




Speech By
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Record of Proceedings, 13 February 2019

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

 **Ms BATES** (Mudgeeraba—LNP) (2.28 pm): I rise to make a contribution to the debate on the Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Bill 2018. This bill seeks to create a new offence to protect vulnerable people from the distribution or threats of sharing intimate images or recordings without a person's consent, which is colloquially often referred to as revenge porn. However, for the purpose of this speech I will be using the term 'image based sexual abuse'. It is a much better term for capturing an array of perpetrator motivations, victim harms, image content and different behaviours where images are being used in some way to cause harm regardless of whether or not the perpetrator intended to cause harm and distress.

As shadow minister for women I feel a responsibility to speak to this bill as it is women—young women specifically—who are more often than not affected by this crime, and this crime has become so pervasive. A search of the Factiva media search engine using the term 'revenge porn' shows that in 2012 there were eight stories in the international media. Just three years later there were 3,176. The rise of image based abuse has been facilitated by our ability to create content and distribute it. This ability has been multiplied by professional facilitators and technology, such as porn site hosting, which can reach much larger audiences.

In 2014, at least 3,000 porn websites around the world featured the revenge genre. A 2016 study by the US Data and Research Institute showed one in 25 online Americans has been a victim of someone posting, or threatening to post, nearly nude or nude images of them without their permission. In Australia, research has shown 23 per cent of those aged 16 to 45 has been subjected to image based abuse. These laws are absolutely necessary and will bring Queensland into line with the rest of Australia.

The Labor government has been a bit slow in bringing these laws to fruition, but I thank them for raising such an important issue that is affecting all of our young kids. I tell honourable members that I am awfully glad that my children are not teenagers and that I do not have to bring up teenagers in an electronic world such as exists today.

At this stage we are one of three states that has not already introduced new offences around image based abuse. In 2016 a Galaxy poll of 800 adults, conducted for the *Courier-Mail*, revealed 90 per cent of those polled wanted a criminal offence created to deal with people who share a naked or intimate image of another person without consent. Despite this overwhelming support and the federal government and other state governments acting, it has taken a while for us to do it in Queensland. Again, it is better late than never.

The Commonwealth government has enacted similar laws that have already achieved successful convictions, some of these in Queensland. A case in point is the example of a Queensland woman who was in a relationship with a married man. The relationship ended and the man returned to his wife after which he was instructed to destroy intimate images of the victim. The man did not, and his wife posted

them on Facebook. The wife was charged under Commonwealth legislation and convicted. This is an excellent example where these types of laws are absolutely necessary. While imperfect, the laws at the very least work to remove a number of barriers for victims of image based sexual abuse, the first obstacle being that until now there has been no specific criminal offence in place. As I said, we welcome the recognition.

Firstly, there have been concerns that a significant number of children under 16 will be prosecuted even when the 'victim' actually consented to the images being distributed. The Queensland Law Society recommended education for young people from the Queensland Police Service instead of resorting to investigation and prosecution. The Queensland Law Society recommended children and young people under 18 years of age should be exempt from Queensland's child exploitation material legislation and excluded from being placed on the sex offender register. This bill has not followed the approach taken in Victoria where anyone under 18 years of age who creates, possesses or distributes an intimate image of another minor who is less than two years younger than them will not be guilty of a child pornography offence.

We believe that the legislation should recognise that teenagers who engage in consensual peer-to-peer sexting are distinct from child pornographers. This would strike the right balance by ensuring child exploitation offences are appropriately addressed and children are protected whilst not criminalising the peer-to-peer sexual conduct of children and young people. We must consider that one in three people aged between 16 and 19 and one in four aged between 20 and 29 has been the victim of image abuse. In its current state, this bill does not consider the impact that sentencing children and young adults will have, and we know that youth detention is already an issue in Queensland.

I agree with my colleague the member for Clayfield: they need education. We support the Queensland Law Society's recommendation to focus on education through the QPS.

Secondly, in the case where the prosecution cannot prove who uploaded the photo, a rectification order cannot be ordered 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 guilty prosecution is achieved. In these cases, the victim may be able to rely on legislation enacted by the federal Turnbull government, the Enhancing Online Safety Act 2015—the Commonwealth act—and report the image based abuse to the eSafety Commissioner to have the images removed.

Finally, there are competing views from stakeholders about the utilisation of the defence of mistaken belief. On one hand, it is argued that the defence of mistaken belief should be available to defendants, as put forward by the Queensland Council for Civil Liberties. On the other hand, the Women's Legal Service recommended that the defence be explicitly excluded from the bill because there is potential for the effectiveness and protection that these new provisions give victims to be nullified and for perpetrator accountability to be avoided. In this instance the bill lacks consideration of these ramifications. Additionally, I hold personal reservations about the real-world application of any of these laws. We all want to see them enacted, but we see that IT companies like Facebook and Twitter really are toothless tigers when people make complaints to them. It is very hard to even make a complaint, let alone get Facebook to remove offending images of people.

Victims of image based abuse may feel uncomfortable reporting to police and proceeding with a prosecution because they are concerned about who is going to see or have access to these images. There is also the additional barrier in relation to sexual violence in that victims are reluctant to report to police for fear of being blamed or stigmatised. They are afraid they will be asked, 'Why did you take that image in the first place?', or, 'Why did you share those images?' This might be particularly pertinent for victims from particular age groups or cultural or religious backgrounds where it might be very shameful for the victim if friends, family members or the community more broadly discovered that these images existed, even if they never had access to them. These issues represent significant barriers to the successful prosecution of this law. In my opinion steps should be taken to ensure that these barriers to reporting are torn down.

We support any measures aimed at protecting Queenslanders from intimidating and threatening behaviour, particularly when it involves the non-consensual sharing of images that are and should remain private. Men, women and children should never be the victims of such damaging conduct. Publicly sharing sexual images of another person can destroy someone's life in so many ways. It can hinder their job prospects, their family relationships and strike at a person's overall wellbeing. It is unacceptable conduct and victims need to be protected. When we consider research that shows that one in five Australians has fallen victim to image based abuse, the victims of these crimes could be our daughter, son, niece, nephew, sister or brother.