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Friday, 19 July 2024

Senator Nita Green
Chair, Senate Legal and Constitutional Affairs Legislation Committee
Parliament House
Canberra ACT 2600

Dear Chair,

Thank you for the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Committee's review of the Criminal Code Amendment (Deepfake Sexual Material) Bill 2024 (the Bill).

Deepfakes can be images, videos, and sound files, created using Artificial Intelligence (AI), of a real person falsely depicting them engaging in conduct. They are increasingly realistic, preventing detection by visual inspection and making it difficult for individuals to understand that the images are fake and do not reflect reality. AI technology is also easily accessible, affordable and simple to use by people without technical expertise, significantly lowering the barrier to entry when used to facilitate crime. For these reasons, AI deepfakes have the potential to be used in a range of criminal offences, such as fraud and scams, blackmail, impersonation of high-office holders, domestic abuse, and online child sexual exploitation.

The Bill seeks to modernise and strengthen the existing offences at section 474.17A of the *Criminal Code Act 1995* (Cth) (the Criminal Code). Existing section 474.17A was introduced in 2018 to address the issue of non-consensual sharing of intimate images. As outlined in the 2018 Explanatory Memorandum, this offence may occur as a result of an ex-partner distributing intimate images for revenge purposes.¹ In such cases, the images themselves may be non-offensive and originally created with consent, but the sharing is non-consensual. The offence can also occur in connection with an attempt to control, blackmail, coerce or punish a victim (commonly referred to as 'sextortion').²

The Bill addresses the emergence of AI deepfake technology as a new means of creating intimate images, videos and audio. The creation of sexual material representing a person without their consent is a form of abuse and the non-consensual sharing of the material can cause long-lasting harm to victims, regardless of the way in which the image was created. The Bill will ensure offences apply to both 'real' material, such as unaltered images and recordings, as well as 'fake' or doctored material created or altered using technology, including AI. From a police perspective, it is important that criminal offences be drafted in a technology neutral way, to ensure they are future focused, and don't become outdated or ambiguous by quickly emerging and evolving technologies. The Bill as drafted should achieve this.

¹ Enhancing Online Safety (Non-Consensual Sharing of Intimate Images) Bill 2018, Revised Explanatory Memorandum, p.2.

² Ibid.

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The AFP was consulted during the development of the Bill, to ensure it is operationally workable. The offences will also be available to state and territory police to investigate and prosecute. In many cases, where the offending occurs in a domestic violence context, including in relation to a former domestic relationship, state and territory police may be the most appropriate to respond in their community policing role.

Non-consensual sharing of intimate images can also be reported to the eSafety Commissioner, who has powers to require online service providers to remove the content from their platforms. The Office of the eSafety Commissioner works closely with police to ensure that any evidence required has been appropriately preserved before content is removed.

The offences at section 474.17A (existing and proposed in the Bill) apply only to material that appears to depict a person who is 18 years or older. Material that depicts children is covered by existing child sexual abuse material offences, which already capture AI generated deep fake material. For example, on 1 May 2023, the AFP, through the Tasmanian Joint Anti Child Exploitation Team, charged a Tasmania man with child abuse material offences, including in relation to AI-generated content. He pleaded guilty and was sentenced to two years imprisonment.

The AFP is available to appear before the Committee to discuss this submission further. The AFP is also supporting further inquiries into safety of Australians online, including the statutory review of the *Online Safety Act 2021* (Cth) and Joint Select Committee on Social Media and Australian Society inquiry.

I trust that this information is of assistance.

Yours sincerely,

Ian McCartney
Deputy Commissioner Crime