

 **Dr ROWAN** (Moggill—LNP) (12.25 pm): I rise to make a contribution to the debate on the Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Bill 2018. We live in an age where, thanks to the ubiquitous and fast-evolving nature of technology, society is more connected than ever before. The potential that modern technology presents to us—to be able to connect instantly with those on the other side of the globe, to have ready access to the world's information at a touch of a button—all thanks to a device that fits into our pocket or can be worn on our wrist—is one that, for the most part, is incredibly positive and has progressed society and provided unprecedented opportunities. However, sadly, there are those in our community who seize on this potential and who choose instead to use modern technology to harm others.

Although the non-consensual sharing of intimate images—often at times referred to as revenge porn—is nothing new, what has changed is that, over the past decade or more, the ease and medium by which such abuse is perpetrated is continuing to evolve. At this point, I acknowledge the comments of the member for Macalister about the term 'revenge porn'. Although this activity is colloquially known as that, yesterday, the member made the case that, given some of the ways it can be misinterpreted, we should all be trying to avoid that term as much as possible. It is a sad fact that the same incredible device that fits squarely into one's pocket can easily be used—and has been used—to cause immense distress and harm through the non-consensual sharing of intimate images.

I note that, in Australia, in 2013 South Australia was the first state to enact specific laws regarding image-based abuse. As we commence 2019, I am pleased to see this parliament enact such laws that will protect Queenslanders, particularly Queensland women, from such abuse. Before I go any further, I would like to take a moment to reflect on the nature of this abuse and echo the statements made by the Legal Affairs and Community Safety Committee in its report No. 20. As I have said earlier, this form of abuse is often colloquially referred to as revenge porn. The committee report noted—

It is also often labelled 'revenge porn' but research has shown that revenge is not the only motive underlying the sharing of, or making a threat to share, intimate images. Other motivations include 'control, intimidation, sexual gratification, monetary gain and social status building'.

That is the important point. Regardless of the intention, which often goes far beyond just revenge, this abhorrent form of abuse is not only confined to the non-consensual sharing of images but also a threat to share as well. Even just the threat to share can cause immense distress and harm. It is rightly seen as a form of abuse in and of itself. Therefore, this legislation will create new offences that address specifically threats to distribute intimate images or prohibited visual records without the consent of the persons depicted, including threats made to distribute an intimate image or prohibited visual recording of another person. As the Attorney General's department noted, this behaviour may include, for example, an ex-boyfriend threatening a woman's new partner to distribute an intimate image of her. Importantly, this bill will also introduce a new rectification order provision that will allow the court to direct convicted offenders to remove or delete intimate images and prohibited images.

Whilst the Liberal National Party supports the objectives of this bill and as such supports any measures that are aimed at protecting Queenslanders from actual or threatened abuse, particularly when it comes to the non-consensual sharing of images, it must be noted that there are a range of concerns that have been raised with this bill by prominent and respected stakeholders. In particular, concerns have been raised that the definition of 'intimate image' will not go so far as to protect people from audio material and therefore in its current form this bill is starting from a position where it is constrained to some past technologies.

As I have said from the outset, we live in a time marked by ubiquitous and fast-evolving technology. As such, it is only reasonable to expect that our laws make every effort to at least keep pace or, where possible, anticipate such changes. I would also like to note issues raised with regard to consent that is given. Under this bill consent is defined as freely and voluntarily given by a person with the cognitive capacity to give the consent. Stakeholders, including the Women's Legal Service, have made it clear that they believe this definition is inadequate, with submissions to the committee recommending a provision in the bill that explicitly states that consent given on one occasion does not apply to all occasions.

Debate, on motion of Dr Rowan, adjourned.

## CRIMINAL CODE AND OTHER LEGISLATION (MASON JETT LEE) AMENDMENT BILL

### Introduction

 **Mr JANETZKI** (Toowoomba South—LNP) (12.30 pm): I present a bill for an act to amend the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004, the Corrective Services Act 2006, the Criminal Code, the Criminal Law Amendment Act 1945, the Criminal Practice Rules 1999, the Criminal Proceeds Confiscation Act 2002, the Disability Services Act 2006, the Mental Health Act 2016, the Penalties and Sentences Act 1992, the Transport Operations (Passenger Transport) Act 1994, the Victims of Crime Assistance Act 2009, the Weapons Act 1990, the Working with Children (Risk Management and Screening) Act 2000 and the Youth Justice Act 1992 for particular purposes. I table the bill and the explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

*Tabled paper:* Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019.

*Tabled paper:* Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019, explanatory notes.

It is for Mason Jett Lee and for all the children who have lost their lives, including, tragically, Hemi Goodwin-Burke, and for future generations of children that this bill is introduced today. Let me start by acknowledging the presence of Hemi Goodwin-Burke's parents, Shane and Kerri-Ann, and grandmother Lyn in the gallery here today and also little Tee. I would also like to acknowledge other fierce advocates for law reform of this nature: from Act for Mason, Katherine, thank you for your presence in the gallery today, together with Nicole, the local coordinator for Toowoomba.

The killing of a child is a shameful crime. Any parent or carer who has held a child in their arms knows the vulnerability, the reliance, the trust that child has for you. No child deserves to be held in the arms of evil. All too often these arms are robbing innocent children of their lives. That could be 60, 70, 80, 90 years of living in this beautiful world with all its promise and its possibilities. This evil does not just steal life from these children, but from their families and loved ones, thereby inflicting a life sentence of pain and heartache and, sadly, questions: why did this happen and why does this evil not seem to be punished sufficiently by the justice system?

According to the Queensland Sentencing Advisory Council's report into child homicide, offenders sentenced for adult manslaughter received significantly longer average sentences, at 8.5 years, than offenders sentenced for child manslaughter, at 6.8 years. These light punishments do not reflect the value of the child's life but have unfortunately formed strong precedent making it almost impossible for courts to deviate from them and apply a punishment that fits the crime—our bill will.

Case after case in Queensland has highlighted the injustice. A 19-day-old baby was shaken so violently that recovery was not feasible. The baby remained alive for 10 months, crying as if in constant pain and eventually passing away. The offender had a previous conviction for assault occasioning bodily harm. That offender was sentenced to only six years imprisonment for manslaughter. An infant subjected to repeated violence over a period of time in which the offender contrived occasions to be alone with the child. In that case the infant died due to substantial physical abuse. The offender was sentenced to only seven years for manslaughter.

A toddler age four, who was punched in the stomach by his mother, later died of abdominal injuries. His mother was sentenced to nine years for manslaughter but was eligible for parole after serving four years. An offender who inflicted abuse on his one-month-old baby girl, the child suffering injuries including a fracture to the skull, ribs and legs, an underlying brain injury and lacerations to the liver and pancreas, was sentenced to nine years for manslaughter. A three-year-old who was punched by her father died a slow painful death and the offender was sentenced to nine years for manslaughter. An offender delivered a punch to his 10-week-old son's stomach while he was in the rocker swing. In the presiding judge's words addressed to the offender—

It is sickening to imagine what occurred. The child, of course, was totally oblivious to what was about to happen. He was a 10-week-old baby and totally innocent of the world. He had no idea of life, death or the duty that you, as his father, had to protect and care for him.<sup>1</sup>

The offender was sentenced to nine years for manslaughter but eligible for parole after five years.

In the case of 18-month-old Hemi, who was beaten and killed by his drunken babysitter, the offender was sentenced to eight and a half years for manslaughter with parole eligibility after four years. It is too tragic for words. And, of course, there is the case of Mason Jett Lee, after whom this bill is named, 22-month-old Mason, found riddled with broken bones, ruptured organs and bruised from head to toe. He was covered in vomit, blood had pooled around his neck and ears and a bruise had swallowed his eye. The tissue between the scalp and the skull was separated, believed to be forceful pulling of his hair. There are other injuries too graphic to place into *Hansard*. This precious boy, not much older than my own 16-month-old son, endured hell on earth. His offender was sentenced to nine years for manslaughter with parole eligibility after six years.

I am still in disbelief when I think that these offenders who committed the most sickening of crimes have all been sentenced to less than 10 years imprisonment. The system is failing our children, it is failing the families of the victims, which is why the LNP has intervened to reset the scales and see justice served for families who have lost everything. This bill is fundamental if we are to restore the public's faith in the justice system. The bill strengthens the punishment imposed for the murder of a child under the age of 18 years by requiring the court sentencing the person to make an order that the person must not be released from imprisonment until the person has served a minimum of 25 years or more. This change follows in the footsteps of other Australian jurisdictions including New South Wales and the Northern Territory.

The bill seeks to introduce a new homicide offence in the Criminal Code which will sit between the murder and manslaughter provisions. It will apply to any child under 18 years. Under the new offence, a person who vigorously shakes, punches, kicks, stamps, throws, squeezes, suffocates, strangles or engages in any violent act that causes a child's death will be guilty of child homicide and face a minimum mandatory sentence of 15 years imprisonment. A person who sexually assaults a child which causes the child's death will be caught under this offence. The abuse of a child for sexual gratification resulting in death is a crime of unutterable gravity, which is why any person who rapes a child or does any sexual offence to cause that child's death will serve a minimum of 15 years imprisonment. A person who has a duty to care for a child and fails to provide the necessities of life for the child which causes its death will be caught under this offence.

Mandatory sentencing will raise the bar and bring Queensland in line with other Australian jurisdictions that impose sentences that accord with community expectations. The bill includes defences that will operate as a partial defence in very limited circumstances. I also want to stress that people who have the misfortune of being involved in an accidental death will not be caught by the new child homicide offence. Section 23 of the Criminal Code provides that a person is not criminally responsible for an event that occurs by accident. This section is relied upon to absolve a person from criminal responsibility where an act or omission has occurred independently of the exercise of the person's will or an event that the person does not intend or foresee as a possible consequence.

Therefore, an unfortunate event such as where a parent accidentally runs over a child will not be caught under the new child homicide offence. The parents of a child who makes his or her way to a dam and accidentally drowns will not be caught under this new offence. As always, the prosecution still has the discretion to charge a person with the offence of manslaughter if they reach the conclusion that that is appropriate. This bill is deliberately targeted towards those who act violently towards a child or who neglect a child for whom they have a duty of care.

We cannot afford to fall short in considering these laws. Some have argued that aggravating factors, already plentiful across sentencing guidelines, will be measured against mitigating factors. However, sadly it will all too often ultimately result, as it has in other jurisdictions, with the scales tipping in favour of the offender and not the victim. In contrast, the LNP's child homicide offence guarantees the families of victims that their child's killer will serve a 15-year sentence. Evil is evil and no quarter should be given.

I note that reckless indifference is also a very high threshold for the Crown to meet. In New South Wales, the definition of murder has long included reckless indifference. However, despite that there is ample evidence of case law that shows offenders who have violently killed children entering into plea bargains with the prosecution and pleading guilty to the lesser charge of manslaughter. This is not just a rhetorical argument. There are many cases where this has been borne out in practice in New South Wales.

In one case, the defendant pleaded guilty to manslaughter after initially being arraigned on a charge of murder. That case involved a brutal attack on a seven-month-old child. The offender took the child from a pram in the lounge room into the bedroom and struck the child repeatedly, with at least one punch to the head and one punch to the abdomen. At some stage, the offender applied a clamp to the baby's toes, causing the child to vomit and die of asphyxiation.

In 2008, another horrific case involved the unlawful and dangerous act of rape of a three-year-old child, causing the child to vomit and asphyxiate. The offender was acquitted of the charge of murder, but found guilty of manslaughter.

In yet another case, a man shook a child, choked the child and then stomped on the child's chest. The man had assaulted the child on previous occasions. The court called the attack on the child brutal and stated that there was no evidence of any expression of remorse by the man. The offender pleaded

guilty to manslaughter on the basis that he killed the child by an unlawful and dangerous act, which was accepted by the Crown.

All of those horrific New South Wales cases resulted in a conviction of manslaughter, despite the element of reckless indifference in a murder charge being available. The same will happen here in Queensland. The Crown will accept a guilty plea for the lesser charge of manslaughter. It goes on in New South Wales and it will happen here. It is a tricky legal fix couched in good intentions, but it will fail and it will fail Queensland children. It will fail to deliver justice to the families and loved ones of those children, that is, the men and women who have lost everything.

As I conclude, the determination and strength of the many advocates who have never given up on their calls for tougher laws must be recognised. I have already mentioned Shane, KerriAnn, Lyn and Tee in the gallery, as well as Katherine from Act for Mason, Mason Parker's grandparents Sue and John Sandemann who are watching from Townsville, Bravehearts, the Daniel Morcombe Foundation—the list goes on. In Queensland law, punishment must reflect the seriousness of the crime committed. The criminal justice system needs to be seen as completely intolerant of violent crimes against children.

The front line is this parliament. If we do not denounce the violent killing of a child and truly and meaningfully toughen up the law, we cannot expect the rest of the justice system to toughen up. Unless the Labor government supports mandatory punishment for this most heinous of crimes, this parliament will be falling short of our solemn responsibilities and the community will judge us for it. Human life has to be valued and at the moment that value is just not there.

In honour of the memory of the children who have had their lives stolen from them and from their loved ones who are left with a lifelong grief, I commend this bill to the House.

### First Reading

**Mr JANETZKI** (Toowoomba South—LNP) (12.44 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

### Referral to Legal Affairs and Community Safety Committee

**Madam DEPUTY SPEAKER** (Ms Pugh): In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.

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

### ~~Second Reading~~

~~Resumed from p. 148, on motion of Mrs D'Ath~~

~~That the bill be now read a second time.~~

~~ **Dr ROWAN** (Moggill—LNP) (12.44 pm), continuing: Time will tell if the government's acceptance of the definition of consent is sufficient for victims of the non-consensual sharing of intimate images. However, as the committee commented on page 31 of its report—~~

~~The committee recognises that technology is constantly changing and that this may impact on the efficacy of the new laws. The committee considers that it would be beneficial for the new laws to be reviewed three years after they commence operation to ascertain whether they are operating as intended, in light of continuing technological advances.~~

~~At the very heart of this bill are concerns around the granting or lack of granting of consent. I would add that it would be wise to also further consider the definition of consent when these laws are reviewed.~~

~~I conclude by reflecting on the remarks of the Office of the Information Commissioner to the committee when it specifically noted the pervasive use of social media platforms. It is a sad reality that these platforms are increasingly being used on a daily basis to bully and harass everyday Queenslanders, often for simply having a different opinion. In the last few years, social media in all its forms has become problematic. We know that there are those who unfortunately harass, bully and intimidate others. Certainly I have seen that in a professional capacity when treating patients who have~~