

The Commission for Children and Young People and Child Guardian

promoting and protecting the rights, interests and wellbeing of all Queenslanders under 18

Advice to: Ms Sophie Dunstone, Committee Secretary, Legal and Constitutional Affairs Legislation Committee

Topic: Inquiry into the Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2013

Date due: 27 February 2014

Thank you for inviting the Commission for Children and Young People and Child Guardian (the Commission) to comment on the Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2013 (the Bill).

The Commission's submission focuses on key differences between the revised private members Bill and the previous Bill and issues resulting from the proposed provisions.

The Commission's comments:

- The revised Bill and the previous Bill differ as the age of the recipient has been lowered from 18 years to 16 years and the '*absolute liability*' provision has been removed.
- The Commission does not support the revised Bill as it:
 - duplicates existing criminal code grooming and procurement offences, and
 - creates offences which criminalise non-criminal behaviours.
- Consideration should be given to reviewing existing grooming and procurement laws to see if they need strengthening and educating the public on cyber safety and the existing laws.

Key differences between the current and originating Bills

The revised Bill retains the original purpose of the Bill which is to make it an offence for an adult to use a carriage service to misrepresent their age to a person under 16 years.

The key areas where the revised Bill differs from the earlier Bill include:

- amending the offence trigger by lowering the recipient's age from '*under 18 years*' to '*under 16 years*', and
- removing the '*absolute liability*' provision regarding the recipient's age.

While these changes overcome some of the key issues raised in previous submissions a number of key concerns remain unaddressed. Specifically, the revised Bill offences duplicate existing Criminal Code offences and issues with the formulation of the proposed offences.

While the Commission welcomes initiatives aimed at improving online safety for children and young people the Commission does not support the Bill being passed for the reasons outlined below.

Duplication of existing Criminal Code offences

The Bill creates two new offences to cover situations when a person over 18 years uses the anonymity of online communication to intentionally misrepresent their age to a young

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person under 16 years of age for the purposes of encouraging a meeting or with the intention of committing an offence.

The offences created by the Bill target behaviors currently captured by the grooming and procurement offences in the Criminal Code. The changes reflected in the revised Bill do not address this issue and consequently the offences in the revised Bill appear to be an unnecessary duplication.

Formulation of the Bill

The Bill creates offences with too broad application as they criminalise behaviours which would not normally be considered criminal in nature such as lying or where a person forms an intention to do an act but then does carry through with it.

Adults who make misrepresentations to children are a serious concern for the whole community and as in the case of Carly Ryan can lead to situations which have tragic consequences for the child and their family. New laws are not always the answer particularly when there are current existing laws. Consideration should be given to reviewing the current grooming and procurement laws to see if they need strengthening and putting in place ongoing measures to educate children and their families on cyber safety and these laws.

Please do not hesitate to contact Ms Adrienne Schneider, Senior Policy Officer Strategic Policy and Research, ph: (07) 3211 6700; e-mail:wmaster@ccypcg.qld.gov.au should any aspects of this advice require clarification.