

# CHAPTER 1

## Introduction and Background

### Referral of the inquiry

1.1 On 12 December 2013, Senator Nick Xenophon introduced the Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2013 (the Bill) into the Senate.<sup>1</sup> On the same day, the Bill was referred to the Senate Legal and Constitutional Affairs Legislation Committee (the committee), for inquiry and report by 19 February 2014.<sup>2</sup> The Senate subsequently extended the committee's reporting date to 27 March 2014,<sup>3</sup> and then 29 May 2014.<sup>4</sup> On 27 May 2014, the committee tabled an interim report for the inquiry, extending the final reporting date to 4 December 2014.<sup>5</sup> On 3 December 2014, the Senate granted a further extension of time for reporting until 12 February 2015.<sup>6</sup> Additional extensions of time to report were subsequently granted, until 24 June 2015 and then 13 August 2015.<sup>7</sup>

### Purpose and key provisions of the Bill

1.2 The Bill seeks to amend the *Criminal Code Act 1995* (Criminal Code) to make it an offence for a person who is over 18 years of age to misrepresent their age to a person they reasonably believe to be under 16 years of age for the purposes of encouraging a physical meeting, or with the intent of committing an offence.<sup>8</sup>

1.3 In his second reading speech introducing the Bill, Senator Xenophon explained that this legislation has been motivated by an individual case in which an online predator lied about his age to a teenager in order to establish a relationship, before ultimately assaulting and murdering her.<sup>9</sup> The senator stated:

[The items in the Bill] close an important loophole in the law. There is no reason for an adult to knowingly misrepresent their age to someone they believe is under eighteen, particularly if they believe doing so will make it easier to meet or commit another offence.

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1 *Journals of the Senate*, No. 11—12 December 2013, p. 368.

2 *Journals of the Senate*, No. 11—12 December 2013, p. 361.

3 *Journals of the Senate*, No. 13—12 February 2014, p. 451.

4 *Journals of the Senate*, No. 24—25 March 2014, p. 708.

5 Senate Legal and Constitutional Affairs Legislation Committee, *Interim Report into the Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2013*, 27 May 2014.

6 *Journals of the Senate*, No. 73, 3 December 2014, p. 1965.

7 *Journals of the Senate*, No. 78, 12 February 2015, p. 2158; *Journals of the Senate*, No. 99, 22 June 2015, p. 2744.

8 Explanatory Memorandum (EM), p. 2.

9 *Senate Hansard*, 12 December 2013, p. 1606.

...New forms of communication mean we need new laws to protect children. In cyberspace, we can't stand by their side as they explore the world. We can't always set rules and curfews, because our kids can be sitting safe in their rooms even while they're in danger.

This bill is an attempt to address some of the techniques used by online predators, so that we can put an additional safeguard in place for our children.<sup>10</sup>

### ***Key provisions of the Bill***

1.4 Clause 3 of the Bill states that the object of the Act is 'to protect minors from predatory online behaviour by adults'.

1.5 The proposed amendments to the Criminal Code are contained in Schedule 1 of the Bill. The schedule would insert proposed new Subdivision H (Offences relating to use of carriage service with intention of misrepresenting age) at the end of Division 474 (Telecommunications offences) of the Schedule to the Criminal Code.

1.6 Proposed new section 474.40 of Schedule 1 would create two offences for a person over 18 years of age (the 'sender') to intentionally misrepresent their age using a carriage service to a person who is, or who the sender believes to be, under 16 years of age (the 'recipient'):

- for the purpose of encouraging the recipient to physically meet with the sender (or any other person) (subsection 474.40(1)); or
- with the intention of committing an offence, other than an offence under proposed new section 474.40 (subsection 474.40(2)).

1.7 Both offences would be punishable by a term of imprisonment: five years where the intent was to encourage a physical meeting; and eight years where the intent was to commit an offence.

### ***Previous iterations of the Bill and committee inquiries***

1.8 The current version of the Bill, introduced in December 2013, is the third iteration of this Bill introduced by Senator Xenophon.

1.9 The Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2010 was introduced in February 2010. It was the subject of a report by this committee, tabled in June 2010, which recommended that the Senate should not pass the Bill.<sup>11</sup> The Bill then lapsed at the end of the 42<sup>nd</sup> Parliament in September 2010.

1.10 The Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2013 was then introduced in February 2013, and was the subject of an inquiry by this committee, with a report tabled in June 2013. The inquiry recommended that the

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10 *Senate Hansard*, 12 December 2013, p. 1606.

11 Senate Legal and Constitutional Affairs Legislation Committee, *Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2010*, June 2010, p. 11.

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Senate not pass the Bill.<sup>12</sup> This Bill then lapsed at the end of the 43<sup>rd</sup> Parliament in November 2013.

1.11 The current Bill is substantially similar to the first version of the 2013 Bill; the main difference is that the current Bill deals with intentional misrepresentation of age to persons under 16 years of age, rather than 18 years of age in the first version of the Bill. This change has been made as 16 years is consistent with the age of sexual consent in the majority of Australian jurisdictions.<sup>13</sup>

### **Conduct of the inquiry**

1.12 Details of the inquiry, including links to the Bill and associated documents, were placed on the committee's website at [www.aph.gov.au/senate\\_legalcon](http://www.aph.gov.au/senate_legalcon). The committee wrote to various organisations and individuals, inviting submissions by 27 February 2014. Invitees were asked to specifically address the differences between the current Bill and the previous version of the Bill in their submissions, including any relevant issues that arise as a result of these differences.

1.13 The committee received 9 submissions, which are listed at Appendix 1. All submissions were published on the committee's website.

1.14 The committee held a public hearing for the inquiry in Canberra on 3 March 2014. A list of witnesses who appeared is at Appendix 2.

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

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12 Senate Legal and Constitutional Affairs Legislation Committee, *Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2013*, June 2013, p. 9.

13 Senator Xenophon, *Senate Hansard*, 12 December 2013, p. 1606.

