

## Possess Child Abuse Material Accessed Using Carriage Service s 474.22A (Cth) *Criminal Code*

s 474.22A Possess or control child abuse material obtained or accessed using a carriage service and in the form of data held in a computer or data storage device

**Commenced:** 21.9.2019

**Maximum penalty:** 15 years

**Note:** Mandatory minimum penalty applies to offence committed on or after 23.6.2020 where offender convicted previously of child sexual abuse offence:

4 years head sentence: s.16AAB (Cth) *Crimes Act 2014*

May be reduced by up to 25% each for guilty plea and/or co-operation: s.16AAC

**COPINE scale (Combating Paedophile Information Networks in Europe) / Australian National Victim Image Library (ANVIL) / Child Exploitation Tracking System (CETS).**

Category 1	images depicting erotic posing of children with no sexual activity
Category 2	images depicting sexual activity between children, or solo masturbation by a child
Category 3	images depicting non-penetrative sexual activity between adults and children
Category 4	images depicting penetrative sexual activity between children and adults.
Category 5	images depicting sadism or bestiality
Category 6	animated or virtual depictions of children engaged in sexual poses or activity

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	Johnston (44) <a href="#">[2020] ACTSC 46</a> Mossop J	s.474.22A  2 x Use carriage service to transmit indecent communication to child under 16y: s.474.27A	PG	11m  6m 15d  Total: 14m 15d released after 4m for 12m		nil	Indecent conversation with 10y girl via Instagram over two days – requested picture of body – conversation continued with police officer – not explicit and limited but deliberate grooming – low gravity - found in possession of 291 child abuse images on hard drive, computer and phone – review of sample found images from each Cat – lower end of mid-range Good character – reasonable prospects of rehabilitation

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2.	<b>Logue</b> (29) <a href="#">[2020] ACTSC 115</a> Elkiam J	s.474.22A  Access child abuse material using carriage service– s.474.22(1)(a)(i)  Prepare / plan to engage in sexual act with child outside Australia: s.272.8 / 272.20	PG (25%)	12m  12m  6m  <u>Total:</u> 18m 28d released after 3m for 18m		Nil	Made contact with unknown persons in three countries using Tinder, phone application and internet – circumstances suggest would not have acted on request for sexual activity with young girl – below mid-range – videos of child abuse material found on phone – found in possession of videos of child abuse material, one in Cat 5 and seven in Cat 4 – mid range Prior good character – some insight and remorse – limited risk of re-offending – prospects of rehabilitation
3.	<b>Davison</b> (49) <a href="#">[2020] ACTSC 272</a> Eliakim J	s.474.22A	PG (25%)	9m released after 3m for 12m		Nil	827 files containing child abuse material found on computer: Cat 1: 496 images Cat 2: 8 videos Cat 3: 10 images Cat 4: 26 videos Cat 6: 280 images – 2 videos – 2 doc No evidence of distribution – period of possession unknown – mid range Serious mental health issues – no insight
4.	<b>Burch</b> (34) <a href="#">[2020] ACTSC 192</a> Murrell CJ	s.474.22A  Transmit child pornography using carriage service: s.474.19(1)(a)(iii)	PG (25%)	2y GBB 100h CSO  12m ICO 200h CSO		nil	Five images of child abuse material found on computer Cat 1: 1 image Cat 2: 3 images Cat 4: 1 image Images not isolated but other possible material unrecoverable - conducted conversations with four people over messenger services discussing child abuse – each Cat 6 – below moderate seriousness Physical and mental health issues – became addicted to pornography as a juvenile

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5.	<b>Armstrong</b> (43) <a href="#">[2020] ACTSC 298</a> Robinson AJ	s.474.22A  Access child pornography using carriage service: s.474.19(1)(a)(i)  Access child abuse material using carriage service: s.474.22(1)(a)(i)	PG (20%)	13m  6m  6m  <u>Total:</u> 18m released after 6m for 12m		nil	66 videos containing child abuse found on computer – accessed material over 15m Cat 1: 22 videos Cat 2: 11 videos Cat 3: 1 videos Cat 4: 31 videos Cat 5: 1 video Suffers social anxiety
6.	<b>AX (No.3)</b> (23) <a href="#">[2020] ACTSC 334</a> Burns J	s.474.22A  Access child abuse material using carriage service: s.474.22(1)(a)(i)    Failure to notify change of circumstances under child Sex Offenders legislation  Breach suspended sentences	PG (25%)	12m  12m  <u>Total:</u> 14m released after 6m for 2y  8m (suspended)  6m  <u>Total:</u> 20m released after 12m for 2y		Breached suspended sentence for possession child pornography committed as a juvenile	1,915 files containing child abuse material found on phone – admitted downloading and masturbating to material: Cat 1: 1,471 images – 3 videos Cat 2: 77 images - 8 videos Cat 3: 147 images – 30 videos Cat 4: 107 images - 59 videos Cat 5: 8 images – 1 video Cat 6: 3 images – 1 videos  No suggestion possessed for distribution – between low and mid-range seriousness - used five online accounts not reported under registration requirements Developed pornography addiction as a juvenile – aboriginal – drug abuse and mental health issues – sexually abused as a child – remorse – reasonable prospects of rehabilitation
7.	<b>Arnould</b> (50) <a href="#">[2020] ACTSC 345</a> Elkiam J	s.474.22A  Access child abuse material using carriage service: s.474.22(1)(a)(i)	PG (25%)	9m  9m  <u>Total:</u> 9m released after 3m fir 12m		Nil record	Accessed and downloaded 370 images and videos of child abuse material – deleted after viewing – found in possession of child abuse material in computer cache – most images in Cat 1 but some from Cat 4 – medium seriousness Prospects of rehabilitation – some insight

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8.	Ramsay-Feeney (34) <a href="#">[2021] ACTSC 5</a> Burns J  <a href="#">[2022] ACTSC 82</a> Eliakim J	s.474.22A  Access child pornography using carriage service: s.474.19(1)(a)(i)  Access child abuse material using carriage service: s.474.22(1)(a)(i)  Access child abuse material using carriage service: s.474.22(1)  Breach ICO	PG (25%)    PG (25%)	9m 12  9m 12d (concurrent – already served)  9m ICO  3y released to recognizance after 16m  9m (concurrent)			5,370 files containing child abuse material found on phone – accessed over two years: Cat 1: 4,385 images Cat 2: 364 images Cat 3: 138 images Cat 4: 260 images Cat 5: 21 images Cat 6: 202 images Voluntarily assisted police – mental illness requiring assistance for rehabilitation  <b>Mandatory Minimum Term: 4 years applied to s.474.22(1) offence</b> Accessed 148 images of child abuse – 95% animated or cartoon – lower end of range – less serious than earlier offence - breached ICO imposed in earlier case Co-operated with police – importance of recognizance to provide assistance in rehabilitation – mental illness issues – mandatory minimum reduced for guilty plea
9.	<b>Cobcroft</b> <a href="#">[2021] ACTSC 15</a> Murrell CJ	s.474.22A  Access child pornography using carriage service: s.474.19(1)(a)(i)  Access child abuse material using carriage service: s.474.22(1)(a)(i)	PG (25%)	15m  11m  11m  <u>Total:</u> 21m released after 5m for 2y		Nil	Accessed child abuse material using several electronic devices – accessed 147 files over 15m and 564 files over 12m – found in possession of 21,149 files (some duplicates) – all computer generated animations with no real children – very realistic and highly offensive with degraded text – no further distribution Remorse and insight – very good prospects of rehabilitation – bail conditions restricted role as primary carer for child

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10.	Appleby (45) <a href="#">[2021] ACTSC 55</a> Loukas-Karlsson J	2 x s.474.22A  Access child abuse material using carriage service: s.474.22(1)(a)(i)  15 x Capture visual data of another person: s.61B(1) (ACT) <u>Crimes Act</u>	PG (25%)	14m  14m  <u>Total</u> 2y 1m released after 10m for 2y  <u>Total:</u> 11m  <u>Total:</u> 2y 9m released after 1y 6m for 2y		nil	Found in possession of images and videos of child abuse material on phone and computer – several thousand videos and hundreds of images (although not all reviewed) – installed and used hidden camera to take photos of people on toilet and in shower of previous and current residence - pre-meditated offences Prospects of rehabilitation
11.	Cusak (42 at sentence) <a href="#">[2021] ACTSC 75</a> Eliakim J	s.474.22A  Access child pornography using carriage service: s.474.19(1)(a)(i)  Access child abuse material using carriage service: s.474.22(1)(a)(i)	PG (25%)	9m  9m  9m  <u>Total:</u> 12m released after 2m for 18m		Nil	2,517 files accessed over 5y and kept in possession – well above mid-range Good character – remorse and insight – addressing rehabilitation – depression and suicide risk

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12.	<b>Barber</b> (67 at sentence) <a href="#">[2021] ACTSC 78</a> Murrell CJ	2 x Access child pornography using carriage service: s.474.19(1)(a)(i) [15y]  2 x Access child abuse material using carriage service: s.474.22(1)(a)(i)  s.474.22A  s.474.22A	PG (25%)	4m / 11m  11m / 9m  2y  9m  <u>Total:</u> 2y 6m released		nil	Offending during four distinct time periods: s.474.19: 2011 accessed 10 Cat 1 images s.474.19: 2019 s.474.22 / s.474.22A: early 2020 – 4,500 images found on 5 devices – most serious offence Cat 1: 2,226 images / 89 videos Cat 2: 495 images / 46 videos Cat 3: 571 images / 29 videos Cat 4: 700 images / 230 videos Cat 5: 219 images / 5 videos s.474.22 / s.474.22A: late 2020 and on bail for earlier offences – seven cat 1 files Isolated life – significant depression – impact of custody on mental health - remorse
13.	<b>Cox</b> (48) <a href="#">[2021] ACTSC 98</a> Burns ACJ	s.474.22A  2 x Access child pornography using carriage service: s.474.19(1)(a)(i) [15y]  Transmit child pornography using carriage service - s.474.19(1)(a)(ii) [15y]	PG (25%)	12m  12m / 15m  6w  <u>Total:</u> 1y 7m 29d released after 5m for 2y		nil	Found in possession of 229 videos and 1 image of child abuse material on three devices – accessed 254 videos over 2 years and 1,349 items over later 4m period – transmitted 2 files from one email to another (both belonged to offender) - much overlap in material – mid range Assistance at time of arrest – reasonable prospects of rehabilitation - remorse
14.	<b>Monday (a pseudonym)</b> (59) <a href="#">[2021] ACTSC 99</a> Murrell CJ	s.474.22A	PG	2y GBB		nil	Attached two images of computer-generated child abuse material to email in preparation to send it to associate – unclear if email sent before suspended – very low objective seriousness – not isolated incident History of serious mental health issues – causally linked to offending – low risk of re-offending

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15.	Payne-Moore (32) <a href="#">[2021] ACTSC 125</a> Loukas-Karlsson J	s.474.22A  Access child abuse material using carriage service – s.474.22(1)(a)(i)	PG (20%)	12m  12m  <u>Total:</u> 15m released after 4m for 2y		nil	Used two computers to access 7 child abuse material files - stored 137 files on mobile phone and 2 computers over 15m Cat 1: 82 files Cat 2: 7 files Cat 3: 15 files Cat 4: 26 files Cat 5: 7 files Extra curial punishment taken into account
16.	Hurt (30) <a href="#">[2019] ACTSC 148</a> Mossop J  <a href="#">[2021] ACTSC 241</a> Mossop J  <a href="#">[2022] ACTCA 49</a>	Intentionally possess child exploitation material – s.65 (ACT) <i>Crimes Act</i>  Distribute child pornography using carriage service - s.474.19(1)(a)(iii)  Transmit child abuse material using carriage service - s.474.22(1)(a)(ii)  Access child abuse material using carriage service - s.474.22(1)(a)(i)  s.474.22A  Breach bond (s.65 offence)	PG (25%)    PG (25%)	15m suspended after 8m for 18m  2y recognisance  15m  15m  4y  <u>Total:</u> 4y 8m NPP 2y 1m  7m  <u>Total:</u> 5y 3m NPP 2y 8m	    Crown AA 15m  15m  4y 6m  <u>Total:</u> 4y 8m NPP 2y 2m  7m  <u>Total:</u> 5y 3m NPP 2y 9m	Nil relevant    Earlier offences – breached bond	Child exploitation material found on two mobile phones – thousands of images and hundreds of videos – mid-range – distribute offences involved sharing one image – low range Alcohol and cannabis abuse – delay in prosecution  <b>Mandatory Minimum Term: 4 years (applied to s.474.22A offence only)</b> Within months of being released on bond commenced downloading child abuse material – transmitted to self 357 images and 7 videos from 20 websites – accessed further 104 images – possession offence encompassed material from s.474.22 offences and additional 25 images and 48 videos – mid range – intentional acts - material not held for distribution – committed in breach of bond – specific deterrence important Prospects of rehabilitation guarded On appeal: mandatory minimum term provisions erroneously applied only to 25 photos of s.474.22A offence – applied to all material

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17.	Mertell (68) <a href="#">[2022] ACTSC 37</a> McWilliam AJ  <a href="#">[2022] ACTCA 69</a>	7 x s.474.22A  2 x Access child abuse material using carriage service: s.474.22(1)(a)(i)	PG (25%)	9m  9m  <u>Total:</u> 6y 3m NPP 2y	AA 2m / 3m / 5m / 6m / 9m  3m / 8m  <u>Total:</u> 30m released after 12m for 12m	nil	Over 6 months possessed 513 child abuse material files (56 duplicate) across seven devices – 25% Cat 1 and 75% Cat 2 ASD diagnosis contributed to obsessive behaviour – socially isolated – prospects of rehabilitation guarded – poor insight On appeal: failure to give adequate weight to totality
18.	Minson <a href="#">[2022] ACTSC 46</a> Mossop J	Access child abuse material using carriage service - s.474.22(1)(a)(i)  s.474.22A  s.474.22A  s.474.22A  2 x s.474.22A	PG (20%)	4y 5m  5y 7m  4y 5m  2y 5m  2y  <u>Total:</u> 7y 5m NPP 4y 5m		NSW - child pornography offence	<b>Mandatory Minimum Term: 4 years (applied to s.474.22 and 2 x s.474.22A offences)</b> Over 18 days used computer program to access 24 child abuse files – moderate sophistication and deliberate search - found in possession of 2,107 videos and 14,103 images files of child abuse material on five electronic devices – admitted accessing child abuse material over many years – ‘library’ of material but no evidence of further distribution – above mid-range Health issues of wife. Mandatory minimum provisions applied to three of six offences only

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19.	<b>Delzotto</b> <a href="#">[2022] NSWCCA 117</a>	s.474.22A  Access child abuse material using carriage service - s.474.22(1)(a)(i)  Sched: Access - s.474.19(1)(a)(i) Access – s.474.22(1)(a)(i)	PG (30%)	<u>Indicative:</u> 2y 9m  18m  <u>Aggregate:</u> 3y 3m NPP 2y 2m	Crown AA <u>Indicative</u> 4y 2m  1y  <u>Aggregate:</u> 4y 6m NPP 3y	Qld – aggravated indecent treatment child under 16y	<b>Mandatory Minimum Term: 4 years</b> 2,653 files containing child abuse material found on four devices – used carriage service to access 7 files located on laptop – additional offences involved accessing 33 files in 2019 and accessing website containing four written stories describing child abuse material – acted alone – no plans to distribute Major depressive disorder – co-operated with police – sexually abused as a child – isolated socially – extra-curial punishment – prospects of rehabilitation – remorse On appeal: sentence for s.474.22A offence manifestly inadequate – discussion about application of mandatory minimum provisions
20.	<b>Kember</b> (27-32) <a href="#">[2022] ACTSC 153</a> McCallum CJ	2 x Access child pornography using carriage service: s.474.19(1)  Access child abuse material using carriage service s.474.22(1)  Use carriage service to procure - s.474.26(1) (Cth) <u>Code</u>  Use carriage service to transmit indecent communication to child under 16 – s.474.27A(1) (Cth) <u>Code</u>  s.474.22A	PG	16m / 10m  8m  6m  3m  6m  <u>Total:</u> 3y released after 8m for 2y		nil	Requested and received naked photo from younger sister of partner when complainant aged 13-15y – requested and received photo of exposed breasts from 16y complainant met through cheerleading – significant impact on complainant – accessed Instagram account of younger sister of partner and saved 8 photos of complainant in swimmers – supplied alcohol to 15y complainant at school after receiving promise of oral sex – discussed sexual experience with younger sister of sexual partner over Snapchat – found in possession of material from above offences – mostly Cat 1 and one Cat 2 image – all at lower end of range or below mid-range – not isolated offences Difficult childhood – good prospects of rehabilitation – father suffering with Alzheimer's

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21.	Hutchinson (52 at sentence) <a href="#">[2022] VSCA 217</a>	s.474.22A  Access child pornography using carriage service - s.474.19(1)(a)(i)  Access child abuse material using carriage service - s.474.22(1)(a)(i)	PG	4y  3y  1y  <u>Total:</u> 5y NPP 3y  Pre discount for guilty plea: 7y NPP 5y	AD	nil	Found in possession of 317,003 files of child abuse material downloaded from internet over 7y Cat 1: 304,596 images / 906 videos Cat 2: 4,619 images / 410 videos Cat 3: 2,758 images / 87 videos Cat 4: 2,162 images / 676 videos Cat 5: 112 images / 24 videos Cat 6: 613 images / 12 videos Careful organisation of images electronically – objective seriousness very high Plea at first opportunity – good character – physical and mental health issues – good prospects rehabilitation – remorse – difficult childhood – family hardship On appeal: sentence not excessive in view of large number of images
22.	Ferns (27-28) <a href="#">[2022] QSC 220</a> Davis J	2 x s.474.22A  Transmit child abuse material using carriage service - s.474.22(1)(a)(iii)  Access child abuse material using carriage service - s.474.22(1)(a)(i)  Solicit child abuse material using carriage service - s.474.22(1)(a)(iv)  Agg s.474.22 – conduct involving 3 or more occasions with 2 or more people: s.474.24A(1) [25y]	PG	8y  10y  8y  4y  15y  <u>Total:</u> 15y NPP 8y		nil	<b>Mandatory Minimum Term: 7 years applies to s.474.24A offence</b> Transmitted child abuse material over one month to 17 users – included obscene text conversations – sourced child abuse material over one year and requested material from two different users – found in possession of 198 videos and 118 images – s.474.24A most serious offence – depraved conversations and transmission of material to two other users over two days Difficult childhood – early drug abuse – good work record

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23.	Horner (45-48) <a href="#">[2023] ACTSC 23</a> Baker J	s.474.22A(1)  Access child exploitation material using carriage service - s.474.19(1)(a)(i)	PG (25%)	15m  12m  <u>Total:</u> 18m released immediately for 3y		Nil	Found in possession of three child abuse videos on computer – admitted accessing 50 child abuse files for purpose of reporting to eSafety Commissioner – limited quantity - lower end of range Exceptional circumstances permitting immediate release – clear link between childhood sexual abuse, mental illness and offending – remorse and insight – strong prospects of rehabilitation – importance of continued rehabilitation – prior good character – loss of job and position in society and separated from family
24.	Dean (20-21) <a href="#">[2023] ACTSC 98</a> Berman AJ	Transmit child pornography using carriage service: s.474.19(1)(a)(iii)  s.474.22A(1)  Access child abuse material using carriage service– s.474.22(1)(a)(i)  Intentionally possess child exploitation material – s.65 (ACT) <u>Crimes Act</u>	PG (25%)	6m released immediately 2y recog  22m ICO  6m released immediately 2y recog  6m suspended		Nil	Uploaded 20 images (transmit offence) – not transmitted to third person – images and videos found on phone: 56 videos 146 videos and 255 images 116 videos and 11 images Some overlap in offences – committed over 1y 6m – boredom at home and addiction to pornography led to seeking greater stimulation ASD, depression and difficult childhood contributed to social isolation – delay - immediately sought counselling – good rehabilitation – prior good character – remorse – unlikely to re-offend – effect of imprisonment on physical and mental health of wife (relationship subsequent to offending)

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25.	Henderson (37) <a href="#">[2023] ACTSC 110</a> Norrish AJ	Transmit child abuse material using carriage service - s.474.22(1)(a)(ii)  s.474.22A	PG (25%)	11m released after 10m to 1y recog  1y 10m released after 4m to 2y recog  <u>Total:</u> 2y 4m released after 10m to 2y recog		Nil	Police advised by offender's female partner she was in possession of material received from offender – offender had transmitted 68 files to co-offender and text based conversations discussing rape of child – found in possession on three devices of 1,715 files: 424 videos and 1,291 images - material highly depraved – in possession for over 2y Early co-operation with police – difficult childhood including violence – mental health issues and self-harm risk – prior good character – importance of deterrence
26.	Lazarus <a href="#">[2023] NSWCCA 214</a>	2 x Access child pornography using carriage service – s.474.19(1)(a)(i)  4 x Cause child pornography to be transmitted through carriage service - s.474.19(1)(a)(ii)  s.474.22A(1)  4 x Use carriage service to transmit indecent communication to child under 16 – s.474.27A(1)  Use carriage service to procure child under 16 - s.474.26(1)  Access child abuse material using carriage service- s.474.22(1)(a)(i)  Sched: 2 x s.474.27A	PG (25%)	<u>Indicative:</u> 22m – 24m  15m – 27m  18m  15m – 22m  27m  24m  <u>Aggregate:</u> 6y 6m NPP 3y 9m	AD		Engaged in conduct over 8 years – engaged in sexual conversations online with multiple complainants aged or believed to be aged under 16y – sent to and procured from complainant's naked photos – sought to procure sexual activity on one occasion – misrepresented himself as school teacher to one complainant – found in possession of multiple Cat 1 and Cat 2 images – extended period of predatory and persistent criminal behaviour – objective seriousness assessed as between lower end of range and slightly above mid-range Remorse, insight and reasonable prospects of rehabilitation – co-operated with authorities – onerous custodial conditions On appeal: found in error in failure to consider impact of mental health issues on deterrence – no lesser sentence warranted

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27.	Curle (53) <a href="#">[2024] NSWCCA 117</a>	s.474.22A(1) Access child abuse material using carriage service- s.474.22(1)(a)(i)  Transmit child abuse material using carriage service - s.474.22(1)(a)(ii)	PG (25%)	20m  20m  24m  <u>Total:</u> 29m released after 21m for 18m recog	AD	Nil	Material found on desktop (619 videos and 40 images), phone (60 images and 384 videos) and SD card (2 videos) – real children aged 2-13y predominantly female - included penetrative intercourse – downloaded 1,333 files over two weeks – transferred 114 files to 11 different recipients over 7 weeks Difficult childhood – receiving treatment for paraphilic disorder – good character – remorse and growing insight – low risk of re-offending – good prospects of rehabilitation On appeal - no error in application of s.19AC and s.16A(2AAA) – not manifestly excessive

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