

Use Carriage Service to Groom Person Under 16 Years

s.474.27(1) (Cth) Criminal Code

s 474.27(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.

Maximum Penalty: 12 years

Commenced: 1.3.2005

Amended: 15.4.2010 to remove paragraph (b) - requirement that the communication be indecent

Maximum Penalty increased to 15 years - 23.6.2020

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

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	Shepherd (50) (2008) 189 A Crim R 165 [2008] ACTSC 116	s.474.27(1)	PG	2y 9m released after 9m for 3y		Dishonesty offences	Exchanged 58 messages by mobile phone with 14y male – exchanged pornographic videos – recipient replaced by undercover officer – further 800 messages exchanged – explicit sexual encounters discussed
2.	Rampley (33) [2010] NSWCCA 293	s.474.27(1)	PG (25%)	2y 9m NPP 1y 6m	AD	Nil relevant	Over four months communicated with police officer posing as 12y female – provided instruction on masturbating herself – suggested explicit sexual behaviour – exposed recipient to pornography Good character – good prospects of rehabilitation

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3.	Asplund (61) [2010] NSWCCA 316	2 x s.474.27(1)	VG	3y 6m NPP 1y 9m	Crown AA 7y NPP 4y	nil	Conversation with 14y girl in chat room regarding sexual matters – multiple text messages by mobile phone on sexual matters including photo of erect penis – received explicit photos from complainant – sought meeting for sexual activities – conduct over 61 days – sent complainant money Community service
4.	Costello [2011] QCA 39	s.474.27(1) 4 x Use carriage service to expose person believed to be under 16y to indecent material – s.218A(1)(b) (QLD) <u>Code</u>	VG	27m released after 13.5 months 8m (concurrent)	AD		Conducted 9 chats with police officer posing as 14y female over internet chat room – sent photos of genitals including offender masturbating – obtained mobile phone number from 'complainant' Loss of marriage – depression

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5.	Cooper (25) [2012] VSCA 32	2 x Use carriage service to procure - s.474.26(1) 2 x s.474.27(1) Use carriage service to access child pornography - s.474.19(1)(a)(i) 2 x Use carriage service to transmit child pornography - s.474.19(1)(a)(iii) Use carriage service to cause to be transmitted child pornography - s.474.19(1)(a)(ii) Knowingly possess child pornography – s.70 (VIC) <u>Crimes Act</u>	PG (approx. 25%)	4y 3y 1y 6m 1y 6m <u>Total:</u> 7y NPP 5y	AA 3y 3y 1y 6m 1y 6m <u>Total:</u> 5y NPP 3y 9m (pre discount for guilty plea: 7y NPP 5y)	Indecent act with child	During chat session transmitted child pornography – engaged in communications of sexual nature with adults and children – had two males under 16y masturbate in front of computer camera – after questioned by police engaged in further sexual conversations with persons he believed to be under 16y – lower end of scale
6.	Nahlous (33) [2013] NSWCCA 90	s.474.27(1) Sched: 5 x s 424.27A(1)	PG	18m suspended upon entering into 3y recognisance	Crown AD	Nil	Exchanged large number of messages on Facebook with 14y female neighbour – suggestive and sexual language – took place over 6 days - honest about age Socially isolated having divorced from wife who moved back to Lebanon – anxiety – remorseful and contrite – hardworking – good character.

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7.	Engeln (33-34) [2014] QCA 313	3 x Use carriage service to procure - s.474.26(1) 2 x s.474.27(1) Use carriage service to transmit indecent communication to person under 16y - s.474.27A(1) Knowingly possess child exploitation material – s.228D (QLD) <u>Code</u>	PG	3y released to recog after 9m (18m probation) 2y released to recog after 9m (18m probation) 2y released to recog after 9m (18m probation) 12m suspended after 4m	AD	nil	Engaged in sexually explicit conversation with two 14y girls over internet – undercover police officers – suggested meeting with each girl to engage in sexual activity – sent one girl images of himself masturbating – travelled to meet one girl at hotel – found in possession at home of 308 movie files of child pornography – 197 at Cat 4
8.	Rajasekar (29) [2017] NSWCCA 113	2 x s.474.27(1) Use carriage service to engage in sexual activity with person under 16y - s.474.25A(1) Possess child abuse material - s.91H(2) (NSW) <u>Crimes Act</u> Sched: 2 x s.474.27(1)	PG (25%)	3y 4y 12m <u>Total:</u> 5y 9m NPP 3y 7m	AD	Nil	Used false social media identities to engage online with 5 children – solicited nude photos – engaged in sexual chat – met one child but took her home before sexual activity – had one girl engage in sexual act allowing him to view through webcam – persistent, deliberate and calculated to establish contact with young girls - in possession of 40 videos and 167 images of child abuse material – pornography offences towards bottom on range School teacher – socially isolated
9.	Aboud (46) [2017] NSWCCA 140	'Multiple counts' - Use carriage service to procure - s.474.26(1) s.474.27(1) Use carriage service in offensive manner - s.474.17(1)	PG (discount unstated but accepted as significant)	<u>Total:</u> 7y NPP 5y 3m	AD	Nil	Opened two Facebook accounts in false names – over 6 months contacted 8 girls aged 12-15y – conducted offensive and sexually explicit conversations largely unwanted and one sided – obtained naked photos from one complainant – threatened to reveal Facebook activity to parents of another complainant Remorse – good character – co-operation with police in relation to own offending

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10.	Meadows (38) [2017] VSCA 290	s.474.27(1) Knowingly possess child pornography – s.70 (VIC) <i>Crimes Act</i>	PG	12m released after 3m for 12m 15m Community Corrections Order	AA 12m released after 3m for 9m 15m Community Corrections Order		Used sexually explicit and graphic language in four online conversations using 'Teenchat' and 'Skype' – believed recipient was 12y female – found in possession of two pornographic images on computer – no intention to meet up On appeal corrected order
11.	DPP v Ramos (22-24) [2018] VSCA 290	14 x s.474.27(1) 6 x Use carriage service to solicit child pornography - s.474.19(1)(a)(iv) 3 x Use carriage service to cause to be transmitted child pornography - s.474.19(1)(a)(ii) Transmit indecent communication to person under 16 - s.474.27A(1) Use carriage service to engage in sexual activity with person under 16y – s.474.25A(1) Use carriage service to procure - s.474.26(1) State bail offences	PG	1y 1y 6m 1y 6m 8m 2y 1y 6m 1m <u>Total:</u> 6y NPP 3y 6m (pre discount for guilty plea: 9y 6m NPP 6y)	Crown AD		Offences committed over several years - used social media applications to message 20 girls aged 11-15y – knew or identified complainants from school or other activities – had sexual conversations – sent sexual photos of self or other adults – threatened suicide if girls did not comply – some complainants sent naked photos – one complainant watched offender masturbate - committed two offence while on bail Low intelligence and hearing loss

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12.	Ralston (48) [2020] ACTCA 47	s.474.27(1)	VG	2y Suspended for 3y	Crown AD		Communicated through Instagram with 11y daughter of girlfriend – numerous messages culminated with request to see complainant naked – below medium On appeal: SJ erred in not finding earlier message constituted part of offence but sentence not manifestly inadequate
13.	Small (38) [2020] NSWCCA 216	s.474.27(1) Use carriage service to solicit child pornography - s.474.19(1)(a)(iv) 4 x Fail to comply with reporting obligations Possess child abuse material - s.91H(2) (NSW) <u>Crimes Act</u> Sched: s.474.19(1)(a)(iii)	PG (25%)	6y 7y 2y 2y 3m <u>Total:</u> 10y 6m NPP 7y	AA 5y 10m 6y 10m 2y 2y 3m <u>Total:</u> 10y NPP 6y 11m	Similar offences	Made contact with 14y female through Snapchat then Facebook and mobile phone – communicated over several weeks – became aware complainant vulnerable and self-harming – made sexual requests and requested photos – complainant sent partial photos of breasts uploaded by offender to Instagram – maintained contact despite becoming aware of distress caused to complainant and request by complainant and complainant's father to cease contact – mid range On arrest 61 child abuse images found on phone – sixty were Cat 1 and one image Cat 3 – low-range – failed to report interstate travel and possession and use of carriage service, internet service, Facebook, Instagram and Snapchat Lack of insight – no remorse – high risk of re-offending – importance of community protection and deterrence in view of record On appeal: error in discount for guilty plea for Commonwealth offences – <u>Xiao</u>

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14.	O'Hara (34) [2021] WASCA 123	2 x s.474.27(1) 2 x s.474.27(1) 3 x Possess child exploitation material: s.220 (WA) <u>Code</u> Use carriage service to do act in preparation for sexual activity with person under 16y: s.474.25C 3 x Use carriage service to transmit indecent communication to person under 16y - s.474.27A(1) 6 x Use carriage service for child pornography - s.474.19(1)	PG	12m 18m 1m / 12m 8m 12m / 14m 6m / 8m / 18m <u>Total:</u> 4y 6m NPP 2y 6m	AA 12m 18m 1m / 12m 8m 8m / 10m 6m / 8m / 18m <u>Total:</u> 4y NPP 2y	nil	Used computer to search for child pornography – stored pornography on hard drive – over 700,000 images and 724 videos – used Twitter account on phone to chat to 8-16y girls – created false persona of 11y girl – sent inappropriate sexual photos and engaged in inappropriate sexual comments – multiple complainants Co-operated with police – genuine remorse – favourable prospects of rehabilitation – emotional vulnerability and immaturity would make custodial conditions difficult On appeal: error in relation to maximum penalty for s.474.27A offences
15.	Aboud (56) [2021] NSWCCA 77	Use carriage service to procure - s.474.26(1) 4 x s.474.27(1) Use carriage service in offensive manner - s.474.17(1)	PG (25%)	4y 2y / 3y / 18m 1y <u>Total:</u> 7y NPP 5y 3m	AD	Nil	Offences committed in 2011 over period of 6 months - created fake Facebook account / identity pretending to be a young male – made contact with complainants teenage girls aged 13-15 - flattered and bribed complainants to elicit sexually explicit photographs - on some occasions, would threaten to tell complainant's parents about content of conversations - in some cases, promised accommodation, drinks and money to have sex with "an older friend" who was in fact the applicant - planned offences over period of time. CCA: <i>Xiao</i> (guilty plea) error- re-sentence: co-operation with police – delay – good prospects of rehabilitation – unlikely to reoffend.

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16.	Boucher (25) [2022] VSCA 3	Procure child to engage in sexual act outside Australia: s.272.14(1) 2 x Use carriage service to solicit child pornography - s.474.19(1)(a)(iv) Use carriage service to transmit indecent communication to child under 16 – s.474.27A(1) s.474.27(1)	VG	2y 2y / 18m 18m 18m <u>Total:</u> 3y released after 6m for 3y	AD		Communicated with 14y female in Canada through Snapchat over 2 weeks – discussed sexual matters – solicited photo of exposed breasts and showering – masturbated while complainant exposed breasts on video call – threatened to release images to internet – contacted by undercover police officer posing as 14-15y female – had sexual conversation Physical health issues
17.	Bredal (45) [2024] NSWCCA 75	s.474.27(1)	VG (5% cooperation)	1y 7m suspended sentence - release on recognisance 3y	Crown AD	Nil	Online chat exchanges on adult chat site with police assumed online identity (AOI) of 14y female – discussed meeting and prospect of physical sexual activity – offender later terminated meeting plans. Prior good character - cooperation with police - caring for three children with special needs. CCA: SJ correct to find circumstances exceptional for sentence to be suspended: voluntarily withdrew from offending, no evidence to suggest actively looking to engage with a child, communications with AOI and not real child - absence of interest in children, lack of prior record and withdrawal from offending, suggest contact with a “child” may not have occurred but for undercover police operation.

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18.	TBE (35) [2024] QCA 204	s.474.27(1)	PG	21m released after 4m to 3y recognisance	AD	Nil	Met 15y male through gel-blasting activities – communicated through Facebook Messenger – messages from offender became sexualised and requested complainant be his 'secret boyfriend' – messages sent over 2 months – no images Indonesian citizen – prior good character – some effort at rehabilitation On appeal: no error in finding no exceptional circumstances to suspend sentence of imprisonment
19.	Lidden (40) [2024] ACTSC 297 Taylor J	s.474.27(1)	PG (25%)	15m Released immediately to 2y recog		Minor	Engaged in Facebook Messenger conversation over 9 days with undercover officer he believed to be 14y girl – much of conversation not sexual – no deliberate manipulation or attempt to coerce – did not take up opportunity to escalate sexual element of conversation and did not request sexual pictures – unsophisticated attempt to make inappropriate connection – lower end of spectrum Delayed cognitive disability – difficulty at school, employment and social interactions – remorse and insight – moral culpability significantly reduced – impact of custody – exceptional circumstances

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