

Crimes (Intimate Covert Filming) Amendment Act 2006

Public Act 2006 No 75
Date of assent 4 December 2006

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Crimes (Intimate Covert Filming) Amendment Act 2006.

2 Commencement

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

3 Principal Act amended

This Act amends the Crimes Act 1961.

Part 1**Amendments to principal Act****4 New heading and sections 216G to 216N inserted**

The following heading and sections are inserted after section 216F:

“Intimate visual recordings

“216G Intimate visual recording defined

“(1) In sections 216H to 216N, **intimate visual recording** means a visual recording (for example, a photograph, videotape, or digital image) that is made in any medium using any device without the knowledge or consent of the person who is the subject of the recording, and the recording is of—

“(a) a person who is in a place which, in the circumstances, would reasonably be expected to provide privacy, and that person is—

“(i) naked or has his or her genitals, pubic area, buttocks, or female breasts exposed, partially exposed, or clad solely in undergarments; or

“(ii) engaged in an intimate sexual activity; or

- “(iii) engaged in showering, toileting, or other personal bodily activity that involves dressing or undressing; or
- “(b) a person’s naked or undergarment-clad genitals, pubic area, buttocks, or female breasts which is made—
 - “(i) from beneath or under a person’s clothing; or
 - “(ii) through a person’s outer clothing in circumstances where it is unreasonable to do so.
- “(2) In section 216H, intimate visual recording includes an intimate visual recording that is made and transmitted in real time without retention or storage in—
 - “(a) a physical form; or
 - “(b) an electronic form from which the recording is capable of being reproduced with or without the aid of any device or thing.

“216H Prohibition on making intimate visual recording

Everyone is liable to imprisonment for a term not exceeding 3 years who intentionally or recklessly makes an intimate visual recording of another person.

“216I Prohibition on possessing intimate visual recording in certain circumstances

- “(1) Everyone is liable to imprisonment for a term not exceeding 3 years who has in his or her possession an intimate visual recording—
 - “(a) for the purpose of publishing, exporting or selling the intimate visual recording; and
 - “(b) knowing it to be an intimate visual recording, or being reckless as to whether it is an intimate visual recording.
- “(2) Everyone is liable to imprisonment for a term not exceeding 1 year who, without reasonable excuse, has in his or her possession an intimate visual recording knowing it to be an intimate visual recording.

“216J Prohibition on publishing, importing, exporting, or selling intimate visual recording

- “(1) Everyone is liable to imprisonment for a term not exceeding 3 years who, knowing that a visual recording is an intimate vi-

sual recording, or being reckless as to whether a visual recording is an intimate visual recording,—

- “(a) publishes in New Zealand the intimate visual recording:
- “(b) imports into New Zealand the intimate visual recording:
- “(c) exports from New Zealand the intimate visual recording:
- “(d) sells the intimate visual recording.

“(2) In this section, unless the context otherwise requires,—

“**publishes** means any of the following

- “(a) displays by any means:
- “(b) sends to any person by any means:
- “(c) distributes by any means:
- “(d) conveys by electronic medium:
- “(e) stores electronically in a way that is accessible by any other person or persons

“**sells** means sells in a physical form or by electronic medium, and includes—

- “(a) offers for sale:
- “(b) agrees to sell.

“**216K Exceptions to prohibition in section 216J**

- “(1) Nothing in section 216J(1)(a), (b), or (c) applies to anything done by any person in the course of, or in connection with, exercising or performing any powers, duties, or functions under any enactment.
- “(2) Nothing in section 216J(1)(a) applies to any person by reason only of that person publishing an intimate visual recording to a person referred to in section 216N(1).
- “(3) Nothing in section 216J applies to any person who, not knowing or suspecting that a visual recording is an intimate visual recording, facilitates access to that recording by reason only of providing some or all of the means necessary for—
 - “(a) delivery of the recording in physical form (for example, by a postal operator or courier); or
 - “(b) transmission (other than by broadcasting) of the recording (for example, by a network operator or service provider providing only a network or facility through which a recording is transmitted); or

- “(c) storage of the recording electronically in a way that is accessible by any other person or persons.
- “(4) In subsection (3), unless the context otherwise requires,—
 - “**courier** means a person carrying on business as a courier
 - “**network operator** has the same meaning as in section 3(1) of the Telecommunications (Interception Capability) Act 2004
 - “**postal operator** has the same meaning as in section 2(1) of the Postal Services Act 1998
 - “**public data network** has the same meaning as in section 5 of the Telecommunications Act 2001
 - “**service provider** —
 - “(a) means a person providing Internet access, email access, or both of those facilities, by means of a public data network; but
 - “(b) does not include a network operator.

“**216L Disposal and forfeiture**

- “(1) Where any person is convicted of an offence against section 216H or section 216I or section 216J, the Court may, in addition to or instead of passing any other sentence or making any other order in respect of the offence, order that the intimate visual recording be destroyed within 10 working days from the making of the order, and that the recording in the meantime be impounded.
- “(2) Where any person is convicted of an offence against section 216H or section 216I or section 216J, the Court may, in addition to or instead of passing any other sentence or making any other order in respect of the offence, order that any equipment, goods, or other thing used in respect of the commission of the offence be forfeited to the Crown; and anything so forfeited must be sold, destroyed, or otherwise disposed of as the Minister of Justice directs.
- “(3) Before making an order under subsection (1) or subsection (2), the Court must give the following persons an opportunity to be heard:
 - “(a) the person convicted; and
 - “(b) any other person who, in the opinion of the Court, would be directly affected by the making of the order.

- “(4) If the Court is satisfied that the intimate visual recording that was the subject of the prosecution, or any equipment, goods, or other thing used in respect of the commission of the offence, should be delivered to a person other than the person convicted, it may so order.

“216M Effect of appeal on order made under section 216L

- “(1) If any person is convicted of an offence against section 216H or section 216I or section 216J, and any order is made under section 216L, the operation of the order is suspended,—
- “(a) in any case, until the expiration of the time prescribed in the Summary Proceedings Act 1957 or this Act for the filing of a notice of appeal or an application for leave to appeal; and
 - “(b) if a notice of appeal is filed within the time so prescribed, until the determination of the appeal; and
 - “(c) if the application for leave to appeal is filed within the time so prescribed, until the application is determined, and, if leave to appeal is granted, until the determination of the appeal.
- “(2) If the operation of any order is suspended until the determination of the appeal, the Court determining the appeal may, by order, cancel or vary the order.

“216N Protection from liability

- “(1) This section applies to the following persons:
- “(a) any member of the police; and
 - “(b) any Customs officer; and
 - “(c) any officer or employee of the New Zealand Security Intelligence Service; and
 - “(d) any employee of the Department of Corrections and any other employee exercising powers or functions under the Corrections Act 2004; and
 - “(e) any lawyer or agent—
 - “(i) giving legal advice in relation to an intimate visual recording; or
 - “(ii) giving legal advice, or making representations, in relation to any civil or criminal proceedings; and

- “(f) any other person or member of a class of persons prescribed in regulations made under this Act; and
 - “(g) the person who is the subject of an intimate visual recording.
- “(2) No person referred to in subsection (1)(g) commits an offence against section 216I or section 216J by possessing or publishing the intimate visual recording.
- “(3) No other person to whom this section applies commits an offence against section 216H or section 216I or section 216J(1)(a) or (b) or (c) by making, possessing, or publishing any intimate visual recording for the purpose of, or in the course of, carrying out the functions set out in subsection (5).
- “(4) Subsection (3) does not apply in respect of anything done in bad faith or without reasonable cause.
- “(5) The functions referred to in subsection (3) are functions relating to—
- “(a) the prevention, detection, investigation, prosecution, or punishment of offences:
 - “(b) the conduct of proceedings in any court or tribunal:
 - “(c) security or safety.
- “(6) Subsections (1) to (3) apply despite the fact that, but for this section, the act would have otherwise constituted an offence.
- “(7) Where a person to whom subsection (1)(a) to (f) applies has in his or her possession an intimate visual recording, the recording must not be kept longer than is required for the purpose of carrying out the functions referred to in subsection (5), and must then either be—
- “(a) made available to the person who is the subject of the recording, if that person requests; or
 - “(b) immediately destroyed if the person who is the subject of the recording makes no request under paragraph (a).”

Part 2

Amendments to other Acts

5 Amendment to Summary Proceedings Act 1957

Part 1 of Schedule 1 of the Summary Proceedings Act 1957 is amended by inserting, in their appropriate numerical order, the following items:

section 216H	Prohibition on making intimate visual recording
section 216I	Prohibition on possessing intimate visual recording in certain circumstances
section 216J	Prohibition on publishing, importing, exporting, or selling intimate visual recording

Legislative history

12 April 2005	Introduction (Bill 257-1)
5 May 2005	First reading and referral to Government Administration Committee
1 August 2005	Reported from Government Administration Committee
5 April 2006	Second reading
16 November 2006	Committee of the whole House (Bill 257-2)
23 November 2006	Third reading
