

NORTHERN TERRITORY OF AUSTRALIA

CRIMINAL CODE AMENDMENT (INTIMATE IMAGES) ACT 2018

Act No. 6 of 2018

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 6 of 2018

An Act to amend the Criminal Code

[Assented to 19 April 2018]
[Second reading 23 November 2017]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Criminal Code Amendment (Intimate Images) Act 2018*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the Criminal Code.

4 Section 1 amended

Section 1

insert (in alphabetical order)

distribute, for Part VI, Division 7A, see section 208AA.

image, for Part VI, Division 7A, see section 208AA.

intimate image, for Part VI, Division 7A, see section 208AA.

law enforcement officer, for Part VI, Division 7A, see section 208AA.

5 Section 149B amended

Section 149B

insert (in alphabetical order)

distribute, for Division 7A, see section 208AA.

image, for Division 7A, see section 208AA.

intimate image, for Division 7A, see section 208AA.

law enforcement officer, for Division 7A, see section 208AA.

6 Part VI, Division 7A inserted

After section 208

insert

Division 7A Distributing intimate images

208AA Definitions

In this Division:

distribute, in relation to an image, includes engaging in the following conduct, whether manually, electronically, digitally or in any other manner:

- (a) publish, exhibit, show, communicate, send, supply or transmit the image to another person;
- (b) make the image available for viewing or access by another person.

image means a moving or still image in any form.

Examples for definition image

1 A "jpeg" file stored on a computer.

2 A photo stored on a phone.

intimate image means an image that depicts or has been altered to appear to depict:

- (a) a person engaged in a sexual act of a kind not ordinarily seen in public; or

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- (b) a person in a manner or context that is sexual; or
 - (c) the genital or anal region of a person, whether bare or covered by underwear; or
 - (d) a breast, whether bare or covered by underwear, of a female person or of a transgender or intersex person who identifies as female.

law enforcement officer means:

- (a) a police officer or a member of the police force or police service of any State; or
- (b) a member of the Australian Federal Police; or
- (c) a member of staff of the Australian Crime Commission.

208AB Distribution of intimate image without consent

- (1) A person commits an offence if the person:
 - (a) intentionally distributes an image of another person; and
 - (b) the image is an intimate image and the person is reckless in relation to that circumstance; and
 - (c) the other person did not consent to the distribution and the person is reckless as to the lack of consent.

Maximum penalty: Imprisonment for 3 years.

- (2) Subsection (1) does not apply to the distribution of an intimate image in the following circumstances:
 - (a) to only the person depicted in the image;
 - (b) by a law enforcement officer acting reasonably in the performance of the officer's duty;
 - (c) for the purpose of reporting unlawful conduct to a law enforcement officer;
 - (d) when required by a court or reasonably required for the purpose of a legal proceeding;
 - (e) for a scientific, medical or educational purpose;
 - (f) by a person solely in the person's capacity as an internet service provider, internet content host or a carriage service provider;

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- (g) of a child, or other person incapable of giving consent, in circumstances that a reasonable person would regard as acceptable.

Example for subsection (2)(e)

A doctor sends an image of a female patient's breast to another doctor for a second opinion about the patient's medical condition.

Example for subsection (2)(g)

Sharing a photograph or movie of a naked newborn relative.

- (3) A person under the age of 16 years is taken to be incapable of consenting to the distribution of an intimate image of the person.
- (4) A person who consents to the distribution of an intimate image on a particular occasion is not, by reason only of that fact, to be regarded as having consented to the distribution of that image or any other image on another occasion.
- (5) A person who consents to the distribution of an intimate 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 intimate image of the person is not, by reason only of that fact, to be regarded as having consented to any other distribution of the image.
- (7) This section does not limit the grounds on which it may be established that a person does not consent to the distribution of an intimate image.
- (8) In this section:

consent means free and voluntary agreement.

208AC Threaten to distribute intimate images

- (1) A person commits an offence if the person:
- (a) intentionally threatens to distribute an intimate image of another person; and
- (b) intends the other person to fear that the threat would be carried out.

Maximum penalty: Imprisonment for 3 years.

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- (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 for subsection (2)(c)

1 *The image does not exist.*

2 *Technical limitations prevent the person from distributing the image.*

208AD Prosecution of child to be approved

A prosecution of a child for an offence against this Division must not be commenced without the consent of the Director of Public Prosecutions.

208AE Court may order rectification

- (1) A court may order a person found guilty by the court of an offence under this Division to take reasonable action to remove, retract, recover, delete or destroy any intimate images related to the offence within a stated period.
- (2) A person commits an offence if the person:
 - (a) knows the person is subject to an order under subsection (1); and
 - (b) intentionally engages in conduct; and
 - (c) the conduct results in non-compliance with the court order and the person is reckless in relation to that result.

Maximum penalty: Imprisonment for 2 years.

7 Schedule 1 amended

Schedule 1

insert (in numerical order)

Part VI (Offences against the person and related matters),
Division 7A (Distributing intimate images)

8 Repeal of Act

This Act is repealed on the day after it commences.