

## 474.21 Defences in respect of child pornography material

- (1) A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for use through a carriage service) because of engaging in particular conduct if the conduct:
- (a) is of public benefit; and
  - (b) does not extend beyond what is of public benefit.

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

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

- (2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:
- (a) enforcing a law of the Commonwealth, a State or a Territory; or
  - (b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or
  - (c) the administration of justice; or
  - (d) conducting scientific, medical or educational research that has been approved by the Minister in writing for the purposes of this section.
- (3) A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for use through a carriage service) if:
- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
  - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

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

- (4) A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for use through a carriage service) if the person engages in the conduct in good faith for the sole purpose of:
- (a) assisting the Australian Communications and Media Authority to detect:
    - (i) prohibited content (within the meaning of Schedule 7 to the *Broadcasting Services Act 1992*); or
    - (ii) potential prohibited content (within the meaning of that Schedule);in the performance of the Authority's functions under Schedule 5 or Schedule 7 to that Act; or
  - (b) manufacturing or developing, or updating, content filtering technology (including software) in accordance with:
    - (i) a recognised alternative access-prevention arrangement (within the meaning of clause 40 of Schedule 5 to the *Broadcasting Services Act 1992*); or
    - (ii) a designated alternative access-prevention arrangement (within the meaning of clause 60 of that Schedule).

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