

CHAPTER 2

OVERVIEW OF THE BILL

Key provisions of the Bill

- 2.1 There are two schedules to the Bill. Schedule 1 of the Bill (Item 1) will:
- repeal the existing child sex tourism offence regime in the *Crimes Act 1914* and move the provisions to the Criminal Code Act 1995 (the Criminal Code) (proposed new Divisions 272 and 273);¹
 - seek to strengthen the existing child sex tourism regime by improving the operation of existing offences for sexual intercourse or other sexual activity with a child; and by introducing new sexual activity offences directed at aggravated conduct, persistent sexual abuse and sexual activity with a young person (between 16 and 18 years of age) where the defendant is in a position of trust or authority in relation to the young person;
 - introduce new offences for Australians dealing in child pornography and child abuse material overseas, for which there are currently no offences applying extra-territorially. New offences will apply for possessing, controlling, producing, distributing or obtaining child pornography or child abuse material outside Australia; and
 - make minor consequential amendments.
- 2.2 Schedule 2 of the Bill will establish a specific scheme in the *Crimes Act 1914* for the forfeiture of child pornography and child abuse material that is related to a Commonwealth child sex offence.
- 2.3 The main focus of this chapter is on the amended and new offences to be introduced by the Bill.

SCHEDULE 1—AMENDMENTS RELATING TO SEXUAL OFFENCES AGAINST CHILDREN

Part 1—Amendments relating to child sex offences outside Australia

- 2.4 New Division 272 of the Criminal Code will deal with child sex offences outside Australia (child sex tourism) and Division 273 will deal with offences involving child pornography or child abuse material outside Australia (Item 4).

1 The explanatory memorandum (EM) advises that this is consistent with the general practice of transferring Commonwealth criminal offences enacted prior to 1995 into the Criminal Code.

Division 272—Child sex offences outside Australia

2.5 New Division 272 (Subdivision A) of the Criminal Code will contain the definition provisions currently contained in section 50AA of the *Crimes Act 1914*. Some amendments to the existing definitions, as well as new definitions, will also be included (these are discussed below where relevant).²

2.6 The offences relating to child sex offences outside Australia in new Division 272 (Subdivision B) of the Criminal Code will be based on existing Part IIIA 'Child Sex Tourism' in the *Crimes Act 1914*.

Offences directed at sexual intercourse and other sexual activity

Sexual intercourse and sexual conduct offences

2.7 Existing child sex tourism offences in Part IIIA of the *Crimes Act 1914* criminalise engaging in sexual intercourse or sexual conduct with a person under 16, or inducing a person under 16 to engage in sexual intercourse or sexual conduct in the presence of the defendant.³ The amendments are intended to simplify the structure of these offences by merging the existing offences into one offence.

2.8 The new 'sexual intercourse' offence will apply to *engaging* in sexual intercourse with a child (paragraph 272.8(1)(a))⁴ or to *causing* a child to engage in sexual intercourse in the presence of the defendant (outside Australia) (paragraph 272.8(2)(b)). The use of *causing* rather than *inducing* is intended to avoid confusion by distinguishing this offence from the new procuring offence to be inserted by the Bill. It also makes clear that the offence is directed not at inducing conduct but at the more serious conduct of actual sexual intercourse.

2.9 The maximum penalty for an offence under this section will be 20 years imprisonment (increased from 17 years under the *Crimes Act 1914*).

2.10 The current 'sexual conduct' offences will be replaced by an offence directed at 'sexual activity', which will apply to *engaging* in sexual activity with a child (paragraph 272.9(1)(a)) or *causing* a child to engage in sexual activity in the presence of the defendant (outside Australia) (paragraph 272.9(2)(b)). The new 'sexual activity' offence removes current references to specific variations of behaviour that the offence is intended to cover, and relies instead on the existing definition of *sexual activity* in the Criminal Code (Item 10) and a new extended definition of *engage in sexual activity* (Item 6). The purpose of the offence is to cover any conduct which involves a child engaging in any sexual activity (other than sexual intercourse) with, or in the presence of, the defendant outside Australia.

2 For full details see the EM, pp 11-14.

3 *Crimes Act 1914*, sections 50BA, 50BB, 50BC and 50BD.

4 All references are to proposed sections unless otherwise indicated.

2.11 Subsection 272.9(5) will make available a defence to these offences where the child was present but the defendant did not intend to derive gratification. The EM explains that this defence is intended to ensure that a person will not be captured by the offences in cases where a child happens to be present but there was no intention on the part of that person to derive gratification from the child's presence.

2.12 The maximum penalty for an offence under this section will be 15 years imprisonment (increased from 12 years under the *Crimes Act 1914*).

New aggravated offences

2.13 Section 272.10 will introduce new aggravated 'sexual intercourse' and 'sexual activity' offences.⁵ The aggravated offences will apply where the child has a mental impairment and/or 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. The new offence will rely on the existing definition of *mental impairment* in subsection 7.3(8) of the Criminal Code and on the new definition of *position of trust or authority* (Item 4). However, this aggravating factor is intended to apply more broadly than just those specific relationships that will be prescribed under the definition, and it will be for the court to determine whether the child was otherwise under the care, supervision or authority of the defendant.

2.14 A defence will be available to the defendant to the effect that, at the time the underlying offence was committed, he or she believed that the child did not have a mental impairment (subsection 272.10(6)). The defence of mistake of fact and the general defences under existing section 9.2 and Part 2.3 of the Criminal Code will also be available to a defendant.

2.15 The maximum penalty for an offence under this section will be 25 years imprisonment.

New persistent sexual abuse offence

2.16 Section 272.11 introduces a new offence of persistent sexual abuse of a child overseas. In satisfying this offence it will not be necessary to specify or prove the dates or exact circumstances of the occasions on which the offending behaviour occurred (subsection 272.11(5)). It will also be immaterial whether the underlying offence is the same on each occasion (subsection 272.11(4)). This takes into account past difficulties in presenting evidence of particular acts with sufficient precision.

2.17 The maximum penalty for an offence under this section will be 25 years imprisonment.

5 That is, subsections 272.8(1), 272.8(2), 272.9(1) and 272.9(2).

New offence of abuse of a young person where offender is in a position of trust or authority

2.18 Sections 272.12 and 272.13 will introduce new 'sexual intercourse' or other 'sexual activity' offences with a young person (a person aged between 16 and 18 years of age). Under these sections, it will be an offence to *engage* in sexual intercourse with a young person or to *cause* a young person to engage in sexual intercourse in the presence of the defendant outside Australia, where the defendant is in a *position of trust or authority* in relation to the young person.

2.19 A number of defences will be available to a defendant accused of an offence under section 272.12. The amendments include a specific defence of belief of age (section 272.16) as well as a specific defence relating to the existence of a valid and genuine marriage (section 272.17). The defence of mistake of fact and the general defences under section 9.2 and Part 2.3 of the Criminal Code, respectively, will also be available. In relation to section 272.13, the specific defences relating to belief of age and the existence of a valid and genuine marriage will be available. The general defence under Part 2.3 of the Criminal Code will also be available.

2.20 The maximum penalty for an offence under these sections will be 10 years imprisonment.

New procurement offence

2.21 Section 272.14 creates an offence of procuring a child to engage in sexual activity outside Australia. The EM states that the purpose of the offence is to address gaps in the current law, which do not criminalise behaviour leading up to actual sexual activity with a child. Under section 272.14, it will be an offence to engage in conduct to procure a child to engage in sexual activity in Australia. The procuring offence is directed at the procuring (or inducing) conduct and does not require the actual sexual activity to take place.

2.22 *Sexual activity* will be defined (Item 10) to mean sexual intercourse or any other act of a sexual or indecent nature (including an indecent assault) that involves the human body, or bodily actions or functions (whether or not that activity involves physical contact between people).

2.23 A number of defences will be available to a defendant accused of an offence under this section. The amendments include a specific defence of belief of age as well as a specific defence relating to the existence of a valid and genuine marriage. The general defences under Part 2.3 of the Criminal Code will also be available.

2.24 The maximum penalty for an offence under this section will be 15 years imprisonment.

New grooming offence

2.25 The term 'grooming' generally refers to behaviour that is designed to make it easier for the offender to procure a child for sexual activity. Under section 272.15, it will be an offence to groom a child with the intention of making it easier to procure the child to engage in sexual activity outside Australia.

2.26 The EM notes that, within Australia, offences already exist for grooming a child for sexual activity or for using a carriage service for such behaviour. However, while child sex tourism offences prohibit engaging in sexual intercourse or sexual conduct with a child, or inducing a child to engage in such conduct, they do not criminalise behaviour leading up to actual sexual activity with a child. The amendment will ensure that equivalent offences are in place in relation to grooming a child for sexual activity overseas. This will 'ensure comprehensive criminalisation of this kind of conduct, and place Australia on par with its international counterparts'.⁶

2.27 *Sexual activity* will be defined as per the procurement offence at section 272.14 (see above). The grooming offence will also rely on a new definition of *engage in sexual activity*. Without limiting when a person engages in sexual activity, a person will be taken to engage in sexual activity if the person is in the presence of another person (including by a means of communication that allows the person to see or hear the other person) while the other person engages in sexual activity.

2.28 A number of defences will be available to a defendant accused of an offence under this section, as per the procurement offence (see above).

2.29 The maximum penalty for an offence under this section will be 12 years imprisonment.

New offences of benefiting from, encouraging or preparing to commit sexual offences against children outside Australia

2.30 New Division 272 (Subdivision C) of the Criminal Code will also insert three new offences directed at commercial child sex tour operators and preliminary conduct engaged in by child sex clients.

Benefiting from or encouraging an offence against Division 272

2.31 Under section 272.18, it will be an offence for a person to engage in conduct, whether in Australia or overseas, with the intention of benefiting from an offence against Division 272 (if the conduct is reasonably capable of resulting in that person benefiting from the offence).

6 EM, p. 11.

2.32 Section 272.19 is similar to section 272.18⁷ but proscribes acts or omissions performed with the intention of 'encouraging' an offence under Division 272 (if the act or omission is reasonably capable of encouraging such conduct).

2.33 The maximum penalty for an offence under either of these sections will be 20 years imprisonment (increased from 17 years under the *Crimes Act 1914*). The EM explains that the increased penalties are intended to mirror the maximum penalties for the most serious substantive child sex tourism offences – the sexual intercourse offence and sexual conduct offences – which will be raised to 17 and 20 years imprisonment respectively.⁸

New preparatory offence

2.34 Under section 272.20, it will be an offence to prepare for or plan an offence relating to sexual intercourse or other sexual activity with a child (subsection 270.20(1)).⁹ It will also be an offence to prepare or plan for an offence relating to sexual abuse of a young person (that is, a person aged between 16 and 18 years of age) outside Australia where the defendant is in a position of trust or authority in relation to the young person (subsection 270.20(2)).¹⁰

2.35 The EM states that this new offence is necessary because it is unclear whether the existing 'benefiting' and 'encouraging' offences in sections 272.18 and 272.19 – which would apply to, for example, a child sex tour operator – would apply to preparatory activity where a person was planning their own participation in child sex tourism. The new offence is intended to allow law enforcement agencies to intervene at an earlier stage where there is evidence of a person's intent to travel overseas to sexually abuse children.

2.36 The maximum penalty for an offence under this section will be 10 years imprisonment, or five years in the case of preparing or planning an offence against sections 272.12 or 272.13 (relating to a young person).

Consent to proceedings where the defendant is under 18 years of age

2.37 Section 272.31 will provide that proceedings for an offence against Division 272 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.

7 These offences are based on sections 50DA and 50DB of the *Crimes Act 1914*.

8 EM, p. 38.

9 That is, an offence against sections 272.8, 272.9, 272.10, 272.11 and 272.18.

10 That is, an offence against sections 272.12 and 272.13.

2.38 The EM explains that this will enshrine in legislation a direction of the Attorney-General that was issued in 1994 under section 8 of the *Director of Public Prosecutions Act 1983*.¹¹

Division 273—Offences involving child pornography material or child abuse material outside Australia

2.39 The EM explains that the possession, production or distribution of child pornography or child abuse material within Australia, or unlawfully importing such material into Australia, is currently criminalised by Commonwealth, state and territory laws. However, these existing offences do not have extra-territorial effect, and many countries either do not have comparable laws or are unwilling or unable to enforce them. Accordingly, new Division 273 (Subdivision B) of the Criminal Code will contain a number of offences directed at dealing in child pornography and child abuse material overseas. It will also include an aggravated offence, which will apply where an offence involves conduct on three or more occasions and involving two or more persons.¹²

New offence for possessing, controlling, producing, distributing or obtaining child pornography or child abuse material outside Australia

2.40 Under sections 273.5 and 273.6, it will be an offence for a person to possess, control, produce, distribute or obtain child pornography or child abuse material, or to facilitate the production or distribution of such material, while that person is outside Australia. *Child pornography material* is defined in the existing definitions section of the Criminal Code. The definition includes material that depicts or describes a child engaged in sexual activity in a way that reasonable persons would regard as being, in all the circumstances, offensive.

2.41 The maximum penalty for an offence under these sections will be 15 years imprisonment.

New aggravated offence for conduct on three or more occasions and involving more than one person

2.42 Section 273.7 will introduce a new aggravated offence that will apply if a person commits an offence against sections 273.5 or 273.6 (the underlying offences) in circumstances where the defendant has committed an underlying offence on three or more separate occasions and the commission of these offences involved two or more persons. The EM notes that the purpose of the provision is to target criminal networks engaged in offences involving child pornography and/or child abuse material.¹³

11 EM, p. 44.

12 EM, p. 2.

13 EM, p. 49.

2.43 The maximum penalty for an offence under this section will be 25 years imprisonment. The EM notes that this higher maximum penalty is justified by the additional or aggravating elements of the offence.¹⁴

Defences

2.44 Section 273.9 (Division 273, Subdivision C) will set out the defences to the offences in Subdivision B.¹⁵ These are intended to protect people who have legitimate reasons for possessing, controlling, producing, distributing or obtaining child pornography material or child abuse material. The defences include circumstances where:

- a defendant can point to evidence to suggest that his or her conduct is of public benefit and does not go beyond what is of public benefit (subsection 273.9(1));
- the person is at the time of the offence a law enforcement officer, an intelligence or security officer, or an officer or employee of the government of a foreign country performing similar duties to an intelligence or security officer and acting reasonably in the course of their duties; and
- the person engages in the conduct in good faith for the sole purpose of assisting the Australian Communications and Media Authority to:
 - detect prohibited, or potentially prohibited, content in the performance of the Authority's functions; or
 - manufacture, develop or update content filtering technology (including software) in accordance with a recognised alternative access-prevention arrangement or a designated alternative access-prevention arrangement.

Part 2—Amendments relating to child sex offences involving postal or similar services, or carriage services

2.45 Part 2 of Schedule 1 will introduce a number of offences which criminalise the use of a postal or similar service for child sex-related activity. The offences will mirror relevant carriage service offences (as amended by Schedule 1) and ensure that such activity is criminalised consistently, regardless of the means through which it is committed. A range of amendments are made to existing Division 474, which sets out a number of telecommunications offences relating to the use of a carriage service for criminal activity. Section 470.4 will insert a number of definitions for the purposes of new Subdivisions B and C of Division 471. These are discussed below as relevant.¹⁶

14 EM, p. 48.

15 That is, sections 273.5, 273.6 and 273.7.

16 For full details see EM, p. 59; and the Bill, pp 34-35.

New offences relating to use of postal or similar service for child pornography material or child abuse material

2.46 Item 14 of the Bill will insert new Subdivision B into the Criminal Code, relating to use of a postal or similar service for child pornography material or child abuse material.

Using a postal or similar service for child pornography or child abuse material

2.47 Under sections 471.16 and 471.19, it will be an offence to use a postal or similar service for child pornography or child abuse material and to cause or request any such material to be carried by any such service. The EM states that the purpose of this offence is to ensure that the use of a postal or similar service for conduct relating to child pornography is criminalised in a way that is consistent with comparable offences directed at the Internet.¹⁷

2.48 The maximum penalty for an offence under these sections will be 15 years imprisonment.

Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service

2.49 Under subsection 471.17(1), it will be an offence for a person to possess, control, produce, supply or obtain child pornography material with the intention that the material will be used by that person, or another person, in committing an offence against section 471.16 (using a postal or similar service for child pornography material).

2.50 The maximum penalty for an offence under this section will be 15 years imprisonment.

Defences in respect of child pornography material

2.51 Section 471.18 will set out the defences to an offence against the postal service offences involving child pornography material.¹⁸ These defences will apply where the conduct said to constitute the offence is of public benefit. Conduct that is considered to be of public benefit includes situations where the conduct is necessary for enforcing, or monitoring compliance with, a Commonwealth, state or territory law, for the administration of justice, or for conducting scientific, medical or educational research approved by the Minister. Subsection 471.18(2) will provide an exhaustive list of conduct that is of public benefit.

17 EM, p. 60.

18 That is, sections 471.16 and 471.17.

2.52 The section also includes a defence for law enforcement, intelligence or security officers acting in the course of duty.¹⁹

Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service

2.53 Under subsection 471.20(1), it will be an offence for a person to possess, control, produce, supply or obtain child abuse material with the intention that the material will be used by that person, or another person, in committing an offence against section 471.19 (using a postal or similar service for child abuse material).

2.54 The maximum penalty for an offence under this section will be 15 years imprisonment.

Defences in respect of child abuse material

2.55 The defences to postal service offences involving child abuse material will operate as per those set out above in relation to child pornography material.

Aggravated offence involving conduct on three or more occasions and two or more people

2.56 Subsection 471.22(1) will insert a new aggravated offence that will apply if a person commits an offence against sections 471.16, 471.17, 471.18, 471.19 and 471.20 (the underlying offences), in circumstances where the defendant has committed an underlying offence on three or more separate occasions and the commission of these offences involved two or more persons.

2.57 Subsection 471.22(5) will provide that a person who has been convicted or acquitted of an aggravated offence will not be able to be convicted of an offence against sections 471.16, 471.17, 471.18, 471.19 or 471.20 for the same conduct that constituted the aggravated offence.

2.58 The maximum penalty for an offence under this section will be 25 years imprisonment.²⁰

New offences relating to use of a postal or similar service involving sexual activity with a person under 16

2.59 New Subdivision C of existing Division 471 of the Criminal Code will introduce three new offences directed at the use of postal or similar services for offences involving sexual activity with a person under 16. The new offences will mirror existing and new carriage service offences.

19 EM, p. 63.

20 EM, p. 69.

Using a postal or similar service to procure or to groom persons under 16 years of age

2.60 Under sections 471.24 and 471.25, it will be an offence to use a postal or similar service to procure or to groom a person under 16 to engage in sexual activity. The EM states that the purpose of these offences is to give law enforcement authorities the means to deal with preparatory conduct and enable a person to be arrested before any physical harm occurs to the child.

2.61 The grooming offence will apply where a person engages in conduct using a postal or similar service with the intention of making it easier to procure the child ('grooming' the child) to participate in certain activities. Subsection 471.25(3) will create an offence with the additional element that the sender intends that the sexual activity take place with another person who is under 16 in the presence of the sender, or another person who is at least 18.

2.62 A specific 'belief about age' defence is available to this offence.

2.63 The maximum penalty for the procurement offence will be 15 years imprisonment. The maximum penalty for the grooming offence will be 12 years imprisonment, or 15 years imprisonment for the offence created by subsection 471.25(3).

Using a postal or similar service to send indecent material to persons under 16 years of age

2.64 Section 471.26 will criminalise the use of a postal service to send indecent material to a person under 16 years of age. The EM states that the purpose of this offence is to address situations where the offender sends indecent material to a child with no further intent to groom or procure the child for sexual activity. This offence will mirror the comparable carriage-service offence to be introduced by section 474.27A to ensure that child sex-related activity is criminalised consistently, regardless of the means through which it is committed (for example, through the Internet or the post).

2.65 The maximum penalty for an offence under this section will be seven years imprisonment.

Defences to offences against Subdivision C (offences relating to use of a postal or similar service involving sexual activity with a person under 16)

2.66 Section 471.29 will provide a defence based on a belief about age where, at the time the defendant caused the article to be carried, the defendant believed that the person was, for example, 16 or over.²¹

21 EM, p. 79.

Offences relating to the use of a carriage service for child pornography material or child abuse material

2.67 Item 19 of the Bill will insert a new subdivision and heading into existing Division 474 of the Criminal Code: 'Subdivision D—Offences relating to the use of a carriage service for child pornography material or child abuse material'. Existing offences in sections 474.19 – 474.24 will be included in new Subdivision D and have their penalties increased, and a new aggravated offence will be created.

Increasing penalties

2.68 Item 21, 23, 25 and 27 of the Bill will increase the penalty for the existing offences to be moved into new Subdivision D of Division 274, which relate to controlling, producing, supplying or obtaining child pornography or child abuse material for use through a carriage service. The maximum penalty for these offences will be increased from 10 to 15 years imprisonment. The EM states that this is appropriate in light of the scale of contemporary offending and will ensure that the maximum penalty reflects the 'worst case scenario'.²²

New aggravated offence for conduct involving three or more occasions and two or more people

2.69 Subsection 474.24A(1) will insert an aggravated offence that will apply if a person commits an offence against sections 474.19, 474.20, 474.22 or 474.23 (the underlying offences) in circumstances where the defendant has committed an underlying offence on three or more separate occasions and the commission of these offences involved two or more persons.

2.70 This offence will contain the same arrangements for double jeopardy as are proposed for the aggravated offence involving conduct on three or more occasions and two or more people in relation to child pornography and child abuse material (see above).

2.71 The maximum penalty for an offence under this section will be 25 years imprisonment.

Offences relating to the use of a carriage service involving sexual activity with a person under 16

2.72 Item 29 of the Bill will insert a new subdivision and heading into existing Division 474 of the Criminal Code: 'Subdivision F—Offences relating to the use of carriage service involving sexual activity with person under 16'. Existing offences in sections 474.26 – 474.29 will be included in new Subdivision F, along with two new offences.

22 EM, p. 83.

New offence for using a carriage service for sexual activity with person under 16 years of age

2.73 Under subsection 474.25A(1), it will be an offence to use a carriage service for sexual activity with a child under the age of 16 years, or to cause a child to engage in sexual activity with another person of at least 18 years of age (subsection 474.25A(2)). The EM states that the purpose of this offence is to ensure that engaging in sexual activity with a child online is criminalised in a comparable way to equivalent 'real life' activity.

2.74 A number of defences will be available to a defendant accused of an offence under this section. The amendments include a specific defence of belief of age (subsection 474.29(1)) as well as a specific defence of not intending to derive gratification (subsection 425.25A(4)). The general defences under Part 2.3 of the Criminal Code will also be available.

2.75 The maximum penalty for an offence under this section will be 15 years imprisonment.

New aggravated offence—child with mental impairment or under care, supervision or authority of defendant

2.76 Section 474.25B will introduce a new aggravated offence that will apply if a person commits an offence against subsections 474.25A(1) or 474.25A(2), in circumstances where the child has a mental impairment and/or is under the care, supervision or authority of the person. The new offence will rely on the definition of *position of trust or authority* to be inserted into the Criminal Code by Item 4, which will prescribe the categories of relationships that would constitute a position of trust or authority, such as a parent, guardian or carer, or the teacher or employer of a person. However, this aggravating factor is intended to apply more broadly than just those specific relationships that will be prescribed, and it will be for the court to determine whether the child was otherwise under the care, supervision or authority of the person.

2.77 A defence to this offence will be available where a defendant can show that he or she believed that the child did not have a mental impairment (subsection 474.29(3)). The general defences under Part 2.3 of the Criminal Code, and the defence of 'mistake of fact' under existing section 9.2 will also be available to a defendant charged with this offence.

2.78 The maximum penalty for an offence under this section will be 25 years imprisonment.²³

Using a carriage service to transmit indecent communication to person under 16 years of age

2.79 Under subsection 474.27A(1), it will be an offence for a person 18 years or over to use a carriage service to transmit an indecent communication to a person who is, or who the sender believes to be, under 16 years of age.

2.80 A specific 'belief about age' defence is available to this offence (subsection 474.29(5)). The general defences under Part 2.3 of the Criminal Code will also be available to a person accused of an offence under this section.

2.81 The maximum penalty for an offence under this section will be seven years imprisonment.

Offences relating to the use of a carriage service for suicide related material

2.82 Subdivision C of Division 474 currently includes a range of offences related to the use of telecommunications. Item 57 of the Bill will divide Subdivision C into several separate subdivisions to better reflect the conduct involved in those offences. This item will insert a new heading to provide that existing sections 474.29A (relating to use of a carriage service for suicide related material) and 474.29B (relating to possessing, controlling, producing, supplying or obtaining suicide-related material for use through a carriage service) will now be contained in Subdivision General—'Offences relating to use of a carriage service for suicide related material'.²⁴

Part 3—Consequential amendments

2.83 Existing child sex offences are referred to in a number of Acts in order to allow the exercise of certain law enforcement powers for the investigation of such offences. Minor technical amendments are required to include updated references to existing and new child sex tourism and other child sex offence provisions to reflect the changes made by the Bill.

2.84 Part 3 of Schedule 1 of the Bill will make consequential amendments to the *Australian Crime Commission Act 2002*, the *Crimes Act 1914*, the *Surveillance Devices Act 2004* and the *Telecommunications (Interception and Access) Act 1979*.²⁵

24 EM, p. 103.

25 For full details see EM, pp 106-129; and the Bill, pp 63-73.

SCHEDULE 2—FORFEITURE OF CHILD SEX MATERIAL

2.85 Schedule 2 provides for a specific scheme in the *Crimes Act 1914* for the forfeiture of child pornography and child abuse material that is related to a Commonwealth child sex offence. Once forfeited, such items will become the property of the Commonwealth.

2.86 The EM notes that there is currently no specific Commonwealth scheme for dealing with material or equipment that is seized by law enforcement agencies in the course of investigations, such as child pornography and child abuse material contained in photos, DVDs, computers or other electronic equipment. This means that in cases where no person is convicted of an offence, either because no prosecution is commenced or a defendant is acquitted, the seized items must be returned. In cases where a defendant is convicted, an application must be made for the forfeiture of the material under the *Proceeds of Crime Act 2002*, which 'is a lengthy process and one ill-suited for dealing with child pornography and child abuse material'.²⁶

2.87 Accordingly, the proposed scheme is intended to allow law enforcement agencies to be able to deal appropriately with such material or equipment, regardless of whether criminal proceedings subsequently occur.

2.88 The proposed Commonwealth forfeiture scheme for child sex material will comprise two approaches: administrative forfeiture and court-ordered forfeiture.²⁷

26 EM, p. 114.

27 For full details see EM, pp 114-129.

