



Queensland

# **Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Act 2019**

**Act No. 1 of 2019**

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**An Act to amend the Criminal Code for particular purposes**

**[Assented to 21 February 2019]**





Queensland

# Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Act 2019

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**The Parliament of Queensland enacts—**

**1 Short title**

This Act may be cited as the *Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Act 2019*.

**2 Code amended**

This Act amends the Criminal Code.

**3 Amendment of s 1 (Definitions)**

Section 1—

*insert—*

*intimate image*, for part 4, chapter 22, see section 207A.

*prohibited visual recording*, for part 4, chapter 22, see section 207A.

**4 Amendment of s 207A (Definitions for this chapter)**

(1) Section 207A—

*insert—*

*intimate image*, of a person—

- (a) means a moving or still image that depicts—
  - (i) the person engaged in an intimate sexual activity that is not ordinarily done in public; or
  - (ii) the person's genital or anal region, when it is bare or covered only by underwear; or

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- (iii) if the person is female or a transgender or intersex person who identifies as female—the person’s bare breasts; and
- (b) includes an image that has been altered to appear to show any of the things mentioned in paragraph (a)(i) to (iii); and
- (c) includes an image depicting a thing mentioned in paragraph (a)(i) to (iii), even if the thing has been digitally obscured, if the person is depicted in a sexual way.

***prohibited visual recording***, of a person, means—

- (a) a visual recording of the person, in a private place or engaging in a private act, made in circumstances where a reasonable adult would expect to be afforded privacy; or
  - (b) a visual recording of the person’s genital or anal region, when it is bare or covered only by underwear, made in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region.
- (2) Section 207A, definition *state of undress*, paragraph (a), ‘female,’—

*omit, insert—*

female or a transgender or intersex person who identifies as female,

## **5 Insertion of new s 223**

After section 222—

*insert—*

### **223 Distributing intimate images**

- (1) A person who distributes an intimate image of another person—
  - (a) without the other person’s consent; and

- (b) in a way that would cause the other person distress reasonably arising in all the circumstances;

commits a misdemeanour.

*Examples of circumstances for subsection (1)(b)—*

- the circumstances surrounding the distribution of the intimate image
- the extent to which the distribution of the intimate image interferes with the other person's privacy
- the relationship, if any, between the person who distributes the intimate image and the other person

Maximum penalty—3 years imprisonment.

- (2) For subsection (1)(a), a child under the age of 16 years is incapable of giving consent.
- (3) For subsection (1)(b), it is immaterial whether the person who distributes the intimate image intends to cause, or actually causes, the other person distress.
- (4) It is a defence to a charge of an offence against subsection (1) to prove that—
- (a) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational, legal, medical, scientific or public benefit purpose; and
- (b) the person's conduct was, in the circumstances, reasonable for that purpose.
- (5) In this section—

**consent** means consent freely and voluntarily given by a person with the cognitive capacity to give the consent.

## **6 Amendment of s 227A (Observations or recordings in breach of privacy)**

- (1) Section 227A(1) and (2), penalty—

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*omit, insert—*

Maximum penalty—3 years imprisonment.

(2) Section 227A(3)—

*omit, insert—*

(3) In this section—

**consent** means consent freely and voluntarily given by a person with the cognitive capacity to give the consent.

**genital or anal region**, of a person, means the person's genital or anal region when it is bare or covered only by underwear.

## **7 Amendment of s 227B (Distributing prohibited visual recordings)**

(1) Section 227B(1), penalty—

*omit, insert—*

Maximum penalty—3 years imprisonment.

(2) Section 227B(2)—

*omit, insert—*

(2) In this section—

**consent** means consent freely and voluntarily given by a person with the cognitive capacity to give the consent.

## **8 Amendment of s 227C (Persons who are not criminally responsible for offences against ss 227A and 227B)**

(1) Section 227C, heading, after 'ss'—

*insert—*

**223,**

(2) Section 227C(1), after 'section'—

*insert—*



223,

- (3) Section 227C(2), ‘227A(1) or (2) or 227B(1) in relation to’—  
*omit, insert—*

223, 227A(1) or (2) or 227B(1) in relation to an intimate image or

## 9 Insertion of new ss 229A and 229AA

After section 229—

*insert—*

### **229A Threats to distribute intimate image or prohibited visual recording**

- (1) A person commits a misdemeanour if—
- (a) the person makes a threat to another person to distribute an intimate image or prohibited visual recording of the other person—
    - (i) without the other person’s consent; and
    - (ii) in a way that would cause the other person distress reasonably arising in all the circumstances; and
  - (b) the threat is made in a way that would cause the other person fear, reasonably arising in all the circumstances, of the threat being carried out.

*Examples of circumstances for subsection (1)—*

- the circumstances surrounding the threat
- the relationship, if any, between the person who makes the threat and the other person

Maximum penalty—3 years imprisonment.

- (2) A person commits a misdemeanour if—
- (a) the person makes a threat to another person (*person A*) to distribute an intimate image or prohibited visual recording of another person (*person B*)—

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- (i) without person B's consent; and
  - (ii) in a way that would cause either person A or person B distress reasonably arising in all the circumstances; and
- (b) the threat is made in a way that would cause person A fear, reasonably arising in all the circumstances, of the threat being carried out.

*Examples of circumstances for subsection (2)—*

- the circumstances surrounding the threat
- the relationship, if any, between the person who makes the threat and person A or person B

Maximum penalty—3 years imprisonment.

- (3) For subsections (1) and (2) it is immaterial whether—
- (a) the intimate image or prohibited visual recording exists or does not exist; or
  - (b) the person who makes the threat intends to cause, or actually causes, the fear mentioned in the subsection.
- (4) For subsections (1)(a)(i) and (2)(a)(i), a child under the age of 16 years is incapable of giving consent.
- (5) In this section—
- consent* means consent freely and voluntarily given by a person with the cognitive capacity to give the consent.

**229AA Rectification order—offence against s 223, 227A, 227B or 229A**

- (1) If a person is convicted of an offence against section 223(1), 227A(1) or (2), 227B(1) or 229A(1) or (2) the court may order the person to take reasonable action to remove, retract, recover, delete or destroy an intimate image or prohibited

visual recording involved in the offence within a stated period.

- (2) A person who fails to comply with an order made under subsection (1) commits a misdemeanour.

Maximum penalty—2 years imprisonment.

## 10 Insertion of new pt 9, ch 100

After section 741—

*insert—*

# Chapter 100 Transitional provision for Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Act 2019

## 742 Application of s 229AA

Section 229AA applies to an offender convicted of an offence against section 227A(1) or (2) or 227B(1) after the commencement, even if the offence was committed, or the offender was charged with the offence, before the commencement.

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