



**Australian
Broadcasting
Authority**

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Australian Senate
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Dear Mr Bailey

**Inquiry into the provisions of the Criminal Code Amendment (Suicide Related
Material Offences) Bill 2004**

I refer to your letter dated 6 August 2004 and thank you for the opportunity to comment on the proposed amendments to the Criminal Code Act 1995 (Criminal Code) concerning suicide related material on the Internet.

As you may be aware, the Australian Broadcasting Authority (ABA) has responsibility under Schedule 5 to the *Broadcasting Services Act 1992* (Schedule 5) for certain Internet related activities, including investigating complaints about Internet content. My comments on the proposed Criminal Code amendments, as related to this role, follow.

Thresholds for prohibited Internet content under Schedule 5

I note that the thresholds applied in determining whether certain Internet content may relate to the commission of an offence under the proposed Criminal Code amendments potentially differ to those applied in classifying Internet content under Schedule 5.

Under Schedule 5, the ABA may take action in relation to Internet content that is 'prohibited' (or 'potentially prohibited'). Internet content is classified according to the Commonwealth *Classification (Publications, Films and Computer Games) Act 1995* (Classification Act) and the Guidelines for the Classification of Films and Computer Games 2003 (OFLC Guidelines).

For the purposes of Schedule 5, suicide related material may be potentially prohibited if it meets the thresholds applied under the Classification Act and OFLC guidelines for either the 'R' (restricted) or 'RC' (refused classification) classification. R-classified material

will only be prohibited if hosted in Australia and access is not restricted by an age verification process or similar.

In the R classification, suicide is typically treated as a 'theme'. The R classification accommodates virtually any theme, provided that the impact of the content does not exceed high. This can be a difficult threshold to meet, and it is possible that a suicide-related website may not be of sufficient impact to warrant an R classification, yet may nonetheless meet the requisite threshold applied under the Criminal Code amendments.

Content that is classified RC under the Classification Act and OFLC guidelines includes material that provides 'detailed instruction or promotion in matters of crime or violence'. This potentially includes suicide related material.

The ABA's experience has been that the threshold set by the OFLC for the RC classification is very high. As an example, the ABA has previously investigated an Internet web page that included a list of 19 different methods of suicide under various headings, including "Hanging", "Poison", "Shotgun", "Self Immolation" etc. One entry, for example, read:

"COCAINE

Dosage: About one ounce

Time: 2 to 3 hours

Available: Difficult to get hold of

Certainty: Unknown

Notes: Not enough information"

The content also included disclaimers, links to help centres and information that would tend to discourage suicide-related activity (eg. "brain damage likely if rescued"). Under the Classification Act and OFLC guidelines, this site was considered not to contain sufficient detail or impact to warrant an RC classification and was not prohibited.

It would therefore appear possible that an offence may be committed under the proposed Criminal Code amendments in relation to Internet content that is not prohibited under Schedule 5.

Law enforcement processes under Schedule 5

I note that Schedule 5 currently provides no formal mechanism by which the ABA may report to a law enforcement agency Internet content that is found *not* to be prohibited.

The ABA has in place service agreements with State, Territory and Commonwealth law enforcement agencies to facilitate the referral of prohibited content that is considered to be of a sufficiently serious nature, including content that is classified RC under the Classification Act and OFLC guidelines that provides 'detailed instruction or promotion in matters of crime or violence'.

However, at present, Internet content found not to be sufficiently serious (such as the example outlined above) would not be reported to law enforcement for investigation

under Schedule 5, even though the material may – under the proposed Criminal Code amendments – indicate the commission of a criminal offence.


ABA indemnity from prosecution

I note that the proposed Criminal Code amendments appear not to provide protection from criminal proceedings equivalent to that provided to the ABA under Schedule 5.

Clause 89 of Schedule 5 provides specific protection to ABA members/staff (and other persons involved in Internet content investigations) from potential criminal proceedings arising as a result of possessing potentially prohibited Internet content. In the interests of consistency and to avoid any doubt, the ABA seeks your consideration of an equivalent indemnity under the proposed Criminal Code amendments to that provided to the ABA under Schedule 5.

I hope this is of assistance. Should you require any additional information or comment pleased feel free to contact me on (02) 9334 7865.

Yours sincerely



per Suzanne Shipard
Manager
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