

Serial 93
Criminal Justice Legislation Amendment (Sexual Offences) Bill 2023
Mr Paech

A Bill for an Act to amend the Criminal Code, the *Child Protection (Offender Reporting and Registration) Act 2004*, the *Information Act 2002*, the *National Disability Insurance Scheme (Worker Clearance) Regulations 2021* and the *Sentencing Act 1995* and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

CRIMINAL JUSTICE LEGISLATION AMENDMENT (SEXUAL OFFENCES)
ACT 2023

Act No. [] of 2023

Table of provisions

Part 1	Preliminary matters	
1	Short title	1
2	Commencement	1
Part 2	Amendment of Criminal Code	
3	Criminal Code amended	1
4	Section 1 amended (Definitions).....	2
5	Section 72 amended (Definitions).....	3
6	Section 72A inserted	3
	72A Meaning of <i>act of piracy</i>	
7	Sections 125B to 125E replaced	4
	125B Production, possession etc. of child abuse material	
	125C Publishing indecent articles	
	125D Using child for production of child abuse material or pornographic or abusive performance	
	125E Criminal liability of executive officer of body corporate – legal burden of proof on defence	
8	Section 125F amended (Court proceedings).....	9
9	Part V, Division 2, Subdivision 2 replaced	9
	Division 2A Offence relating to human remains	
	126 Interference with or indignity to human remains	
10	Section 188 amended (Common assault)	9
11	Sections 192 to 192B repealed.....	10
12	Section 208AAB inserted.....	10
	208AAB Recording or capturing intimate image without consent	
13	Part VIA inserted	11
	Part VIA Sexual offences	
	Division 1 Interpretation	
	208G Definitions	
	208GA Consent	
	208GB Indecent and grossly indecent	
	208GC Meaning of <i>position of authority</i>	
	208GD Meaning of <i>sexually involved with</i>	
	208GE Meaning of <i>touches</i>	

Division 2	Sexual acts committed without consent
208H	Sexual intercourse – without consent
208HA	Compelling sexual intercourse or penetration – without consent
208HB	Gross indecency – without consent
208HC	Indecent touching or act – without consent
208HD	Compelling indecent touching or act – without consent
208HE	Recklessness in sexual offences
208HF	Attempt to commit sexual offence and recklessness
Division 3	Sexual acts committed against children under 16 years
208J	Sexual intercourse – child under 16 years
208JA	Causing sexual intercourse or penetration – child under 16 years
208JB	Gross indecency – child under 16 years
208JC	Indecent touching or act – child under 16 years
208JD	Causing indecent touching or act – child under 16 years
208JE	Exposure to indecent thing or act – child under 16 years
208JF	Recording or capturing indecent image – child under 16 years
208JG	Engaging in conduct to procure sexual activity – child under 16 years
208JH	Grooming to engage in sexual activity – child under 16 years
208JI	Repeated sexual abuse – child under 16 years
208JJ	Charge for offence of repeated sexual abuse
208JK	No defence of consent
208JL	No defence of belief in marriage or de facto relationship
208JM	Proceeding against child
Division 4	Sexual acts committed against young persons by persons in positions of authority
208K	Sexual intercourse – young person
208KA	Causing sexual intercourse or penetration – young person
208KB	Gross indecency – young person
208KC	Indecent touching or act – young person
208KD	No defence of consent
208KE	Defence – marriage or de facto relationship
Division 5	Sexual acts committed against cognitively impaired persons by carers
208L	Meaning of <i>cognitive impairment</i>
208LA	Person responsible for care of person with cognitive impairment
208LB	Sexual intercourse – person with cognitive impairment
208LC	Causing sexual intercourse or penetration – person with cognitive impairment
208LD	Gross indecency – person with cognitive impairment
208LE	Indecent touching or act – person with cognitive impairment
208LF	Defence – consent
208LG	Defence – marriage or de facto relationship
Division 6	Sexual acts committed against close family members
208M	Meaning of <i>close family member</i>
208MA	Incest
208MB	No defence of consent
208MC	Defence – compulsion
Division 7	Sexual acts committed against animal or in public
208N	Sexual involvement with animal
208NA	Public masturbation

	Division 8	General matters	
	208P	Increased penalty for aggravated offence	
	208PA	Procedural and evidentiary provisions for aggravated offences	
	208PB	Jury directions on consent	
	208PC	Exception – medical, hygienic, veterinary or agricultural procedures	
	208PD	Alternative verdicts	
	208PE	Indecent images and related articles may be destroyed	
	208PF	Article containing indecent images may be returned	
14		Sections 319 and 377 repealed	42
15		Part XI, Division 19 inserted	43
	Division 19	Criminal Justice Legislation Amendment (Sexual Offences) Act 2023	
	475	Offences – before and after commencement	
16		Schedule 1 amended (Provisions of Code to which Part IIAA applies).....	44
17		Act further amended	44
Part 3		Amendment of Child Protection (Offender Reporting and Registration) Act 2004	
18		Act amended	44
19		Part 9 inserted	45
	Part 9	Transitional matters for Criminal Justice Legislation Amendment (Sexual Offences) Act 2023	
	105	Definitions	
	106	Application of amendments to Schedules if person is reportable offender	
	107	Application of amendments to Schedules if person is not reportable offender	
20		Schedules 1 and 2 replaced	46
Part 4		Amendment of Information Act 2002	
21		Act amended	47
22		Schedule 1 amended (Secrecy provisions)	47
Part 5		Amendment of National Disability Insurance Scheme (Worker Clearance) Regulations 2021	
23		Regulations amended.....	47
24		Regulation 6 amended (Disqualifying offences)	48
25		Regulation 7 amended (Presumed disqualifying offences).....	48
26		Schedule 2 amended (Disqualifying offences).....	49
27		Schedule 3 amended (Presumed disqualifying offences).....	50

Part 6 Amendment of Sentencing Act 1995

28	Act amended	51
29	Section 5 amended (Sentencing guidelines)	52
30	Section 55 amended (Minimum non-parole period for certain sexual offences and drug offences).....	52
31	Section 55A amended (Fixed non-parole periods for offences against persons under 16 years)	53
32	Part 12, Division 11 inserted.....	53
	Division 11 Transitional matter for Criminal Justice Legislation Amendment (Sexual Offences) Act 2023	
	149 Application of section 5	
33	Schedule 2 amended (Violent offences).....	54
34	Schedule 3 replaced.....	54
	Schedule 3 Sexual offences	

Part 7 Consequential amendments

Division 1 Care and Protection of Children (Screening) Regulations 2010

35	Regulations amended.....	54
36	Schedule 3 amended (Disqualifying offences).....	55

Division 2 Commercial Passenger (Miscellaneous) Regulations 1992

37	Regulations amended.....	55
38	Regulation 7 replaced.....	55
	7 Disqualifying offences	
39	Schedule 3 repealed.....	56

Division 3 Education Regulations 2015

40	Regulations amended.....	56
41	Schedule 1 amended (Disqualifying offences).....	56

Division 4 Serious Sex Offenders Act 2013

42	Act amended	57
43	Schedule 1 amended (Serious sex offences)	57
44	Schedule 2 amended (Offences of a sexual nature).....	58

Division 5 Summary Offences Act 1923

45	Act amended	58
46	Section 47AC amended (Loitering by sexual offender)	58

Division 6	Teacher Registration (Northern Territory) Regulations 2004	
47	Regulations amended.....	59
48	Regulation 2A amended (Sexual offences)	60
Division 7	Victims of Crime Assistance Regulations 2007	
49	Regulations amended.....	60
50	Regulation 3 amended (Definitions)	60
51	Regulation 4 amended (Violent acts – sexual offences).....	60
52	Regulation 15 amended (Categories of psychological and psychiatric disorders).....	61
53	Schedules 1 and 2 replaced	62
	Schedule 1 Violent acts and categories of compensable violent acts	
	Schedule 2 Category 1 offences for psychological or psychiatric disorder	
Division 8	Other laws amended	
54	Other laws amended	65
Part 8	Repeal of Act	
55	Repeal of Act.....	65
Schedule 1	Act further amended	
Schedule 2	Other laws amended	



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2023

An Act to amend the Criminal Code, the *Child Protection (Offender Reporting and Registration) Act 2004*, the *Information Act 2002*, the *National Disability Insurance Scheme (Worker Clearance) Regulations 2021* and the *Sentencing Act 1995* and for related purposes

[Assented to [] 2023]
[Introduced [] 2023]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Criminal Code

3 Criminal Code amended

This Part amends the Criminal Code.

4 Section 1 amended (Definitions)

(1) Section 1

omit

Code, unless the contrary intention appears:

insert

Code:

(2) Section 1, definitions **aggravated offence**, **law enforcement officer**, **sexual intercourse** and **vagina**

omit

(3) Section 1

insert

act of piracy, for Part III, Division 6, see section 72A.

aggravated offence:

(a) for Part VI – see section 149B; or

(b) for Part VIA – see section 208G.

article, for Part VIA, see section 208G.

close family member, for Part VIA, Division 6, see section 208M.

cognitive impairment, for Part VIA, Division 5, see section 208L.

consent:

(a) for Part VI, Division 7A – see section 208AA; or

(b) for Part VIA – see section 208GA.

correctional services officer, see section 16 of the *Correctional Services Act 2014*.

genitals, for Part VIA, see section 208G.

historical offence, for Part VIA, see section 208G.

indecent, for Part VIA, see section 208GB(1).

law enforcement officer, for Part VI, see section 149B.

married, for Part VIA, see section 208G.

part of the body, for Part VIA, see section 208G.

penis, for Part VIA, see section 208G.

pirate, for Part III, Division 6, see section 72.

position of authority, for Part VIA, see section 208GC.

senior rank, for Part VIA, see section 208G.

sexual intercourse, for Part VIA, see section 208G.

sexually involved with, for Part VIA, see section 208GD.

touches, for Part VIA, see section 208GE.

5 Section 72 amended (Definitions)

(1) Section 72, definitions **act of piracy** and **master**

omit

(2) Section 72

insert

act of piracy, see section 72A.

6 Section 72A inserted

After section 72

insert

72A Meaning of **act of piracy**

(1) Subject to subsection (2), an **act of piracy** is any of the following acts on the high seas:

(a) an act that, if committed in the Territory, would constitute an offence against section 218(1);

(b) the boarding of a ship against the wishes or without the knowledge of the master for the purpose of committing on the ship an act that, if committed in the Territory, would constitute an offence against section 156, 181, 194, 195, 202, 208H, 208HA, 208HB, 241, 243 or 245;

- (c) an act committed on a ship that, if committed in the Territory, would constitute an offence against section 156, 181, 194, 195, 202, 208H, 208HA, 208HB, 241, 243 or 245;
 - (d) the stealing of a ship;
 - (e) directly or indirectly taking control of a ship against the wishes of the master;
 - (f) the confining of the master of a ship against the master's will;
 - (g) an act of a person on board a ship intentionally disobeying a lawful direction of the master given for the purpose of ensuring the safety of the ship, the crew or the passengers.
- (2) Neither of the following is an **act of piracy**:
- (a) an act of war committed under the authority of the Commonwealth or the lawful government of a foreign state;
 - (b) the taking of control of a ship by a person against the wishes of the master if:
 - (i) the person is a member of the armed forces of, or is acting with the authority of, the Commonwealth or the lawful government of a foreign state; and
 - (ii) the master had control of the ship as a result of an act mentioned in subsection (1).

- (3) In this section:

master, of a ship, means the person for the time being in control of the ship, whether or not that control was lawfully obtained.

7 Sections 125B to 125E replaced

Sections 125B to 125E

repeal, insert

125B Production, possession etc. of child abuse material

- (1) A person commits an offence if:
- (a) the person intentionally produces, sells, distributes or possesses, or offers or advertises for sale or distribution, material; and
 - (b) the material is child abuse material and the person is reckless in relation to that circumstance.

Maximum penalty:

- (a) for an individual – imprisonment for 10 years; or
 - (b) for a body corporate – 10 000 penalty units.
- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
- (a) is a member or officer of a law enforcement agency or a court who has child abuse material in the member's or officer's possession in the exercise of a power or performance of a function conferred or imposed on the member or officer by or under an Act or law; or
 - (b) has child abuse material in the defendant's possession in the exercise of a power, or performance of a function, relating to the classification of the material that is conferred or imposed on the defendant by or under an Act or law; or
 - (c) has child abuse material in the defendant's possession for legitimate medical or health research purposes.
- (3) In a prosecution of a person for an offence against subsection (1), each of the following is evidence that material was in the person's possession:
- (a) proof that the material was in or at a place of which the person was the occupier;
 - (b) proof that the material was in or at a place, the management or control of which the person was concerned in.
- (4) Subsection (3) does not apply to a person if the person neither knew nor had reason to suspect that the material was in or on that place.
- (5) In proceedings for an offence against subsection (1), a Commonwealth evidentiary certificate is admissible in any court of competent jurisdiction and is evidence that the film, publication or computer game mentioned in the certificate is child abuse material.
- (6) A court that finds a person guilty of an offence against subsection (1):
- (a) must order the forfeiture and destruction of any child abuse material in respect of which the offence 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 offence was committed.

- (7) In this section:

Commonwealth evidentiary certificate means a certificate issued under section 87 of the Commonwealth Act that:

- (a) purports to be signed by the Director of the Classification Board or the Deputy Director of the Classification Board; and
- (b) states that a film, publication or computer game 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 who is, or appears to be, a child (whether the person is engaged in sexual activity or not).

Note for section 125B

See also section 208JF.

125C Publishing indecent articles

- (1) A person commits an offence if:
 - (a) the person intentionally publishes an article; and
 - (b) the article is indecent and the person is reckless in relation to that circumstance.

Maximum penalty:

- (a) for an individual – imprisonment for 2 years; or
 - (b) for a body corporate – 175 penalty units.
- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
 - (a) published the indecent article for the purposes of an application for classification under the Commonwealth Act; or
 - (b) is a member or officer of a law enforcement agency and published the indecent article in the exercise of a power conferred, or performance of a function imposed, on the member or officer by or under an Act or law.
 - (3) For this section, an article may be indecent even if part of it is not indecent.

125D Using child for production of child abuse material or pornographic or abusive performance

A person commits an offence if:

- (a) the person intentionally uses, offers or procures another person for the production of material or for a performance; and
- (b) the other person is a child, or a person who appears to be a child, and the person is reckless in relation to that circumstance; and
- (c) the material is child abuse material, or the performance is a pornographic or abusive performance, and the person is reckless in relation to that circumstance.

Maximum penalty:

- (a) for an individual – imprisonment for 14 years; or
- (b) for a body corporate – 15 000 penalty units.

125E Criminal liability of executive officer of body corporate – legal burden of proof on defence

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence against section 125B(1), 125C(1) or 125D (a **relevant offence**).

Maximum penalty: The maximum penalty that may be imposed on an individual for the commission of the relevant offence.

- (2) An offence against subsection (1) is an offence of absolute liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
 - (a) was not in a position to influence the conduct of the body corporate in relation to the commission of the relevant offence; or
 - (b) took reasonable steps to prevent the commission of the relevant offence; or
 - (c) did not know, and could not reasonably have been expected to know, that the relevant offence would be committed.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

- (5) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the commission of the relevant offence, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the commission of the relevant offence):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the provision to which the relevant offence relates;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
 - (b) any action the defendant took when the defendant became aware that the relevant offence was, or could be, about to be committed.
- (6) Subsection (5) does not limit the matters the court may consider.
- (7) This section does not affect the liability of the body corporate.
- (8) This section applies to an executive officer whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (9) Subsection (1) does not apply to an executive officer if the body corporate would have a defence to a prosecution for the relevant offence.

Note for subsection (9)

The defendant has an evidential burden in relation to the matters mentioned in subsection (9) (see section 43BU of the Criminal Code).

- (10) In this section:

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

8 Section 125F amended (Court proceedings)

Section 125F(1)(a)

omit

125E;

insert

125D;

9 Part V, Division 2, Subdivision 2 replaced

Part V, Division 2, Subdivision 2

repeal, insert

Division 2A Offence relating to human remains**126 Interference with or indignity to human remains**

- (1) A person commits an offence if:
- (a) the person intentionally engages in conduct in relation to human remains, whether or not the remains are buried; and
 - (b) the conduct is an improper or indecent interference with, or an indignity to, the remains, according to the standards of ordinary people.

Maximum penalty: Imprisonment for 2 years.

- (2) Absolute liability applies to subsection (1)(b).
- (3) In a prosecution for an offence against subsection (1), the question of what is improper, indecent or an indignity is a matter for the trier of fact.

10 Section 188 amended (Common assault)

- (1) Section 188(2)(k) and (3)

omit

- (2) Section 188(2)(m)

omit

weapon,

insert

weapon;

- (3) Section 188(2)(a) to (j), at the end

insert

or

11 Sections 192 to 192B repealed

Sections 192 to 192B

repeal

12 Section 208AAB inserted

After section 208AA

insert

208AAB Recording or capturing intimate image without consent

- (1) A person commits an offence if:
- (a) the person intentionally records or captures an image of another person; and
 - (b) the image is an intimate image and the person is reckless in relation to that circumstance; and
 - (c) the other person did not consent to the recording or capturing of the image at the time it was recorded or captured and the person is reckless in relation to that circumstance.

Maximum penalty: Imprisonment for 3 years.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the image:
- (a) was recorded or captured by a law enforcement officer acting reasonably in the performance of the officer's duty; or
 - (b) was recorded or captured for the purpose of reporting unlawful conduct by the other person to a law enforcement officer; or
 - (c) is of a person incapable of giving consent and was recorded or captured:
 - (i) for a scientific, medical or educational purpose; or

-
- (ii) in other circumstances that a reasonable person would regard as acceptable.

Example for subsection (2)(c)(ii)

Taking a photograph or video of a naked newborn relative.

- (3) A person under 16 years of age is taken to be incapable of consenting to the recording or capturing of an intimate image of the person.

13 Part VIA inserted

After section 208F

insert

Part VIA Sexual offences

Division 1 Interpretation

208G Definitions

In this Part:

aggravated offence means an offence against this Part to which a circumstance of aggravation mentioned in section 208P applies.

article includes any thing:

- (a) that contains or embodies matter to be read or looked at; or
- (b) that is to be looked at; or
- (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).

close family member, for Division 6, see section 208M.

cognitive impairment, for Division 5, see section 208L.

consent, see section 208GA.

genitals includes internal and external genitals and any surgically constructed genitals.

historical offence means any of the following offences:

- (a) an offence against section 127, 128, 130, 132, 134, 188(2)(k), 192 or 192B as in force before the commencement of this Part;
- (b) an offence against section 129 or 135, as in force before the commencement of the *Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003*;
- (c) an offence against another repealed provision of an Act that is substantially similar to an offence mentioned in paragraph (a) or (b).

indecent, see section 208GB(1).

married means married according to the law of Australia.

part of the body includes a surgically constructed part of the body.

penis includes a surgically constructed penis.

position of authority, see section 208GC.

senior rank, in relation to a police officer, means a rank of or above the rank of Commander.

sexual intercourse means any of the following:

- (a) the penetration (to any extent) of the genitals or anus of a person with any part of the body of a person or with anything controlled by a person;
- (b) the penetration (to any extent) of the mouth of a person with the penis of a person;
- (c) cunnilingus;
- (d) fellatio;
- (e) the continuation of an act mentioned in paragraphs (a) to (d).

*Note for definition **sexual intercourse***

Section 208PC provides a general exception for an offence against this Part for engaging in sexual intercourse in the course of a procedure carried out in good faith for medical or hygienic purposes.

sexually involved with, see section 208GD.

touches, see section 208GE.

208GA Consent

- (1) **Consent**, to a sexual act, means free and voluntary agreement to the act.
- (2) Circumstances in which a person does not consent to a sexual act include circumstances in which:
 - (a) the person submits to the act because of force or the fear of force to the person or to someone else; or
 - (b) the person submits to the act because the person is unlawfully detained; or
 - (c) the person submits to the act because of a false representation as to the nature or purpose of the act; or
 - (d) the person is asleep or unconscious or is so affected by alcohol, a drug or another substance as to be incapable of consenting; or
 - (e) the person is incapable of understanding the sexual nature of the act; or
 - (f) the person is mistaken about the sexual nature of the act; or
 - (g) the person is mistaken about the identity of another person involved in the act; or
 - (h) the person consents to the act with a condom, but another person involved in the act does not use or intentionally disrupts or removes the condom without the person's consent.

Example for subsection (2)(f)

The person mistakenly believes the act is for medical or hygienic purposes.

- (3) In this section:

sexual act means an act that constitutes an element of an offence against this Part.

Note for section 208GA

Section 208PB also requires that the Judge direct a jury, in a relevant case, as to the factors to which the jury may have regard in determining whether or not there was consent.

208GB Indecent and grossly indecent

- (1) An act, including touching, an image or a thing is **indecent** if it is indecent according to the standards of ordinary people.

- (2) In a prosecution for an offence against this Part, indecency or gross indecency is a matter for the trier of fact.

208GC Meaning of *position of authority*

- (1) A person is in a ***position of authority*** in relation to a person who is 16 or 17 years of age (the ***young person***) if, at the time of the conduct concerned:
- (a) the person is a parent, step-parent, foster parent, legal guardian or legal custodian of the young person; or
 - (b) the person is a teacher at a school and the young person is enrolled at the school; or
 - (c) the person is an employer of the young person; or
 - (d) the person is a counsellor to the young person in a professional capacity; or
 - (e) the person is a health practitioner and the young person is the person's patient; or
 - (f) the person is a police officer, correctional services officer or community youth justice officer and the young person is in the person's care, custody, control or supervision as such an officer; or
 - (g) the person has authority over the young person because of the circumstances of the person's relationship with the young person, regardless of whether the authority is exercised lawfully; or
 - (h) the person has established a personal relationship with the young person in connection with the care, supervision or religious, sporting, musical or other instruction of the young person.

Example for subsection (1)(g)

The person supplies the young person with drugs.

Example for subsection (1)(h) of a person who has established a personal relationship in connection with the supervision of a young person

The person supervises the young person in the course of employment or training.

- (2) In subsection (1):

community youth justice officer, see section 5(1) of the *Youth Justice Act 2005*.

health practitioner means a person registered under the Health Practitioner Regulation National Law to practise in a health profession (other than as a student).

208GD Meaning of *sexually involved with*

A person is **sexually involved with** an animal if any of the following occur:

- (a) the person inserts (to any extent) any part of the person's body or a thing controlled by the person into the genitals or anus of the animal;
- (b) the person inserts (to any extent) the person's penis into the mouth of the animal;
- (c) the person touches the animal's genitals with any part of the person's mouth;
- (d) the animal's penis is inserted (to any extent) into the person's genitals, anus or mouth;
- (e) any part of the animal's mouth touches the person's genitals.

*Note for definition **sexually involved with***

Section 208PC provides a general exception for an offence against this Part for acts done in the course of a procedure carried out in good faith for veterinary or agricultural purposes.

208GE Meaning of *touches*

A person **touches** another person if the person touches the other person with any part of the person's body or with anything controlled by the person.

Division 2 Sexual acts committed without consent

208H Sexual intercourse – without consent

- (1) A person commits an offence if:
 - (a) the person intentionally engages in sexual intercourse with another person; and
 - (b) the other person does not consent to the sexual intercourse and the person is reckless in relation to the other person's lack of consent.

Maximum penalty: Imprisonment for life.

(2) The offence of attempting to commit an offence against subsection (1) is punishable by imprisonment not exceeding:

- (a) 20 years; or
- (b) for an aggravated offence – 25 years.

Note for subsection (2)

For the offence of attempting to commit the offence, see section 43BF.

208HA Compelling sexual intercourse or penetration – without consent

A person commits an offence if:

- (a) the person intentionally compels, by force or otherwise, another person:
 - (i) to engage in sexual intercourse with someone else; or
 - (ii) to be sexually involved with an animal; or
 - (iii) to penetrate (to any extent) the other person's own genitals or anus; and
- (b) the other person does not consent to engaging in the conduct and the person is reckless in relation to the other person's lack of consent.

Maximum penalty: Imprisonment for life.

208HB Gross indecency – without consent

(1) A person commits an offence if:

- (a) the person intentionally performs an act on another person; and
- (b) the act is grossly indecent; and
- (c) the other person does not consent to the act being performed and the person is reckless in relation to the other person's lack of consent.

Maximum penalty: Imprisonment for 14 years or, for an aggravated offence, 17 years.

(2) A person commits an offence if:

- (a) the person intentionally engages in conduct; and

- (b) the conduct results in another person performing an act on the person and the person intends that result; and
- (c) the act is grossly indecent; and
- (d) the other person does not consent to performing the act and the person is reckless in relation to the other person's lack of consent.

Maximum penalty: Imprisonment for 14 years or, for an aggravated offence, 17 years.

- (3) Absolute liability applies to subsections (1)(b) and (2)(c).

208HC Indecent touching or act – without consent

- (1) A person commits an offence if:

- (a) the person intentionally:
 - (i) touches another person; or
 - (ii) engages in an act directed at another person; and
- (b) the touching or act is indecent; and
- (c) the other person does not consent to the touching or act and the person is reckless in relation to the other person's lack of consent.

Maximum penalty: Imprisonment for 5 years or, for an aggravated offence, 7 years.

- (2) A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct results in the person being touched by another person and the person intends that result; and
- (c) the touching is indecent; and
- (d) the other person does not consent to the touching and the person is reckless in relation to the other person's lack of consent.

Maximum penalty: Imprisonment for 5 years or, for an aggravated offence, 7 years.

- (3) Absolute liability applies to subsections (1)(b) and (2)(c).

208HD Compelling indecent touching or act – without consent

- (1) A person commits an offence if:
- (a) the person intentionally compels, by force or otherwise, another person:
 - (i) to touch any part of the other person's own body; or
 - (ii) to touch, or to be touched by, someone else or an animal; or
 - (iii) to engage in an act; and
 - (b) the touching or act is indecent; and
 - (c) the other person does not consent to the touching or act and the person is reckless in relation to the other person's lack of consent.

Maximum penalty: Imprisonment for 5 years or, for an aggravated offence, 7 years.

- (2) Absolute liability applies to subsection (1)(b).

208HE Recklessness in sexual offences

Despite section 43AK, for an offence against this Division:

- (a) being reckless in relation to a lack of consent to sexual intercourse, engaging in conduct, the performance of an act, touching or an act includes not giving any thought to whether or not the other person consents to the sexual intercourse, engaging in the conduct, the performance of the act, the touching or the act; and
- (b) the trier of fact must have regard to all the circumstances of the case including any steps taken by the person to ascertain whether the other person consents to the sexual intercourse, engaging in the conduct, the performance of the act, the touching or the act.

208HF Attempt to commit sexual offence and recklessness

- (1) Despite section 43BF(4), if recklessness is a fault element for a physical element of an offence against this Division, recklessness is also a fault element for the same physical element in relation to an attempt to commit that offence.

- (2) The fault element of recklessness mentioned in subsection (1) includes the fault element as extended by section 208HE.

Division 3 Sexual acts committed against children under 16 years

208J Sexual intercourse – child under 16 years

- (1) A person commits an offence if:
- (a) the person intentionally engages in sexual intercourse with another person; and
 - (b) the other person is under 14 years of age.

Maximum penalty:

- (a) if the other person is under 10 years of age – imprisonment for life; or
 - (b) otherwise – imprisonment for 20 years or, for an aggravated offence, 25 years.
- (2) Absolute liability applies to subsection (1)(b).
- (3) A person commits an offence if:
- (a) the person intentionally engages in sexual intercourse with another person; and
 - (b) the other person is 14 or 15 years of age.

Maximum penalty: Imprisonment for 16 years or, for an aggravated offence, 20 years.

- (4) Strict liability applies to subsection (3)(b).
- (5) It is a defence to a prosecution for an offence against subsection (3) if:
- (a) the defendant is not more than 24 months older or younger than the person against whom the offence is alleged to have been committed; and
 - (b) the person consented to the sexual intercourse.

208JA Causing sexual intercourse or penetration – child under 16 years

- (1) A person commits an offence if:
- (a) the person intentionally causes another person:
 - (i) to engage in sexual intercourse with someone else; or
 - (ii) to be sexually involved with an animal; or
 - (iii) to penetrate (to any extent) the other person's own genitals or anus; and
 - (b) the other person is under 14 years of age.

Maximum penalty:

- (a) if the other person is under 10 years of age – imprisonment for life; or
 - (b) otherwise – imprisonment for 20 years or, for an aggravated offence, 25 years.
- (2) Absolute liability applies to subsection (1)(b).

- (3) A person commits an offence if:
- (a) the person intentionally causes another person:
 - (i) to engage in sexual intercourse with someone else; or
 - (ii) to be sexually involved with an animal; or
 - (iii) to penetrate (to any extent) the other person's own genitals or anus; and
 - (b) the other person is 14 or 15 years of age.

Maximum penalty: Imprisonment for 16 years or, for an aggravated offence, 20 years.

- (4) Strict liability applies to subsection (3)(b).

208JB Gross indecency – child under 16 years

- (1) A person commits an offence if:
- (a) the person intentionally:
 - (i) performs an act on another person; or

(ii) causes or allows another person to perform an act on the person; and

(b) the act is grossly indecent; and

(c) the other person is under 14 years of age.

Maximum penalty: Imprisonment for 20 years or, for an aggravated offence, 25 years.

(2) A person commits an offence if:

(a) the person:

(i) intentionally performs an act on another person; or

(ii) intentionally causes or allows another person to perform an act on the person; and

(b) the act is grossly indecent; and

(c) the other person is 14 or 15 years of age.

Maximum penalty: Imprisonment for 16 years or, for an aggravated offence, 20 years.

(3) Absolute liability applies to subsections (1)(b) and (c) and (2)(b).

(4) Strict liability applies to subsection (2)(c).

208JC Indecent touching or act – child under 16 years

(1) A person commits an offence if:

(a) the person intentionally:

(i) touches another person; or

(ii) causes or allows another person to touch the person; or

(iii) engages in an act directed at another person; and

(b) the touching or act is indecent; and

(c) the other person is under 14 years of age.

Maximum penalty: Imprisonment for 14 years or, for an aggravated offence, 17 years.

- (2) A person commits an offence if:
- (a) the person intentionally:
 - (i) touches another person; or
 - (ii) causes or allows another person to touch the person; or
 - (iii) engages in an act directed at another person; and
 - (b) the touching or act is indecent; and
 - (c) the other person is 14 or 15 years of age.

Maximum penalty: Imprisonment for 10 years or, for an aggravated offence, 12 years.

- (3) Absolute liability applies to subsections (1)(b) and (c) and (2)(b).
- (4) Strict liability applies to subsection (2)(c).

208JD Causing indecent touching or act – child under 16 years

- (1) A person commits an offence if:
- (a) the person intentionally causes another person:
 - (i) to touch any part of the other person's own body; or
 - (ii) to touch, or to be touched by, someone else or an animal; or
 - (iii) to engage in an act; and
 - (b) the touching or act is indecent; and
 - (c) the other person is under 14 years of age.

Maximum penalty: Imprisonment for 14 years or, for an aggravated offence, 17 years.

- (2) A person commits an offence if:
- (a) the person intentionally causes another person:
 - (i) to touch any part of the other person's own body; or
 - (ii) to touch, or to be touched by, someone else or an animal; or
 - (iii) to engage in an act; and

- (b) the touching or act is indecent; and
- (c) the other person is 14 or 15 years of age.

Maximum penalty: Imprisonment for 10 years or, for an aggravated offence, 12 years.

- (3) Absolute liability applies to subsections (1)(b) and (c) and (2)(b).
- (4) Strict liability applies to subsection (2)(c).

208JE Exposure to indecent thing or act – child under 16 years

- (1) A person commits an offence if:
 - (a) the person intentionally exposes another person to a thing or act; and
 - (b) the thing or act is indecent; and
 - (c) the other person is under 14 years of age.

Maximum penalty: Imprisonment for 14 years or, for an aggravated offence, 17 years.

- (2) A person commits an offence if:
 - (a) the person intentionally exposes another person to a thing or act; and
 - (b) the thing or act is indecent; and
 - (c) the other person is 14 or 15 years of age.

Maximum penalty: Imprisonment for 10 years or, for an aggravated offence, 12 years.

- (3) Absolute liability applies to subsections (1)(b) and (c) and (2)(b).
- (4) Strict liability applies to subsection (2)(c).
- (5) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant has a reasonable excuse.

208JF Recording or capturing indecent image – child under 16 years

- (1) A person commits an offence if:
 - (a) the person intentionally records or captures a visual image of another person; and

- (b) the image is indecent; and
- (c) the other person is under 14 years of age.

Maximum penalty: Imprisonment for 10 years or, for an aggravated offence, 12 years.

(2) A person commits an offence if:

- (a) the person intentionally records or captures a visual image of another person; and
- (b) the image is indecent; and
- (c) the other person is 14 or 15 years of age.

Maximum penalty: Imprisonment for 8 years or, for an aggravated offence, 10 years.

(3) Absolute liability applies to subsections (1)(b) and (c) and (2)(b).

(4) Strict liability applies to subsection (2)(c).

(5) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant has a reasonable excuse.

(6) In this section:

image means a moving or still image in any form.

Examples for definition image

1 A file stored on a computer.

2 A photo stored on a phone.

Note for section 208JF

See Part V, Division 2 for offences relating to child abuse material.

208JG Engaging in conduct to procure sexual activity – child under 16 years

(1) A person commits an offence if:

- (a) the person engages in conduct in relation to another person (the **child**); and
- (b) the person does so with the intention of procuring the child to engage in sexual activity with the person or another person; and

(c) the child is under 14 years of age.

Maximum penalty: Imprisonment for 14 years or, for an aggravated offence, 17 years.

(2) A person commits an offence if:

(a) the person engages in conduct in relation to another person (the **child**); and

(b) the person does so with the intention of procuring the child to engage in sexual activity with the person or another person; and

(c) the child is 14 or 15 years of age.

Maximum penalty: Imprisonment for 12 years or, for an aggravated offence, 15 years.

(3) Subsection (1)(b) is the fault element for the conduct in subsection (1)(a) and subsection (2)(b) is the fault element for the conduct in subsection (2)(a).

(4) Absolute liability applies to subsection (1)(c).

(5) Strict liability applies to subsection (2)(c).

(6) In this section:

sexual activity means sexual intercourse, an act of gross indecency, indecent touching or an indecent act.

208JH Grooming to engage in sexual activity – child under 16 years

(1) A person commits an offence if:

(a) the person engages in conduct in relation to another person (the **child**); and

(b) the person does so with the intention of making it easier to procure the child to engage in sexual activity with the person or another person; and

(c) the child is someone:

(i) who is under 14 years of age; or

(ii) who the person believes is under 14 years of age.

Maximum penalty: Imprisonment for 12 years or, for an aggravated offence, 15 years.

(2) A person commits an offence if:

- (a) the person engages in conduct in relation to another person (the **child**); and
- (b) the person does so with the intention of making it easier to procure the child to engage in sexual activity with the person or another person; and
- (c) the child is someone:
 - (i) who is 14 or 15 years of age; or
 - (ii) who the person believes is 14 or 15 years of age.

Maximum penalty: Imprisonment for 10 years or, for an aggravated offence, 12 years.

(3) A person commits an offence if:

- (a) the person engages in conduct in relation to a contact of a person (the **child**); and
- (b) the person does so with the intention of making it easier to procure the child to engage in sexual activity with the person or another person; and
- (c) the child is someone:
 - (i) who is under 14 years of age; or
 - (ii) who the person believes is under 14 years of age.

Maximum penalty: Imprisonment for 12 years or, for an aggravated offence, 15 years.

(4) A person commits an offence if:

- (a) the person engages in conduct in relation to a contact of a person (the **child**); and
- (b) the person does so with the intention of making it easier to procure the child to engage in sexual activity with the person or another person; and
- (c) the child is someone:
 - (i) who is 14 or 15 years of age; or

(ii) who the person believes is 14 or 15 years of age.

Maximum penalty: Imprisonment for 10 years or, for an aggravated offence, 12 years.

(5) For subsections (1) to (4):

(a) subsection (1)(b) is the fault element for the conduct in subsection (1)(a); and

(b) subsection (2)(b) is the fault element for the conduct in subsection (2)(a); and

(c) subsection (3)(b) is the fault element for the conduct in subsection (3)(a); and

(d) subsection (4)(b) is the fault element for the conduct in subsection (4)(a).

(6) Absolute liability applies to subsections (1)(c)(i) and (3)(c)(i).

(7) Strict liability applies to subsections (2)(c)(i) and (4)(c)(i).

(8) A person may be found guilty of an offence against subsection (1), (2), (3) or (4) even if:

(a) it is impossible for the sexual activity mentioned in the subsection to take place; or

(b) the child is a fictitious person represented to the accused person as a real person; or

(c) without limiting section 43CA, the accused person and the child or contact, as the case may be, were both outside the Territory at the time at which some or all of the conduct constituting the offence against the subsection occurred, so long as the intended sexual activity would occur in the Territory.

(9) In this section:

contact, of a person, means any person who has a relationship of any type with the person.

*Examples for definition **contact**, in relation to a child*

A family member, babysitter, teacher or acquaintance of the child.

sexual activity means sexual intercourse, an act of gross indecency, indecent touching or an indecent act.

208JI Repeated sexual abuse – child under 16 years

- (1) A person commits an offence if:
- (a) the person intentionally engages in conduct with another person on 2 or more occasions at any time on or after 1 July 1978; and
 - (b) the conduct constitutes sexual activity; and
 - (c) the other person is under 16 years of age.

Maximum penalty: See subsection (7).

- (2) Absolute liability applies to subsection (1)(b) and (c).
- (3) It is a defence to a prosecution for an offence against subsection (1) if:
- (a) on each occasion on which the conduct occurred:
 - (i) the defendant believed, on reasonable grounds, that the other person was 16 years of age or older; and
 - (ii) the other person was 14 or 15 years of age; or
 - (b) engaging in the conduct with a person who is under 16 years of age would not have constituted an offence at the time at which the conduct occurred.
- (4) To avoid doubt, the offence in subsection (1) applies in relation to conduct that occurred at any time on or after 1 July 1978.
- (5) For a person to be found guilty of an offence against subsection (1), all the members of the jury or, if section 368 applies in relation to the trial, the number of jurors required under that section for a majority verdict, must be satisfied beyond reasonable doubt that the evidence shows that the defendant engaged in conduct constituting sexual activity with the other person on 2 or more occasions.
- (6) For this section:
- (a) it is immaterial whether the sexual activity was of the same nature on each occasion; and
 - (b) it is immaterial whether any of the sexual activity occurred outside the Territory, as long as at least one occasion of the sexual activity occurred in the Territory; and

- (c) the prosecution is not required to allege or prove the particulars of any sexual activity that would be necessary if the activity were charged as a separate offence; and
 - (d) the jury is not required to be satisfied of the particulars of any sexual activity of which it would have to be satisfied if the activity were charged as a separate offence; and
 - (e) despite subsection (5), all the members of the jury or, if section 368 applies in relation to the trial, the number of jurors required under that section for a majority verdict, are not required to be satisfied about the same sexual activity.
- (7) The maximum penalty for an offence against subsection (1) is as follows:
- (a) for an offence involving occasions of sexual activity all of which occurred after the commencement – imprisonment for life;
 - (b) for an offence involving occasions of sexual activity that occurred both before and after the commencement:
 - (i) if 2 or more occasions occurred after the commencement – imprisonment for life; or
 - (ii) otherwise – the penalty specified in item 3 of the Table;
 - (c) for an offence involving occasions of sexual activity all of which occurred before the commencement:
 - (i) if the occasions occurred during only one of the periods specified in the Table – the penalty specified in the Table for that period; or
 - (ii) if the occasions occurred during 2 or more of the periods specified in the Table and 2 or more occasions occurred during any of those periods – the higher of the penalties specified in the Table for the periods in which 2 or more occasions occurred; or
 - (iii) if the occasions occurred during 2 or more of the periods specified in the Table and only one occasion occurred during each of those periods – the lower of the penalties specified in the Table for those periods.

Table

Item	Period	Penalty
1	The period commencing on 1 July 1978 and ending on 31 May 1994	The penalty is the total of the maximum penalties for each historical offence constituted by the occasions of sexual activity that are found to have occurred during this period.
2	The period commencing on 1 June 1994 and ending on 16 March 2004	The penalty is: (a) if the occasions of sexual activity that occurred constituted at least one historical offence for which the maximum penalty, at the time of the activity, exceeded 14 years – imprisonment for life; or (b) otherwise – imprisonment for 14 years.
3	The period commencing on 17 March 2004 and ending immediately before the commencement	The penalty is: (a) if the occasions of sexual activity that occurred constituted at least one historical offence for which the maximum penalty, at the time of the activity, exceeded 20 years – imprisonment for life; or (b) if the occasions of sexual activity that occurred constituted at least one offence against section 192B (as in force before the commencement) – imprisonment for life; or (c) otherwise – imprisonment for 20 years.

- (8) For the purposes of the Table, an occasion of sexual activity constitutes a historical offence if the sexual activity is the same as the act, omission or event that constitutes the historical offence, even if the particulars of the time and place at which the sexual activity took place are not sufficiently particularised to enable the defendant to be charged with or found guilty of the historical offence.

Note for subsection (8)

The mental element applying in relation to the historical offence is to be disregarded in determining whether the sexual activity constituted a historical offence.

- (9) In this section:

commencement means the commencement of this section.

sexual activity means any of the following conduct, unless done in the course of a procedure carried out in good faith for medical or hygienic purposes:

- (a) sexual intercourse;
- (b) causing a person to be sexually involved with an animal;
- (c) causing a person to penetrate (to any extent) the person's own genitals or anus;
- (d) an act of gross indecency;
- (e) indecent touching;
- (f) an indecent act.

*Note for definition **sexual activity***

Conduct amounting to an attempt to engage in any conduct specified in paragraphs (a) to (f) may be evidence of an attempt to commit an offence against subsection (1).

Table means the Table to subsection (7).

208JJ Charge for offence of repeated sexual abuse

- (1) A person may be charged in one indictment with:
- (a) an offence against section 208JI(1); and
 - (b) one or more other offences against this Part or a historical offence alleged to have been committed by the person in relation to the other person in the course of the alleged repeated sexual abuse.

- (2) A person charged in one indictment may be found guilty of and punished for any or all of the offences charged.
- (3) A proceeding for an offence against section 208JI(1) must not be started without the consent of the Director of Public Prosecutions.
- (4) Despite subsection (3), a person may be arrested for or charged with, or remanded in custody or on bail in connection with, an offence against section 208JI(1) before the consent of the Director of Public Prosecutions is given.

208JK No defence of consent

Consent of the person against whom the offence is alleged to have been committed is not a defence to an offence against this Division, except as mentioned in section 208J(5).

208JL No defence of belief in marriage or de facto relationship

It is not a defence to an offence against this Division if the person charged with the offence believed the person:

- (a) was married to the child concerned; or
- (b) was the de facto partner of the child concerned.

208JM Proceeding against child

- (1) A proceeding for the following offences must not be started without the consent of the Director of Public Prosecutions:
 - (a) an offence against section 208JG(1) or (2) or 208JH(1), (2), (3) or (4) alleged to have been committed by a child;
 - (b) an offence against another provision of this Division, other than section 208JI(1), alleged to have been committed by a child under 14 years of age.
- (2) Despite subsection (1), a child mentioned in subsection (1) may be arrested for or charged with, or remanded in custody or on bail in connection with, the offence before the necessary consent is given.

Division 4 Sexual acts committed against young persons by persons in positions of authority**208K Sexual intercourse – young person**

- (1) A person commits an offence if:
- (a) the person is in a position of authority in relation to another person and is reckless in relation to that circumstance; and
 - (b) the person intentionally engages in sexual intercourse with the other person; and
 - (c) the other person is 16 or 17 years of age.

Maximum penalty: Imprisonment for 8 years or, for an aggravated offence, 10 years.

- (2) Strict liability applies to subsection (1)(c).

208KA Causing sexual intercourse or penetration – young person

- (1) A person commits an offence if:
- (a) the person is in a position of authority in relation to another person and is reckless in relation to that circumstance; and
 - (b) the person intentionally causes the other person:
 - (i) to engage in sexual intercourse with someone else; or
 - (ii) to be sexually involved with an animal; or
 - (iii) to penetrate (to any extent) the other person's own genitals or anus; and
 - (c) the other person is 16 or 17 years of age.

Maximum penalty: Imprisonment for 8 years or, for an aggravated offence, 10 years.

- (2) Strict liability applies to subsection (1)(c).

208KB Gross indecency – young person

- (1) A person commits an offence if:
- (a) the person is in a position of authority in relation to another person and is reckless in relation to that circumstance; and

- (b) the person intentionally:
 - (i) performs an act on the other person; or
 - (ii) causes or allows the other person to perform an act on the person; and
- (c) the act is grossly indecent; and
- (d) the other person is 16 or 17 years of age.

Maximum penalty: Imprisonment for 7 years or, for an aggravated offence, 9 years.

- (2) Absolute liability applies to subsection (1)(c).
- (3) Strict liability applies to subsection (1)(d).

208KC Indecent touching or act – young person

- (1) A person commits an offence if:
 - (a) the person is in a position of authority in relation to another person and is reckless in relation to that circumstance; and
 - (b) the person intentionally:
 - (i) touches the other person; or
 - (ii) causes or allows the other person to touch the person; or
 - (iii) engages in an act directed at the other person; and
 - (c) the touching or act is indecent; and
 - (d) the other person is 16 or 17 years of age.

Maximum penalty: Imprisonment for 5 years or, for an aggravated offence, 7 years.

- (2) Absolute liability applies to subsection (1)(c).
- (3) Strict liability applies to subsection (1)(d).

208KD No defence of consent

Consent of the person against whom the offence is alleged to have been committed is not a defence to an offence against this Division.

208KE Defence – marriage or de facto relationship

A person who is in a position of authority in relation to another person is not criminally responsible for an offence against this Division in relation to conduct involving the other person if, at the time of the conduct:

- (a) the person was married to, or honestly believed on reasonable grounds that the person was married to, the other person; or
- (b) the person was the de facto partner of, or honestly believed on reasonable grounds that the person was the de facto partner of, the other person.

Division 5 Sexual acts committed against cognitively impaired persons by carers**208L Meaning of *cognitive impairment***

For this Division, a person has a ***cognitive impairment*** if:

- (a) the person has one of the following impairments:
 - (i) an intellectual disability;
 - (ii) a developmental disorder (including an autistic spectrum disorder);
 - (iii) a neurological disorder;
 - (iv) dementia;
 - (v) a severe mental illness;
 - (vi) a brain injury; and
- (b) the impairment results in the person requiring supervision or social habilitation in connection with daily life activities.

208LA Person responsible for care of person with cognitive impairment

- (1) For this Division, a person is responsible for the care of a person with a cognitive impairment if the person provides care to that person, whether or not on a voluntary basis:
 - (a) at a facility at which persons with a cognitive impairment are detained, reside or attend; or

- (b) at the home of that person as part of a service or program under which the operator of a facility mentioned in paragraph (a), or another government or community organisation or service provider, provides care to persons with a cognitive impairment.

- (2) In subsection (1):

care includes health care, education and supervision.

208LB Sexual intercourse – person with cognitive impairment

- (1) A person commits an offence if the person:

- (a) is responsible for the care of a person with a cognitive impairment; and
- (b) intentionally engages in sexual intercourse with the person with a cognitive impairment.

Maximum penalty: Imprisonment for 8 years or, for an aggravated offence, 10 years.

- (2) Strict liability applies to subsection (1)(a).

208LC Causing sexual intercourse or penetration – person with cognitive impairment

- (1) A person commits an offence if the person:

- (a) is responsible for the care of a person with a cognitive impairment; and
- (b) intentionally causes the person with a cognitive impairment:
 - (i) to engage in sexual intercourse with someone else; or
 - (ii) to be sexually involved with an animal; or
 - (iii) to penetrate (to any extent) the other person's own genitals or anus.

Maximum penalty: Imprisonment for 8 years or, for an aggravated offence, 10 years.

- (2) Strict liability applies to subsection (1)(a).

208LD Gross indecency – person with cognitive impairment

- (1) A person commits an offence if:
- (a) the person is responsible for the care of a person with a cognitive impairment; and
 - (b) the person intentionally:
 - (i) performs an act on the person with a cognitive impairment; or
 - (ii) causes or allows the person with a cognitive impairment to perform an act on the person; and
 - (c) the act is grossly indecent.

Maximum penalty: Imprisonment for 7 years or, for an aggravated offence, 9 years.

- (2) Strict liability applies to subsection (1)(a).
- (3) Absolute liability applies to subsection (1)(c).

208LE Indecent touching or act – person with cognitive impairment

- (1) A person commits an offence if:
- (a) the person is responsible for the care of a person with a cognitive impairment; and
 - (b) the person intentionally:
 - (i) touches the person with a cognitive impairment; or
 - (ii) causes or allows the person with a cognitive impairment to touch the person; or
 - (iii) engages in an act directed at the person with a cognitive impairment; and
 - (c) the touching or act is indecent.

Maximum penalty: Imprisonment for 5 years or, for an aggravated offence, 7 years.

- (2) Strict liability applies to subsection (1)(a).
- (3) Absolute liability applies to subsection (1)(c).

208LF Defence – consent

- (1) Consent of the person with a cognitive impairment concerned is not a defence to an offence against this Division, except as provided by subsection (2).
- (2) A person who is responsible for the care of a person with a cognitive impairment is not criminally responsible for an offence against this Division in relation to conduct if, at the time of the conduct:
 - (a) the person with a cognitive impairment consented to the conduct; and
 - (b) the giving of the consent was not unduly influenced by the fact that the person was responsible for the care of the person with a cognitive impairment.

208LG Defence – marriage or de facto relationship

A person who is responsible for the care of a person with a cognitive impairment is not criminally responsible for an offence against this Division in relation to conduct if, at the time of the conduct:

- (a) the person was married to, or honestly believed on reasonable grounds that the person was married to, the person with a cognitive impairment; or
- (b) the person was the de facto partner of, or honestly believed on reasonable grounds that the person was the de facto partner of, the person with a cognitive impairment.

Division 6 Sexual acts committed against close family members**208M Meaning of *close family member***

A ***close family member*** of a person is someone who, from birth and not from marriage or adoption, is a grandparent, parent, sibling (including a half-brother or half-sister), child or grandchild of the person.

208MA Incest

A person commits an offence if:

- (a) the person intentionally engages in sexual intercourse with another person; and

- (b) the other person is a close family member of the person and the person has knowledge of that circumstance.

Maximum penalty: Imprisonment for 14 years.

208MB No defence of consent

Consent of the close family member concerned is not a defence to an offence against section 208MA.

208MC Defence – compulsion

A person is not criminally responsible for an offence against section 208MA if a close family member compelled, by force or otherwise, the person to engage in the conduct mentioned in section 208MA(a).

Division 7 Sexual acts committed against animal or in public

208N Sexual involvement with animal

A person commits an offence if the person is intentionally sexually involved with an animal.

Maximum penalty: Imprisonment for 7 years.

208NA Public masturbation

- (1) A person commits an offence if:
- (a) the person intentionally masturbates; and
 - (b) the conduct occurs in public or in a place that is visible to the public.

Maximum penalty: Imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(b).

Division 8 General matters

208P Increased penalty for aggravated offence

- (1) The following are circumstances of aggravation for an offence committed against this Part, and a maximum penalty specified in this Part for an aggravated offence applies if a circumstance of aggravation applies to the offence:

- (a) the offence was committed during torture;

- (b) the offence was committed by the use or threatened use of an offensive weapon;
 - (c) the offence was committed by a person in the company of another person;
 - (d) the offence was committed in circumstances that involved the victim being caused serious harm or being threatened with serious harm or death;
 - (e) the offence was committed against a child under 16 years of age, except in the case of an offence against Division 3;
 - (f) the offence was committed against a person in abuse of a position of trust, except in the case of an offence against Division 4 or 5;
 - (g) the offence was committed against a person in abuse of a position of authority, except in the case of an offence against Division 4.
- (2) For subsection (1)(a), the offence was committed during torture if the person who committed it deliberately and systematically, over a period, inflicted severe pain on the person against whom it was committed.

208PA Procedural and evidentiary provisions for aggravated offences

- (1) If the prosecution intends to prove an aggravated offence, the relevant circumstance of aggravation must be contained in the charge.
- (2) In order to prove an aggravated offence, the prosecution must prove that the person who committed the offence was reckless in relation to the circumstance of aggravation.

208PB Jury directions on consent

- (1) In a proceeding for an offence against this Part, the Judge must, in an appropriate case, direct the jury that a person must not be regarded as having consented to a particular sexual act merely because:
 - (a) the person did not say or do anything to indicate that the person did not consent; or
 - (b) the person did not protest or physically resist; or
 - (c) the person did not sustain physical injury; or

- (d) during the period or on the occasion when the sexual act occurred, or on an earlier occasion, the person consented to engage in a sexual act (whether or not of the same type) with the person charged with the offence or with another person.
- (2) In a proceeding for an offence against this Part, the Judge must, in an appropriate case, direct the jury that, in deciding whether the accused was under a mistaken belief that a person consented to a sexual act, the jury may consider whether the mistaken belief was reasonable in the circumstances.

Note for section 208PB

The Sexual Offences (Evidence and Procedure) Act 1983 contains further provisions about evidence and procedure for offences against this Part.

208PC Exception – medical, hygienic, veterinary or agricultural procedures

A person is not criminally responsible for an offence against this Part in relation to any sexual intercourse, touching or other act done in the course of a procedure carried out in good faith for medical, hygienic, veterinary or agricultural purposes.

208PD Alternative verdicts

- (1) In a proceeding against a person charged with an offence against this Part (the **prosecuted offence**), the trier of fact may find the person not guilty of the prosecuted offence but guilty of another offence, or an attempt to commit another offence, against this Part (the **alternative offence**) if the trier of fact:
 - (a) is not satisfied beyond reasonable doubt that the person committed the prosecuted offence; and
 - (b) is satisfied beyond reasonable doubt that the person committed the alternative offence.
- (2) Subsection (1) does not authorise the trier of fact to find a person guilty of an alternative offence for which the maximum penalty is greater than the maximum penalty for the prosecuted offence.

208PE Indecent images and related articles may be destroyed

- (1) If any of the following things are seized by a police officer, a police officer of a senior rank may authorise the forfeiture and destruction by a police officer of the thing:
 - (a) an indecent image of a child;
 - (b) an article that contains an indecent image of a child;

- (c) an article that a police officer of a senior rank believes on reasonable grounds contains an indecent image of a child.
- (2) Subsection (1) has effect whether or not a person is charged, or is to be charged, with an offence in relation to the thing.
- (3) The thing may be destroyed at the place at which it was forfeited or at any other place that a police officer of a senior rank thinks fit.
- (4) If the operation of this section would, apart from this subsection, result in an acquisition of property from a person otherwise than on just terms:
 - (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
 - (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

208PF Article containing indecent images may be returned

- (1) If an article that contains, or is believed to contain, an indecent image of a child is forfeited by a police officer under section 208PE, a police officer of a senior rank may authorise a police officer to return the article to the owner of the article.
- (2) The authorisation must not be given unless the police officer of a senior rank is satisfied that all indecent images of children are removed from the article.

14 Sections 319 and 377 repealed

Sections 319 and 377

repeal

15 Part XI, Division 19 inserted

After section 474

insert

Division 19 Criminal Justice Legislation Amendment (Sexual Offences) Act 2023**475 Offences – before and after commencement**

- (1) The offence provisions, as inserted or amended by the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*, apply only in relation to offences committed after the commencement.
- (2) The offence provisions, as in force before the commencement, continue to apply in relation to offences committed before the commencement.
- (3) Despite subsections (1) and (2):
 - (a) section 131A continues to apply in relation to an offence committed before the commencement only if the person is charged with the offence before the commencement; and
 - (b) section 208JI applies in relation to:
 - (i) an offence committed after the commencement; and
 - (ii) an offence committed before the commencement if the person is not charged, before the commencement, with an offence against section 131A.
- (4) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.
- (5) In this section:

commencement means the commencement of Part 2 of the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*.

offence provisions means the provisions of this Act that create or relate to offences, including provisions that relate to criminal responsibility, defences and penalties.

section 131A means section 131A as in force before the commencement.

16 Schedule 1 amended (Provisions of Code to which Part IIAA applies)

(1) Schedule 1, entry for Section 192

omit

(2) Schedule 1

insert (in numerical order)

Part V, Division 2 (Child abuse material and indecent articles) and
Division 2A (Offence relating to human remains)

Part VIA (Sexual offences)

(3) Schedule 1, entry for Part VI, Division 7A

omit

(Distributing

insert

(Recording and distributing

17 Act further amended

Schedule 1 has effect.

**Part 3 Amendment of Child Protection (Offender
Reporting and Registration) Act 2004**

18 Act amended

This Part amends the *Child Protection (Offender Reporting and
Registration) Act 2004*.

19 Part 9 inserted

After section 104

insert

Part 9 Transitional matters for Criminal Justice Legislation Amendment (Sexual Offences) Act 2023

105 Definitions

In this Part:

amending Act means the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*.

commencement means the commencement of Part 3 of the amending Act.

106 Application of amendments to Schedules if person is reportable offender

- (1) Subsection (2) applies to a person if:
 - (a) immediately before the commencement the person was a reportable offender; and
 - (b) at any time before the commencement the person had committed an offence that, because of the amendments made by the amending Act, is a reportable offence.
- (2) The person's reporting period does not increase, regardless of whether the person was sentenced before, or is sentenced after, the commencement for the offence mentioned in subsection (1)(b).

107 Application of amendments to Schedules if person is not reportable offender

- (1) Subsection (2) applies to a person if:
 - (a) immediately before the commencement the person was not a reportable offender; and
 - (b) at any time before the commencement the person had committed an offence that, because of the amendments made by the amending Act, is a reportable offence.

- (2) If, after the commencement, the person is sentenced by a Territory court for the offence mentioned in subsection (1)(b), the person becomes a Territory reportable offender as defined in section 7(1).

20 Schedules 1 and 2 replaced

Schedules 1 and 2

repeal, insert

Schedule 1 Class 1 offences

section 12(2)(a)

Criminal Code

Provision of Act

Qualification

Section 125D

Section 156, 160, 202B, 202C, 202D, 208H, 208HA or 208HB

If the victim is a child

Section 208J, 208JA, 208JB or 208JI

Section 208LB, 208LC, 208LD or 208MA

If the victim is a child

Schedule 2 Class 2 offences

section 12(3)(a)

1 Criminal Code

Provision of Act

Qualification

Section 125B

Section 125C

If the article is indecent because it depicts, describes or represents a person who is under, or who looks to be under, 16 years of age

Section 193

If the intent is to commit a reportable offence

Section 201, 208JC, 208JD, 208JE, 208JF, 208JG, 208JH, 208K, 208KA, 208KB or 208KC

Section 208LE If the victim is a child

2 Sex Industry Act 2019

Provision of Act	Qualification
------------------	---------------

Section 12, 13 or 14

3 Criminal Code (Cth)

Provision of Act	Qualification
------------------	---------------

Section 271.4, 271.7, 272.15A, 273A.1, 471.25A, 474.22, 474.22A, 474.23, 474.24A, 474.25A, 474.25B, 474.25C(ii) or (iii), 474.26, 474.27 or 474.27AA

Part 4 Amendment of Information Act 2002

21 Act amended

This Part amends the *Information Act 2002*.

22 Schedule 1 amended (Secrecy provisions)

Schedule 1

omit

Sexual Offences (Evidence and Procedure) Act 1983 sections 11, 11A and 11B(1)

insert

Sexual Offences (Evidence and Procedure) Act 1983 section 6(1), 7(1) or 10

Part 5 Amendment of National Disability Insurance Scheme (Worker Clearance) Regulations 2021

23 Regulations amended

This Part amends the *National Disability Insurance Scheme (Worker Clearance) Regulations 2021*.

24 Regulation 6 amended (Disqualifying offences)

(1) Regulation 6(d)

omit

(b).

insert

(b);

(2) After regulation 6(d)

insert

(e) an offence committed before the commencement of a provision of an Act or Commonwealth Act mentioned in paragraph (a) that, if committed after that commencement, would have constituted an offence mentioned in paragraph (a).

25 Regulation 7 amended (Presumed disqualifying offences)

(1) Regulation 7(d)

omit

(b).

insert

(b);

(2) After regulation 7(d)

insert

(e) an offence committed before the commencement of a provision of an Act or Commonwealth Act mentioned in paragraph (a) that, if committed after that commencement, would have constituted an offence mentioned in paragraph (a).

26 Schedule 2 amended (Disqualifying offences)

Schedule 2, item 1

omit, insert

1 Criminal Code

Provision of Act	Qualification
125B	
125C	The article relates to a child or a vulnerable person
125D, 156, 165	
174E	The victim is a child or a vulnerable person
174F(1), 174FC(1)	The offender intended to cause death
175, 176, 177, 181, 182, 185, 186B, 186C	The victim is a child or a vulnerable person
188	The circumstances mentioned in subsection (2)(c) or (d) exist or The circumstances mentioned in subsection (2)(m) exist and the victim is a child or a vulnerable person
193	The victim is a child or a vulnerable person
194, 195	The victim is a child or a vulnerable person who is not a relative of the offender
201	
202B	The victim is a child or a vulnerable person
202C(1)	The victim is a vulnerable person
202C(2) or (3)	
202D, 208H, 208HA, 208HB	The victim is a child or a vulnerable person
208HC, 208HD	The victim is a child under 14 years of age or The victim is a child who is 14 years of age or older and the offender is at least 5 years older than the victim or

	The victim is a vulnerable person
208J, 208JA, 208JB, 208JC, 208JD, 208JE, 208JF	The victim is a child under 14 years of age or The victim is a child who is 14 years of age or older and the offender is at least 5 years older than the victim
208JG, 208JH	
208JI	The victim is a child under 14 years of age or The victim is a child who is 14 years of age or older and the offender is at least 5 years older than the victim
208K, 208KA, 208KB, 208KC, 208LB, 208LC, 208LD, 208LE	
208MA	The victim is a child or a vulnerable person
208N	

27 Schedule 3 amended (Presumed disqualifying offences)

Schedule 3, item 1

omit, insert

1 Criminal Code

Provision of Act	Qualification
51, 53, 54, 55, 73, 74, 75	
160, 161A, 162, 170	
174E	The victim is not a child or a vulnerable person
174F(1)	The offender did not intend to cause death
174FA	
174FC(1)	The offender did not intend to cause death
175, 176, 177, 181, 182	The victim is not a child or a vulnerable person
183, 184	The victim is a person under care
185, 186B, 186C	The victim is not a child or a vulnerable person

188	The circumstances mentioned in subsection (2)(m) exist and the victim is not a child or a vulnerable person
193	The victim is not a child or a vulnerable person
194, 195	The victim is a child or a vulnerable person and is a relative of the offender or The victim is not a child or a vulnerable person and is not a relative of the offender
202B(1)	The victim is not a vulnerable person
202D	The victim is not a child or a vulnerable person
208AAB, 208AB	The image is of a child or a vulnerable person
208H, 208HA, 208HB	The victim is not a child or a vulnerable person
208HC, 208HD	The victim is a child who is 14 years of age or older and the offender is less than 5 years older than the victim or The victim is not a child or a vulnerable person
208J, 208JA, 208JB, 208JC, 208JD, 208JE, 208JF, 208JI	The victim is a child who is 14 years of age or older and the offender is less than 5 years older than the victim
208MA	The victim is not a child or a vulnerable person
228AH, 228AK	The person intended to be deceived is a child or a vulnerable person
253, 254	The offence involves or affects a child or a vulnerable person
284	The person intended to be defrauded is a child or a vulnerable person

Part 6 Amendment of Sentencing Act 1995

28 Act amended

This Part amends the *Sentencing Act 1995*.

29 Section 5 amended (Sentencing guidelines)

After section 5(3)

insert

(3A) Despite subsection (2)(e), in sentencing an offender for an offence against Part V, Division 2 or Part VIA of the Criminal Code, a court must disregard the good character of the offender if:

- (a) the person against whom the offence was committed was, at the time the offence was committed, under 18 years of age; and
- (b) the court is satisfied that the offender's alleged good character was of assistance to the offender in the commission of the offence.

Examples for subsection (3A)(b)

- 1 *The offender's good character was one reason the offender was selected to supervise children at a camp. The offender began to establish a relationship with children at the camp to obtain their compliance in sexual activities.*
- 2 *A child's parent trusted the offender to care for the child because of the offender's authority in their community. The offender held authority in the community in part due to the offender's good character. The offender sexually abused the child including while the child was in the offender's care.*

30 Section 55 amended (Minimum non-parole period for certain sexual offences and drug offences)

Section 55(3), definition ***specified offence***, paragraph (a)

omit, insert

- (a) an offence against section 208H of the Criminal Code; or
- (ab) an offence against section 192(3) of the Criminal Code, as in force before the commencement of Part 2 of the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*;
or

31 Section 55A amended (Fixed non-parole periods for offences against persons under 16 years)

Section 55A(1)(a)

omit, insert

- (a) a court sentences an offender to be imprisoned for an offence against:
- (i) section 177(a), 181, 184, 186, 186B, 188, 208H, 208HA, 208HB, 208J, 208JA, 208JB, 208JC, 208JD, 208JE, 208JF, 208JG, 208JH, 208JI, 208LB, 208LC, 208LD or 208MA of the Criminal Code; or
 - (ii) section 127, 130, 131, 131A, 132, 134, 188 or 192(4) of the Criminal Code as in force before the commencement of Part 2 of the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*; and

32 Part 12, Division 11 inserted

After section 148

insert

Division 11 Transitional matter for Criminal Justice Legislation Amendment (Sexual Offences) Act 2023**149 Application of section 5**

- (1) Section 5, as amended by section 29 of the amending Act, applies only in relation to offences that are committed after the commencement of this section.
- (2) For subsection (1), if any of the conduct constituting an offence occurred before the commencement of this section, the offence is taken to have been committed before the commencement of this section.
- (3) In this section:

amending Act means the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*.

33 Schedule 2 amended (Violent offences)

Schedule 2, entry for section 188

omit

all words after "assault"

34 Schedule 3 replaced

Schedule 3

repeal, insert

Schedule 3 Sexual offences

section 3(1)

- 1 An offence against section 125B or 125C of the Criminal Code if the offender is an individual.
- 2 An offence against a provision of Part VIA of the Criminal Code, other than section 208NA.
- 3 An offence against any of the following provisions of the Criminal Code, as in force before the commencement of Part 2 of the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*:
 - (a) section 127, 128, 130, 131, 131A, 132, 134 or 138;
 - (b) section 188 if the circumstance mentioned in section 188(2)(k) applied;
 - (c) section 192 or 192B.

Part 7 Consequential amendments

Division 1 Care and Protection of Children (Screening) Regulations 2010

35 Regulations amended

This Division amends the *Care and Protection of Children (Screening) Regulations 2010*.

36 Schedule 3 amended (Disqualifying offences)

Schedule 3, entry for item 1

omit, insert

1 Criminal Code

Provision of Act

Qualification

Section 125D

Section 156

If the victim is a child

Section 194

If the person kidnapped is a child

Section 195 or 202B

If the victim is a child

Section 202C

If the business involves the sexual servitude of a child

Section 202D, 208H, 208HA or 208HB

If the victim is a child

Section 208J, 208JA, 208JB, 208JI, 208K, 208KA or 208KB

Section 208LB, 208LC, 208LD or 208MA

If the victim is a child

Division 2 Commercial Passenger (Miscellaneous) Regulations 1992

37 Regulations amended

This Division amends the *Commercial Passenger (Miscellaneous) Regulations 1992*.

38 Regulation 7 replaced

Regulation 7

repeal, insert

7 Disqualifying offences

For section 3(1) of the Act, definition ***disqualifying offence***, paragraph (a), the following offences are prescribed:

- (a) an offence against section 125B, 125D, 156, 165, 177, 181, 182, 194, 201, 202B, 202C, 202D, 208H, 208HA, 208HB, 208HC, 208HD, 208J, 208JA, 208JB, 208JC, 208JD, 208JE, 208JF, 208JG, 208JH, 208JI, 208K, 208KA, 208KB, 208LB,

208LC, 208LD or 218 of the Criminal Code;

- (b) an offence against section 125C of the Criminal Code if the article is indecent because it depicts, describes or represents a child who is under, or who looks to be under, 16 years of age;
- (c) an offence against section 12, 13 or 14 of the *Sex Industry Act 2019*.

39 Schedule 3 repealed

Schedule 3

repeal

Division 3 Education Regulations 2015

40 Regulations amended

This Division amends the *Education Regulations 2015*.

41 Schedule 1 amended (Disqualifying offences)

Schedule 1, item 1

omit, insert

1 Criminal Code

Provision of Act

Qualification

Section 125B or 125D

Section 156 or 165

If the victim is a child

Section 194

If the person kidnapped is a child

Section 195

If the victim is a child

Section 201 or 202

Section 202C

If the business involves the sexual servitude of a child

Section 202D, 208H, 208HA or 208HB

If the victim is a child

Section 208J, 208JA, 208JB, 208JC, 208JD, 208JE, 208JF,

208JG, 208JH, 208JI, 208K,
208KA or 208KB

Section 208LB, 208LC or 208LD If the victim is a child

Division 4 Serious Sex Offenders Act 2013

42 Act amended

This Division amends the *Serious Sex Offenders Act 2013*.

43 Schedule 1 amended (Serious sex offences)

Schedule 1, entry for Criminal Code

omit, insert

Criminal Code

Provision of Act	Qualification
-------------------------	----------------------

section 125B	If the person produces child abuse material
--------------	---

section 125D, 186B, 201, 202B, 202C, 202D, 208H, 208HA, 208HB, 208J, 208JA, 208JB, 208JC, 208JD, 208JE, 208JF, 208JG, 208JH, 208JI, 208K, 208KA or 208KB	
--	--

section 208LB, 208LC or 208LD	If the victim is under 16 years
----------------------------------	---------------------------------

section 208MA	If the victim is under 18 years
---------------	---------------------------------

44 Schedule 2 amended (Offences of a sexual nature)

Schedule 2, entry for Criminal Code

omit, insert

Criminal Code

Provision of Act	Qualification
section 125B	If the person sells, distributes or possesses, or offers or advertises for sale or distribution, child abuse material
section 176	If the offence intended to be committed or facilitated is a serious sex offence
section 193	If the offence intended to be committed is a serious sex offence
section 208HC or 208HD	
section 208LB, 208LC or 208LD	If the victim is 16 years or more
section 208MA	If the victim is 18 years or more
section 208N	
section 220 or 221	If the offence intended to be committed is a serious sex offence

Division 5 Summary Offences Act 1923

45 Act amended

This Division amends the *Summary Offences Act 1923*.

46 Section 47AC amended (Loitering by sexual offender)

(1) Section 47AC(1)

omit

(2) After section 47AC(3)

insert

(4) In this section:

sexual offence means:

(a) an offence against any of the following:

- (i) Part V, Division 2 of the Criminal Code;
- (ii) section 201, 208H, 208HA, 208HB or 208HC of the Criminal Code;
- (iii) Part VIA, Divisions 3 to 7 of the Criminal Code;
- (iv) Part V, Division 2 or section 188(2)(k), 192 or 192B of the Criminal Code as in force before the commencement of Part 2 of the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*; or

(b) an offence of:

- (i) attempting to commit an offence mentioned in paragraph (a); or
- (ii) counselling or procuring an offence mentioned in paragraph (a); or
- (iii) aiding or abetting the commission of an offence mentioned in paragraph (a); or
- (iv) incitement to commit an offence mentioned in paragraph (a); or
- (v) conspiring to commit an offence mentioned in paragraph (a); or
- (vi) being an accessory after the fact to an offence mentioned in paragraph (a).

Division 6 Teacher Registration (Northern Territory) Regulations 2004

47 Regulations amended

This Division amends the *Teacher Registration (Northern Territory) Regulations 2004*.

48 Regulation 2A amended (Sexual offences)

(1) Regulation 2A(1)

omit, insert

(1) For section 4 of the Act, definition **sexual offence**, the following offences against the Criminal Code are prescribed:

(a) an offence against Part V, Division 2 or section 201, 202B, 202C, 202D, 208AAB, 208AB, 208AC or Part VIA, Division 2, 3, 4, 5, 6 or 7 of the Criminal Code;

(b) an offence against Part V, Division 2 or section 188(2)(k), 192 or 192B of the Criminal Code as in force before the commencement of Part 2 of the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*.

(2) After regulation 2A(4)(b)

insert

(ba) incitement to commit;

Division 7 Victims of Crime Assistance Regulations 2007

49 Regulations amended

This Division amends the *Victims of Crime Assistance Regulations 2007*.

50 Regulation 3 amended (Definitions)

Regulation 3

insert

harm, see section 1A of the Criminal Code.

51 Regulation 4 amended (Violent acts – sexual offences)

(1) Regulation 4, before "For"

insert

(1)

- (2) Regulation 4, after "3,"
insert
subject to any qualification specified opposite the offence,
- (3) Regulation 4, note
omit
regulation 4
insert
subregulation (1)
- (4) Regulation 4, at the end
insert
- (2) To avoid doubt, despite section 43BJA of the Criminal Code, a reference in Schedule 1 to an offence does not include a reference to an offence of attempting, or of conspiracy or incitement, to commit the offence.

52 Regulation 15 amended (Categories of psychological and psychiatric disorders)

- (1) Regulation 15(1)(b)
omit
2.
insert
2 to which the qualification specified opposite applies.
- (2) After regulation 15(2)
insert
- (3) To avoid doubt, despite section 43BJA of the Criminal Code, a reference in Schedule 2 to an offence does not include a reference to an offence of attempting, or of conspiracy or incitement, to commit the offence.

53 Schedules 1 and 2 replaced

Schedules 1 and 2

repeal, insert

Schedule 1 Violent acts and categories of compensable violent acts

regulations 4 and 14(1), (2) and (3)

Part 1 Category 1

Criminal Code

Offence	Qualification
An offence of attempting to commit an offence against section 208H or 208HA	If offence committed by adult and victim is under 16 years of age
An offence of attempting to commit an offence against section 208J or 208JA	If offence committed by adult
An offence against section 208JB	
An offence against section 208JC	If offence involves touching or attempted touching, is committed by adult and victim suffers harm
An offence against section 208LB or 208LC	If victim is 16 years of age or older
An offence against section 208LD	

Criminal Code as in force before the commencement of Part 2 of the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*

Offence	Qualification
An offence against section 127(1)(b) or 130(2) or (3A)(b)	
An offence against section 188	If the circumstances mentioned in section 188(2)(a), (c) and (k) of the Code applied

An offence against section 192(6)

Part 2 Category 2

Criminal Code

Offence	Qualification
An offence against section 186B	
An offence of attempting to commit an offence against section 208H	If victim suffers serious harm
An offence against section 208H, 208HA, 208J or 208JA	
An offence against section 208LB or 208LC	If victim is under 16 years of age

Criminal Code as in force before the commencement of Part 2 of the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*

Offence	Qualification
An offence against section 127(1)(a), 130(3A)(a), 192(3) or (8) or 192B	

Part 3 Category 3

Criminal Code

Offence	Qualification
An offence mentioned in Part 1 or 2, or a combination of those offences, involving a pattern of abuse	
An offence against section 208H, 208HA, 208J, 208JA or 208JB	If a factor of aggravation applies for the offence
An offence against section 208JI	
An offence against section 208LB, 208LC or 208LD	If a factor of aggravation applies for the offence

**Criminal Code as in force before the commencement of Part 2 of the
*Criminal Justice Legislation Amendment (Sexual Offences) Act 2023***

Offence	Qualification
An offence against section 127 or 130(2) or (3A)	If a factor of aggravation applies for the offence
An offence against section 131A	
An offence against section 192(3) or 192B	If a factor of aggravation applies for the offence

Note for Part 3

Regulation 7 specifies the circumstances in which a factor of aggravation applies for an offence.

Schedule 2 Category 1 offences for psychological or psychiatric disorder

regulation 15(1)

Criminal Code

Offence	Qualification
An offence against section 156, 194 or 195	
An offence against section 196	If offence committed by a person on the person's unlawful entry of a building under section 221 of the Code
An offence against section 202	
An offence of attempting to commit an offence against section 208H	If the victim suffers harm
An offence against section 208HC or 208HD	If the offender is an adult and the victim is under 16 years of age
An offence against section 208JC, 208JD, 208JE, 208JF, 208JG or 208JH	

An offence against section 218	If committed in a circumstance mentioned in section 219(1) of the Code
--------------------------------	--

Criminal Code as in force before the commencement of Part 2 of the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*

Offence	Qualification
An offence against section 132(2)	
An offence against section 188	If the circumstances mentioned in section 188(2)(c) and (k) of the Code applied
An offence against section 192(7)	

Division 8 Other laws amended

54 Other laws amended

Schedule 2 amends the laws mentioned in it.

Part 8 Repeal of Act

55 Repeal of Act

This Act is repealed on the day after it commences.

Schedule 1 Act further amended

section 17

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 43BK(1)	natural persons	individuals
section 43BK(2)	natural persons a natural person.	individuals an individual.
section 113	(as defined in section 16 of the <i>Correctional Services Act 2014</i>)	
Part V, Division 2, heading	whole heading	Division 2 Child abuse material and indecent articles
Part V, Division 2, Subdivision 1, heading	whole heading	
section 125A(1)	Subdivision	Division
section 125A(1), definition Commonwealth Act	of the Commonwealth.	(Cth).
section 125A(2) and (3)	subdivision	Division
section 149B, definition law enforcement officer	whole definition	law enforcement officer means: (a) a police officer or a member of the police force or police service of any State; or (b) a member of the Australian Federal Police; or (c) a member of staff of the Australian Crime

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
		Commission.
Part VI, Division 7A, heading	Distributing	Recording and distributing
section 208AA, definition law enforcement officer	whole definition	
section 208AA		consent means free and voluntary agreement.
section 208AA, definition image	"jpeg"	
section 208AB(1)	if the person:	if:
section 208AB(1)(a), before "intentionally"		the person
section 208AB(8)	whole subsection	

Schedule 2 Other laws amended

section 54

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<i>Bail Act 1982</i>		
section 3(1), definition <i>serious violence offence</i>	whole definition	<p><i>serious violence offence</i> means:</p> <p>(a) an offence against any of the following provisions of the Criminal Code that is punishable by imprisonment for 5 or more years:</p> <p>(i) Part V, Division 2;</p> <p>(ii) Part VI, Divisions 3 to 6A;</p> <p>(iii) Part VIA;</p> <p>(iv) section 218;</p> <p>(v) another provision prescribed by regulation; or</p> <p>(b) an offence against Part V, Division 2 or Part VI, Division 5 of the Criminal Code, as in force before the commencement of Part 2 of the <i>Criminal Justice Legislation Amendment</i></p>

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
		(<i>Sexual Offences Act 2023</i>), that was punishable by imprisonment for 5 or more years.
section 3(1), definition <i>Territory sexual offence</i> , paragraph (a)	whole paragraph	(a) sexual intercourse, sexual penetration or a sexual involvement with an animal; or (ab) a grossly indecent act; or
section 7A(1)(dd)(ii)	or 192	, 208H, 208HA or 208HB
after section 7A(1)(dd)(iii)		(iv) an offence against section 192 of the Criminal Code, as in force before the commencement of Part 2 of the <i>Criminal Justice Legislation Amendment (Sexual Offences) Act 2023</i> ;
<i>Bail Regulations 1983</i>		
regulation 2A(a)	whole paragraph	(a) section 54, 55(1), 65, 66, 69, 125B(1), 156, 160, 161A, 165, 174C, 174D, 174E, 174F, 174FA, 174FB, 175, 176, 177, 181, 182, 186, 188A, 189A, 190, 191, 193B, 194, 208H, 208HA, 208HB,

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
		208HC, 208J, 208JA, 208JB, 208JC, 208JD, 208JE, 208JF, 208MA, 217, 218, 220, 221, 228AB, 241 or 243 of the Criminal Code;
after regulation 2A(ba)		(bb) section 127, 130(3A) or (3B), 132, 134, 188(2)(k), 192(3), (4), (7) or (8) or 192B of the Criminal Code as in force before the commencement of Part 2 of the <i>Criminal Justice Legislation Amendment (Sexual Offences) Act 2023</i> ;
<i>Care and Protection of Children Act 2007</i>		
section 26(1)(a)(iii)	128	208K, 208KA or 208KB
section 26(1), note	whole note	<i>Note for subsection (1)(a)(iii) The victim of an offence against section 208K, 208KA or 208KB of the Criminal Code is a child who is 16 or 17 years of age and in relation to whom the offender is in a position of authority (for example, because the offender is a legal guardian or employer of the child).</i>

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<i>Criminal Records (Spent Convictions) Act 1992</i>		
section 3(1), definition <i>sexual offence</i> , paragraphs (a) and (b)		(a) an offence against Part V, Division 2 or section 201, 208H, 208HA, 208HB or 208HC or Part VIA, Divisions 3 to 7 of the Criminal Code; or (b) an offence against Part V, Division 2 or section 188(2)(k), 192 or 192B of the Criminal Code, as in force before the commencement of Part 2 of the <i>Criminal Justice Legislation Amendment (Sexual Offences) Act 2023</i> ; or
section 3(1), definition <i>sexual offence</i> , paragraph (d)(i) and (ii), at the end		or
section 3(1), definition <i>sexual offence</i> , paragraph (d)(iii)	whole subparagraph	(iii) incitement or conspiring to commit; or
<i>Evidence Act 1939</i>		
section 21AA, definition <i>serious violence offence</i>	whole definition	<i>serious violence offence</i> means: (a) an offence against any of the following provisions of the Criminal Code that

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
		<p>is punishable by imprisonment for 5 or more years:</p> <p>(i) Part V, Division 2;</p> <p>(ii) Part VI, Divisions 3 to 6A;</p> <p>(iii) Part VIA;</p> <p>(iv) section 218;</p> <p>(v) another provision prescribed by regulation; or</p> <p>(b) an offence against Part V, Division 2 or Part VI, Division 5 of the Criminal Code as in force before the commencement of Part 2 of the <i>Criminal Justice Legislation Amendment (Sexual Offences) Act 2023</i> that was punishable by imprisonment for 5 or more years.</p>
<i>Firearms Regulations 1997</i>		
before regulation 1A(1)		(1AA) This regulation prescribes offences to be disqualifying offences for section 3(1) of

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
		the Act, definition <i>disqualifying offence</i> , paragraph (a).
regulation 1A(1)(b) and (n)	whole paragraph	
regulation 1A(1)(oa)	202D or 218;	202D, 208H, 208HA or 208HB;
after regulation 1A(1)(oa)		(ob) section 208JI or 208MA, if a custodial sentence is imposed; (oc) section 218;
after regulation 1A(1A)		(1B) An offence against any of the following provisions of the Criminal Code, as in force before the commencement of Part 2 of the <i>Criminal Justice Legislation Amendment (Sexual Offences) Act 2023</i> , is a disqualifying offence: (a) section 131A or 134, if a custodial sentence is imposed; (b) section 192 or 192B.
after regulation 1B, heading		(1AA) This regulation prescribes offences to be offences of

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
		violence for section 3(1) of the Act, definition offence of violence , paragraph (a).
regulation 1B, before "An"		(1)
regulation 1B(c) and (d)	whole paragraph	
regulation 1B(k)	whole paragraph	(k) section 188(2)(a) to (j);
regulation 1B(q)	imposed.	imposed;
after regulation 1B(q)		(r) section 208JG, 208LB, 208LC or 208LD.
regulation 1B, at the end		(2) An offence against any of the following provisions of the Criminal Code, as in force before the commencement of Part 2 of the <i>Criminal Justice Legislation Amendment (Sexual Offences) Act 2023</i> , is an offence of violence: (a) section 130 or 131; (b) section 131A, unless a custodial sentence is imposed;

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
		(c) 188(2)(k).
<i>Liquor Act 2019</i>		
section 209(1)(ba)	133, 192,	
section 209(1)(ba), after "200,"		208H, 208HA, 208HB, 208NA,
<i>Local Court (Criminal Procedure) Act 1928</i>		
section 4, definition <i>serious violence offence</i>	whole definition	<i>serious violence offence</i> means: (a) an offence against any of the following provisions of the Criminal Code that is punishable by imprisonment for 5 or more years: (i) Part V, Division 2; (ii) Part VI, Divisions 3 to 6A; (iii) Part VIA; (iv) section 218; (v) another provision prescribed by regulation; or (b) an offence against Part V, Division 2 or Part VI, Division 5 of the Criminal Code, as in force

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
		before the commencement of Part 2 of the <i>Criminal Justice Legislation Amendment (Sexual Offences) Act 2023</i> , that was punishable by imprisonment for 5 or more years.
<i>Personal Violence Restraining Orders Act 2016</i>		
section 4(a)	whole paragraph	<p>(a) an offence against any of the following provisions of the Criminal Code:</p> <p>(i) Part V, Division 2;</p> <p>(ii) Part VI, Divisions 3 to 6A;</p> <p>(iii) Part VIA, other than section 208NA;</p> <p>(iv) section 218;</p> <p>(v) another provision prescribed by regulation; or</p> <p>(ab) an offence against Part V, Division 2 or Part VI, Division 5 of the Criminal Code, as in force before the</p>

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
		commencement of Part 2 of the <i>Criminal Justice Legislation Amendment (Sexual Offences) Act 2023</i> ; or
<i>Private Security (Crowd Controllers) Regulations 1996</i>		
regulation 3(a)	132, 192, 192B,	
regulation 3(a), after "196,"		208H, 208HA, 208HB, 208J, 208JA, 208JB, 208JC, 208JD, 208JE, 208JF, 208JG,
after regulation 3(c)		(ca) an offence against section 132, 188(2)(k), 192 or 192B as in force before the commencement of Part 2 of the <i>Criminal Justice Legislation Amendment (Sexual Offences) Act 2023</i> ;
<i>Private Security (Security Firms) Regulations 1996</i>		
regulation 2(a)	132, 192, 192B,	
regulation 2(a), after "196,"		208H, 208HA, 208HB, 208J, 208JA, 208JB, 208JC, 208JD, 208JE, 208JF, 208JG,
after regulation 2(c)		(ca) an offence against section 132, 188(2)(k), 192 or

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
		192B as in force before the commencement of Part 2 of the <i>Criminal Justice Legislation Amendment (Sexual Offences) Act 2023</i> ;
<i>Private Security (Security Officers) Regulations 1996</i>		
regulation 2(a)	132, 192, 192B,	
regulation 2(a), after "196,"		208H, 208HA, 208HB, 208J, 208JA, 208JB, 208JC, 208JD, 208JE, 208JF, 208JG,
after regulation 2(c)		(ca) an offence against section 132, 188(2)(k), 192 or 192B as in force before the commencement of Part 2 of the <i>Criminal Justice Legislation Amendment (Sexual Offences) Act 2023</i> ;
<i>Summary Offences Regulations 1994</i>		
regulation 9	125E, 131A, 132,	125D,
regulation 9, after "202D,"		208JA, 208JC, 208JD, 208JE, 208JF, 208JG, 208JI,
regulation 9, entry for Criminal Code, at the end		sections 125E, 131A and 132 as in force before the commencement of

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
		Part 2 of the <i>Criminal Justice Legislation Amendment (Sexual Offences) Act 2023</i>
Youth Justice Regulations 2006		
regulation 3A(1)(a)	127(1), (2) or (3), 134(1), (2) or (3), 192, 192B,	
regulation 3A(1)(a), after "201,"		208H, 208HA, 208HB, 208J, 208JA, 208JB, 208MA
after regulation 3A(2)		(3) For section 38A(a) of the Act, an offence against section 127(1), (2) or (3), 134(1), (2) or (3), 192 or 192B of the Criminal Code, as in force before the commencement of Part 2 of the <i>Criminal Justice Legislation Amendment (Sexual Offences) Act 2023</i> , is prescribed.