

# CHAPTER 1

## INTRODUCTION

1.1 On 26 February 2013, the Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2013 (Bill) was introduced into the Senate as a private senator's bill by Senator Nick Xenophon.<sup>1</sup> On 28 February 2013, the Senate referred the Bill to the Senate Legal and Constitutional Affairs Legislation Committee (committee) for inquiry and report by 27 June 2013.<sup>2</sup>

### **Purpose of the Bill**

1.2 The Bill seeks to amend the *Criminal Code Act 1995* (Cth) (Criminal Code), to make it an offence for a person who is over 18 years of age to misrepresent their age in online communications to a person they reasonably believe to be under 18 years of age, for the purpose of encouraging a physical meeting or with the intent of committing an offence.<sup>3</sup>

1.3 The key provision of the Bill is proposed new section 474.40 (item 1 of Schedule 1), which would be inserted at the end of Division 474 (Telecommunications offences) of the Schedule to the Criminal Code.

1.4 Proposed new section 474.40 would create two offences for a person over 18 years of age (the 'sender') to intentionally misrepresent their age using a carriage service to a person who is, or who the sender believes to be, under 18 years of age (the 'recipient'):

- for the purpose of encouraging the recipient to physically meet with the sender (or any other person) (subsection 474.40(1)); or
- with the intention of committing an offence, other than an offence under proposed new section 474.40 (subsection 474.40(2)).

1.5 Both offences will be punishable by a term of imprisonment: five years where the intent was to encourage a physical meeting; and eight years where the intent was to commit an offence.

### **Background to the Bill**

1.6 In February 2010, Senator Xenophon introduced the Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2010 (2010 Bill) into the Senate.<sup>4</sup> The stated purpose of the 2010 Bill was similar to that of the current Bill,

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1 Senate, *Journals of the Senate*, No. 134-26 February 2013, p. 3661.

2 Senate, *Journals of the Senate*, No. 136-28 February 2013, pp 3690-3691.

3 Explanatory Memorandum (EM), p. 2.

4 Senate, *Journals of the Senate*, No. 107-3 February 2010, p. 3117.

the notable difference being that the 2010 Bill did not include an intention to encourage a physical meeting or commit an offence, as formulated in the current Bill.<sup>5</sup>

1.7 The 2010 Bill was referred to the committee for inquiry and report<sup>6</sup> and, in June 2010, the committee recommended that the Senate should not pass the bill.<sup>7</sup> The inquiry had highlighted a number of concerns with the 2010 Bill, such as the failure to incorporate an element of intent and the potential duplication of existing Criminal Code offences.<sup>8</sup>

1.8 Upon introduction of the current Bill, Senator Xenophon stated that the proposed legislation would close an important legal 'loophole', as there is no reason for an adult to knowingly misrepresent their age to someone they believe to be under 18 years of age. Further:

I previously attempted to address this serious issue in 2010 with the earlier version of this bill. I acknowledge the concerns raised in relation to that bill, and I have modified this version to ensure there are no unintended consequences of enforcing this law. Instead, this bill creates offences specifically aimed at the circumstances – an adult lying to a minor about their age to facilitate a meeting or to make themselves seem 'more approachable' – that need to be addressed.<sup>9</sup>

### **Conduct of the inquiry**

1.9 The committee advertised the current inquiry in *The Australian* on 6 March 2013 and 27 March 2013. Details of the inquiry, including links to the Bill and associated documents, were placed on the committee's website at [www.aph.gov.au/senate\\_legalcon](http://www.aph.gov.au/senate_legalcon). The committee also wrote to 64 organisations and individuals, inviting submissions by 26 April 2013. Submissions continued to be accepted after that date.

1.10 The committee received nine submissions, which are listed at Appendix 1. All submissions were published on the committee's website. The committee thanks those organisations and individuals who made submissions. No public hearings were held for this inquiry.

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5 Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2010, EM, p. 2.

6 Senate, *Journals of the Senate*, No. 108-4 February 2010, pp 3143-3144.

7 Senate Legal and Constitutional Affairs Legislation Committee, *Inquiry into the Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2010*, June 2010, p. 11 (Recommendation 1).

8 Senate Legal and Constitutional Affairs Legislation Committee, *Inquiry into the Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2010*, June 2010, p. 10.

9 *Senate Hansard*, 26 February 2013, p. 926.