



Australian Capital Territory

Crimes (Intimate Image Abuse) Amendment Act 2017

A2017-22

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au



Australian Capital Territory

Crimes (Intimate Image Abuse) Amendment Act 2017

A2017-22

An Act to amend the *Crimes Act 1900*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Crimes (Intimate Image Abuse) Amendment Act 2017*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the *Crimes Act 1900*.

4 Offences against Act—application of Criminal Code etc Section 7A, note 1

insert

- s 72C (Non-consensual distribution of intimate images)
- s 72D (Distribution of intimate image of young person)
- s 72E (Threaten to capture or distribute intimate images)
- s 72H (Court may order rectification)

5 New part 3A

insert

Part 3A Intimate image abuse

72A Definitions—pt 3A

In this part:

breasts, of a female or a transgender or intersex person who identifies as a female, means the person's breasts whether covered by underwear or bare.

engaged in a private act means—

- (a) in a state of undress; or
- (b) using the toilet, showering or bathing; or
- (c) engaged in an act of a sexual nature of a kind not ordinarily done in public.

genital or anal region, of a person, means the person's genital or anal region whether covered by underwear or bare.

intimate image, of a person—

- (a) means a still or moving image, in any form—
 - (i) of the person's genital or anal region; or
 - (ii) for a female or a transgender or intersex person who identifies as a female—of the person's breasts; or
 - (iii) of the person engaged in a private act; or
 - (iv) that depicts the person in a sexual manner or context; and
- (b) includes an image, in any form, that has been altered to appear to show any of the things mentioned in paragraph (a).

72B Meaning of *distribute*—pt 3A

- (1) In this part:

distribute—

- (a) includes any of the following conduct, whether done in person, electronically, digitally or in any other way:
 - (i) send, supply, show, exhibit, transmit or communicate to another person;
 - (ii) make available for viewing or access by another person, whether in person or by electronic, digital or any other means; but

- (b) does not include conduct mentioned in paragraph (a) done by a person solely in the person's capacity as an internet service provider, internet content host or a carriage service provider.
- (2) A person is taken to have distributed an image whether or not another person views or accesses the image.

72C Non-consensual distribution of intimate images

A person (the *offender*) commits an offence if—

- (a) the offender distributes an intimate image of another person; and
- (b) the offender—
 - (i) knows the other person does not consent to the distribution; or
 - (ii) is reckless about whether the other person consents to the distribution.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

72D Distribution of intimate image of young person

- (1) A person commits an offence if—
 - (a) the person distributes an intimate image of another person; and
 - (b) the other person is under 16 years old.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

-
- (2) It is a defence to a prosecution for an offence against this section if the defendant proves that—
- (a) at the time of the offence—
 - (i) the defendant believed on reasonable grounds that the person against whom the offence is alleged to have been committed was at least 16 years old; or
 - (ii) the person against whom the offence is alleged to have been committed was—
 - (A) at least 10 years old; and
 - (B) not more than 2 years younger than the defendant; and
 - (b) the person against whom the offence is alleged to have been committed consented to the distribution of the intimate image.

Note The defendant has a legal burden in relation to the matters mentioned in this section (see [Criminal Code](#), s 59).

72E Threaten to capture or distribute intimate images

- (1) A person commits an offence if—
- (a) the person threatens to capture or distribute an intimate image of another person; and
 - (b) the person—
 - (i) intends the other person to fear that the threat would be carried out; or
 - (ii) is reckless about whether the other person would fear that the threat would be carried out.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

- (2) In a prosecution for an offence against this section—
- (a) a threat may be made by any conduct whether explicit, implicit, conditional, or unconditional; and
 - (b) it is not necessary to prove that the other person actually feared that the threat would be carried out; and
 - (c) a person may be found guilty even if carrying out the threat is impossible.

Examples—par (c)

- the image does not exist
- technical limitations prevent the person from capturing or distributing the image

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) In this section:

capture intimate image—a person ***captures an intimate image*** of another person if the person captures an image of the other person, with a camera or by any other means, in such a way that—

- (a) a recording is made of the image; or
- (b) the image is capable of being transmitted in real time, with or without retention or storage, in a physical or electronic form; or
- (c) the image is otherwise capable of being distributed.

72F Consent—pt 3A

- (1) For this part, and without limiting the grounds on which it may be established that consent is negated, a person does not consent to the distribution of an intimate image of the person by another person (the ***offender***) if the consent is caused by a circumstance set out in section 67 (1) (a) to (j).

- (2) Also, a person does not consent to the distribution of an intimate image of the person by the offender only because the person—
- (a) consented to the offender distributing the image or another intimate image on another occasion; or
 - (b) consented to someone else distributing the image or another intimate image; or
 - (c) consented to the offender or someone else distributing the image or another intimate image in a different way to the way the offender distributed the image; or
 - (d) distributed the image or another intimate image to someone else.

72G Exceptions for reasonable distribution

- (1) An offence against section 72C or section 72D does not apply to the distribution of an intimate image—
- (a) by a law enforcement officer acting reasonably in the performance of the officer's duty; or
 - (b) for a lawful and common practice of law enforcement, criminal reporting or a legal proceeding; or
 - (c) for the purpose of reporting unlawful conduct to a law enforcement officer; or
 - (d) by a licensed security provider acting reasonably in the performance of a security activity; or
 - (e) for a scientific, medical or educational purpose; or

Example

a patient consents to her a doctor providing an image of a mole on her breast to another doctor for a second opinion about the mole

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (f) by a person in the course of reasonably protecting premises owned by the person; or
- (g) of a child or other person incapable of giving consent in circumstances in which a reasonable person would regard the distribution of the intimate image as acceptable; or

Example

sharing a photograph or movie of a naked newborn relative

- (h) in circumstances or for a purpose prescribed by regulation.
- (2) Nothing in this section prevents a person being found guilty of an offence under or because of the [Criminal Code](#), part 2.4 (Extensions of criminal responsibility).
- (3) In this section:

law enforcement officer means—

- (a) a police officer; or
- (b) a member of the staff of the Australian Crime Commission established by the [Australian Crime Commission Act 2002](#) (Cwlth).

licensed security provider means a person who holds a licence under the [Security Industry Act 2003](#).

security activity—see the [Security Industry Act 2003](#), section 7.

72H Court may order rectification

- (1) This section applies if a person is found guilty of an offence against—
- (a) section 72C (Non-consensual distribution of intimate images); or

- (b) section 72D (Distribution of intimate image of young person);
or
- (c) section 72E (Threaten to capture or distribute intimate images).
- (2) The court may order the person to take reasonable action to remove, retract, recover, delete or destroy an intimate image involved in the offence within a stated period.
- (3) The person commits an offence if the person fails to comply with the order.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

6 Dictionary, new definitions

insert

breasts, for part 3A (Intimate image abuse)—see section 72A.

distribute, for part 3A (Intimate image abuse)—see section 72B.

engaged in a private act, for part 3A (Intimate image abuse)—see section 72A.

genital or anal region, for part 3A (Intimate image abuse)—see section 72A.

intimate image, for part 3A (Intimate image abuse)—see section 72A.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 7 June 2017.

2 Notification

Notified under the [Legislation Act](#) on 29 August 2017.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Crimes (Intimate Image Abuse) Amendment Bill 2017, which was passed by the Legislative Assembly on 16 August 2017.

Clerk of the Legislative Assembly

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