




Speech By
James Lister

MEMBER FOR SOUTHERN DOWNS

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CRIMINAL CODE (NON-CONSENSUAL SHARING OF INTIMATE IMAGES) AMENDMENT BILL

 **Mr LISTER** (Southern Downs—LNP) (12.52 pm): I rise to speak in support of the Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Bill 2018. Like the member for Toohey, I am on the Legal Affairs and Community Safety Committee. I acknowledge the great work that all of my colleagues have done on this bill and of course thank the committee staff, who have always supported us admirably.

I learned a great deal from sitting on the committee as this bill was considered. The scope, the prevalence and the complexity of this particular issue never really occurred to me. It seemed such a simple thing—someone taking an image of you that you do not want to be shared and sharing it. In terms of doing something about it, it is not necessarily a simple thing.

There were 18 submissions to the committee. I am thankful for that. I am particularly thankful for those interest groups that appeared before us at the public hearings. I acknowledge the Centre Against Sexual Violence, the Brisbane Domestic Violence Service, the Women's Legal Service of Queensland and the Queensland Law Society, which makes regular appearances before our committee.

The objective of the bill is to create new offences to protect vulnerable people from the distribution of, or threat of sharing, intimate images or recordings without their consent. On the offence of distributing intimate images the bill states—

- (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.

The maximum penalty is to be three years imprisonment. The new offence of threatening to distribute an intimate image or prohibited visual recording includes making a threat to a person depicted in the image or recording or making a threat to a person to distribute an image of another person. A new rectification order provision allows a court to direct convicted offenders to remove or delete intimate images or prohibited visual recordings. I think these things are very worthwhile. This problem needed to be addressed and I think this bill is a good start.

I acknowledge that the Attorney-General said in her second reading speech that this bill proclaims that the sharing of intimate images without the consent of the person is unacceptable, illegal and punishable. However, a number of concerns about particular aspects of the bill were raised with the committee by stakeholders. I think it is appropriate that I give some voice to those.

There were concerns by some stakeholders that the definition of 'intimate image' will not go so far as to protect people in relation to audio material and that, therefore, the bill in its current form is confined to visual material only. I acknowledge that earlier the Attorney-General spoke about all kinds of digital material. I hope that in her reply to the debate the Attorney might be able to speak about the potential for offensive audio material to be included.

'Consent' is defined in the bill as 'consent freely and voluntarily given by a person with the cognitive capacity to give the consent'. Stakeholders would like to see an explicit provision in the bill making it clear that consent given on one occasion does not apply to all other occasions.

Regarding retrospectivity, the bill only has prospective application. Therefore, offenders will only face prosecution for conduct that occurs after the bill is passed and becomes legislation. Therefore, victims who are currently being threatened or trying to have images of themselves removed may have no remedy or protection. The only real option would be for victims to invoke the Commonwealth jurisdiction and submit a request to the eSafety Commissioner to have the image or recording removed.

Regarding the prosecution of people acting anonymously, the bill fails to reflect circumstances where a person acts anonymously to upload prohibited images or recordings. This may include instances where someone uploads material from a device that has particular anonymising qualities, such as a phone with a prepaid SIM card. This circumstance may result in the prosecution being unable to prove who the offender is.

One important point regarded children under the age of 16. Given that in the bill children under the age of 16 cannot consent to the distribution of intimate images, there are concerns that a significant number of children aged under 16 will be prosecuted, even where the victim consented to the images being distributed. The Queensland Law Society raised this issue and recommended education for young people by the Queensland Police Service instead of resorting to investigation and prosecution. The Women's Legal Service requested that the permission of the Director of Public Prosecutions be required before the commencement of the prosecution of a person under the age of 16. I hope that our law enforcement authorities and the courts will treat this with the sensitivity required to avoid prosecutions where that would not be in the public interest on the basis of the age of the offender.

In relation to rectification orders, in cases where the prosecution cannot provide proof of who uploaded the photo a rectification order cannot be made by the court as this order can only be made when someone is convicted of an offence. The issue is whether there will be any restorative action that victims can rely on in circumstances where a person is not convicted of an offence. The Queensland Law Society recommended that a provision be included to permit a rectification order regardless of whether a prosecution is successful. In these cases, a victim may be able to rely on legislation enacted by the federal government—the Enhancing Online Safety Act 2015—and report the image based abuse to the eSafety Commissioner to have it removed.

Regarding the defence of mistaken belief, there were competing views from stakeholders about the utilisation of the defence of mistaken belief. On the one hand, it was argued by the Queensland Council for Civil Liberties that the defence of mistaken belief should be available to defendants. On the other hand, the Women's Legal Service recommended that the defence be explicitly excluded from the bill because of the potential for the effectiveness and protection of these new provisions for victims to be nullified and for the perpetrator to avoid accountability. The Women's Legal Service raised concerns about the court's willingness to interpret the defence in favour of the defendant.

In conclusion, the LNP opposition supports any measures aimed at protecting Queenslanders from the sharing of intimate images without their consent. Men, women and children should never be victims of such damaging conduct. The public sharing of sexual images of a person can destroy that person's life in so many ways. The shadow Attorney-General, the member for Toowoomba South, spoke very well about the impacts that these things can have on people's lives. As I say, I learned a great deal about the scope of those impacts in my role on the committee. We support the continued operational practices of the Queensland Police Service to educate our children and young people about these issues and to raise awareness. I think this is by and large a good bill and the LNP and I will be supporting it.