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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Criminal Code Amendment (Private
Sexual Material) Bill 2015**

No. , 2015

(Mr Watts and Ms TM Butler)

**A Bill for an Act to amend the *Criminal Code Act
1995*, and for related purposes**

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1 **A Bill for an Act to amend the *Criminal Code Act***
2 ***1995, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Criminal Code Amendment (Private*
6 *Sexual Material) Act 2015*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedules**

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

Schedule 1—Amendments

Criminal Code Act 1995

1 Section 473.1 of the *Criminal Code*

Insert:

private sexual material has the meaning given by section
@474.24D.

subject of private sexual material has the meaning given by section
@474.24D.

2 After Subdivision D of Division 474 of the *Criminal Code*

Insert:

Subdivision DA—Offences relating to use of carriage service for private sexual material

@474.24D Meaning of *private sexual material*

- (1) For the purposes of this Act, material that satisfies the conditions set out in subsections (2) and (3) is *private sexual material* and a person depicted in the material as mentioned in subsection (3) is a *subject* of the material.
- (2) The material must depict something that, in the circumstances in which the material was produced, a reasonable person would expect to be kept private.
- (3) The material must depict:
 - (a) a person who 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
 - (b) a sexual organ or the anal region of a person; or
 - (c) the breasts of a female person.
- (4) Despite subsection (1), material is not *private sexual material* if:
 - (a) the material consists of material that has been altered in any way, or that combines material from 2 or more sources; and

- 1 (b) one or more of the following apply:
2 (i) the material does not consist of or include material that
3 is private sexual material;
4 (ii) the material is only private sexual material because of
5 the alteration or combination mentioned in
6 paragraph (a);
7 (iii) it is only because of the alteration or combination
8 mentioned in paragraph (a) that the material depicts the
9 person mentioned in subsection (3).

10 **@474.24E Using a carriage service for private sexual material**

- 11 (1) A person commits an offence if:
12 (a) the person transmits, makes available, publishes, distributes,
13 advertises or promotes material; and
14 (b) the material is private sexual material; and
15 (c) the person engages in the conduct mentioned in paragraph (a)
16 without the consent of a subject of the material (see section
17 @474.24J); and
18 (d) the person knows of, or is reckless as to, the subject's lack of
19 consent; and
20 (e) either:
21 (i) the conduct mentioned in paragraph (a) causes distress
22 or harm to a subject of the material; or
23 (ii) there is a risk that the conduct mentioned in
24 paragraph (a) will cause distress or harm to a subject of
25 the material; and
26 (f) the person engages in the conduct mentioned in paragraph (a)
27 using a carriage service.

28 Penalty: Imprisonment for 3 years.

29 *Transmission etc. to subject of material*

- 30 (2) In a prosecution for an offence against subsection (1), the
31 prosecution must prove that the conduct mentioned in
32 paragraph (a) did not consist solely of a transmission, making
33 available, publication, distribution, advertisement or promotion of
34 private sexual material to a subject of the material.

1 *Consent*

- 2 (3) For the purposes of paragraph (1)(d), being reckless as to a
3 subject's lack of consent includes not giving any thought to
4 whether or not the subject is consenting.

5 *Causing distress or harm*

- 6 (4) For the purposes of paragraph (1)(e):
7 (a) a person's conduct is taken to cause distress or harm if it
8 substantially contributes to distress or harm; and
9 (b) a person's conduct does not cause distress merely because
10 that is a natural and probable consequence of the conduct.

11 *Use of carriage service*

- 12 (5) Absolute liability applies to paragraph (1)(f).

13 Note: For absolute liability, see section 6.2.

14 *Defences*

- 15 (6) As well as the general defences provided for in Part 2.3, defences
16 are provided for under section @474.24H in relation to this
17 section.

18 **@474.24F Using a carriage service to make a threat about private**
19 **sexual material**

- 20 (1) A person (the *first person*) commits an offence if:
21 (a) the first person uses a carriage service to make to another
22 person (the *second person*) a threat to transmit, make
23 available, publish, distribute, advertise or promote private
24 sexual material of which the second person or a third person
25 is the subject; and
26 (b) the first person intends the second person to fear that the
27 threat will be carried out.

28 Penalty: Imprisonment for 3 years.

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Actual fear not necessary

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the person receiving the threat actually feared that the threat would be carried out.

Defences

- (3) As well as the general defences provided for in Part 2.3, a defence is provided for under subsection @474.24H(1) in relation to this section.

Definitions

- (4) In this section:
fear includes apprehension.

@474.24G Possessing, controlling, producing, supplying or obtaining private sexual material for use through a carriage service

- (1) A person commits an offence if:
 - (a) the person:
 - (i) has possession or control of material; or
 - (ii) produces, supplies or obtains material; and
 - (b) the material is private sexual material; and
 - (c) the person has that possession or control, or engages in that production, supply or obtaining, with the intention that the material be used:
 - (i) by that person; or
 - (ii) by another person;in committing an offence against section @474.24E (using a carriage service for private sexual material) or @474.24F (using a carriage service to make a threat about private sexual material).

Penalty: Imprisonment for 5 years.

- (2) A person may be found guilty of an offence against subsection (1) even if committing the offence against section @474.24E or @474.24F is impossible.

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- 1 (3) It is not an offence to attempt to commit an offence against
2 subsection (1).

3 *Defences*

- 4 (4) As well as the general defences provided for in Part 2.3, defences
5 are provided for under section @474.24H in relation to this
6 section.

7 **@474.24H Defences in respect of private sexual material**

8 *Material previously transmitted etc.*

- 9 (1) A person is not criminally responsible for an offence against this
10 Subdivision if:
11 (a) the person reasonably believed that the private sexual
12 material had previously been transmitted, made available,
13 published, distributed, advertised, or promoted (whether by a
14 subject of the material or another person); and
15 (b) the person had no reason to believe that the transmission,
16 making available, publication, distribution, advertisement or
17 promotion mentioned in paragraph (a) occurred without the
18 consent of a subject of the material (see section @474.24J).

19 Note: A defendant bears an evidential burden in relation to the matter in this
20 subsection, see subsection 13.3(3).

21 *Public benefit*

- 22 (2) A person is not criminally responsible for an offence against
23 section @474.24E (using a carriage service for private sexual
24 material) or @474.24G (possessing etc. private sexual material for
25 use through a carriage service) because of engaging in particular
26 conduct if the conduct:
27 (a) is of public benefit; and
28 (b) does not extend beyond what is of public benefit.

29 In determining whether the person is, under this subsection, not
30 criminally responsible for the offence, the question whether the
31 conduct is of public benefit is a question of fact and the person's
32 motives in engaging in the conduct are irrelevant.

33 Note: A defendant bears an evidential burden in relation to the matter in this
34 subsection, see subsection 13.3(3).

- 1 (3) For the purposes of subsection (2), conduct is of public benefit if,
2 and only if, the conduct is necessary for or of assistance in:
3 (a) enforcing a law of the Commonwealth, a State or a Territory;
4 or
5 (b) monitoring compliance with, or investigating a contravention
6 of, a law of the Commonwealth, a State or a Territory; or
7 (c) the administration of justice; or
8 (d) conducting scientific, medical or educational research that
9 has been approved by the Minister in writing for the purposes
10 of this section.

11 *Media activities*

- 12 (4) A person is not criminally responsible for an offence against
13 section @474.24E (using a carriage service for private sexual
14 material) or @474.24G (possessing etc. private sexual material for
15 use through a carriage service) because of engaging in particular
16 conduct if:
17 (a) the person engaged in the conduct for the purposes of
18 collecting, preparing for the dissemination of, or
19 disseminating:
20 (i) material having the character of news, current affairs,
21 information or a documentary; or
22 (ii) material consisting of commentary or opinion on, or
23 analysis of, news, current affairs, information or a
24 documentary; and
25 (b) the person did not intend the conduct to cause harm to the
26 subject of the material; and
27 (c) the person reasonably believed the conduct to be in the public
28 interest.

29 Note: A defendant bears an evidential burden in relation to the matter in this
30 subsection, see subsection 13.3(3).

31 *Duties of law enforcement officer, or intelligence or security*
32 *officer*

- 33 (5) A person is not criminally responsible for an offence against
34 section @474.24E (using a carriage service for private sexual
35 material) or @474.24G (possessing etc. private sexual material for
36 use through a carriage service) if:
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- 1 (a) the person is, at the time of the offence, a law enforcement
 2 officer, or an intelligence or security officer, acting in the
 3 course of his or her duties; and
 4 (b) the conduct of the person is reasonable in the circumstances
 5 for the purpose of performing that duty.

6 Note: A defendant bears an evidential burden in relation to the matter in this
 7 subsection, see subsection 13.3(3).

8 *Prohibited content and content filtering technology*

- 9 (6) A person is not criminally responsible for an offence against
 10 section @474.24E (using a carriage service for private sexual
 11 material) or @474.24G (possessing etc. private sexual material for
 12 use through a carriage service) if the person engages in the conduct
 13 in good faith for the sole purpose of:
 14 (a) assisting the Children’s e-Safety Commissioner to detect:
 15 (i) prohibited content (within the meaning of Schedule 7 to
 16 the *Broadcasting Services Act 1992*); or
 17 (ii) potential prohibited content (within the meaning of that
 18 Schedule);
 19 in the performance of the Commissioner’s functions under
 20 Schedule 5 or Schedule 7 to that Act; or
 21 (b) manufacturing or developing, or updating, content filtering
 22 technology (including software) in accordance with:
 23 (i) a recognised alternative access-prevention arrangement
 24 (within the meaning of clause 40 of Schedule 5 to the
 25 *Broadcasting Services Act 1992*); or
 26 (ii) a designated alternative access-prevention arrangement
 27 (within the meaning of clause 60 of that Schedule).

28 Note: A defendant bears an evidential burden in relation to the matter in this
 29 subsection, see subsection 13.3(3).

30 **@474.24J Consent in relation to private sexual material**

31 For the purposes of this Subdivision, consent to conduct consisting
 32 of the transmission, making available, publication, distribution,
 33 advertisement or promotion of private sexual material:

- 34 (a) includes general consent covering conduct of that kind, as
 35 well as consent to a particular instance of such conduct; and
 36 (b) may be given expressly or by necessary implication.

1 **3 Subsections 475.1A(1) and (2) of the *Criminal Code***

2 After “D,” insert “DA,”.

3 **4 Paragraphs 475.1B(1)(a) and (2)(a) of the *Criminal Code***

4 After “D,” insert “DA,”.