

CHAPTER 2

OVERVIEW OF THE BILL

2.1 This chapter briefly outlines the main provisions of the Criminal Code Amendment (Suicide Related Material Offences) Bill 2005 (the Bill).

Background

2.2 Suicide or attempted suicide is no longer an offence in Australia. However assisting or encouraging another person to commit suicide is an offence in all states and territories. In addition, to assist or encourage another person to attempt to commit suicide is an offence in the Australian Capital Territory, Northern Territory, New South Wales, South Australia and Victoria. Further, except in Victoria, a person can be prosecuted for 'attempt' if they have unsuccessfully assisted or encouraged suicide.¹

Significant provisions of the Bill

2.3 The Bill will insert three new offences into the Criminal Code dealing with use of a carriage service to access, transmit or otherwise make available suicide-related material; and possession, production, supplying or obtaining suicide-related material for use through a carriage service.² The proposed offences are specifically aimed at use of the Internet, email and other online applications and are intended to cover the range of activities that a person can engage in when using these.³

2.4 Proposed subsection 474.29A(1) will make it an offence for a person to use a telecommunications/carriage service to access, transmit, make available, publish or distribute material that directly or indirectly counsels or incites suicide, with the intention that they or another person will use the material to counsel or incite suicide.

2.5 Proposed subsection 474.29A(2) will make it an offence to use a telecommunications/carriage service to directly or indirectly promote or provide instruction on a particular method of committing suicide, with the intention that the material be used to promote or provide instruction on that method of suicide.⁴

2.6 Due to the application of section 5.6 of the Criminal Code, the fault element of 'recklessness' applies to the element of the offences relating to whether the material

1 Angus Martyn, Parliamentary Library, *Criminal Code Amendment (Suicide Related Material Offences) Bill 2005*, Bills Digest No. 133 2004-05, p. 3.

2 *Explanatory Memorandum*, p. 1.

3 *Explanatory Memorandum*, p. 3.

4 *Explanatory Memorandum*, p. 2.

in question directly or indirectly counsels or incites suicide or promotes or provides instruction of a particular method of committing suicide.⁵

2.7 The term 'material' is defined in section 473.1 of the Criminal Code as including 'material in any form, or combination of forms, capable of constituting a communication'.

2.8 According to the Explanatory Memorandum (EM) to the Bill, the offence under proposed section 474.29A is not intended to capture Internet material that advocates or debates law reform on euthanasia and/or suicide-related issues. Similarly, the intention is that Internet material dealing with suicide-related research and suicide prevention or support material will generally not be caught by the offences. Therefore proposed subsections 474.29A(3) and (4) expressly state that if a carriage service is used to engage either in public discussion or advocacy of law reform with respect to euthanasia or suicide, no offence is committed if the person *does not intend* the material to be used to counsel or incite suicide, or to promote or provide instruction on a method of committing suicide.⁶

2.9 The third proposed offence is contained in proposed subsection 474.29B(1). An offence will be committed if a person possesses, controls, produces, supplies or obtains suicide-related material with the intention that the material be used by that person or another person to commit an offence against proposed section 474.29A (which is described above).⁷ This third proposed offence is intended to cover a broad range of preparatory conduct undertaken with the intention to commit a primary offence. Proposed subsection 474.29B(2) provides that a person can be found guilty of an offence against proposed subsection 474.29B(1), even if it is impossible to commit an offence under proposed section 474.29A (an offence of attempt).

2.10 The maximum penalties for the proposed offences are 1000 penalty units, which is \$110,000 for individuals or \$550,000 for a body corporate.⁸

2.11 The proposed offences are intended to complement the *Customs (Prohibited Imports) Regulations 1956* and the *Customs (Prohibited Exports) Regulations 1958* (the Customs Regulations). These prohibit, amongst other things, the physical importation and exportation of documents that promote the use of a device designed or customised to be used by a person to commit suicide (that is, a suicide kit), counsel or incite a person to commit suicide using a suicide kit, or instruct a person how to commit suicide using a suicide kit.⁹

5 *Explanatory Memorandum*, p. 4.

6 *Explanatory Memorandum*, p. 4.

7 *Explanatory Memorandum*, p. 4.

8 *Explanatory Memorandum*, p. 3.

9 *Explanatory Memorandum*, p. 3.

2.12 Specific defences are not included in the Bill. The EM states that this 'is because no-one should have a defence available to them if they intend, in engaging in particular conduct, to, for example, incite a person to commit suicide.'¹⁰

10 *Explanatory Memorandum*, p. 3.

