

DISSENTING REPORT BY SENATOR XENOPHON

1.1 Carly Ryan was only 15 when she was brutally murdered by Gary Francis Newman, an online predator. This is her story, in the words of her mother, Sonya Ryan:

In 2006 Carly Ryan thought she had met her dream boyfriend online. His name was Brandon Kane, a 20 year old musician from Melbourne. Brandon was in fact fictitious. An internet construct, the cyberspace alter ego of Gary Francis Newman, a 50 year old predator and paedophile. Carly fell in love with the Brandon construct during months of online contact and phone calls.

Gary Newman took on another identity when he attended Carly's 15th birthday: that of Brandon's adopted father "Shane". In that guise, he attempted to gain the trust of Carly's mum, Sonya, and continued to deceive Carly, buying her gifts and promising to bring Brandon to Adelaide to meet her.

Gary Newman spent months masquerading as Brandon Kane to win Carly's love. When he tried to seduce her in person, while pretending to be Brandon's father Shane, saying that Brandon wouldn't mind if his dad had sex with her, she rejected him. Angry, Gary Newman returned to Melbourne vowing to "fix Carly up". He used his alter ego to lure Carly to a final, fatal meeting.

In February 2007, Gary Newman convinced Carly to meet him. He took Carly to a secluded beach at Port Elliott, South Australia. There, he bashed her, pushed her face into the sand, suffocating her. He then threw her into the water to drown. She was only 15 years old.

A local lady found Carly's body the next morning, covered in sand, her clothing in disarray.

Within 11 days detectives located Gary Newman in Victoria. They found him at his computer, logged in as Brandon Kane, talking with a 14 year old girl in Western Australia. They arrested him, charging him with Carly's murder.

In a Supreme Court trial which continued for over three months, a jury found Gary Francis Newman guilty of murder. He was sentenced on 31 March 2010. South Australian Justice Trish Kelly ordered him to serve a life behind bars with a 29 year non-parole period.¹

1 The Carly Ryan Foundation, *Carly's Story*, available at: http://www.carlyryanfoundation.com/carlys_story (accessed 25 June 2013).

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

1.2 In 2010 I introduced the Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2010, the purpose of which was to make it illegal for an adult to lie about their age when communicating with a child online. This bill failed to pass, however Sonya and I were not going to give up on the challenge of protecting children from online predators.

1.3 The Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2013 ('the bill') amends the *Criminal Code Act 1995* to make it an offence for a person over 18 to intentionally misrepresent their age in online communications to a person they reasonably believe to be under 16 years of age for the purposes of encouraging a physical meeting, or with the intention of committing an offence.

1.4 I am dismayed that the committee recommended this bill not be passed. I understand the committee shares the view of the Attorney-General's Department and the South Australian Law Society that the Criminal Code already captures the behaviour this bill seeks to criminalise. However, I strongly disagree with this position for the reasons below.

The need for preventative measures

1.5 Internet use among persons under 16 years of age has reached unprecedented levels. In her submission, Ms Susan McLean, a cyber-safety expert and educator, summarised some research which reveals disturbing trends:

A 2005 survey of 742 teens (aged 13-18) and 726 tweens (aged 8-12) conducted by the Polly Klass Foundation (USA) reported...54 per cent of teens admitted communicating with someone they've never met using an Instant Messaging program, 50 per cent via email and 45 per cent in a chat room. Sixteen per cent of all respondents...discovered that someone that they were communicating with online was an adult pretending to be much younger.²

1.6 Ms Sonya Ryan explained in her submission why children are particularly vulnerable in an online environment:

Young teens often have a desire to be free of their parents' authority to gain acceptance as grown-ups. Teens are naïve and inexperienced, especially in dealing with adults who have ulterior motive. Sexual predators take advantage of this naivety. They manipulate kids in an effort to gain trust, which they use and gradually turn seemingly innocent online relationships into real-life sexual interactions. A predator usually approaches a child initially through harmless chat room or instant message dialogue. Over time – perhaps weeks or even months – the stranger, having obtained as much personal information as possible, grooms the child, gaining his or her trust

through compliments, positive statements and other forms of flattery to build an emotional bond.³

1.7 As Sonya knows all too well, the consequences of an adult misrepresenting their age to a child through online communication can be fatal. In her submission, she explains why our current legislation does not go far enough:

We are seeking to add this vital law to address the common denominator in the way online predators behave, they all set up false online profiles, most reduce their online age to present as a peer to the child with the intention to meet that child. I put it to you that no adult could have a legitimate reason for establishing false profiles with fake names, age and photos to contact and meet a child that is not known to them for legitimate purposes. The proposed law is specifically tailored to that fact.⁴

1.8 The bill aims to provide law enforcement agencies with the ability to investigate and prosecute alleged offenders in the preparatory stages of their grooming activities, and to prevent children being placed in a position of danger:

As a nation we need to support our law enforcement units that are dealing with this new form of stranger danger, to ensure that once they have identified a predator, they have the support of Parliament to apprehend these criminals...This proposed law is the gap between our law enforcement agencies and the ability to make a difference before it's too late. We have comprehensive laws that protect us from those who seek to commit an act of terror, apprehending the persons (involved) prior to the event. I believe we also need to have laws that protect our children on the same basis, to prevent an act of terror, terror that may or may not end in death, but may cause a lifetime of trauma.⁵

Amendments to the bill

1.9 The amendments circulated for this bill address the concerns which have been raised through the committee process by reducing the age of the victim from 18 to 16 (in line with Commonwealth criminal laws) and by removing the reference to provisions which would have made offences committed under this bill absolute liability offences.

1.10 I find it extraordinary that while the committee has considered these amendments, it still maintains this bill to protect children is unnecessary. The committee is in effect saying an adult can lie about their age online to a child and attempt to meet that child without any legal consequences. As Sonya Ryan knows too well, this deception can have devastating consequences.

3 *Submission 7*, p. 3.

4 *Submission 7*, p. 4.

5 *Submission 7*, p. 4.

Recommendation 1

1.11 That the bill (as amended) be passed.

Senator Nick Xenophon