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## TASMANIA

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### **CIVIL DIGITAL COMMUNICATIONS BILL 2017**

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(Brought in by Madeleine Ruth Ogilvie MP)

## **A BILL FOR**

An Act to address the issues pertaining to persons who send or deliver electronic communications, letters or other articles for the purpose of causing distress or anxiety.

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

### **1. Short Title**

This Act may be cited as the Civil Digital Communications Act 2017.

### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

### **3. Interpretation**

In this Act, unless the contrary intention appears –

**Electronic Communication** includes –

- (a) any oral or other communication by means of an electronic communications network or process;  
and
- (b) any communication (however sent) that is in electronic or other form.

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#### **4. Offence Relating to Malicious Communications**

- (1) Any person who sends, or causes to be sent, to another person –
  - (a) a letter, electronic communication or article of any description, which conveys-
  - (b) a message or image which is indecent or grossly offensive;
  - (c) a threat, or
  - (d) any article or electronic communication which is, in whole or part, of an indecent or grossly offensive nature,

is guilty of an offence if the purpose, or one of the purposes, in sending it is that it should, so far as falling within paragraph (a) or (b) above, cause distress or anxiety to the recipient or to any other person to whom the offence is intended that is or its contents or nature should be communicated.

- (2) A person is not guilty of an offence by virtue of subsection (1)(c) above if it is shown –
  - (a) that the threat was used to reinforce a demand made on reasonable grounds for the purposes of legal action, and
  - (b) that there were reasonable grounds for believing that the use of the threat was a proper means of reinforcing the demand.
- (3) In this section, references to sending include references to delivering or transmitting, and to causing to be sent, displayed, delivered or transmitted and “sender” shall be construed accordingly.

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## **5. Disclosing Private Sexual Photographs and Films with Intent to Cause Distress**

- (1) It is an offence for a person to disclose a private sexual photograph or film if the disclosure is made—
  - (a) without the consent of an individual who appears in the photograph or film, and
  - (b) with the intention of causing that individual distress.
- (2) It is not an offence under this section for the person to disclose the photograph or film to the individual mentioned in subsection (1)(a).
- (3) It is a defence for a person charged with an offence under this section to prove that he or she reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.
- (4) It is a defence for a person charged with an offence under this section to show that—
  - (a) the disclosure was made in the course of, or with a view to, the publication of journalistic material, and
  - (b) he or she reasonably believed that, in the particular circumstances, the publication of the journalistic material was, or would be, in the public interest.
- (5) It is a defence for a person charged with an offence under this section to show that—
  - (a) he or she reasonably believed that the photograph or film had previously been disclosed for reward, whether by the individual mentioned in subsection (1)(a) or another person, and
  - (b) he or she had no reason to believe that the previous disclosure for reward was made without

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the consent of the individual mentioned in subsection (1)(a).

- (6) A person is taken to have shown the matters mentioned in subsection (4) or (5) if—
  - (a) sufficient evidence of the matters is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.
- (7) For the purposes of subsections (1) to (5)—
  - (a) “consent” to a disclosure includes general consent covering the disclosure, as well as consent to the particular disclosure, and
  - (b) “publication” of journalistic material means disclosure to the public at large or to a section of the public.
- (8) A person charged with an offence under this section is not to be taken to have disclosed a photograph or film with the intention of causing distress merely because that was a natural and probable consequence of the disclosure.
- (9) Meaning of “disclose” and “photograph or film” —
  - (1) The following apply for the purposes of section 4, this section and section 6.
  - (2) A person “discloses” something to a person if, by any means, he or she gives or shows it to the person, transmits, displays by electronic means or makes it available to the person.
  - (3) Something that is given, shown or made available to a person is disclosed—
    - (a) whether or not it is given, shown or made available for reward, and
    - (b) whether or not it has previously been given, shown or made available to the person.

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- (4) “Photograph or film” means a still or moving image in any form that—
    - (a) appears to consist of or include one or more photographed or filmed images, and
    - (b) in fact consists of or includes one or more photographed or filmed images.
  - (5) The reference in subsection (4)(b) to photographed or filmed images includes photographed or filmed images that have been altered in any way.
  - (6) “Photographed or filmed image” means a still or moving image that—
    - (a) was originally captured by photography or filming, or
    - (b) is part of an image originally captured by photography or filming.
  - (7) “Filming” means making a recording, on any medium, from which a moving image may be produced by any means.
  - (8) References to a photograph or film include—
    - (a) a negative version of an image described in subsection (4), and
    - (b) data stored by any means which is capable of conversion into an image described in subsection (4).

## **6. Meaning of “private” and “sexual”**

- (1) The following apply for the purposes of this section.
- (2) A photograph or film is “private” if it shows something that is not of a kind ordinarily seen in public.

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- (3) A photograph or film is “sexual” if—
- (a) it shows all or part of an individual’s exposed genitals or pubic area;
  - (b) it shows something that a reasonable person would consider to be sexual because of its nature, or
  - (c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual.
- (4) Subsection (5) applies in the case of —
- (a) a photograph or film that consists of or includes a photographed or filmed image that has been altered in any way,
  - (b) a photograph or film that combines two or more photographed or filmed images, and
  - (c) a photograph or film that combines a photographed or filmed image with something else.
- (5) The photograph or film is not private and sexual if—
- (a) it does not consist of or include a photographed or filmed image that is itself private and sexual;
  - (b) it is only private or sexual by virtue of the alteration or combination mentioned in subsection (4), or
  - (c) it is only by virtue of the alteration or combination mentioned in subsection (4) that the person affected is shown as part of, or with, whatever makes the photograph or film private and sexual.

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## **7. Prohibition of Harassment**

- (1) A person must not pursue a course of conduct, including a course of conduct as contained in section 5 –
  - (a) which amounts to harassment of another, and
  - (b) which he or she knows or ought to know involves harassment of the other.
- (2) A person must not pursue a course of conduct, including a course of conduct as contained in section 5 –
  - (a) which involves harassment of two or more persons, and
  - (b) which he or she knows or ought to know involves harassment of those persons, and
  - (c) by which he or she intends to persuade any person not to do something that he or she is entitled to do, or to do something that he or she is not under any obligation to do.
- (3) Subsections (1) and (2) do not apply to a course of conduct if the person who pursued it shows –
  - (a) that it was pursued for the purpose of preventing or detecting crime;
  - (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
  - (c) that in the particular circumstances the pursuit of the course of conduct was reasonable.



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## **8. Offence of Harassment**

A person who pursues a course of conduct in breach of section 7 is guilty of an offence.

## **9. Offence of Electronic Stalking**

- (1) A person is guilty of an offence if the person pursues a course of conduct in breach of section 7 and the course of conduct is effected through electronic means.
- (2) For the purposes of section 1 a person's course of conduct amounts to stalking of a person, if it is effected through electronic means, if it amounts to harassment of that person, the acts or omissions involved are ones associated with stalking and the person whose conduct it is ought to know that the course of conduct amounts to harassment of the other person.
- (3) The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking, which may include but be limited to –
  - (a) contacting or attempting to contact a person by electronic means;
  - (b) publishing any statement or other material relating to or purporting to relate to a person or purporting to originate from a person; and
  - (c) monitoring the use by a person of the internet, social media platforms, the person's data transmission, digital information associated with a person or any other form of that person's electronic communications.

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## **10. Injunction to Protect Person from Harassment**

Where there is an actual or apprehended breach of sections 4,5,6,7, 9 or 11 of this Act, the affected person may apply to the Magistrates Court of Tasmania for an injunction restraining the relevant person from pursuing that conduct.

## **11. Putting People in fear of Violence**

- (1) A person whose course of conduct, effected through electronic means, causes another to fear that violence will be used against him or her is guilty of an offence if the person knows or ought to have known that the course of conduct will cause the other so to fear.
- (2) It is a defence for a person charged with an offence under this section to show that –
  - (a) his or her course of conduct was pursued for the purposes of preventing or detecting crime;
  - (b) his or her course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment;
  - (c) the pursuit of his or her course of conduct was reasonable for the protection of himself or herself, or another, for the protection of his or her property or another's property, or
  - (d) necessary for the reporting of a crime.

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## **12. Obtaining Private Sexual Material for Use**

- (1) A person commits an offence if:
  - (a) the person has possession or control of material, obtained or used without consent, or produces, supplies or obtains material of a private sexual nature without consent; and
  - (b) the person has that possession or control and engages in that production, supply or obtaining, with the intention that the material be used by that person, or another person, in committing an offence, or for commercial purposes or for obtaining a benefit.
- (2) A person is not guilty of an offence under this section if the person engaged in the conduct in good faith, for the public benefit, or for the sole purpose of assisting the Childrens e-Safety Commissioner or other law enforcement agencies.

## **13. Take Down Orders**

- (1) A person may, upon application to the Magistrates Court of Tasmania, seek and be granted an order against another person, for the immediate removal of material the subject of this act.
- (2) A person's failure to remove material in accordance with a take down order is an offence under this act.

## **14. Effective Dates**

The Act commences 30 March 2018.

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## **15. Regulations**

- (1) The Governor may make regulations as are contemplated by, or may be necessary or expedient for the purposes of this Act.
- (2) Without limiting subsection (1) the regulations may make provisions of a saving or transitional nature.
- (3) The regulations may –
  - (a) be of general application or vary in their application according to prescribed factor, and
  - (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or a specified person or body.

## **16. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.