

Persistent Sexual Abuse of Child Outside Australia

s.272.11 (Cth) *Criminal Code*

272.11(1) A person commits an offence against this section if the person commits an offence (the underlying offence) against one or more of the following provisions in relation to the same person (the child) on 2 or more separate occasions during any period:

- (a) subsection 272.8(1) (engaging in sexual intercourse with child outside Australia);
- (b) subsection 272.8(2) (causing child to engage in sexual intercourse in presence of defendant outside Australia);
- (c) subsection 272.9(1) (engaging in sexual activity (other than sexual intercourse) with child outside Australia);
- (d) subsection 272.9(2) (causing child to engage in sexual activity (other than sexual intercourse) in presence of defendant outside Australia).

Maximum Penalty: 30 years

Important Changes

Commenced: 15.4.2010

Maximum penalty 25 years

Offence required 3 separate occasions

Amended: 21.9.2019 (applied to offences specifying a period starting on or after commencement of amendments)

Reduced number of separate occasions required to 2

Amended: 23.6.2020

Increased maximum penalty to 30y

Note: Mandatory minimum penalty applies to offence committed on or after 23.6.2020:

7 years head sentence: s.16AAA (Cth) *Crimes Act* 2014

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

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	Baden [2020] NSWCCA 23	2 x Procure child to engage in sexual activity outside Australia – s.272.14 Persistent sexual abuse of child outside Australia – s.272.11 [25y] Engage in sexual activity with child outside Australia – s.272.9(1) 2 x Possess child abuse material – s.91H(2) NSW	PG 10% PG (20%)	4y / 5y 8y 5y 10m / 12m <u>Total:</u> 11y 4m NPP 7y 4m	AD	Sexual offences against 13y girl	Offences committed over 4 years – engaged in grooming chats with two female complainants aged 6-11y and 2-7y living in Philippines – used webcam to watch complainants engage in sexual activity while offender naked and masturbating – paid mother of complainants \$26,286.93 over four years – offending mid-level – state offences related to 858 Cat 6 images found on USB and 1,144 images and videos of various categories On appeal: no errors and sentence not manifestly excessive – discussed principles applicable to offence under s.272.11
2.	Harrison (62-63) [2021] QCA 279	Persistent sexual abuse of child outside Australia – s.272.11 [25y] Use carriage service to cause to be transmitted child pornography - s.474.19(1)(a)(ii) Use carriage service to transmit child pornography - s.474.19(1)(a)(iii) Encourage sexual offence against child outside Australia – s.272.19 Possess child exploitation material - Qld	PG	6y 6m 6m 6m 6m 6m <u>Total:</u> 6y 6m NPP 2y 6m	Crown AA 7y 18m 6m 18m 6m <u>Total:</u> 8y NPP 5y	Short and irrelevant	Engaged in acts of sexual penetration with 14-15y Filipino complainant in hotel room on three separate occasions – phone used to take and store photos of complainant in Cat 1 poses – engaged in highly sexualised and graphic communication with complainant – made arrangements for complainant to procure young girl to engage in sexual activity – communicated with a second complainant and procured 19 sexualised photos through inducements, threats and emotional manipulation – persistent and repeated offending – took advantage of vulnerable complainants with disadvantaged economic circumstances – sent one person one child abuse image Born in Sri Lanka On appeal: sentence manifestly inadequate

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
3.	Doig (57) [2023] NSWCCA 76	Procure child to engage in sexual activity outside Australia – s.272.14 Possess child abuse material obtained using carriage service – s.474.22A Persistent sexual abuse of child outside Australia – s.272.11 [25y] Use carriage service to cause to be transmitted child abuse material - s.474.20(1)(a)(ii)	PG (25%)	<u>Indicative:</u> 4y 2y 9m 7y 6m 3y <u>Aggregate:</u> 9y NPP 5y 6m	AA <u>Indicative:</u> 4y 2y 9m 6y 3y <u>Aggregate:</u> 7y 6m NPP 4y 6m	Nil significant	Over 9m made multiple transfers of money to 13y Filipina girl – for some months engaged in Facebook messaging with complainant – complainant sent sexualised videos and images of self – during multiple video calls offender watched complainant engage in sexual activity and gave directions in real time – images and videos of complainant and other children found on phone – exploited vulnerable complainant's impoverished circumstances – opportunistic – not overly sophisticated but sustained offending – offences between low to mid-range Contrite – loss of marriage, employment and reputation – intense media attention On appeal: sentence for s.272.11 offences manifestly excessive

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
4.	Schulze (35) [2023] QCA 150	<p>2 x Persistent sexual abuse of child outside Australia – s.272.11 [25y]</p> <p>2 x Procure child to engage in sexual activity outside Australia – s.272.14</p> <p>Sexual intercourse with child outside Australia - s 272.8</p> <p>10 x Use carriage service to solicit child pornography - s.474.19(1)(a)(iv)</p> <p>5 x Use carriage service to transmit child pornography - s.474.19(1)(a)(ii)</p> <p>5 x Use carriage service to solicit child abuse material – s.474.22(l)(a)(iv)</p> <p>Use carriage service to transmit child abuse material – s.474.22(l)(a)(ii)</p> <p>Use carriage service to plan to engage in sexual activity with person under 16- s.474.25C</p> <p>Control child abuse material for use through carriage service – s.474.23</p> <p>4 x Possess child exploitation material: s.28D(1)(b) Qld Code</p>		<p>9y / 6y</p> <p>12m</p> <p>7y</p> <p>3y / 4y / 5y</p> <p>2y / 3y / 4y / 5y</p> <p>3y / 4y</p> <p>2y</p> <p>12m</p> <p>3y</p> <p>12m / 15m / 18m / 2y</p> <p><u>Total:</u> 9y NPP 4y 6m</p>	<p>Crown AA 9y / 6y</p> <p>12m</p> <p>7y</p> <p>3y / 4y / 5y</p> <p>2y / 3y / 4y / 5y</p> <p>3y / 4y</p> <p>2y</p> <p>12m</p> <p>3y</p> <p>12m / 15m / 18m / 2y</p> <p><u>Total:</u> 13y NPP 7y 6m</p>		Over 14m communicated with female AM in Philippines via Facebook messenger on 23 discrete occasions – sent \$874.10 electronic payment – AM sent child pornography / abuse material – engaged in sexual activity with 8y daughter, 3-4y niece and 14y son while offender watched and directed – on several occasions activity recorded by offender – offender started preparations to visit AM in Manilla – repeated offending over protracted period involving more than one child – high level of planning and organisation – exploitation of AM's poverty Depression

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
5.	McGregor (53) [2024] NSWCCA 200	<p>Persistent sexual abuse of child outside Australia – s.272.11 [30y]</p> <p>Use carriage service to transmit child abuse material to self – s.474.22</p> <p>Possess child abuse material – s.474.22A</p> <p>Intent to procure child sexual activity outside Australia – s.272.14(1)</p> <p>Sched: Use carriage service to transmit indecent communication to child – s.474.27A(1)</p>	PG (30%)	<p><u>Indicative</u> 5y 10m</p> <p>2y 9m</p> <p>4y 2m</p> <p>4y 10m</p> <p><u>Aggregate</u> 11y 6m NPP 8y</p>	<p>AA <u>Indicative</u> 5y 7m</p> <p>2y 9m</p> <p>4y</p> <p>4y 6m</p> <p><u>Aggregate</u> 10y 9m NPP 7y 6m</p>		<p>Mandatory minimum penalty 7y Facts not stated. Offences over 12-18m period.</p> <p>CCA: Error in application of s.16AAC Mandatory minimum penalty</p>

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	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
6.	Senarath (46) [2024] VSCA 306	<p>Persistent sexual abuse of child outside Australia – s.272.11 [30y]</p> <p>2 x Use carriage service to transmit child abuse material to self – s.474.22</p> <p>Possess child abuse material – s.474.22A</p> <p>9 x Grooming to engage in sexual activity with a child outside Australia – s.272.15A</p> <p>Visually capturing a person's genitals: s.41B <u>Summary Offences Act</u> (Vic)</p>	PG	<p>8y</p> <p>3m / 2y</p> <p>18m</p> <p>10m – 4y</p> <p>3m</p> <p><u>Total:</u> 13y 8m NPP 9y 6m</p> <p>(pre discount for guilty plea: 17y 6m NPP 14y)</p>	AD	Nil	<p>Mandatory minimum penalty 7y</p> <p>Over 2 years 6 months had online conversations with people in Philippines – solicited and received sexual images and videos of children – offered money to meet in person in Philippines for purpose of sexual abuse – engaged in and recoded sexual activity with girl aged approximately 12y – digital penetration, cunnilingus and touching with penis – serious, planned and repeated offences – pursued persons in impoverished situations – 697 images and 794 videos of child abuse material found on computer – upskirted 12y girl in offender's home</p> <p>Born in Sir Lanka – liable to deportation – reasonable prospects of rehabilitation – moderate-low risk of re-offending – mental health – minimal insight</p> <p>No merit on appeal</p>

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