

CRIMINAL LAW AMENDMENT (INTIMATE IMAGES) BILL 2018

Second Reading

Resumed from 28 June.

MR P.A. KATSAMBANIS (Hillarys) [3.32 pm]: I rise as the opposition lead speaker on the Criminal Law Amendment (Intimate Images) Bill 2018. I indicate at the outset that the Liberal opposition will support this bill. It is a relatively short bill, but in many ways quite complex. It deals with some pretty confronting subject matter at one level, but it also deals with an emerging social phenomenon that has been facilitated by the rise of new technology over time and a change in community standards and the use of that technology.

Technology is a wonderful thing and we all use it every single day, but we know that when there are people with bad will and bad intent, they can sometimes use it to great harm. There are various types and levels of harm, but it is hard to think of harm that could be worse than distributing an image of a person—a young person, a female, an older person, a male or anybody else—without their consent when that distribution could cause grave harm. In the absence of this new law, if police examined cases in which intimate images had been distributed without the consent of the subject of those images, there would probably be some areas of the Criminal Code that could be used in some instances, but it is quite clear from public debate on this issue that our existing laws do not cover the whole area that potentially could be traversed with the distribution of intimate images and that there are gaps in the law. There are perhaps also emerging trends that we still have not fully explored. We do not know the boundaries of those trends and we possibly require legislation that goes a little bit further than what we currently know to cover off potential gaps that may appear either through litigation or as the technology continues to emerge.

This area is new because the methods of distribution have changed. I dare say that the distribution of intimate images without the consent of the person in the image could have happened from the time photography first started, but current methods of transmission—be they text message, email or various applications through which people can send information and images to either one person or many people, websites that facilitate the posting of information, including images, and the whole range of modern technology—make it simpler and easier. It also means that the image could potentially be communicated to more people in less time than ever before. When that technology is being used for malfeasance, the harm will be practically immediate and can be ongoing as images either remain public or more people distribute them to further third parties. The damage can be extreme. We know it can be reputational, but beyond that, as outlined in the Attorney General's second reading speech, it could get to the realms of causing significant personal harm. It is clearly a form of abuse. It can be used to threaten and harass people. Just the threat of distributing these images could end up causing enormous harm to the subject of the image, the victim, if you like, in this new wave of disseminating intimate images.

When these new matters arise, the public looks to us as parliamentarians for leadership. It looks to the government and the opposition to show leadership in these matters, to provide reassurance and to provide amendments to criminal law that will ensure that this type of criminal activity is captured. It would be a brave person who could stand in this chamber and suggest that the bill we are considering today would cover the entire field and provide 100 per cent assurance to victims and potential victims in this area, or that there would not be any unintended consequences, but I do not think any of that is an excuse for not acting. I think we are all very conscious that this is an ever-moving and ever-changing area and we will have to be vigilant to make sure that legislation, when introduced, does not have unintended consequences. If there is need for amendment I think we need to look at that too, and I raise that right at the outset. The amendment could be from either side. People could be inadvertently caught in this. When the specific details of a matter are examined, it might be found that they ought not to have been caught or, on the other side of the equation, things that are not currently dealt with might develop—things that we do not know might be happening out there or that might happen in the future. We should treat this bill as a good start rather than as something that is absolutely complete and bulletproof and cannot be manipulated in any way in the future. We should keep a watch on this area.

Of course, the need to criminalise this behaviour arises because the behaviour exists. People of my generation, or even people who are older than I am, might find it astounding that people take intimate images of themselves and send them to other people, but it is a reality. It is happening out there. There is an important education piece. It is clearly important to send a public message to people, especially young people who may not have the maturity of adults, that the best possible protection against the dissemination of intimate images without consent is not to create the images in the first place or not to send them to anyone. We know that people are doing it. We know that young people in particular—it is not restricted to young people—see this as something that they want to do. They find it an attractive option to take these images and send them, based on the fact that they have taken the image and pressed the button, to a person they trust. That act is not being criminalised under this bill. What is being criminalised and made very clear is that when the recipient of that image sends the image to somebody else without the consent of the person depicted in the image, they commit a criminal offence, and that offence is spelt out in

proposed section 221BD(2) in the bill. That criminal offence carries a penalty of imprisonment for three years. If the offence is treated summarily, the maximum penalty is imprisonment for 18 months and a fine of \$18 000. I cannot stress enough that the best protection that any member of the public—a child, a young adult, a middle-aged person or an elderly person—can have against the distribution of images of themselves without their consent is to not create those images or not be a party to those images in the first place.

Another element contained in the bill—it is not the primary purpose of the bill—deals with images, particularly altered images, that may well have been created without the victim’s knowledge. It should be acknowledged that an area of this bill will cover that. I would say that the harm would be equal in those circumstances, even if the victim was not a party to it. In fact, in many ways the victim not being a party to the creation of altered images—perhaps an image with someone else’s body or face—may cause as much, if not more, harm and distress to the person depicted in the image. The bill covers that area as well.

The bill introduces some new concepts. In particular, it defines “intimate image”. It is probably better to have a discussion in the consideration in detail stage, if the Attorney General would consent to it, about why “intimate image” has been defined in the way it has been, any exclusions and grey areas or examples. In the main, I think the definition is probably as close to complete as it can be at the moment, but there will always be questions on the periphery of this. We will examine them not at great length, but I think it is worthwhile examining them when we get to the consideration in detail stage.

There is a specific definition of “consent” in proposed section 221BB. Again, we will probably have a bit of discussion about that in consideration in detail. I think the definition is relatively comprehensive. The issue with the definition of “consent” that should be pointed out is in proposed section 221BB(6). A person under 16 years of age is incapable of consenting to the distribution of an intimate image. That is extremely important for a number of reasons. First, it is similar to other sexual offences; young people cannot give consent to a sexual activity. Importantly, it touches on the area of the production and distribution of intimate images, which has certainly had a lot of media attention. It touches on the area relating to very young people. As a hypothetical example, if a 14-year-old takes a photograph and sends it to a recipient 14-year-old—or, for that matter, a person of any age—who then asks whether they can distribute it and the 14-year-old who is the subject of the image says, “Go for your life” and that person then starts distributing the image to other people, that cannot be deemed to be consent under this legislation. I think that is very important. We need to protect our young people. We need to protect them from exploitation. Yes, an argument could be raised by some people that perhaps the mishmash of consent to other sexual activity by people on the older scale of youth, if you like, could be entered into, but I think this is a very important area where we need to tread carefully. We should think as much about the message we are sending by passing this legislation as we think about the criminal offences we are creating. I think I can say that in a bipartisan manner in here. The message we are sending, particularly to young people, is to be extraordinarily careful. Someone may think that the person to whom they are sending this image is extremely trustworthy. However, firstly, they do not know; and, secondly, circumstances change and the level of trust someone may have in another person may change the next day or down the track. Be very, very careful.

As I have said before in my contribution and I have said in public debate on this matter, the best and ultimate protection we could have is not to be a party to the creation of these images. Do not create these images and do not move them on. We know in reality that not everyone will abide by that and not everyone will want to abide by that. We are not stopping anyone from doing it or criminalising the creation of the image. As I keep saying, we are criminalising the distribution of the image without consent.

I think that proposed section 221BB is relatively comprehensive. A catch-all is provided in proposed section 221BB(7), which states —

This section does not limit the grounds on which it may be established —

Through the provision of evidence —

that a person does not consent to the distribution of an intimate image.

The term “distributes” is also defined in this clause. It is defined quite widely and it attempts to cover both the old traditional methods of paper distribution as well as the utilisation of modern technology to distribute all types of information. That provision also has a catch-all about entering into an agreement or arrangement to do anything that leads to distribution. The definition of “distributes” is in this clause. As I said at the outset, things change. Firstly, we do not know the entire realm of what is happening in this area. Secondly, we know 100 per cent that technology will change, improve and move on. These provisions may not be totally comprehensive forever, but if things emerge that we do not know about today, we can look at amending this legislation, hopefully, quickly and in a bipartisan manner to protect the victims. That is what we are about here—protecting the people whose lives can be changed by the non-consensual distribution of intimate images.

Proposed section 221BD refers to the distribution of an intimate image. Proposed section 221BD(2) creates the criminal offence, as I said earlier. Again, I think it is as comprehensive as we can make it. At the consideration in detail stage, I will probably ask the Attorney General for an explanation of why proposed section 221BD(2)(b) states the depicted person “does not consent” to the distribution, rather than the depicted person “did not consent” or “has not consented”. I do not think that that will be critical in the interpretation of this legislation.

There are defences for distribution, including that the image was for a genuine scientific, educational or medical purpose. There is also a defence that the distribution of the image was reasonably necessary for the purpose of legal proceedings. That is important too. There is also a defence that —

- (c) the person who distributed the image —
 - (i) distributed the image for media activity purposes; and
 - (ii) did not intend the distribution to cause harm to the depicted person; and
 - (iii) reasonably believed the distribution to be in the public interest;

Some of those terms have been defined in other areas of law, such as defamation proceedings and proceedings against paparazzi and the like, usually in other jurisdictions on the east coast, but I think that makes some sense. The reasonable person defence has six elements, with the final one being “any other relevant matters”. I think that is comprehensive. I am not necessarily sure whether it catches one small element of the distribution of images, but again I will probably restrict that question to the consideration in detail stage. My question is around a classification authority distributing images or a product to members of the classification authority for the purposes of examining the material to see whether it meets classification guidelines. I know that could be pretty obscure, but again we need to make sure that those people who need to receive these images for genuine legal purposes and important community protection purposes get these images and do not fall foul of any our laws, including the provisions introduced by this bill.

The next section within the comprehensive clause 4, proposed section 221BE, refers to rectification and a court ordering the person who distributed the image, or perhaps even a third party who might have it so that it does not keep going down the chain —

... to take reasonable actions to remove, retract, recover, delete, destroy or forfeit to the State any intimate image to which the offence relates within a period specified by the court.

It is interesting that proposed subsection (2) provides for this court order to be taken out when a person is charged. The purists may argue that that is a presumption of guilt, rather than a presumption of innocence or it is unfair until we know for sure that the person charged committed this offence and is subject to a criminal penalty for that offence, but I think that it would be too late then. We have to remember that our primary concern is the victims; the people whose images are being sent without their consent. When a complaint is made, it would have to be investigated and the police would have to determine whether there is a prima facie case for the accused to answer. The interim period between the charges being laid and being heard can sometimes be quite long for many reasons. In that period, no further harm can be done. Of course, if the matter runs its course and it is later determined that consent was given or that an offence was not committed, the person who distributed the image can then go on their merry way and do whatever they want. I do not see any great harm being caused to the accused person through a rectification order and the collection of the offending images in the period before the matter is finally determined. If there is any danger of harm to the accused person, I think that has to be balanced against the potential ongoing and continuing harm to the victim, and I know where I sit every time on that. I do not have any major issues with that.

Part 3 of the bill will amend the Restraining Orders Act to allow restraining orders to be made to prohibit the threat or the act of distribution of these sorts of images. I think that is consistent. I know that police have already used the provisions in the existing law to stop the distribution of intimate images. However, as we are creating a new offence and covering off this area within the Criminal Code, I see no harm whatsoever in inserting the provisions in part 3 of the bill into the Restraining Orders Act 1997. It will close off any loopholes, as much as they can be closed off, and make sure that family members in particular can have access to the Restraining Orders Act if there are any issues around the distribution or the threat of ongoing distribution of intimate images without someone’s consent. That could cover a range of areas, including adults and children. It is extraordinarily important and I have no problem with it.

Part 4 will ensure that people who have been convicted of the offence of distribution of intimate images, when the image is of a child, will be covered by the Working with Children (Criminal Record Checking) Act 2004. Based on my previous comments about the importance of protecting our children, I think that is good sense and it will have practically 100 per cent support across our community. We are here to protect our children. If someone has been convicted in the past of distributing intimate images of a child, they ought to be caught up in the working

Extract from Hansard

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with children regime. The regime has opportunities for people who have historic charges to prove to the authorities that they should not be subject to restrictions on working with children. I hope I speak for everyone in this chamber and the general public—I am pretty sure I do—when I say that that is how it should be. These people should not be given a blank cheque to carry on their merry way in the future and have access to children unless someone has looked at it to see whether, perhaps, it was a youthful indiscretion or whether 30 years of good citizenship allows these people to work with children. *Prima facie*, initially, let us always work on the basis of protecting children first and not put more children at risk of harm in the future.

I am reluctant to use the word “concerned”, but I am interested to know how, within the regime that will be created by this bill, someone will be able to access the protective mechanisms in our legal system, particularly suppression orders. Once that concept has been raised, I think that every member of the house will be able to recognise situations in which one of the harms that could be caused to the victim or victims would be the public becoming aware that this was happening. I am primarily interested in victims. I know that perpetrators might want to take out suppression orders. However, in this case there might well be very good reasons why a victim would want to seek a suppression order so that the subject matter did not become publicly known. I would also like to know how the ability to access suppression orders would interact with the family law system. Again, the publication of information that may ordinarily have been prevented from being published in Family Court proceedings may inadvertently be made public through the procedures provided for in this bill—the prosecution of the crime of the distribution of an intimate image contained in proposed section 221BD(2). As I said, this will not cover off every single crack. There may be an explanation of how the existing suppression order and non-publication of information provisions would be attached to the provisions that this bill will introduce. I welcome the Attorney General covering that off in his response to make it very clear that information that is required for Family Court proceedings will be protected from being inadvertently disclosed through the criminal process introduced by this bill and victims who believe that the publication of this sort of information would cause them further harm and distress—especially people in the public realm—will be protected. How would the existing suppression order regime interact with the provisions of this bill to ensure that they get that protection? I would welcome receiving that answer from the Attorney General in due course. I am not sure whether amendments will need to be brought in to cover it off or whether it is already covered off. I think it is important for the public as well. I think the public want to know that perpetrators of the distribution of intimate images without consent or intimate images of children under 16 will be brought to justice and that further harm will not be caused through public discourse of what is happening.

I said at the outset that the opposition supports this bill. I personally strongly support this bill and welcome it. I cannot profess to be remotely knowledgeable about the subject matter—that whole area of young people feeling this desire to create and distribute intimate images of themselves and others. It is beyond the realms of my comprehension. I should probably put on record that, as a father of five children, I have two who are slightly older, being in their early to mid-20s, and never had this sort of stuff happening when they were teenagers, so I did not have personal experience at that end. My three younger children are all aged under 10 so we have not got there yet as a family and I do not have any experience from that level. We know that it is happening and we are told that it is happening. I have had victims of what should be the illegal distribution of intimate images visit my office, as, I am sure, many other members have had. We have spoken to friends who are either aware of this or have fallen victim to this sort of stuff. We need to protect them. I agree with the Attorney General. I think I have managed to resist using the term that the Attorney General used in the second paragraph of the second reading speech that is occasionally used in this area—that is, the term “revenge porn”. I need to mention that I agree with the Attorney General and encourage everybody—the general public, media outlets, members of Parliament; everyone—to stop using that term. Firstly, it is not comprehensive and complete. Secondly, it in some ways diminishes the significance of the harm being caused. The Attorney General said that it is a form of abuse, and I agree. Whether we call it image abuse or image-based abuse or simply say that there are people out there who disrespect others, are distributing images and causing immense harm to the people who are the subject of the images, I encourage everyone in our community, especially the media, to make sure that they use appropriate terms and do not use a term that may in some instances be considered to be a bit dismissive or restricted to a particular set of fact circumstances that do not cover the entire field.

Again, I cannot stress enough that the best protection any community member can have in this area is not to create these images, not be a party to creating these images and certainly not distribute them to people they trust. However, we know that some people want to do this. Other people may be coerced into doing this. Not just young people, but particularly young people, may be coerced into creating images or having those images created. We need to protect those people as much as we can because if they created the images in good faith to go to a restricted number of people for themselves, a partner or friend, their desire to restrict the distribution or restrict people from seeing these images ought to be respected.

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I guess probably a good point to round out this discussion on is that what we need here as a community is more respect—more respect for individuals who could potentially be harmed if their images are distributed without their consent. That has to go all ways. It is about males respecting females; females respecting males. I think trust is an important element in the coherence of our society, but I caution very strongly people who do these things ordinarily or young people who may think it is a good idea to not rely on trust. We have seen way too often that trust has been breached in this area. Will the introduction of this Criminal Law Amendment (Intimate Images) Bill 2018 stop this abusive practice of distributing people's images without their consent? In a perfect world, I hope it will, but just as we will not stop people from taking these images and sending them to others, we will never stop every single person from abusing the trust someone else has put in them by sending them an image and telling them not to move it on any further.

We can create a legal framework within which those people who abuse that trust, lack respect and distribute images without consent can be investigated, charged, prosecuted and convicted for their criminal act. We are sending a strong message when we pass this bill that we consider that activity to be a criminal act and we will have significant punishment written into our laws with a maximum of three years' imprisonment for the offence. Of course, magistrates and judges have a range of sentencing in this area so that they can consider an appropriate sentence. Even on summary conviction, the penalty is a maximum of 18 months and a fine of up to \$18 000. No, we will not ever stop every single person from doing it. Provisions probably already exist that may be used to create a criminal offence, but on the passing of this bill, it will be a clear criminal offence with its own section in the Criminal Code. I hope that that sends a very, very strong message to the vast majority of people who may in the past have been predisposed to delivering intimate images to third parties without the consent of the person who is the subject of the intimate image. It sends a very clear message to them: it is a criminal offence; do not do it.

We know that the vast majority of citizens in this society that we live in respect our laws and they will respect this one, as well as continuing to respect all others. But that small hardcore group of people who want to continue to cause harm, who want to use the distribution of intimate images without consent as a method of harassment, of intimidation or of abuse of other people, will be subject to criminal action; and that is a good thing, I reiterate, especially to young people. I say to those young people: try very hard. I know it is hard. I know there is a lot of pressure and sometimes all sorts of things going on. Try extraordinarily hard to resist arming these people of bad faith with the ability to cause you this great harm. If you do succumb, know that you at least have the protection of this criminal justice system. It will not protect you if someone does want to do the wrong thing and destroys your reputation or causes you other harm. But know that if you are the victim of this sort of crime, you can report it. There will be a very clear offence in our Criminal Code. Police are conscious of it. They already get dozens of reports, based on information about this action fed to me and other members of Parliament. They will now have an extraordinarily clear provision in the Criminal Code that they can utilise to bring those offenders to justice. That is what we are here for. We are here to protect our community as best we can. The community has to help by protecting themselves but when something goes wrong in this very, very important area of image-based abuse, the Parliament of Western Australia and the WA Police Force, which will be working on this, as well as the entire criminal justice system, will be there to assist them at the very least to prosecute the offender and, at best, especially if we can use the areas around restraining orders and rectification, to stop the harm from occurring.

MS A. SANDERSON (Morley — Parliamentary Secretary) [4.18 pm]: I rise also to make a contribution to the Criminal Law Amendment (Intimate Images) Bill 2018. I thank the previous member for his contribution. This is an incredibly important bill. I want to congratulate the Attorney General for introducing this bill. This was a promise made prior to the election and is something that is long overdue in Western Australia. It is something that jurisdictions have been grappling with over many years and have acted on, but we had not done so in Western Australia. The previous Attorney General sat on his hands. He wrung his hands. I know that he understood the importance of it, but he could not find a way to a solution through a bill. We now have an Attorney General who has done that. I want to congratulate the Attorney General on the excellent second reading speech to this bill, which beautifully articulated the issues around non-consensual sharing of intimate images, the strong links with family and domestic violence, and the long-lasting impact on victims, which is exacerbated by a very pervasive victim-blaming culture. Every time we say to someone, "Don't send those images. Try not to do that," it is like saying to someone, "You shouldn't walk in the park at night. You shouldn't walk home at night." There is nothing wrong with sending those images. There is nothing illegal about sending those images. They are not doing anything wrong. It is the people who then misuse those images who are the problem here. This bill criminalises that act, which is why it is such a good bill. It is not a civil penalty and it is not a complaint system; it is actually going to be enshrined in the Criminal Code.

This is an important piece of legislation for many, many people. The proliferation of social media is just one reason for the proliferation of this crime. New methods of communication are developing all the time, which means that the kinds of infractions that people experience are developing and changing. The law needs to do that as well; it

has been incredibly slow and clumsy in this area. As the previous speaker said, it is also referred to as revenge porn, but it is so much more than that. Calling it revenge porn is slightly dismissive and really limits it to the context of a relationship breakdown. It is not just about relationship breakdowns or these images even being consensual—this image-based abuse can take on many, many forms. Images can be photoshopped. A person can have a completely harmless image of themselves on holiday on Facebook and someone will photoshop it and send it around. People can have their devices and clouds hacked into—we have seen examples of that. I do not really understand the cloud. I have everything in the cloud. I do not understand how it can be secure or how it works, but it clearly is not that secure. Many of these images are also used to hold people to ransom in exchange for money or actions or to keep people in relationships. That is why “image-based abuse” is a much more accurate term than “revenge porn”, because it helps to encompass a much broader spectrum of abuse that goes well beyond the narrative of a vindictive partner. It is essentially an extension of sexual violence that is perpetrated against both men and women, and can be a very strong aspect of family and domestic violence. In many instances, a victim may not even know the person responsible for the image-based abuse. They may have no idea that this person exists. They may not even know that these photographs exist—they could have been taken while they were asleep. We have seen many instances of upskirting, which is a particularly unpleasant practice used on adults and children. People do not even know that those pictures exist. Some images are taken during consensual sex, but without a person’s knowledge that they are being filmed. Many minority and marginalised groups are particularly vulnerable to this practice.

This is a rapidly emerging issue, and laws and policies have not kept pace with community expectations. It is very important that when we introduce or discuss these laws, we differentiate between legitimate crime prevention and punishment and victim blaming. This legislation puts the responsibility on the offender. Many practices around the world require the victim to prove that it was non-consensual or that the image was stolen—the onus of proof is on the victim. That is not necessarily the case in this legislation, as the previous speaker outlined. Many victims are young and are not well-equipped to manage those kinds of processes. In fact, the best kind of legislation that we could have, and the police have called for this a number of times, is federal legislation, but the federal government has really dropped the ball on this. It is a very hard issue to police overall, because of piecemeal state legislation and outdated federal laws. Social media and communications devices do not have state boundaries—they do not understand the difference between federal and state jurisdictions. My understanding is that the only two states that have intimate images legislation are Victoria and South Australia. I think some of the penalties in Victoria are as high as \$100 000, which sends a really strong message.

The current federal legislation is incredibly clumsy—it was not written for this purpose. A specific piece of federal legislation is required. The current legislation covers a situation of a person using a carriage service to harass—there is no specific federal criminal law that deals with image-based abuse. Cross-jurisdictional or even transnational investigations are complex. If a person’s image appears in Victoria and they live in Western Australia, it is virtually impossible to police and prosecute that offence, yet that person is still burdened with all of the impacts of that. In 2015, Tim Watts and Terri Butler, Labor members of the federal Parliament, introduced a private member’s bill, but the Liberals in the House of Representatives have not yet moved to criminalise this offence. The Commonwealth Director of Public Prosecutions actually said that a commonwealth offence targeting revenge porn—their own words—would fill a gap in the existing law. Even the Commonwealth Director of Public Prosecutions has admitted that this is a serious gap! The Australian Federal Police have said that uniformity of legislation would be most helpful for police, so that they could investigate and charge perpetrators. Even though this is really important legislation that we are delivering in Western Australia, it is not going to help nationally. What we need is a federal drive and the agreement of all state and territory governments to introduce uniform legislation, so that it applies across the board. It is great that states, including Western Australia, are stepping up on this issue, but it is not good enough; we need the federal government to do more. The Senate recently passed the Enhancing Online Safety (Non-consensual Sharing of Intimate Images) Bill 2018. It is very important to distinguish that this bill establishes a civil penalty and a complaint system regime—it is not part of the criminal law. It simply does not, and will not, go far enough.

Some really good research from RMIT and Monash University was quoted by the Attorney General in his second reading speech. The research goes through some of the really significant impacts on people from the non-consensual sharing of images. Just over 4 000 people aged between 16 and 49 years were surveyed. One in five of those people had suffered image-based abuse. The research found that men and women were equally likely to be victims. There is differing research on this—some research demonstrates that women are more likely to be victims, but there is also research that says that men and women are equally victims. My anecdotal experience is that men and women are equally victims of this practice. Many marginalised groups are especially vulnerable. There was a one in two rate of victimisation of disabled and Indigenous people. One in three people aged 16 to 19 have been targets. One in three people who identify as gay, lesbian or bisexual have been victims. Thirty nine

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per cent of female victims were targeted by an intimate partner or ex-partner; 20 per cent of people had had nude or sexual images taken without their consent; and 11 per cent had had someone share an intimate image of them without their consent, and of this group, 75 per cent had suffered moderate to severe depression and/or anxiety. Nine per cent had experienced so-called “sextortion” and been threatened with having an image of them shared with others, and those of those, 80 per cent suffered moderate and severe depression and/or anxiety, and 46 per cent felt highly afraid for their safety.

The chief investigator in the report states —

“Image-based abuse has emerged so rapidly as an issue that ... our laws and policies are struggling to catch up,”...

RMIT’s Anastasia Powell says —

“We need to rethink our approach both from a legal perspective but also as a community, to change attitudes that often blame the victims and play down the very real harm caused by image-based abuse,”...

Posting what we do is now part of everyday life. We have to accept that. We can say that we do not understand it and I do not—in that sense I share the confusion of the member for Hillarys—but it is now a part of everyday life. I am having a harsh reality check on that when I can say, “Just don’t send it, don’t go there, just don’t do it. Of course you don’t need to do that.” I have an 11-year-old daughter who is nearly 12, going on 18 it feels like. She desperately wants a phone; she is one of only two of the kids in her class who does not have a phone. I am the only one hanging in there. It feels like there is no solidarity with the other parents and I am resisting. She is allowed to use certain apps on my phone, she desperately wants an Instagram account and wants this and that. Kids are cunning and sneaky, and the more we say, “No, don’t do that”, the more they will. It is up to us to make them as safe as we possibly can. That is what this legislation seeks to do. I see all the issues around eSafety and supporting our children and I am horrified to see what parents will allow some kids to do, but I cannot control any of that. It is now the way that kids engage. It is the way kids start relationships, by sending pictures of themselves. That is a fact. We will not change that with this legislation. We can make them safer from long-term harm with it, but we are never going to change it. Saying to them, “Just don’t do it. That’s just silly, because I’m a 42-year-old woman and I don’t need to do it”, does not relate to them in any way. It is not the reality of their lives. We have to make them safer.

The impact on victims is incredibly serious. As I stated earlier, research states that the impact of non-consensual sharing of images can be similar to that of a sexual assault. Jennifer Lawrence, the Hollywood actress who was a victim of this, put it very articulately when she had her own intimate photographs hacked from the cloud. She had sent them to her previous partner; there is nothing wrong with doing that. It is not illegal and she is not in the wrong here. It is important to make that point. In a recent article she said —

... so unbelievably violating that you can’t even put it into words,”...

...

I feel like I got gang-banged by the ... planet — ... there’s not one person in the world that is not capable of seeing these intimate photos of me. You can just be at a barbecue and somebody can just pull them up on their phone. That was a really impossible thing to process.”

That really articulates the deep personal effect and impact that it has on every part of someone’s life. It can cause severe anxiety and depression, not just at the point of it happening, but it can have lifelong mental health impacts for those people. There can be social exclusion and social isolation and it can have really serious employment and financial implications for people who lose their job or find it untenable to stay in their employment any longer. This happens in Perth, in Western Australia. There’s a big Facebook site called “Help a Sister Out!—Perth” It has over 40 000 members, women only and no boys allowed—the website’s own rule. There are dozens of accounts of so-called revenge porn and image-based abuse, in both the context of ex-partners and domestic abuse, but also instances in which private images were stolen and leaked. There was an incident in 2016 in Perth, “Starfox”, in which literally thousands of photos of girls and young women were posted on a Google drive and the photos were organised by folder, name and sometimes suburb. Some of the women and girls were from Perth, pictured in their school uniforms and very easily identifiable. There was an investigation, but it is very hard to establish if any kind of prosecutions or ramifications came out of that investigation. It is so important that we are protecting men, women, boys and girls from this. We are not blaming them. But the other really important aspect of this is the responsibility of the digital platforms. We have seen these enormous multibillion dollar companies—that have essentially changed the world with the way they operate and the way we communicate—take virtually no responsibility for the impact they have and they call it free speech. We saw that with Facebook with the manipulation of elections, not just in the United States but around the world.

[Member's time extended.]

Ms A. SANDERSON: These organisations have a responsibility to protect people from this. Whether these images were consensual or not, if they are distributed in a non-consensual fashion they have to protect them. All the current policies around those platforms require the victim to prove it was non-consensual, which is almost impossible to do. They require the victim to prove that it is non-consensual distribution. These companies need to seriously look at themselves, how they operate in the community and the danger that they put in them. The other disturbing aspect of this is the fun news story in which we see some of the Australian Football League players or rugby players sending a photo around of a topless woman who then requested that photo not be distributed, and the news outlet publishes it on the front page. The news outlet publishes it again! They have blacked out her face, but they have published the photograph again. News outlets need to stop doing that because that is a further distribution of that non-consensual image. There is a raft of responsibility across the community on this, and the responsibility is not on the victim. The responsibility is on the platforms, the law and the perpetrators. That is where the responsibility lies and that is very much where this legislation is pitched at. I congratulate the government and the Attorney General for bringing in this legislation.

MRS L.M. HARVEY (Scarborough — Deputy Leader of the Opposition) [4.37 pm]: I rise to make a contribution to this debate, and I am supportive of the Criminal Law Amendment (Intimate Images) Bill 2018. In researching for this debate I came across quite a few interesting publications on cyberbullying and the exposure that our children have to this particular form of abuse. An interesting publication from ECU in 2009 was a review of existing Australian and international cyber safety research documents by Julian Dooley, Donna Cross, Lydia Hearn and Robyn Treyvaud. There are some interesting statistics in there. It states —

The majority of Australian households (67% in 2007–2008) have access to the Internet and over 11 million Australians use the Internet as an integral part of their personal, social and occupational activities. By mid-2008, there were over 22 million active mobile phones being used in Australia, which equates to more than one phone for every citizen.

It is difficult to estimate online privacy breaches. They have been notoriously difficult to quantify, but quoting from that 2009 review, a survey was conducted at that time.

The ACTING SPEAKER (Ms M.M. Quirk): Member for Churchlands, you have walked in front of the member for Scarborough.

Mr S.K. L'Estrange: I apologise, Acting Speaker.

Mrs L.M. HARVEY: This review suggested that over 40 per cent of university students had had a photograph posted online without their permission in 2009. Further to that, despite young people having a positive attitude towards the internet—obviously it is a part of their lives—75 per cent consider that technology is a threat to their privacy. What is really frightening about some of this research is that when we look at the motivator for young children posting images of themselves online, or, indeed, any individual, it is very much driven by peer group pressure, and 47 per cent of children younger than 14 years and 41 per cent of those older than 14 years disclosed personal information on the internet because they believed that their friends were also doing it. That was the motivator for putting private images of themselves on the internet.

Looking at the prevalence of transmissions through our mobile phone network, we can see the difficulty that we have trying to manage information. In 2004, 500 million SMS messages were sent each month. If 500 million text messages were sent each month in 2004, one photograph can certainly move around the globe in a very, very short space of time. Notwithstanding that 92 per cent of our young people feel that privacy is important, the scary statistic is that 40 per cent of our young people said that they have had pictures of themselves posted online without their consent. When we look at how those images are used as part of the cyberbullying culture we find ourselves in, we are now at the point at which 32 per cent year 5s and 29 per cent of year 8 students report frequent school bullying, and most of it is done online.

In supporting this legislation, I thought I should find out a little bit about who these people are, what the statistics are and why we have the problem that we have. During my time as Minister for Police, I remember several different situations proposed to me by police, some were really awful, sad stories of suicides of teenagers who had had images transmitted purposefully as part of a vengeful attack for some slight in the playground, and the relentlessness of that bullying on a 24-hour cycle of various forms of social media. The entire school saw images of one particular girl. She felt like the entire school had seen her naked and she was just so humiliated. She could not go to school and ended up with depression and anxiety, and ultimately took her own life. Those are the ramifications and the circumstances that surround the victims of this particular practice. When it comes to looking for work in the future, one simple, silly action of a 15-year-old could preclude them from being employed in certain areas, because once the images are online, they are online forever.

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Another area that I found particularly concerning and the reason that I am very pleased to see this legislation before Parliament is the area of domestic violence. Members would be astonished to know the number of victims of domestic violence who are trying to escape from the perpetrators and the number of women who actually stay in these awful, dreadful relationships, putting themselves in harm's way, under the threat of having images of themselves released. Indeed, this is a new way perpetrators try to keep women and some men in domestic violence relationships, because they leave under threat of having these images of themselves published. It is really concerning. It is bad enough for victims of domestic violence to try to get the courage to leave when they may not have a credit card or a bank account, probably do not have car keys and probably do not have any self-confidence, but if their partner has forced them to pose and taken images of them and said that they will go around their entire network of family and friends if they choose to leave, it is a very compelling leash to put on an individual in terrible circumstances. It is a control mechanism. I am not sure whether this legislation addresses the threat of using images in that fashion with a potential penalty, but it is certainly something that I think we are going to need to consider as a society in the future. I have just been advised that it does address that, and I am very pleased to hear that.

Of course, the difficulty we have is that once the images are released, they are out there forever. No matter what happens with respect to ramifications for the perpetrator and the individual who has unlawfully transmitted the images, the images will still be out there. That is the difficulty we have with this particular issue. Obviously, legislation passing through Parliament creates a really good opportunity for an education program. I believe that by having legislation such as this when individuals will know that they can go to jail, even children will know that they can go to detention, if they illegally transmit private images of someone else or their private parts or whatever it might be that that education piece can start to happen in our schools and we can start to reset that culture of cyberbullying that has unfortunately erupted and perhaps prevent this practice from occurring. Whenever we look at legislation that involves penalties, a carrot-and-stick approach is always needed. For some people knowing that a serious penalty will result from their criminal actions may prevent them from taking that step into criminality. Other individuals basically need the stick once they have acted in a criminal way because for whatever reason the message does not necessarily get through that they need to behave in a different way. But I have faith and confidence in the vast majority of Australian young people and indeed Australians who are using the internet and sending those 500 million or so text messages every month, and knowing that the legislation is here will give them some peace of mind. Knowing that there will be penalties in place for offenders who commit these offences will no doubt provide some relief to individuals who have been harmed and victimised in this way. But it is a very vexing issue. We would like to hear from the government about the value of the education piece for this legislation and how it will be managed. Will additional funding go through to schools, some of the sporting organisations and universities to ensure that the message gets out about these new penalties?

Mr J.R. Quigley: I'm sorry, member, I couldn't quite hear what you said about if the government —

Mrs L.M. HARVEY: It was about the education piece that will need to go with this legislation, educating our children and young people about the ramifications of their actions and having them understand first of all that if they take that picture in the first place, then send it to someone and they send it on, or if they do that in retaliation, for example, if their relationship breaks down, they send that nude shot of their partner, they need to understand the consequences. Hopefully, in understanding the consequences, we can actually have a reset and change the behaviour of our young people to prevent this activity from occurring in the first place. We find ourselves in a really unfortunate set of circumstances. We know that we have an inordinate number of children—11, 12, 13 and 14-year-olds—who can be coaxed very easily into taking a photograph of themselves naked or taking a photograph of their private parts and transmitting it. The very sophisticated grooming that occurs to have children participate in that way is of great concern, and that is a constantly emerging area. When we start to find out about new and different types of this grooming behaviour by individuals who want to get access to these photographs of young people, they change and morph as we educate young people, so we have to be in a constant conversation to try to stay ahead of the predators who try to elicit these photographs from children. There are a couple of different pieces here. There are children transmitting photos that are being on-sent without their consent, and there are also cyber predators who specifically target children to try to get these images so they can send them on and sell them to others. It is a big problem. I am pleased to see this legislation before the house and I am very pleased to offer my support to government in bringing it through and expediting its passage.

MS S.F. MCGURK (Fremantle — Minister for Women's Interests) [4.50 pm]: I want to make a few points about this Criminal Law Amendment (Intimate Images) Bill 2018. I appreciate that I had to jump the queue a little to speak, so I thank members for indulging me. This is an important bill before the house. The changes it will bring are of real interest to me in my ministerial responsibilities in relation to the portfolio of women's interests, but also in the prevention of family and domestic violence. Critically, this bill focuses on the issue of consent. As the Attorney General outlined when introducing this bill, when it comes to consent, the overarching requirement is that it is free and voluntary. Giving out an intimate image without consent is abusive behaviour. This behaviour is about exercising control over another person. The impacts of controlling and coercive behaviours on victims can

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be multiple—fear, shame, humiliation, loss of confidence and exclusion from social life. Too often in such situations, our community tilts towards blaming victims for abuse. I am very aware of this view in our community, particularly when it comes to the work we are doing on family and domestic violence prevention. People ask, “Why doesn’t she leave?”, and “Why doesn’t she go back?” A national survey on attitudes across the community about violence against women shows that nearly eight in 10 people agree that it is hard to understand why women stay in a violent relationship. With victim blaming persisting in our community, our responses to people experiencing and disclosing family and domestic violence will not be sufficient. It is unacceptable that women are held, even partially, responsible for their victimisation, whether it be family and domestic violence or sexual assault. These attitudes and misperceptions need to change.

The bill before us today on the distribution of intimate images asserts a new normal by shifting the attention to perpetrators, and I congratulate the Attorney General on this bill. It ensures that perpetrators are held to account for their actions, not victims. Instead of saying, “She shouldn’t have sent a picture of herself half-naked to her boyfriend in the first place”, we say, “If you circulate an intimate image of a person and you do not have their consent, you are committing a crime—full stop.” The legislative changes before us send a sharp signal to would-be perpetrators. Distributing without consent is the harm. This law does not require a victim to prove that they have suffered harm or injury or that the accused —

[Interruption from the gallery.]

The ACTING SPEAKER: I am conscious there is some noise from the gallery. I do not want to be a wowser, but I might advise the people that they are free to go and get some fresh air, because I think the speech they are waiting for is not for half an hour or so.

Ms S.F. McGURK: I was making the point that this law does not require a victim to prove that they have suffered harm or injury or that the accused intended to cause any particular harm to the victim. Just as importantly when it comes to the impacts of abuse, this bill puts victims at the centre of the picture. The court will be able to make a take-down or rectification order. Once a person has been charged with an intimate image offence, the court may order the person to take down, remove, recover or destroy the image in question.

In September last year, I had the pleasure of meeting with 11 young people who participated in the annual YMCA Youth Parliament. That youth Parliament gives young people a chance to act as parliamentarians and have their say about important matters that affect them. I am sure many here have had the pleasure of presiding over or meeting of YMCA youth parliamentarians. I was contacted by Taylor Watson, who last year took on the role of shadow Minister for Women’s Interests, to discuss their experiences during youth Parliament. In particular, she wanted to discuss a bill that had been drafted in relation to the non-consensual distribution of intimate images. Taylor and her peers were motivated to address this issue because they believed it disproportionately impacts on young women as all persuasive social media encroaches on all of our lives and especially across high school and university campuses. During the youth Parliament participants held an impassioned and informed second reading debate, as we are doing here this evening, and moved to a vote. Their bill passed the Parliament to a count of 50 ayes, zero noes and two abstentions. This is the first bill to pass the youth Parliament without any form of opposition—an overwhelming endorsement of the view that better legal protections are required in relation to this issue. I will read an excerpt from the explanatory memorandum prepared for the youth Parliament. I quote —

With the rise of technology in this digital age, the sexual harassment of women online has become a significant issue in Western Australia, and indeed across the nation. One of the most serious concerns associated with this trend is the sending of explicit images or videos by an ex-partner after a relationship breakdown ... once the material is out in the public domain, the individual depicted has no idea how many other people will view it, or worse still, transmit it on. Such actions are distressing, damaging and detrimental for any person, but unfortunately, women seem to disproportionately bear the brunt of these encounters. Hence something must be done to ensure that their dignity is protected, and their safety and security guaranteed.

We can be confident that this bill being considered today reflects the views of young people and responds to the concerns they encounter as part of their daily and digital lives. Social media, text messaging and sharing of images by a range of applications are part of their everyday lives. It is incumbent on us as lawmakers to ensure that our legislation keeps pace with that change and to ensure that people are protected from exploitation in the business of normal daily social practice. The research tells us that males and females equally report being victim of non-consensual distribution of images; however, when considered alongside the very real issue of women’s safety, I believe this bill goes a long way to improving women’s safety in the community. As Minister for Women’s Interests, I am proud we are taking steps to put measures in place that create accountability and provide protection for victims.

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In conclusion, 80 per cent of Australians agree that it should be a crime to share sexual or nude images without permission. That figure is from a 2017 report from RMIT University by Henry, Powell and Flynn entitled “Not Just ‘Revenge Pornography’: Australians’ Experiences of Image-Based Abuse — A Summary Report”. Clearly, there is broad agreement across the community about the seriousness of this issue, yet distributing an intimate image without consent is also not respectful. We need to keep promoting equal and respectful relationships as the norm. When that standard slips, it is reassuring that laws that this government is bringing to this house are working to support that norm.

DR D.J. HONEY (Cottesloe) [4.59 pm]: This is a really important bill before Parliament. The motivation for the Criminal Law Amendment (Intimate Images) Bill 2018 is very clear, and we have heard that from all speakers today. As with all such issues, there is a wide range of causes and a wide range of intents of these potential incidents. At one extreme, an individual may obtain intimate images of someone without their consent and then distribute those images to, for example, their workmates with the specific intent of humiliating and causing harm. It may be not just personal harm to the individual, but harm to that person’s career. That is at one end of the spectrum. They are typically the examples that we hear as the justification for this legislation. Those examples are at the extreme end and there is clear intent that the person distributed those images to cause harm. That is very clear. No-one has any concerns about that. Everyone recognises that it is important for governments to respond to those sorts of issues. However, as with all legislation, we should be concerned about the breadth of the legislation. At the other end, we may end up capturing people who do something that does not fall within the purview of what would be regarded as a criminal offence.

I think this will have a bearing on a significant amount of legislation that we look at in this place in terms of potential unintended consequences. It may dramatically affect young people. It is interesting that the children in my family range from children to adults. I think we have the most profound generational gap that has existed since the 1960s. The way that people under 30 years of age view a whole range of issues, whether those issues relate to drugs or intimate images, is profoundly different from the view held by older people. I hate to say it, but all of us seem to be old fogies, and some of us may be older fogies than others.

Mr Z.R.F. Kirkup interjected.

Dr D.J. HONEY: Over the age of 30, member for Dawesville—that is the definition.

That has clearly been driven by technological change. That is the ease with which these things can occur. Previously, it required a great deal of intent for someone to install an electronic device in a particular room, capture an image in secret and then somehow download and transmit that image. Now it simply involves a person pressing a couple of buttons on their electronic device and all of a sudden it is done. This is endemic amongst younger people. It is quite apparent that, for many young people, sharing intimate images is part of the early courtship ritual, not the latter part of a young couple getting together. They go out and have a few coffees and get to know each other and the next level of intimacy is sharing images. I see the Attorney General shaking his head. I agree with him. It seems incomprehensible that anyone would take these images. I agree with the previous speaker; it seems incomprehensible. Younger people and, in some cases, children see this as something that people do. A number of members will be aware—I believe it was in the press, but I heard about it recently—of an older person who has been masquerading as a 16-year-old boy and then soliciting connection with young women at a variety of schools. Apparently, some 2 000 or 3 000 young people have been contacted by this person. I have been told that 50 year 8 students at one particular school communicated with this person and many shared images with this person. That must be pretty well the entire cohort of the 13-year-old girls at that school. It seems incomprehensible, but that is how endemic it is.

I will go further into the unintended consequences. There is a fundamentally different attitude towards collecting and sharing these images. This legislation is very broad. I am happy for the Attorney General to inform me otherwise, but I understand that this legislation covers the sharing of direct images and transposing an image of the body part of another person with or without the face of the person who is involved and simply ascribing that body part to the victim in this matter. That would be an offence under this legislation. I understand that even a Pickering-type caricature of a person would qualify as an offence under this legislation, but I am happy to be informed otherwise on that. As I understand from the briefing we had on the bill, the victim or the person portrayed in the image is not required to make the complaint; another party could make the complaint and that would initiate the police prosecuting the matter as an offence.

Mr J.R. Quigley: Such as a parent.

Dr D.J. HONEY: Such as a parent. I used this example in a discussion in our party room earlier today. Many parents, particularly of younger children, make a habit of looking at what their children are sending. It may be that a parent sees an image and then tackles their child about it and the child subsequently makes a complaint or says that it was unintentional or they did not give permission to share it further. That is very clear.

Extract from Hansard

[ASSEMBLY — Tuesday, 14 August 2018]

p4310b-4322a

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I am sure that the young member for Dawesville is very aware that memes are a way of life. A meme is an element of a culture or system of behaviour passed from one individual to another by imitation or other non-generic means and, more specifically, is an image, video, piece of text et cetera, typically humorous in nature, that is copied and spread rapidly by internet users, often with slight variations. It is absolutely endemic. I can pretty well guarantee that if any member's children have access to any form of electronic device, they will be participating in the distribution of memes. In this case, a meme could include a person taking a picture of someone and drawing some part of genitalia on them. As I understand it, if that meme was forwarded without the victim's consent, that would qualify as an offence per se. I know that it is not the intention of the Attorney General or the Minister for Prevention of Family and Domestic Violence, who have in good faith put this legislation forward because this is a serious issue for those people who are doing it for the worst possible reasons, but I am extremely concerned that there could be an unintended consequence; that is, we could potentially criminalise the actions of a very large number of people. Another thing that has become apparent to me quite recently is that it is very clear to us that serious matters that could be criminal matters could result in jail time. For us, it is very, very clear that drug matters are serious matters that could end with offenders going to jail. Despite all the education and the communication about this, it is not what children or young people believe. Drugs are pervasive, just as the transmission of these images is pervasive. For example, recreational drugs are so pervasive that young people do not believe they are illegal. It is sort of a circular argument. They see it everywhere so they think, "How could it be illegal? I see it everywhere; at every party I go to, every time I go to a school function and every time I am over at a friend's house." It is the same with these images. I am not talking about the extreme end. I think we all agree that on the extreme end, when someone has clear intent, it is obvious. But here I am talking about unintended consequences.

I was really disturbed by the statistics mentioned by some of the previous speakers. If I heard correctly, I learned that at least one in 10 of the entire population, including children, believes that they have had intimate images taken and distributed. If that were the case, then 2.5 million Australians—perhaps a little less when very young children clearly cannot use the devices—would have committed an offence under this legislation. I find that profoundly disturbing. I appreciate that clearly it is not the intention to jail a large percentage of the population. I know the Attorney General believes that jailing should be a last resort because it rarely solves fundamental problems, hence I echo the Deputy Leader of the Liberal Party's comments that if we expect that this legislation by itself will alter behaviour, particularly of young people, we are sadly mistaken. I do not think that it will alter behaviour. This legislation could have the effect that people want to achieve for good reason, but only if this bill is accompanied by a massive education program. Otherwise, I suspect that we are at real risk of criminalising a significant proportion of the younger generation. There are other parts to that. Specifically, the legislation states that a child under the age of 16 cannot provide consent. I know I am looking at the fringes here, but it means that if a 15-year-old takes an intimate image and transmits it to another 15-year-old and says, "Hey, share that with all your friends; I'm pretty proud of whatever", the 15-year-old who shares it around has committed a criminal offence, because the depicted 15-year-old could not possibly have given consent. Again, that is a real risk. We sit here and look at this lucidly and we are horrified that the initial image could be collected, and then we are even more horrified that someone would share it with another person, let alone that other person sharing it with other people. But our view of the world is a dramatically different view from that of young people, who, with no particular intent to cause harm, could do so immediately. It is very clear; this act is very binary. It takes the most extreme view. It is per se a criminal offence. Obviously, there are other factors in sentencing young people. Not being a lawyer, I am no expert on that, but I understand that the court has options. Indeed, it has a range of options in this legislation.

I have a query and am concerned about another aspect of the legislation. Based on the briefing that we received, I understand that if a parent took a picture of a very young child in the bath that included their genitalia or breast area and forwarded it to people without consent—of course, a child under the age of 16 cannot give consent—that may also be a criminal offence under this legislation. I am happy if that is not the case, but I am concerned that it could be the case. I am not trying to create the impression that I believe that that is the case from reading the legislation, but I would like to be reassured that it is not the case. Many of us and many parents take pictures of their kids in the bath or down at the beach, maybe running into the water and having a swim without bathers on, and they will post that to relatives and the like and transmit it electronically. Clearly, the child or the young person who has had the image taken of them, under this legislation, cannot provide any consent for that.

I understand the reason for this legislation and I think that there is a very clear justification for the legislation that people have articulately outlined. I have a concern. I have had this discussion with other people about whether intent should be part of the legislation. There are two parts to intent. There is an intent to cause harm and there is an intent to transmit the image.

[Member's time extended.]

Dr D.J. HONEY: I understand it is almost time to adjourn this debate.

The ACTING SPEAKER: Keep going.

Dr D.J. HONEY: I will keep going. I will try to wrap up in any case.

I understand that there is a debate and discussion about whether someone should have to show intent. In all the examples that I heard today, there was a clear and patent attempt to cause harm. I refer to the second part, the intent to transmit an image. It is terribly easy for so-called smart devices to transmit something unintentionally. I have unintentionally transmitted an email to someone I did not intend to transmit it to. The trouble is that it is easy because we do not have to do something dramatic such as setting up a camera in a bathroom; we just have to touch a little plastic screen and—guess what?—something has gone to a wider audience. There is no consideration in this bill of whether there was an intent to transmit. I understand that if we make these things too hard, the law is not enforced or becomes unenforceable. However, I believe that it is a most serious consequence. Clearly, speakers today have articulated very well the very serious consequences for victims, but there are also serious consequences for the offender, such as going to jail for three years, having a criminal offence on their record and going onto the sexual offenders register. There are also very serious consequences for the victim. Typically, because there are such serious consequences, a fair effort is made to prove someone's guilt, and I believe part of it is proving intent.

Like the other members who have spoken, I support the need for this legislation. I understand that this legislation is based on federal legislation. A joint-party working group is developing legislation and is about to report. This legislation is ahead of that report. I understand that the proposed measures by that working group are not quite as broad as this bill. Perhaps there may be an opportunity for us to consider that as a whole Parliament before this bill goes through. As I said, I fully support the intent of the legislation and I fully understand why the government has to move on this. It is very, very important. However, I am very concerned about the other side and that we are going to criminalise people unknowingly or unintentionally distributing images and, potentially, have a large number of people before court. That is not really the intention of members in this chamber.

Finally, I reinforce the point that the Deputy Leader of the Opposition made: when this legislation is passed, which it will be, if a large education package does not accompany it, it will result in an overwhelming outcome for the courts. We will need the most phenomenal effort to educate people on this legislation and to change attitudes.

Debate adjourned until a later stage of the sitting, on motion by **Mr D.A. Templeman (Leader of the House)**.

[Continued on page 4326.]