



New South Wales

Crimes Amendment (Child Pornography) Act 1995 No 49

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Crimes Amendment (Child Pornography) Act 1995 No 49

Act No 49, 1995

An Act to amend the *Crimes Act 1900* with respect to the possession of child pornography; to amend the *Film and Computer Game Classification Act 1984* and the *Indecent Articles and Classified Publications Act 1975* for related purposes; and to consequentially amend the *Search Warrants Act 1985*. [Assented to 2 November 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Child Pornography) Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

4 Amendment of other Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule.

5 Certain other amendments relating to age

Each Act specified in Schedule 3 is amended as set out in that Schedule.

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

[1] Section 1 Short title and contents of Act

Insert after the matter relating to Part 6:

Part 6 A Possession of Child Pornography—s. 310A

[2] Section 1

Insert after item (2AA) of the matter relating to Part 10:

(2AB) *Powers of entry and search in relation to child pornography—s. 357EB*

[3] Part 6A

Insert after Part 6:

Part 6 A Possession of Child Pornography

310A Possession of child pornography

- (1) A person is guilty of an offence if the person has in his or her possession any child pornography, and is liable, on summary conviction before a Magistrate, to imprisonment for 12 months, or to a fine of 100 penalty units, or both.
- (2) For the purposes of this section, *child pornography* means:
 - (a) a film that has been refused classification under the 1984 Act, or that is subsequently refused classification under that Act, because it is a child abuse film, or
 - (b) a computer game that has been refused classification under the 1984 Act, or that is subsequently refused classification under that Act, because it is a computer game referred to in section 9AA (2) (b) of that Act, or

- (c) a publication that has been classified as a prohibited publication under the 1975 Act, or that is subsequently classified as a prohibited publication under that Act, because it is a publication referred to in section 13 (3) (a) of that Act.
- (3) A police officer may seize:
 - (a) any film or computer game that the officer reasonably suspects would be refused classification under the 1984 Act as child pornography, or
 - (b) any publication that the officer reasonably suspects would be prohibited under the 1975 Act as child pornography,for the purpose of having it classified under the relevant Act.
- (4) Nothing in this section makes it an offence:
 - (a) for any member or officer of a law enforcement agency to have any child pornography in his or her possession in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under any Act or law, or
 - (b) for any person to have any child pornography in his or her possession in the exercise or performance of a power, function or duty relating to the classification of such material conferred or imposed on the person by or under any Act or law, or
 - (c) for a person to have in his or her possession any film that has been classified under the *Classification of Publications Ordinance 1983* of the Australian Capital Territory.
- (5) Proceedings for an offence under this section cannot be commenced later than 6 months after the date of the alleged offence.

- (6) It is a defence to a prosecution under this section to prove:
- (a) that the defendant did not know, or could not reasonably be expected to have known, that the material concerned had been refused classification or had been prohibited, or
 - (b) that the defendant could not reasonably have been expected to suspect that the material concerned would be likely to be refused classification or would be likely to be prohibited, or
 - (c) that the person depicted in the material was of or above the age of 16 at the time when the film, computer game or publication was made, taken, produced or published.
- (7) In any proceedings for an offence under this section:
- (a) a certificate signed or purporting to be signed by the censor stating that a film has been refused classification under the 1984 Act because it is a child abuse film is conclusive evidence of the matter stated in the certificate, and
 - (b) a certificate signed or purporting to be signed by the censor stating that a computer game has been refused classification under the 1984 Act because it is a computer game referred to in section 9AA (2) (b) of that Act is conclusive evidence of the matter stated in the certificate, and
 - (c) a copy of a notification under section 14 (1) of the 1975 Act which specifies that a publication has been classified as a prohibited publication under that Act because it is a publication referred to in section 13 (3) (a) of that Act is conclusive evidence that the publication has been so classified.
- (8) A court that convicts a person of an offence under this section may order that any child pornography in respect of which the offence was committed is to be destroyed or otherwise disposed of as the court thinks fit.

- (9) In this section:
- censor, child abuse film, computer game* and *film* have the same meanings as in the 1984 Act.
- law enforcement agency* has the same meaning as in section 13 of the *Criminal Records Act 1991*, and includes a person or body prescribed by the regulations for the purpose of this definition.
- publication* has the same meaning as in the 1975 Act.
- the 1975 Act* means the *Indecent Articles and Classified Publications Act 1975*.
- the 1984 Act* means the *Film and Computer Game Classification Act 1984*.

[4] Section 357EB

Insert after section 357EA:

Powers of entry and search in relation to child pornography

357EB Police may enter and search premises for child pornography

- (1) A police officer may apply to an authorised justice for the issue of a search warrant if the police officer believes on reasonable grounds that an offence against section 310A is being committed on any premises.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a police officer:
- (a) to enter and search the premises concerned for evidence of an offence against section 310A, and
 - (b) to seize any film, computer game or publication (as referred to in section 310A) that may be evidence of such an offence.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) In this section, *authorised justice* has the same meaning as in the *Search Warrants Act 1985*.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Film and Computer Game Classification Act 1984 No 155

[1] Section 3 Definitions

Omit “, or who is apparently, a child” from the definition of *child abuse film* in section 3 (1).

Insert instead “a child (or who looks like a child)”.

[2] Section 9 Classification of films

Omit section 9 (2) (b). Insert instead:

(b) is, in the opinion of the censor, a child abuse film,

[3] Section 9AA Classification of computer games

Omit “, or who is apparently, a child” from section 9AA (2) (b).
Insert instead “a child (or who, in the opinion of the censor, looks like a child)”.

2.2 Indecent Articles and Classified Publications Act 1975 No 32

Section 13 Classification of publications

Omit “, or who is apparently, under” from section 13 (3) (a).
Insert instead “under (or, in the opinion of the classifying authority, is under)”.

2.3 Search Warrants Act 1985 No 37

Section 10 Definitions

Omit the matter relating to the *Crimes Act 1900* from the definition of *search warrant*.

Insert instead:

sections 357EA and 357EB of the *Crimes Act 1900*,

Schedule 3 Certain other amendments relating to age

(Section 5)

3.1 Crimes Act 1900 No 40

Section 310A Possession of child pornography

Omit “16” from section 310 (6) (c) (as inserted by the *Crimes Amendment (Child Pornography) Act 1995*).

Insert instead “18”.

3.2 Film and Computer Game Classification Act 1985 No 155

Omit “16” from the definition of *child* in section 3.

Insert instead “18”.

3.3 Indecent Articles and Classified Publications Act 1975 No 32

Omit “16” from section 13 (3) (a). Insert instead “18”.

[Minister’s second reading speech made in—
Legislative Assembly on 23 May 1995
Legislative Council on 19 September 1995]