



## Appendix E – Online Offences

Table Online Offences (I): Sexual offences committed online against minors

OFFENCE		JURISDICTIONS								
Type	Elements	Cth <sup>1</sup>	ACT <sup>2</sup>	NSW <sup>3</sup>	NT <sup>4</sup>	Qld <sup>5</sup>	SA <sup>6</sup>	Tas <sup>7</sup>	Vic <sup>8</sup>	WA <sup>9</sup>

<sup>1</sup> Unless otherwise noted, offence provisions in this column are located in the *Criminal Code Act 1995 (Cth)*

<sup>2</sup> Unless otherwise noted, offence provisions in this column are located in the *Crimes Act 1900 (ACT)*

<sup>3</sup> Unless otherwise noted, offence provisions in this column are located in the *Crimes Act 1900 (NSW)*

<sup>4</sup> Unless otherwise noted, offence provisions in this column are located in the *Criminal Code Act (NT)*

<sup>5</sup> Unless otherwise noted, offence provisions in this column are located in the *Criminal Code Act 1899 (Qld)*

<sup>6</sup> Unless otherwise noted, offence provisions in this column are located in the *Criminal Law Consolidation Act 1935 (SA)*

<sup>7</sup> Unless otherwise noted, offence provisions in this column are located in the *Criminal Code Act 1924 (Tas)*

OFFENCE		JURISDICTIONS								
Type	Elements	Cth <sup>1</sup>	ACT <sup>2</sup>	NSW <sup>3</sup>	NT <sup>4</sup>	Qld <sup>5</sup>	SA <sup>6</sup>	Tas <sup>7</sup>	Vic <sup>8</sup>	WA <sup>9</sup>
<b>Grooming</b>	<i>Citation</i>	s474.27	<b>See 'depravity'</b>	s66EB(3)			s63B(3)	s125D		
	<i>Age limits</i>	Victim must be under 16		Perpetrator must over 18; victim under 16			Victim must be under 16	Victim must be (or believed to be) under 17		
	<i>Definition</i>	Uses a carriage service to transmit a communication with the intention of making it easier to procure the recipient to engage in sexual activity with the sender or another person		Any conduct (including communicating by telephone or internet) that exposes a child to indecent material with the intention of making it easier to procure the child for unlawful sexual activity			Makes a communication with a prurient purpose and with the intention of making a child amenable to a sexual activity	Makes a communication by any means with the intention of procuring a person to engage in an unlawful sexual act		
	<i>Penalty<sup>10</sup></i>	12 years		12 years (victim under 14); or 10 years			10 years (basic); 12 years (aggravated) <sup>11</sup>	21 years and/or fine		
<b>Procuring</b>	<i>Citation</i>	s474.26	<b>See 'depravity'</b>	s66EB(2)	s131	s218A	s63B(1)	s125C	s58	s204B
	<i>Age limits</i>	Victim must be (or believed to be) under 16, perpetrator over 18		Victim must be under 16, perpetrator over 18	Victim must be under 16	Victim must be (or believed to be) under 16, perpetrator over 18	Victim must be under 16	Victim must be under 17	Victim must be under 16, perpetrator over 18	Victim must be (or believed to be) under 16; perpetrator over 18

<sup>8</sup> Unless otherwise noted, offence provisions in this column are located in the *Criminal Code Act 1958 (Vic)*

<sup>9</sup> Unless otherwise noted, offence provisions in this column are located in the *Criminal Code Act Compilation Act 1913 (WA)*

<sup>10</sup> References to 'years' indicate maximum possible term of imprisonment.

<sup>11</sup> Aggravating circumstances listed in *Criminal Law Consolidation Act 1935 (SA)* s5AA

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	<i>Definition</i>	Uses a carriage service to transmit a communication to another person; with the intention of procuring the recipient to engage in sexual activity with the sender or another person		Intentionally procures for unlawful sexual activity with that or any other person	Attempts to procure to have sexual intercourse or commit, perform or engage in any act of gross indecency	Knowingly entice or recruit for the purposes of sexual exploitation	Incites or procures the commission of an indecent act; or, acting for a prurient purpose, causes or induces to expose any part of the body	Procures to have unlawful sexual intercourse or to commit an indecent act	Solicits or procures to take part in an act of sexual penetration, or an indecent act	Uses electronic communication with intent to procure a person to engage in sexual activity
	<i>Penalty</i>	15 years		15 years (child under 14) or 12 years	3 years; if perpetrator is an adult 5 years	10 years (victim under 12) or 5 years	10 years (basic); 12 years (aggravated)	21 years and/or fine	10 years	10 years (child under 13) or 5 years
<b>Child abuse material</b> <sup>12</sup>	<i>Citation</i>	ss474.19 – 474.23	s64; s64A	s91H	s125B	s228C	s63; s63C	s130B	s57A	s60 <sup>13</sup>
	<i>Age limits</i>	Person depicted is or appears to be under 18 <sup>14</sup>	Person depicted under 18	Person depicted under 16	Person depicted is or appears to be under 18	Person depicted is or appears to be under 16	Person depicted is or appears to be under 16	Person depicted is or appears to be under 18	Person depicted is or appears to be under 18	Person depicted is or appears to be under 16

<sup>12</sup> Offences relating to the production or possession of child abuse materials/ pornography have been omitted

<sup>13</sup> *Classification (Publications, Films and Computer Games) Enforcement Act 1996 (IVA)*

<sup>14</sup> Attorney-General's consent needed to commence proceedings against an individual aged under 18 at the time of the offence

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	<i>Definition</i>	Transmits or supplies child pornography or child abuse material. Must intend to commit act, but need only be reckless as to whether material constitutes abuse material or pornography	Publishes, offers or sells child pornography	Disseminates child abuse material; includes sending, exhibiting, transmitting or communicating to another person	Distributes, sells or offers or advertises for distribution or sale child abuse material	Distributes child exploitation material; includes communicating, exhibiting, sending, supplying or transmitting to someone, whether to a particular person or not	Disseminates, or takes any steps in disseminating, child pornography knowing of its pornographic nature	Distributes, or does anything to facilitate the distribution of, child exploitation material; and knows, or ought to have known, that the material is child exploitation material	Knowingly uses an on-line information service to publish or transmit, or make available for transmission, objectionable material	Sells or supplies, or offers to sell or supply, or displays, exhibits or demonstrates, child pornography
	<i>Penalty</i>	15 years, 25 years if conduct repeated on 3 occasions and commission involves multiple offenders <sup>15</sup>	1200 penalty units and/or 12 years	10 years	10 years	10 years	10 years basic, 12 years aggravated	21 years and/or fine	10 years	5 years for displaying/ exhibiting; 7 years for selling/ supplying; and/or fine of any amount
<b>Indecency</b>	<i>Citation</i>	474.27A	S66		S132	S218A		S125D(3)	S58 <sup>16</sup>	S204B
	<i>Age limits</i>	Recipient must be (or believed to be) under 16; perpetrator must be over 18	Recipient must be under 16		Recipient must be under 16	Recipient must be (or believed to be) under 16		Recipient must be (or believed to be) under 17	Recipient must be under 18	Recipient must be (or believed to be) under 16, perpetrator over 18

<sup>15</sup> Aggravated offence provisions were introduced to combat pornography/ child abuse material rings

<sup>16</sup> *Classification (Publications, Films and Computer Games) Enforcement Act 1995 (Vic)*



Table Online Offences (II): Offences against the person committed online where age is not an element of the offence

NB These offences may be committed by an adult or a minor against any person, including another minor)

OFFENCE		JURISDICTIONS								
Type	Elements	Cth <sup>17</sup>	ACT <sup>18</sup>	NSW <sup>19</sup>	NT <sup>20</sup>	Qld <sup>21</sup>	SA <sup>22</sup>	Tas <sup>23</sup>	Vic <sup>24</sup>	WA <sup>25</sup>
Stalking	Citation		s35	s13 <sup>26</sup>	s189	Ch33A	s19AA		s21A	s338E(1)
	Definition		Specified conduct repeated on at least two occasions, which can include sending electronic messages to or about the stalked person. Must be intent to cause apprehension; or to	Stalks or intimidates another person with the intention of causing the <a href="#">other person</a> to fear physical or mental harm	Specified conduct repeated on at least two occasions which can include telephoning, sending electronic messages to or otherwise contacting the stalked person.	One 'protracted' incident or multiple instances of specified conduct intentionally directed at a person; which can include any form of contact that would cause apprehension	Specified conduct repeated on at least two occasions, which can include publishing or transmitting offensive material to the person by electronic means; or	A course of conduct made up of one or more specified actions, which can include contacting the person by any means; publishing or transmitting offensive material by electronic	A course of conduct which can include contacting the victim by post, telephone, fax, text message, e-mail or other electronic communication; publishing on the Internet material	Pursues another person with intent to intimidate. <sup>27</sup> Repeated communication can constitute pursuit

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<sup>19</sup> Unless otherwise noted, offence provisions in this column are located in the *Crimes Act 1900 (NSW)*

<sup>20</sup> Unless otherwise noted, offence provisions in this column are located in the *Criminal Code Act (NT)*

<sup>21</sup> Unless otherwise noted, offence provisions in this column are located in the *Criminal Code Act 1899 (Qld)*

<sup>22</sup> Unless otherwise noted, offence provisions in this column are located in the *Criminal Law Consolidation Act 1935 (SA)*

<sup>23</sup> Unless otherwise noted, offence provisions in this column are located in the *Criminal Code Act 1924 (Tas)*

<sup>24</sup> Unless otherwise noted, offence provisions in this column are located in the *Criminal Code Act 1958 (Vic)*

<sup>25</sup> Unless otherwise noted, offence provisions in this column are located in the *Criminal Code Act Compilation Act 1913 (WA)*

<sup>26</sup> *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*

<sup>27</sup> Alternative charge for 'pursues another person in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, that person or a third person' carries maximum 12 year sentence or \$12,000 fine (*Criminal Code Act Compilation Act 1913 (WA) s338E(2)*)

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			harm/ harass		Must intend to cause physical or mental harm; or arouse fear or apprehension	or fear, or detriment (reasonably arising in all the circumstances)	communicating with or about the other person by way of the internet in a manner that could reasonably be expected to arouse apprehension or fear. Must intend to <a href="#">cause</a> serious physical or <a href="#">mental harm</a> ; or serious apprehension or fear	means; or using the internet or any other form of electronic communication in a way that could reasonably be expected to cause apprehension or fear. Must intend to cause physical or mental harm; or arouse apprehension or fear	relating to or purporting to originate from the victim; and tracing the victim's use of the Internet. Must intend to cause physical or mental harm; or arouse apprehension or fear	
	<i>Penalty</i>		2 years (5 years if contravene injunction)	5 years and/ or fifty penalty units	2 years (5 years if involves weapon or contravening injunction)	5 years (7 years if contravene injunction)	3 years (basic), 5 years (aggravated)	21 years and/or fine	10 years	3 years (basic), 8 years (aggravated)
<b>Bullying</b>	<i>Citation</i>			S60E						
	<i>Definition</i>			Assaults, stalks, harasses or intimidates a school student or member of staff while victim is attending a <a href="#">school</a>						
	<i>Penalty</i>			5 years						
<b>Assault/ threats</b>	<i>Citation</i>	s474.15	s26	s61	s188	s335	s20	<b>Words alone cannot constitute an assault (s182)</b>	s31	s338A
	<i>Definition</i>	Uses a carriage service to make a threat to kill or cause serious harm to the second person or a third person, intending	(Common law)	(Common law)	(Common law)	(Common law)	<a href="#">Threatens</a> to apply force to the <a href="#">victim</a> ; and there are reasonable grounds for the <a href="#">victim</a> to believe that the		Threatens direct or indirect application of force to the victim with intent to commit assault	Makes a threat to cause detriment of any kind to any person, with intent to

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		the second person to fear that the threat will be carried out					person is in a position to carry out the <a href="#">threat</a> and intends to do so; or there is a real possibility that the person will carry out the <a href="#">threat</a>			cause a detriment <sup>28</sup>
	<i>Penalty</i>	10 years for threat to kill, 7 years for threat to cause serious harm	2 years	2 years	1 year, 5 years if male to female or adult to person under 16	3 years	2 years		5 years	7 years (10 years if threaten to kill)
<b>Harassment</b> <sup>29</sup>	<i>Citation</i>	s474.17								
	<i>Definition</i>	Uses a carriage service in a way (whether by the method of use or the content of a communication) that reasonable persons would regard as being menacing, harassing or offensive	<b>Harassment in certain circumstances is unlawful, but not a criminal offence, under the <i>Discrimination Act 1991 (ACT)</i> (see s71)</b>	<b>Sexual harassment in certain circumstances is unlawful, but not an offence, under the <i>Anti-Discrimination Act 1977 (NSW)</i> (s22B)</b>	<b>Harassment in certain circumstances is prohibited, but not a criminal offence, under the <i>Anti-Discrimination Act (NT)</i> s22</b>	<b>Sexual harassment in certain circumstances contravenes but does not give rise to criminal sanctions under the <i>Anti-Discrimination Act 1991 (Qld)</i></b>	<b>Sexual harassment in certain circumstances contravenes but does not give rise to criminal sanctions under the <i>Equal Opportunity Act 1984 (SA)</i> (see s99)</b>	<b>Harassment in certain circumstances is prohibited, but not a criminal offence, under the <i>Anti-Discrimination Act 1998 (Tas)</i></b>	<b>Sexual harassment in certain circumstances contravenes but does not give rise to criminal sanctions under the <i>Equal Opportunity Act 1995 (Vic)</i> (see s209)</b>	<b>Sexual and racial harassment in certain circumstances contravenes but does not give rise to criminal sanctions under the</b>

<sup>28</sup> Alternative charge for 'person who makes a threat to unlawfully cause detriment' carries maximum 3 year sentence, or 6 years if the conduct was racially motivated (*Criminal Code Act Compilation Act 1913 (WA)* s338B(b))

<sup>29</sup> Note that stalking laws may apply to online harassment



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	Penalty	3 years								<i>Equal Opportunity Act 1984 (WA) (see s154)</i>
Vilification	Citation	<p><b>The Racial Discrimination Act (Cth) makes certain conduct unlawful; but excludes criminal liability for unlawful conduct under the statute (with limited exceptions unrelated to online conduct) (see s26)</b></p>	s67 <sup>30</sup>	s20D; s38T; s49ZTA; s49ZXC <sup>31</sup>		s131A <sup>32</sup>	s4 <sup>33</sup>		s24; s25 <sup>34</sup>	s77; s78 <sup>35</sup>
	Definition		By a public act incite hatred, serious contempt or severe ridicule on the ground of race, sexuality, gender identity, or HIV/AIDS status	By a public act incite hatred, serious contempt or severe ridicule on the ground of race, transgender identity, HIV/AIDS status, or homosexuality		By a public act, knowingly or recklessly incite hatred, serious contempt or severe ridicule on the ground of the race, religion, sexuality or gender identity in a way that includes threatening or inciting physical harm	By a public act incite hatred, serious contempt or severe ridicule on the ground of race		<p><b>Inciting hatred by a public act against specific groups is prohibited, but does not attract criminal sanctions, under the Anti-Discrimination Act 1998 (Tas) (s 19)</b></p>	Intentionally engage in conduct on the grounds of race (including use of the internet or email) that the offender knows is likely to incite hatred, serious contempt or revulsion; or threaten, or incite others to threaten, physical harm

<sup>30</sup> *Discrimination Act 1991 (ACT)*

<sup>31</sup> *Anti-Discrimination Act 1977 (NSW)*

<sup>32</sup> *Anti-Discrimination Act 1991 (Qld)*

<sup>33</sup> *Racial Vilification Act 1996 (SA)*

<sup>34</sup> *Racial and Religious Tolerance Act 2001 (Vic)*

<sup>35</sup> *Equal Opportunity Act 1984 (WA)*



