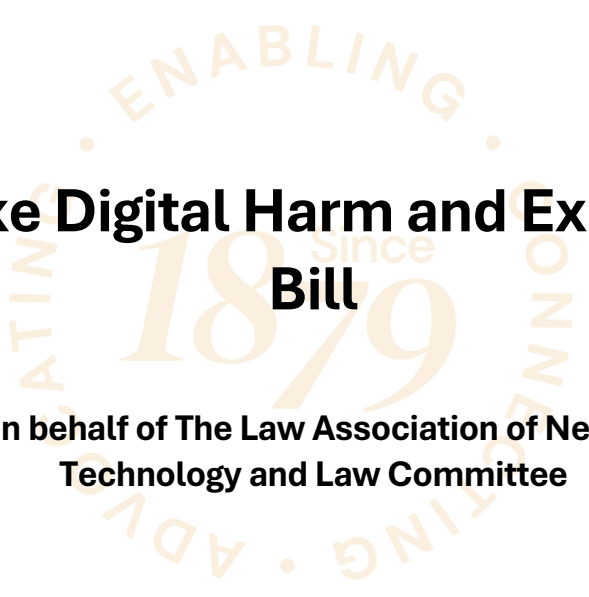




Deepfake Digital Harm and Exploitation Bill

**Submissions on behalf of The Law Association of New Zealand by the
Technology and Law Committee**

19 June 2026

INTRODUCTION

This submission is made on behalf of the Technology and Law Committee (“the Technology Committee”) of The Law Association of New Zealand (The Law Association). The Law Association is an independent membership organisation representing more than 11,000 legal professionals across Aotearoa, New Zealand, and contributes to legal and policy development through the work of its expert committees. The Committee comprises practitioners with specialist expertise in law, technology, and public policy.

The Committee welcomes the opportunity to submit the Deepfake Digital Harm and Exploitation Bill (“the Bill”). The Committee has a direct interest in the subject matter of the Bill. In its recent submission to the Education and Workforce Committee’s Inquiry into the harm young New Zealanders encounter online, the Committee identified the very gap the Bill now seeks to close and recommended that the definitions of “intimate visual material” be reformed to include synthetic content. The Bill is a welcome and overdue response to that gap.

The Committee supports the Bill. The recommendations that follow are intended to ensure that it operates clearly, consistently, and proportionately. The Committee is happy to appear before the Committee to speak to this submission.

EXECUTIVE SUMMARY

In summary, the Committee:

- (a) supports the Bill in principle as a sound, technology-neutral means of closing a recognised gap in the law;
- (b) welcomes the amendments to the Crimes Act 1961 to capture the creation of an intimate deepfake, not only its distribution;
- (c) recommends that the identifiability and realism threshold (“appears to show the person”) be clarified by reference to an objective test
- (d) recommends that the words “without the knowledge or consent” be removed from the Harmful Digital Communications Act amendment, to avoid an internal inconsistency and an unintended gap;
- (e) recommends that the mental element applying to synthetic recordings be clarified;
- (f) recommends that the Bill’s relationship with the objectionable-publications regime be clarified, particularly for depictions of minors;
- (g) recommends express consideration of legitimate-purpose exceptions, to ensure consistency with the New Zealand Bill of Rights Act 1990;
- (h) notes the penalty and forum overlap between the two regimes; and
- (i) emphasises that, while necessary, the Bill is not sufficient: systemic platform reform and supply-side measures remain needed; and
- (j) notes that further work addressing synthetic media issues in the law and legal systems must continue.

SUBMISSIONS

1. The Committee supports the Bill in principle

- 1.1. New Zealand’s intimate-image offences were designed for recordings of a real person’s actual body. The offences in sections 216G to 216N of the Crimes Act 1961 (CA) turn on a recording “made ... without the knowledge or consent” of the subject, and the posting offence in section 22A of the Harmful Digital Communications Act 2015 (HDCA) is directed at posting such a recording without consent.¹² Synthetic depictions — in which a person’s likeness is mapped onto a generated or altered body — sit uneasily within these definitions, and their application to deepfakes has not been substantively tested by the courts.³
- 1.2. The harm is real and escalating. The LAW ASSOCIATION Committee’s earlier submission documented the rapid growth of AI-generated intimate imagery, including within school communities. New Zealand has since seen its first sentencing in a case involving sexually explicit deepfakes, underscoring that victims are presently forced to rely on legal workarounds and uncertain interpretation rather than clear protection.⁴
- 1.3. The Bill’s central mechanism - extending “intimate visual recording” to images that are “created, synthesised, or altered” - is a sound and technology-neutral way to close that gap. The Technology Committee commends the technology-neutral drafting, which is consistent with its recommendation for future-proof, principles-based reform.⁵
- 1.4. The Technology Committee therefore supports the Bill and the policy it advances. Its remaining submissions are refinements only.

2. The Technology Committee welcomes that the Bill captures creation, not only distribution

- 2.1. By amending the definition in section 216G CA, the Bill brings synthetic content within the whole suite of Crimes Act offences for dealing with intimate visual recordings - making (s 216H), possession (s 216I), and publishing (s 216J) - and not only the HDCA posting offence.
- 2.2. This directly addresses a concern raised in the Technology Committee’s earlier submission: that an intimate deepfake need not be shared in order to cause serious harm, and that simply knowing an identifiable image of oneself has been created can be deeply distressing, particularly for young people.⁶ Criminalising the creation of such material under section 216H CA, which carries a maximum penalty of three years’ imprisonment, is a proportionate and necessary response.⁷
- 2.3. The Technology Committee also notes that the proposed new section 216G(1A) CA sensibly omits the “reasonable expectation of privacy in a place” element that qualifies

¹Crimes Act 1961, ss 216G–216N; legislation.govt.nz.

²Harmful Digital Communications Act 2015, s 22A, inserted by the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Act 2022, s 8; legislation.govt.nz.

³The only reported decision citing s 22A, *Tang v Police* [2024] NZHC 3702, does not concern synthetic material; *R v AB* [2025] NZDC CRI-2023-006-000137, 43, discusses the gap in the legislation and mischief to be remedied

⁴See Laura McClure “First Explicit Deepfake Sentencing: ACT MP Responds” (22 May 2026) Scoop.

⁵Online Harm Inquiry submission, above n 2.

⁶Online Harm Inquiry submission, above n 2.

⁷Crimes Act 1961, s 216H; legislation.govt.nz.

the existing limb (a).⁸ That element would make little sense for a synthesised image, which does not necessarily need to depict a real place or event. The Technology Committee supports this drafting choice.

3. The standard for identifiability and realism should be clarified with an objective test

- 3.1. The Bill turns on whether a recording “appears to show the person” and defines “subject” as an individual who “is, or appears to be, featured or depicted” in the recording – with no further clarification as to what this entails. This marks a significant shift in the focus of ‘intimate visual recordings’, which requires a nexus to physical covert filming, to issues surrounding personality and likeness rights. The Technology Committee is concerned with the ambiguity this creates.
- 3.2. The Bill does not state the degree of resemblance required, nor whether identifiability is to be judged objectively. The Bill is also ambiguous as to whether a synthesised image must appear photorealistic to be covered by the offences.
- 3.3. The requirement that a recording “appears to show the person” suggests a realism element, but it alone does not provide sufficient clarity on this point. It is possible for synthetic images to appear to depict a particular real, identifiable individual whilst appearing obviously non-realistic (e.g. an explicit image synthesised in a cartoon style, but with distinct features, context or identifiers suggesting inspiration from a real person). Comparable images have not historically been covered under “intimate visual recording” provisions, so clarity on whether the Bill extends the scope this far is necessary.
- 3.4. The Technology Committee believes images with a clearly non-realistic style are best left out of the “intimate visual recording” definition. While acknowledging such images can cause comparable harm to realistic images when shared in certain circumstances, most of these scenarios would involve clear intention to harm which s 22 of the HDCA already effectively captures. Including non-realistic images without further treatment also creates potentially disproportionate liability for the creation and possession of such content in the Crimes Act, where penalties were conceived to capture the more intrusive violation of covert filming.⁹
- 3.5. Furthermore, if the standard of ‘appears to’ is the sole qualifier, this suggests that defects in the quality of a synthetically generated explicit image could be relevant as a defence – in the case of an image which may have been intended to look photorealistic, but appear obviously synthetic due to visual defects or watermarking. This notably conflicts with how the Bill criminalises some actions at the point of creation, prior to when the output of the image can be determined.
- 3.6. The Technology Committee understands that the Bill, by subsuming synthetic images into the intimate visual recording definition, targets harm caused by synthetic depictions which appear realistic, and would be recognised and assumed by a reasonable viewer to depict a subject’s real body and actions. The current wording of the Bill, however, may capture non-realistic images which have historically sat far outside the scope of the intimate visual recording regime.

⁸Crimes Act 1961, s 216G(1)(a).

⁹ Crimes Act 1961, s 216 H and I(1).

3.7. To address this, the Technology Committee recommends that the addition of an expressly objective test for identifiability and realism — that is, whether a reasonable person would identify the subject and be likely to assume the image to depict the real subject, in order to give certainty to victims, defendants, and enforcement agencies. This would help exclude images in a non-realistic style from the regime and refocus defences to creation and possession offences under the Crimes Act on the intention to create a reasonably realistic image, and not the quality of output. This aligns with the comparable overseas instruments that frame the offence around an “identifiable individual” and under the term ‘digital forgery’, suggesting a requirement for some intention to pass off the content as real along with convincing realism, and a direct connection to the portrayed individual. Without this requirement, the offence is not seen as applicable.¹⁰

4. The “without the knowledge or consent” qualifier should be removed from the HDCA amendment

4.1. The Bill replicates near-identical wording in both Acts. In the Crimes Act, requiring that the recording be “created, synthesised, or altered without the knowledge or consent” of the subject is consistent with the existing definition, because the Crimes Act offences, including making under section 216H, are predicated on non-consensual making. The qualifier is appropriate and should be retained.

4.2. The HDCA definition is deliberately different. To support the section 22A posting offence, which criminalises posting without consent regardless of whether the recording was made with consent — the existing HDCA definition of “intimate visual recording” expressly covers recordings made “with or without” the subject’s knowledge or consent.¹¹ Under that regime, consent is assessed at the point of posting, not at the point of making.

4.3. By inserting a new paragraph (ab) that requires a synthetic recording to have been created “without the knowledge or consent” of the subject, the Bill imports a non-consensual-making element into the HDCA definition that is inconsistent with the balance of that definition. It also creates an unintended gap: a synthetic intimate image created with the subject’s consent (for example, commissioned or self-generated) but later posted without consent would fall outside paragraph (ab), and therefore outside section 22A, even though an equivalent genuine recording posted in the same circumstances would be caught.

4.4. The recommendation is to delete the words “without the knowledge or consent of the person who is the subject of the recording” from the proposed new paragraph (ab) of the section 4 HDCA definition, so that the synthetic-content limb aligns with the existing definition and consent continues to be assessed) at the posting stage under section 22A. The corresponding words in the Crimes Act amendment should be retained.

5. The mental element applying to synthetic recordings should be clarified

5.1. The existing offences carry mental elements: section 216H CA applies to a person who “intentionally or recklessly” makes an intimate visual recording, and section 22A HDCA

¹⁰In the United States, the TAKE IT DOWN Act 2025 frames its prohibitions around an “identifiable individual”.

¹¹Harmful Digital Communications Act 2015, s 4, definition of “intimate visual recording” (which, unlike the Crimes Act definition, applies to a recording made “with or without the knowledge or consent” of the subject). Consent is assessed under s 22A at the point of posting, not at the point of making.

applies to a person who posts knowing of, or being reckless as to, the absence of consent.¹²

5.2. For synthetic content, a further question arises that does not arise for ordinary recordings: whether the defendant knew or intended that the image depicts, or appears to depict, a real and identifiable person. Generative tools can produce outputs that incidentally resemble a real individual. The Technology Committee recommends that the Committee consider whether the Bill should make explicit that liability requires the defendant to have intended or known that the recording depicts (or appears to depict) an identifiable person, so as not to capture genuinely inadvertent resemblance.

6. The Bill's relationship with the objectionable-publications regime should be clarified, particularly for minors

6.1. Where the subject is a child or young person, synthetic sexual depictions also engage the Films, Videos, and Publications Classification Act 1993 (FVPCA). A publication that promotes or supports the exploitation of children or young persons for sexual purposes is “objectionable”, and the making, possession, and distribution of objectionable publications are serious offences carrying substantially higher penalties than those under the Bill.¹³

6.2. Importantly, the FVPCA's content-based test does not require the depicted child to be a real or identifiable person: wholly synthetic depictions of child sexual abuse are already objectionable. The Bill, by contrast, requires an identifiable real subject.

6.3. The Technology Committee therefore recommends that the Committee:

- (a) confirm that the Bill is not intended to, and does not, narrow the existing coverage of synthetic child sexual abuse material under the FVPCA; and
- (b) consider an explanatory note or savings provision clarifying the relationship between the two regimes, so that it is not inadvertently understood that synthetic depictions of minors are an offence only where the child is identifiable.

6.4. The Bill nonetheless adds real value for young victims, by extending both the privacy-based Crimes Act offences and the HDCA civil take-down regime (see paragraph 9.3 below) to identifiable depictions.

7. Legitimate-purpose exceptions and the New Zealand Bill of Rights Act 1990

7.1. Criminalising the creation and publication of images engages the right to freedom of expression affirmed by section 14 of the New Zealand Bill of Rights Act 1990, and any limit must be demonstrably justified under section 5.¹⁴ For non-consensual intimate deepfakes the justification is, in TLANZ Committee's view, compelling, and the Technology Committee does not suggest the Bill is inconsistent with the Act.

7.2. The Bill contains no express exception for legitimate purposes (for example, satire, art, education, journalism, medical, or law-enforcement uses). The sponsor has indicated

¹²Crimes Act 1961, s 216H; Harmful Digital Communications Act 2015, s 22A.

¹³Films, Videos, and Publications Classification Act 1993, s 3 (definition of “objectionable”); offences at ss 123–131A.

¹⁴New Zealand Bill of Rights Act 1990, ss 5 and 14.

publicly that the Bill is not intended to capture satire or art.¹⁵ However, the existing public-interest exceptions in section 216K CA are directed at publishing under section 216J CA and do not apply to the making offence in section 216H CA.¹⁶ As extended, section 216H CA could in principle capture the creation of a non-consensual intimate depiction made for a genuinely satirical or artistic purpose.

7.3. The Technology Committee recommends that the Committee consider whether a narrowly framed legitimate-purpose exception (or an express extension of the section 216K CA exceptions to the synthetic-content limb) is required to ensure the Bill is proportionate and consistent with section 14 of the New Zealand Bill of Rights Act 1990 — while recognising that the overwhelming majority of the conduct the Bill targets has no legitimate purpose and would not benefit from any such exception.

8. Penalty and forum consistency

8.1. The same synthetic image could be prosecuted under either the CA or the HDCA. Creating a deepfake would be an offence under section 216H CA (maximum three years' imprisonment); posting it would be an offence under both section 216J of the CA (maximum three years' imprisonment) and section 22A of the HDCA (maximum two years' imprisonment, or a fine not exceeding \$50,000, for a natural person).¹⁷

8.2. This produces overlapping offences with different maximum penalties and different procedural settings for substantially the same conduct. The Technology Committee does not suggest this is fatal — prosecutorial discretion routinely manages overlapping offences — but recommends that the Committee note the overlap and consider whether the penalty levels across the two regimes should be expressly reconciled.

9. The Bill is necessary but not sufficient: systemic and supply-side reform remains needed

9.1. The Technology Committee reiterates the broader position set out in its earlier submission. The Bill is a targeted and welcome criminal-law reform that closes one specific definitional gap. It does not address — and is not a substitute for — the systemic issues the Technology Committee previously identified: the absence of any general duty of care, or risk-assessment and transparency obligations, on platforms; the safe-harbour provisions that shield platforms from liability for design-enabled harm; and the fragmented enforcement architecture.¹⁸

9.2. By the HDCA's design, only a small minority of image-based sexual abuse victims ever engage the courts. Many victims will engage only as far as Netsafe's support to have their content removed, but have difficulty pursuing further action – commonly due to either the emotional toll of the abuse, or difficulties in identifying perpetrators shielded by online anonymity. Most children in schools who fall victim to incidents involving explicit deepfakes also never engage with any formal process at all, as school staff often prefer to handle incidents internally except for support from Netsafe to deal with content circulated online, to avoid implicating reckless young offenders.

¹⁵Russell Palmer "Deepfake bill passes first reading in Parliament" RNZ (20 May 2026).

¹⁶Crimes Act 1961, s 216K (exceptions to the s 216J prohibition).

¹⁷Harmful Digital Communications Act 2015, s 22A(2). The maximum for a body corporate is a fine not exceeding \$200,000.

¹⁸Online Harm Inquiry submission, above n 2.

- 9.3. Barring a few fringe communities dedicated to deepfake explicit imagery, most online platforms already respond to content reports of non-consensual explicit synthetic material as they would with non-synthetic content. While the Bill's extension of the civil take-down and remedial regime under that Act (the approved-agency process and the District Court orders) is helpful to clarify that these requests have clear legal authority, in most cases this ambiguity has not proven a significant barrier. For these prospective victims, the Bill's amendments may offer some initial deterrence to certain deliberate bad actors – but otherwise makes little difference to their victim experience and does not effectively prevent harm stemming from reckless mischief.
- 9.4. For more meaningful prevention, the law must address the supply side — the availability of “nudify” applications and services which are readily used to generate non-consensual intimate imagery.
- 9.5. In its current form, the Bill lacks any mechanism in which the supply, provision or development of synthetic image generation technology can be monitored or regulated. The liability provisions for online content hosts under ss 23 and 24 of the HDCA puts the onus on victims to raise issue with deepfake technology providers to address content hosted or created on its platforms. As evident by the 2025 Grok sexual deepfake scandal, synthetic image generation technologies are both widespread and easily accessible.¹⁹ As of the time of this submission's writing, deepfake sexual images and videos of real people are still being reported as publicly posted on Grok and the social media platform, X.²⁰
- 9.6. It is further unclear whether s 23 of the HDCA liability for online content hosts would even apply to synthetic image generation technology providers. The definition for an online content host under s 4 of the HDCA refers to an “electronic retrieval system”, listing examples such as a website or an online application, implying s 23 would only apply to web-based services. Such a definition overlooks deepfake applications which operate on other platform types, exempting deepfake technology providers from hosting in other forms.
- 9.7. In addition, synthetic image generation technology providers of “nudify” applications are financially motivated to continue providing access to technologies capable of sexually explicit image generation. Deepfake developers provide their services behind a paywall where users gain access to higher quality image generation and increased token usage for producing increased quantities of deepfake.²¹ Even in the aftermath of Grok's sexually-explicit deepfake scandal, Elon Musk elected to put Grok's deepfake capabilities behind a paywall available only to subscribers of X Premium, a paid service with an estimated 15.3 million users.²²
- 9.8. Deepfake sexual abuse material is on the rise and ultimately stems from the increased accessibility of synthetic image generation technology. Consistent with its earlier recommendation, the Technology Committee encourages the Government to give separate and urgent consideration to supply-side measures. The United Kingdom and

¹⁹ AJ Vicens and Raphael Satter “Elon Musk's Grok AI floods X with sexualized photos of women and minors” (4 January 2026) Reuters (online ed) <www.reuters.com>; and Amelia Gentleman and Robert Booth “X still allowing users to post sexualised images generated by Grok AI tool” (16 January 2026) The Guardian <www.theguardian.com>.

²⁰ Matt Burgess “Grok Is Still Hosting Sexualized Deepfakes of Famous Women” (11 June 2026) WIRED <www.wired.com>.

²¹ Jonathan Vanian “How a ‘nudify’ site turned a group of friends into key figures in a fight against AI-generated porn” (27 September 2025) CNBC <www.cnbc.com>.

²² Hadas Gold “After ‘digital undressing’ criticism, Elon Musk's Grok limits some image generation to paid subscribers” (10 January 2026) CNN Business <<https://edition.cnn.com/>>; and Michael Muyot “Inside the Tech Stack Keeping Deepfake Abuse Profitable” (13 March 2026) Hyvemind <www.thehyvemind.com>.

Australia have both recognised this and are moving to restrict such tools and to criminalise the generation of synthetic intimate images.²³ Further, it considers the Bill is appropriately scoped to the conduct of individuals, and that supply-side regulation should be progressed through dedicated work.

10. Further work needs to be done examining issues with synthetic media across the law

- 10.1. The Technology Committee sits across a range of issues involving law and technology. While this Bill closes one gap in the law regarding deepfake sexual abuse, we remain concerned that the law and legal processes may not sufficiently address a range of other foreseeable interpersonal harms and issues facilitated by synthetic media. These include but are not limited to harms and issues arising from impersonation scams, political and election fraud, and the admission of misleading synthetic images as evidence in court.
- 10.2. The Technology Committee understands that these matters sit outside the scope of this Bill, which was drafted specifically to address intimate image abuse issues, and will entail more comprehensive review and complex law reform than just inserting amendments into existing legislation.
- 10.3. However, the Technology Committee would like to stress it is crucial that these other harms and issues are not ignored and a recommendation is made to continue work in these areas.
- 10.4. The Technology Committee, therefore, recommends that the Government continue to closely monitor developments relating to synthetic media and efforts in other jurisdictions to limit its harms, and consider working closely with overseas partners to develop fit for purpose protections to prevent synthetic media abuse.

11. Summary of recommendations

- 11.1. The Technology Committee recommends that the Social Services and Community Committee to consider and include the refinements to the bill:
 - (i) retain the amendments to the CA, which appropriately capture the creation of an intimate deepfake (paragraphs 2.1–2.3);
 - (ii) clarify the identifiability and realism threshold, preferably by adopting an objective “reasonable person” test of whether a reasonable person identifies the subject (the person portrayed for example) and the image appears realistic (paragraphs 3.1–3.6);
 - (iii) delete the words “without the knowledge or consent of the person who is the subject of the recording” from the proposed new paragraph (ab) of the section 4 HDCA definition, while retaining the equivalent words in the CA amendment (paragraph 4.4);
 - (iv) clarify that liability for synthetic recordings requires the defendant to have intended or known that the recording depicts, or appears to depict, an identifiable person (paragraph 5.2);

²³See the Criminal Code Amendment (Deepfake Sexual Material) Act 2024 (Cth); and, in the United Kingdom, the Non-Consensual Sexually Explicit Images and Videos (Offences) Bill and related measures.

- (v) clarify the Bill's relationship with the objectionable-publications regime under the FVPCA, and confirm that the Bill does not narrow existing coverage of synthetic child sexual abuse material (paragraphs 6.1–6.4);
- (vi) consider a narrowly framed legitimate-purpose exception to ensure consistency with section 14 of the New Zealand Bill of Rights Act 1990 (paragraphs 7.1–7.3);
- (vii) note, and consider reconciling, the penalty and forum overlap between the two regimes (paragraphs 8.1–8.2);
- (viii) recommend that the Government progress, separately and urgently, the systemic platform-accountability and supply-side measures that the Bill does not address (paragraphs 9.1–9.9); and
- (ix) recommend that the Government continue to examine potential issues with synthetic media in the law.

CONCLUSION

Thank you for the opportunity to make submissions in respect of the Deepfake Digital Harm and Exploitation Bill. We are available to discuss our submissions, if required. Should clarification be required with regard to any matters raised, please contact Moira McFarland, The Law Association Committee Executive at Moira.McFarland@tlanz.nz.

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Ngā mihi



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