

Submission

**Criminal Code Amendment (Misrepresentation of Age to a
Minor) Bill 2013**

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1 The National Children's and Youth Law Centre

- 1.1 The National Children's and Youth Law Centre ("**NCYLC**" or "**Centre**") is the only Australian national community legal centre for children and young people. NCYLC promotes the rights and interests of all Australian children and young people through advocacy, information and education. Since its inception in 1993, NCYLC has made over 180 public submissions on law and policy affecting children and young people and handled over 150,000 inquiries. NCYLC seeks to increase children and young people's access to legal assistance and to improve the legal status of children and young people in Australia.
- 1.2 As Australia's only national community legal centre for children and young people, NCYLC is at the forefront of children's issues. In response to this position, NCYLC actively conducts community legal education, legal advice through email and policy work aimed at increasing young people's access to legal assistance and improving the legal status of children and young people in Australia.

2 Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2013

- 2.1 The NCYLC welcomes the opportunity to assist the Senate Legal and Constitutional Affairs Committee ("**Committee**") inquiry on the Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2013 ("**Bill**").
- 2.2 While the Centre supports the social policy objectives underpinning the Bill, we have concerns with the specific approach adopted by the Bill.
- 2.3 Our concerns relate to a number of issues with the drafting and formulation of the offences proposed by the Bill. These issues are amply addressed by the Australian Government Attorney-General's Department submission on the Bill ("**AG Submission**") which we have had the benefit of reading. In the interests of brevity, we will not discuss those issues in this submission but we note that

we have considered and agree with the issues identified in the AG Submission.

- 2.4 Given these issues with the Bill, we respectfully suggest that there may be alternative steps that can be taken to achieve the policy objectives which underpin the Bill. This submission focuses on examining some of these alternatives.
- 2.5 There are two primary policy objectives underpinning the Bill. The first objective is to protect vulnerable children from predatory behaviour by adults over the internet or other carriage services. The second objective is to have the law reflect society's additional abhorrence when such predatory behaviour has been facilitated by calculated dishonesty so that the child is more open to communication with the adult.
- 2.6 We consider approaches for each of these policy objectives in turn.

Protecting young people

- 2.7 For the criminal law to satisfactorily protect young people from predatory behaviour over the internet or other carriage services, the applicable offences and penalties must have a sufficient deterrent effect.
- 2.8 We suggest that research be undertaken into the effectiveness of the existing grooming and procuring offences, and the corresponding penalties, as deterrents for prospective offenders. Research may reveal that greater public education is required about the offences and penalties for them to have a sufficient deterrent effect. This may include educating children, parents and teachers about the need to report any objectionable or suspicious communications immediately. Research may also indicate that increased maximum penalties are required to effectively deter the predatory behaviour.
- 2.9 We consider that there would be greater utility from this type of research and corresponding policy action, rather than introducing the new offences proposed by the Bill.

2.9 However, to the extent that any increase in penalties is considered, we urge policymakers to be mindful of one significant caution. The NCYLC considers that no legislative action should be undertaken that would exacerbate the issues identified in the *New Voices / New Laws* (November 2012) report (accessible at http://www.lawstuff.org.au/__data/assets/pdf_file/0009/15030/New-Voices-Law-Reform-Report.pdf). In particular, we are referring to the issues that arise in relation to online communications, including those of a sexual nature, between young people, especially those under the age of 25.

Additional abhorrence when there has been calculated dishonesty

2.10 The repugnance of predatory online behaviour is heightened when it involves deliberate misrepresentations about age (or any matter) to encourage the child to communicate with the adult. The offences proposed by the Bill appear to be an attempt to ensure this additional repugnance is captured in the law.

2.11 We suggest the same objective could be achieved by making calculated misrepresentations about age (or any other matter) an aggravating factor within the existing offences relevant to the sentencing of an offender.