



Australian Government

Australian Government response to the
Senate Legal and Constitutional Affairs Legislation
Committee report:

Criminal Code Amendment (Deepfake Sexual
Material) Bill 2024

AUGUST 2024

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Introduction

The Government thanks the Senate Legal and Constitutional Affairs Legislation Committee for its review of the Criminal Code Amendment (Deepfake Sexual Material) Bill 2024, and is pleased to provide the following response to the Committee's and Senator Scarr's recommendations.

Committee's Recommendations

Recommendation One

The committee recommends that the Attorney-General reviews the threshold outlined in proposed subsection 474.17AA(1) after two years of the Bill's operation.

The Government accepts this recommendation.

The Government continually monitors the operation of its laws to ensure they keep pace with technological developments, offending trends, operational needs and societal expectations. The Government recognises the importance of reviewing criminal thresholds to ensure the objectives of the provisions continue to be met and the offences remain fit for purpose.

Given the interactions of the aggravated offence at section 474.17AA(1) of the Bill and the contraventions under the *Online Safety Act 2021*, the Attorney-General's Department will work in close consultation with the Department of Infrastructure, Transport, Regional Development, Communications and the Arts and the Office of the eSafety Commissioner to implement this recommendation.

Recommendation Two

The committee recommends that the Attorney-General continues work already underway via the Standing Council of Attorneys-General in relation to development of harmonised offences across Australian jurisdictions for the:

- non-consensual creation of sexual material; and
- threat to non-consensual creation and/or distribution of sexual material that does not use a carriage service

The Government accepts this recommendation.

The Government will continue to work with states and territories through the Standing Council of Attorneys-General (SCAG) on responses to improve online safety, including technology-facilitated abuse and deepfakes, and to prevent family, domestic and sexual violence and abuse.

Recommendation Three

The committee notes the work of Education Ministers to implement version 9 of the Australian Curriculum and the work of schooling systems to implement age and developmentally appropriate programs on consent and online safety within the context of respectful relationships. The committee recommends the Education Ministers Meeting continues to progress their work to strengthen respectful relationships in schools.

The Government accepts this recommendation.

Under the Australian Government's \$83.5 million Consent and Respectful Relationships Education (CRRE) measure, the Government is partnering with states, territories, non-government school sectors and experts to strengthen Respectful Relationships Education (RRE) nationally. This includes through providing \$77.6 million to states, territories and non-government school systems over five years via a Federation Funding Agreement to support evidence-based, age-appropriate and expert-development CRRE in primary and secondary schools. Implementation of the CRRE measure is being guided by a National RRE Expert Working Group of jurisdictional and non-government school sector representatives and experts, and supported by development of an RRE Framework.

The Australian Government Department of Education will continue to work with stakeholders nationally to implement this measure, including through briefing Education Ministers Meeting members as needed.

Recommendation Four

Subject to the preceding recommendations, the committee recommends that the Senate urgently passes the Bill.

The Government accepts this recommendation.

The Government supports the urgent passing of the Criminal Code Amendment (Deepfake Sexual Material) Bill 2024 (the Bill) in the Senate.

Technology-facilitated abuse, especially non-consensual sharing of sexual material, continues to significantly impact Australians online. The Bill will protect the community from the growing trend of emerging online harms, and send a clear message to perpetrators that serious penalties apply to those who create and distribute real or fake sexual material without consent.

Recommendation One

It is recommended that the Senate consider whether the policy objectives of the Bill could be better achieved by retaining features of the framing of the offence in section 474.17 of the Criminal Code Act 1995 that promote certainty, with appropriate amendments made to the current offence to address the concerns raised by the Commonwealth Director of Public Prosecutions.

The Government notes this recommendation.

The Law Council of Australia's Submission to the Senate Legal and Constitutional Affairs Legislation Committee on the Bill noted that there are certain features of the framing of the existing primary offence in section 474.17 that promotes certainty, and referred to the broad and technologically neutral drafting of section 474.17 as an example.

While the Criminal Code Amendment (Deepfake Sexual Material) Bill 2024 will streamline and strengthen criminal offences by specifically targeting the non-consensual sharing of real or simulated sexually explicit material online, it is drafted in a way to ensure it is technology neutral and can apply to existing and future technologies. In particular, it is irrelevant for the purposes of the proposed new offences whether the material transmitted is in an unaltered form or has been created, or altered in any way, using technology, to ensure that the offences apply equally to the non-consensual transmission of real material, and material that has been altered or created using technology.

Recommendation Two

It is recommended that, prior to passing the Bill, the Senate should have the opportunity to consider the response of the Scrutiny of Bills Committee to any response received from the Attorney General to the issues raised by the Scrutiny of Bills Committee in its report dated 26 June 2024.

The Government notes this recommendation.

The Senate Standing Committee for the Scrutiny of Bills handed down its report on the Bill (Scrutiny Digest 7 of 2024) on 26 June 2024, and requested that a response be provided to the Committee by 12 July 2024. The Attorney-General provided detailed advice on the issues raised to the Committee, and has not received any further correspondence from the Committee.

Recommendation Three

It is recommended that the Bill be amended to provide for an independent statutory review of the operation of the Bill and related matters after 2 years of operation. Preparation of the terms of reference for the review should be informed by (amongst other things) the issues raised during this inquiry.

The Government notes this recommendation.

In accepting the Committee's first recommendation, the Government will review the threshold outlined in proposed subsection 474.17AA(1) after two years of the Bill's operation.

As outlined in the Government's response to the Committee's first recommendation, the Government continually monitors the operation of its laws to ensure they keep pace with technological developments, offending trends, operational needs and societal expectations.