

CHAPTER 1

Introduction and Overview

1.1 On 4 February 2010, the Senate referred the Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2010 (Bill) to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 30 June 2010.¹

1.2 The Bill was introduced in the Senate as a private senator's bill by South Australian Senator Nick Xenophon. The impetus for the Bill was the case of Carly Ryan, a 15-year old South Australian who was murdered in 2007 by a 50-year old man who, together with his son, had posed online as a 20-year old.

1.3 The Explanatory Memorandum (EM) explains that the Bill is designed to protect those under the age of 18 years from internet predators who intentionally lie about their age so as to gain the trust of minors.² Senator Xenophon told the Parliament that existing laws are not achieving this purpose:

Currently in many jurisdictions police have to prove a sexual predator has a prurient interest in misrepresenting their identity.

This can be a difficult task and can result in police being unable to act, even when they believe there is a threat.

This bill would remove any doubt. If an adult knowingly lies to a minor about their age online, they have broken the law.³

Summary of key amendments

1.4 The Bill amends Subdivision C of Division 474 (Telecommunications Offences) of the Schedule to the *Criminal Code Act 1995* (Criminal Code). The six-page Bill proposes to insert three substantive sections into the Criminal Code:

- creating new offences for the online misrepresentation of age to persons under 18 years of age;
- clarifying the provisions relating to those offences; and
- providing a limited number of defences to those offences.⁴

1 Journals of the Senate, No. 108-4 February 2010, p. 3143.

2 Explanatory Memorandum, p. 1.

3 *Senate Hansard*, 3 February 2010, p. 62.

4 Proposed sections 474.40-474.42.

1.5 Due to the content of submissions and evidence received by the committee, the inquiry focussed primarily on those provisions creating the new offences. These are contained in proposed section 474.40.

1.6 Proposed subsection 474.40(1) makes it an offence for a person (the sender) to use a carriage service to transmit a communication to another person (the recipient) with the intention of misrepresenting the sender's age in circumstances where the recipient is someone who is, or who the sender believes to be, under 18 years of age and where the sender is at least 18 years of age.

1.7 Proposed subsections 474.40(2) and 474.40(3) extend this offence by, respectively, adding the element of an intention to make it easier for the sender to physically meet the recipient and the element of an intention to commit an offence (other than that proposed by subsection 474.40(1)).

Conduct of the inquiry

1.8 The committee advertised the inquiry in *The Australian* newspaper on 10 February 2010 and 24 February 2010. Details of the inquiry, the Bill and associated documents were placed on the committee's website. The committee also wrote to 57 organisations and individuals inviting submissions.

1.9 The committee received nine submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

1.10 The committee held a public hearing in Canberra on 9 March 2010. A list of witnesses who appeared at the hearing is at Appendix 2, and copies of the Hansard transcript are available through the internet at <http://www.aph.gov.au/hansard>.

Acknowledgement

1.11 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

Scope of the report

1.12 Chapter 2 discusses the key issues raised in submissions and evidence.

Note on references

1.13 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee *Hansard* are to the proof *Hansard*: page numbers may vary between the proof and the official *Hansard* transcript.