



New South Wales

Crimes Amendment (Intimate Images) Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crimes Act 1900* to create new offences to address the non-consensual sharing of intimate images (also known as revenge porn). The Bill provides that it will be an offence for a person to intentionally record or distribute, or threaten to record or distribute, an intimate image of another person without that person's consent. The maximum penalty will be imprisonment for 3 years or 100 penalty units, or both.

The Bill is part of the Government's response to the report by the Legislative Council Standing Committee on Law and Justice entitled "Remedies for the serious invasion of privacy in New South Wales" published in March 2016.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days appointed by proclamation.

Schedule 1 Amendment of Crimes Act 1900 No 40

Schedule 1 [2] inserts proposed Division 15C into Part 3 of the *Crimes Act 1900*. Proposed section 91N defines certain words and expressions used in the Division. **Intimate image** is defined to mean 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 and includes an altered image that appears 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** include a person's genital area or anal area (whether bare or covered by underwear) and breasts of a female person or of a transgender or intersex person identifying as female.

Proposed section 91O provides for the meaning of consent in the proposed offences.

Proposed section 91P makes it an offence to intentionally record an intimate image of another person without the consent of that person and knowing the person did not consent to the recording (or being reckless as to whether the person consented).

Proposed section 91Q makes it an offence to intentionally distribute an intimate image of another person without the consent of that person and knowing the person did not consent to the distribution (or being reckless as to whether the person consented).

Proposed section 91R makes it an offence to threaten to record or distribute an intimate image of another person without the consent of that person and intending to cause that other person to fear the threat will be carried out.

The maximum penalty for each offence is imprisonment for 3 years or 100 penalty units or both. The approval of the Director of Public Prosecutions will be needed for a prosecution for any of the offences against a person under the age of 16 years.

Proposed section 91S enables a court that finds a person guilty of an offence against proposed section 91P or 91Q to order the person to take reasonable action to remove, delete or destroy the intimate image concerned. It will be an offence to contravene such an order, with a maximum penalty of imprisonment for 2 years or 50 penalty units or both.

Proposed section 91T contains certain exceptions to the offences. The exceptions apply to conduct done for genuine medical or scientific purposes, law enforcement or legal proceedings and to conduct that a reasonable person would consider to be acceptable.

Schedule 1 [3] makes it clear that the new offences of intentionally recording or intentionally distributing an intimate image without consent are offences of specific intent under Part 11A of the *Crimes Act 1900*. This means that evidence that the accused person was intoxicated at the time of the offence may be taken into account in determining whether the person had the required intent for the offence. This is consistent with the general rule for offences of specific intent as expressed in section 428B of the *Crimes Act 1900*.

Schedule 1 [1] amends the definition of **private parts** in an offence relating to voyeurism for consistency with the definition used in the proposed Division.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Child Protection (Working with Children) Act 2012* to provide that a risk assessment is required under that Act for a person who is convicted of an offence under proposed section 91P, 91Q or 91R of the *Crimes Act 1900* where the offence is committed against a child while the person was an adult.

Schedule 2.2 amends the *Crimes (Domestic and Personal Violence) Act 2007* to provide that the new offences under proposed sections 91P, 91Q and 91R of the *Crimes Act 1900* are **personal violence offences** under the *Crimes (Domestic and Personal Violence) Act 2007* for the purposes of apprehended violence orders.

Schedule 2.3 amends the *Criminal Procedure Act 1986* to provide that the new offences under proposed sections 91P, 91Q and 91R of the *Crimes Act 1900* are indictable offences listed in Table 2, that is, they are to be dealt with summarily unless the prosecutor elects to have them dealt with on indictment. The maximum fine that may be imposed by the Local Court when dealing with the new offences will be 50 penalty units.