



New South Wales

Crimes Amendment (Intimate Images) Act 2017 No 29

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Crimes Amendment (Intimate Images) Act 2017 No 29

Act No 29, 2017

An Act to amend the *Crimes Act 1900* to create offences relating to the non-consensual recording and distribution of intimate images; and for other purposes. [Assented to 27 June 2017]

The Legislature of New South Wales enacts:

1 Name of Act

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

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Crimes Act 1900 No 40

[1] Section 91I Definitions

Omit the definition of *private parts* from section 91I (1). Insert instead:

private parts means:

- (a) a person's genital area or anal area, whether bare or covered by underwear, or
- (b) the breasts of a female person, or transgender or intersex person identifying as female.

[2] Part 3, Division 15C

Insert after Division 15B:

Division 15C Recording and distributing intimate images

91N Definitions

(1) In this Division:

distribute includes:

- (a) send, supply, exhibit, transmit or communicate to another person, or
- (b) make available for viewing or access by another person, whether in person or by electronic, digital or any other means.

engaged in a private act means:

- (a) in a state of undress, or
- (b) using the toilet, showering or bathing, or
- (c) engaged in a sexual act of a kind not ordinarily done in public, or
- (d) engaged in any other like activity.

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

intimate image means:

- (a) an image of a person's private parts, or of a person engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy, or
- (b) an image that has been altered to appear to show a person's private parts, or a person engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy.

private parts means:

- (a) a person's genital area or anal area, whether bare or covered by underwear, or
- (b) the breasts of a female person, or transgender or intersex person identifying as female.

record an image means record, take or capture an image, by any means.

(2) A person may be regarded as having distributed an image to another person whether or not the other person views or accesses the image.

91O Meaning of consent in intimate image offences

- (1) This section applies to all offences under this Division.
- (2) A person consents to the recording of an intimate image if the person freely and voluntarily agrees to the recording of the intimate image.

- (3) A person consents to the distribution of an intimate image if the person freely and voluntarily agrees to the distribution of the intimate image.
- (4) A person who consents to the recording or distribution of an image on a particular occasion is not, by reason only of that fact, to be regarded as having consented to the recording or distribution of that image or any other image on another occasion.
- (5) A person who consents to the distribution of an image to a particular person or in a particular way is not, by reason only of that fact, to be regarded as having consented to the distribution of that image or any other image to another person or in another way.
- (6) A person who distributes an image of himself or herself is not, by reason only of that fact, to be regarded as having consented to any other distribution of the image.
- (7) A person does not consent to the recording or distribution of an intimate image:
 - (a) if the person is under the age of 16 years or does not otherwise have the capacity to consent, including because of cognitive incapacity, or
 - (b) if the person does not have the opportunity to consent because the person is unconscious or asleep, or
 - (c) if the person consents because of threats of force or terror (whether the threats are against, or the terror is instilled in, that person or any other person), or
 - (d) if the person consents because the person is unlawfully detained.
- (8) This section does not limit the grounds on which it may be established that a person does not consent to the recording or distribution of an intimate image.

91P Record intimate image without consent

- (1) A person who intentionally records an intimate image of another person:
 - (a) without the consent of the person, and
 - (b) knowing the person did not consent to the recording or being reckless as to whether the person consented to the recording,is guilty of an offence.
Maximum penalty: 100 penalty units or imprisonment for 3 years, or both.
- (2) A prosecution of a person under the age of 16 years for an offence against this section is not to be commenced without the approval of the Director of Public Prosecutions.

91Q Distribute intimate image without consent

- (1) A person who intentionally distributes an intimate image of another person:
 - (a) without the consent of the person, and
 - (b) knowing the person did not consent to the distribution or being reckless as to whether the person consented to the distribution,is guilty of an offence.
Maximum penalty: 100 penalty units or imprisonment for 3 years, or both.
- (2) A prosecution of a person under the age of 16 years for an offence against this section is not to be commenced without the approval of the Director of Public Prosecutions.

91R Threaten to record or distribute intimate image

- (1) A person who threatens to record an intimate image of another person:
 - (a) without the consent of the other person, and
 - (b) intending to cause that other person to fear that the threat will be carried out,is guilty of an offence.
Maximum penalty: 100 penalty units or imprisonment for 3 years, or both.
- (2) A person who threatens to distribute an intimate image of another person:
 - (a) without the consent of the other person, and
 - (b) intending to cause that other person to fear that the threat will be carried out,is guilty of an offence.
Maximum penalty: 100 penalty units or imprisonment for 3 years, or both.
- (3) A threat may be made by any conduct, and may be explicit or implicit and conditional or unconditional.
- (4) A person may threaten to distribute an image whether or not the image exists.
- (5) In proceedings for an offence against this section, the prosecution is not required to prove that the person alleged to have been threatened actually feared that the threat would be carried out.
- (6) A prosecution of a person under the age of 16 years for an offence against this section is not to be commenced without the approval of the Director of Public Prosecutions.

91S Court may order rectification

- (1) A court that finds a person guilty of an offence against section 91P or 91Q may order the person to take reasonable actions to remove, retract, recover, delete or destroy any intimate image recorded or distributed by the person in contravention of the section within a period specified by the court.
- (2) A person who, without reasonable excuse, contravenes an order made under this section is guilty of an offence.
Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.
- (3) An offence against this section is a summary offence.

91T Exceptions

- (1) A person does not commit an offence against section 91P or 91Q if:
 - (a) the conduct alleged to constitute the offence was done for a genuine medical or scientific purpose, or
 - (b) the conduct alleged to constitute the offence was done by a law enforcement officer for a genuine law enforcement purpose, or
 - (c) the conduct alleged to constitute the offence was required by a court or otherwise reasonably necessary to be done for the purpose of legal proceedings, or
 - (d) a reasonable person would consider the conduct of the accused person acceptable, having regard to each of the following (to the extent relevant):
 - (i) the nature and content of the image,

- (ii) the circumstances in which the image was recorded or distributed,
- (iii) the age, intellectual capacity, vulnerability or other relevant circumstances of the person depicted in the image,
- (iv) the degree to which the accused person's actions affect the privacy of the person depicted in the image,
- (v) the relationship between the accused person and the person depicted in the image.

(2) In this section:

law enforcement officer means a police officer or other person who exercises law enforcement functions under a law of this State, another State, a Territory or the Commonwealth.

[3] Section 428B Offences of specific intent to which Part applies

Insert in paragraph (b) of the Table, after the matter relating to section 91:

91P (intentionally record intimate image)

91Q (intentionally distribute intimate image)

Schedule 2 Amendment of other Acts

2.1 Child Protection (Working with Children) Act 2012 No 51

[1] Schedule 1 Assessment requirement triggers

Insert after clause 1 (4):

- (4A) A person has been convicted of an offence under section 91P, 91Q or 91R (1) or (2) of the *Crimes Act 1900*, being an offence committed against a child while the person was an adult.

[2] Schedule 1, clause 1 (5)

Omit “and (4)”. Insert instead “, (4) and (4A)”.

2.2 Crimes (Domestic and Personal Violence) Act 2007 No 80

Section 4 Meaning of “personal violence offence”

Insert “91P, 91Q, 91R,” after “87,” in section 4 (a).

2.3 Criminal Procedure Act 1986 No 209

[1] Section 268 Maximum penalties for Table 2 offences

Omit “or 61O (1) or (1A)” from section 268 (2) (a).

Insert instead “, 61O (1) or (1A), 91P, 91Q or 91R (1) or (2)”.

[2] Schedule 1 Indictable offences triable summarily

Omit “or 61O (1) or (1A)” from clause 1 of Table 2.

Insert instead “, 61O (1) or (1A), 91P, 91Q or 91R (1) or (2)”.

[Second reading speech made in—
Legislative Assembly on 24 May 2017
Legislative Council on 21 June 2017]