




Speech By
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MEMBER FOR MACALISTER

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

 **Mrs McMAHON** (Macalister—ALP) (3.19 pm): I am proud to stand here as a member of the Palaszczuk Labor government to speak in support of the Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Bill 2018. This Labor government has been responsible for some of the biggest legislative advances and improvements in the prevention of domestic and family violence in a generation. Whilst implementing the recommendations of the *Not now, not ever* report has been the cornerstone of this achievement, continually introducing legislation, understanding the nuances of this troublesome epidemic and building on that work shows that we understand and we will strive to do more. Whenever there are victims caught in the terrible vortex of power and control there is work to be done, particularly by members of this House.

I have spent some considerable time working in this space with victims, stakeholders and law enforcement officials here in Queensland, interstate and overseas. In every forum I have attended it has been acknowledged that in the increasingly complex environment which offending behaviour seeks to exploit and expand into lawmakers must be responsive. As legislators we must acknowledge that relationship dynamics and pressures are constantly changing and that, in an overwhelmingly digital society, privacy and reputation is something that is precious and deserves to be fiercely guarded.

The non-consensual sharing of intimate images is more widely reported under the misnomer 'revenge porn'. I would urge all those who report responsibly on this issue to take a moment to consider how unhelpful and misrepresentative both aspects of that term actually are. 'Revenge' implies righting a wrong and that someone who has been scorned—or not even that—deserves to have some sort of retribution and that they 'had it coming' to them. This is unhelpful and not representative of what we are dealing with here. Regardless of how you feel about pornography as a form of expression, the term 'porn' is used pejoratively in a way that is completely unrelated and demonises a field usually engaged in by consenting adults for commercial purposes. This is an entirely unhelpful term when we are dealing with the sorts of behaviours that are the subject of this bill.

Those who have worked in the field of domestic and family violence have long been aware of the prevalence of the use of intimate images to control and coerce victims. We now have a generation of teenagers and young adults who have not known life without a digital footprint. This brings us to a dangerous intersection between technology and attitudes. This is something that is prolific and on a scale that most people over the age of 30 would struggle to comprehend. A Triple J online survey of over 10,000 Australians showed that, of those under 30, two in three had seen a naked selfie and 61 per cent had themselves sent someone a naked selfie. This is not confined to listeners of a specific radio demographic. A national online survey conducted by RMIT showed that, of over 4,000 respondents, one in three people aged 16 to 19 reported image based abuse and one in two had experienced pressure or coercion to send sexual images. While strictly speaking this epidemic has both male and female victims, the eSafety Commissioner reports that women are twice as likely to have their sexual images shared without consent and they are more likely to experience image based abuse at the hands of a former intimate partner.

There can be no doubt that this is a gender based offence. I have heard comments from certain sections of the community who feel that, if you take a naked image and send it on, you only have yourself to blame. Not only is that position not helpful and wilfully ignorant of relationship dynamics and how coercion and control work but it is also blissfully ignorant of the malevolence that exists against women. A woman need never have taken a naked image of herself to find herself a victim of this. Women can now find their likenesses digitally imposed on other suggestive, lewd and downright depraved images. This is especially problematic for women who do have positions of authority and power within society. It is used as a deliberate tool to degrade and humiliate them simply for being a woman. Furthermore, even where these images do not actually exist, the threat to release or distribute intimate images can cause untold anxiety and stress.

A couple of years ago, as a senior project officer for domestic and family violence in the Queensland Police Service, I attended the inaugural tech summit held in Sydney by the Women's Services Network. This summit focused on how digital technology could be used to direct violence towards women and to equip people who work in the field with the tools to help empower women to reclaim their digital autonomy. We heard firsthand from women whose lives had been irrevocably changed because their privacy had been compromised and intimate images shared online. One woman continued to experience difficulty seeking employment because she had chosen to seek justice when her ex went online with intimate photos. Now potential employers see her name linked to revenge porn sites. Believe me, the internet still has plenty of dark places where intimate images are the stock-in-trade for people who are deliberately looking to generate humiliation and harassment for ex-partners.

One of the worst cases I have had the misfortune to follow was here in Queensland. A woman had her face digitally superimposed on a pornographic image and posted online with her name, address and contact details along with suggestions on how to approach her. These included, 'Don't knock, just come in. She loves to be tortured and raped.' Sure enough, men came to her home and knocked on her door, even when she had her three-month-old child with her. After years of putting up with this behaviour, the perpetrator was eventually located and charged with stalking because we did not have anything else. Today I say to that victim that I can only hope the action we take here in this House today will mean that future victims will have quicker police investigations and appropriate judicial recourse.

This bill will introduce specific offences under chapter 22 of the Criminal Code. The new section 223, distributing images, is supported by clear definitions of the terms 'distribute', 'intimate image' and 'consent'. This section articulates a clear criminal act. The new section 229A, threats to distribute intimate image or prohibited visual recording, covers the threat to commit the act under section 223 where there is a real fear of that threat being carried out. The bill also provides for rectification orders to be issued by courts to persons convicted of these offences requiring them to remove, retract, recover, delete or destroy an intimate image. An offender who fails to comply with that order is guilty of a misdemeanour.

Listening to stakeholders during the public briefings and hearings reiterated the need for offences such as these. I also acknowledge that some stakeholders felt the legislation does not go far enough. In this regard I speak of the issues raised around the definition of consent and the intersection of the defence provisions of section 24 of the Criminal Code, mistake of fact, particularly in relation to how it manifests in a controlling relationship. For the benefit of other members who may not be aware of how this works in the real world, particularly in harmful domestic violence relationships, the concern is that a victim who is in a protracted violent and abusive relationship and subjected to constant threats or fear of reprisal is not someone who can give consent freely and voluntarily. Even though the offender may record a verbal statement of consent at the time, a woman who knows what will happen if she says no—either on or off camera or otherwise—cannot be said to have given positive consent. Therefore, after this woman has left her relationship and seeks to claw back her life she is still faced with the possible tacit evidence of her consent.

The department acknowledged these concerns and that the definition of consent is only attached to the section 223 offence but notes that other jurisdictions are in the process of reviewing the concept of consent, and it acknowledges that any future changes to criminal law regarding consent may take these into consideration. Listening to the shadow Attorney-General's response today, I look forward to his support when that review occurs.

I thank all stakeholders for their submissions, I thank them for their tireless work with victims and I thank them for their advocacy in this area. I would like to thank my fellow committee members, committee secretariat and department staff.

I stand here in this House to pass this type of legislation. It is the reason I am here. While I may not be able to stand before the House every day and speak on issues like this, I will take every opportunity when it arises. I commend this bill to the House.