

## Submissions on the Deepfake Digital Harm and Exploitation Bill

- 1 The Auckland Women Lawyer's Association (**AWLA**) makes these submissions in support of the Deepfake Digital Harm and Exploitation Bill (**Bill**).
- 2 AWLA is a representative charitable organisation for lawyers identifying as women in the Auckland region. AWLA's constitution sets out the following objectives, inter alia:
  - (a) to make suggestions and work for the reform of the law and the administration of the law particularly as it affects women and children; and
  - (b) to participate as a body in matters of interest to the legal profession.

### Concerns with current legal framework

- 3 Image-based sexual abuse has become alarmingly common in recent years, overwhelmingly targeting women and girls. Recent research indicates that 98% of deepfakes shared online are sexual in nature, with 99% of explicit deepfakes targeting women.<sup>1</sup>
- 4 Currently under the Harmful Digital Communication Act 2015 (**HDCA**), an individual who creates a sexualized deepfake image only commits an offence if they post the image with the intention to cause harm, and that the victim did in fact suffer harm.
- 5 Deepfakes do not currently fall within the definition of an 'intimate visual recording' and therefore are not captured by the stricter criteria of section 22A, which does not require an intention to cause harm.
- 6 'Harm' is defined by the HDCA as 'serious emotional distress.' This is a high threshold. It is difficult to prove that a defendant intended to cause serious emotional distress, as one can argue the images were shared as a joke or were not intended to be taken seriously.<sup>2</sup>

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<sup>1</sup> LeeYouk, Saetbyeol and Seering, Joseph "Deepfake, Real Harm: A Participatory Approach for Imagining Infrastructures to Combat Deepfake Sexual Abuse" (2026) Association for Computing Machinery.

<sup>2</sup> Gill Higgins, "Man Sentenced for Creating Sharing Deepfake Porn Images" (22 May 2026) 1 News <[www.1news.co.nz/2026/05/22/man-sentenced-for-creating-sharing-deepfake-porn-images/](http://www.1news.co.nz/2026/05/22/man-sentenced-for-creating-sharing-deepfake-porn-images/)>

- 7 For the victim, the process of proving they have suffered serious emotional distress is extensive, requiring an assessment of the victims age and characteristics, the extent of circulation of the digital communication, and whether the digital communication was true or false. It is likely that this process discourages victims from coming forward.
- 8 The subjectivity of the criteria under s 22 HDCA may also disadvantage victims who respond with anger or resilience rather than overt psychological suffering.<sup>3</sup>
- 9 If New Zealand does not take steps to criminalise sexualised deepfakes, it will fall behind countries such as the United Kingdom, Australia, South Korea and the United States, who have already introduced or expanded laws to criminalise the creation and/or sharing of non-consensual deepfakes.<sup>4</sup>
- 10 AWLA agrees that legislative change is needed to modernise New Zealand's approach to image-based sexual abuse.

### **Proposed Legislative Change**

- 11 Currently under the Crimes Act 1961 (**Crimes Act**), it is prohibited to make an intimate visual recording of another person, possess an intimate visual recording for the purpose of publishing or sale, and to publish, import, export or sell an intimate visual recording. Breach of these provisions attracts a term of imprisonment of up to 3 years.
- 12 Under section 216G of the Crimes Act and section 4 of the HDCA, an 'intimate visual recording' means a visual recording (for example, a photograph, videotape, or digital image) that is made in any medium using any device without the knowledge or consent of the person who is the subject of the recording, and the recording is of –
  - (a) a person who is in a place which, in the circumstances, would reasonably be expected to provide privacy, and that person is—
    - i. naked or has his or her genitals, pubic area, buttocks, or female breasts exposed, partially exposed, or clad solely in undergarments; or
    - ii. engaged in an intimate sexual activity; or

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<sup>3</sup> Dr Cassandra Mudgway, "Deepfake Digital Harm and Exploitation Bill" (2026) NZLJ 6.

<sup>4</sup> Dr Cassandra Mudgway, "NZ is criminalising sexualised deepfakes – banning apps that make them should be next." (19 May 2026) The Conversation <[theconversation.com/nz-is-criminalising-sexualised-deepfakes-banning-apps-that-make-them-should-be-next-282127](https://theconversation.com/nz-is-criminalising-sexualised-deepfakes-banning-apps-that-make-them-should-be-next-282127)>

- iii. engaged in showering, toileting, or other personal bodily activity that involves dressing or undressing; or
  - (b) a person's naked or undergarment-clad genitals, pubic area, buttocks, or female breasts which is made—
    - i. from beneath or under a person's clothing; or
    - ii. through a person's outer clothing in circumstances where it is unreasonable to do so.
- 13 Intimate digital recordings also include a recording which is made and transmitted in real time without retention or storage (such as a live stream).
- 14 Part 1 of the Bill seeks to amend the Crimes Act to extend the definition of 'intimate visual recording' to include images that are created, synthesised, or altered to appear to be intimate visual images. It also proposes to amend the definition of 'subject' (subject of an intimate visual recording) to mean an individual who is, or appears to be, featured or depicted in the recording.
- 15 Part 2 of the Bill seeks to amend the HDCA to extend the definition of intimate visual recording to include images that are created, synthesised, or altered to appear to be intimate visual images. It similarly seeks to amend the definition of 'subject' to reflect the proposed definition in the Crimes Act.
- 16 The definition of intimate visual recording is relevant to section 22A of the HDCA which states that a person commits an offence if they post an intimate visual recording of a victim, knowing or being reckless as to whether the victim has consented to the posting.
- 17 An offender who is a natural person under section 22A is liable on conviction to a term of imprisonment of up to 2 years or a fine of up to \$50,000.
- 18 Notably, section 22A requires a lower threshold of intention than the offences listed at section 22 of the act which relate to causing harm by digital communication (and form the majority of offences under that act). Section 22 requires that a person post a digital communication with the intention that it cause harm to a victim; that posting the communication would cause harm to an ordinary reasonable person in the position of the victim, and posting the communication does, in fact, cause harm to the victim. The level of harm required is 'serious emotional distress.'
- 19 Section 22A was introduced with the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Act 2022 to recognise that non-consensual publication of an intimate visual image is, in and of itself, harmful because it involves a breach of trust and confidence.

- 20 The offences under the Crimes Act take a similar approach. A key difference is that under the Crimes Act it would become an offence under sections 216H and 216I not only to share a sexualised deepfake, but to create one, possess one, or possess one for the purpose of publishing it. Creating a non-consensual sexualised deepfake would therefore attract the same penalty as creating a covert intimate recording, being a term of imprisonment of up to 3 years.
- 21 This approach would be consistent with research which suggests that the psychological consequences for victims of sexualised deepfakes are comparable to those of non-consensual intimate image abuse, with victims often experiencing PTSD, depression, anxiety and social withdrawal.<sup>5</sup> Legal scholar Clare McGlynn likens sexualised deepfakes to conventional voyeurism, stating that it is a “non-consensual act of a sexual nature, infringing on an individual fundamental rights to privacy, dignity and sexual autonomy.”<sup>6</sup>

#### **AWLA Comments on Proposed Amendments**

- 22 AWLA supports the Bill as a necessary change which brings New Zealand up to date with other jurisdictions.
- 23 The proposed changes to the Crimes Act and the HDCA are welcomed.
- 24 AWLA is concerned that, with the rapid pace of technological change, the Bill adopts a piecemeal approach to online sexual harm and may require amendment in the near future.
- 25 AWLA therefore recommends that the Bill is amended to become more forward focused, and makes the following suggestions:
- (a) Parliament to establish a national online sexual harm oversight body composed of technical experts.
  - (b) Expand the Bill to include penalties for individuals and companies for creating, hosting, selling, advertising or distributing AI systems and apps which are capable of generating non-consensual sexual content.

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<sup>5</sup> LeeYouk, Saetbyeol and Seering, Joseph “Deepfake, Real Harm: A Participatory Approach for Imagining Infrastructures to Combat Deepfake Sexual Abuse” (2026) Association for Computing Machinery.

<sup>6</sup> McGlynn, C. and Toparlak R. T. The ‘new voyeurism’: criminalizing the creation of ‘deepfake porn’. *Journal of Law and Society*. 2025;52:204–228.

- (c) Provide an avenue for compensation alongside take-down orders to recognise victims' 'right to be forgotten.'

### **Concerns the Bill does not go far enough**

- 26 AWLA is concerned that the proposed changes, although welcomed, represent a temporary fix for a larger issue. It is likely that the Crimes Act and HDCA will require regular amendments as the technology to create nonconsensual sexual materials and other harmful digital content continues to proliferate and improve.

#### *Penalties for the Creation and Distribution of Apps Capable of Generating Sexualised Deepfakes*

- 27 Jurisdictions which were early to criminalise deepfakes such as Australia, the European Union, and the United Kingdom are now proposing further legislation to regulate AI systems deemed as 'high-risk.'<sup>7</sup> For example, a bill was recently introduced in Australia that would make it a criminal offence to download, access, supply or offer access to 'nudify' apps and other tools of which the dominant or sole purpose is the creation of child sexual abuse material.<sup>8</sup>
- 28 Apps containing 'nudify' or 'undress' tools are readily available on websites and app stores, and can be highly profitable for hosts and developers. One July 2025 study showed that 85 'nudify' websites had a combined average of 18.5 million visitors over a six-month period, generating between US \$2.6 million and \$18.4 million in that six-month period.<sup>9</sup>
- 29 New Zealand has the opportunity to lead the way in this arena by broadening the scope of the current Bill to target deepfake systems and platforms, rather than just its users. AWLA recommends this expansion of the Bill as a way of addressing the issue at the source.

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<sup>7</sup> Dr Cassandra Mudgway, "NZ is criminalising sexualised deepfakes – banning apps that make them should be next." (19 May 2026) [theconversation.com/nz-is-criminalising-sexualised-deepfakes-banning-apps-that-make-them-should-be-next-282127](https://theconversation.com/nz-is-criminalising-sexualised-deepfakes-banning-apps-that-make-them-should-be-next-282127)

<sup>8</sup> Nicola Henry, "Australia set to ban 'nudify' apps. How will it work?" (3 September 2025) [theconversation.com/australia-set-to-ban-nudify-apps-how-will-it-work-264349](https://theconversation.com/australia-set-to-ban-nudify-apps-how-will-it-work-264349)

<sup>9</sup> Above.

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### *Establish a National Online Sexual Harm Oversight Body*

- 30 AI deepfake technologies are becoming increasingly difficult to detect as AI-generated content is sometimes indistinguishable from other types of digital sexual abuse.<sup>10</sup> Perpetrators are able to mask their identity and location using VPNs, proxy servers, file-sharing platforms and private forums.
- 31 There is a risk that those seeking to prosecute under the proposed new legislation will face high evidential or practical burdens. For example, proving that a subject 'is or appears to be depicted,' or proving the identity and whereabouts of the perpetrator, could be time intensive and require a degree of technical expertise. AWLA therefore recommends that Parliament consider the establishment of a national online sexual harm oversight body. This approach could model steps taken in countries such as South Korea, which has established a national Digital Sex Crime Monitoring and Response Center that coordinates policy, monitoring, and investigations across the country.<sup>11</sup>

### *Provide an Avenue for Compensation and Take-Down Orders*

- 32 As provided to European citizens under the General Data Protection Regulation, the 'right to be forgotten' provides people in the European Union the right to request that information about them online is erased in certain situations.
- 33 Legal protections for the unauthorised use of an individual's image and more broadly speaking, an individual's likeness or personality, are woefully inadequate in Aotearoa New Zealand.
- 34 The limited statutory protections that we do have are contained in the Privacy Act 2020 (**PA**), the HDCA and the Harassment Act 2007. However, none of these acts meaningfully assist when the victim has suffered emotional harm, or actual harm through loss of a job or loss of an opportunity. The PA does not provide the victim a right to require search engines or social media sites to remove the image or links to it. It does not provide the victim a right to compensatory damages for the harm suffered. The HDCA and the Harassment Act, while providing the basis for a take-down order or a restraining order, do not provide a right to compensatory damages for the harm suffered either.

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<sup>10</sup> LeeYouk, Saetbyeol and Seering, Joseph "Deepfake, Real Harm: A Participatory Approach for Imagining Infrastructures to Combat Deepfake Sexual Abuse" (2026) Association for Computing Machinery.

<sup>11</sup> Above.

35 AWLA appreciates the opportunity to contribute to this important legislative reform. AWLA welcomes the opportunity to make oral submissions on the Bill.

Nāku noa, nā



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