



Criminal Code Amendment (Deepfake Sexual Material) Act 2024

No. 78, 2024

An Act to amend the *Criminal Code Act 1995*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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An Act to amend the *Criminal Code Act 1995*, and for related purposes

[Assented to 2 September 2024]

The Parliament of Australia enacts:

1 Short title

This Act is the *Criminal Code Amendment (Deepfake Sexual Material) Act 2024*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	3 September 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Criminal Code Act 1995

1 Section 473.1 of the *Criminal Code* (definition of *private sexual material*)

Repeal the definition.

2 Section 473.1 of the *Criminal Code* (definition of *subject*)

Repeal the definition.

3 Subsection 473.4(1) of the *Criminal Code*

Omit “(1)”.

4 Subsections 473.4(2) to (4) of the *Criminal Code*

Repeal the subsections.

5 Section 474.17A of the *Criminal Code*

Repeal the section, substitute:

474.17A Using a carriage service to transmit sexual material without consent

Offence

- (1) A person (the *first person*) commits an offence if:
- (a) the first person uses a carriage service to transmit material of another person; and
 - (b) the other person is, or appears to be, 18 years of age or older; and
 - (c) the material depicts, or appears to depict:
 - (i) the other person engaging in a sexual pose or sexual activity (whether or not in the presence of other persons); or
 - (ii) a sexual organ or the anal region of the other person; or
 - (iii) if the other person is female—the other person’s breasts; and

(d) the first person:

- (i) knows that the other person does not consent to the transmission of the material; or
- (ii) is reckless as to whether the other person consents to the transmission of the material.

Note: For material that relates to a person who is, or appears to be, under 18 years of age, see:

- (a) the definition of *child abuse material*; and
- (b) the offences relating to child abuse material in Subdivision D.

Penalty: Imprisonment for 6 years.

(2) For the purposes of subsection (1), it is irrelevant whether the material transmitted:

- (a) is in an unaltered form; or
- (b) has been created, or altered in any way, using technology.

Note: Paragraph (b) includes images, videos or audio depicting a person that have been edited or entirely created using digital technology (including artificial intelligence), generating a realistic but false depiction of the person. Examples of such material are “deepfakes”.

Exceptions

(3) Subsection (1) does not apply if:

- (a) transmitting the material is necessary for, or of assistance in:
 - (i) enforcing a law of the Commonwealth, a State or a Territory; or
 - (ii) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or
- (b) transmitting the material is for the purposes of proceedings in a court or tribunal; or
- (c) transmitting the material is for a genuine medical or scientific purpose; or
- (d) a reasonable person would consider transmitting the material to be acceptable, having regard to the following:
 - (i) the nature and content of the material;
 - (ii) the circumstances in which the material was transmitted;

- (iii) the age, intellectual capacity, vulnerability or other relevant circumstances of the person depicted, or appearing to be depicted, in the material;
- (iv) the degree to which the transmission of the material affects the privacy of the person depicted, or appearing to be depicted, in the material;
- (v) the relationship between the person transmitting the material and the person depicted, or appearing to be depicted, in the material;
- (vi) any other relevant matters.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3).

Interpretation

- (4) In this section:

transmit includes make available, publish, distribute, advertise and promote.

- (5) In this section, being **reckless** in relation to consent includes not giving any thought to whether or not the person is consenting.

474.17AA Aggravated offences involving transmission of sexual material without consent

Aggravated offence—transmission of sexual material without consent after certain civil penalty orders were made

- (1) A person commits an offence against this subsection if:
- (a) the person commits an offence (the **underlying offence**) against subsection 474.17A(1); and
 - (b) before the commission of the underlying offence, 3 or more civil penalty orders were made against the person under the *Regulatory Powers (Standard Provisions) Act 2014* in relation to either or both of the following:
 - (i) contraventions of subsection 75(1) of the *Online Safety Act 2021*;

- (ii) contraventions of section 91 of the *Online Safety Act 2021* that relate to removal notices given under section 89 of that Act.

Penalty: Imprisonment for 7 years.

- (2) There is no fault element for the physical element described in paragraph (1)(a) other than the fault elements (however described), if any, for the underlying offence.
- (3) To avoid doubt, a person does not commit the underlying offence for the purposes of paragraph (1)(a) if the person has a defence to the underlying offence.
- (4) Absolute liability applies to paragraph (1)(b).

Aggravated offence—creation or alteration of sexual material transmitted without consent

- (5) A person commits an offence against this subsection if:
- (a) the person commits an offence (the **underlying offence**) against subsection 474.17A(1); and
 - (b) the person was responsible for the creation or alteration of the material.

Penalty: Imprisonment for 7 years.

- (6) There is no fault element for the physical element described in paragraph (5)(a) other than the fault elements (however described), if any, for the underlying offence.
- (7) To avoid doubt, a person does not commit the underlying offence for the purposes of paragraph (5)(a) if the person has a defence to the underlying offence.

474.17AB Double jeopardy etc. provisions—offences involving transmission of sexual material without consent

Double jeopardy

- (1) A person who has been convicted or acquitted of an offence (the **aggravated offence**) specified in column 1 of an item of the following table may not be convicted of an offence specified in

column 2 of the item in relation to the conduct that constituted the aggravated offence.

Double jeopardy

Item	Column 1 Aggravated offence	Column 2 Other offence
1	subsection 474.17AA(1)	subsection 474.17A(1) or 474.17AA(5)
2	subsection 474.17AA(5)	subsection 474.17A(1) or 474.17AA(1)

- (2) Subsection (1) does not prevent an alternative verdict under section 474.17B.
- (3) A person who has been convicted or acquitted of an offence (the ***underlying offence***) against subsection 474.17A(1) may not be convicted of an offence against subsection 474.17AA(1) or (5) in relation to the conduct that constituted the underlying offence.

When conviction must be set aside

- (4) If:
- (a) a person has been convicted by a court of an offence against subsection 474.17AA(1) on the basis that 3 or more civil penalty orders were made against the person under the *Regulatory Powers (Standard Provisions) Act 2014* in relation to either or both of the following:
 - (i) contraventions of subsection 75(1) of the *Online Safety Act 2021*;
 - (ii) contraventions of section 91 of the *Online Safety Act 2021* that relate to removal notices given under section 89 of that Act; and
 - (b) one or more of those civil penalty orders are set aside or reversed on appeal; and
 - (c) if the civil penalty orders covered by paragraph (b) of this subsection had never been made, the person could not have been convicted of the offence; and
 - (d) the person applies to the court for the conviction to be set aside;
- the court must set aside the conviction.

(5) If:

- (a) a person has been convicted by a court of an offence (the **aggravated offence**) against subsection 474.17AA(1); and
- (b) the court sets aside the conviction under subsection (4) of this section;

the setting aside of the conviction does not prevent proceedings from being instituted against the person for an offence against subsection 474.17A(1) or 474.17AA(5) in relation to the conduct that constituted the aggravated offence.

6 Section 474.17B of the *Criminal Code*

Repeal the section, substitute:

474.17B Alternative verdict if aggravated offence not proven

- (1) If, on a trial of a person for an offence specified in column 1 of an item of the following table, the trier of fact:
 - (a) is not satisfied that the person is guilty of the offence; and
 - (b) is satisfied beyond reasonable doubt that the person is guilty of an offence against a provision specified in column 2 of the item;
 it may find the person not guilty of the offence specified in column 1 but guilty of an offence specified in column 2 of that item.

Alternative verdict if aggravated offence not proven

Item	Column 1 For an offence against:	Column 2 the alternative verdict is an offence against:
1	subsection 474.17AA(1)	either of the following: (a) subsection 474.17A(1); (b) subsection 474.17AA(5)
2	subsection 474.17AA(5)	either of the following: (a) subsection 474.17A(1); (b) subsection 474.17AA(1)

- (2) Subsection (1) applies only if the person has been accorded procedural fairness in relation to the finding of guilt for the offence specified in column 2 of the relevant item.

7 Application of amendments

The amendments made by this Schedule apply in relation to material that is transmitted after the commencement of this Schedule (regardless of whether the material was created or altered before or after that commencement).

*[Minister's second reading speech made in—
House of Representatives on 5 June 2024
Senate on 3 July 2024]*

(71/24)

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