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

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INQUIRY INTO CRIMINAL CODE AMENDMENT (DEEPPFAKE SEXUAL MATERIAL) BILL 2024

Relationships Australia welcomes the opportunity to make a submission to this Inquiry. Given the brief consultation period, this submission is restricted to key points and concerns. Of course, we would be happy to expand on any aspect of the submission if it would assist the Committee.

Relationships Australia has welcomed the Government's multiple initiatives, announced on 1 May 2024, to

address easy access to pornography for children and young people and tackle extreme online misogyny, which is fuelling harmful attitudes towards women.¹

In our recent submission to the review of the *Online Safety Act 2021 (Cth)*,² Relationships Australia expressed support for:

- the announced age assurance pilot³
- legislation to ban the creation and non-consensual distribution of deepfake pornography, and
- the proposed new phase of the Stop it at the Start campaign.

Recommendations

Recommendation 1 That, to be clearer about the intended scope and effect of the Bill, it should be re-named to clearly reflect its significantly broader scope than just 'deepfake' images.

Recommendation 2 That Australian Governments continue to develop ongoing and refresher training for professionals working in these systems to counter myths about domestic, family and sexual violence, its perpetrators and victim survivors, as well as the effects of trauma.

¹ Media release, 1 May 2024, Tackling online harms, <https://www.pm.gov.au/media/tackling-online-harms#:~:text=%E2%80%9CThe%20reality%20is%20that%20digital,and%20other%20age%2Drestricted%20services.> See also Coumarelos et al, 2023.

² This submission, dated 20 June 2024, is accessible on our website at <https://www.relationships.org.au/wp-content/uploads/StatrvwOnlineSafetyAct.200624FINAL.pdf>

³ We welcome this response to the 2019 recommendations of the eSafety Commissioner and Jaktar & Jenkinson, 2019.

- Recommendation 3** That the Government monitor interpretation, by law enforcement, the Director of Public Prosecution, and the courts, of the exceptions described in paragraph 474.17A(3)(d).
- Recommendation 4** That governments and researchers continue to monitor harms to ensure that legislative and service responses remain fit for purpose.
- Recommendation 5** That the Bill be amended to at least restrict its application to potential offenders aged 14 or over.
- Recommendation 6** That the Bill be amended to prevent inadvertent criminalisation of children who may have transmitted material *not* on their own initiative, but who have been manipulated or coerced to do so by an adult perpetrator, especially in the context of DFV and/or family separation.
- Recommendation 7** That financial sanctions for tolerating (and encouraging) conduct of a kind to which the Bill applies should be set at whatever points are necessary to de-monetise violence, abuse and exploitation for service providers.
- Recommendation 8** That, notwithstanding the repeal of existing section 474.17A, it remain an offence to use a carriage service to threaten to transmit sexual material without consent.
- Recommendation 9** That the Bill include a definition of consent, and that affirmative consent to each instance of transmission should be required.
- Recommendation 10** That the Bill be amended so that it aligns with the definition, in section 5 of the *Online Safety Act 2021* (Cth), of ‘private sexual material’.
- Recommendation 11** That paragraph 474.17A(1)(c) be omitted or at least qualified to only extend to situations in which there is a serious and imminent risk to life or health.
- Recommendation 12** That arrangements between the Australian Federal Police, the Commonwealth Director of Public Prosecutions and the Office of the eSafety Commissioner are sufficient to ensure that up to date information about the existence of penalty orders is shared among the relevant agencies.
- Recommendation 13** That Commonwealth, state and territory legal assistance funding enable timely and geographically equitable access to legal advice and representation of people experiencing image-based abuse.
- Recommendation 14** That governments commission ongoing research into:
- categories of perpetrators (Relationships Australia welcomes current initiatives to develop a deeper understanding of people who use violence in their relationships, including the Rapid Review, the Innovative Perpetrator Response programme, and the ANROWS 2023-2027 research programme on people who use domestic, family and sexual violence)
 - risk factors and drivers of perpetration

- the extent and nature of image-based abuse co-occurring with other forms of abuse
- effective perpetrator interventions
- what protections can be built into technology to reduce risk
- what protections can be built into technology to halt transmission at the earliest possible opportunity
- resistance strategies adopted by victim survivors
- impacts and harms, including in relation to victim survivors, perpetrators, and third parties who may have been inveigled into participating (including children who have been manipulated into collecting or transmitting images in the context of IPV)
- experiences of image-based abuse among marginalised communities, and people experiencing intersecting positionalities of disadvantage and vulnerability; it is imperative that First Nations families, and culturally and linguistically diverse families, have access to culturally sensitive services, and to have choice among service providers.

- Recommendation 15** That the Australian Government engage meaningfully with communities, and advocates for communities, that experience exclusion and/or marginalisation online and who are at the highest risk of abuse (and of suffering the most serious harm).
- Recommendation 16** That the Online Safety Act be amended to clarify that its definition of ‘intimate image’ (section 15) extends to sexualised deepfake images covered in this Bill.
- Recommendation 17** That the Bill be accompanied by adequately-resourced coordinated, nationally consistent and ongoing public education and awareness campaign.
- Recommendation 18** That Australian Governments ensure that relevant professional groups across the family law, family relationships, domestic, family and sexual violence, and child protection systems receive appropriate initial and ongoing professional development to ensure that policies and service responses to image-based abuse are supported by the best available contemporary evidence.
- Recommendation 19** That:
- all prosecution offices and courts be child safe organisations (including for child defendants)
 - governments fund case management and navigation support for people using the family law, DFV, child protection and - where applicable -online safety, systems

- police, prosecutors and court staff be equipped and empowered to provide victim survivors with warm referrals to case management and psychosocial supports
- providers of psychosocial support services, with expertise in working with victim survivors of sexual violence, be embedded at all courts hearing sexual violence matters; those providers should also be resourced, and have the capability, to 'warm refer' victim survivors to other support services, if needed.

Recommendation 20 That Australian Governments ensure that funding envelopes include money for investment in initial and ongoing training of workers in a range of areas, including IPV, ANOP, child maltreatment, the nature of coercive control (a concept yet to be fully understood in both offline and online settings), as well as the nature and impacts of trauma (including intergenerational trauma).

The work of Relationships Australia

Relationships Australia is an Australian federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, cultural background, lifestyle choices, or economic circumstances. Relationships Australia provides services for victims and perpetrators of domestic, family, sexual and other interpersonal violence, including abuse and neglect of older people. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others. Relationships Australia believes that violence, coercion, control and inequality are unacceptable. We respect the rights of all people, in all their diversity, to live life fully within their families and communities with dignity and safety, and to enjoy healthy relationships.

In 2022-2023, Relationships Australia member organisations:

- served more than 140,000 clients across more than 100 locations and 97 outreach locations
- employed 2,340 staff to offer more than 320 separate services/programs
- launched more than 25 new programs
- participated in over 29 research projects, and
- offered more than 27 articles, submissions and papers to support legislative and policy development, and continuous improvement and innovation in service delivery, and which reflected and amplified what we learn from our clients and through our research projects.

Our services include:

- family law counselling, mediation and dispute resolution, and post-separation services for parents and children

- Children's Contact Services (services which provide supervised contact and changeovers for high risk families)
- Specialised Family Violence Services
- services designed for men, including programs to support parenting capacities and resources, Men's Behaviour Change Programs, and tailored programs such as the Respectful Relationships Program for Indigenous clients
- individual, couples, and family counselling
- a range of tailored services for older Australians, including senior relationship services, elder mediation, elder abuse case management and mediation, social connection services and mental health services in residential aged care on behalf of Primary Health Networks in South Australia
- therapeutic and case management services to applicants for Redress Support Services, Forgotten Australians, Forced Adoption Support Services, Intercountry Adoptee Family Support Service, and Post Adoption Support Services
- gambling help services
- alcohol and other drugs services
- employee assistance programs
- Headspace (youth mental health) services
- mental health (including suicide prevention) services and programs, and
- Family Mental Health Support Services.

To better understand the Australian relational landscape, we relaunched our *Relationship Indicators* research during the 2022-2023 financial year (Fisher et al, 2022). Relationship Indicators is the only nationally representative survey that explores the state of relationships in Australia.⁴ Relationships Australia is continuing to analyse this data and release special reports on discrete topics. Key findings relevant to this Inquiry include that:

- 1.7 million members of our community (or 8.8%) feel unsafe disagreeing with their most important person, and
- 59% of people who felt unsafe disagreeing with their important person were aged 55 years or more.

Drawing on this practice expertise, Relationships Australia National Office has made substantive contributions to recent inquiries focusing on domestic, family and sexual violence (including abuse and neglect of older people by family members), which can be found at <https://relationships.org.au/research/#advocacy>. These include our submissions commenting on:

- the 2020 inquiry by the House of Representatives Standing Committee on Social Policy and Legal Affairs into family, domestic and sexual violence, and
- drafts of the 2022-2032 National Plan to End Violence Against Women and Children
- the inquiry by the Australian Law Reform Commission into justice responses to sexual violence.

⁴ The findings from this report have been quoted in Australia's first Wellbeing Framework.

This submission draws also from our submission to the statutory review of the *Online Safety Act 2021* (Cth).

Relationships Australia advocates stronger protections against online harms, and on improving the accessibility of Australia's online regulatory and law enforcement systems and structures.

Framing Principles for this submission

Principle 1 - Commitment to human rights

Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Relationships Australia recognises the indivisibility and universality of human rights and the inherent and equal freedom and dignity of all. In our 2023 submission to the inquiry by the Parliamentary Joint Committee on Human Rights into Australia's human rights framework, we recommended that Government should introduce a Human Rights Act that provides a positive framework for recognition of human rights in Australia (Recommendation 2 of that submission).⁵

This Bill notably engages the Convention on the Elimination of All Forms of Discrimination against Women. The Convention on the Rights of the Child is also relevant. Although the Bill does not address child sexual abuse material (dealt with elsewhere in the Commonwealth Criminal Code), the rights of children are engaged as potential defendants, as well as potentially harmed through being manipulated in collecting and/or transmitting material to which the Bill applies.

Principle 2 – Accessible and inclusive public institutions, regulation and service delivery

Inclusive and universally accessible public institutions, regulation and services are an imperative of human rights. This is because circumstances that operate to exclude, marginalise or discriminate against individuals become barriers to full participation in economic, cultural, political, and social life through the operation of systemic and structural factors including:

- legal, political and bureaucratic frameworks
- beliefs and expectations that are reflected in decision-making structures (such as legislatures, courts and tribunals, and regulators)
- policy settings that inform programme administration, and
- biases or prejudices that persist across society and that are reflected in arts, culture, media and entertainment.

Principle 3 - Cultural safety and responsiveness

Our commitment to upholding human rights necessarily includes a commitment to respecting epistemologies beyond conventional Western ways of being, thinking and doing. Of acute importance is a commitment to respecting epistemologies and experiences of Aboriginal and

⁵ Available at https://www.relationships.org.au/wp-content/uploads/PJCHRhumanrightsframework.FINAL_.pdf

Torres Strait Islander people as foundational to policy and programme development, as well as service delivery. Connection to Country, and context-specific experiences of kinship, for example, do not countenance the hyper-individualism that pervades Western assumptions about distribution of resources and obligations between the Western nation-state and individual taxpayers and among individual taxpayers. Centring the epistemologies and experiences of Aboriginal and Torres Strait Islander people is a necessary (although not sufficient) step in achieving the targets in the National Agreement on Closing the Gap.

Principle 4 - Accessible legal and regulatory frameworks

Legal and regulatory frameworks should be clear, intelligible, accessible and inclusive.

Accordingly, Relationships Australia is committed to advocating for:

- reducing complexity of the law and its supporting systems and processes
- reducing fragmentation, and
- high quality and evidence-based regulation, accompanied by robust and timely accountability mechanisms.

Principle 5 - Geographic equity

Relationships Australia advocates for geographic equity in the availability of services.

Principle 6 - Fragmentation and siloing

Our commitment to accessibility also underpins our advocacy for systems and processes that lift from the shoulders of those least equipped to bear them the burdens of fragmented, siloed, complex and duplicative or inconsistent laws, policies, programmes, and administering entities. The complex co-morbidities and intersectionalities experienced by many victim survivors⁶ can limit their cognitive and emotional capacity to navigate the multiple services and agencies with which they must engage to obtain FVOs.⁷

Relationships Australia is committed to promoting accessibility of its services, and advocating for accessibility, including by:

- reducing fragmentation
- reducing complexity of the law and its supporting processes, and
- reducing barriers to access arising from financial or economic disadvantage, as well as other positionalities and circumstances that create barriers to accessing services (including by promoting geographic equity).

⁶ See, eg, ALRC, 2018, Discussion Paper 86 (esp Chapters 1 and 4); Family Law Council reports, 2015 and 2016.

⁷ The National Principles to Address Coercive Control in Family and Domestic Violence, 2023, note that 'A victim-survivor can also be affected by memory loss; blocking off memories of abuse as a psychologically protective measure' (p 14). Recent research has concluded that 'as CTE is typically associated with cognitive and behavioral symptoms, future IPV interventions need to recognize the possibility of these deficits affecting individuals with longstanding RHI exposure, with intensive and specialized support for those at risk' (Tiemensma et al, 2024).

Principle 7 - Commitment to promoting social connection and addressing loneliness as a serious public health risk

Social isolation is a common consequence of image-based abuse, for reasons canvassed below in the section, 'Harms caused by image-based abuse.'⁸

Loneliness is a complex social problem and a public health concern. It should be considered to be a social determinant of health in its own right. As a public health concern (Heinrich & Gullone, 2006; Holt-Lunstad et al, 2015; Mance, 2018; AIHW, 2019), loneliness has been linked to physical health risks such as being equivalent to smoking 15 cigarettes a day and an increased risk of heart disease (Valtorta, 2016). Loneliness is a precursor to poorer mental health outcomes, including increased suicidality (Calati et al, 2019; McClelland et al, 2020; Mushtaq, 2014).⁹

Relationships Australia has a particular interest in isolation and loneliness, serving many cohorts who are disproportionately more likely to experience systemic and structural barriers to participation in Australian social, cultural, political and economic life and, as a result, are at heightened risk of loneliness which both compounds, and is compounded by, socio-economic disadvantage and poor physical and mental health.

We are invested in supporting respectful and sustainable relationships not only within families, but within and across communities. We have conducted pioneering research into who experiences loneliness (eg Mance, 2018), and manage a social connection campaign, Neighbours Every Day,¹⁰ which supports people to create connections which combat loneliness.

Relationships Australia is a founding member organisation in the Ending Loneliness Together network.¹¹ In our clinical practice and our advocacy, we apply a social model of loneliness which recognises systemic and structural barriers that inhibit people from making fulfilling social connections and from participating as fully as they would wish in all facets of our community.

Comments on the Bill and its context

Image-based abuse as a form of sexual violence

Relationships Australia conceptualises image-based abuse, of the kinds described in the Bill, as a subset of technologically-facilitated abuse and as a form of sexual violence. It is not necessarily less serious for not being physical;¹² indeed, the lack of boundaries of space and time¹³ can be aggravating circumstances in terms of the extent to which the lack of boundaries:

⁸ See, eg, Bates, 2017; Rogers et al, 2023.

⁹ The campaign Ending Loneliness Together has released a guide that explains how community organisations can use validated scales to measure loneliness: https://endingloneliness.com.au/wp-content/uploads/2021/08/AGuideto-Measuring-Loneliness-for-Community-Organisations_Ending-Loneliness-Together.pdf

¹⁰ Neighbours Every Day is a celebration of community, encouraging people to connect with their neighbours. Neighbours matter (whether near, far, or online); see <https://neighbourseveryday.org/>

¹¹ For more information, see <https://endingloneliness.com.au/>

¹² Noting that justice systems and agencies have tended to regard technology-facilitated IPV as inherently less serious: see, eg, Yardley, 2021. See also Bates, 2017; Melander & Marganski, 2020; Okolie, 2023.

¹³ See, eg, Markwick et al, 2019; Rogers et al, 2023.

- enables ongoing and pervasive harms (eg victim survivors may feel that there is no escape from the online images that have been transmitted without their consent)¹⁴
- enables a perpetrator to use violence without being present in the same time and space as a victim survivor
- enables a primary perpetrator to broadly distribute images to their social networks, leveraging members of those networks to become (whether consciously or not) additional perpetrators, while amplifying the frequency, intensity and duration of abuse¹⁵
- heightens a perpetrator's sense of exercising power, control and dominance over a victim survivor, and
- complicates enforcement through, for example, the need for enforcement to be effective extra-territorially.¹⁶

Nor is image-based abuse necessarily less serious depending on whether or not the images have been altered. Relationships Australia notes that, notwithstanding the title of the Bill, it applies to images that have not been altered. We recommend that, to be clearer about the intended scope and effect of the Bill, it should be re-named to clearly reflect its significantly broader scope than just 'deepfake' images. **(Recommendation 1)**

Image-based abuse also leverages longstanding 'offline' 'rape myths', which can reinforce shame, stigma and victim blaming. 'Rape myths' are prevalent and persistent and interact with misogynistic views and behaviour that circulate widely online, as well as in the offline world.¹⁷ This form of abuse is often gendered in terms of who are more likely to be perpetrators and who are more likely to be victim survivors.¹⁸ Exacerbating the harm of offline 'rape myths' has been a tendency in the community, in the media and among law enforcement and justice agencies, to trivialise online activity and online harms.¹⁹

Experience to date has demonstrated that law enforcement and criminal justice systems continue to be influenced by stereotypes or myths about domestic, family and sexual violence, its perpetrators and victim survivors, as well as the effects of trauma. Relationships Australia

¹⁴ See, eg, Bates, 2017; Markwick et al, 2019. Rogers et al, 2023, note that this 'omnipresence' can be described as both a tactic and consequence of technology facilitated abuse (see p 2219).

¹⁵ See eg Douglas et al, 2019; Yardley, 2021; Fiolet et al, 2021.

¹⁶ See also Fiolet et al, 2021; Woodlock, 2017.

¹⁷ Relationships Australia acknowledges the efforts being undertaken by states, territories and the Commonwealth to combat these harmful messages. As noted by Hill & Salter (2024): 'The data [from the National Community Attitudes Survey 2021] improves somewhat when you look at the attitudes of young people (aged 16-24) towards sexual violence, which improved by three points (from 66 to 69) between 2017 and 2021.' (Hill & Salter, 2024, citing Coumarelos et al, 2023, p 47) We agree with Hill & Salter (2024) that, while the work to dismantle these attitudes is necessary, it has proven thus far insufficient to prevent sexual violence or even to improve responses to it.

¹⁸ See, eg, Woodlock et al, 2020; see also eSafety Commission, 2023; Rogers et al, 2023. Powell & Henry (2019) found similar prevalence of technology-facilitated abuse being perpetrated against Australian women and men, but suggested that the perpetrators were more likely to be men in both cases. According to Rogers et al, 2023, research on image-based abuse in LGBTIQ+ communities remains sparse.

¹⁹ See, eg, Okolie, 2023.

recommends that Australian Governments continue to develop ongoing and refresher training for professionals working in these systems to counter these myths.²⁰ (**Recommendation 2**)

Image-based abuse as a form of coercive control in DFV

Non-consensual transmission of sexual material can be undertaken, by itself or with offline tactics, as a dimension of coercive controlling domestic and family violence (DFV) (including intimate partner violence, abuse and neglect of older people, and child maltreatment) before, during and after separation.²¹ As with other forms of coercive control, image-based abuse (and technology-facilitated abuse more broadly) offers perpetrators opportunities to ‘tailor’ their abuse, and obscure it by seemingly innocuous behaviours that are deeply threatening to the victim survivor being targeted by the perpetrator. This in turn offers perpetrators additional means by which they can ‘gaslight’ a victim survivor to themselves and to third parties, portraying the victim survivor as ‘paranoid’, ‘delusional’, or otherwise over-reacting to harmless words, images and conduct.²²

In this context, for example, transmission of an image of a woman with her hair uncovered may be regarded as ‘acceptable’, but may give rise to significant harms if the woman belongs to a community in which uncovered hair is unacceptable and may be sanctioned.²³ Similarly, an image of a person that is unproblematic without context may become highly problematic if it is of a person who has since transitioned their gender; it may be experienced by that person as an egregious act of misgendering.

Because of the potentially individualised nature of image based abuse as a form of coercive control, Relationships Australia recommends that the Government monitor interpretation, by law enforcement, the Director of Public Prosecution, and the courts, of the exceptions described in paragraph 474.17A(3)(d). (**Recommendation 3**)

Harms caused by image-based abuse

As technology evolves, and capabilities once possessed by only a few become ubiquitous among all users of technology, the nature and intensity of harms is also likely to evolve. We recommend that governments and researchers continue to monitor harms to ensure that legislative and

²⁰ See, eg, Bates, 2017, noting that ‘...women reporting nonconsensual [pornography] may experience victim-blaming from law enforcement and not be taken seriously. In addition, race and class may also effect [sic] the treatment of women reporting [revenge porn] to police. (at p 40), noting that recent years have seen shifts away from terms such as ‘nonconsensual pornography’ and ‘revenge porn’ as tending to trivialise the conduct and elevating sexual motivations over control and domination motivations. See, eg, Henry & Powell, 2016; Markwick et al, 2019.

²¹ See, eg, Afrouz, 2023; Dragiewicz et al, 2018; Markwick et al, 2019; Rogers et al, 2022; Woodlock, 2017. Technology facilitated abuse was characterised as an extension of coercive control in DFV by DFV service providers interviewed by Fiolet et al (2021). For discussion of co-occurrence of image based abuse with other forms of abuse, see Duerksen & Woodin, 2019; Rogers et al, 2023. Rogers et al note research indicating overlaps between victim survivors and perpetrators: see p 2211.

²² See Fiolet et al, 2021.

²³ As is recognised by subsection 15(4) of the *Online Safety Act 2021* (Cth), in its definition of ‘intimate image’.

service responses remain fit for purpose. (**Recommendation 4**) Currently, Relationships Australia considers that the evidence base supports identification of the following kinds of harm:

- harms to the mental health of victim survivors (including PTSD, anxiety and depression, self-harm and suicidal ideation, as well as maladaptive coping strategies including harmful use of alcohol and other drugs)²⁴
- loss of reputation
- financial hardship (through loss of employment and employment prospects and/or through payment of fees to have images taken down)²⁵ which, where the abuse has occurred in a DFV and/or family separation context, will compound the (well-documented) enduring financial hardship faced by women post-separation²⁶
- exclusion from online spaces, limiting personal, cultural, social, recreational and professional opportunities, and
- social isolation and loneliness - either as a consequence of the abuse (eg being shunned by family, friends and other community members in response either to seeing images or having been incited to do so at the behest of the perpetrator²⁷) or as an element of resistance to the abuse (eg a victim survivor ceasing to access and use online communities). Rogers et al, writing about technology facilitated abuse more broadly, observed that ‘Overwhelmingly, the most frequently reported outcome was social isolation resulting from the direct actions of perpetrators. Studies also reported the consequences of advice given by professionals ... as leading to social isolation as such advice included changing email accounts, limiting or ceasing use of the internet and social media, blocking texts, messages, call and emails of replacing devices (citing Powell and Henry, 2018). Inevitably, this can limit victims/survivors’ participation in the digital sphere, restricting or losing their social connections and contact with others.’²⁸

Rogers et al (2023) emphasise that ‘consequences are rarely experienced in isolation but as overlapping and interacting.’ (p 2218)

Perpetrators – children

Hill & Salter (2024) noted the risks of younger people becoming sexual violence offenders:

While child sexual abuse by adult perpetrators ha[s] decreased significantly over previous decades, abuse by known adolescents in non-romantic relationships has in the past few years increased, to become the most common perpetrator category for victimised young people now aged 16-24. This is a significant and recent change. Historically, adults were

²⁴ See, eg, Bates, 2017; Rogers et al, 2023.

²⁵ See, eg, Rogers et al, 2023, noting several studies describing financial consequences for victim survivors, including Douglas et al, 2019, and Woodlock et al, 2020.

²⁶ Broadway et al, 2022; de Vaus et al, 2007; de Vaus et al, 2015; Eastal et al, 2018; Fehlberg & Millward, (2014); Gray et al, 2010; Smyth & Weston, 2000; Warren, 2017.

²⁷ See, eg, Bates; 2017; Fiolet et al, 2021, p 5; Markwick et al, 2019, describing this as a ‘new form of criminality’.

²⁸ See, eg Rogers et al, 2023, Bates, 2017; Douglas et al, 2019.

the most common perpetrators of child sexual abuse (and still are, for people aged over 25). Now, the most common sexual offender against children is another child. These statistics are alarming on their own, but they should also raise alarm bells about the potential for future perpetration, because sexual violence in childhood is a risk factor for other violence, including domestic and family violence in adult relationships....

The Bill currently contemplates children as young as 10 years of age being charged under the offences it creates. This raises the following concerns.

Relationships Australia has elsewhere supported raising the minimum age of criminal responsibility to at least 14 years of age, based on contemporary understanding of neurological, cognitive and executive function development.²⁹ We recommend that the Bill be amended to at least restrict its application to potential offenders aged 14 or over. (**Recommendation 5**)

We are also concerned by the risk of inadvertent criminalisation of children who may have transmitted material *not* on their own initiative, but who have been manipulated or coerced to do so by an adult perpetrator, especially in the context of DFV and/or family separation.³⁰ We recommend that the Bill be amended to prevent this. (**Recommendation 6**)

Perpetrators – current or former intimate partners

As canvassed above, image based abuse occurs during or after the end of intimate partner relationships. Common motivations for such perpetrators include:

- bullying and coercive control, including by imbuing victim survivors with an enduring sense of the perpetrator’s omnipresence, omniscience and omnipotence³¹
- extortion (whether or not as part of coercive control) of money
- circumventing consent
- revenge
- proof of masculinity
- generalised ‘injury to social reputation (to which we would add isolation from friends and family, including as part of a pattern of coercive control)³²
- for sexual gratification
- to punish, belittle, humiliate and terrorise³³

²⁹ See, eg, Farmer, 2011. See, eg, our submission to the ACT Government in response to its 2021 Discussion Paper (https://www.relationships.org.au/wp-content/uploads/20210804-RACR-and-RAN-Submission_Raising-age-of-criminal-responsibility-in-the-ACT_FINAL.pdf). See also our 2020 submission to the Parliamentary Joint Committee on Intelligence and Security in relation to the Australian Security Intelligence Bill 2020 in which we raised concerns about the then proposed power to question a minor aged 14 to 18 years old where the minor is the target of an ASIO investigation in relation to politically motivated violence, including terrorism. (accessible at <https://www.relationships.org.au/wp-content/uploads/ASIO250620final.pdf>)

³⁰ See, eg, Douglas et al, 2019; Fiolet et al, 2021, p 6.

³¹ See, eg, Markwick et al, 2019; Rogers et al, 2023.

³² See, eg, Bates, 2017; Bloom, 2014; Rogers et al, 2023, canvassing studies categorizing abuse within pre-existing frameworks used in relation to intimate partner violence: p 2214.

³³ See, eg, Markwick et al, 2019.

- as adjuncts to proceedings for sexual violence or in family law proceedings.³⁴

Perpetrators for profit

Websites have been established for the dedicated purpose of distributing nonconsensual images, such as ‘slut shaming’ websites and websites that purport to depict women who were not professional pornography workers engaged in sexual activity, such as Girls Do Porn. In addition, current policy settings allow global technology service providers to profit from harmful content and conduct, including failing to take reasonable and proportionate steps to prevent and minimise the non-consensual transmission of sexual material to which the Bill would apply.

Relationships Australia considers that non-consensual transmission of sexual material in a DFV context should attract different responses (in kind and scale) from responses to individuals and entities who are monetising image-based abuse. Hill & Salter have observed that

Violence prevention frameworks around gender-based violence in Australia have been reluctant to tackle wealthy industries that are profiting from violence against women, such as pornography and the technology sector, and the multi-billion dollar alcohol and gambling industries. (Hill & Salter, 2024)

Relationships Australia considers that service providers who monetise gender based and sexual violence should be regarded with the same public and official opprobrium as people traffickers, money launderers and financiers of terrorism. They should be subjected to operationally significant criminal justice and regulatory responses. This is because of:

- the gravity of risks to those subjected to these forms of violence (especially members of marginalised and excluded communities)
- the magnitude of harm that can be caused by materialisation of risk, and its duration, which is potentially in perpetuity because:
 - incidents of transmission can continue without active involvement of the perpetrator
 - even if transmission ceases and all images are removed from online spaces, the emotional and psychological damage to the victim survivor can continue, and
 - loss of reputation and inclusion in community can endure³⁵
- the gross asymmetries of knowledge and power as between service providers and victim survivors, and
- the commercial gains that are made by service providers from tolerating dangerous material and content.

³⁴ See, eg, Markwick et al, 2019, citing Baughman, 2010 and Blakeley, 2015.

³⁵ See, eg, Bates, 2017; Dragiewicz et al, 2019; Fiolet et al, 2021; Rogers et al, 2023.

We consider that much more can and should be done to deal with ‘for profit’ perpetrators, and that there are opportunities, in doing so effectively, to ‘de-normalise’ these kinds of behaviours among other perpetrators.

In our recent submission to the statutory review of the *Online Safety Act 2021 (Cth)*, we have recommended:

- imposition, through legislation, of a positive duty of care on providers³⁶
- that ‘for profit’ perpetrators be subjected to much harsher penalties, which compound over the duration of the offending conduct
- that the Act be amended to confer on the Commissioner powers to impose sanctions such as business disruption sanctions. (Recommendation 19 of that submission)

Aggravated and exemplary damages should be available for breach of the duty, and eSafety and other relevant agencies, as well as victim survivors, should have standing to enforce it.

Consistent with our recommendations to the review of the Online Safety Act, Relationships Australia recommends that financial sanctions for tolerating (and encouraging) conduct of a kind to which the Bill applies should be set at whatever points are necessary to de-monetise violence, abuse and exploitation for service providers. (**Recommendation 7**)³⁷

Menace, harass or cause offence – threats without transmission

Some perpetrators of technology-facilitated abuse (whether or not in the context of any form of DFV) may not ever transmit material of a kind to which the Bill would apply. Rather, they exercise control over victim survivors simply by making a threat to transmit (which may, or may not, be accompanied by demands such as for renewal of a relationship or for money).

Relationships Australia recommends that, notwithstanding the repeal of existing section 474.17A,³⁸ it remain an offence to use a carriage service to threaten to transmit sexual material without consent. (**Recommendation 8**)

Consent

Relationships Australia notes that the Bill overcomes previous difficulties in responding to ‘deepfake’ images by removing the element of an expectation of privacy. Instead, ‘consent’ (or the lack of it) becomes the lynchpin of the offending conduct. However, despite its significance, the Bill does not seek to define ‘consent’.

³⁶ See the Report of the House of Representatives Select Committee on Social Media and Online Safety (2022), Recommendation 20.

³⁷ see Recommendation 18 of our submission to the Online Safety Act review. In that submission, we also recommended, in response to Question 18 of the supporting paper, that the Commonwealth Government consider creating within the Commonwealth Criminal Code offences for officeholders, employees and agents of service providers who have a nexus with Australia.

³⁸ See item 5 of Schedule 1 to the Bill.

The Explanatory Memorandum states that

Consent is not defined under this section and relies on its ordinary meaning. In this circumstance, a person would be taken to have consented to the transmission if the person freely and voluntarily agrees to the transmission. (paragraph 71)

Relationships Australia has some concerns with the definition, given that the notion of ‘consent’ can be described to be in a state of flux at present and that the criminal laws of states and territories are not consistent. The absence of a definition may undermine effective enforcement of the proposed offences. Relationships Australia recommends that the Bill include a definition of consent, and that affirmative consent to each instance of transmission should be required (we note that, in its current form, consent to each instance is required). (**Recommendation 9**)

Material that depicts breasts – paragraph 474.17A(1)(c)

Paragraph 474.17A(1)(c) provides that material depicting, or appearing to depict, another person’s breasts falls within the ambit of the provision. Paragraph 66 of the Explanatory Memorandum states that

The reference to ‘if the other person is female person – the other person’s breasts’ is intended to include the breasts of transgender women, relying upon an interpretation of the definition of gender identity under the *Sex Discrimination Act 1984*.

Transgender men may also have breasts. The transmission of a depiction, or apparent depiction, of breasts of a trans man could occur within a range of contexts that infringe their common law and statutory rights, as well as rights conferred through public international law instruments. These contexts include, but are certainly not limited to, transphobic contexts. Accordingly, Relationships Australia recommends that the Bill be amended so that it aligns with the definition, in section 5 of the *Online Safety Act 2021* (Cth), of ‘private sexual material’.

(**Recommendation 10**)

Genuine medical or scientific purpose – the exception in proposed paragraph 474.17A(1)(c)

It is unacceptable and anachronistic that the ‘genuineness’ of a medical or scientific purpose could override a lack of consent to transmission of an image that would otherwise be within the scope of the offence. The exception as drafted violates substantive and widely-accepted human rights to autonomy, dignity and privacy reflected across a range of international and domestic human rights instruments. It affronts the general common law and statutory principles of consent that apply in health care settings, deriving from Australia’s recognition of the dignity interest. That interest gives legal protection to identity, personality and self-esteem.³⁹ The proposed exception is regressive, in that it fails to reflect significant advances, over the past

³⁹ See *Department of Health and Community Services (NT) v JWB and SMB (‘Re Marion’)* (1992) 175 CLR 218, 252, 254 (joint judgment), 266, 267, 273-7 (Brennan J), 303 (Deane J) and 310 (McHugh J).

three decades, in medical jurisprudence concerning the autonomy, dignity and privacy rights of persons receiving health care.⁴⁰ It is deeply surprising to find it in a Bill introduced into the Australian Parliament in 2024.⁴¹

The proposed exception is contrary to the guidance produced by the Australian Medical Association and the Medical Indemnity Industry Association of Australia for medical students and doctors, *Clinical images and the use of personal mobile devices*.⁴² This guidance makes very clear the significance of consent in clinical photography, as does similar guidance provided by the Royal Australian College of General Practitioners.⁴³

It should also be noted that transmission of material in reliance on the proposed exception could also breach Commonwealth and State or Territory privacy legislation. The Office of the Australian Information Commissioner observes that

A health service provider using devices to take images of patients involving personal information will usually need to ensure that they have the appropriate consent to collect and use or disclose the image. There are limited exceptions to the need to obtain consent outlined in the [Australian Privacy Principles](#), such as where there is a serious threat to life or health.⁴⁴

Relationships Australia recommends that paragraph 474.17A(1)(c) be omitted or at least qualified to only extend to situations in which there is a serious and imminent risk to life or health. (**Recommendation 11**)

Information sharing between Australian Governments and among government agencies

We have recently provided a submission to the inquiry by the House of Representatives Standing Committee on Social Policy and Legal Affairs into Family Violence Orders. That submission canvasses in detail the risks to victim survivors which are created and exacerbated by information silos across Commonwealth, State and Territory jurisdictions, and across government agencies and service providers.⁴⁵ While recent years have seen some very useful progress in

⁴⁰ As is clear from the array of professional guidance to health care providers emphasising the importance of consent. See also AHRC, 2021, pp 37-38.

⁴¹ The taking, storing and distribution of non-consensual medical photography has been recognised as a legal risk to clinicians in Australia for well over a decade: see, eg, Mahar et al, 2013.

⁴² Accessed on 17 July 2024, at https://ama.com.au/sites/default/files/documents/FINAL_AMA_Clinical_Images_Guide.pdf

⁴³ Accessed on 17 July 2024, at

<https://www.racgp.org.au/FSDEDEV/media/documents/Running%20a%20practice/Practice%20resources/Using-personal-mobile-devices-for-clinical-photos.pdf>. Many health care providers and professional bodies have similar policies, which are significantly more robust in their protection of rights to privacy, dignity and autonomy than the proposed exception.

⁴⁴ Accessed on 17 July 2024, at <https://www.oaic.gov.au/privacy/privacy-guidance-for-organisations-and-government-agencies/health-service-providers/taking-photos-of-patients>.

⁴⁵ See, eg, ALRC Report No. 114/NSWLRC Report No. 128 at p 138: 'Although the laws utilised within each 'silo' might be perceived to operate effectively, or to require minor refinement and change, the problems faced by victims of violence required engagement with several different parts of the system. Consequently these people could be referred from court to court, agency

addressing this issue, much work remains to be done to remove all avoidable risks and ensure that the burdens of fragmentation are not left to be carried by victim survivors and their families. In its 2019 report on Australia's family law system, the ALRC again identified issues arising from fragmentation of protective orders made in the context of family violence.⁴⁶ In 2022, and in the context of the ACT's DFV system, Easteal et al wrote that

the complexities and inadequacies of the dynamic between the ACT's FV legislation and the federal family law system emerged in our research as a key issue that affected safety for victim/survivors and their children. (p 24)

Relationships Australia supports the aggravated offence created in proposed section 474.17AA of the Bill (after certain civil penalty orders have been made). Given known gaps in information sharing about DFSV, Relationships Australia recommends that arrangements between the Australian Federal Police, the Commonwealth Director of Public Prosecutions and the Office of the eSafety Commissioner are sufficient to ensure that up to date information about the existence of penalty orders is shared among the relevant agencies. (**Recommendation 12**)

Support for victim survivors

As noted above, victim survivors of non-consensual transmission of sexual material face financial hardship. Their financial difficulties can be compounded by the need to involve professional advisers in dealing with ongoing accessibility of the images, and the perpetual consequences of that. This may include legal advice and representation (including to engage with carriage service providers, regulatory agencies, courts and tribunals), mental health care providers, and assistance with setting up new online devices, services and profiles. Victim survivors may also need to pay for expert reports to substantiate harm in criminal or civil proceedings. In the context of family separation involving children, they may need to pay for expert reports to rebut adverse inferences about their mental health and parenting capacity.

Relationships Australia recommends that Commonwealth, state and territory legal assistance funding enable timely and geographically equitable access to legal advice and representation of people experiencing image-based abuse. This is consistent with recommendations made in response to Issues Paper 49 from the Australian Law Reform Commission, about justice responses to sexual violence.⁴⁷ (**Recommendation 13**)

Research programmes

Significant research continues to be undertaken into the nature and prevalence of domestic and family violence among separating and separated families,⁴⁸ including mistreatment of older

to agency, with the risk that they may fall between the gaps in the system and not obtain the legal solutions—and the protection—that they require.'

⁴⁶ See ALRC Report 135, paragraphs 4.30, 4.38, Appendix G; see also Hester, 2011; Taylor, et al, 2015.

⁴⁷ Accessible at https://www.relationships.org.au/wp-content/uploads/ALRCJRSVIP49.sub_080524FINAL.pdf

⁴⁸ See Kaspiew et al, 2015.

people,⁴⁹ maltreatment of children,⁵⁰ the use of coercive control⁵¹ against intimate partners (including through systems abuse),⁵² and technology-facilitated abuse.⁵³ To complement this work, in relation to image-based abuse to which the Bill applies, Relationships Australia recommends that governments commission ongoing research into:

- categories of perpetrators (Relationships Australia welcomes current initiatives to develop a deeper understanding of people who use violence in their relationships, including the Rapid Review, the Innovative Perpetrator Response programme, and the ANROWS 2023-2027 research programme on people who use domestic, family and sexual violence⁵⁴)
- risk factors and drivers of perpetration
- the extent and nature of image-based abuse co-occurring with other forms of abuse
- effective perpetrator interventions
- what protections can be built into technology to reduce risk
- what protections can be built into technology to halt transmission at the earliest possible opportunity
- resistance strategies adopted by victim survivors
- impacts and harms, including in relation to victim survivors, perpetrators, and third parties who may have been inveigled into participating (including children who have been manipulated into collecting or transmitting images in the context of IPV)⁵⁵
- experiences of image-based abuse among marginalised communities, and people experiencing intersecting positionalities of disadvantage and vulnerability; it is imperative that First Nations families, and culturally and linguistically diverse families, have access to culturally sensitive services, and to have choice among service providers.⁵⁶

(Recommendation 14)

We further recommend that the Australian Government engage meaningfully with communities, and advocates for communities, that experience exclusion and/or marginalisation online and

⁴⁹ Qu et al, 2018.

⁵⁰ Haslam et al, 2023; Higgins et al, 2023; Lawrence et al, 2023, Mathews et al, 2023 and Scott et al, 2023: available at <https://www.acms.au/>. For discussion about malicious child maltreatment as part of coercive control, see eg, Douglas & Fell, 2020.

⁵¹ See, eg, National Principles to Address Coercive Control in Family and Domestic Violence, 2023.

⁵² See, eg, ABS, 2022; Beckwith et al, 2023, noting that prevalence evidence on coercive control (described as 'partner emotional abuse' by the ABS) is still in the early stages as, indeed, is the concept of coercive control in a forensic and justice context. See also Fitch & Easteal, 2017.

⁵³ See, eg, Afrouz, 2023; Dragiewicz et al, 2018; Dragiewicz et al, 2021; Dragiewicz et al, 2022; Woodlock et al, 2023; Powell et al, 2022. See Fiolet et al, 2021, suggesting that more research is needed into technology-facilitated abuse in forms of DFV other than intimate partner violence.

⁵⁴ <https://www.anrows.org.au/people-who-use-violence-research-program>. See also AIHW, 2021.

⁵⁵ See, eg, Douglas et al, 2019; Fiolet et al, 2021.

⁵⁶ See, eg, National Agreement on Closing the Gap, 2020. See also Fiolet et al, 2021, p 5 (example of image based abuse of young Bhutanese woman, where images were circulated to her community and she was exhorted to kill herself because of the shame she had brought onto her community; Henry et al, 2022; Rogers et al, 2023. Douglas et al, 2019, offers case studies of women from CALD/CARM communities.

who are at the highest risk of abuse (and of suffering the most serious harm). Legislative and service responses should be co-designed. **(Recommendation 15)**

Online Safety Act 2021 (Cth)

In addition to our recommendations to Government in its statutory review of the Online Safety Act,⁵⁷ we recommend that the Online Safety Act be amended to clarify that its definition of ‘intimate image’ (section 15) extends to sexualised deepfake images covered in this Bill.⁵⁸ **(Recommendation 16)**

Informed and aware communities and services

The effectiveness of reforms to promote safety from domestic, family and sexual violence (including image-based abuse in the context of family, domestic or intimate partner violence) is largely contingent on public awareness that they exist, and understanding of what they mean for victim survivors, perpetrators, their families and communities. This has been recognised by Australian Governments, including in the National Principles to Address Coercive Control in Family and Domestic Violence (the Coercive Control Principles).⁵⁹

Consistent with previous submissions therefore, we recommend that the Bill be accompanied by adequately-resourced coordinated, nationally consistent and ongoing public education and awareness campaign. **(Recommendation 17)**

We further recommend that Australian Governments ensure that relevant professional groups across the family law, family relationships, domestic, family and sexual violence, and child protection systems receive appropriate initial and ongoing professional development to ensure that policies and service responses to image-based abuse are supported by the best available contemporary evidence. **(Recommendation 18)**

Consistent with our recent submissions to the inquiry by the Australian Law Reform Commission into justice responses to sexual violence and by the House of Representatives Standing Committee into Social Policy and Legal Affairs into family violence orders, Relationships Australia recommends that:

- all prosecution offices and courts be child safe organisations (including for child defendants)
- governments fund case management and navigation support for people using the family law, DFV, child protection and - where applicable -online safety, systems
- police, prosecutors and court staff be equipped and empowered to provide victim survivors with warm referrals to case management and psychosocial supports
- providers of psychosocial support services, with expertise in working with victim survivors of sexual violence, be embedded at all courts hearing sexual violence matters; those

⁵⁷ See <https://www.relationships.org.au/wp-content/uploads/StatrvwOnlineSafetyAct.200624FINAL.pdf>

⁵⁸ Noting that the Bills Digest for this Bill (Bills Digest No. 81, 2023-2024; 24 June 2024) implies that this might not be certain (see p 5 of the Bills Digest).

⁵⁹ See, eg, p 7.

providers should also be resourced, and have the capability, to 'warm refer' victim survivors to other support services, if needed.⁶⁰ (**Recommendation 19**)

Resourcing

Rogers et al (2023) observe

...the lack of an evidence-informed framework for agency and professional responses. Studies [reviewed by the authors] noted the lack of knowledge and confidence of professionals....In addition to victim-blaming and poor or inappropriate advice given to victims/survivors.⁶¹

Agencies and services whose functions include supporting victim survivors of image-based abuse must be adequately resourced. We acknowledge the DFV funding provisions made pursuant to the Federation Funding Agreements 2021-2027 between the Commonwealth and the States and Territories.⁶²

Relationships Australia recommends that Australian Governments ensure that funding envelopes include money for investment in initial and ongoing training of workers in a range of areas, including IPV, ANOP, child maltreatment, the nature of coercive control (a concept yet to be fully understood in both offline and online settings), as well as the nature and impacts of trauma (including intergenerational trauma). (**Recommendation 20**) One of our concerns about the criminalisation of coercive control has been that general duties police are not yet in a position to confidently identify coercive control and the person most in need of protection, or to accurately and consistently interpret and apply orders. Experience to date has demonstrated that law enforcement and criminal justice systems continue to be influenced by stereotypes or myths about domestic, family and sexual violence, its perpetrators and victim survivors, as well as the effects of trauma.

Conclusion

Relationships Australia supports measures to prevent, identify, and remediate gender-based harm. The proliferation of image-based abuse is occurring in the context of exponential increases in the technological capability, the democratisation of that capability,⁶³ and surges in misogynistic, racist, ageist and ableist sentiments, which exist in a continuous and self-reinforcing loop.

The compact implicit in democracies between government and the governed requires government to take responsibility for actions that individuals and small communities cannot. As the national government assumes responsibility for national defence, so is it obliged to prioritise

⁶⁰ In designing these services, governments should have regard to the principles set out in Mental Health Australia & National Mental Health Consumer & Carer Forum, 2024, p 8.

⁶¹ Rogers et al, 2023, at p 2222; see also Woodlock, 2017.

⁶² Accessible at <https://federalfinancialrelations.gov.au/agreements/family-domestic-and-sexual-violence-responses-2021-27>

⁶³ See, eg, Okolie, 2023.

combatting the insidious hazards inherent in a borderless online world. In that world, organised crime and powerful state-like actors disproportionately target and harm our most marginalised and vulnerable community members. People who use coercion and violence in their intimate and family relationships can recruit innumerable agents to exercise that control and violence. In that world, serious harms can be inflicted from anywhere, on anyone, anywhere.⁶⁴ Those harms can, without effective regulatory and law enforcement action, recur in perpetuity, eroding the capacity of victim survivors to participate in the economy, in education, in safe relationships and broader social and cultural life. Harms are inflicted as part of domestic, family and sexual violence, as well as among peers, in workplaces and educational settings, and through predatory algorithms that isolate, radicalise and harmfully addict. The perpetrators, their allies and their unwitting agents come right into our homes, at all times of day and night, unpredictably or with relentless predictability, creating all pervasive and inescapable fear. The distinction between online and offline, in terms of the capacity to endanger and harm, becomes increasingly meaningless. The potential for harms is likely to increase exponentially as emerging technologies such as immersive experiences become embedded in our homes, schools, workplaces and 'real life' social activities.

For the reasons stated previously, we support the Bill and its intentions.

We again thank you for the opportunity to engage with this Inquiry, and would be happy to discuss further the contents of this submission if this would be of assistance. I can be contacted directly on (02) 6162 9300 or at ntebbey@relationships.org.au. Alternatively, you can contact Dr Susan Cochrane, National Policy Manager, on (02) 6162 9300 or by email: scochrane@relationships.org.au.

Yours sincerely



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⁶⁴ See, eg, Bates, 2017.

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