



New South Wales
Council for
Civil Liberties

NSW Council for Civil Liberties Inc.

Postal address: PO BOX A1386 SYDNEY SOUTH NSW 1235
Office address: suite 203, 105 Pitt Street SYDNEY NSW 2000
Phone: 02 8090 2952 Fax: 02 8580 4633
Email: office@nswccl.org.au Website: www.nswccl.org.au



Submission to the Legal and Constitutional Affairs Committee of the Australian Senate, concerning the Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2013

The New South Wales Council for Civil Liberties ('CCL') is committed to protecting and promoting civil liberties and human rights in Australia. CCL is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

CCL was established in 1963 and is one of Australia's leading human rights and civil liberties organisations. Our aim is to secure the equal rights of everyone in Australia and oppose any abuse or excessive power by the State against its people. To this end CCL attempts to influence public debate and government policy on a range of human rights issues. We try to secure amendments to laws, or changes in policy, where civil liberties and human rights are not fully respected.

CCL thanks the Senate Committee for the opportunity to comment on this bill.

We made a submission on an earlier version of this Bill introduced into the last Parliament by Senator Xenophon and have compared this Bill with that earlier version.

A key change between the two Bills is that in the new Bill the two proposed offences would apply in certain situations where a person over the age of 18 years uses a carriage service to misrepresent their age to a person under the age of 16 years instead of to a person under the age of 18 years.

This change does not address our key concern with the previous version of the Bill which we expressed in our submission on that Bill:

Most importantly, the proposals in the bill have the potential to impact greatly on many Australians, young and old alike, who do not necessarily possess any criminal intent, without providing sufficient nexus to the more serious offences the bill aims to prevent.

Proposed section 474.40(1)

To our knowledge, encouraging a meeting is not a criminal offence and nor should it be, whether or not a person is lying about their age. It is untenable that such an action could result in a person being subject to five years imprisonment – whether or not a meeting actually takes place – and whether or not some other offence is subsequently committed.

This proposed section appears designed to criminalise actions ancillary to the committing of an offence e.g. grooming (although it does not state this). We consider that any criminal behavior would be captured by the relevant legislation and that this proposed section is unneeded. In addition, this proposed section would criminalise behavior that might be considered reprehensible, unusual, or strange, but not sufficiently harmful to be criminal in nature.

Proposed section 474.40(2)

We make the same comments on proposed section 474.40(2) as we did on the corresponding section in the previous version of the Bill.

As argued above, intending to commit a crime is not itself a crime, and should not be made a crime.

If crimes have occurred, they are what a person should be charged with. If they haven't, a person should not be charged for what he or she merely has in mind as a plan.

CCL recommends that this Bill should be rejected.

Dr Sacha Blumen
Vice President and Convenor of the Civil Rights Subcommittee
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