

Serial 113
Criminal Code
Amendment (No.3)
Mr Hatton

NORTHERN TERRITORY OF AUSTRALIA
CRIMINAL CODE AMENDMENT BILL (NO.3) 1995

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the Criminal Code

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Criminal Code Amendment Act (No.3) 1995*.

2. NEW SUBDIVISION AND SUBDIVISION HEADING

The Criminal Code is amended by inserting in Division 2 of Part V, before section 126, the following:

"Subdivision 1 - Child Pornography

"125A. Interpretation

"(1) In this Subdivision -

"article" includes any thing -

(a) that contains or embodies matter to be read or looked at;

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- (b) that is to be looked at;
- (c) that is a record; or
- (d) that can be used, either alone or as one of a set, for the production or manufacture of any thing referred to in paragraphs (a), (b) or (c),

but does not include -

- (e) a film that is classified (other than as RC) under the Commonwealth Act;
- (f) a publication that is classified Unrestricted, Category 1 restricted or Category 2 restricted under the Commonwealth Act;
- (g) a computer game that is classified (other than as RC) under the Commonwealth Act, or
- (h) 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*,

"child pornography" means a film, publication or computer game classified RC, or an unclassified film, publication or computer game that would, if classified, be 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 who has not attained the age of 16 years or who looks like a child who has not attained that age;

"Classification Board" means the Classification Board established under the Commonwealth Act.

"classified" means classified under the Commonwealth Act;

"Commonwealth Act" means the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth;

"computer game, film and publication" each have the same meanings, respectively, as in the Commonwealth Act;

"indecent article" means an article -

- (a) that promotes crime or violence, or incites or instructs in matters of crime or violence;

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- (b) an article that describes or depicts, in a manner that is likely to cause offence to a reasonable adult -
 - (i) the use of violence or coercion to compel a person to participate in, or submit to, sexual conduct;
 - (ii) sexual conduct with or on the body of a dead person;
 - (iii) the use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct;
 - (iv) bestiality; or
 - (v) acts of torture or the infliction of extreme violence or extreme cruelty;

"law enforcement agency" has the same meaning as in the *Criminal Records (Spent Convictions) Act*;

"publish" includes -

- (a) distribute, disseminate, circulate, deliver, exhibit, lend for gain, exchange, barter, sell, offer for sale, let on hire or offer to let on hire;
- (b) have in possession or custody, or under control, for the purpose of doing an act referred to in paragraph (a); or
- (c) print, photograph or make in any other manner (whether of the same or of a different kind or nature): for the purpose of doing such an act;

"record" means a gramophone record or a wire or tape, or a film, and any other thing of the same or of a different kind or nature, on which is recorded a sound or picture and from which, with the aid of a suitable apparatus, the sound or picture can be produced (whether or not it is in a distorted or altered form);

"sell" has the same meaning as in the *Classification of Publications, Films and Computer Games Act*.

"(2) A reference in this subdivision to a classification in relation to a film, publication or computer game is a reference to its classification (or, as the case may be, that it is unclassified) under the Commonwealth Act.

"125B. Possession of child pornography

"(1) A person who has in his or her possession child pornography is guilty of an offence and is liable to imprisonment for 2 years.

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"(2) A person who sells or offers or advertises for distribution (whether or not for reward) child pornography is guilty of an offence and is liable to imprisonment for 10 years.

"(3) Nothing in this section makes it an offence -

- (a) for a 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 an Act or law; or
- (b) for a person to have 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 an Act or law.

"(4) Proceedings for an offence against this section in relation to a film, publication or computer game that is unclassified at the time of the alleged offence, shall not be commenced until the film, publication or computer game concerned has been classified.

"(5) It is a defence to a prosecution for an offence against this section to prove that -

- (a) the defendant did not know, or could not reasonably be expected to have known, that the film, publication or computer game concerned is classified RC or would be classified RC, or
- (b) the person depicted in the material had attained the age of 16 years at the time when the film, computer game or publication was made, taken, produced or published.

"(6) 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 who has not attained the age of 16 years or who looks like a child who has not attained that age is admissible in any court of law and is prima facie evidence of the matter stated in the certificate.

"(7) A court that convicts a person of an offence against 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.

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"125C. Publishing indecent articles

"(1) A person who publishes an indecent article is guilty of an offence and is liable -

- (a) in the case of an individual to imprisonment for 2 years; and
- (b) in the case of a corporation a fine of \$20,000.

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

- (a) a person to publish an indecent article for the purposes of an application for classification under a Commonwealth Act; or
- (b) a member or officer of a law enforcement agency to publish an indecent article 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.

"(3) For the purposes of this section, an article may be indecent even though part of it is not indecent.

"Subdivision 2 - Other Offences Against Morality".

3. REPEAL

Sections 137 and 137A of the Criminal Code are repealed.
