

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

*Sponsor: Senator Xenophon*

*Introduced: Senate, 12 December 2013*

### **Summary of committee concerns**

1.144 The committee notes that it has previously examined the measures contained in this bill and, following this examination, sought clarification from Senator Xenophon in relation to a number of concerns. The committee is yet to receive a response and again seeks clarification on the matters raised.

### **Overview**

1.145 This bill seeks to amend the *Criminal Code Act 1995* to make it a criminal offence for a person over 18 years of age to intentionally misrepresent his or her age in online communications with a person they reasonably believe to be under 18 years of age:

- (a) for the purpose of encouraging the recipient to physically meet with the sender (or any other person); or
- (b) with the intention of committing an offence.

1.146 The bill re-introduces measures which were contained in an identical bill introduced during the 43<sup>rd</sup> Parliament which lapsed due to the proroguing of Parliament.<sup>1</sup>

### **Compatibility with human rights**

#### ***Statement of compatibility***

1.147 The bill is accompanied by a statement of compatibility that addresses a number of the human rights engaged by the bill. The statement refers to the criminal procedure rights guaranteed by the right to a fair trial,<sup>2</sup> the right to privacy<sup>3</sup> and the rights of the child.<sup>4</sup>

#### ***Committee view on compatibility***

1.148 The committee notes that our predecessor committee examined the measures contained in this bill in the 43<sup>rd</sup> Parliament.<sup>5</sup> The committee considered

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- 1 Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2013, introduced into the Senate on 2 February 2013.
  - 2 Article 14 of the International Covenant on Civil and Political Rights (ICCPR).
  - 3 Article 17 of the ICCPR.
  - 4 Including article 19(1) of the Convention on the Rights of the Child.
  - 5 See PJCHR comments on the Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2013, *Third Report of 2013*, p 5.

that the measures appeared to limit the right to freedom of expression,<sup>6</sup> the right to privacy,<sup>7</sup> and possibly the right to freedom of association,<sup>8</sup> but that these limitations were aimed at the legitimate objective of seeking to protect children.

1.149 However, in order for limitations to be permissible, they must be rationally related to achieving that objective and be a reasonable and proportionate means of pursuing that goal. The committee wrote to Senator Xenophon to seek further clarification as to why it was necessary (in addition to the offence of misrepresenting one's age with the intent of committing an offence) to have a separate offence of misrepresenting one's age to encourage a child to meet the defendant with no intention to commit an offence. The committee also sought clarification as to how imposing an evidential burden on the defendant under proposed section 474.41(2) of the bill was compatible with the right to be presumed innocent.<sup>9</sup>

1.150 The committee is yet to receive a response from Senator Xenophon addressing its concerns.

**1.151 The committee intends to write to Senator Xenophon seeking clarification on the matters raised by the committee following its previous examination of the measures in the bill, including why it is necessary to have a separate offence of misrepresenting one's age without an intention to commit an offence and how the bill is compatible with the right to be presumed innocent.**

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6 Article 19 of the ICCPR.

7 Article 17 of the ICCPR.

8 Article 22 of the ICCPR.

9 Article 14(2) of the ICCPR.