

Parliament of Australia

Senate Legal and Constitutional Affairs Legislation Committee

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

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Introduction

An October 2006 study tour to the United States of America as well as subsequent research conducted in Australia and the completion of a university course in the United Kingdom have highlighted the growth in popularity of internet technology, especially with generation Y and Z, that is those born from the early 1980's to the present. Young people today are known as the 'always on' generation or digital natives. There are distinct benefits that access to technology brings in the areas of education, connectedness and socialisation, but as with the real world, there are also negatives. Associated technology including 3G/4G mobile telephones, webcams, Skype, live gaming sites, virtual worlds and the explosion of social networking sites such as Facebook, Twitter, Tumblr and Instagram, today's youth have access to and are accessible by many millions of people worldwide.

Globalisation means it is just as simple to be on line to a person anywhere in the world, as it is someone in the next street. The unprecedented amount of personal information available on these sites makes them a perfect place for people who would happily identify their victims and gain their trust. Some of these people are adults, pretending to be teens in order to gain their trust and exploit them for their own gratification. This trust can then be used to lure teens into a false sense of security, making them vulnerable to grooming and enticement to meet in person, often for the purposes of engaging the young person in sex.

Australians love their smart phones with nearly 10 million more to be in use by 2015, taking the total number of smart phone users to 18.5 million, according to new research from Telsyte. In 2015 nearly 90% of all mobile phone users will have a smart phone as their primary mobile device, up from just under 50% in 2011. A study released in September 2011 has found that Australia

has the second highest smart phone usage by population density in the world, ahead of the US, the UK and Japan, and second only to the city/state of Singapore. (IPSOS Research on behalf of Google). Two in five Australian smart phone owners use their device to search daily, which exceeds the equivalent usage in the UK and Germany.

A detailed study in America by the National Centre for Missing and Exploited Children (NCMEC), 'On-line Victimization of Youth 2000 & 2005' Finkelhor et al, showed a disturbing trend in the incidence of internet offences against children, with 19 percent subjected to an unwanted sexual solicitation in the past year, 25 percent subjected to unwanted exposure to sexual material and 6 percent subjected to harassment and bullying, a trend that we are now seeing here. Many young people are being subjected to dangerous and inappropriate experiences on the internet. The offences and offenders are diverse and the primary vulnerable population is young people.

A 2005 survey of 742 teens (aged 13 – 18) and 726 tweens (aged 8 – 12) conducted by the Polly Klaas Foundation (USA) reported the following disturbing trends. 54% of teens admitted communicating with someone they've never met using an Instant Messaging program, 50% via email and 45% in a chat room. **16% of all respondents or one in eight youth aged 8 – 18 discovered that someone that they were communicating with online was an adult pretending to be much younger.**

Adolescent Brain Development

There is strong research evidence to suggest that adolescents in general and male adolescents in particular, are developmentally less able to make informed decisions about personal safety and security than are adults. The US National Institute of Mental Health (2001) reports that MRI studies are shedding light on how teens may process emotions differently than adults. These studies have shown the remarkable changes that occur in the brain during the teen years, and also demonstrate that the teenage brain is a very complicated and dynamic arena, one that is not easily understood.

The American Bar Association (ABA, 2004), Juvenile Justice Centre released a report that considered the new understanding of adolescent brain development to explore the issue of criminal culpability.

The article quotes Jay Giedd, a researcher at the National Institute of Mental Health, who explains that during adolescence the:

[P]art of the brain that is helping organization, planning and strategizing is not done being built yet... It's sort of unfair to expect [adolescents to] have adult levels of organizational skills or decision making before their brain is finished being built.

Dr. Deborah Yurgelun-Todd of Harvard Medical School has studied the relation between these new findings and teen behaviour and concluded that adolescents often rely on emotional parts of the brain, rather than the frontal lobe. She explains, “one of the things that teenagers seem to do is to respond more strongly with gut response than they do with evaluating the consequences of what they’re doing.” Also, appearances may be deceiving:

Just because they’re physically mature, they may not appreciate the consequences or weigh information the same way as adults do. So we may be mistaken if we think that [although] somebody looks physically mature, their brain may in fact not be mature.

This discovery gives us a new understanding into juvenile delinquency. The frontal lobe is “involved in behavioral facets germane to many aspects of criminal culpability,” explains Dr. Ruben C. Gur, neuropsychologist and Director of the Brain Behavior Laboratory at the University of Pennsylvania.

Perhaps most relevant is the involvement of these brain regions in the control of aggression and other impulses... If the neural substrates of these behaviors have not reached maturity before adulthood, it is unreasonable to expect the behaviors themselves to reflect mature thought processes. The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern

impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable... Indeed, age 21 or 22 would be closer to the 'biological' age of maturity. (ABA, 2004)

It is clear from this new understanding of adolescent brain development that children, adolescents and the developmentally impaired need extra protection from the dangers present when accessing online technologies.

Adults entrusted with the care of our children, such as parents, teachers and other professionals must be educated and empowered so that they are able to educate and assist the children in their care. More importantly, young people must be given the opportunity to gain the knowledge and skills to safely navigate cyberspace, to identify risk and take appropriate steps to keep themselves safe. This must happen as soon as children are accessing the Internet for education or socialisation and should be a key component of every school's curriculum.

What is online grooming?

Online grooming is conducted in a similar fashion to grooming in the real world and is often a preliminary step to procuring, where the adult through the words and actions attempt to loosen the child's inhibitions regarding sexual activity or heighten their curiosity by sending pornographic material or talking about sexual matters. The aim of the predator is to eventually meet the child in person for the purposes of sexual activity. The process often starts with the sending to the child of pornographic images so as to normalise the requests, and then moves to requesting the child send naked images of themselves or perform a sex act on a web cam.

There are risks for all children who use the Internet or online services. Teenagers are particularly at risk because they often use the computer unsupervised and are more likely than younger children to participate in online

discussions about more personal issues such as sexual activity. Young people are naturally curious and will engage in online discussions about things that they would not openly discuss in the real world.

Online predators use all forms of technology in order to connect with children. E-mail, instant messaging programs, bulletin boards, chat rooms, social media and gaming sites are all used to connect with a child and gain their trust. They are supremely clever and have an ability to connect with those who are vulnerable or who make poor online decisions about who they allow into their online lives or those whose parents are not actively involved in their online world. Children believe that those who are 'nice' online will be the same in the real world and of course this is not always the case. Young people firmly believe that they have the ability to identify a paedophile online and would never talk to one. The reality sadly is very different. Children take risks and can be quite naive. It can be exciting for them to chat to people they did not know before. Many are on social networking sites where they like to share personal information, which provides a fertile hunting ground for those waiting to identify a victim and gain their trust. Online offenders are increasingly adept at 'targeting' those who were making themselves vulnerable online, by not having for example, secure privacy settings.

Examples of misrepresentation of age to a minor?

In almost every case of the online grooming of a child, whether the offender eventually meets the child in person or conducts a 'relationship' solely online, the fact of the matter is the offender is predominately an 'older male' pretending to close in age to the victim. The ease at which a person can create a false profile online, pretending to be someone other than his or her actual self is frightening and one that no one seems to want to take responsibility for. There is no way to accurately age verify any internet user, the same way that there is no way for anyone using the internet to really know who they are engaging with unless of course they are known to them in real

life. Adults, who for a variety of reasons go online pretending to be a like-minded teen, rarely have honest intentions.

- A Maryland man has admitted he posed as a teenage lesbian to trick a 15-year-old girl he met online into sending him sexually explicit photos. Michael Speelman, 52, of Adelphi, Maryland, went on to feign the suicide of "Lisa Stauffer" - his teenage lesbian alter ego - after she and the victim had established a romantic relationship. In online chats with the victim, Speelman then pretended to be the mother of his deceased alter ego and threatened to make the explicit photos public. The threats continued even after the victim said she now had a boyfriend and was "moving on" with her life. FBI agents searching Speelman's home recovered 38 nude pictures of the girl, who was identified only by the initials C.M. They also found other child pornography, including 10 movie clips of pre-pubescent minors and 10 explicit pictures that appeared to be self-produced by a girl estimated to be between 12 and 15 years old. The confession is the latest cautionary tale to highlight the hazards of online chat involving teens.
- In 2010, a Massachusetts man in his 40s was accused of posing as a 17-year-old boy to convince girls to send him nude videos of themselves. After a 14-year-old girl complied, Lawrence Joseph Silipigni Jr., of Saugus, Massachusetts posted the sexually explicit video online, where it eventually came to the attention of his victim.
- A case that received world wide attention was that of the tragic suicide of Megan Meier. He called himself Josh Evans, and he and Meier, 13, struck up an online friendship that lasted for weeks. The boy then abruptly turned on Meier and ended it. Meier, who previously battled depression, committed suicide that night. The secret was revealed six weeks later: Neighbour, mother Lori Drew had pretended to be 16-year-old "Josh" to gain the trust of Meier, who had been fighting with Drew's daughter, according to police records and Meier's parents. According to a police report, Lori Drew said she "instigated and monitored" a fake account before Megan's suicide "for the sole purpose of communicating" with the girl.

Cases such as this are not confined to other countries.

- In 2007, a South Australian teenager named Carly Ryan believed she had found the man of her dreams in a Texas-born, Victorian-based, 20-year-old "emo" named Brandon Kane. In reality, he did not exist. Brandon Kane was nothing more than "an internet construct" and had no more substance than a dream. Her true love was actually a "cyberspace alter-ego" created so that a 50-year-old man and his 19-year-old son could pursue a sexual relationship with Miss Ryan. Carly Ryan was murdered on the night of 19th February and the two men who allegedly constructed the fake MySpace profile were arrested and charged with her murder. Hidden by a fake Internet name, he manipulated an infatuated teenage girl and his own son to orchestrate a brutal killing. On 21st January 2010, the older male was found guilty of murder. His 19yo son was acquitted.
- In February 2013, Robert Paul McKenzie faced Melbourne Magistrates' Court charged with online sex offences involving young girls. McKenzie set up a fake Facebook account in 2009 and befriended the young girls by pretending to be a young friend of a friend. McKenzie pleaded guilty to five counts of procuring a minor for child pornography and possession of child pornography.
- A few weeks ago, another online predator posing as a 12yo boy, convinced several 10-year-old girls to send naked pictures of themselves via KiK messenger.

Sadly these are not isolated cases and acknowledgment must be made that we need to do more to protect children when they are online.

Conclusion and Recommendation

The perceived anonymity and disinhibition provided by the impersonal interface that is the Internet allows many young people to engage in behavior that they would not even consider in the real world. Legislation must be updated to correctly capture these online 'wrongs'. Whilst educational programs must be put in place to address the needs of young people,

schools, parents and the wider community. Whilst individuals and companies behind the creation of websites, social networking sites, and other relevant internet applications do take steps to address the issue of 'fake' accounts, some better than others, more must be done. The very real issue of people creating 'fake' profiles online in order to gain the trust of vulnerable young people which in many cases can lead to online solicitation must be openly and honestly discussed to ensure that prevention strategies are either included in any existing school based programs or subsequently form an integral part of any personal safety program.

While education is vital, so too is comprehensive legislation. Law enforcement must be prepared to acknowledge the serious nature of online crimes against young people, especially where imposition and betrayal of trust occur. They too must have access to education in relation to the impact of these crimes, and be educated about the application of any new laws. Whilst acknowledging that legislation alone will not prevent people committing crimes, laws are designed to provide both a deterrent and a consequence when broken. Providing law enforcement with the ability to arrest and prosecute *before* the offence of 'grooming' or 'procuring' has occurred will be a vital and useful new tool in their efforts to combat online exploitation of young people and one which will assist to prevent further tragedies such as that of Carly Ryan and the many others who have had heinous crimes committed on them.

The Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2013 is a positive step forward in the effort to reduce online harms to children and will be a welcome addition to Commonwealth Legislation. As adults we have an obligation to protect those most vulnerable. We cannot sit back and wait, but must act promptly and prudently to provide protection where possible and this legislation has the ability to do just that.

For those who will continue to abuse young people regardless, the processes must provide a clear passage for them to be presented before the courts. Penalties must reflect both the serious nature of these offences and community expectations.

Recommendation

I commend the work of Senator Nick Xenaphon and recommend that the Criminal code Amendment (Misrepresentation of Age to a Minor) Bill 2013 be passed.