



DPP

Commonwealth Director of Public Prosecutions

**SUBMISSION BY THE COMMONWEALTH DPP
THE JOINT SELECT COMMITTEE ON CYBER-SAFETY
INQUIRY INTO CYBER SAFETY**

Introduction

The Office of the Commonwealth Director of Public Prosecutions (CDPP) is responsible for the prosecution of criminal offences against the laws of the Commonwealth and to conduct proceedings for the confiscation of proceeds of Commonwealth crime. The CDPP can only prosecute or take confiscation action when there has been an investigation by an investigation agency. The CDPP does not have an investigative function. The Office prosecutes or takes confiscation action in matters investigated by the Australian Federal Police or other investigative agencies.

There are a number of Commonwealth offences which relate to the potential abuse of children online, such as offences involving grooming and procuring children using a carriage service (sections 474.26 and 474.27 of the Code) and offences of using a carriage service for child pornography material and child abuse material (sections 474.19, 474.20, 474.22 and 474.23 of the Code). These offences are prosecuted by the CDPP. The CDPP is prosecuting an increasing number of offences involving the on-line exploitation of children.

It is apparent to the CDPP that matters being referred to this Office relating to the potential exploitation of children online are increasingly becoming more sophisticated through the use of networks to distribute material and the protection of material by encryption, which can result in complex technical and evidentiary issues. The CDPP works closely with the Australian Federal Police and other law enforcement agencies in this area.

Overview of the offence provisions

Use of a carriage service for Child Pornography Material or Child Abuse Material

Sections 474.19, 474.20, 474.22 and 474.23 of the Code relate to the use of a carriage service for child pornography material or child abuse material. They commenced on 1 March 2005.

“Child pornography material” and “child abuse material” are defined in section 473.1 of the Code. “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 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;

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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 person 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) in 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 person 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.

“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 person would regard as being, in all the circumstances, offensive; or

- (b) material that describes 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 person would regard as being, in all the circumstances, offensive

The offences in sections 474.19 and 474.22 of the Code cover a range of conduct, such as accessing, transmitting, publishing and making available, child pornography material or child abuse material using a carriage service, which includes the internet, email, mobile phones and other similar on-line applications. The offences in sections 474.20 and 474.23 of the Code relate to the possession, control, production, supply or obtaining of child pornography material or

child abuse material with the intention that the material will be used to commit an offences against section 474.19 or 474.22 of the Code.

Procuring and Grooming Offences

Sections 474.26 and 474.27 of the Code contain procuring and grooming offences. They commenced on 1 March 2005.

There are three “procuring” offences in section 474.26 of the Code which cover those circumstances where the sender transmits a communication to the recipient (who is under 16 years of age or the sender believes is under 16) with the intention of getting the recipient to engage in sexual activity with the sender, with another adult or with another person under 18 years old in the presence of the sender or another adult.

There are three “grooming” offences in section 474.27 of the Code which cover those circumstances where the sender transmits a communication to the recipient (who is under 16 years of age or who the sender believes is under 16) with the intention of making it easier to procure the recipient to engage in sexual activity with the sender, with another adult or with another person under 18 years old in the presence of the sender or another adult.

New offences in the Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010 (Cth)

The *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010 (Cth)* inserted new offences into the Code which specifically relate to the potential abuse of children online. These offences include an aggravated offence of committing a child pornography or abuse material offence on three or more occasions involving 2 or more people (section 474.24A of the Code), offences of using a carriage service to engage in sexual activity with a child (section 474.25A of the Code with an aggravated offence in section 474.25B) and an offence in relation to using a carriage service to transmit an indecent communication to a child (section 474.27A of the Code). These offences commenced on 15 April 2010.

The new offences in relation to using a carriage service to engage in sexual activity with a child and using a carriage service to transmit an indecent communication to a child were introduced to cover areas of possible exploitation of children on-line which, depending on the facts of the case, may not have been covered by the existing offences. As discussed in the Explanatory Memorandum to the *Crimes Legislation Amendment (Sexual Offences Against Children) Bill 2010*:

Part 2 of Schedule 1 will introduce two new carriage service offences covering certain specific activity relating to children. In State and Territory child sex offence regimes, offences criminalising exposing children to pornographic or indecent material are common. The Bill will insert a new offence of using a carriage service for indecent communications with a child. The offence would capture situations where an adults sends a child sexually explicit material (eg adult pornography) without any intent to commit a further offence (eg a grooming or procuring offence). The offence would carry a maximum penalty of seven years imprisonment.

Secondly, the Part 2 of Schedule 1 will insert a new offence of using a carriage service for sexual activity with a child. Changes in technology mean that offenders can commit sexual offences against children without meeting up in ‘real life’. For example, an offender might masturbate in front of a webcam while a child watches online. The new offence would carry a maximum penalty of 15 years imprisonment. Aggravated offences would also apply where the sexual activity is committed with a child in relation to which the offender is in a position of trust or authority, or where the victim has a mental impairment, carrying a maximum penalty of 25 years imprisonment. (pages 58-59)

The Committee may be assisted by the following breakdowns of sections 474.25A and 474.27A into their physical and fault elements, as provided for in Part 2.2 of Chapter 2 of the Criminal Code.

Subsection 474.25A(1)

- (a) D engages in sexual activity with the child using a carriage service (conduct)

Fault: intention (s5.6 of the Code)

- (b) The child is under 16 years of age (circumstance)

Fault: absolute liability (s474.28(1) of the Code)

- (c) D is at least 18 years of age (circumstance)

Fault: recklessness (s5.6 of the Code)

Subsection 474.25A (2)

- (a) D engages in conduct in relation to the child (conduct)

Fault: intention (s5.6 of the Code)

- (b) the conduct causes the child to engage in sexual activity with the participant using a carriage service (result)

Fault: intention (s474.25A(3) of the Code)

- (c) The child is under 16 years of age when the sexual activity is engaged in (circumstance)

Fault: absolute liability (s474.28(1) of the Code)

- (d) The participant is at least 18 years of age when the sexual activity is engaged in (circumstance)

Fault: absolute liability (s474.28(2) of the Code)

Subsection 474.27A (1)

- (a) D uses a carriage service to transmit a communication to another person (the recipient) (conduct)

Fault: intention (s5.6 of the Code)

- (b) the article is, or contains material that is indecent (circumstance)

Fault: recklessness (s5.6 of the Code)

- (c) (i) The recipient is under 16 years of age (circumstance)

Fault: absolute liability (s474.28(1) of the Code)

OR

- (ii) The recipient is over 16 years of age (circumstance)

Fault:D believes that the recipient is under 16 years of age (s474.27A(1)(c) of the Code)

(e) D is at least 18 years of age (circumstance)

Fault: recklessness (s5.6 of the Code)

Prosecution Statistics

The following tables set out statistics in relation to the prosecution of the offences sections 474.19, 474.10, 474.22, 474.23, 474.26 and 474.27 of the Code by this office. Table 1 contains the number of proven offences by defendant under each of the identified offences. Table 2 provides information on the sentence ordered in relation to the proven offences identified in Table 1.

| Table 1 'Proven' Offence Outcomes (to 22 June 2010) | | | | | | | |
|---|---------|---------|---------|---------|---------|---------|-------|
| Act/Section | Outcome | FY05/06 | FY06/07 | FY07/08 | FY08/09 | FY09/10 | Total |
| Criminal Code 474.19 | Proven | 2 | 22 | 38 | 110 | 129 | 301 |
| Criminal Code 474.20 | Proven | | 4 | 2 | 6 | 3 | 15 |
| Criminal Code 474.22 | Proven | | 4 | 7 | 9 | 4 | 24 |
| Criminal Code 474.23 | Proven | | 1 | 1 | 1 | | 3 |
| Criminal Code 474.26 | Proven | | 4 | 6 | 12 | 14 | 36 |
| Criminal Code 474.27 | Proven | 1 | 1 | 3 | 11 | 14 | 30 |
| Totals | Proven | 3 | 36 | 57 | 149 | 164 | 409 |

Note: Table 1 relates to a total of 356 defendants.

| Table 2 Highest Penalty for 'Proven' Offence (to 22 June 2010) | | | | | | | |
|--|------------------------|---------|---------|---------|---------|---------|-------|
| Act/Section | Penalty | FY05/06 | FY06/07 | FY07/08 | FY08/09 | FY09/10 | Total |
| Criminal Code 474.19 | Gaol | 1 | 12 | 22 | 56 | 73 | 164 |
| | Gaol (Fully Suspended) | | 6 | 8 | 44 | 44 | 102 |
| | Periodic detention | | 1 | 2 | 3 | 2 | 8 |
| | Fine | 1 | 2 | 3 | 2 | | 8 |
| | CSO/CBO | | 1 | 2 | 2 | 1 | 6 |
| | Recog Order | | | 1 | 3 | 8 | 12 |
| | Subtotals | | 2 | 22 | 38 | 110 | 128 |
| Criminal Code 474.20 | Gaol | | 3 | | 4 | 3 | 10 |
| | Gaol (Fully Suspended) | | 1 | 2 | 2 | | 5 |
| | Periodic detention | | | | | | |
| | Fine | | | | | | |
| | CSO/CBO | | | | | | |
| | Recog Order | | | | | | |
| | Subtotals | | | 4 | 2 | 6 | 3 |
| Criminal Code 474.22 | Gaol | | 4 | 5 | 4 | 4 | 17 |
| | Gaol (Fully Suspended) | | | | 4 | | 4 |
| | Periodic detention | | | | | | |
| | Fine | | | | | | |
| | CSO/CBO | | | 1 | 1 | | 2 |
| | Recog Order | | | 1 | | | 1 |
| | Other | | | | | | |
| | Subtotals | | | 4 | 7 | 9 | 4 |
| Criminal Code 474.23 | Gaol | | 1 | | | | 1 |
| | Gaol (Fully Suspended) | | | | 1 | | 1 |
| | Periodic detention | | | | | | |
| | Fine | | | | | | |
| | CSO/CBO | | | | | | |
| | Recog Order | | | 1 | | | 1 |
| | Subtotals | | | 1 | 1 | 1 | |
| Criminal Code 474.26 | Gaol | | 4 | 5 | 10 | 9 | 28 |
| | Gaol (Fully Suspended) | | | | 2 | 5 | 7 |
| | Periodic detention | | | | | | |
| | Fine | | | | | | |
| | CSO/CBO | | | | | | |
| | Recog Order | | | 1 | | | 1 |
| | Subtotals | | | 4 | 6 | 12 | 14 |
| Criminal Code 474.27 | Gaol | 1 | 1 | | 9 | 9 | 20 |
| | Gaol (Fully Suspended) | | | 2 | 2 | 2 | 6 |
| | Periodic detention | | | 1 | | | 1 |
| | Fine | | | | | 1 | 1 |
| | CSO/CBO | | | | | | |
| | Recog Order | | | | | 2 | 2 |
| | Subtotals | 1 | 1 | 3 | 11 | 14 | 30 |
| Totals | Gaol | 2 | 25 | 32 | 83 | 98 | 240 |
| | Gaol (Fully Suspended) | | 7 | 12 | 55 | 51 | 125 |
| | Periodic detention | | 1 | 3 | 3 | 2 | 9 |
| | Fine | 1 | 2 | 3 | 2 | 1 | 9 |
| | CSO/CBO | | 1 | 3 | 3 | 1 | 8 |
| | Recog Order | | | 4 | 3 | 10 | 17 |
| | Totals | 3 | 36 | 57 | 149 | 163 | 408 |

Note: Table 2 relates to a total of 356 defendants. One matter has had an offence under s474.19 found proven but has no penalty recorded. That matter is currently under a Defence Appeal against the sentence.

Case examples

The CDPP publishes case reports in its Annual Report each year to provide examples of the types of prosecutions conducted by the Office. The following case reports were included in the CDPP's 2008-2009 Annual Report in relation to on-line exploitation or abuse of children and may be of assistance to the Committee in relation to this inquiry.

Derek Richard Mara

In mid-2004 the defendant and 3 others established a highly sophisticated group using internet newsgroups with the objective to pursue their common interest in child pornography. These 4 core members screened, tested and subsequently admitted new members. The 4 core members and 2 others were the 'administrators', overseeing the structure and internal workings of the group, and providing instructions relating to security protocols, arrangements for the secure posting of material and the expectations of members. The core members and administrators were identified by nicknames. Other members of the group were known as the 'trustworthy'. None of the group knew the true identity of any of the other members. Many of the members were convicted sex offenders.

A large quantity of child exploitation material was traded, much of which had never been seen by police before. The group also purchased and commissioned the production of material. The material was posted to newsgroups as binary files that were unable to be viewed by anyone who did not have an encryption 'key'. The group used highly sophisticated techniques to avoid detection, including:

- encryption requiring the use of paired encryption keys to view the material and to communicate with other members. The keys were changed regularly and involved 3 different levels of security;
- frequently changing nicknames which accorded to a theme;
- changing the newsgroup location ;
- changing the file extension in order to disguise the nature of the file contents; and
- using a program written by a group member to automate the file extension change process.

The defendant was involved in ensuring that the encryption and security systems were followed, although another member was the gatekeeper. During his involvement the defendant used at least 8 nicknames to protect his identity. He posted editorial comment and large quantities of child pornography material for members of the group and frequently downloaded such material. When he wanted particular files he would post a message asking a group member to post the file for his use. He assisted others with the technical aspects of accessing the material. He did so for his own sexual gratification and that of other like-minded individuals.

The defendant was also aware that some members of the group made financial contributions towards 'custom made' videos involving the sexual abuse of children but did not make any financial contribution himself. He tried to withdraw from the group several times, but due to his addiction returned each time.

In January 2006 police from the Queensland Police Service's Taskforce Argos covertly infiltrated the group and commenced gathering data to identify offenders. At that time the group had 43 members. The investigation developed into a 26 month international operation, named Operation Achilles, based in Washington, USA. The defendant was inactive for 11 of those 26 months. Between August 2006 and February 2008 police collected over 444,000 images and 1,100 movie/video files of child exploitation material which had been uploaded and advertised for use by the group.

On 29 February 2008, as part of an international police operation against members of the group in several countries, police executed a search warrant at the defendant's home and seized his computer equipment for forensic examination. Initial attempts to examine the hard drives were impeded due to the defendant's use of the group's encryption software.

After first refusing to be interviewed, on 1 March 2008 the defendant participated in an interview with police and made significant admissions. He told police he had deleted his entire collection of pornography several times in the preceding years, including shortly after the police raid of his home which resulted in him being charged with cannabis offences in February 2007, but he had always found himself 'coming back to it'. About 2½ weeks later, he provided police with passwords without which they would not have been able to forensically interrogate areas of the hard drives.

As a result of the decryption of the defendant's hard drives forensic examination revealed:

- 75,706 image files and 763 movie/video files of child pornography on the external hard-drive;
- 1,206 images of child pornography (recovered from the deleted space), 13 image files and 40 movie/video files of child pornography on the internal drive; and
- that between 7 January 2006 and 21 May 2007 the defendant had uploaded at least 116 movie or video files of child pornography for the group's use.

Police also located a short movie file where the defendant had used his mobile phone to record about 2 minutes of 'upskirting' footage of a 5 year old girl who was a friend of his family. Whilst on remand the defendant was assessed by a forensic psychologist as conforming to a diagnosis of the sexual disorder paedophilia.

The defendant was charged with 1 count of using a carriage service to access child pornography pursuant to section 474.19(1) of the *Criminal Code*; 1 count of using a carriage service to cause child pornography to be transmitted pursuant to section 474.19(1) of the *Criminal Code*; 1 count of using a carriage service to transmit child pornography pursuant to section 474.19(1) of the *Criminal Code*; and 1 count of indecently treating a child under 16 with a circumstance of aggravation pursuant to sections 210(1)(f) and (3) of the *Criminal Code* (Qld).

On 5 March 2009 in the District Court of Queensland in Townsville the defendant was convicted and sentenced to a total effective penalty of 6 years imprisonment to be released after serving 32 months on condition that he be of good behaviour for 3 years and be subject to 18 months probation upon his release. A forfeiture order pursuant to section 228G of the *Criminal Code* (Qld) was made in relation to the defendant's computer tower and external hard drive.

The defendant appealed to the Queensland Court of Appeal against the excessiveness of his sentence. The appeal was unanimously dismissed by the Court of Appeal.

Russell Gorden Boshammer

This matter received significant media attention and became the subject matter of a police internet child safety video to be shown to school children.

On 2 October 2007 the defendant contacted a 13 year old girl via an internet chat room after seeing her profile page on a social networking website. The girl accepted the defendant as a 'contact friend' and during an initial internet chat the girl told the defendant her age and indicated that she attended high school. The defendant asked her if he could meet her and 'have fun' and they arranged to meet at a nearby sports club within walking distance of the girl's house. The defendant and girl met and the girl refused a lift in the defendant's vehicle. She then told her mother about the incident and made a formal complaint to police.

On 5 October 2007 a Queensland police officer covertly posed as the girl and chatted via the internet to the defendant. The defendant made graphic and salacious sexualised comments to

the girl and indicated his desire to have sex with her. A meeting was then arranged for that afternoon at the same sports club where they had earlier met. Police arrested the defendant at the sports club. He was found in possession of a box of condoms which had been purchased on the way to the meeting. A warrant executed on the defendant's home found implements for smoking cannabis.

The defendant was charged with 1 count of using a carriage service to procure a person under 16 years for sexual activity pursuant to section 474.26(1) of the *Criminal Code* and 1 count of possessing utensils or pipes pursuant to section 10(2)(A) of the *Drugs Misuse Act 1986* (Qld).

On 29 May 2009 in the Supreme Court of Queensland in Brisbane the defendant was convicted and sentenced to 2½ years imprisonment to be released after serving 8 months on condition that he be of good behaviour for 3 years and subject to probation for 6 months. He was convicted of the drug offence but not further punished.

Richard George Carlyon

The AFP Interpol Office in Canberra received information from the Republic of Austria Federal Ministry of the Interior, Criminal Intelligence Service, Austria (Interpol Vienna) which was forwarded to the AFP Online Child Sex Exploitation Team. The information related to the possession and distribution of child pornography through 4 Austrian based Internet addresses.

On 3 December 2007 a search warrant was executed at the defendant's address and 1 computer tower (containing two internal hard drives), 2 thumb drives, and 96 CDs and DVDs were seized and forensically examined. On examination of the computer hard drives 109,400 images (55% child abuse material and 30% child pornography material) and 559 video files (70% child abuse material and 30% child pornography material) were located. The images and video files included child pornography images of girls between the ages of 5 and 15 years.

The defendant was charged with 1 count of using a carriage service to access child pornography material pursuant to section 474.19(1)(a)(i) of the *Criminal Code* and 1 count of possessing child pornography pursuant to section 60(4) of the *Classification (Publications Films and Computer Games) Enforcement Act 1996* (WA).

On 24 October 2008 in the District Court of Western Australia in Perth the defendant was convicted and sentenced to a total effective penalty of 2 years imprisonment with a non-parole period of 12 months. A forfeiture order was made in relation to the computer equipment pursuant to section 48 and 56 of the *POC Act 2002*.

Reginald Christian Colin

This matter represents the second highest penalty imposed in Australia for using a carriage service to procure a child under 16 years.

The defendant, a 33 year old resident of Brisbane, met a 15 year old girl from New South Wales via Facebook. Using the internet the defendant procured the girl for sexual activity and paid for her flight to Brisbane so they could meet. Over a weekend they engaged in various sexual acts, many of which were photographed and videoed by the defendant. The defendant gave the girl a Skype mobile phone so they could communicate after the weekend. The defendant transmitted to the girl over the internet some of the images from their weekend together. He also transmitted the images to another person who expressed his disgust. The defendant and the girl also created a Facebook website together and the defendant uploaded the images of the sex acts they had engaged in onto their Facebook page.

The defendant claimed that the reason he did this was to show other paedophiles, attract their comments and let the girl know how dangerous paedophiles can be. During their relationship

the defendant also instructed the girl to perform certain sexual acts on webcam via instant messenger. The defendant employed the same modus operandi to try to procure the girl's 15 year old friend who, whilst initially engaging in explicit internet chats with the defendant, declined his offer to meet for sex.

The girl's mother discovered the offences and alerted police. After the defendant was first arrested and while he was on bail, the defendant was the subject of another search warrant. Police located a large cache of child pornography videos downloaded from the internet as well as an MP3 player with images and videos of the girl engaged in sexual acts with and for the defendant.

Two separate indictments were presented. The CDPP presented an indictment charging the defendant with 3 counts of using a carriage service to procure a person under 16 for sexual activity pursuant to section 474.26(1) of the *Criminal Code*; 1 count of making child exploitation material pursuant to section 228B of the *Criminal Code* (Qld); 2 counts of using a carriage service to transmit child pornography pursuant to section 474.19(a)(iii) of the *Criminal Code*; 2 counts of possessing child exploitation material pursuant to section 228D of the *Criminal Code* (Qld); and 1 count of using a carriage service to access child pornography material pursuant to section 474.19(a)(i) of the *Criminal Code*.

The Qld DPP presented an indictment charging the defendant with 3 counts of carnal knowledge of a child under 16 years pursuant to section 215 of the *Criminal Code* (Qld) and 1 count of indecent treatment of a child under the age of 16 years pursuant to section 210(1)(c) of the *Criminal Code* (Qld).

On 16 June 2009 in the Supreme Court of Queensland in Brisbane the defendant was sentenced to a total effective penalty of 5 years imprisonment with a non-parole period of 3 years. The defendant was sentenced to a concurrent term for offences contained on the State indictment. An order was made to forfeit all the equipment used in the commission of the offences pursuant to section 228G of the *Criminal Code* (Qld).

At sentence the defendant's counsel contended relying on a psychological report that he suffered from 'white knight syndrome' whereby he 'saves vulnerable people from perceived dangers.' The court gave little or no weight to this contention and expressed abhorrence in relation to the defendant's offences.

Vipulkumar Gajjar

The defendant entered an online chat site and met an undercover AFP officer posing as a 14 year old girl. The defendant engaged in a 2 hour chat session during which time he asked questions about the girl's age, whether she'd had sex before and whether she wanted to have sex with him. The defendant used explicit language during this exchange.

The defendant arranged to meet with the 'girl' the following day at Flinders Street station in Melbourne. The defendant attended as arranged but left shortly after becoming alerted to the presence of police at the station.

During an interview with police the defendant admitted using the internet to chat with the 'girl', engaging in sexually explicit conversation and arranging to meet, however he stated that he attended the train station only to see if the other person was a 'real 14 year old.'

The defendant was charged with using a carriage service to procure a person under 16 years pursuant to section 474.26 of the *Criminal Code*.

On 20 June 2008 in the County Court of Victoria in Melbourne the defendant was convicted and sentenced to 2½ years imprisonment to be released after serving 8 months on condition that he be of good behaviour for 22 months. He was also ordered to be subject to the supervision of a

probation officer and obey all reasonable directions of that officer including any direction to participate in a sex offender treatment program or undergo psychological or psychiatric assessment.

The defendant appealed to the Victorian Court of Appeal against the excessiveness of this sentence. It was the first time the Victorian Court of Appeal had considered a sentence imposed in relation to section 474.26 of the *Criminal Code*. The Court stated that as a general rule, cases of this type can ordinarily expect to receive a term of immediate imprisonment.

The Victorian Court of Appeal stated:

'Of course it cannot be said that this offence falls within anything like the worst category of its type. Nor, however, can it be described as anything but a serious example of conduct that is pernicious and difficult to detect. As such, it warrants severe punishment.'

'There is nothing in the appellant's point that it is wrong to lay down, as a general principle, that ordinarily one can expect to receive a term of immediate imprisonment in cases of this type. Appellate courts often make statements of that kind in an effort to give guidance to sentencing judges.'

Daniel Hizhnikov

On 6 February 2008 the defendant entered an on-line chat site and engaged in a chat session with a covert member of the Victorian Police Sexual Crimes Squad. At the commencement of the chat session the police officer told the defendant she was a 14 year old girl and the defendant said he was 25 years old.

On 6 February and 10 February 2008 the defendant and 'girl' engaged in one on one chats using Windows Live Messenger. The content of the chats was sexual and there was an agreement to meet at the Broadmeadows train station.

On 10 February 2008 the defendant was arrested at the Broadmeadows train station, his car was searched. Police located 5 bourbon and cola cans, condoms and a small amount of cannabis. A search of the defendant's premises was also conducted and a computer with internet capability was seized. Forensic analysis of the computer found 58 image files and 7 movie files of child pornography. A Norica air rifle (which was in pieces) was also located in his bedroom.

The defendant was charged with 1 count of using a carriage service to procure a person under 16 years pursuant to section 474.26(1) of the *Criminal Code*; 1 count of possessing child pornography pursuant to section 70(1) of the *Crimes Act 1958* (Vic); 1 count of possessing an unregistered firearm pursuant to section 6A(1) of the *Firearms Act 1996* (Vic); and 1 count of possessing cannabis pursuant to section 73 of the *Drugs Poisons and Controlled Substances Act 1981* (Vic).

On 15 August 2008 in the County Court of Victoria in Melbourne the defendant was convicted and sentenced to total effective penalty of 22 months imprisonment to be released forthwith on condition that he be of good behaviour for 4 years. He was fined of \$500 for the firearm offence. An order for forfeiture of the defendant's computer tower was made pursuant to section 48 of the *POC Act 2002*.

The Director appealed against the inadequacy of the sentence imposed for the procuring offence. Although the appeal was ultimately dismissed by the Victorian Court of Appeal, the court's reasons outline that the starting point for a procuring offence should be immediate imprisonment.

Christopher James

On 8 March 2007 the AFP executed a search warrant on the defendant's premises and seized 8 compact discs, 2 computers, 17 compact discs, and 26 colour images on A4 pages. A preliminary examination of the material revealed over 130,000 images, video and movie files. Some of these images were examined and 3,235 child pornography images and 77 child pornography videos were identified.

The defendant was charged with 1 count of using a carriage service to access child pornography pursuant to section 474.19(1)(a)(i) of the *Criminal Code* and 1 count of possessing child pornography pursuant to section 91H(3) of the *Crimes Act 1900* (NSW).

On 23 April 2008 in the District Court of New South Wales in Sydney the defendant was convicted and sentenced to a total effective penalty of 18 months imprisonment to be released after serving 12 months on condition that he be of good behaviour for 3 years.

The defendant appealed to the New South Wales Court of Criminal Appeal against the excessiveness of the sentence. On 3 March 2009 the defendant's appeal was dismissed.

Graeme Malcolm McLeod

On 6 January 2008 the defendant accessed an on-line instant messaging site where he had a conversation with a person who introduced himself as a 12 year old boy from Melbourne. On 6 separate occasions between January and August 2008 the defendant and the 'boy' had sexually explicit on-line conversations with the defendant often expressing a desire to meet at various places in Melbourne. The defendant discussed spending the night together at a hotel in Melbourne and attempted to convince 'boy' that sexual relations between an adult male and a 12 year old boy were considered normal.

A search warrant was executed at the defendant's residence and a number of floppy discs, CDs and DVDs were seized revealing approximately 2,300 images and 30 video files of child pornography as well as 10 child pornography text based stories.

The defendant was charged with 1 count of using a carriage service to procure a person under 16 years pursuant to section 474.26 of the *Criminal Code* and 1 count of possessing child pornography pursuant to section 70(1) of the *Crimes Act* (Vic).

On 26 May 2009 in the County Court of Victoria in Ballarat the defendant was convicted and sentenced to a total effective penalty of 2½ years imprisonment to be released after serving 15 months. The defendant's computer tower, discs and hard copy stories were forfeited. In sentencing, the Court had no hesitation in accepting the principle that in cases of this type, offenders can ordinarily expect an immediate term of imprisonment.

Neil James Williams

This defendant is a retired Queen's Counsel, author and academic who was 75 at the time of sentence.

In June 2008 the AFP Child Protection Team received information regarding peer-to-peer file sharing of child pornography material over the internet. The defendant was identified as one of the participants and the AFP subsequently attended at the defendant's residence and executed a search warrant.

Computer equipment and compact discs containing 10,535 images, 278 videos and 1,571 written text files depicting child pornography were seized. Analysis of the defendant's computer discovered that between August 2006 and April 2008 1,838 child pornography files were

received from other internet users via 'Google Hello' and between December 2006 and March 2008 1,860 child pornography files were transmitted to other internet users via 'Google Hello'. 'Google Hello' is a software program providing both an online chat program and the ability to share digital images such as photographs.

The defendant was charged with 1 count of possessing child pornography pursuant to section 70(1) of the *Crimes Act 1958* (Vic), 1 count of using a carriage service to access child pornography pursuant to section 474.19(1)(a)(i) of the *Criminal Code* and 1 count of using a carriage service to transmit child pornography pursuant to section 474.19(1)(a)(iii) of the *Criminal Code*.

On 23 April 2009 in the County Court of Victoria in Bendigo the defendant was sentenced to a total effective penalty of 2 year imprisonment to be released after serving 6 months on condition that he be of good behaviour for 18 months. The defendant was declared to be a serious sexual offender pursuant to section 6F of the *Sentencing Act 1991* (Vic) and was registered as a serious sexual offender pursuant to the *Sex Offender Registration Act 2002* (Vic) with a life-long reporting period.

In sentencing the defendant, the Court acknowledged that the defendant had no prior convictions, was remorseful and unlikely to reoffend. His Honour stated that the defendant had '*made significant contributions to the legal profession in this country in general*' and that he had done so '*in every facet of [his] professional life both as a barrister, solicitor and author.*' His Honour acknowledged that the defendant's reputation '*was in tatters*' and that his '*fall from grace was complete.*'

His Honour stated that general deterrence was the primary sentencing consideration. The offending was aggravated by the depravity and deviancy of the images; the duration of the offending (the defence conceded that he had accessed child pornography over a 12-year period); the trading of the images; his profession as a barrister, eminent author and officer of the court; and, his frequent attendance at prisons in a voluntary capacity as a visitor during which time he became aware of the prospects of incarcerated paedophiles, yet continued to offend.