

2017

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Jeremy Hanson)

# Crimes (Intimate Image Abuse) Amendment Bill 2017

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Offences against Act—application of Criminal Code etc Section 7A, note 1	2
5 New part 3A	2
6 Dictionary, new definitions	9



2017

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Jeremy Hanson)

# Crimes (Intimate Image Abuse) Amendment Bill 2017

---

## A Bill for

An Act to amend the *Crimes Act 1900*

---

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

1 **1 Name of Act**  
2 This Act is the *Crimes (Intimate Image Abuse) Amendment Act*  
3 *2017*.

4 **2 Commencement**  
5 This Act commences on the day after its notification day.  
6 *Note* The naming and commencement provisions automatically commence on  
7 the notification day (see [Legislation Act](#), s 75 (1)).

8 **3 Legislation amended**  
9 This Act amends the *Crimes Act 1900*.

10 **4 Offences against Act—application of Criminal Code etc**  
11 **Section 7A, note 1**  
12 *insert*  
13 • s 72D (Non-consensual distribution of intimate images)  
14 • s 72E (Threaten to capture or distribute intimate images)

15 **5 New part 3A**  
16 *insert*

## 17 **Part 3A Intimate image abuse**

18 **72A Definitions—pt 3A**  
19 In this part:  
20 *capture visual data*—a person *captures visual data* of another  
21 person if the person captures an image of the other person by a  
22 camera or any other means in such a way that—  
23 (a) a recording is made of the images; or

1 (b) the images are capable of being transmitted in real time with or  
2 without retention or storage in a physical or electronic form; or

3 (c) the images are otherwise capable of being distributed.

4 ***engaged in a private act*** means—

5 (a) in a state of undress; or

6 (b) using the toilet, showering or bathing; or

7 (c) engaged in sexual activity of a kind not ordinarily done in  
8 public; or

9 (d) engaged in any other like activity.

10 ***image*** means a still or moving image, whether or not altered.

11 ***intimate image*** means—

12 (a) an image of a person's private parts, or of a person engaged in  
13 a private act, in circumstances in which a reasonable person  
14 would reasonably expect the person to be given privacy; or

15 (b) an image that has been altered to appear to show a person's  
16 private parts, or a person engaged in a private act, in  
17 circumstances in which a reasonable person would reasonably  
18 expect the person to be given privacy.

19 ***private parts***, of a person, means—

20 (a) a person's genital or anal area, whether covered by underwear  
21 or bare; or

22 (b) for a female or a transgender or intersex person who identifies  
23 as a female—the person's breasts whether covered by  
24 underwear or bare.

1    **72B        Meaning of *distribute*—pt 3A**

2           (1) In this part:

3                *distribute*—

4                (a) includes any of the following conduct, whether done in person,  
5                        electronically, digitally or in any other way:

6                        (i) send, supply, exhibit, transmit or communicate to another  
7                                person;

8                        (ii) make available for viewing or access by another person,  
9                                whether in person or by electronic, digital or any other  
10                                means; but

11                (b) does not include conduct mentioned in paragraph (a) done by a  
12                        person solely in the person’s capacity as an internet service  
13                        provider, internet content host or a carriage service provider.

14           (2) A person is taken to have distributed an image to another person  
15                whether or not the other person views or accesses the image.

16    **72C        Meaning of *consent*—pt 3A**

17           (1) In this part, *consent*, of a person, for distribution of an intimate  
18                image of the person by another person, means free and voluntary  
19                agreement to the distribution of the image expressed or  
20                communicated by the person to the other person.

21           (2) However—

22                (a) a person who consents to the distribution of an image on a  
23                        particular occasion must not, by reason only of that consent, be  
24                        taken to have consented to the distribution of the image or any  
25                        other image on another occasion; and

- 1 (b) a person who consents to the distribution of an image to a  
2 particular person or in a particular way must not, by reason  
3 only of that consent, be taken to have consented to the  
4 distribution of the image or any other image to another person  
5 or in another way; and
- 6 (c) a person who distributes an image of themselves is not, by reason  
7 only of the distribution, to be regarded as having consented to  
8 any other distribution of the image.
- 9 (3) Without limiting the grounds on which it may be established that the  
10 consent of a person to the distribution of an intimate image is  
11 negated, the consent is negated if any of the following apply:
- 12 (a) the person is under 16 years old;
- 13 (b) the person does not have the capacity to consent, whether as a  
14 result of cognitive incapacity or otherwise;
- 15 (c) the person does not have an opportunity to consent because the  
16 person is unconscious, asleep, or otherwise physically helpless;
- 17 (d) the person consents because of actual or threatened violence,  
18 force or terror directed at the person or someone else;
- 19 (e) the person consents because the person is unlawfully detained.

## 20 **72D Non-consensual distribution of intimate images**

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

- 22 (a) the offender distributes an intimate image of another person  
23 (the *affected person*); and
- 24 (b) the offender—
- 25 (i) knows the other person does not consent to the  
26 distribution; or

1 (ii) is reckless as to whether the other person consents to the  
2 distribution.

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

5 **72E Threaten to capture or distribute intimate images**

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

7 (a) the offender threatens to capture visual data of a person (the  
8 *threatened person*); and

9 (b) the visual data involves an intimate image of the threatened  
10 person; and

11 (c) the offender intends the threatened person to fear that the threat  
12 would be carried out.

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

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

16 (a) the offender threatens to distribute visual data of a person (the  
17 *threatened person*); and

18 (b) the visual data involves an intimate image of the threatened  
19 person; and

20 (c) the offender intends the threatened person to fear that the threat  
21 would be carried out.

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

24 (3) In a prosecution—

25 (a) for an offence against this section generally—

26 (i) a threat may be made by any conduct whether explicit,  
27 implicit, conditional, or unconditional; and



- 1 (ii) it is not necessary to prove that the threatened person  
2 actually feared that the threat would be carried out; and
- 3 (b) for an offence against subsection (2)—it does not matter  
4 whether the visual data that forms part of a threat to distribute  
5 the data existed when the threat was made.

6 **72F Exception to s 72D for consenting young people**

7 An offence against section 72D does not apply to a person (the  
8 *defendant*) if—

- 9 (a) the defendant is younger than 18 years old when the offence is  
10 alleged to have been committed; and
- 11 (b) the person on whom the offence is alleged to have been  
12 committed (the *complainant*) was at the time of the offence—
- 13 (i) at least 14 years old; and  
14 (ii) not more than 2 years younger than the defendant; and
- 15 (c) the complainant consented to the conduct required for the  
16 offence.

17 *Note* The defendant has an evidential burden in relation to the matters  
18 mentioned in this section (see [Criminal Code](#), s 58).

19 **72G Exceptions for reasonable distribution**

- 20 (1) An offence against section 72D or section 72E does not apply to the  
21 distribution of an intimate image—
- 22 (a) by a law enforcement officer acting reasonably in the  
23 performance of the officer's duty; or
- 24 (b) for a lawful and common practice of law enforcement, criminal  
25 reporting or a legal proceeding; or
- 26 (c) for the purpose of reporting unlawful conduct to a law  
27 enforcement officer; or

- 1 (d) for a scientific, medical or educational purpose; or
- 2 **Example**
- 3 a patient consents to her a doctor providing an image of a mole on her
- 4 breast to another doctor for a second opinion about the mole
- 5 *Note* An example is part of the Act, is not exhaustive and may extend,
- 6 but does not limit, the meaning of the provision in which it
- 7 appears (see [Legislation Act](#), s 126 and s 132).
- 8 (e) in circumstances in which a reasonable person would consider
- 9 the conduct of the defendant acceptable taking into account
- 10 any of the following:
- 11 (i) the nature and content of the image;
- 12 (ii) the circumstances in which the image was distributed;
- 13 (iii) the age, cognitive capacity, vulnerability or other relevant
- 14 circumstances of the person shown in the image;
- 15 (iv) the extent to which the defendant's actions affect the
- 16 privacy of the person depicted in the image;
- 17 (v) the relationship between the defendant and the person
- 18 shown in the image; or
- 19 (f) in circumstances or for a purpose prescribed by regulation.
- 20 (2) Nothing in this section prevents a person being found guilty of an
- 21 offence under or because of the [Criminal Code](#), part 2.4 (Extensions
- 22 of criminal responsibility).
- 23 (3) In this section:
- 24 ***law enforcement officer*** means—
- 25 (a) a police officer; or
- 26 (b) a member of the staff of the Australian Crime Commission
- 27 established by the [Australian Crime Commission Act 2002](#)
- 28 (Cwlth).

1            *licensed security provider* means a person who holds a licence  
2            under the *Security Industry Act 2003*.

3            *security activity*—see the *Security Industry Act 2003*, section 7.

#### 4    **72H        Court may order rectification**

5            (1) This section applies if a person is found guilty of an offence against  
6            section 72D (Non-consensual distribution of intimate images).

7            (2) The court may order the person to take reasonable action to remove,  
8            retract, recover, delete or destroy an intimate image involved in the  
9            offence within a stated period.

10          (3) The person commits an offence if the person fails to comply with  
11          the order.

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

#### 14    **72I        DPP consent for prosecution of children**

15          A proceeding for an offence against this part must not be  
16          commenced without the consent of the director of public  
17          prosecutions if the person charged with the offence was under the  
18          age of 16 years at the time the offence is alleged to have been  
19          committed.

### 20    **6            Dictionary, new definitions**

21          *insert*

22          *capture visual data*, for part 3A (Intimate image abuse)—see  
23          section 72A.

24          *consent*, of a person, for part 3A (Intimate image abuse)—see  
25          section 72C.

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

- 1                *engaged in a private act*, for part 3A (Intimate image abuse)—see  
2                section 72A.
- 3                *image*, for part 3A (Intimate image abuse)—see section 72A.
- 4                *intimate image*, for part 3A (Intimate image abuse)—see  
5                section 72A.
- 6                *private parts*, of a person, for part 3A (Intimate image abuse)—see  
7                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                                  2017.

### 3        **Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

---