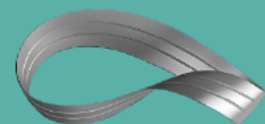


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# CRIMINAL CODE AMENDMENT (DEEFAKE SEXUAL MATERIAL) BILL 2024

ISA SUBMISSION

19 July 2024



INDEPENDENT  
SCHOOLS  
AUSTRALIA



...custodians of country throughout  
...s and community. We pay respect to  
...conciliation.



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## 1. ABOUT ISA

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Independent Schools Australia (ISA) is the national peak body for Independent schooling in Australia. ISA represents the sector on national issues and engages with the Australian Government, national agencies, media, key stakeholders, and the wider Australian community.

Working with the eight state and territory Associations of Independent Schools (AISs), ISA represents 716,800 students, over 1,215 schools and a workforce of 122,000 people.

Independent schools are long-established partners in Australia's education system, alongside government and Catholic schools. They make a valuable contribution to society and the learning and wellbeing of Australian children.

The Independent school sector is diverse, and schools serve a wide range of communities. The latest available data shows that more than one in six Australian school students attends an Independent school. For secondary students, it is over one in five.

Students at Independent schools reflect the full diversity of Australian society – including those who experience one or multiple forms of disadvantage. These students include:

- high-needs students with disability attending special schools
- Aboriginal and Torres Strait Islander students attending remote 100 per cent Indigenous schools
- students living in regional, rural and remote locations
- highly disadvantaged and disengaged young people attending Independent special assistance schools.

Most families with children enrolled in Independent schools are middle-to-low-income earners, increasingly from culturally diverse backgrounds, and residing in outer-suburban and inner-suburban communities. Many of these families are currently facing economic stress and are making substantial sacrifices for their children's education.

According to the most recent data, the majority of Independent schools charge annual fees of less than \$6,000, and there was a greater number of schools charging less than \$1,200 per year than those charging over \$20,000. Some Independent schools charge no fees at all. More than half of the sector's recurrent income comes from parents and families.

Many Independent schools provide a religious or values-based education. Others promote a specific educational philosophy or alternatively recognised curriculum. Some have been established by community groups seeking to meet particular needs or to reflect the religious values of a community. Independent Catholic schools are a significant part of the sector, accounting for eight per cent of the Independent sector's enrolments.

Most Independent schools are set up and governed independently on an individual school basis. However, some schools with common aims and educational philosophies are governed and administered as systems, for example, Lutheran schools. Systemic schools account for 20 per cent of schools in the sector but the majority of schools in the sector are autonomous non-systemic schools.

## 2. INTRODUCTION

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ISA prepared this submission in response to the Senate Legal and Constitutional Affairs Committee's Inquiry into the Criminal Code Amendment (Deepfake Sexual Material) Bill 2024.

Independent Schools Australia welcomes the opportunity to provide input on the Criminal Code Amendment (Deepfake Sexual Material) Bill 2024 (Bill). ISA is committed to ensuring the safety and well-being of students and staff in Independent schools.

With the rapid technological advancement of generative artificial intelligence (AI), the rise of deepfake technology poses an increased risk for schools and their communities and the potential for significant harm when misused, particularly in the context of non-consensual creation and distribution of sexually explicit material.

ISA regards the misuse of deepfake technology as a societal challenge and believes that global collaboration will be required to address the misuse of deepfake generation technologies.

This submission outlines ISA's perspectives on the proposed amendments to the Bill, emphasising the importance of robust legislation to deter individuals from digital exploitation and abuse.

## 3. KEY POINTS

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ISA supports the Bill's proposal to create a new offence for non-consensual misuse of deepfake sexual material. It is an important part of a greater societal approach that is necessary to reduce harm caused by exploitation of deepfake images. ISA makes the following key points which emphasise the importance of prevention, detection, and protection to reduce the generation and spread of damaging deepfake content:

- The development of a community education and awareness campaign in relation to penalties for the misuse of deepfake materials is necessary.
- Increased and targeted support for victims of deepfake abuse is required to reduce the impact of misuse and to provide navigation to legal and technical information and support.
- Strengthened requirements for social media websites and platforms to proactively prevent the sharing of deepfake materials, and greater penalties for companies knowingly hosting this material.
- Strong deterrent measures through the Criminal Code.

## 4. PREVENTION STRATEGIES FOR DEEPPAKE MATERIALS

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The Independent school sector is greatly concerned about the ease of access to generate deepfake images and the significant harm these images can have on their victims. The media has recently portrayed several stories of school students generating and sharing deepfake sexual images of both staff and students at their school. This is an extreme form of bullying and causes great harm and distress to all concerned. As one school principal stated, this is not just a school-based problem but a whole community-wide issue that can affect anyone at any time.

Amidst growing concerns and a spike in school incidences, the eSafety Commissioner Julie Inman Grant was reported as saying, 'image-based abuse, including the production of deepfake images and videos, was a persistent online harm which also represents one of the most egregious invasions of

privacy'.<sup>1</sup> It is essential to provide immediate education on generative AI literacy and to make young people aware that they are breaking the law if they participate in this activity.

While all school sectors educate their students about safe behaviours and the impact and harm that deepfake technology can cause, education on this issue cannot be the sole responsibility of schools or parents. Teachers are already under pressure to upskill their own generative AI skills to support their students and consider how best to integrate AI ethically into their lesson plans and pedagogical toolkit. Given the fast pace of digital change, all schools require support to provide education on generative AI literacy, especially regarding the generation of harmful deepfakes.

The Association of Independent Schools NSW has received several recent requests for support from member schools on the misuse of generative AI including:

- students accessing AI software to alter images of staff and/or students and replacing these images with pornographic images
- students accessing AI to alter staff speaking within a school context replacing their speech with inappropriate sexualised or racist language.

This behaviour causes great distress for those whose likeness is replicated, and can have substantial impacts such as social exclusion, cyber bullying and potentially exacerbated mental health issues for affected staff and students.

ISA recommends the implementation of a national education campaign to raise awareness about the harms of deepfake technology and the legal consequences of misusing it. A national campaign would support the distribution of widespread information for students, educators, parents and the public about the ethical considerations and potential repercussions of creating and sharing deepfake content. As this is a quickly developing space, young people may not realise that the generation and distribution of deepfake sexual material is a criminal offence. A strong education campaign can limit the number of additional investigations/charges resulting from these legislative amendments, reducing the impact on police resourcing.

Strong deterrent measures through the Bill can help prevent the creation and distribution of deepfake material by imposing significant legal consequences for such actions. Greater penalties imposed on those social media companies who allow deepfake sexual material to be shared on their sites could also reduce the proliferation of this material.

## 5. DETECTION

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As deepfakes are extremely difficult to detect, the work of law enforcement agencies to locate offenders who have generated offensive material is currently almost impossible, especially when offenders are in other countries or protected by VPNs. As the source image may be significantly altered, it may not be possible for police to locate and notify the victim. Due to these challenges in prosecuting the perpetrators of these crimes, an increased focus should be placed on the early detection and removal of deepfake material from websites and online platforms.

Support for ethically driven DigiTech companies to develop and implement software that can identify deepfake content and prevent its dissemination on social media platforms and other online spaces would be advantageous. In a school context, social media, forums and private messaging applications are the primary platforms through which deepfake images are shared. If stronger detection technology was available, it could be integrated into social media platforms and other online spaces to prevent the dissemination of deepfake sexual material and allow a more rapid response to illegal activity.

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<sup>1</sup> [Student AI deepfake images reflective of porn crisis. Australian Associated Press, 2024](#)



To support the detection of deepfake materials, ISA recommends further consultation be undertaken with key generative AI stakeholders to determine if the development and use of technology to detect deepfake sexual material is a feasible option. By investing in and advocating for technological solutions, and working collaboratively with DigiTech companies and countries globally, governments could help create a safer digital environment for all users.

## 6. PROTECTION AND SUPPORT

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ISA supports the Bill as a deterrent against the creation and distribution of deepfake sexual material without consent.

Victims of deepfake abuse might need counselling and legal aid following an incident. They should be informed about available resources for guidance and technological support to determine whether the damaging content can be removed from the website where it was posted.

Children and young people found guilty of generating and distributing harmful deep fake sexual material need to have developmentally appropriate consequences. This may include guidance, further education, counselling or restorative processes so they can understand the impact they have had on their victim/s. If charged with a criminal offence, the justice system can provide a level of punishment appropriate to the perpetrator's developmental age, motive for the offence and level of harm caused.

## 7. CONCLUSION

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This submission highlights the significant concerns of the Independent school sector regarding the ease with which young people can generate deepfake images and the substantial harm these images can inflict on victims. Independent schools are focussing on educating and informing their school communities on the law, safe behaviours and the impact on others when deepfake technology is misused. Schools may need support and legal advice when misuse arises in their school community.

ISA recommends further investigation into possible technological solutions for detecting harmful deepfake material and strong deterrent measures through the Bill which are developmentally appropriate for young people. Stronger requirements should also be established for social media websites and platforms hosting deepfake content to proactively prevent harmful content being uploaded, and quickly removed when it is identified in hosted content.

A national community education campaign is recommended to raise awareness about the harms of deepfake sexual material and the legal consequences of misusing it, as education on this issue cannot be the sole responsibility of schools or parents. This should not be limited to deepfake sexual material, but any misuse of deepfake images that can create harm or widespread misinformation.

Adopting a broad and detailed strategy to address the generation and dissemination of deepfake sexual content is crucial for enhancing safeguarding measures for all Australians. The Criminal Code Amendment (Deepfake Sexual Material) Bill 2024 represents one element of a necessary holistic approach, and ISA supports the purpose behind the Bill.

### Contact details

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