



Commissioner for Children and Young People
Western Australia

Our reference: CM 24/3727

Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: legcon.sen@aph.gov.au

Dear Senators,

Criminal Code Amendment (Deepfake Sexual Material) Bill 2024 [Provisions]

Thank you for the opportunity to provide feedback on the Criminal Code Amendment (Deepfake Sexual Material) Bill 2024 [Provisions].

As Commissioner for Children and Young People in Western Australia, I have a statutory responsibility under the Commissioner for Children and Young People Act 2006 (WA) to advocate for the views of children and young people to be heard in decision making that affects them. This role includes giving priority to, and having special regard to, the interests and needs of Aboriginal and Torres Strait Islander children and young people, and to children and young people who are vulnerable or disadvantaged in any way.

In undertaking these responsibilities, I must also have regard for the United Nations Convention on the Rights of the Child (UN CRC) which upholds the right of all children and young people to be protected from harm, to be safe, feel safe and be respected wherever they are, and to participate in decision making that affects them.

The impact of intimate image abuse is significant, and I therefore welcome the Bill's intent to strengthen offences targeting the non-consensual sharing of sexually explicit material online, including deepfakes.

I note that this Bill is intended to cover deepfakes of people who are, or appear to be, 18 or over with child sexual abuse material covered in other legislation. It is important to recognise that some children and young people are responsible for harmful sexual behaviour, which could include image-based abuse of adults. As some teachers have reported a rise in gendered harassment this could be an issue of concern.

As a function of their developmental stage, children and young people may have less ability to judge the appropriateness and impact of their actions or manage risks and impulsivity.

In their General Comment No. 24 (2019) on children's rights in the child justice system, the United Nations Committee on the Rights of the Child noted that "children differ

from adults in their physical and psychological development. Such differences constitute the basis for lesser culpability, and for a separate system with a different, individualized approach” (UN CRC: 2019, SI.2). This principle that justice should be developmentally appropriate is relevant across the justice system, including in legislation, policy and the administration of justice, as well as in the development and delivery of prevention, intervention, diversion and detention services.

Although children and young people are understood to have lesser culpability (and therefore criminal responsibility), this does not reduce the impact on victims, and there is a legitimate need for legislation that improves public safety. However, criminalisation of young people is not necessarily effective in addressing or preventing further offending.

I urge the Committee to therefore consider the need for such legislation to be accompanied by support for developmentally appropriate prevention and education strategies to prevent harmful sexual behaviour by children and young people. Children and young people need developmentally appropriate guidance and advice to ensure that they are aware that sharing sexual material including deepfakes of adults is a criminal act.

I am supportive of the bill's exclusion from the mandatory sentencing provisions for people under the age of 18. Addressing harmful sexual behaviour should prioritise early intervention and diversion to appropriate programs and supports that emphasise behaviour change, rehabilitation and reducing recidivism.

Children and young people with developmental delays, neurodevelopmental disorders or disability and children who have experienced sexual abuse, trauma and lacked appropriate support from adults may be particularly vulnerable to criminalisation. Their needs should be individually assessed to provide tailored education and support. Such support may need to continue past the age of 18 for people with neurocognitive disability.

Supporting children and young people to develop healthy and respectful relationships, including using online spaces effectively and safely is critical to their wellbeing and contributes to the broader safety of the community.

Should you wish to discuss further, please don't hesitate to contact Sharon Davis, Manager of Policy on

Yours sincerely,

~~Jacqueline McGowan~~ Jones

Commissioner

16 July 2024