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

Member's Bill

As reported from the committee of the whole House

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

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

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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

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Harmful Digital Communications Act 2015 (the **principal Act**).

3A Section 4 amended (Interpretation)

(1) In section 4, insert in their appropriate alphabetical order:

post, in relation to a digital communication,—

(a) means to transfer, send, publish, disseminate, or otherwise communicate by means of a digital communication—

(i) any information, whether truthful or untruthful, about the victim; or

(ii) an intimate visual recording of ~~a victim~~ an individual; and

(b) includes an attempt to do anything referred to in **paragraph (a)**

~~**victim** means,—~~

~~(a) in relation to the posting of a digital communication that is an intimate visual recording, an individual who is the subject of the recording; or~~

~~(b) in relation to the posting of any other digital communication, an individual who is the target of a posted digital communication.~~

victim means,—

(a) in relation to section 22, an individual who is the target of a posted digital communication; and

(b) in relation to **section 22A**, an individual who is the subject of an intimate visual recording.

(2) In section 4, repeal the definition of **posts a digital communication**.

3B Section 20 amended (Court may vary or discharge order)

In section 20(1) and (2), replace "18 or 19" with "18, 19, or **22B**".

3C Section 21 amended (Offence of non-compliance with order)

In section 21(1), replace "18 or 19" with "18, 19, or **22B**".

3D Section 22 amended (Causing harm by posting digital communication)

Replace section 22(4) with:

(4) This section does not apply if the posted digital communication is an intimate visual recording to which the offence in **section 22A** applies.

4 New sections 22A and 22B inserted

After section 22, insert:

22A Posting intimate visual recording without consent

(1) A person commits an offence if the person, without reasonable excuse, posts a digital communication that is an intimate visual recording of a victim—

(a) knowing that the victim has not consented to the posting; or

(b) being reckless as to whether the victim has consented to the posting.

(1A) An individual under the age of 16 years cannot consent to the posting of an intimate visual recording of which they are the subject.

(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 2 years or a fine not exceeding $50,000:

(b) in the case of a body corporate, a fine not exceeding $200,000.

22B Court may make civil order during proceedings for offence under section 22A

(1) On application under this section and if the court considers it desirable to do so, the court conducting the proceedings for an offence under **section 22A** may make,—

(a) during the proceedings, 1 or more of the interim orders set out in **subsection (2)** against the defendant for the duration of the proceedings; and

(b) if the defendant is proven to have committed the offence, 1 or more of the orders set out in **subsection (3)** against the defendant.

(2) The following interim orders are available to the court under **subsection (1)(a)**:

(a) an order to take down or disable material:

(b) an order that the defendant cease or refrain from the conduct concerned:

(c) an order that the defendant not encourage any other persons to engage in similar communications towards the affected individual.

(3) The following orders are available to the court under **subsection (1)(b)**:

(a) an order to take down or disable material:

(b) an order that the defendant cease or refrain from the conduct concerned:

(c) an order that the defendant not encourage any other persons to engage in similar communications towards the affected individual:

(d) an order that a correction be published:

(e) an order that a right of reply be given to the affected individual:

(f) an order that an apology be published.

(4) In this section, a defendant is **proven to have committed** an offence under **section 22A** if—

(a) the defendant is convicted of the offence; or

(b) the defendant is found guilty of, or pleads guilty to, the offence, but is discharged without conviction under section 106 of the Sentencing Act 2002; or

(c) the Youth Court makes an order under section 282 of the Oranga Tamariki Act 1989 discharging the charge relating to the offence after finding that the offence was proved.

Legislative history

2 July 2020	Introduction (Bill 305–1)
10 March 2021	First reading and referral to Justice Committee
8 September 2021	Reported from Justice Committee (Bill 305–2)
10 November 2021	Second reading
15 February 2022	Committee of the whole House (Bill 305–3)

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