Criminal Code***

Add:

##### **471.29A Sentencing**

- (1) In determining the sentence to be passed, or the order to be made, in respect of a person for an offence against this Subdivision, the court must take into account the following matters:
    - (a) the age and maturity of the person in relation to whom the offence was committed;
    - (b) if that person was under 10 when the offence was committed—that fact as a reason for aggravating the
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seriousness of the criminal behaviour to which the offence relates;

(c) the number of people involved in the commission of the offence.

(2) However, the court need only take into account a matter mentioned in subsection (1) so far as the matter is known to the court and, for a matter mentioned in paragraph (1)(a) or (c), relevant.

(3) The matters mentioned in subsection (1) are in addition to any other matters the court must take into account (for example, the matters mentioned in section 16A of the *Crimes Act 1914*).

#### **4 At the end of Subdivision F of Division 474 of the *Criminal Code***

Add:

##### **474.29AA Sentencing**

(1) In determining the sentence to be passed, or the order to be made, in respect of a person for an offence against this Subdivision, the court must take into account the following matters:

(a) the age and maturity of the person in relation to whom the offence was committed;

(b) if that person was under 10 when the offence was committed—that fact as a reason for aggravating the seriousness of the criminal behaviour to which the offence relates;

(c) the number of people involved in the commission of the offence.

(2) However, the court need only take into account a matter mentioned in subsection (1) so far as the matter is known to the court and, for a matter mentioned in paragraph (1)(a) or (c), relevant.

(3) The matters mentioned in subsection (1) are in addition to any other matters the court must take into account (for example, the matters mentioned in section 16A of the *Crimes Act 1914*).

## **5 Application provision**

The amendments made by this Schedule apply in determining the sentence to be passed, or the order to be made, in respect of a person for an offence that is committed on or after the commencement of this item.

## Schedule 10—Cumulative sentences

### *Crimes Act 1914*

#### **1 Before subsection 19(1)**

Insert:

##### *General requirements*

#### **2 At the end of section 19**

Add:

##### *Additional requirements for Commonwealth child sex offences*

- (5) An order must not have the effect that a term of imprisonment imposed on a person for a Commonwealth child sex offence be served partly cumulatively, or concurrently, with an uncompleted term of imprisonment that is, or has been, imposed on the person for:
  - (a) another Commonwealth child sex offence; or
  - (b) a State or Territory registrable child sex offence.
- (6) Subsection (5) does not apply if the court is satisfied that imposing the sentence in a different manner would still result in sentences that are of a severity appropriate in all the circumstances.
- (7) If the court imposes a term of imprisonment other than in accordance with subsection (5), the court must:
  - (a) state its reasons for imposing the sentence in that manner; and
  - (b) cause the reasons to be entered in the records of the court.

#### **3 Application provision**

The amendments made by this Schedule apply in relation to an order made, on or after the commencement of this Schedule, directing when sentences commence, where the offences to which the sentences relate were committed on or after that commencement.

## **Schedule 11—Conditional release of offenders after conviction**

### ***Crimes Act 1914***

#### **1 Paragraph 20(1)(b)**

Repeal the paragraph, substitute:

- (b) sentence the person to imprisonment in respect of the offence or each offence but direct, by order, that the person be released, upon giving security of the kind referred to in paragraph (a):
  - (i) if none of the offences is a Commonwealth child sex offence—either immediately or after the person has served a specified period of imprisonment that is calculated in accordance with subsection 19AF(1); or
  - (ii) if at least one of the offences is a Commonwealth child sex offence and the court is not satisfied that there are exceptional circumstances—after the person has served a specified period of imprisonment that is calculated in accordance with subsection 19AF(1); or
  - (iii) if at least one of the offences is a Commonwealth child sex offence and the court is satisfied that there are exceptional circumstances—immediately.

#### **2 Subsection 20(1A)**

Omit “If”, substitute “Subject to subsection (1B), if”.

#### **3 After subsection 20(1A)**

Insert:

- (1B) If at least one of the offences the person is convicted of is a Commonwealth child sex offence, the court must specify under paragraph (1)(b), as mentioned in subparagraph (1)(a)(iv), the conditions that the person will, during the specified period:
  - (a) be subject to the supervision of a probation officer appointed in accordance with the order; and
  - (b) obey all reasonable directions of the probation officer; and

- (c) not travel interstate or overseas without the written permission of the probation officer; and
- (d) undertake such treatment or rehabilitation programs that the probation officer reasonably directs.

#### **4 Application and saving provisions**

- (1) The amendments made by this Schedule apply in relation to an order made on or after the commencement of this Schedule, when sentencing the person to imprisonment in respect of an offence committed on or after that commencement.
- (2) The repeal and substitution of paragraph 20(1)(b) of the *Crimes Act 1914* by this Schedule does not affect the validity of an order given under that paragraph before the commencement of this Schedule.

## **Schedule 12—Additional sentencing alternatives**

### ***Crimes Act 1914***

#### **1 After subparagraph 20AB(1AA)(a)(vii)**

Insert:

(viiia) a residential treatment order;

#### **2 Subsection 20BQ(3)**

After “20AB”, insert “(other than an order covered by subparagraph 20AB(1AA)(a)(viiia))”.

#### **3 Application provision**

The amendments made by this Schedule apply in relation to a sentence passed, or an order made, on or after the commencement of this Schedule, in respect of a person convicted before, on or after that commencement.

## **Schedule 13—Revocation of parole order or licence**

### ***Crimes Act 1914***

#### **1 Subsection 19AA(2)**

Omit “, or is taken to be,”.

#### **2 Subsection 19AA(3)**

Repeal the subsection, substitute:

- (3) If a prescribed authority is fixing a non-parole period under section 19AW in respect of a federal offender:
- (a) who is released on parole or licence; and
  - (b) whose parole order or licence has subsequently been revoked under section 19AU; and
  - (c) who does not get the benefit of subsection (2) in calculating the part of any federal sentence of imprisonment remaining to be served at the time of release;
- the prescribed authority must have regard to the period of time spent by the person on parole or licence before that parole order or licence was revoked.

#### **3 Subsection 19AG(5) (paragraph (ca) of the note)**

Omit “or 19AR(2)(e)”.

#### **4 Subsection 19APB(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) has effect as if the parole period or the licence period had not ended without the parole order or licence being revoked, if in relation to the parole order or licence:
- (a) a determination referred to in subsection 19AQ(1) or (2) is made at a time after the end of the parole period or licence period; and

- (b) the time the parole order or licence is taken to have been revoked under subsection 19AQ(1) or (2) is during the parole period or licence period.

## **5 Section 19AQ**

Repeal the section, substitute:

### **19AQ Parole order or licence revoked following further offence**

#### *Revocation time*

- (1) If a person to whom a parole order relates is sentenced to life imprisonment or to a sentence of, or sentences aggregating, more than 3 months in respect of a federal, State or Territory offence (the *new offence*) committed during the parole period, the court that sentences the person for the new offence must determine the time (the *revocation time*) when the parole order is taken to have been revoked.
- (2) If a person to whom a licence relates is sentenced to life imprisonment or to a sentence of, or sentences aggregating, more than 3 months in respect of a federal, State or Territory offence (the *new offence*) committed during the licence period, the court that sentences the person for the new offence must determine the time (the *revocation time*) when the licence is taken to have been revoked.
- (3) A revocation time determined under subsection (1) or (2) must be one of the following times:
  - (a) the time at which the court determines the new offence was committed;
  - (b) the time at which the court determines the new offence was most likely to have been committed;
  - (c) the time at which the court determines the new offence was most likely to have first begun to have been committed.

#### *Time person liable to serve*

- (4) If the parole order or licence relating to a person is taken to have been revoked under subsection (1) or (2), the person becomes liable to serve:

- (a) that part of the sentence or of each sentence for a federal offence that the person had not served at the time of his or her release under that order or licence; or
- (b) if the court considers it appropriate taking into account the good behaviour of the person during the period (the *clean street period*) starting at the time the person was released under that order or licence and ending at the revocation time—the sentence or aggregate sentence that would be imposed under paragraph (a) reduced by the period that is the same as the clean street period.

*Suspended sentences*

- (5) This section does not apply where the sentence or each sentence referred to in subsection (1) or (2) is a suspended sentence.

**6 Section 19AR (heading)**

Repeal the heading, substitute:

**19AR Fixing of non-parole period etc. where parole or licence taken to be revoked under section 19AQ**

**7 Subsections 19AR(1) and (2)**

Repeal the subsections, substitute:

*New federal offence etc.*

- (1) Subject to subsection (4), if:
  - (a) a person who is serving or is to serve a federal sentence or federal sentences is released on parole or licence under this Act; and
  - (b) the person is later sentenced (the *new sentence or sentences*) to a term of imprisonment in respect of a federal offence or federal offences committed during the parole period or licence period; and
  - (c) under section 19AQ:
    - (i) the parole order or licence is to be taken to have been revoked; and

- (ii) the person becomes liable to serve a part of a sentence or sentences (the *outstanding sentence or sentences*);
- the court imposing the new sentence or sentences:
- (d) must not make a recognizance release order; and
  - (e) must fix a single new non-parole period in respect of the new sentence or sentences and the outstanding sentence or sentences having regard to the total period of imprisonment that the person is liable to serve.

### **8 Subsection 19AR(3)**

Repeal the subsection, substitute:

*New State or Territory offence etc.*

- (3) Subject to subsection (4), if:
    - (a) a person who is serving or is to serve a federal sentence or federal sentences is released on parole or licence under this Act; and
    - (b) the person is later sentenced (the *new sentence or sentences*) to a term of imprisonment in respect of one or more State or Territory offences committed during the parole period or licence period; and
    - (c) under section 19AQ:
      - (i) the parole order or licence is to be taken to have been revoked; and
      - (ii) the person becomes liable to serve a part of a sentence or sentences (the *outstanding sentence or sentences*);
- the court imposing the new sentence or sentences:
- (d) must not make a recognizance release order; and
  - (e) must fix a single new non-parole period in respect of the outstanding sentence or sentences having regard to the total period of imprisonment that the person is liable to serve.

### **9 Subsection 19AR(4)**

Repeal the subsection, substitute:

*General*

- (4) A court may decline to fix a non-parole period if:

- (a) the court is satisfied that doing so is appropriate, having regard to:
  - (i) the serious nature and circumstances of the offence or offences; and
  - (ii) the antecedents of the person; or
- (b) the person is expected to be serving a State or Territory sentence on the day after the end of the federal sentence, or the last to be served of the federal sentences, as reduced by any remissions or reductions under section 19AA.

**10 Subsection 19AR(5)**

Omit “either to fix a non-parole period, or to make a recognizance release order”, substitute “to fix a non-parole period”.

**11 Subsection 19AR(6)**

Omit “or the making of recognizance release orders”.

**12 Subsection 19AR(6)**

Omit “or the making of such orders”.

**13 Subsection 19AR(7)**

Omit “or the failure to make, or properly to make, recognizance release orders”.

**14 Subsection 19AR(7)**

Omit “or the making of such orders”.

**15 Subsection 19AS(1)**

Repeal the subsection, substitute:

- (1) If:
  - (a) a person who is serving or is to serve a federal sentence or federal sentences is released on parole or licence under this Act; and
  - (b) the person is later sentenced (the *new sentence or sentences*) to a term of imprisonment in respect of one or more federal, State or Territory offences committed during the parole period or licence period; and

- (c) under section 19AQ:
  - (i) the parole order or licence is to be taken to have been revoked; and
  - (ii) the person becomes liable to serve a part of a sentence or sentences (the *outstanding sentence or sentences*);

then:

- (d) the court imposing the new sentence or sentences must issue a warrant authorising the person to be detained in prison to undergo imprisonment for the unserved part of the outstanding sentence or sentences; and
- (e) the person must begin to serve the unserved part of the outstanding sentence or of the first to be served of the outstanding sentences on the day that the new sentence is, or the new sentences are, imposed; and
- (f) the unserved part of the outstanding sentence or of each of the outstanding sentences must be served in the State or Territory where the new sentence is, or the new sentences are, imposed.

#### **16 Subsection 19AS(2)**

Omit “paragraph (1)(c)”, substitute “paragraph (1)(d)”.

#### **17 Paragraphs 19AT(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) a person who is serving or is to serve a federal sentence or federal sentences is released on parole or licence under this Act; and
- (b) the person is later sentenced (the *new sentence or sentences*) to a term of imprisonment in respect of one or more federal, State or Territory offences committed during the parole period or licence period; and
- (ba) under section 19AQ:
  - (i) the parole order or licence is to be taken to have been revoked; and
  - (ii) the person becomes liable to serve a part of a sentence or sentences (the *outstanding sentence or sentences*);

**18 Subsection 19AW(2)**

Omit “may issue a warrant”, substitute “must issue a warrant”.

**19 Paragraph 19AW(3)(a)**

Omit “nature”, substitute “serious nature”.

**20 Subsection 20(6)**

Omit “sections 19AC, 19AE and 19AR”, substitute “sections 19AC and 19AE”.

**21 Application provisions**

- (1) The amendments made by items 1, 4, 5 and 7 to 17 of this Schedule apply in relation to the revocation, on or after the commencement of this Schedule, of a parole order or licence relating to a sentence that was imposed on a person (whether the sentence was imposed before, on or after that commencement).
- (2) The amendment made by item 2 of this Schedule applies in relation to fixing, on or after the commencement of this Schedule, a non-parole period in respect of a sentence (whether the sentence was imposed before, on or after that commencement).
- (3) The amendments made by items 18 and 19 of this Schedule apply in relation to hearings begun on or after the commencement of this Schedule (whether the order revoking the relevant parole order or licence was made before, on or after that commencement).

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## Schedule 14—Definitions

### *Crimes Act 1914*

#### 1 Subsection 3(1)

Insert:

***child sexual abuse offence*** means:

- (a) a Commonwealth child sex offence; or
- (b) an offence against section 273.5, 471.16, 471.17, 474.19 or 474.20 of the *Criminal Code* as in force at any time before the commencement of Schedule 7 to the *Combatting Child Sexual Exploitation Legislation Amendment Act 2019*; or
- (c) an offence against Part IIIA of this Act as in force at any time before the commencement of Schedule 1 to the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010*; or
- (d) a State or Territory registrable child sex offence.

***Commonwealth child sexual abuse offence*** means a Commonwealth child sex offence, other than an offence against subsection 272.8(1) or (2), 272.9(1) or (2), section 272.10, 272.11, 272.18, 272.19, 273.7, 471.22, 474.23A or 474.24A, subsection 474.25A(1) or (2) or section 474.25B or 474.25C of the *Criminal Code*.

***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 child was a victim or an intended victim; or
  - (ii) the offending involved child abuse material.

## Schedule 15—Review of sentencing for Commonwealth child sex offences

### 1 Review of sentencing for Commonwealth child sex offences

- (1) The Attorney-General must cause a review to be undertaken of the first 3 years of the operation of the following provisions of Part IB (sentencing, imprisonment and release of federal offenders) of the *Crimes Act 1914*, as amended by this Act, in relation to Commonwealth child sex offences (within the meaning of that Act):
  - (a) Divisions 2 to 4;
  - (b) Subdivision D of Division 5;
  - (c) Divisions 6 to 9;
  - (d) Division 1, to the extent that it relates to a provision covered by paragraph (a), (b) or (c) of this subitem.
- (2) The review must be undertaken by one or more persons who, in the Attorney-General's opinion, possess appropriate qualifications to undertake the review.
- (3) The person or persons undertaking the review must give the Attorney-General a written report of the review within 12 months after the end of the 3-year period.
- (4) The Attorney-General must cause a copy of the report of the review to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Attorney-General.

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[*Minister's second reading speech made in—  
House of Representatives on 11 September 2019  
Senate on 17 October 2019*]

(169/19)

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