

Version  
as at 9 March 2022



## Harmful Digital Communications Act 2015

Public Act 2015 No 63  
Date of assent 2 July 2015  
Commencement see section 2

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This Act is administered by the Ministry of Justice.**

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

**1 Title**

This Act is the Harmful Digital Communications Act 2015.

**2 Commencement**

- (1) Sections 22 to 25 and Part 2 come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on the earlier of—
  - (a) a date appointed by the Governor-General by Order in Council; and
  - (b) 2 years after the date on which this Act receives the Royal assent.
- (3) One or more Orders in Council may be made under subsection (2) appointing different dates for different provisions.
- (4) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 2(2): sections 8 to 21 and 26 to 28 brought into force, on 21 November 2016, by clause 2 of the Harmful Digital Communications Act Commencement Order (No 2) 2016 (LI 2016/226).

Section 2(2): sections 3, 4, 5, and 6 brought into force, on 27 November 2015, by clause 2 of the Harmful Digital Communications Act Commencement Order 2015 (LI 2015/248).

Section 2(2): section 7 brought into force, on 20 May 2016, by clause 2 of the Harmful Digital Communications Act Commencement Order 2016 (LI 2016/90).

Section 2(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## Part 1

### Approved Agency and enforcement

#### Subpart 1—Purpose, interpretation, the Crown, and communication principles

#### 3 Purpose

The purpose of this Act is to—

- (a) deter, prevent, and mitigate harm caused to individuals by digital communications; and
- (b) provide victims of harmful digital communications with a quick and efficient means of redress.

#### 4 Interpretation

In this Act, unless the context otherwise requires,—

**applicant** means anyone who makes an application under section 11

**application** means an application to the District Court under section 15

**Approved Agency** or **Agency** means a person, organisation, department, or entity appointed as an Approved Agency under section 7

**chief executive** means the chief executive of the department that is for the time being responsible for the administration of this Act

**defendant**, in relation to an application made to, or an order made by, a court under this Act, means a person against whom an order is sought or made

**digital communication**—

- (a) means any form of electronic communication; and
- (b) includes any text message, writing, photograph, picture, recording, or other matter that is communicated electronically

**harm** means serious emotional distress

**individual** means a natural person

**intimate visual recording**—

- (a) means a visual recording (for example, a photograph, videotape, or digital image) that is made in any medium using any device with or without the knowledge or consent of the individual who is the subject of the recording, and that is of—
  - (i) an individual who is in a place which, in the circumstances, would reasonably be expected to provide privacy, and the individual is—

- (A) naked or has his or her genitals, pubic area, buttocks, or female breasts exposed, partially exposed, or clad solely in undergarments; or
- (B) engaged in an intimate sexual activity; or
- (C) engaged in showering, toileting, or other personal bodily activity that involves dressing or undressing; or
- (ii) an individual's naked or undergarment-clad genitals, pubic area, buttocks, or female breasts which is made—
  - (A) from beneath or under an individual's clothing; or
  - (B) through an individual's outer clothing in circumstances where it is unreasonable to do so; and
- (b) includes an intimate visual recording that is made and transmitted in real time without retention or storage in—
  - (i) a physical form; or
  - (ii) an electronic form from which the recording is capable of being reproduced with or without the aid of any device or thing

**IPAP** has the same meaning as in section 122A(1) of the Copyright Act 1994

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**online content host**, in relation to a digital communication, means the person who has control over the part of the electronic retrieval system, such as a website or an online application, on which the communication is posted and accessible by the user

**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 an individual; and
- (b) includes an attempt to do anything referred to in paragraph (a)

**professional leader** has the same meaning as in section 10(1) of the Education and Training Act 2020

**registered school** has the same meaning as in section 10(1) of the Education and Training Act 2020

**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.

Section 4 **application**: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 4 **post**: inserted, on 9 March 2022, by section 4(1) of the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Act 2022 (2022 No 3).

Section 4 **posts a digital communication**: repealed, on 9 March 2022, by section 4(2) of the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Act 2022 (2022 No 3).

Section 4 **professional leader**: amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Section 4 **registered school**: amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Section 4 **victim**: inserted, on 9 March 2022, by section 4(1) of the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Act 2022 (2022 No 3).

## 5 Act binds the Crown

This Act binds the Crown.

### *Communication principles*

## 6 Communication principles

- (1) The communication principles are—

### *Principle 1*

A digital communication should not disclose sensitive personal facts about an individual.

### *Principle 2*

A digital communication should not be threatening, intimidating, or menacing.

### *Principle 3*

A digital communication should not be grossly offensive to a reasonable person in the position of the affected individual.

### *Principle 4*

A digital communication should not be indecent or obscene.

### *Principle 5*

A digital communication should not be used to harass an individual.

### *Principle 6*

A digital communication should not make a false allegation.

### *Principle 7*

A digital communication should not contain a matter that is published in breach of confidence.

*Principle 8*

A digital communication should not incite or encourage anyone to send a message to an individual for the purpose of causing harm to the individual.

*Principle 9*

A digital communication should not incite or encourage an individual to commit suicide.

*Principle 10*

A digital communication should not denigrate an individual by reason of his or her colour, race, ethnic or national origins, religion, gender, sexual orientation, or disability.

- (2) In performing functions or exercising powers under this Act, the Approved Agency and courts must—
- (a) take account of the communication principles; and
  - (b) act consistently with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990.

Subpart 2—Enforcement provisions

*Approved Agency*

**7 Approved Agency**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
- (a) appoint as the Approved Agency for the purpose of this Act—
    - (i) any person or organisation:
    - (ii) any department:
    - (iii) any Crown entity:
  - (b) prescribe the functions of the Approved Agency that are in addition to the functions specified in section 8(1) and are related to the purpose of this Act:
  - (c) prescribe any reporting requirements, accountability measures, or other terms or conditions that the Approved Agency must comply with.
- (2) Before recommending the making of an Order in Council under subsection (1), the Minister must be satisfied that the appointee has the appropriate knowledge, skills, and experience to carry out some or all of the functions of the Approved Agency under this Act.
- (3) The Approved Agency holds office for the term specified in the order made under subsection (1).
- (4) A person is not to be regarded as being employed in the service of the Crown for the purposes of the Public Service Act 2020 or the Government Superannu-

ation Fund Act 1956 solely because of his or her appointment as the Approved Agency.

- (5) The Approved Agency is subject to the Ombudsmen Act 1975, the Official Information Act 1982, and the Public Records Act 2005 in respect of functions that the Agency or any delegate of the Agency performs under this Act.
- (6) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 7(4): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 7(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## 8 Functions and powers of Approved Agency

- (1) The functions of the Approved Agency are—
  - (a) to receive and assess complaints about harm caused to individuals by digital communications:
  - (b) to investigate complaints:
  - (c) to use advice, negotiation, mediation, and persuasion (as appropriate) to resolve complaints:
  - (d) to establish and maintain relationships with domestic and foreign service providers, online content hosts, and agencies (as appropriate) to achieve the purpose of this Act:
  - (e) to provide education and advice on policies for online safety and conduct on the Internet:
  - (f) to perform the other functions conferred on it by or under this Act, including functions prescribed by Order in Council made under section 7.
- (2) The Agency may, subject to any other enactment, seek and receive any information that the Agency considers will assist it in the performance of its functions.
- (3) The Agency may refuse to investigate, or cease investigating, any complaint if the Agency considers that—
  - (a) the complaint is trivial, frivolous, or vexatious; or



- (b) the subject matter or nature of the complaint is unlikely to cause harm to any individual; or
  - (c) the subject matter or nature of the complaint does not contravene the communication principles.
- (4) The Agency may decide not to take any further action on a complaint if, in the course of assessing or investigating the complaint, it appears to the Agency that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.
- (5) If the Agency decides not to take any further action on a complaint, it must notify the complainant of the right to apply to the District Court for an order under this Act.

## **9 Power of Approved Agency to delegate**

- (1) Subject to the approval of the Minister, the Approved Agency may delegate to any person or organisation any of its functions and powers except this power of delegation.
- (2) Before delegating any functions or powers, the Approved Agency must be satisfied that the delegate has the appropriate knowledge, skills, and experience to carry out those functions or powers.
- (3) A delegation—
- (a) must be in writing; and
  - (b) is subject to any restrictions and conditions specified by the Approved Agency that it thinks fit, including conditions that relate to the Approved Agency's obligations under section 7(5); and
  - (c) is revocable at any time, in writing; and
  - (d) does not prevent the performance or exercise of a function or power by the Approved Agency.
- (4) A person or organisation performing or exercising any delegated functions or powers may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (5) A person or organisation who acts under a delegation given under this section is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.
- (6) Any action or decision of a delegate under the delegation is treated as an action or decision of the Approved Agency under this Act.
- (7) A delegate must comply with all reasonable requests or requirements of the Approved Agency for the purpose of enabling the Agency to comply with the Ombudsmen Act 1975, the Official Information Act 1982, and the Public Records Act 2005 in respect of functions to which the delegation applies.

## **10 Protection for employees of Approved Agency**

- (1) This section applies if the Approved Agency is not a department or Crown entity.
- (2) If this section applies, no civil action lies against any employee of the Agency, or against any employee of a delegate of the Agency, for any act done or omitted by the Agency, or by the delegate, or by him or her, in good faith in the performance or intended performance of the functions, duties, or powers of the Agency.
- (3) However, subsection (2) does not prevent a person from filing an application for review under section 8 of the Judicial Review Procedure Act 2016 in relation to the exercise, refusal to exercise, or proposed or purported exercise by the Approved Agency of a statutory power within the meaning of that Act or otherwise affect the operation of that Act.

Section 10(3): amended, on 1 March 2017, by section 24 of the Judicial Review Procedure Act 2016 (2016 No 50).

### *Proceedings may be brought in District Court*

## **11 Who may bring proceedings**

- (1) Any of the following may apply to the District Court for an order under section 18 or 19:
  - (a) an individual (the **affected individual**) who alleges that he or she has suffered or will suffer harm as a result of a digital communication:
  - (b) a parent or guardian on behalf of the affected individual:
  - (c) the professional leader of a registered school or his or her delegate, if the affected individual is a student of that school and consents to the professional leader or delegate bringing the proceedings:
  - (d) the Police, if the digital communication constitutes a threat to the safety of an individual.
- (2) The chief coroner may apply for an order under section 18 or 19(1)(a) or (b) or (2)(a) in respect of a digital communication that contravenes a provision of the Coroners Act 2006.

Section 11(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **12 Threshold for proceedings**

- (1) An applicant referred to in section 11(1)(a), (b), or (c) may not apply for an order under section 18 or 19 in respect of a digital communication unless the Approved Agency has first received a complaint about the communication and had a reasonable opportunity to assess the complaint and decide what action (if any) to take.

- (2) In any case, the District Court must not grant an application from an applicant referred to in section 11(1)(a), (b), or (c) for an order under section 18 or 19 unless it is satisfied that—
  - (a) there has been a threatened serious breach, a serious breach, or a repeated breach of 1 or more communication principles; and
  - (b) the breach has caused or is likely to cause harm to an individual.
- (3) The court may, on its own initiative, dismiss an application from an applicant referred to in section 11(1)(a), (b), or (c) without a hearing if it considers that the application is frivolous or vexatious, or for any other reason does not meet the threshold in subsection (2).
- (4) The court may, on its own initiative, dismiss an application under section 11 from the Police if satisfied that, having regard to all the circumstances of the case, the application should be dismissed.

Section 12(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **13 District Court may refer matter back to Approved Agency**

- (1) This section applies when the District Court considers an application under section 11 that arises from the subject matter of a complaint that has been received by the Approved Agency (whether or not the complaint has been assessed under section 12(1)).
- (2) The court—
  - (a) must consider whether an attempt has been made to resolve the complaint (whether through mediation or otherwise); and
  - (b) may adjourn the proceeding and refer the matter back to the Approved Agency unless satisfied that attempts at resolution, or further attempts at resolution, of the matter by the parties and the Agency—
    - (i) will not contribute constructively to resolving the matter; or
    - (ii) will not, in the circumstances, be in the public interest; or
    - (iii) will undermine the proceedings before the court.

Section 13(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **14 Court may require Approved Agency to provide information**

- (1) The District Court or any Registrar or Deputy Registrar of the court may require the Approved Agency to provide information for the purposes of satisfying the court of any matters referred to in sections 12 and 13.
- (2) The Approved Agency must provide the information in the form (if any) prescribed by rules of court.

Section 14(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

*Procedure***15 Applications**

- (1) Applications for any orders under section 18 or 19 must—
  - (a) be filed in the District Court; and
  - (b) be in the prescribed form (if any).
- (2) The court may give directions as to service and, if the court considers it appropriate to do so in the circumstances, having regard to the principles of natural justice, the court may consider an application made on a without notice basis.
- (3) No filing fee is payable for an application.

Section 15(1)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

**16 Mode of hearing and evidence**

- (1) The court must, having regard to the circumstances of the particular case, direct that an application be determined—
  - (a) just on the basis of written material provided to it; or
  - (b) by way of a hearing involving oral submissions.
- (2) The court may deal with an application in any manner that it thinks will preserve the anonymity of a party so that the party's identity is not released to any other party during the proceedings.
- (3) The court must give reasons for any decision it makes in the proceedings.
- (4) The decision, including the reasons, must be published.
- (5) Subsections (3) and (4) are subject to subsection (2).
- (6) The court may receive any evidence or information that may in its opinion assist it to deal effectively with any proceedings under this Act, whether or not the evidence or information would be otherwise admissible in a court of law.

**17 Technical advisers**

- (1) The District Court or the High Court, as the case may be, may appoint a technical adviser to assist it in considering and determining an application for an order under section 19 or any appeal under section 124 of the District Court Act 2016.
- (2) The duties of a technical adviser are—
  - (a) to sit with the court; and
  - (b) subject to subsection (4), to act in all respects as an extra member of the court.
- (3) The court or any Registrar or Deputy Registrar of the court must appoint a technical adviser if the court is considering an application for an order under section 19(2)(a) or (b) or (3) or (4)(a).

- (4) The Judge may give any weight to the technical adviser's advice that the Judge thinks fit, and the Judge alone must determine the application or appeal.
- (5) The Minister must maintain a panel of persons who may be appointed under this section as technical advisers, and only persons named on the panel may be appointed under this section as technical advisers.
- (6) A technical adviser may be appointed to the panel for up to 5 years, and the appointment continues until—
  - (a) the person is reappointed; or
  - (b) a successor to the person is appointed; or
  - (c) the person is informed in writing by the Minister that the person is not to be reappointed and that a successor to that person is not to be appointed; or
  - (d) the person resigns by notice in writing to the Minister; or
  - (e) the person is removed from the panel by the Minister for incapacity that affects the person's performance of duty, for neglect of duty, or for misconduct, proved to the satisfaction of the Minister; or
  - (f) the person dies.
- (7) The chief executive must pay technical advisers the remuneration and allowances determined from time to time by the Minister.

Section 17(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **18 Interim orders**

- (1) The District Court may, if the court considers it is desirable to do so, grant any interim orders pending the determination of the application for orders under section 19.
- (2) An interim order under this section may do anything that may be done by order under section 19 and expires when the application under that section is determined.

Section 18(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **19 Orders that may be made by court**

- (1) The District Court may, on an application, make 1 or more of the following orders against a defendant:
  - (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.
- (2) The District Court may, on an application, make 1 or more of the following orders against an online content host:
- (a) an order to take down or disable public access to material that has been posted or sent:
  - (b) an order that the identity of the author of an anonymous or pseudonymous communication be released to the court:
  - (c) an order that a correction be published in any manner that the court specifies in the order:
  - (d) an order that a right of reply be given to the affected individual in any manner that the court specifies in the order.
- (3) The District Court may, on application, make an order against an IPAP that the identity of an anonymous communicator be released to the court.
- (4) The court may also do 1 or more of the following:
- (a) make a direction applying an order provided for in subsection (1) or (2) to other persons specified in the direction, if there is evidence that those others have been encouraged to engage in harmful digital communications towards the affected individual:
  - (b) make a declaration that a communication breaches a communication principle:
  - (c) order that the names of any specified parties be suppressed.
- (5) In deciding whether or not to make an order, and the form of an order, the court must take into account the following:
- (a) the content of the communication and the level of harm caused or likely to be caused by it:
  - (b) the purpose of the communicator, in particular whether the communication was intended to cause harm:
  - (c) the occasion, context, and subject matter of the communication:
  - (d) the extent to which the communication has spread beyond the original parties to the communication:
  - (e) the age and vulnerability of the affected individual:
  - (f) the truth or falsity of the statement:
  - (g) whether the communication is in the public interest:
  - (h) the conduct of the defendant, including any attempt by the defendant to minimise the harm caused:
  - (i) the conduct of the affected individual or complainant:
  - (j) the technical and operational practicalities, and the costs, of an order:

- (k) the appropriate individual or other person who should be subject to the order.
- (6) In doing anything under this section, the court must act consistently with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990.

## **20 Court may vary or discharge order**

- (1) Any applicant who obtains an order under section 18, 19, or 22B or any other party to that order may apply for an order under subsection (2).
- (2) The District Court may, by order, do any of the following things to an order made under section 18, 19, or 22B:
  - (a) vary the duration of the order:
  - (b) vary any conditions of the order:
  - (c) discharge the order.
- (3) The court may make an order referred to in subsection (2)(a) or (b) on its own initiative, whether or not an application is made.

Section 20(1): amended, on 9 March 2022, by section 5 of the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Act 2022 (2022 No 3).

Section 20(2): amended, on 9 March 2022, by section 5 of the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Act 2022 (2022 No 3).

## *Offences*

## **21 Offence of non-compliance with order**

- (1) A person who, without reasonable excuse, fails to comply with an order made under section 18, 19, or 22B commits an offence.
- (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 6 months or a fine not exceeding \$5,000:
  - (b) in the case of a body corporate, a fine not exceeding \$20,000.

Section 21(1): amended, on 9 March 2022, by section 6 of the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Act 2022 (2022 No 3).

## **22 Causing harm by posting digital communication**

- (1) A person commits an offence if—
  - (a) the person posts a digital communication with the intention that it cause harm to a victim; and
  - (b) posting the communication would cause harm to an ordinary reasonable person in the position of the victim; and
  - (c) posting the communication causes harm to the victim.

- (2) In determining whether a post would cause harm, the court may take into account any factors it considers relevant, including—
- (a) the extremity of the language used:
  - (b) the age and characteristics of the victim:
  - (c) whether the digital communication was anonymous:
  - (d) whether the digital communication was repeated:
  - (e) the extent of circulation of the digital communication:
  - (f) whether the digital communication is true or false:
  - (g) the context in which the digital communication appeared.
- (3) 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.
- (4) This section does not apply if the posted digital communication is an intimate visual recording to which the offence in section 22A applies.

Compare: 1961 No 43 s 216G; Michigan Penal Code 1931 s 750.411s

Section 22(4): replaced, on 9 March 2022, by section 7 of the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Act 2022 (2022 No 3).

## **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.
- (2) An individual under the age of 16 years cannot consent to the posting of an intimate visual recording of which they are the subject.
- (3) 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.

Section 22A: inserted, on 9 March 2022, by section 8 of the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Act 2022 (2022 No 3).

## **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.

Section 22B: inserted, on 9 March 2022, by section 8 of the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Act 2022 (2022 No 3).

### *Liability of online content host*

#### **23 Liability of online content host for content posted by user**

- (1) Section 24 provides protection for an online content host in respect of any specific content of a digital communication posted by a person and hosted by the online content host if the host follows the process in that section.
- (2) The fact that an online content host does not take advantage of section 24 does not of itself create any civil or criminal liability for hosting the specific content.
- (3) Section 24 does not affect any rights or defences otherwise available to the online content host in respect of the hosting of the specific content (for

example, the removal of content or the creation, exercise, or taking advantage of any contractual indemnity or immunity or any other term of use).

- (4) This section is subject to section 25(5).

## **24 Process for obtaining protection against liability for specific content**

- (1) No civil or criminal proceedings may be brought against an online content host in respect of the content complained of (the **specific content**) if the online content host—

- (a) receives a notice of complaint about the specific content; and
- (b) complies with subsection (2).

- (2) The requirements of this subsection are that—

### *Host to notify author of complaint*

- (a) the online content host must, as soon as practicable but no later than 48 hours after receiving a notice of complaint,—
  - (i) provide the author of the specific content with a copy of the notice of complaint, altered to conceal personal information that identifies the complainant if the host has received confirmation that the complainant does not consent to the host providing that information to the author; and
  - (ii) notify the author that the author may submit a counter-notice to the host within 48 hours after receiving that notification:
- (b) if the host is unable to contact the author (for example, because the identity of the author is unknown) after taking reasonable steps to do so, the host must take down or disable the specific content as soon as practicable after taking those steps but no later than 48 hours after receiving a notice of complaint:

### *Author's counter-notice consenting to removal of content*

- (c) if the author submits a valid counter-notice no later than 48 hours after receiving the host's notification under paragraph (a) in which the author consents to the removal of the specific content, the host must take down or disable the specific content as soon as practicable after receiving that counter-notice:

### *Author's counter-notice refusing consent to removal of content*

- (d) if the author submits a valid counter-notice no later than 48 hours after receiving the host's notification under paragraph (a) in which the author refuses to consent to the removal of the specific content, the host must leave the specific content in place and, as soon as practicable after receiving that counter-notice,—
  - (i) notify the complainant of the author's decision; and

- (ii) if the author consents, provide the complainant with personal information that identifies the author:  
*Author failing to submit valid counter-notice*
- (e) if the author does not submit a valid counter-notice in accordance with this subsection (whether by failing to submit a counter-notice or by submitting an invalid counter-notice), the host must take down or disable the specific content as soon as practicable but no later than 48 hours after notifying the author under paragraph (a).
- (3) A notice of complaint must—
  - (a) state the complainant’s name and a telephone number, a physical address, and an email address for the complainant; and
  - (b) state the specific content, and explain why the complainant considers that the specific content—
    - (i) is unlawful; or
    - (ii) breaches 1 or more communication principles and has caused harm; and
  - (c) sufficiently enable the specific content to be readily located; and
  - (d) state whether the complainant consents to personal information that identifies the complainant being released to the author; and
  - (e) contain any other information that the complainant considers relevant.
- (4) A counter-notice must state—
  - (a) the author’s name and a telephone phone number, a physical address, and an email address for the author; and
  - (b) whether the author consents to personal information that identifies the author being released to the complainant; and
  - (c) whether the author consents to the removal of the specific content.
- (5) An online content host must not disclose any personal information about the complainant or author under information privacy principle 11(1)(e)(iv) set out in section 22 of the Privacy Act 2020, except by order of a District Court Judge or a High Court Judge made on an application under this subsection.
- (6) Nothing in subsection (5) affects the application of any other provision in the Privacy Act 2020.
- (7) This section is subject to section 25(5).

Section 24(5): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Section 24(6): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

**25 Further provisions related to section 24**

- (1) The Approved Agency may lodge a notice of complaint under section 24 on behalf of a complainant and provide advice and assistance to the complainant in relation to the complaint.
- (2) The protection conferred on an online content host by section 24 does not apply if the host does not provide an easily accessible mechanism that enables a user to contact the host about specific content in the manner provided in that section.
- (3) The protection conferred on an online content host by section 24 does not apply if the person who provides the specific content does so on behalf, or at the direction, of the online content host.
- (4) Nothing in section 23 or 24 or this section affects—
  - (a) section 211 of the Criminal Procedure Act 2011; or
  - (b) section 19 of the Bail Act 2000; or
  - (c) copyright liability, or any proceedings, under the Copyright Act 1994; or
  - (d) any enactment that expressly overrides section 24.
- (5) Nothing in section 23 or 24 or this section limits the right of an individual to injunctive relief in relation to the content of a digital communication posted by another person and hosted by the online content host.

*Regulations and rules***26 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
  - (a) prescribing the practice and procedure for the conduct of matters under this Act before the Approved Agency;
  - (b) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

Section 26(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## **27 Rules**

- (1) The power to make rules of court under section 148 of the Senior Courts Act 2016 and section 228 of the District Court Act 2016 includes the power to make rules regulating the practice and procedure of courts in the exercise of jurisdiction conferred by this Act.
- (2) Without limiting the generality of subsection (1), rules made in accordance with that subsection may—
  - (a) prescribe forms for applications and orders under this Act;
  - (b) prescribe a form for the purposes of section 14;
  - (c) prescribe the practice and procedure for the conduct of matters under this Act before the District Court.

Section 27(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 27(1): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

## **28 Consequential amendments to other Acts**

Amend the Acts specified in the Schedule as set out in that schedule.

## **Part 2**

### **Amendments to other Acts concerning use of digital communications**

#### **Subpart 1—Crimes Act 1961**

### **29 Principal Act**

This subpart amends the Crimes Act 1961.

### **30 Section 179 amended (Aiding and abetting suicide)**

In section 179, insert as subsections (2) and (3):

- (2) A person commits an offence who incites, counsels, or procures another person to commit suicide, even if that other person does not commit or attempt to commit suicide in consequence of that conduct.
- (3) A person who commits an offence against subsection (2) is liable on conviction to imprisonment for a term not exceeding 3 years.

#### **Subpart 2—Harassment Act 1997**

### **31 Principal Act**

This subpart amends the Harassment Act 1997.

### **32 Section 3 amended (Meaning of harassment)**

After section 3(2), insert:

- (3) For the purposes of this Act, a person also harasses another person if—
- (a) he or she engages in a pattern of behaviour that is directed against that other person; and
  - (b) that pattern of behaviour includes doing any specified act to the other person that is one continuing act carried out over any period.
- (4) For the purposes of subsection (3), **continuing act** includes a specified act done on any one occasion that continues to have effect over a protracted period (for example, where offensive material about a person is placed in any electronic media and remains there for a protracted period).

**33 Section 4 amended (Meaning of specified act)**

- (1) In section 4(1)(d), after “correspondence,”, insert “electronic communication,”.
- (2) After section 4(1)(e), insert:
- (ea) giving offensive material to a person by placing the material in any electronic media where it is likely that it will be seen by, or brought to the attention of, that person:

**34 Section 19 amended (Standard conditions of restraining orders)**

After section 19(1), insert:

- (1A) It is a condition of every restraining order that applies to a continuing act within the meaning of section 3 that the respondent must take reasonable steps to prevent the specified act from continuing.

Subpart 3—Human Rights Act 1993

**35 Principal Act**

This subpart amends the Human Rights Act 1993.

**36 Section 61 amended (Racial disharmony)**

- (1) In section 61(1)(a), after “radio or television” insert “or other electronic communication”.
- (2) In section 61(2), after “radio or television” insert “or other electronic communication”.

**37 Section 62 amended (Sexual harassment)**

After section 62(3)(j), insert:

- (k) participation in fora for the exchange of ideas and information.

**38 Section 63 amended (Racial harassment)**

After section 63(2)(j), insert:

- (k) participation in fora for the exchange of ideas and information.

## Subpart 4—Privacy Act 1993

### **39 Principal Act**

This subpart amends the Privacy Act 1993.

### **40 Section 6 amended (Information privacy principles)**

- (1) In section 6, Principle 10(a), after “publicly available publication”, insert “and that, in the circumstances of the case, it would not be unfair or unreasonable to use the information”.
- (2) In section 6, Principle 11(b), after “publicly available publication”, insert “and that, in the circumstances of the case, it would not be unfair or unreasonable to disclose the information”.

### **41 Section 56 amended (Personal information relating to domestic affairs)**

In section 56, insert as subsection (2):

- (2) The exemption in subsection (1) ceases to apply once the personal information concerned is collected, disclosed, or used, if that collection, disclosure, or use would be highly offensive to an ordinary reasonable person.

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## Schedule

### Consequential amendments to other Acts

s 28

**Ombudsmen Act 1975 (1975 No 9)**

In Schedule 1, Part 2, insert in its appropriate alphabetical order: “Approved Agency under the Harmful Digital Communications Act 2015, in its role under that Act”.

**Public Records Act 2005 (2005 No 40)**

In section 4, definition of **public office**, after paragraph (c)(x), insert:

- (xa) the Approved Agency under the Harmful Digital Communications Act 2015, in its role under that Act; and



## Notes

### **1** *General*

This is a consolidation of the Harmful Digital Communications Act 2015 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Act 2022 (2022 No 3)

Secondary Legislation Act 2021 (2021 No 7): section 3

Public Service Act 2020 (2020 No 40): section 135

Education and Training Act 2020 (2020 No 38): section 668

Privacy Act 2020 (2020 No 31): section 217

Harmful Digital Communications Act Commencement Order (No 2) 2016 (LI 2016/226)

Judicial Review Procedure Act 2016 (2016 No 50): section 24

District Court Act 2016 (2016 No 49): section 261

Senior Courts Act 2016 (2016 No 48): section 183(b)

Harmful Digital Communications Act Commencement Order 2016 (LI 2016/90)

Harmful Digital Communications Act Commencement Order 2015 (LI 2015/248)