



# Possessing child exploitation material – charges and penalties

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In Australia, there are a wide variety of [criminal offences relating to unlawfully dealing with child pornography](#), also known as child exploitation material (“CEM”). These include the offences of unlawful possession, access, distribution and making of CEM; the most common offence being that of possession.

CEM offenders can be prosecuted under both state and commonwealth (federal) laws. Commonwealth laws generally focus on CEM offences involving the use of electronic “carriage services”; i.e., telephone or internet, or the importation of such material.

Queensland’s laws also deal with CEM stored or viewed electronically, as well as hard copy material.

This article focuses only on the Queensland legislation in respect of CEM, and in particular, the offence of *possessing* CEM.

## What is child exploitation material?

Under the Queensland Criminal Code, CEM is defined as material likely to cause offence to a reasonable adult that describes or depicts a person, or a representation of a person, who is, or apparently is, a child under 16 years:

- in a sexual context, including engaging in a sexual activity;
- in an offensive or demeaning context; or
- being subjected to abuse, cruelty, or torture.

From this definition, it can be seen that CEM can include photographs, videos, and even stories, cartoons, and drawings.

# What does the prosecution have to prove in Queensland?

For a person to be found guilty of possessing CEM in Queensland, the prosecution must prove that:

1. the person possessed CEM – which involves “custody or control” over the material, and
2. the person *knowingly* possessed the material.

## Categorisation of child exploitation material

In recent years, Queensland authorities have replaced the previously used Oliver Scale with the Interpol Baseline System to assess and categorise CEM.

The Interpol system uses a four-tiered system which differentiates between different types of illegal CEM. The system is used to assist in assessing a particular image or video to be categorised according to the nature of the activity depicted.

## Penalties for possessing child exploitation material

Queensland's *Penalties and Sentences Act 1992* provides that when a court is considering an appropriate sentence to impose upon a person for a criminal offence, imprisonment should generally be seen as a last resort, allowing a person to remain in the community. That principle does not apply to CEM offences.

In 2020, significant changes were made to the law in relation to CEM offences specifically. The primary amendment was that a sentence of imprisonment for a CEM offence is no longer to be seen as a last resort and a sentence of actual imprisonment must be imposed unless there are “exceptional circumstances”. This change has made sentences of imprisonment much more common for CEM offences.

The maximum penalty for a charge of possessing CEM, without a circumstance of aggravation, is 14 years imprisonment. If it is alleged you used a hidden network or an anonymising service in committing the offence, the penalty increases to 20 years imprisonment.

## What are considered exceptional circumstances when imposing a penalty for possession of child exploitation material?

In determining what amounts to “exceptional circumstances”, the court must take into account a variety of factors, such as:

- the age or apparent age of the subject child;
- the nature of the offence and material;
- the defendant's conduct or behaviour in relation to the exploitation material;
- any relationship between the defendant and subject child;

- the need to deter similar behaviour;
- the defendant's prospects of rehabilitation, including medical or psychiatric treatment;
- the defendant's antecedents, age and character;
- any remorse or lack of remorse of the defendant;
- any medical, psychiatric, prison or other relevant reports concerning the defendant.

If the court makes a finding that exceptional circumstances can be demonstrated, then the defendant is not automatically subjected to a term of actual imprisonment, and the [court can consider sentencing options](#) such as wholly suspended terms of imprisonment, immediate parole, or probation.

## The Child Protection Offender Register for reportable offenders

If you plead guilty or if you are found guilty of an offence relating to possessing, sharing or supplying CEM, it is a requirement that you are placed on the Child Protection Offender Register.

The Child Protection Offender Register keeps details of all registered sexual offenders and is accessible to police officers.

If you are placed on the register, you will be subject to certain conditions, such as notifying the police of your residential address, limiting your contact with children, etc. If you fail to comply with those conditions, you may be charged with a further criminal offence.

## Get help from a criminal lawyer

Gilshenan &Luton are experienced criminal lawyers who are very familiar with [child exploitation offences](#). We regularly assist defendants who have been charged with offences of this nature.

If you've been charged with or are being investigated for offences related to child exploitation material, it is crucial that you seek legal advice and assistance early.

## Contacting Gilshenan &Luton Criminal Defence Lawyers

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