

Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Bill

Member's Bill

Explanatory note

General policy statement

Posting a digital communication of an intimate visual recording online, often referred to as revenge pornography, is a form of sexual exploitation that involves the intentional, non-consensual disclosure of intimate visual recordings of another person who is either naked, exposed, or engaged in an intimate sexual activity.

The personal cost of this public humiliation can be immense, especially as the victim's name and contact details are often published alongside the recordings. Unfortunately, some victims have attempted or committed suicide, and many experience mental health issues as a result. Socially, the unauthorised disclosure can harm a victim irreparably and expose them to the threat of being stalked, attacked, bullied and stigmatised. The unauthorised disclosure of intimate visual records is a form of gender-based violence as it affects women at a significantly higher rate, and societal consequences tend to fall more heavily on women victims. Studies have also indicated those in our Rainbow community, and people aged 16-29 are at a high risk of experiencing this type of sexual exploitation.

This Bill makes it an offence for a person to post a digital communication of intimate visual recordings of another person. For the commission of the offence, the person posting the digital communication must either have known that the victim had not expressly consented to the posting or had been reckless as to whether the victim had done so. Under this Bill, consent must be shown to be express, voluntary and informed. And, if consent is asserted, it must be specific to the posting that is the subject of proceedings outlined in this Bill. It also provides for the court to make orders to remove or disable the digital communication.

This Bill recognises that the non-consensual publication of an intimate visual image is in and of itself harmful because it involves a breach of trust and confidence as well as

a significant invasion of privacy. Thus the harm is implicit in the action. The Bill aims to prevent and mitigate harm caused to individuals by this form of sexual exploitation and to assist in the elimination all forms of violence against women.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the bill amends the Harmful Digital Communications Act 2015 (the **principal Act**).

Clause 4 inserts *new section 22A* into the principal Act. *New section 22A(1)* makes it an offence to post a digital communication that is an intimate visual recording, knowing or being reckless as to whether the subject of the recording has consented to it being shared. The consent must be given voluntarily and in full knowledge of how the intimate visual recording will be used on any specific occasion. Commission of the offence attracts a penalty of up to 3 years' imprisonment. In addition to the penalty imposed for the crime, the court may also make any of the orders that may be made by the District Court under section 19(1) of the principal Act.

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The Parliament of New Zealand enacts as follows:

- 1 Title**

This Act is the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Act **2020**.
- 2 Commencement** 5

This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act** 10

This Act amends the Harmful Digital Communications Act 2015 (the **principal Act**).
- 4 New section 22A inserted (Posting an intimate visual recording without consent)**

After section 22, insert:

22A Posting an intimate visual recording without consent

- (1) A person commits an offence if the person posts a digital communication that is an intimate visual recording—
- (a) knowing that the individual who is the subject of the recording (the **victim**) has not expressly consented to it being so posted; or 5
 - (b) being reckless as to whether the victim has so consented.
- (2) A person who commits an offence against this section is liable on conviction to,—
- (a) in the case of a natural person, imprisonment for a term not exceeding 3 years or a fine not exceeding \$50,000; 10
 - (b) in the case of a body corporate, a fine not exceeding \$200,000.
- (3) In addition to any penalty imposed on a person convicted under **subsection (2)**, a court may make any order that the District Court may make under section 19(1) of this Act that it thinks fit.
- (4) For the purposes of this section, **express consent** requires that consent is given voluntarily and in full knowledge of how the intimate visual recording will be used. 15
- (5) To avoid doubt, the fact that a victim has consented to the posting of an intimate visual recording on a particular occasion, or in a particular manner, is not to be regarded as express consent on any other occasion or in any other manner. 20