



Australian Government
Attorney-General's Department

Criminal Justice Division

04/9099

10 August 2004

Mr Phillip Bailey
Secretary
Senate Legal and Constitutional Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Mr Bailey

Questions on notice from hearing of Senate Legal and Constitutional Legislation Committee hearing on Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004

Please find below responses to the questions on notice from the hearing of the Senate Legal and Constitutional Legislation Committee hearing on Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004 on 9 August 2004. I have also provided further information on the question of absolute liability with respect to the proposed 'grooming' and procuring offences.

Question 1: Interception and personal financial information offences

Legitimate dealings with another person's personal financial information are *not* captured by the personal financial information offences proposed in Schedule 3 of the Bill. Proposed section 480.4 of the Bill targets only *dishonest* dealings in personal financial information. Such dealings would include instances of credit card skimming and Internet 'phishing'. Credit card skimming is the process by which legitimate credit and debit card data is illicitly capture or copied, usually by means of an electronic skimming device. 'Phishing' occurs where online criminals use apparently legitimate emails to trick people into divulging passwords, credit card numbers and bank account details

Proposed section 480.4 provides that it is an offence to dishonestly obtain or deal in personal financial information without the consent of the person to whom the information relates. This offence applies only where the person obtaining or dealing in another person's personal financial information does so:

- dishonestly, and
- without the consent of that other person.

This offence does not capture everyday legitimate dealings with personal financial information— for example, where a bank employee retrieves a customer’s records on a computer system in order to process a loan application or where a bank transmits a customer’s personal financial information to a credit card company. Such dealings would generally take place with the consent of the customer and the requisite fault element of dishonesty would not be present.

Similarly, the proposed offences which target importation and possession of skimming devices only apply where the person who possesses or imports the device does so for an illegitimate purpose.

The possession offence (proposed section 480.5) criminalises possession of any thing with the intention that thing be used to commit the offence of dishonestly obtaining or dealing in personal financial information (or to facilitate the commission of such an offence). The importation offence (proposed section 480.6) criminalises importing any thing into Australia with the intention that thing be used to commit the offence of dishonestly obtaining or dealing in personal financial information (or to facilitate the commission of such an offence).

Question 2: Definition of ‘indecent’ in proposed subsection 474.27(5)

As I suggested during the hearing, I can now confirm that the definition of ‘indecent’ used in the proposed grooming offence was drawn from the *Model Criminal Code*. Part 5.2 of the Code deals with sexual offences and it is in this context that ‘indecent’ is defined in section 5.2.2 to mean ‘indecent according to the standards of ordinary people’. A copy of the explanation of this definition and its application is provided in pages 105 to 107 of the Model Criminal Code Officers Committee Report of 1999 on *Sexual Offences Against the Person* (see **Attachment A**).

The definition of ‘indecent’ used in the proposed grooming offence is consistent with the definition of ‘act of indecency’ used in the child sex tourism offences in Part IIIA of the *Crimes Act 1914*. Both definitions rely on an objective standard, linked to the views of ordinary people, about what is or is not indecent.

Question 3: Constitutional validity of proposed section 474.17

The provisions of the Bill are constitutionally valid. The provisions contain an explicit link with a subject within constitutional power, i.e. a telecommunications service (see section 51(v) of the Constitution). Moreover, the relevant prohibition is not discretionary in the sense considered in the joint judgment in Plaintiff 3157(2002) v The Commonwealth (2003) 195 ALR 34 (at paragraph 102). It operates by reference to words whose meaning is capable of being ascertained by a court. The matters to be taken into account under section 473.4 are also described in objective terms and could be the subject of evidence or judicial notice by a court.

Question 4: Section 3L of the Crimes Act 1914 and the Telecommunications (Interception) Act 1979

I understand that this issue was previously addressed by Mr Peter Ford, then Acting Deputy Secretary, Criminal Justice and Security in the Attorney-General’s Department, when he appeared before the Senate Legal and Constitutional Legislation Committee during its hearing on the Telecommunications (Interception) Amendment (Stored Communications) Bill 2004. During that hearing he reiterated that resolution of the issue had been achieved, including on the point that section 3L of the Crimes Act is not available in relation to any communication that is protected by the Telecommunications (Interception) Act (see page 34 of *Official Committee Hansard, Senate Legal and Constitutional Committee, Reference: Telecommunications (Interception) Amendment (Stored Communications) Bill 2004*, Thursday, 1 July 2004). The effect of this in relation to the

example of a menacing, harassing or offensive email is that section 3L of the Crimes Act cannot be used by the police to access such an email where the email remains in its passage over the telecommunications system, unless they have a warrant under the *Telecommunications (Interception) Act 1979*. In practical terms, an interception warrant is currently required where the email has yet to be downloaded or retrieved.

Absolute liability as it applies to proposed sections 474.26 and 474.27

Under proposed subsection 474.28(1), absolute liability applies to the circumstance that the recipient of the communication is under 16 years of age in the offences in proposed sections 474.26 and 474.27. This means that the sender does not have to have any particular state of mind in order to be caught by the relevant offence. There is no requirement for the prosecution to prove intention, knowledge, recklessness or negligence with respect to the circumstance that the recipient is under 16. Proposed subsection 474.29(1) lessens the impact of this provision by providing that it is a defence if the sender believed that the recipient of the communications was not under 16.

Proposed subsection 474.28(2) acts in a similar way, applying absolute liability to the circumstance that the other person referred to in paragraphs 474.26(2)(b) or (3)(e), or 474.27(2)(c) or (3)(f) is at least 18. Again, the sender does not have to have any particular state of mind in order to be caught by the relevant offence. There is no requirement for the prosecution to prove intention, knowledge, recklessness or negligence with respect to the circumstance that the other person is at least 18. Proposed subsection 474.29(2) provides a defence where the sender believes the other person to be under 18 years of age.

The combination of the absolute liability provisions and the defences operate in a similar fashion to strict liability. Strict liability also removes the requirement for any particular state of mind to exist at the time of the offending conduct, but allows for mistake of fact. That is a mistaken but reasonable belief that certain facts existed, where if those facts had actually existed the conduct would not have been an offence. The difference in using the combination of absolute liability and a defence in this way is that the defendant bears the burden of pointing to evidence that supports the defence. If strict liability was used, the prosecution would carry the burden of showing mistake of fact does not apply. It is appropriate in these cases to require the defendant to have to point to evidence that supports the applicable defence, because it would generally be much easier for the defendant, rather than the prosecution, to produce evidence showing the existence of the circumstances to which that defence applies (in this case, the defendant's belief about the age of the recipient or other person).

The child sex tourism offences use the same formula of absolute liability for the circumstance that the victim is under 16 and a defence available to the defendant if he/she believed the victim to be over 16.

Research projects approved by the Minister

I envisage that an approval of a research project would cover particular conduct required to be undertaken for the purposes of that project within a defined period of time. However, any conduct undertaken after approval has been provided must still be of public benefit for it to be covered.

Please also find attached tables outlining the changes in the Bill from the exposure draft version to that which was introduced in Parliament, and Commonwealth, State and Territory offences dealing with child pornography (**Attachments B and C**).

The action officer for this matter is Sean Mowbray who can be contacted on (02) 6250 6629.

Yours sincerely

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Attachment A

Commentary

cover all examples of sexual offences committed against persons who are not consenting to that contact and that feature touching but not penetration. A number of aspects of this offence should be noted.

First, in the interests of simplicity of structure and ease of understanding, the offence (apart from the obvious difference in the physical act) should be identical, if at all possible, to the central offence in section 5.2.6(1). Accordingly, a mirror offence will be required, and is contained in section 5.2.8(2). As well, an offence of compelling indecent touching will be required, and is contained in section 5.2.9.

Second, the concept of "assault" has been deleted from the non-fatal non-sexual offences against the person contained in the Model Criminal Code. It would be anomalous to retain the concept of assault with regard to sexual offences. Accordingly, in contrast to many of the jurisdictions, an offence along the lines of "indecent assault" is replaced in the Code by the offence of indecent touching without consent.

Third, apart from the difference in the physical element, the offence can be identical to the central offence. It should be noted that the element of lack of consent is identical to that contained in the central offence. So are the mental elements of knowledge, recklessness, and inadvertence with regard to the lack of consent of the victim. The Committee sees no reason why there should be any difference between the indecent touching offences and the unlawful sexual penetration offences with regard to these elements.

Fourth, the use of the term "touching" is a deliberate effort to encompass a broad range of behaviour. It is intended that if a person were to touch indecently another person not with a part of the first person's body but with an instrument, then that would fall within the offence. A concept of "indecent physical contact", which may denote direct physical connection between two persons, has been deliberately avoided. Some submissions favoured going beyond touching.¹⁴⁰

Fifth, what is meant by "indecent" or "indecently"? In Division 1, section 5.2.2 provides a definition of indecent, and makes it clear that the question of indecency is a matter for the trier of fact (usually, the jury). Indecency is in essence a question of community standards and is therefore appropriate for the jury to determine.

By way of background, at common law indecency does not have an exact or fixed definition. Rather, its meaning depends on prevailing community standards. What is 'indecent' is assessed objectively. In *R v Court*, the House of Lords stated:

¹⁴⁰ For example, Canberra Rape Crisis Centre (filming or showing pornographic material to children); Commonwealth Office of the Status of Women (washing in front of someone); NSW Health (peeing).

Attachment B

Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004

Changes from Exposure Draft to the Bill

Title	Exposure Draft Section Number	Bill Section Number	Change	Basis for Change - Submission or ACD
Definitions	474.4	473.1	Change ed 'connect' to access services' in definition of subscription-specific secure data'	Australian Communications Authority (ACA)
	474.12	473.1	Definitions of 'child pornography material' and 'child abuse' material amended so they deal with persons under 18 years rather than 16 years as under the exposure draft.	Attorney-General's Department (AGD) - Internal
			Definition of 'child pornography material' extended beyond a depiction or description of a child engaged in a sexual pose or sexual activity, to also cover a depiction or description of a child who is in the presence of another person who is engaged in a sexual pose or sexual activity.	Australian Institute of Criminology
			Definition of 'telecommunications network'	ACD - Internal

			changed to refer directly to the <i>Telecommunications Act 1997</i> .	
Determining whether material is offensive	473.4		The definitions of 'child pornography material' and 'child abuse material', as well as the offence dealing with menacing, harassing or offensive use of a carriage service (section 474.17 of the Bill) require consideration of whether reasonable persons would regard particular material as being, in all the circumstances, offensive. Section 473.4 includes a list of factors to be taken into consideration in determining this issue.	EFA and Liberty Victoria
<i>Customs Act 1901</i> – Subsections 231B(3) and (4)	Item 24		As a consequential amendment the Bill amends the Customs Act to align the definitions of 'child pornography' and 'child abuse material' in that Act with those in the Bill.	Customs and AGEC.
Interference with facilities	474.8	474.6	Subsections 474.8(1) and (3) of the exposure draft only covered facilities operated by a carrier.	ACA

			<p>Subsections (1) and (2) of the Bill covers tampering or interfering with a facility that is owned or operated by a carrier or carriage service provider.</p> <p>Subsection (8) of the Bill ensures facilities the subject of a nominated carrier declaration under the <i>Telecommunications Act 1997</i> are covered by the offences.</p>	
<p>Modification etc. of a telecommunications device identifier</p>	<p>474.9</p>	<p>474.7</p>	<p>Insertion of subsection 474.7(3) - creates a defence for law enforcement/intelligence or security officers acting in the course of their duties where their conduct is reasonable for the purposes of performing that duty</p>	<p>AFP and intelligence agencies.</p>
<p>Possession or control of data on a device with intent to modify a telecommunications device identifier</p>	<p>474.10</p>	<p>474.8</p>	<p>Insertion of subsection 474.8(5) - creates a defence for law enforcement/intelligence or security officers acting in the course of their duties where their conduct is reasonable for the purposes of performing that duty</p>	<p>AFP and intelligence agencies.</p>

Producing, supplying or obtaining data or a device with intent to modify a telecommunications device identifier	474.11	474.9	Insertion of subsection 474.9(5) – creates a defence for law enforcement/intelligence or security officers acting in the course of their duties where their conduct is reasonable for the purposes of performing that duty	AFP and intelligence agencies.
Copying subscription-specific secure data	474.11A	474.10	Insertion of subsection 474.10(4) – creates a defence for law enforcement/intelligence or security officers acting in the course of their duties where their conduct is reasonable for the purposes of performing that duty	AFP and intelligence agencies.
Possession or control of data or a device with intent to copy an account identifier	474.11	474.11	Insertion of subsections 474.11(4) and (5) – provide defences for the same persons as are protected under the primary offences (eg. a carrier who operates facilities used in the supply of public mobile telecommunications service to which the subscription-specific secure data relates)	AGD - internal
Producing, supplying or obtaining data or a device	474.11C	474.12	Insertion of subsections 474.12(4) and (5) – provide	AGD- internal.

<p>with intent to copy an account identifier</p>			<p>defences for the same persons as are protected under the primary offences (eg. law enforcement/intelligence/security officer acting in the course of duty and conduct is reasonable)</p>	
<p>Use of a carriage service</p>	<p>474.13</p>	<p>474.13</p>	<p>The Bill inserts a general exemption for the purposes of relevant offences for ISPs and ICHs, as well as carriers and carriage service providers, when acting in the course of their business.</p>	<p>EFA and Telstra submissions.</p>
<p>Using a carriage service to menace, harass or cause offence</p>	<p>474.16</p>	<p>474.17</p>	<p>The Bill increases the penalty for the offence from 2 years to 3 years imprisonment. The Bill removes the defence for Internet service providers and Internet content hosts. This defence is replaced by a general exemption for the purposes of relevant offences for ISPs and ICHs, as well as carriers and carriage service providers, when acting in the course of their business (section 474.13).</p>	<p>AGD internal. EFA and Telstra submissions.</p>

			<p>Subsection 474.17(2) of the Bill makes it clear that use of a carriage service to menace, harass or cause offence to employees of the National Relay Service (NRS) provider, emergency call persons, employees of emergency service organisations and National security Hotline call takers is caught by the offence.</p>	<p>Australian Communication Exchange and National Emergency Communications Working Group</p>
<p>Improper use of emergency call service</p>	-	474.18	<p>The Bill creates a new offence dealing with improper use of the emergency call service.</p>	<p>National Emergency Communications Working Group.</p>
<p>Defences in respect of child pornography material</p>	474.19	474.21	<p>The Bill removes the defence for Internet service providers and Internet content hosts. This defence is replaced by a general exemption for the purposes of relevant offences for ISPs and ICHs, as well as carriers and carriage service providers, when acting in the course of their business (section 474.13).</p>	<p>EFA and Telstra submissions.</p>
			<p>The Bill removes the health care</p>	<p>Liberty Victoria, EFA,</p>

			<p>professional and medical research defences and replaces them with a 'public benefit' defence.</p> <p>The Bill inserts a defence for officers or employees of law enforcement, intelligence and security agencies.</p>	<p>OFLC, AIC and Telstra submissions.</p> <p>AFP and intelligence agencies.</p>
	474.22	474.24	<p>The Bill removes the defence for Internet service providers and Internet content hosts. This defence is replaced by a general exemption for the purposes of relevant offences for ISPs and ICHs, as well as carriers and carriage service providers, when acting in the course of their business (section 474.13).</p> <p>The Bill removes the health care professional and medical research defences and replaces them with a 'public benefit' defence.</p> <p>The Bill inserts a defence for officers or employees of law enforcement, intelligence and</p>	<p>EFA and Telstra submissions.</p> <p>EFA, OFLC, AIC and Telstra submissions.</p> <p>AFP and intelligence agencies.</p>
Defences in respect of child abuse material				

	<p>474.25</p>		<p>Obligations of Internet service providers and Internet content hosts</p>	<p>security agencies. The Bill inserts an obligation requiring ISPs and ICHs who are made aware of Internet material that may breach relevant offences to forward that material to the AFP for investigation. Non-compliance with this obligation would be a criminal offence punishable by 100 penalty units.</p>	<p>AGD internal.</p>
	<p>474.26</p>	<p>474.23</p>	<p>Using a carriage service to procure persons under 16 years of age</p>	<p>The physical elements of the offences have been tightened to refer specifically to the intention of the adult sending the communication. 'Telecommunications' in heading changed to 'carriage services'.</p>	<p>AGD internal ACA</p>
	<p>474.27</p>	<p>474.24</p>	<p>Using a carriage service to 'groom' persons under 16 years of age</p>	<p>The physical elements of the offences have been tightened to refer specifically to the intention of the adult sending the communication. A third 'grooming' offence has</p>	<p>AGD internal AGD internal</p>

	<p>been inserted to deal with situations where the sender wishes to 'groom' a child for the purposes of watching two children engage in sexual activity.</p> <p>The term 'indecent' has been defined.</p> <p>'Telecommunications' in heading changed to 'carriage services'.</p>				<p>AGD internal</p> <p>ACA.</p>
<p>474.28</p>	<p>The Bill removes the definition of the 'age of consent' as found in the exposure draft Bill. Sections 474.26, 474.27 and 474.29 of the Bill now refer to 'persons under 16 years of age'.</p> <p>The definition of 'sexual activity' has been amended to clarify that it extends to acts that do not involve physical contact (this effects sections 474.26 and 474.27).</p>	<p>474.25</p>	<p>474.30</p>	<p>Provisions relating to offences against sections 474.23 and 474.24 (of the exposure draft Bill)</p>	<p>APP, DPP, Liberty Victoria, AGEC, Criminal Bar Association, NT Police</p> <p>AGD internal</p>
<p>Defences for NRS</p>	<p>The Bill inserts provision</p>	<p>-</p>	<p>474.30</p>		<p>Australian</p>

<p>employees and emergency call persons</p>	<p>474.30, which provides that emergency call persons and employees of the NRS provider are not criminally responsible for any offence involving the use of a carriage service, or the related extensions of criminal responsibility (such as complicity), when acting in their roles as an emergency call person or employee of the NRS provider.</p>	<p>Communication Exchange and</p>
<p>Saving of other laws</p>	<p>475.1</p>	<p>AGD and DCITA.</p>
<p>Crimes Act 1914</p>	<p>475.1</p>	<p>Proposed subsection 475.1(2) provides that any defences to offences under Part 10.6 of the <i>Criminal Code</i> do not make any conduct lawful if the conduct would otherwise be unlawful under the <i>Radiocommunications Act 1992</i>.</p>
<p>Crimes Act 1914</p>	<p>Item 3</p>	<p>Expands the definition of serious Commonwealth offence to include the proposed child pornography, child abuse and 'procuring' and 'grooming' offences.</p>
<p></p>	<p></p>	<p>AFP submission.</p>

<p><i>Telecommunications (Interception) Act 1979</i></p>	<p>.</p>	<p>Item 26</p>	<p>Amends the Act to ensure law enforcement agencies can obtain the requisite authorisation or warrant to assist in investigating the child pornography, child abuse material, and the 'grooming' and 'procuring' offences.</p>	<p>AFP, ACIEC submission.</p>
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CHILD PORNOGRAPHY OFFENCES

JURISDICTION	CRIMINALIZATION OF CHILD PORNOGRAPHY	PENALTIES
Commonwealth	It is an offence to knowingly or recklessly import, or export, items of child pornography (defined as document or goods that depict a person who is or appears to be under 16 and who is in a sexual pose, that is likely to cause offence to a reasonable adult – <i>Customs Act 1901 s 233BAB</i> . See also <i>Customs (Prohibited Import) Regulations, Reg 4A</i> .	2500 penalty units or 10 years imprisonment or both
Commonwealth - proposed new provisions in Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004	<p>It is an offence to use a carriage service to access material, transmit material, make material available or publish or otherwise distribute material, and the material is child pornography or child abuse material – proposed sections 474.19, 474.22</p> <p>It is an offence to possess, control, produce, supply or obtain material that is child pornography material or child abuse material with intention of committing an offence against section 474.19 or 474.22 - proposed sections 474.20, 474.23</p> <p>Child pornography material is defined to cover a range of material including that which depicts or describes persons under 18 engaged in a sexual pose or sexual activity, or in the presence of a person who is engaged in a sexual pose or sexual activity, and does so in a way that reasonable persons would regard as being, in all the circumstances, offensive. The definition also covers material the dominant characteristic of which depicts for a sexual purpose the sexual organs, the anal region or the breasts (in the case of a female) of a person who is under 18, and does so in a way that reasonable persons would regard as being, in all the circumstances, offensive – proposed section 473.1</p>	10 years imprisonment

	<p>Child abuse material is defined to cover material that depicts or describes a person who is under 18, or who appears or is implied to be under 18, as a victim of torture, cruelty or physical abuse, and does so in a way that reasonable persons would regard as being, in all the circumstances, offensive – proposed section 473.1</p> <p>Customs Act definitions of ‘child pornography’ and ‘child abuse material’ amended to reflect proposed Criminal Code definitions – Item 24</p>	
New South Wales	<p>It is an offence to possess child pornography (publication, film or computer game classified RC, or that would be classified RC, that describes or depicts person who is or looks under 16 in a way that is likely to cause offence to a reasonable adult) - s 578B of <i>Crimes Act 1900</i></p> <p>It is an offence to publish child pornography or an indecent article. ‘Child pornography’ defined same as s 578B, above – s 578C of <i>Crimes Act 1900</i></p>	<p>s578B –2 years imprisonment or 100 penalty units or both.</p> <p>s578C – child porn - 5 years imprisonment or 1000 penalty units or both, indecent article – 12 months imprisonment or 100 penalty units or both</p>
Victoria	<p>It is an offence to print, otherwise make or produce child pornography - <i>Crimes Act 1958</i> s 68</p> <p>It is an offence to possess child pornography - <i>Crimes Act 1958</i> s 70</p> <p>Child pornography means a film, photograph, publication or computer game that describes or depicts a person who is, or looks like, a person under 18 engaging in sexual activity or depicted in an indecent sexual manner or context</p>	<p>s 68 — 10 years imprisonment.</p> <p>s 70 – 5 years imprisonment</p>

South Australia	<p>It is an offence to produce, sell, exhibit in a public place or to offend or insult another person child pornography or other indecent or offensive material - <i>Summary Offences Act 1953</i>, 33(2)</p> <p>It is an offence to possess child pornography - <i>Summary Offences Act 1953</i>, 33(3)</p> <p>Child pornography means indecent or offensive material in which a person under 16 (whether engaged in sexual activity or not) is depicted or described in a way that is likely to cause serious and general offence amongst reasonable adult members of the community.</p>	<p>s33(2) – child pornography - 1st offence – 2 years imprisonment, 2nd/subsequent offence – 4 years imprisonment, s33(2) - indecent or offensive material - \$20,000 or 6 months imprisonment</p> <p>s33(3) - \$5000 or 1 year imprisonment</p>
Western Australia	<p>It is an offence to sell, supply, offer, publish, display, possess, or deal in other ways with child pornography - <i>Censorship Act 1996</i>, s 60</p> <p>Child pornography means an article that describes or depicts, in a manner that is likely to cause offence to a reasonable adult, a person who is, or who looks like, a child under 16 years of age (whether the person is engaged in sexual activity or not).</p>	<p>5-7 years imprisonment depending on offence</p>
Tasmania	<p>It is an offence to make, reproduce or possess a child abuse product - <i>Classification (Publications, Films and Computer Games) Enforcement Act 1995</i>, ss 72, 74</p> <p>Child abuse product means a publication, film or computer game that describes or depicts a person (whether engaged in sexual activity or otherwise) who is, or who looks like, a person under 16 in a manner that is likely to cause offence to a reasonable adult.</p>	<p>s72 – make or reproduce - 200 penalty units or 2 years imprisonment or both</p> <p>s74 – possession – 50 penalty units or 12 months imprisonment or both</p>
Queensland	<p>It is an offence to sell, distribute or expose for sale obscene publications or images - a higher penalty applies if it depicts a child who is or is represented to be under 16 - <i>Criminal Code Act 1989</i>, s 228.</p>	<p>s228 – if child is under 16 years of age - 5 years imprisonment, s228 - if child is under 12 years of age – 10 years imprisonment</p>

		s228 – obscene publications and images – 2 years imprisonment
ACT	<p>It is an offence to produce, publish, offer or sell child pornography - <i>Crimes Act 1900</i>, s 64A.</p> <p>It is an offence to intentionally possess child pornography - <i>Crimes Act 1900</i>, s 65.</p> <p>Child pornography means anything that represents the sexual parts of a child, a child engaged in an activity of a sexual nature, or someone else engaged in an activity of a sexual nature in the presence of a child, substantially for the sexual arousal or sexual gratification of someone other than the child (child is a person under 18).</p>	<p>s64A – 1200 penalty units or 12 years imprisonment or both</p> <p>s65 –500 penalty units or 5 years imprisonment or both.</p>
Northern Territory	<p>It is an offence to possess, sell, offer or advertise for distribution child pornography - <i>Criminal Code Act</i>, s 125B</p> <p>Child pornography means a film, publication or computer game classified RC, or an unclassified film, publication or computer game that would, if classified, be classified RC, on the basis that it describes or depicts, in a way that is likely to cause offence to a reasonable adult, a person (whether or not engaged in sexual activity) who is a child who has not attained the age of 16 years or who looks like a child who has not attained that age.</p>	<p>s125B(1) - possession – 2 years imprisonment</p> <p>s125B(2) - sell/offer/advertise – 10 years imprisonment</p>