APPENDIX 9


Part 10.6—Telecommunications Services

Division 473—Preliminary

Section 473.1: Definitions

In this Part:

access in relation to material includes:

a. the display of the material by a computer or any other output of the material from a computer; or
b. the copying or moving of the material to any place in a computer or to a data storage device; or

c. in the case of material that is a program—the execution of the program.

account identifier means:

a. something that:
   i. contains subscription-specific secure data; and
   ii. is installed, or capable of being installed, in a mobile telecommunications device; or
b. anything else that:
   i. allows a particular mobile telecommunications account to be identified; and
   ii. is prescribed by the regulations as an account identifier for the purposes of this Part.

Note: Paragraph (a)—This would include a SIM card.

carriage service provider has the same meaning as in the Telecommunications Act 1997.

Note: See also section 474.3 respecting persons who are taken to be carriage service providers in relation to certain matters.

carrier has the same meaning as in the Telecommunications Act 1997.

Note: See also section 474.3 respecting persons who are taken to be carriers in relation to certain matters.

carry includes transmit, switch and receive.

child abuse material means:

a. material that depicts a person, or a representation of a person,

   who:
   i. is, or appears to be, under 18 years of age; and
ii. is, or appears to be, a victim of torture, cruelty or physical abuse; and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

b. material that describes a person who:
   i. is, or is implied to be, under 18 years of age; and
   ii. is, or is implied to be, a victim of torture, cruelty or physical abuse; and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.

*child pornography material* means:

a. material that depicts a person, or a representation of a person, who is, or appears to be, under 18 years of age and who:
   i. is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or
   ii. is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity; and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

b. material the dominant characteristic of which is the depiction, for a sexual purpose, of:
   i. a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; or
   ii. a representation of such a sexual organ or anal region;

or

   iii. the breasts, or a representation of the breasts, of a female person who is, or appears to be, under 18 years of age; in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

c. material that describes a person who is, or is implied to be, under 18 years of age and who:
   i. is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or
   ii. is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity; and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

d. material that describes:
   i. a sexual organ or the anal region of a person who is, or is implied to be, under 18 years of age; or
   ii. the breasts of a female person who is, or is implied to be, under 18 years of age; and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.

*communication in the course of telecommunications carriage* means a communication that is being carried by a carrier or carriage service provider, and includes a communication that has been collected or received by a carrier or carriage service provider for carriage, but has not yet been delivered by the carrier or carriage service provider.
connected, in relation to a telecommunications network, includes connection otherwise than by means of physical contact (for example, a connection by means of radiocommunication).

control of data, or material that is in the form of data, has the meaning given by section 473.2.

depict includes contain data from which a visual image (whether still or moving) can be generated.

describe includes contain data from which text or sounds can be generated.

emergency call person has the same meaning as in the Telecommunications Act 1997.

emergency service number has the same meaning as in the Telecommunications Act 1997.

emergency service organisation has the same meaning as in section 147 of the Telecommunications (Consumer Protection and Service Standards) Act 1999.

facility has the same meaning as in the Telecommunications Act 1997.

interception device means an apparatus or device that:

a. is of a kind that is capable of being used to enable a person to intercept a communication passing over a telecommunications system; and

b. could reasonably be regarded as having been designed:
   i. for the purpose of; or
   ii. for purposes including the purpose of; using it in connection with the interception of communications passing over a telecommunications system;

and

c. is not designed principally for the reception of communications transmitted by radiocommunications.

Internet content host has the same meaning as in Schedule 5 to the Broadcasting Services Act 1992.

Internet service provider has the same meaning as in Schedule 5 to the Broadcasting Services Act 1992.

mobile telecommunications account means an account with a carriage service provider for the supply of a public mobile telecommunications service to an end-user.

mobile telecommunications device means an item of customer equipment (within the meaning of the Telecommunications Act 1997) that is used, or is capable of being used, in connection with a public mobile telecommunications service. nominated carrier has the same meaning as in the Telecommunications Act 1997.

Section 473.2 Possession or Control of Data or Material in the Form of Data

A reference in this Part to a person having possession or control of data, or material that is in the form of data, includes a reference to the person:

a. having possession of a computer or data storage device that holds or contains the data; or

b. having possession of a document in which the data is recorded; or

c. having control of data held in a computer that is in the possession of another person (whether inside or outside Australia).
Section 473.3 Producing, Supplying or Obtaining Data or Material in the Form of Data

A reference in this Part to a person producing, supplying or obtaining data, or material that is in the form of data, includes a reference to the person:

a. producing, supplying or obtaining data held or contained in a computer or data storage device; or
b. producing, supplying or obtaining a document in which the data is recorded.

Section 473.4 Determining Whether Material is Offensive

The matters to be taken into account in deciding for the purposes of this Part whether reasonable persons would regard particular material, or a particular use of a carriage service, as being, in all the circumstances, offensive, include:

a. the standards of morality, decency and propriety generally accepted by reasonable adults; and
b. the literary, artistic or educational merit (if any) of the material; and
c. the general character of the material (including whether it is of a medical, legal or scientific character).

473.5 Use of a Carriage Service

For the purposes of this Part, a person is taken not to use a carriage service by engaging in particular conduct if:

a. the person is a carrier and, in engaging in that conduct, is acting solely in the person’s capacity as a carrier; or
b. the person is a carriage service provider and, in engaging in that conduct, is acting solely in the person’s capacity as a carriage service provider; or
c. the person is an internet service provider and, in engaging in that conduct, is acting solely in the person’s capacity as an internet service provider; or
d. the person is an internet content host and, in engaging in that conduct, is acting solely in the person’s capacity as an internet content host.

Division 474—Telecommunications Offences

Subdivision A—Dishonesty with Respect to Carriage Services

Section 474.1 Dishonesty

1. For the purposes of this Subdivision, dishonest means:
   a. dishonest according to the standards of ordinary people; and
   b. known by the defendant to be dishonest according to the standards of ordinary people.
2. In a prosecution for an offence against this Subdivision, the determination of dishonesty is a matter for the trier of fact.
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Section 474.2 General Dishonesty with Respect to a Carriage Service Provider

Obtaining a gain

1. A person is guilty of an offence if the person does anything with the intention of dishonestly obtaining a gain from a carriage service provider by way of the supply of a carriage service. Penalty: Imprisonment for 5 years.

Causing a loss

2. A person is guilty of an offence if the person does anything with the intention of dishonestly causing a loss to a carriage service provider in connection with the supply of a carriage service. Penalty: Imprisonment for 5 years.

3. A person is guilty of an offence if:
   a. the person dishonestly causes a loss, or dishonestly causes a risk of loss, to a carriage service provider in connection with the supply of a carriage service; and
   b. the person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring. Penalty: Imprisonment for 5 years.

Subdivision B—Interference with Telecommunications

Section 474.3 Person Acting for a Carrier or Carriage Service Provider

1. For the purposes of this Subdivision, a person who does any thing for or on behalf of a carrier, or on behalf of persons at least one of whom is a carrier, is, in respect of:
   a. the doing by that person of that thing; or
   b. any rental, fee or charge payable for or in relation to the doing by that person of that thing; or
   c. the operation by that person of a facility in connection with the doing of that thing; or
   d. a facility belonging to that person; or
   e. the operation by that person of a satellite; taken to be a carrier.

2. For the purposes of this Subdivision, a person who does any thing for or on behalf of a carriage service provider, or on behalf of persons at least one of whom is a carriage service provider, is, in respect of:
   a. the doing by that person of that thing; or
   b. any rental, fee or charge payable for or in relation to the doing by that person of that thing; or
   c. the operation by that person of a facility in connection with the doing of that thing; or
   d. a facility belonging to that person; or
   e. the operation by that person of a satellite; taken to be a carriage service provider.
Section 474.4 Interception Devices

1. A person is guilty of an offence if:
   a. the person:
      i. manufactures; or
      ii. advertises, displays or offers for sale; or
      iii. sells; or
      iv. possesses; an apparatus or device (whether in an assembled or unassembled form); and
   b. the apparatus or device is an interception device.

Penalty: Imprisonment for 5 years.

2. A person is not criminally responsible for an offence against subsection (1) if the person possesses the interception device in the course of the person’s duties relating to the interception of communications that does not constitute a contravention of subsection 7(1) of the Telecommunications (Interception) Act 1979.

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

3. A person is not criminally responsible for an offence against subsection (1) if the applicable conduct mentioned in subparagraphs (1)(a)(i) to (iv) is in circumstances specified in regulations made for the purposes of this subsection.

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

Section 474.5. Wrongful Delivery of Communications

1. A person is guilty of an offence if:
   a. a communication is in the course of telecommunications carriage; and
   b. the person causes the communication to be received by a person or carriage service other than the person or service to whom it is directed.

Penalty: Imprisonment for 1 year.

2. A person is not criminally responsible for an offence against subsection (1) if the person engages in the conduct referred to in paragraph (1)(b) with the consent or authorisation of the person to whom, or the person operating the carriage service to which, the communication is directed.

   Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).
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Section 474.6. Interference with Facilities

1. A person is guilty of an offence if the person tampers with, or interferes with, a facility owned or operated by:
   a. a carrier; or
   b. a carriage service provider; or
   c. a nominated carrier.

   Penalty: Imprisonment for 1 year.

2. For the purposes of an offence against subsection (1), absolute liability applies to the physical element of circumstance of the offence, that the facility is owned or operated by a carrier, a carriage service provider or a nominated carrier.

3. A person is guilty of an offence if:
   a. the person tampers with, or interferes with, a facility owned or operated by:
      i. a carrier; or
      ii. a carriage service provider; or
      iii. a nominated carrier; and
   b. this conduct results in hindering the normal operation of a carriage service supplied by a carriage service provider.

   Penalty: Imprisonment for 2 years.

4. For the purposes of an offence against subsection (3), absolute liability applies to the following physical elements of circumstance of the offence:
   a. that the facility is owned or operated by a carrier, a carriage service provider or a nominated carrier;
   b. that the carriage service is supplied by a carriage service provider.

5. A person is guilty of an offence if:
   a. the person uses or operates any apparatus or device (whether or not it is comprised in, connected to or used in connection with a telecommunications network); and
   b. this conduct results in hindering the normal operation of a carriage service supplied by a carriage service provider. Penalty: Imprisonment for 2 years.

6. For the purposes of an offence against subsection (5), absolute liability applies to the physical element of circumstance of the offence, that the carriage service is supplied by a carriage service provider.

7. A person is not criminally responsible for an offence against subsection (5) if:
   a. the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in good faith in the course of his or her duties; and
   b. the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

   Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).
Note 2: See also subsection 475.1(2) for the interaction between this defence and the Radiocommunications Act 1992.

8. For the purposes of this section, a facility is taken to be owned or operated by a nominated carrier if the Telecommunications Act 1997 applies, under section 81A of that Act, as if that facility were owned or operated by the nominated carrier.

Section 474.7 Modification etc. of a Telecommunications Device Identifier

1. A person is guilty of an offence if the person:
   a. modifies a telecommunications device identifier; or
   b. interferes with the operation of a telecommunications device identifier.

Penalty: Imprisonment for 2 years.

2. A person is not criminally responsible for an offence against subsection (1) if the person is:
   a. the manufacturer of the mobile telecommunications device in which the telecommunications device identifier is installed;
   or
   b. an employee or agent of the manufacturer who is acting on behalf of the manufacturer; or
   c. acting with the consent of the manufacturer.

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

3. A person is not criminally responsible for an offence against subsection (1) if:
   a. the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
   b. the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

Section 474.8 Possession or Control of Data or a Device with Intent to Modify a Telecommunications Device Identifier

1. A person is guilty of an offence if:
   a. the person has possession or control of any thing or data; and
   b. the person has that possession or control with the intention that the thing or data be used:
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i. by the person; or
ii. by another person;

in committing an offence against subsection 474.7(1) (modification of a telecommunications device identifier).

Penalty: Imprisonment for 2 years.

2. A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.7(1) (modification of a telecommunications device identifier) is impossible.

3. It is not an offence to attempt to commit an offence against subsection (1).

4. A person is not criminally responsible for an offence against subsection (1) if the person is:
   a. the manufacturer of the mobile telecommunications device in which the telecommunications device identifier is installed; or
   b. an employee or agent of the manufacturer who is acting on behalf of the manufacturer; or
   c. acting with the consent of the manufacturer.

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

5. A person is not criminally responsible for an offence against subsection (1) if:
   a. the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
   b. the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

   Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).
   Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

Section 474.9 Producing, Supplying or Obtaining Data or a Device with Intent to Modify a Telecommunications Device Identifier

1. A person is guilty of an offence if:
   a. the person produces, supplies or obtains any thing or data; and
   b. the person does so with the intention that the thing or data be used:
      i. by the person; or
      ii. by another person;

   in committing an offence against subsection 474.7(1) (modification of a telecommunications device identifier).

   Penalty: Imprisonment for 2 years.
2. A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.7(1) (modification of a telecommunications device identifier) is impossible.

3. It is not an offence to attempt to commit an offence against subsection (1).

4. A person is not criminally responsible for an offence against subsection (1) if the person is:
   a. the manufacturer of the mobile telecommunications device in which the telecommunications device identifier is installed; or
   b. an employee or agent of the manufacturer who is acting on behalf of the manufacturer; or
   c. acting with the consent of the manufacturer.

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

5. A person is not criminally responsible for an offence against subsection (1) if:
   a. the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
   b. the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

   Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).
   Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

**Section 474.10 Copying Subscription-Specific Secure Data**

*Copying subscription-specific secure data from an existing account identifier*

1. A person is guilty of an offence if the person:
   a. copies the subscription-specific secure data from an account identifier; and
   b. does so with the intention that the data will be copied (whether by the person or by someone else) onto something that:
      i. is an account identifier; or
      ii. will, once the data is copied onto it, be capable of operating as an account identifier.

   Penalty: Imprisonment for 2 years.

*Copying subscription-specific secure data onto a new account identifier*

2. A person is guilty of an offence if:
   a. subscription-specific secure data is copied from an account identifier (whether by the person or by someone else); and
   b. the person copies that data onto something that:
      i. is an account identifier; or
      ii. will, once the data is copied onto it, be capable of operating as an account identifier.
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This is so whether or not the person knows which particular account identifier the subscription-specific secure data is copied from.
Penalty: Imprisonment for 2 years.

Defences

3. A person is not criminally responsible for an offence against subsection (1) or (2) if the person is:
   a. the carrier who operates the facilities used, or to be used, in the supply of the public mobile telecommunications service to which the subscription-specific secure data relates; or
   b. an employee or agent of that carrier who is acting on behalf of that carrier; or
   c. acting with the consent of that carrier.

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

4. A person is not criminally responsible for an offence against subsection (1) or (2) if:
   a. the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
   b. the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

   Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).
   Note 2: This subsection merely creates a defence to an offence against subsection (1) or (2) and does not operate to authorise any conduct that requires a warrant under some other law.

Section 474.11 Possession or Control of Data or a Device with Intent to Copy an Account Identifier

1. A person is guilty of an offence if:
   a. the person has possession or control of any thing or data; and
   b. the person has that possession or control with the intention that the thing or data be used:
      i. by the person; or
      ii. by another person;

   in committing an offence against subsection 474.10(1) (copying subscription-specific secure data from an account identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier).
   Penalty: Imprisonment for 2 years.

2. A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.10(1) (copying subscription-specific secure data from an account identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier) is impossible.

3. It is not an offence to attempt to commit an offence against subsection (1).
Defences

4. A person is not criminally responsible for an offence against subsection (1) if the person is:
   a. the carrier who operates the facilities used, or to be used, in the supply of the public mobile telecommunication service to which the subscription-specific secure data relates; or
   b. an employee or agent of that carrier who is acting on behalf of that carrier; or
   c. acting with the consent of that carrier.

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

5. A person is not criminally responsible for an offence against subsection (1) if:
   a. the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
   b. the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

   Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).
   Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

Section 474.12 Producing, Supplying or Obtaining Data or a Device with Intent to Copy an Account Identifier

1. A person is guilty of an offence if:
   a. the person produces, supplies or obtains any thing or data; and
   b. the person does so with the intention that the thing or data be used:
      i. by the person; or
      ii. by another person;

   in committing an offence against subsection 474.10(1) (copying subscription-specific secure data from an account identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier).
   Penalty: Imprisonment for 2 years.

2. A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.10(1) (copying subscription-specific secure data from an account identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier) is impossible.

3. It is not an offence to attempt to commit an offence against subsection (1).

Defences

4. A person is not criminally responsible for an offence against subsection (1) if the person is:
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a. the carrier who operates the facilities used, or to be used, in the supply of the public mobile telecommunications service to which the subscription-specific secure data relates; or
b. an employee or agent of that carrier who is acting on behalf of that carrier; or
c. acting with the consent of that carrier.

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

5. A person is not criminally responsible for an offence against subsection (1) if:
   a. the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
   b. the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).
Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

Subdivision C—General Offences Relating to use of Telecommunications

Section 474.14 Using a Telecommunications Network with Intention to Commit a Serious Offence

1. A person is guilty of an offence if:
   a. the person:
      i. connects equipment to a telecommunications network; and
      ii. intends by this to commit, or to facilitate the commission of, an offence (whether by that person or another person); and
   b. the offence is:
      i. a serious offence against a law of the Commonwealth, a State or a Territory; or
      ii. a serious offence against a foreign law.

2. A person is guilty of an offence if:
   a. the person uses equipment connected to a telecommunications network in the commission of, or to facilitate the commission of, an offence (whether by that person or another person); and
   b. the offence is:
      i. a serious offence against a law of the Commonwealth, a State or a Territory; or
      ii. a serious offence against a foreign law.

3. A person who is guilty of an offence against subsection (1) or (2) is punishable, on conviction, by a penalty not exceeding the penalty applicable to the serious offence.

4. Absolute liability applies to paragraphs (1)(b) and (2)(b).

Note: For **absolute liability**, see section 6.2.
5. A person may be found guilty of an offence against subsection (1) or (2) even if committing the serious offence is impossible.

6. It is not an offence to attempt to commit an offence against subsection (1) or (2).

**Section 474.15 Using a Carriage Service to Make a Threat**

*Threat to kill*

1. A person (the first person) is guilty of an offence if:
   a. the first person uses a carriage service to make to another person (the second person) a threat to kill the second person or a third person; and
   b. the first person intends the second person to fear that the threat will be carried out.

   Penalty: Imprisonment for 10 years.

*Threat to cause serious harm*

2. A person (the first person) is guilty of an offence if:
   a. the first person uses a carriage service to make to another person (the second person) a threat to cause serious harm to the second person or a third person; and
   b. the first person intends the second person to fear that the threat will be carried out.

   Penalty: Imprisonment for 7 years.

*Actual fear not necessary*

3. In a prosecution for an offence against this section, it is not necessary to prove that the person receiving the threat actually feared that the threat would be carried out.

**Definitions**

4. In this section:

   *fear* includes apprehension.

   *threat to cause serious harm to a person* includes a threat to substantially contribute to serious harm to the person.

**Section 474.16 Using a Carriage Service for a Hoax Threat**

A person is guilty of an offence if:

a. the person uses a carriage service to send a communication; and
b. the person does so with the intention of inducing a false belief that an explosive, or a dangerous or harmful substance or thing, has been or will be left in any place.
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Penalty: Imprisonment for 10 years.

**Section 474.17 Using a Carriage Service to Menace, Harass or Cause Offence**

1. A person is guilty of an offence if:
   a. the person uses a carriage service; and
   b. the person does so in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive.

Penalty: Imprisonment for 3 years.

2. Without limiting subsection (1), that subsection applies to menacing, harassing or causing offence to:
   a. an employee of the NRS provider; or
   b. an emergency call person; or
   c. an employee of an emergency service organisation; or
   d. an APS employee in the Attorney-General’s Department acting as a National Security Hotline call taker.

**Section 474.18 Improper use of Emergency Call Service**

1. A person is guilty of an offence if the person:
   a. makes a call to an emergency service number; and
   b. does so with the intention of inducing a false belief that an emergency exists.

Penalty: Imprisonment for 3 years.

2. A person is guilty of an offence if:
   a. the person makes a call to an emergency service number; and
   b. the person makes the call otherwise than for the purpose of reporting an emergency; and
   c. the call is a vexatious one.

Penalty: Imprisonment for 3 years.

3. In determining whether a call by a person to an emergency service number is a vexatious one, have regard to:
   a. the content of the call; and
   b. the number, frequency and content of previous calls the person has made to emergency service numbers otherwise than for the purpose of reporting emergencies; and
   c. any other relevant matter.
Subdivision D—Offences Relating to use of Carriage Service for Child Pornography Material or Child Abuse Material

Section 474.19 Using a Carriage Service for Child Pornography Material

1. A person is guilty of an offence if:
   a. the person: distributes, advertises or promotes material; or
      iv. solicits material; and
         aa. the person does so using a carriage service; and
   b. the material is child pornography material.

Penalty: Imprisonment for 15 years.

2. To avoid doubt, the following are the fault elements for the physical elements of an offence against subsection (1):
   a. intention is the fault element for the conduct referred to in paragraph (1)(a);
   b. recklessness is the fault element for the circumstances referred to in paragraph (1)(b).

   Note: For the meaning of intention and recklessness see sections 5.2 and 5.4.

2A. Absolute liability applies to paragraph (1)(aa).

   Note: For absolute liability, see section 6.2.

3. As well as the general defences provided for in Part 2.3, defences are provided for under section 474.21 in relation to this section.

Section 474.20 Possessing, Controlling, Producing, Supplying or Obtaining Child Pornography Material for use Through a Carriage Service

1. A person is guilty of an offence if:
   a. the person:
      i. has possession or control of material; or
      ii. produces, supplies or obtains material; and
   b. the material is child pornography material; and
   c. the person has that possession or control, or engages in that production, supply or obtaining, with the intention that the material be used:
      i. by that person; or
      ii. by another person;
   in committing an offence against section 474.19 (using a carriage service for child pornography material).

Penalty: Imprisonment for 15 years.
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2. A person may be found guilty of an offence against subsection (1) even if committing the offence against section 474.19 (using a carriage service for child pornography material) is impossible.

3. It is not an offence to attempt to commit an offence against subsection (1).

Section 474.21 Defences in Respect of Child Pornography Material

1. A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for use through a carriage service) because of engaging in particular conduct if the conduct:
   a. is of public benefit; and
   b. does not extend beyond what is of public benefit.

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

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

2. For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:
   a. enforcing a law of the Commonwealth, a State or a Territory; or
   b. monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or
   c. the administration of justice; or
   d. conducting scientific, medical or educational research that has been approved by the Minister in writing for the purposes of this section.

3. A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for use through a carriage service) if:
   a. the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
   b. the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

4. A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for use through a carriage service) if the person engages in the conduct in good faith for the sole purpose of:
   a. assisting the Australian Communications and Media Authority to detect:
      i. prohibited content (within the meaning of Schedule 7 to the Broadcasting Services Act 1992); or
potential prohibited content (within the meaning of that Schedule); in the performance of the Authority’s functions under Schedule 5 or Schedule 7 to that Act; or
b. manufacturing or developing, or updating, content filtering technology (including software) in accordance with:
   i. a recognised alternative access-prevention arrangement (within the meaning of clause 40 of Schedule 5 to the Broadcasting Services Act 1992); or
   ii. a designated alternative access-prevention arrangement (within the meaning of clause 60 of that Schedule).

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

Section 474.22 Using a Carriage Service for Child Abuse Material

1. A person is guilty of an offence if:
   a. the person:
      i. accesses material; or
      ii. causes material to be transmitted to himself or herself; or
      iii. transmits, makes available, publishes, distributes, advertises or promotes material; or
      iv. solicits material; and
      aa. the person does so using a carriage service; and
   b. the material is child abuse material.

Penalty: Imprisonment for 15 years.

2. To avoid doubt, the following are the fault elements for the physical elements of an offence against subsection (1):
   a. intention is the fault element for the conduct referred to in paragraph (1)(a);
   b. recklessness is the fault element for the circumstances referred to in paragraph (1)(b).

   Note: For the meaning of intention and recklessness see sections 5.2 and 5.4.

2A. Absolute liability applies to paragraph (1)(aa).

   Note: For absolute liability, see section 6.2.

3. As well as the general defences provided for in Part 2.3, defences are provided for under section 474.24 in relation to this section.

Section 474.23 Possessing, Controlling, Producing, Supplying or Obtaining Child Abuse Material for use through a Carriage Service

1. A person is guilty of an offence if:
   a. the person:
      i. has possession or control of material; or
      ii. produces, supplies or obtains material; and
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b. the material is child abuse material; and

c. the person has that possession or control, or engages in that production, supply or obtaining, with the intention that the material be used:
   i. by that person; or
   ii. by another person; in committing an offence against section 474.22 (using a carriage service for child abuse material).

Penalty: Imprisonment for 15 years.

2. A person may be found guilty of an offence against subsection (1) even if committing the offence against section 474.22 (using a carriage service for child abuse material) is impossible.

3. It is not an offence to attempt to commit an offence against subsection (1).

Section 474.24 Defences in Respect of Child Abuse Material

1. A person is not criminally responsible for an offence against section 474.22 (using a carriage service for child abuse material) or 474.23 (possessing etc. child abuse material for use through a carriage service) because of engaging in particular conduct if the conduct:
   a. is of public benefit; and
   b. does not extend beyond what is of public benefit.

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

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

2. For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:
   a. enforcing a law of the Commonwealth, a State or a Territory; or
   b. monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or
   c. the administration of justice; or
   d. conducting scientific, medical or educational research that has been approved by the Minister in writing for the purposes of this section.

3. A person is not criminally responsible for an offence against section 474.22 (using a carriage service for child abuse material) or 474.23 (possessing etc. child abuse material for use through a carriage service) if:
   a. the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
   b. the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

   Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).
4. A person is not criminally responsible for an offence against section 474.22 (using a carriage service for child abuse material) or 474.23 (possessing etc. child abuse material for use through a carriage service) if the person engages in the conduct in good faith for the sole purpose of:

a. assisting the Australian Communications and Media Authority to detect:
   i. prohibited content (within the meaning of Schedule 7 to the Broadcasting Services Act 1992); or
   ii. potential prohibited content (within the meaning of that Schedule); in the performance of the Authority’s functions under Schedule 5 or Schedule 7 to that Act; or

b. manufacturing or developing, or updating, content filtering technology (including software) in accordance with:
   i. a recognised alternative access-prevention arrangement (within the meaning of clause 40 of Schedule 5 to the Broadcasting Services Act 1992); or
   ii. a designated alternative access-prevention arrangement (within the meaning of clause 60 of that Schedule).

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

Section 474.24A Aggravated Offence—Offence Involving Conduct on 3 or More Occasions and 2 or More People

1. A person commits an offence against this section if:
   a. the person commits an offence against one or more of the following provisions on 3 or more separate occasions:
      i. section 474.19 (using a carriage service for child pornography material);
      ii. section 474.20 (possessing etc. child pornography material for use through a carriage service);
      iii. section 474.22 (using a carriage service for child abuse material);
      iv. section 474.23 (possessing etc. child abuse material for use through a carriage service);
      and
   b. the commission of each such offence involves 2 or more people.

Penalty: Imprisonment for 25 years.

2. There is no fault element for any of the physical elements described in paragraph (1)(a) other than the fault elements (however described), if any, for the offence against section 474.19, 474.20, 474.22 or 474.23.

3. To avoid doubt, a person does not commit an offence against section 474.19, 474.20, 474.22 or 474.23 for the purposes of paragraph (1)(a) if the person has a defence to that offence.

Offence or conduct need not be the same

4. For the purposes of subsection (1), it is immaterial whether the offence, or the conduct constituting the offence, is the same on each occasion.

Double jeopardy etc.
5. A person who has been convicted or acquitted of an offence (the *aggravated offence*) against this section may not be convicted of an offence against section 474.19, 474.20, 474.22 or 474.23 in relation to the conduct that constituted the aggravated offence.

6. Subsection (5) does not prevent an alternative verdict under section 474.24B.

7. A person who has been convicted or acquitted of an offence (the *underlying offence*) against section 474.19, 474.20, 474.22 or 474.23 may not be convicted of an offence against this section in relation to the conduct that constituted the underlying offence.

**Section 474.24B Alternative Verdict if Aggravated Offence not Proven**

If, on a trial for an offence (the *aggravated offence*) against subsection 474.24A(1), the trier of fact:

a. is not satisfied that the defendant is guilty of the aggravated offence; but

b. is satisfied beyond reasonable doubt that he or she is guilty of an offence (the *underlying offence*) against section 474.19, 474.20, 474.22 or 474.23;

it may find the defendant not guilty of the aggravated offence but guilty of the underlying offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

**Section 474.24C Consent to Commencement of Proceedings where Defendant under 18**

1. Proceedings for an offence against this Subdivision must not be commenced without the consent of the Attorney-General if the defendant was under 18 at the time he or she allegedly engaged in the conduct constituting the offence.

2. However, a person may be arrested for, charged with, or remanded in custody or on bail in connection with, such an offence before the necessary consent has been given.

**Subdivision E—Offence Relating to Obligations of Internet Service Providers and Internet Content Hosts**

**Section 474.25 Obligations of Internet Service Providers and Internet Content Hosts**

A person commits an offence if the person:

a. is an internet service provider or an internet content host; and

b. is aware that the service provided by the person can be used to access particular material that the person has reasonable grounds to believe is:
   i. child pornography material; or
   ii. child abuse material; and

c. does not refer details of the material to the Australian Federal Police within a reasonable time after becoming aware of the existence of the material.

Penalty: 100 penalty units.
Subdivision F—Offences Relating to Use of Carriage Service Involving Sexual Activity with Person under 16

Section 474.25A Using a Carriage Service for Sexual Activity with Person under 16 Years of Age

Engaging in sexual activity with child using a carriage service

1. A person commits an offence if:
   a. the person engages in sexual activity with another person (the child) using a carriage service; and
   b. the child is under 16 years of age; and
   c. the person is at least 18 years of age.

Penalty: Imprisonment for 15 years.

Causing child to engage in sexual activity with another person

2. A person (the defendant) commits an offence if:
   a. the defendant engages in conduct in relation to another person (the child); and
   b. that conduct causes the child to engage in sexual activity with another person (the participant) using a carriage service; and
   c. the child is under 16 years of age when the sexual activity is engaged in; and
   d. the participant is at least 18 years of age when the sexual activity is engaged in.

Penalty: Imprisonment for 15 years.

3. The fault element for paragraph (2)(b) is intention.

Defence—child present but defendant does not intend to derive gratification

4. It is a defence to a prosecution for an offence against subsection (1) or (2) if:
   a. the conduct constituting the offence consists only of the child being in the presence of a person while sexual activity is engaged in; and
   b. the defendant proves that he or she did not intend to derive gratification from the presence of the child during that activity.

Note 1: A defendant bears a legal burden in relation to the matter in this subsection, see section 13.4.
Note 2: For other defences relating to this offence, see section 474.29.
Section 474.25B Aggravated Offence—Child with Mental Impairment or under Care, Supervision or Authority of Defendant

1. A person commits an offence against this section if:
   a. the person commits an offence against either of the following provisions in relation to another person (the child):
      i. subsection 474.25A(1) (engaging in sexual activity with child using a carriage service);
      ii. subsection 474.25A(2) (causing child to engage in sexual activity with another person);
   and
   b. either or both of the following apply at the time the person commits the offence:
      i. the child has a mental impairment;
      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.

Penalty: Imprisonment for 25 years.

2. To avoid doubt, a person does not commit the offence against subsection 474.25A(1 or (2) for the purposes of paragraph (1)(a) if the person has a defence to that offence.

Alternative verdicts

3. If, on a trial for an offence (the aggravated offence) against subsection (1), the trier of fact:
   a. is not satisfied that the defendant is guilty of the aggravated offence; but
   b. is satisfied beyond reasonable doubt that he or she is guilty of an offence (the underlying offence) against subsection 474.25A(1 or (2); it may find the defendant not guilty of the aggravated offence but guilty of the underlying offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Section 474.26 Using a Carriage Service 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 procuring the recipient to engage in sexual activity with the sender; and
   c. the recipient 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 procuring the recipient to engage in sexual activity with another person (the participant); and
   c. the recipient 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 procuring the recipient to engage in sexual activity with another person; and
   c. the recipient 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.

Section 474.27 Using a Carriage Service to “Groom” 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
   c. the sender does this with the intention of making it easier to procure the recipient to engage in sexual activity with the sender; and
   d. the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
   e. the sender is at least 18 years of age.

Penalty: Imprisonment for 12 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
   c. the sender does this with the intention of making it easier to procure the recipient to engage in sexual activity with another person (the participant); and
   d. the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
   e. the participant is someone who is, or who the sender believes to be, at least 18 years of age.
Penalty: Imprisonment for 12 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
   c. the sender does this with the intention of making it easier to procure the recipient to engage in sexual activity with another person; and
   e. the other person referred to in paragraph (c) is someone who is, or who the sender believes to be, under 18 years of age; and
   f. the sender intends that the sexual activity referred to in paragraph (c) 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.

Section 474.27A. Using a Carriage Service to Transmit Indecent Communication to Person 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 communication includes material that is indecent; and
   c. the recipient 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 7 years.

2. In a prosecution for an offence against subsection (1), whether material is indecent is a matter for the trier of fact.

3. In this section:
   indecent means indecent according to the standards of ordinary people.

Section 474.28 Provisions Relating to Offences against this Subdivision

Age-related issues—application of absolute liability

1. For the purposes of an offence against this Subdivision, absolute liability applies to the physical element of circumstance of the offence that:
   a. in the case of an offence against section 474.25A—the child is under 16 years of age; and
   b. in the case of an offence against section 474.26, 474.27 or 474.27A—the recipient is someone who is under 16 years of age.
Note 1: For **absolute liability**, see section 6.2.
Note 2: For a defence based on belief about age, see section 474.29.

2. For the purposes of an offence against subsection 474.25A(2), 474.26(2) or (3) or 474.27(2) or (3), absolute liability applies to the physical elements of circumstance of the offence that the participant is at least 18 years of age.
   Note 1: For **absolute liability**, see section 6.2.
   Note 2: For a defence based on belief about age, see section 474.29.

*Proof of belief about age—evidence of representation*

3. For the purposes of sections 474.26, 474.27 and 474.27A, evidence that the recipient was represented to the sender as being under or of a particular age is, in the absence of evidence to the contrary, proof that the sender believed the recipient to be under or of that age.

4. For the purposes of sections 474.25A, 474.26 and 474.27, evidence that the participant was represented to the sender as being:
   a. at least 18 years of age; or
   b. over or of a particular age;

is, in the absence of evidence to the contrary, proof that the sender believed the participant to be at least 18 years of age or over or of that age.

*Determining age—admissible evidence*

5. In determining for the purposes of this Subdivision how old a person is or was at a particular time, a jury or court may treat any of the following as admissible evidence:
   a. the person’s appearance;
   b. medical or other scientific opinion;
   c. a document that is or appears to be an official or medical record from a country outside Australia;
   d. a document that is or appears to be a copy of such a record.

6. Subsection (5) does not make any other kind of evidence inadmissible, and does not affect a prosecutor’s duty to do all he or she can to adduce the best possible evidence for determining the question.

7. If, on a trial for an offence against a provision of this Subdivision, evidence may be treated as admissible because of subsection (5), the court must warn the jury that it must be satisfied beyond reasonable doubt in determining the question.

*Issues relating to aggravated offence involving sexual activity*

7A. For the purposes of an offence against subsection 474.25B(1):
   a. there is no fault element for the physical element described in paragraph (a) of that subsection other than the fault elements (however described), if any, for the underlying offence; and
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b. absolute liability applies to the physical element of circumstance of the offence that the child has a mental impairment; and
c. strict liability applies to the physical element of circumstance of the offence that the defendant 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 defendant.

Note 1: For absolute liability, see section 6.2.
Note 2: For strict liability, see section 6.1.
Note 3: For a defence based on belief that the child did not have a mental impairment, see section 474.29.

Impossibility of sexual activity taking place

8. A person may be found guilty of an offence against section 474.26 or 474.27 even if it is impossible for the sexual activity referred to in that section to take place.

Fictitious recipient

9. For the purposes of sections 474.26, 474.27 and 474.27A, it does not matter that the recipient to whom the sender believes the sender is transmitting the communication is a fictitious person represented to the sender as a real person.

Attempt not offence

10. It is not an offence to attempt to commit an offence against section 474.26 or 474.27.

Section 474.29 Defences to Offences against this Subdivision

Offences involving sexual activity—belief that child at least 16 years of age

1. It is a defence to a prosecution for an offence against section 474.25A if the defendant proves that, at the time the sexual activity was engaged in, he or she 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.

Offences involving sexual activity with other participant—belief that participant under 18 years of age

2. It is a defence to a prosecution for an offence against subsection 474.25A(2) if the defendant proves that, at the time the sexual activity was engaged in, he or she believed that the participant was under 18 years of age.
Aggravated offence involving sexual activity—belief that child did not have mental impairment

3. It is a defence to a prosecution for an offence against subsection 474.25B(1) (as that subsection applies because of subparagraph 474.25B(1)(b)(i)) if the defendant proves that, at the time the defendant committed the offence, he or she believed that the child did not have a mental impairment.

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

Offences involving procuring or “grooming” person for sexual activity with other participant—belief that participant under 18 years of age

4. It is a defence to a prosecution for an offence against subsection 474.26(2) or (3) or 474.27(2) or (3) if the defendant proves that, at the time the communication was transmitted, he or she believed that the participant was under 18 years of age.

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

Offences involving transmission of communication—belief that recipient at least 16 years of age

5. It is a defence to a prosecution for an offence against section 474.26, 474.27 or 474.27A if the defendant proves that, at the time the communication was transmitted, he or she believed that the recipient 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.

Trier of fact may take into account whether belief reasonable

6. In determining whether the defendant had the belief mentioned in one of the preceding subsections of this section, the trier of fact may take into account whether the alleged belief was reasonable in the circumstances.

Subdivision G—Offences Relating to Use of Carriage Service for Suicide Related Material

Section 474.29A Using a Carriage Service for Suicide Related Material

1. A person is guilty of an offence if:
   a. the person:
      i. uses a carriage service to access material; or
      ii. uses a carriage service to cause material to be transmitted to the person; or
      iii. uses a carriage service to transmit material; or
      iv. uses a carriage service to make material available; or
      v. uses a carriage service to publish or otherwise distribute material; and
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b. the material directly or indirectly counsels or incites committing or attempting to commit suicide; and

c. the person:
   i. intends to use the material to counsel or incite committing or attempting to commit suicide; or
   ii. intends that the material be used by another person to counsel or incite committing or attempting to commit suicide.

Penalty: 1,000 penalty units.

2. A person is guilty of an offence if:
   a. the person:
      i. uses a carriage service to access material; or
      ii. uses a carriage service to cause material to be transmitted to the person; or
      iii. uses a carriage service to transmit material; or
      iv. uses a carriage service to make material available; or
      v. uses a carriage service to publish or otherwise distribute material; and
   b. the material directly or indirectly:
      i. promotes a particular method of committing suicide; or
      ii. provides instruction on a particular method of committing suicide; and
   c. the person:
      i. intends to use the material to promote that method of committing suicide or provide instruction on that method of committing suicide; or
      ii. intends that the material be used by another person to promote that method of committing suicide or provide instruction on that method of committing suicide; or
      iii. intends the material to be used by another person to commit suicide.

Penalty: 1,000 penalty units.

3. To avoid doubt, a person is not guilty of an offence against subsection (1) merely because the person uses a carriage service to:
   a. engage in public discussion or debate about euthanasia or suicide; or
   b. advocate reform of the law relating to euthanasia or suicide;

if the person does not:
   c. intend to use the material concerned to counsel or incite committing or attempting to commit suicide; or
   d. intend that the material concerned be used by another person to counsel or incite committing or attempting to commit suicide.

4. To avoid doubt, a person is not guilty of an offence against subsection (2) merely because the person uses a carriage service to:
   a. engage in public discussion or debate about euthanasia or suicide; or
   b. advocate reform of the law relating to euthanasia or suicide;
if the person does not:
   c. intend to use the material concerned to promote a method of committing suicide or provide instruction on a method of committing suicide; or
   d. intend that the material concerned be used by another person to promote a method of committing suicide or provide instruction on a method of committing suicide; or
   e. intend the material concerned to be used by another person to commit suicide.

Section 474.29B Possessing, Controlling, Producing, Supplying or Obtaining Suicide Related Material for Use through a Carriage Service

1. A person is guilty of an offence if:
   a. the person:
      i. has possession or control of material; or
      ii. produces, supplies or obtains material; and
   b. the material directly or indirectly:
      i. counsels or incites committing or attempting to commit suicide; or
      ii. promotes a particular method of committing suicide; or
      iii. provides instruction on a particular method of committing suicide; and
   c. the person has that possession or control, or engages in that production, supply or obtaining, with the intention that the material be used:
      i. by that person; or
      ii. by another person;

   in committing an offence against section 474.29A (using a carriage service for suicide related material).
   Penalty: 1,000 penalty units.

2. A person may be found guilty of an offence against subsection (1) even if committing the offence against section 474.29A (using a carriage service for suicide related material) is impossible.

3. It is not an offence to attempt to commit an offence against subsection (1).

Part 10.7—Computer Offences

Division 476—Preliminary

Section 476.1 Definitions

1. In this Part:

   access to data held in a computer means:
   a. the display of the data by the computer or any other output of the data from the computer; or
   b. the copying or moving of the data to any other place in the computer or to a data storage device; or
   c. in the case of a program—the execution of the program.
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**Commonwealth computer** means a computer owned, leased or operated by a Commonwealth entity.

**electronic communication** means a communication of information in any form by means of guided or unguided electromagnetic energy.

**impairment of electronic communication to or from a computer** includes:

- the prevention of any such communication; or
- the impairment of any such communication on an electronic link or network used by the computer;

but does not include a mere interception of any such communication.

**modification**, in respect of data held in a computer, means:

- the alteration or removal of the data; or
- an addition to the data.

**unauthorised access, modification or impairment** has the meaning given in section 476.2.

2. In this Part, a reference to:

- access to data held in a computer; or
- modification of data held in a computer; or
- the impairment of electronic communication to or from a computer;

is limited to such access, modification or impairment caused, whether directly or indirectly, by the execution of a function of a computer.

**Section 476.2 Meaning of Unauthorised Access, Modification or Impairment**

1. In this Part:

- access to data held in a computer; or
- modification of data held in a computer; or
- the impairment of electronic communication to or from a computer; or
- the impairment of the reliability, security or operation of any data held on a computer disk, credit card or other device used to store data by electronic means;

by a person is unauthorised if the person is not entitled to cause that access, modification or impairment.

2. Any such access, modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.

3. For the purposes of an offence under this Part, a person causes any such unauthorised access, modification or impairment if the person’s conduct substantially contributes to it.

4. For the purposes of subsection (1), if:

- a person causes any access, modification or impairment of a kind mentioned in that subsection; and

- the person does so:

  - under a warrant issued under the law of the Commonwealth, a State or a Territory; or
ii. under an emergency authorisation given to the person under Part 3 of the Surveillance Devices Act 2004 or under a law of a State or Territory that makes provision to similar effect; or

iii. under a tracking device authorisation given to the person under section 39 of that Act;

the person is entitled to cause that access, modification or impairment.

Section 476.3 Geographical Jurisdiction

Section 15.1 (extended geographical jurisdiction—Category A) applies to offences under this Part.

476.4 Saving of Other Laws

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

2 Subsection (1) has effect subject to section 476.5.

Section 476.5 Liability for Certain Acts

1. A staff member or agent of ASIS, DIGO or DSD (the agency) is not subject to any civil or criminal liability for any computer-related act done outside Australia if the act is done in the proper performance of a function of the agency.

2. A person is not subject to any civil or criminal liability for any act done inside Australia if:

a. the act is preparatory to, in support of, or otherwise directly connected with, overseas activities of the agency concerned; and

b. the act:

i. taken together with a computer-related act, event, circumstance or result that took place, or was intended to take place, outside Australia, could amount to an offence; but

ii. in the absence of that computer-related act, event, circumstance or result, would not amount to an offence; and

2A. Subsection (2) is not intended to permit any act in relation to premises, persons, computers, things, or carriage services in Australia, being:

a. an act that ASIO could not do without a Minister authorising it by warrant issued under Division 2 of Part III of the Australian Security Intelligence Organisation Act 1979 or under Part 2-2 of the Telecommunications (Interception and Access) Act 1979; or

b. an act to obtain information that ASIO could not obtain other than in accordance with Division 3 of Part 4-1 of the Telecommunications (Interception and Access) Act 1979.

2B. The Inspector-General of Intelligence and Security may give a certificate in writing certifying any fact relevant to the question of whether an act was done in the proper performance of a function of an agency.
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2C. In any proceedings, a certificate given under subsection (2B) is prima facie evidence of the facts certified.

3. In this section:

**ASIS** means the Australian Secret Intelligence Service.
**civil or criminal liability** means any civil or criminal liability (whether under this Part, under another law or otherwise).
**computer-related act, event, circumstance or result** means an act, event, circumstance or result involving:
   a. the reliability, security or operation of a computer; or
   b. access to, or modification of, data held in a computer or on a data storage device; or
   c. electronic communication to or from a computer; or
   d. the reliability, security or operation of any data held in or on a computer, computer disk, credit card, or other data storage device; or
   e. possession or control of data held in a computer or on a data storage device; or
   f. producing, supplying or obtaining data held in a computer or on a data storage device.

**DIGO** means that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation.
**DSD** means that part of the Department of Defence known as the Defence Signals Directorate.
**staff member** means:
   a. in relation to ASIS—the Director-General of ASIS or a member of the staff of ASIS (whether an employee of ASIS, a consultant or contractor to ASIS, or a person who is made available by another Commonwealth or State authority or other person to perform services for ASIS); and
   b. in relation to DSD—the Director of DSD or a member of the staff of DSD (whether an employee of DSD, a consultant or contractor to DSD, or a person who is made available by another Commonwealth or State authority or other person to perform services for DSD); and
   c. in relation to DIGO—the Director of DIGO or a member of the staff of DIGO (whether an employee of DIGO, a consultant or contractor to DIGO, or a person who is made available by another Commonwealth or State authority or other person to perform services for DIGO).

**Division 477—Serious Computer Offences**

**Section 477.1 Unauthorised Access, Modification or Impairment with Intent to Commit a Serious Offence**

*Intention to commit a serious Commonwealth, State or Territory offence*

1. A person is guilty of an offence if:
   a. the person causes:
      i. any unauthorised access to data held in a computer; or
      ii. any unauthorised modification of data held in a computer; or
iii. any unauthorised impairment of electronic communication to or from a computer; and

b. the unauthorised access, modification or impairment is caused by means of a carriage service;

and

c. the person knows the access, modification or impairment is unauthorised; and

d. the person intends to commit, or facilitate the commission of, a serious offence against a law of the Commonwealth, a State or a Territory (whether by that person or another person) by the access, modification or impairment.

2. Absolute liability applies to paragraph (1)(b).

3. In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the offence was:

a. an offence against a law of the Commonwealth, a State or a Territory; or

b. a serious offence.

Intention to commit a serious Commonwealth offence

4. A person is guilty of an offence if:

a. the person causes:

i. any unauthorised access to data held in a computer; or

ii. any unauthorised modification of data held in a computer; or

iii any unauthorised impairment of electronic communication to or from a computer; and

b. the person knows the access, modification or impairment is unauthorised; and

c. the person intends to commit, or facilitate the commission of, a serious offence against a law of the Commonwealth (whether by that person or another person) by the access, modification or impairment.

5. In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the offence was:

a. an offence against a law of the Commonwealth; or

b. a serious offence.

Penalty

6. A person who is guilty of an offence against this section is punishable, on conviction, by a penalty not exceeding the penalty applicable to the serious offence.

Impossibility

7. A person may be found guilty of an offence against this section even if committing the serious offence is impossible.

No offence of attempt

8. It is not an offence to attempt to commit an offence against this section.

Meaning of serious offence
9. In this section:

   **serious offence** means an offence that is punishable by imprisonment for life or a period of 5 or more years.

**Section 477.2 Unauthorised Modification of Data to Cause Impairment**

1. A person is guilty of an offence if:
   a. the person causes any unauthorised modification of data held in a computer; and
   b. the person knows the modification is unauthorised; and
   c. the person is reckless as to whether the modification impairs or will impair:
      i. access to that or any other data held in any computer; or
      ii. the reliability, security or operation, of any such data; and
   d. one or more of the following applies:
      i. the data that is modified is held in a Commonwealth computer;
      ii. the data that is modified is held on behalf of the Commonwealth in a computer;
      iii. the modification of the data is caused by means of a carriage service;
      iv. the modification of the data is caused by means of a Commonwealth computer;
      v. the modification of the data impairs access to, or the reliability, security or operation of, other data held in a Commonwealth computer;
      vi. the modification of the data impairs access to, or the reliability, security or operation of, other data held on behalf of the Commonwealth in a computer;
      vii. the modification of the data impairs access to, or the reliability, security or operation of, other data by means of a carriage service.

Penalty: 10 years imprisonment.

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

3. A person may be guilty of an offence against this section even if there is or will be no actual impairment to:
   a. access to data held in a computer; or
   b. the reliability, security or operation, of any such data.

4. A conviction for an offence against this section is an alternative verdict to a charge for an offence against section 477.3 (unauthorised impairment of electronic communication).

**Section 477.3 Unauthorised Impairment of Electronic Communication**

1. A person is guilty of an offence if:
   a. the person causes any unauthorised impairment of electronic communication to or from a computer; and
   b. the person knows that the impairment is unauthorised; and
   c. one or both of the following applies:
      i. the electronic communication is sent to or from the computer by means of a carriage service;
ii. the electronic communication is sent to or from a Commonwealth computer.

Penalty: 10 years imprisonment.

2. Absolute liability applies to paragraph (1)(c).
3. A conviction for an offence against this section is an alternative verdict to a charge for an offence against section 477.2 (unauthorised modification of data to cause impairment).

Division 478—Other Computer Offences

Section 478.1 Unauthorised Access to, or Modification of, Restricted Data

1. A person is guilty of an offence if:
   a. the person causes any unauthorised access to, or modification of, restricted data; and
   b. the person intends to cause the access or modification; and
   c. the person knows that the access or modification is unauthorised; and
   d. one or more of the following applies:
      i. the restricted data is held in a Commonwealth computer;
      ii. the restricted data is held on behalf of the Commonwealth;
      iii. the access to, or modification of, the restricted data is caused by means of a carriage service.

Penalty: 2 years imprisonment.

2. Absolute liability applies to paragraph (1)(d).
3. In this section:

   restricted data means data:
   a. held in a computer; and
   b. to which access is restricted by an access control system associated with a function of the computer.

Section 478.2 Unauthorised Impairment of Data Held on a Computer Disk Etc.

1. A person is guilty of an offence if:
   a. the person causes any unauthorised impairment of the reliability, security or operation of data held on:
      i. a computer disk; or
      ii. a credit card; or
      iii. another device used to store data by electronic means; and
   b. the person intends to cause the impairment; and
   c. the person knows that the impairment is unauthorised; and
   d. the computer disk, credit card or other device is owned or leased by a Commonwealth entity.
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Penalty: 2 years imprisonment.

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

Section 478.3 Possession or Control of Data with Intent to Commit a Computer Offence

1. A person is guilty of an offence if:
   a. the person has possession or control of data; and
   b. the person has that possession or control with the intention that the data be used, by the person or another person, in:
      i. committing an offence against Division 477; or
      ii. facilitating the commission of such an offence.

Penalty: 3 years imprisonment.

2. A person may be found guilty of an offence against this section even if committing the offence against Division 477 is impossible.

No offence of attempt

3. It is not an offence to attempt to commit an offence against this section.

Meaning of possession or control of data

4. In this section, a reference to a person having possession or control of data includes a reference to the person:
   a. having possession of a computer or data storage device that holds or contains the data; or
   b. having possession of a document in which the data is recorded; or
   c. having control of data held in a computer that is in the possession of another person (whether inside or outside Australia).

Section 478.4 Producing, Supplying or Obtaining Data with Intent to Commit a Computer Offence

1. A person is guilty of an offence if:
   a. the person produces, supplies or obtains data; and
   b. the person does so with the intention that the data be used, by the person or another person, in:
      i. committing an offence against Division 477; or
      ii. facilitating the commission of such an offence.

Penalty: 3 years imprisonment.
2. A person may be found guilty of an offence against this section even if committing the offence against Division 477 is impossible.

No offence of attempt

3. It is not an offence to attempt to commit an offence against this section.

Meaning of producing, supplying or obtaining data

4. In this section, a reference to a person producing, supplying or obtaining data includes a reference to the person:
   a. producing, supplying or obtaining data held or contained in a computer or data storage device; or
   b. producing, supplying or obtaining a document in which the data is recorded.

Relevant Provisions of Cyber Crime Act, 2001, of Australia

Division 477—Serious Computer Offences

477.1 Unauthorised Access, Modification or Impairment with Intent to Commit a Serious Offence

Intention to commit a serious Commonwealth, State or Territory offence

1. A person is guilty of an offence if:
   a. the person causes:
      i. any unauthorised access to data held in a computer; or
      ii. any unauthorised modification of data held in a computer; or
      iii. any unauthorised impairment of electronic communication to or from a computer; and
   b. the unauthorised access, modification or impairment is caused by means of a telecommunications service; and
   c. the person knows the access, modification or impairment is unauthorised; and
   d. the person intends to commit, or facilitate the commission of, a serious offence against a law of the Commonwealth, a State or a Territory (whether by that person or another person) by the access, modification or impairment.

2. Absolute liability applies to paragraph (1)(b).

3. In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the offence was:
   a. an offence against a law of the Commonwealth, a State or a Territory; or
   b. a serious offence.

Intention to commit a serious Commonwealth offence
4. A person is guilty of an offence if:
   a. the person causes:
      i. any unauthorised access to data held in a computer; or
      ii. any unauthorised modification of data held in a computer; or
      iii. any unauthorised impairment of electronic communication to or from a computer; and
   b. the person knows the access, modification or impairment is unauthorised; and
   c. the person intends to commit, or facilitate the commission of, a serious offence against a law of the Commonwealth (whether by that person or another person) by the access, modification or impairment.

5. In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the offence was:
   a. an offence against a law of the Commonwealth; or
   b. a serious offence.

Penalty

6. A person who is guilty of an offence against this section is punishable, on conviction, by a penalty not exceeding the penalty applicable to the serious offence.

Impossibility

7. A person may be found guilty of an offence against this section even if committing the serious offence is impossible.

No offence of attempt

8. It is not an offence to attempt to commit an offence against this section.

Meaning of serious offence

9. In this section:

   serious offence means an offence that is punishable by imprisonment for life or a period of 5 or more years.

477.2 Unauthorised Modification of Data to Cause Impairment

1. A person is guilty of an offence if:
   a. the person causes any unauthorised modification of data held in a computer; and
   b. the person knows the modification is unauthorised; and
   c. the person is reckless as to whether the modification impairs or will impair:
      i. access to that or any other data held in any computer; or
      ii. the reliability, security or operation, of any such data; and
   d. one or more of the following applies:
i. the data that is modified is held in a Commonwealth computer;
ii. the data that is modified is held on behalf of the Commonwealth in a computer;
iii. the modification of the data is caused by means of a telecommunications service;
iv. the modification of the data is caused by means of a Commonwealth computer;
v. the modification of the data impairs access to, or the reliability, security or operation of, other data held in a Commonwealth computer;
vi. the modification of the data impairs access to, or the reliability, security or operation of, other data held on behalf of the Commonwealth in a computer;
vii. the modification of the data impairs access to, or the reliability, security or operation of, other data by means of a telecommunications service.

Penalty: 10 years imprisonment.

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

3. A person may be guilty of an offence against this section even if there is or will be no actual impairment to:
   a. access to data held in a computer; or
   b. the reliability, security or operation, of any such data.

4. A conviction for an offence against this section is an alternative verdict to a charge for an offence against section 477.3 (unauthorised impairment of electronic communication).

477.3 Unauthorised Impairment of Electronic Communication

1. A person is guilty of an offence if:
   a. the person causes any unauthorised impairment of electronic communication to or from a computer; and
   b. the person knows that the impairment is unauthorised; and
   c. one or both of the following applies:
      i. the electronic communication is sent to or from the computer by means of a telecommunications service;
      ii. the electronic communication is sent to or from a Commonwealth computer.

Penalty: 10 years imprisonment.

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

3. A conviction for an offence against this section is an alternative verdict to a charge for an offence against section 477.2 (unauthorised modification of data to cause impairment).

Division 478—Other Computer Offences

478.1 Unauthorised Access to, or Modification of, Restricted Data

1. A person is guilty of an offence if:
   a. the person causes any unauthorised access to, or modification of, restricted data; and
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b. the person intends to cause the access or modification; and  
c. the person knows that the access or modification is unauthorised; and  
d. one or more of the following applies:  
i. the restricted data is held in a Commonwealth computer;  
ii. the restricted data is held on behalf of the Commonwealth;  
iii. the access to, or modification of, the restricted data is caused by means of a telecommunications service.

Penalty: 2 years imprisonment.

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

3. In this section:

restricted data means data:  
a. held in a computer; and  
b. to which access is restricted by an access control system associated with a function of the computer.

478.2 Unauthorised Impairment of Data Held on a Computer Disk Etc.

1. A person is guilty of an offence if:  
a. the person causes any unauthorised impairment of the reliability, security or operation of data held on:  
i. a computer disk; or  
ii. a credit card; or  
iii. another device used to store data by electronic means; and  
b. the person intends to cause the impairment; and  
c. the person knows that the impairment is unauthorised; and  
d. the computer disk, credit card or other device is owned or leased by a Commonwealth entity.

Penalty: 2 years imprisonment.

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

478.3 Possession or Control of Data with Intent to Commit a Computer Offence

1. A person is guilty of an offence if:  
a. the person has possession or control of data; and  
b. the person has that possession or control with the intention that the data be used, by the person or another person, in:  
i. committing an offence against Division 477; or  
ii. facilitating the commission of such an offence.

Penalty: 3 years imprisonment.
2. A person may be found guilty of an offence against this section even if committing the offence against Division 477 is impossible.

No offence of attempt

3. It is not an offence to attempt to commit an offence against this section.

Meaning of possession or control of data

4. In this section, a reference to a person having possession or control of data includes a reference to the person:
   a. having possession of a computer or data storage device that holds or contains the data; or
   b. having possession of a document in which the data is recorded; or
   c. having control of data held in a computer that is in the possession of another person (whether inside or outside Australia).

478.4 Producing, Supplying or Obtaining Data with Intent to Commit a Computer Offence

1. A person is guilty of an offence if:
   a. the person produces, supplies or obtains data; and
   b. the person does so with the intention that the data be used, by the person or another person, in:
      i. committing an offence against Division 477; or
      ii. facilitating the commission of such an offence.

Penalty: 3 years imprisonment.

2. A person may be found guilty of an offence against this section even if committing the offence against Division 477 is impossible.

No offence of attempt

3. It is not an offence to attempt to commit an offence against this section.

Meaning of producing, supplying or obtaining data

4. In this section, a reference to a person producing, supplying or obtaining data includes a reference to the person:
   a. producing, supplying or obtaining data held or contained in a computer or data storage device; or
   b. producing, supplying or obtaining a document in which the data is recorded.

_data storage device_ means a thing containing, or designed to contain, data for use by a computer.