

**2017**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**CRIMES (INVASION OF PRIVACY) AMENDMENT BILL 2017**

**EXPLANATORY STATEMENT**

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## OUTLINE

### Background

New technologies and the ubiquitousness of cameras - on our phones, on our computers, in our houses and stores - has enabled increased levels of photography and video and audio recording of people without their knowledge or consent. Social media and the internet make these images easy to share and distribute widely. Our Commonwealth and ACT laws have not evolved to adequately and consistently address the use and impacts of these changes and innovations in technology. This Bill seeks to protect our community from the non-consensual sharing of intimate images and documents.

In May 2017, a meeting of Attorneys-General from across Australia and New Zealand endorsed a National Statement of Principles Relating to the Criminalisation of the Non-Consensual Sharing of Intimate Images (“National Principles”). These National Principles outlined a model for the form and substance of criminal offences that each state and territory should investigate.

This explanatory statement relates to the Crimes (Invasion of Privacy) Amendment Bill 2017 (“the Bill”) as presented in exposure draft format to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly. The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

### Purpose of the Bill

The Crimes (Invasion of Privacy) Amendment Bill 2017 provides amendments to address a number of criminal justice legislation issues that have arisen in the ACT through advancements in technology and associated cultural changes. The Bill will amend criminal laws to make key improvements to the criminal justice system to provide protections for our community from the non-consensual sharing of intimate images and documents.

In summary, the Bill will:

1. create a new Part of the *Crimes Act 1900* (“the Act”) to directly address invasions of privacy;
2. move and amend section 61B of the Crimes Act (that was originally inserted to address certain “voyeuristic behaviours” including the phenomenon known as “upskirting”);
3. create two new offences being the non-consensual distribution and the threat of distribution of intimate images;
4. create a new power for the Courts to order the take-down or rectification of intimate images that have been distributed non-consensually;
5. clarify and expand the definition of consent for both invasions of privacy and sexual offences;
6. create a new provision that would protect victims of “stealthing” and other deceptive sexual practices;

7. clarify child pornography offences to ensure that images consensually shared by young people will not result in their prosecution, similar to the 2-year rule for sexual offences;
8. implement further technical and procedural amendments to ensure an efficient and clear criminal law; and
9. incorporate the National Statement of Principles relating to the Criminalisation of the Non-Consensual Sharing of Intimate Images agreed to by the ACT Attorney-General on 19 May 2017.

These National Principles, as published on the Commonwealth Attorney-General's website as at 19 May 2017 are:

#### *General principles*

1. *The distribution of, or threat to distribute, intimate images without consent is unacceptable and breaches community standards of acceptable behaviour.*
2. *The protection and respect of victims and minimisation of harm to victims is essential in responding to the non-consensual sharing of intimate images.*
3. *The non-consensual sharing of intimate images may involve a variety of responses as each jurisdiction considers appropriate, including criminal offences of specific or general application, civil responses, education, awareness, prevention and support for those impacted.*
4. *Responses to the non-consensual sharing of intimate images should be designed to encompass the broad range of conduct, motivations, relationships and means of distribution that such behaviour can involve.*

#### *Scope of criminal offences*

5. *Any criminal offence framework for non-consensual sharing of intimate images should not capture conduct that does not warrant criminal sanctions, such as the sharing of intimate images between consenting adults and the initial taking or sharing of the intimate image by the person depicted in the image.*
6. *Any offence framework should consider whether, and if so, how, it applies to distributors who are minors. An offence should be clearly distinct from criminal conduct already captured by existing child sexual exploitation laws.*
7. *Jurisdictions should consider whether offences address threats to distribute intimate images without consent, irrespective of whether or not the intimate image exists.*
8. *Offences should contemplate existing and emerging technologies.*
9. *Concepts of sharing or distribution should be kept broad and inclusive to capture the various ways in which intimate images are or might in the future be shared, including public distribution and one-on-one sharing.*
10. *The form of the intimate images covered by the offences should be defined broadly and inclusively to cover still images and visual recordings.*
11. *Concepts equivalent to a reasonable expectation of privacy or community standards of acceptable behaviour may be reflected in an offence as each jurisdiction deems appropriate.*

#### *Consent and harm*

12. *Consideration should be given to the merits and risks of offence structures to address the lack of consent to distribution by the person depicted in the intimate image as each jurisdiction deems appropriate.*

- a. *The issue of consent may be addressed in a variety of ways, whether by inclusion as an element of the offence, as an available defence, or considered when determining whether conduct is contrary to community standards of acceptable behaviour.*
  - b. *Where an offence addresses the issue of a lack of consent, criminal liability may apply where a defendant either knew that there was no consent to distribute the image or was reckless as to whether consent had been obtained.*
13. *An offence for sharing intimate images should not require proof that harm has been caused to the person depicted in the image by the sharing of the intimate image.*
14. *If appropriate for the relevant jurisdiction, an offence for sharing intimate images should not require proof of an intention to cause harm or distress or another outcome.*

#### *Investigative powers*

15. *Noting that the non-consensual sharing of intimate images is predominantly committed using technology and telecommunications devices, jurisdictions should have regard to the sufficiency of investigative powers under procedural laws to allow adequate investigation.*
16. *Consideration should be given to the challenges of enforcement, noting the online nature of the majority of this conduct and its prevalence across jurisdiction boundaries.*

#### *Penalties*

17. *Penalties should reflect a proportionate and necessary response to the seriousness of this criminal conduct. Depending upon the jurisdiction and recognising judicial discretion in sentencing practices, aggravating factors that increase the subjective seriousness of the conduct may be relevant to penalties.*

### **Human Rights Considerations**

We recognise this Bill will have human rights implications or engages and places limitations on the following rights:

- Protection from torture and cruel, inhumane or degrading treatment (s10(1)(b));
- Privacy and Reputation (s12) ;
- Freedom of Expression (s16);
- Liberty and Security of the Person (s18);
- Children in the Criminal Process (s20); and
- Rights in Criminal Proceedings (s22).

A draft of this Bill has been presented for comment to the ACT Human Rights Commission.

**DETAIL**

**Clause 1 - Name of Act**

This is a technical clause that names the short title of the Act. The name of the Act would be the *Crimes (Invasion of Privacy) Amendment Act 2017*.

**Clause 2 - Commencement**

This clause provides that the Act commences the day after it is notified.

**Clause 3 - Legislation Amendment**

This clause identifies the legislation amended by the Act.

**Clause 4 - Offences against the Act - application of Criminal Code etc**

This clause removes reference to section 61B (Intimate observations or capturing visual data etc) from the clause regarding application of general principles of criminal responsibility under chapter 2 of the Criminal Code. This is discussed further at Clause 6.

**Clause 5 - Section 7A, note 1**

This clause inserts the new offences made by this Act to apply general principles of criminal responsibility under chapter 2 of the Criminal Code. The five offences inserted are:

- section 72C (Non-consensual intimate observations etc—generally);
- section 72D (Non-consensual intimate observations etc—intimate body areas);
- section 72E (Non-consensual distribution of intimate documents);
- section 72G (Threat to distribute intimate document); and
- section 72H (Court may order rectification).

**Clause 6 - Intimate observations or capturing visual data etc**

This clause removes the offence under section 61B (Intimate observations or capturing visual data etc) of the Act. This offence will be reformed as sections 72C and 72D of the Act.

**Clause 7 - New section 66A**

This clause inserts an exception to certain child sex offences being (per subsection (1)):

- section 64(1) (Using child for production of child exploitation material etc)

- section 65(1) (Possessing child exploitation material)
- section 66(1) (Using electronic means to suggest a young person commit or watch an act of a sexual nature)
- section 66(2) (Using electronic means to send or make available pornographic material to a young person)

“Child exploitation material” is defined as “anything that represents (a) the sexual parts of a child; or (b) a child engaged in an activity of a sexual nature; or (c) someone else engaged in an activity of a sexual nature in the presence of a child; substantially for the sexual arousal or sexual gratification of someone other than the child”. On a plain English reading of this clause, the definition of “child exploitation material” could include intimate images consensually shared between two young people, who, for example, may be in a sexually-active relationship. This change seeks to ensure that young people consensually engaging in this behaviour are not at risk of prosecution.

This clause adds an exception to address concerns from family violence and human rights advocates over the risk of young people who consent to the sharing of sexual material between each other but are nonetheless under the age of majority being prosecuted under child pornography offences. The exclusion operates in a similar manner to the “similarity of age” defence at clause 5.2.17 of the *Model Criminal Code*. The Australian Law Reform Commission investigated these similarity in age provisions at length in part 25 of the “Family Violence - A National Legal Response” Report (ALRC Report 114).

#### *5.2.17 Defence—similarity of age*

- 1) A person is not criminally responsible for an offence against this Division in respect of an act if, at the time of the act, the child concerned was over the age of [no defence age] and:*
  - a) the person was not more than 2 years older than the child, and*
  - b) the person was not more than 2 years younger than the child.*
- 2) An offence of incitement under Part 2.4 is committed by a person who urges another person to engage in an act of sexual penetration or indecent touching or an indecent act even if the other person does not commit an offence by doing so because of subsection (1).*

Recent research from the Queensland Sentencing Advisory Council suggests that nearly half of all those prosecuted for child pornography offences are under the age of 17. While the exact breakdown of those caught nor the proportion that were causing real harm with exploitative material is not known, this exclusion and the provisions under Part 3A - Invasions of Privacy addresses this issue before it becomes a problem in the ACT.

This clause protects young people engaging in consensual behaviour and/or sharing consensually-produced and consensually-shared images. It is important that our criminal law focuses on wrongdoing and the potential for harm rather than on what consenting young people do regardless of their age.

## **Clause 8 - Section 67 heading**

This clause changes the heading for section 67 from “Consent” to “Meaning of consent—sexual offence consent provisions”. A definition for consent now appears in both Part 3-Sexual Offences and Part 3A-Invasion of Privacy, and it is appropriate that the heading of the section reflects this.

## **Clause 9 - Consent - Section 67(1)**

This clause inserts a definition of consent with respect to sexual offences and substitutes a list of factors that are to be considered by the Courts when determining when consent can be negated.

This clause will be replicated by clause 72B to ensure that the definition of consent is consistent between sexual offences and invasions of privacy offences.

The current section 67(1) defines consent only by what would negate consent (for example, intoxication or the threat of violence), rather than defining consent by what it is and then listing negating factors.

### ***Subsection 67(1) - Definition of Consent***

This clause would define consent by five elements:

Consent for the purpose of consenting to sexual intercourse with another person or to committing an act of indecency by or with another person is:

1. an agreement;
2. that was free and voluntary;
3. expressed or communicated;
4. with a positive action; and
5. by the person to another person.

This definition would help protect victims of sexual offences by placing the onus of proving that consent on the alleged offender insofar as to prove that a positive communication or expression of consent was given by the victim.

### ***Subsection 67(1A) - Factors that Negate Consent***

This clause replicates the list of negating factors from the current section 67(1) and adds at subclause (1A)(g): “a mistaken belief as to the nature of the act, whether by fraud, deceit, or failure to provide reasonable information about the nature of the act”.

Subclause (1A)(g) would ensure that consent is taken to be negated where consent was only given on the provision that certain conditions agreed by both parties would be met and where those conditions are not. For example, where consent was given on the basis that a condom would be used during intercourse and the alleged offender removes the condom during intercourse without informing the other person, the other person’s consent is assumed to have been revoked.



## **Clause 10 - Section 67(3)**

This clause is a consequential amendment to rectify numbering due to these new provisions.

## **Clause 11 - New section 67(4)**

This clause inserts a definition of “sexual offence provision” to enumerate which offences clause 7 subclause (1) affects, being:

- section 54 (sexual intercourse without consent);
- section 54(3)(b) (reasonable belief defence to sexual intercourse with a young person between the ages of 10 and 16);
- section 60 (act of indecency without consent);
- section 61(3)(b) (reasonable belief defence to acts of indecency with young people between the ages of 10 and 16); and
- section 66A(2)(c) (exceptions to offences for consenting young people)

The previous section 67(1) enumerated those offences by an in-text list being “For sections 54, 55 (3) (b), 60 and 61 (3) (b)”. This drafting was not aligned with plain English drafting principles.

This clause creates a clear list of offences the definition of consent applies to.

## **Clause 12 - New part 3A**

This clause creates a new part of the Act being “Invasion of privacy”, and creates five new offences being:

- section 72C (non-consensual intimate observations etc - generally);
- section 72D (non-consensual intimate observations etc - intimate body areas);
- section 72E (non-consensual distribution of intimate documents);
- section 72G (threat to distribute intimate document); and
- section 72H (Court may order rectification)

Previous section 61B was moved from Part 3 - Sexual Offences to new Part 3A in recognition that the behaviours that previous section 61B and the new offences seek to address are not necessarily sexual in nature.

An example of an intimate observation that is not sexual in nature would be taking pictures of dead bodies in a morgue as interfering with a corpse has been viewed by the Courts as indecent. This also recognises that the motivation behind these offences is not necessarily sexual gratification but about power, humiliation or shame.

## Section 72A - Definitions - part 3A

This section creates a list of definitions of terms that apply to the whole of Part 3A. Definitions that require further explanations have been included below.

***device** does not include spectacles, contact lenses or a similar device when used by someone with impaired sight only to overcome the impairment.*

The phrase “only to overcome the impairment” is to ensure that wearable technology devices such as Google Glass are excluded if they are only being used to correct vision and not for any other purpose. Similarly, as advancements in medical technology develop and bionic eye implants become more common, these implants are strictly speaking transmitting data but exist solely to correct eyesight.

A device could include a drone, a camera, a smartphone, binoculars, etc.

This definition incorporates Principle 8 of the National Principles.

***distribute**—*

*a) includes—*

*i) communicate, share, show, exhibit, send, supply, upload or transmit; and*

*ii) make available for access by another person; but*

*b) does not include distribution by a person solely in the person’s capacity as an internet service provider, internet content host or a carriage service provider.*

This definition includes “share, show” which do not appear in similar legislation. Research has indicated that the Victorian definition being “communicate, exhibit, send, supply, upload” may not cover “old-fashioned” distribution methods, including letterboxing, postering, or the physical showing of a photograph to another person.

This definition incorporates Principle 9 of the National Principles.

***intimate body area, of a person, means—***

*a) the person’s genital or anal region whether covered by underwear or bare; or*

*b) for a female or a transgender or intersex person who identifies as a female—the person’s breasts whether covered by underwear or bare.*

This definition transfers the existing language used in previous section 61B(5)(a) into a definition. This term is used multiple times in the new legislation and to aid clarity, it is now a defined term.

***intimate document, in relation to a person, means a document that shows, visually or otherwise—***

*a) the person engaged in sexual activity; or*

*b) the person in a sexual manner or context; or*

*c) an intimate body area; or*

*d) an area of the person's body that, in the person's circumstances, is private in nature.*

*Examples—document*

- 1. digitally altered image*
- 2. a text message*
- 3. an audio recording*

*Examples—par (d)*

- 1. if a Muslim woman wears a hijab, parts of the woman's body without the hijab*
- 2. if a person is changing in the change room of a gymnasium, parts of the person's body that are usually clothed about which the person may feel particularly self-conscious because of age, weight, injury or surgical procedure*

The term “intimate” has been adopted over other terms like “sexual” to ensure that the offences encompass the range of behaviours designed to blackmail, humiliate or embarrass the victim, or to generate notoriety, financial gain or sexual gratification for the perpetrator. Likewise, limiting the offence to “sexual” imagery, as some jurisdictions suggest, constrains enforcement and fails to capture all wrongful behaviours.

The term “intimate” for the purpose of this section includes (at subsection (d)) “an area of the person's body that, in the person's circumstances, is private in nature”. This approach has been adopted to recognise that the term “intimate” is subjective and can mean different things to different cultures and individuals. As an example, we recognise that there is inherent harm in the sharing of an image of a woman not wearing a hijab who would normally wear one and whose culture or personal circumstances lead her to wear a hijab in photographs.

The term “document” has been adopted as research and subsequent inquiries have identified that a wide definition must be adopted to encompass the multitude of forms that intimate documents and images can take. Using the term “document” ensures that text messages and audio recordings are included under this offence, recognising that not all intimate documents are images. Images are also documents for the purpose of this section.

This definition incorporates Principles 4, 10 and 11 of the National Principles.

***Section 72B - Meaning of Consent - part 3A***

Sections 72B(1) and 72B(2) replicate the definition of consent from sections 67(1) and 67(1A) but for “an intimate act” rather than “non-consensual intercourse and indecency provisions”.

“Intimate act” is defined by section 72B(5) as:

- a) the observation, or capturing of visual data, of an intimate body area of a person by another person; or,*
- b) the distribution of an intimate document relating to a person by another person.*

Both “intimate body area” and “intimate document” are defined in section 72A.

This section ensures that the meaning of consent is consistent between Parts 3 (Sexual Offences) and 3A (Invasions of Privacy).

#### *Subsection 72B(3) - Consent of Young People*

This section relates to young people - defined at section 72B(5) as “a child 10 years old or older but less than 16 years old. The clause reads:

*The consent of a young person to an intimate act by another young person is not presumed to be negated only because of the age of the young person giving consent.*

As a general legal principle, it is assumed that persons under 16 years old cannot give consent to sexual acts. This principle becomes problematic when dealing with young people who have reached sexual maturity and are sexually active but have not yet reached the age of majority.

Principle 6 of the National Principles notes that “any offence framework should consider whether, and if so, how, it applies to distributors who are minors” and “an offence should be clearly distinct from criminal conduct already captured by existing child sexual exploitation laws” recognising that the treatment and exploitation of minors through technology-facilitated abuse is a major problem.

Current child sex legislation makes some attempts at ensuring two people under 16 years old who are within two years difference in age who consent to sexual activities (notwithstanding negating factors) with each other are not prosecuted under these offences. This exception only applies to sexual intercourse and indecent act offences and not child pornography offences, creating a risk that young people may be prosecuted under those child pornography provisions.

A report by the Queensland Sentencing Advisory Council, identified that, between 2006 and 2016, of the 3,035 people prosecuted under child pornography offences, 1,470 were between 10 and 16 years old and most of those related to “sexting” - filming and distributing explicit material of people under 17 years old. While we recognise that this problem is less pronounced in the ACT, it is desirable to avoid a situation where children remain at risk of prosecution for undertaking consensual sexual activities.

This legislation attempts to rectify some of these issues.

#### ***Section 72C - Non-consensual intimate observations etc-generally***

Sections 72C and 72D break up the two offences in previous section 61B “intimate observations or capturing visual data etc” into two clearly separate sections. This has two effects:

- The new section clearly delineates a general invasion of privacy by the observation or capture of indecent visual data and the observation or capture of “intimate body areas”; and
- The new section implements the recommendations from the research that a separate offence for the capture or observation of intimate acts that are not encompassed by the definition of “intimate body areas” is also a criminal offence.

This section in practice replicates previous section 61B(1).

### ***Section 72D - Non-consensual intimate observations etc-intimate body areas***

This section replicates previous section 61B(5) and is the complementary offence to section 72C.

### ***Section 72E - Non-consensual distribution of intimate documents***

This section implements recommendations 2 and 3 of the 2016 Senate Report into “the phenomenon colloquially referred to as 'revenge porn'”, specifically creating an offence that criminalises “knowingly or recklessly sharing intimate images without consent”.

In the construction of this offence, an “activity-centric” conception of the offence was adopted that focuses on wrongfulness of the act of sharing intimate documents non-consensually.

This was chosen over an “intent-centric” conception that focuses on the perpetrators’ motivation which fails to encompass the broad range of motivations behind this behaviour (Principles 4 and 14 of the National Principles).

It was also preferred over a “harm-centric” conception that focuses on harm to the person. This fails to recognise that not all of the behaviours encompassed by these offences may result in harm per se and are wrongful in and of themselves (Principle 13 of the National Principles).

For these reasons, these offences do not require proof of intention to cause harm nor proof of harm.

### ***Subsection 72E(4) - Reasonable Belief to Consent or Impossibility of Consent***

Subsection (4) refers to certain defences to the offence. It ensures that individuals who either reasonably believed the other person consented to the distribution, or who did not and could not reasonably be expected to know that the other person did not consent to the distribution will not be prosecuted. For example, a news broadcaster broadcasting footage of a public art performance featuring a number of naked participants would not be liable for prosecution as the broadcaster could reasonably assume each participant gave their consent.

### ***Section 72F - Exceptions to offences***

This section details the exceptions/exclusions to the offences contained in Part 3A. This section incorporates Principle 5 of the National Principles.

Subsection (1) applies to section 72C “Non-consensual intimate observations etc-generally” and section 72D “Non-consensual intimate observations-intimate body areas”. This section replicates the previous section 61B(8).

Subsection (1)(a) provides an exception to observing data that was previously captured, or in other words, the original observation is the criminal act, and subsequent observations (for example, by being shown non-consensual intimate images by another person) is not itself criminal. This ensures that the original observation/capture and the subsequent disclosure are criminal behaviours, but subsequent, or even inadvertent, observations are not. Subsection (1)(b) lists the professions/activities where behaviours that would otherwise be criminal under sections 72C and 72D are either

necessary for the function of society or are generally considered socially acceptable. The main examples used are a mother taking a photograph of her newborn baby and uploading it to social media, and a doctor taking a photograph of a mole on a patient's body for the purpose of seeking a second medical opinion from a colleague.

Subsection (2) applies to section 72E “Non-consensual distribution of intimate documents”. This section synthesises the exclusions from subsection (1)(b) and additional exclusions recommended by Drs Henry, Powell and Flynn in their submission to the 2016 NSW Justice Discussion Paper “the sharing of intimate images without consent”, citing Danielle Citron’s 2014 book “Hate Crimes in Cyberspace” at page 153.

The exclusions are:

- a) “by a law enforcement officer acting reasonably in the performance of the officer’s duty” - to protect law enforcement officers in the collection of evidence or in undertaking surveillance. Note that this exclusion is subject to a reasonableness test and is held to common standard for law enforcement in the ACT;
- b) “for a lawful and common practice of law enforcement, criminal reporting or a legal proceeding” - to protect individuals in legal proceedings who might bring certain images to the Court’s or the Police’s attention;
- c) “for the purpose of reporting unlawful conduct to a law enforcement officer” - to protect members of the public who, in the reporting conduct to law enforcement or a legal representative. This protects individuals reporting complaints to local civil authorities or the Police;
- d) “for a scientific, medical or education purpose” - to protect researchers, academics, health professionals and teachers who may use intimate images or documents reasonably for these above purposes;
- e) “in the public interest” - to protect whistleblowers or concerned members of the public who, using conventional public interest disclosure processes, release intimate images or documents to government officials or the media. For example, teachers who have confiscated images from students to provide to school administration; and
- f) “in circumstances or for a purpose prescribed by regulation” - allows flexibility for additional or specific exclusions as necessary.

Subsection (3) replicates previous section 61B(9) and ensures that the exclusions do not prevent an alleged offender being found guilty by extension of criminal responsibility under the *Criminal Code 2002*. It is unclear what the purpose of this section originally was, but for the sake of consistency, it has been adopted along with the remainder of the previous section 61B.

Subsection (4) defines “law enforcement officer” as a “police officer” or a staff member of the Australian Crime Commission, a “licensed security provider” as a person licensed under the *Security Industry Act 2003*, and “security activity” as activities under section 7 of the *Security Industry Act 2003*.

### ***Section 72G - Threat to distribute intimate document***

This section implements recommendations 2 and 3 of the 2016 Senate Report into “the phenomenon colloquially referred to as ‘revenge porn’”, specifically creating an offence that criminalises the “threatening to take and/or share

intimate images without consent, irrespective of whether or not those images exist” and Principle 7 of the National Principles.

The offence is the threat to distribute an intimate document, where a reasonable person would see the distribution as an invasion of privacy of the person depicted in the document, and that the offender intended for, or was reckless resulting in, the threatened person fearing the threat would be carried out. The offence does not require proof that any such document exists.

This offence further ensures that the threat does not necessarily need to be aimed at the person depicted in the document. For example, the offence would cover threatening a person with the distribution of nude images of their partner.

### ***Section 72H - Court may order rectification***

This section gives the Courts power to compel a person found to have committed an offence under sections 72C, 72D or 72E to take reasonable action to “remove, retract, recover, delete or destroy” instances of the intimate documents in question. This section incorporates Principles 15 and 16 of the National Principles.

This provision relies on the offenders’ capability to remove, retract, etc the documents, which may be cached, downloaded, repackaged, etc, and beyond the ability of the offender to stop further distribution. It is likely enforceability will remain an issue.

This section attempts to address concerns about enforceability and cross-jurisdictional issues. Generally, the power to administer telecommunications and enforce takedown orders lies with the Commonwealth, therefore this legislation cannot create a power to compel a third party (for example, an Internet Service Provider) to take-down or block access to offending documents.

Failure to comply with an order under section 72H will result in a further offence under section 72H(3) and could result in up to 50 penalty units, 6 months’ imprisonment or both - in line with the penalty for failure to appear.

### ***Section 72I - DPP’s approval for prosecution of children***

This section ensures that the prosecution of young people under the age of 16 years old cannot be commenced without the approval of the Director of Public Prosecutions. This is a further safeguard to ensure that young people are not at risk of unwarranted prosecution, and implements a recommendation by the NSW inquiry and the ACT Human Rights Commissioner.

### **Clause 13 - Dictionary, note 2**

This clause inserts into the Dictionary to the *Crimes Act* a note that the term “document” is defined in the *Legislation Act*, dictionary - part 1.

### **Clause 14 - Dictionary, new definitions**

This clause inserts references to the new definitions created by this Bill.