

Serial 253

Criminal Code Amendment (Child Abuse Material) Bill 2004

Dr Toyne

**A BILL
for
AN ACT**

to amend the *Criminal Code*



NORTHERN TERRITORY OF AUSTRALIA
CRIMINAL CODE AMENDMENT (CHILD ABUSE MATERIAL) ACT 2004

No. of 2004

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Heading to Part V, Division 2, Subdivision 1
4. Interpretation
5. Repeal and substitution of section 125B
125B. Possession of child abuse material
6. New sections 125E and 125F
125E. Using child for production of child abuse material or pornographic
or abusive performance
125F. Court proceedings

C
C

C

C

C



NORTHERN TERRITORY OF AUSTRALIA

No. of 2004

AN ACT

to amend the *Criminal Code*

[Assented to 2004]
[Second reading 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Criminal Code Amendment (Child Abuse Material) Act 2004*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Heading to Part V, Division 2, Subdivision 1

The heading to Part V, Division 2, Subdivision 1 of the *Criminal Code* is repealed and the following substituted:

"Subdivision 1 – Child abuse material and indecent articles".

4. Interpretation

Section 125A of the *Criminal Code* is amended –

- (a) by omitting from subsection (1) the definition of "child pornography";

Criminal Code Amendment (Child Abuse Material) Act 2004

- (b) by inserting in subsection (1) in alphabetical order the following:

" 'child abuse material' means material that depicts, describes or represents, in a manner that is likely to cause offence to a reasonable adult, a person who is a child or who appears to be a child –

- (a) engaging in sexual activity;
- (b) in a sexual, offensive or demeaning context; or
- (c) being subjected to torture, cruelty or abuse,

but does not include –

- (d) a film, publication or computer game that is classified (other than as RC) under the Commonwealth Act; or
- (e) a film, publication or computer game that is the subject of an exemption under Part X of the *Classification of Publications, Films and Computer Games Act*;

'person' includes part of a person;

'pornographic or abusive performance' means any performance by a person –

- (a) engaging in sexual activity;
- (b) in a sexual, offensive or demeaning context; or
- (c) being subject to torture, cruelty or abuse,

that is likely to cause offence to a reasonable adult;";

- (c) by omitting from paragraph (b) of the definition of "indecent article" in subsection (1) "describes or depicts" and substituting "depicts, describes or represents"; and
- (d) by omitting subsection (3) and substituting the following:

"(3) For this subdivision, the phrase 'material that depicts, describes or represents' includes material that contains data from which text, visual images or sound can be generated."

5. Repeal and substitution of section 125B

Section 125B of the Criminal Code is repealed and the following substituted:

"125B. Possession of child abuse material

"(1) A person who possesses, distributes, produces, sells or offers or advertises for distribution or sale child abuse material is guilty of a crime and is liable –

- (a) in the case of an individual – to imprisonment for 10 years; and
- (b) in the case of a corporation – to a fine of 10 000 penalty units.

"(2) Nothing in this section makes it an offence –

- (a) for a member or officer of a law enforcement agency to have any child abuse material 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 an Act or law; or
- (b) for a person to have child abuse material 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 an Act or law.

"(3) In respect of a charge against a person of having committed an offence against this section, proof that child abuse material was at the material time in or on a place of which the person was –

- (a) the occupier; or
- (b) concerned in the management or control,

is evidence that the child abuse material was then in the person's possession unless it is shown that the person then neither knew nor had reason to suspect that the child abuse material was in or on that place.

"(4) It is a defence to a prosecution for an offence against this section to prove that the material is being used for legitimate medical or health research purposes.

"(5) In proceedings for an offence against this section, a certificate issued under section 87 of the Commonwealth Act purporting to be signed by the Director of the Classification Board (or by the Deputy Director of the Classification Board) and stating that the film, publication or computer game concerned is classified RC on the basis that it describes or depicts, in a way that is likely to cause offence to a reasonable adult, a person (whether or not engaged in

sexual activity) who is a child or who looks like a child is admissible in any court of law and is prima facie evidence that the film, publication or computer game is child abuse material.

- "(6) A court that convicts a person of a crime against this section –
- (a) must order the forfeiture and destruction of any child abuse material in respect of which the crime was committed; and
 - (b) may order the forfeiture and destruction of any other articles seized at the same time as the child abuse material in respect of which the crime was committed."

6. New sections 125E and 125F

The Criminal Code is amended by inserting after section 125D in Part V, Division 2, Subdivision 1 the following:

"125E. Using child for production of child abuse material or pornographic or abusive performance

"A person who uses, offers or procures a person who is a child or who appears to be a child for the production of child abuse material or for a pornographic or abusive performance is guilty of a crime and is liable –

- (a) in the case of an individual – to imprisonment for 14 years; and
- (b) in the case of a corporation – to a fine of 15 000 penalty units.

"125F. Court proceedings

- "(1) This section applies to proceedings for –
- (a) an offence against section 125B or 125E; or
 - (b) an offence against section 125C involving an article that is indecent by virtue of paragraph (b)(vi) of the definition of 'indecent article'.

"(2) For proceedings specified in subsection (1), the Court must be closed while the material that is the subject of the offence is on display."