

The Senate

Legal and Constitutional
Legislation Committee

Provisions of the Criminal Code Amendment
(Suicide Related Material Offences) Bill 2005

May 2005

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ISBN 0 642 71510 6

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Parliament House, Canberra

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RECOMMENDATIONS

Recommendation 1

3.1 The committee recommends that proposed paragraphs 474.29A(1)(b) and (c) be amended so that the phrase 'counsels or incites suicide' reads 'counsels or incites another person to commit or attempt to commit suicide'.

Recommendation 2

3.1 The committee recommends that the Bill be amended to insert a requirement that, as soon as practicable after the end of 12 months from the date of the Bill's commencement, the Attorney-General must cause to be laid before each House of Parliament a comprehensive report on the operation of proposed subsections 474.29A(3) and (4).

Recommendation 3

3.2 Subject to the preceding recommendations, the committee recommends that the Senate pass the Bill.

Recommendation 4

3.3 The committee supports and calls for the implementation of additional broader research, strategies, resourcing and policy initiatives by the Federal Government and state/territory governments in order to address jointly and consistently issues relating to suicide in Australia.

ABBREVIATIONS

the Atheist Foundation	Atheist Foundation of Australia
the Bill	Criminal Code Amendment (Suicide Related Material Offences) Bill 2005
the Criminal Code	<i>Criminal Code Act 1995</i>
Customs Regulations	<i>Customs (Prohibited Imports) Regulations 1956 and Customs (Prohibited Exports) Regulations 1956</i>
the Department	Attorney-General's Department
EFA	Electronic Frontiers Australia
EM	Explanatory Memorandum
the Law Council	Law Council of Australia
Migration Act	<i>Migration Act 1958</i>
VEST	Voluntary Euthanasia Society of Tasmania
VESV	Voluntary Euthanasia Society of Victoria
the 2004 Bill	Criminal Code Amendment (Suicide Related Material Offences) Bill 2004

CHAPTER 1

INTRODUCTION

Background

1.1 On 16 March 2005, the Senate referred the provisions of the Criminal Code Amendment (Suicide Related Material Offences) Bill 2005 to the Senate Legal and Constitutional Legislation Committee for inquiry and report by 10 May 2005.

1.2 The Criminal Code Amendment (Suicide Related Material Offences) Bill 2005 contains offences which were originally introduced in the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill 2004. After its introduction into the Senate, the Federal Government decided to split the original bill in two, and then reintroduced the two separate bills into the House of Representatives as the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) (No. 2) 2004 and the Criminal Code Amendment (Suicide Related Material Offences) Bill 2004.

1.3 The latter bill (the 2004 Bill) was briefly debated in the House of Representatives on 11 August 2004 but did not reach the Senate before the prorogation of the 40th Parliament. However, the provisions of the 2004 Bill had been referred to the committee before the prorogation of Parliament, with the committee calling for and receiving submissions before it had to discontinue the inquiry at that time.

1.4 The 2005 Bill replicates the 2004 Bill, but contains additional provisions which will insert new subsections 474.29A(3) and (4) into the *Criminal Code Act 1995* (the Criminal Code).

Conduct of the inquiry

1.5 The committee advertised the inquiry in *The Australian* newspaper on 23 March 2005, and invited submissions by 1 April 2005. Details of the inquiry, the Bill and associated documents were placed on the committee's website. The committee also wrote to over 60 organisations and individuals.

1.6 The committee received 31 submissions, including several supplementary submissions. 21 of these submissions had been received in relation to the 2004 Bill but, at the request of their authors, were treated as submissions to the current inquiry. Submissions were placed on the committee's website for ease of access by the public. The submissions are also listed at Appendix 1.

1.7 The committee held a public hearing in Canberra on 14 April 2005. A list of witnesses who appeared at the hearing is at Appendix 2. Copies of the relevant Hansard transcript are available through the Internet at <http://aph.gov.au/hansard>.

Acknowledgement

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

Note on references

1.9 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

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.

CHAPTER 3

KEY ISSUES

3.1 Submissions to the inquiry were clearly divided between those expressing support for the Bill and its policy objectives, and those expressing strong opposition to it. However, the great majority of submissions and witnesses objected to the Bill in its entirety. This chapter discusses the key issues raised in the course of the committee's inquiry, including:

- the proposition that the Bill is required in order to protect the 'vulnerable';
- arguments that the measures contained in the Bill are uncalled-for, misguided and counterproductive;
- arguments in favour of the Bill and its policy objectives;
- the extent to which the Bill will impact unduly on free speech and on personal and private communications between individuals, and access to information;
- concerns over terms and definitions used in the Bill; and
- the Bill's inconsistency with the Customs Regulations.

Policy justification of the Bill – to protect the 'vulnerable'

3.2 The policy aim or objective behind the Bill is to protect vulnerable people who may be suicidal or have suicidal tendencies. As the Attorney-General argued in his Second Reading Speech:

There is a real need to protect vulnerable individuals from people who use the internet with destructive intent to counsel or incite others to take their own lives. The internet contains readily accessible sites and chat rooms that positively advocate suicide and discourage individuals from seeking psychiatric or other help. Many of these sites also provide explicit instructions on methods of committing suicide. There have been instances where internet chat rooms have been used by a person, or even a group of persons, to urge another to commit suicide. Recent studies have shown that in some cases such internet chat room discussions have led to a person attempting suicide, and sometimes successfully. This research points to evidence that vulnerable individuals were compelled so strongly by others to take their own lives that they felt to back out or seek help would involve losing face.¹

3.3 The Attorney-General's Department (the Department) advised the committee that the Bill's purpose was:

1 The Hon Philip Ruddock MP, Attorney-General, Second Reading Speech, *House of Representatives Hansard*, 10 March 2005, pp 4-5.

1) to complement Customs Regulations [that prohibit]...the import and export of suicide kits and associated instructions.

After the introduction of the Customs Regulations, the Internet was used to post information on how to make and use suicide kits in an effort to circumvent the intention of these Customs offences. This Bill is intended to criminalise this process.

2) to proactively respond to media reports and research studies which suggest that certain information about suicide on the Internet may encourage suicidal behaviour.

Web sites that provide chat rooms or bulletin boards devoted to discussion about suicide, in particular, have the potential to influence suicidal behaviour.²

3.4 At the hearing, representatives from the Department conceded that 'it is very clear that there was not a detailed scientific study or an extensive research project' which had prompted the Bill.³ Rather, the Bill appears more a reaction in part to perceived community concern over the risks posed by the Internet. This was borne out by other witnesses and submissions which provided the committee with examples of websites and Internet chat rooms containing detailed descriptions of methods of committing suicide that reportedly have resulted in suicides or attempted suicides overseas.⁴

Arguments that the Bill is uncalled-for and misguided

3.5 The committee also received considerable evidence to the effect that the Bill was misguided and/or that, in practice, it would not achieve its stated aim of protecting the vulnerable.

3.6 It was argued that the Bill was misdirected in that the Federal Government had merely sought to prohibit access to information about suicide rather than address the underlying causes of suicide. For example, the Law Society of New South Wales argued that the Bill 'will not operate to protect vulnerable people who are at risk of committing suicide' because:

(t)he major factor leading to suicide is despair, which can be triggered by tragedy such as personal despondency, loneliness, depression, mental illness, family breakdown or death of a loved one, poverty, unemployment, financial ruin, substance abuse or the chronic pain of a terminal illness. People at risk, in particular young people, require far more pro-active

2 *Submission 31*, p. 5.

3 *Committee Hansard*, 14 April 2005, p. 29.

4 For example, see Mr Graham Preston, Right to Life Australia, *Committee Hansard*, 14 April 2005, pp 1-2.

measures to address the causes of suicide and to help them rebuild their lives.⁵

3.7 It was also argued that the Bill was misdirected in that the risk that the Internet, or material on the Internet, posed to so-called vulnerable people has been overstated. For example, the Atheist Foundation of Australia (the Atheist Foundation) argued that anecdotal evidence – such as that put forward in support of the Bill – is not enough to justify the enactment of criminal laws. Further, the Atheist Foundation stated that its own 'investigations into the rationale behind the proposed Bill have failed to find the necessary evidence for its implementation'.⁶

3.8 Other submitters stressed that the premise of the Bill in specifically targeting the Internet was incorrect as the rate of suicide in Australia has decreased since the Internet became publicly accessible in Australia in 1994.⁷ Electronic Frontiers Australia (EFA) submitted that the Bill would not achieve any reduction of suicide rates in practice:

EFA considers it extremely unlikely that criminalising use of the Internet to access, and/or make available, the subject material will make the slightest difference to the incidence of suicide in Australia and certainly not by the most common methods of hanging and motor vehicle exhaust.⁸

3.9 Dr Philip Nitschke from Exit International made a similar argument:

The point that I would keep coming back to is the fact that suicide rates have dropped in the very same period that the internet has become more increasingly used. So in a sense we seem to be complaining about or blaming the internet for something which has got no relationship, or at least a very questionable relationship, with what is a very positive prognostic trend which we have noticed in suicide rates amongst the various age groups.⁹

3.10 Mr Kep Enderby QC from the Voluntary Euthanasia Society of New South Wales also advised the committee that:

I disagree...that suicide is a major problem in Australia, and that young people are especially prone to suicide. That is just not correct. It is wrong. The opposite is true: it is the elderly who are most attracted to the idea of suicide as an escape from the inevitable problems and discomforts, and sometimes pain, of old age. I think I can speak with some feeling, because I am about to enter my 80th year. I do not regard myself as particularly vulnerable, as has often been expressed here by earlier speakers about the

5 *Submission 18*, pp. 1-2.

6 *Submission 23*, p. 1.

7 See, for example, Electronic Frontiers Australia, *Submission 28*, p. 4.

8 *Submission 28*, p. 5.

9 *Committee Hansard*, 14 April 2005, pp 13-14.

elderly. The rate of suicide in Australia is only two per cent of all Australian deaths, with by far the greatest majority of those suicides being voluntary euthanasia type deaths.¹⁰

3.11 Similarly, the West Australian Voluntary Euthanasia Society submitted that 'the largest number of suicides in the country is among persons of over 75 and the largest proportion of those die by hanging'.¹¹ The Voluntary Euthanasia Society of Queensland made a similar point:

According to the Australian Bureau of Statistics each week 3 persons over the age of 73 commit suicide in the most horrendous ways possible, and all because they were unable to source or were deprived of meaningful information and help.¹²

3.12 Others also argued that the proposed prohibition on access to information would be counterproductive and only compound the problem of suicide. Dr Nitschke from Exit International argued that:

One of the ways one protects vulnerable individuals is to treat them with respect and to engage in legitimate discussion with them. You do not respect a society or individuals within that society by restricting them from information which you deem to be adversely helpful to them. Our suggestion is the one that I referred to earlier: when people are able to talk openly about this issue, their health indices improve. They feel less anxious, less worried and they go on to live longer lives. Happier people have access to good information and to sit around and try to restrict access to information, acting as some form of judge about what is deemed to be in their best interests, I feel is the wrong way for our society to be heading.¹³

3.13 Mr Neil Cook also argued that measures such as those contained in the Bill will actually exacerbate the suicide problem in Australia:

There are those who will promote this legislation on the grounds of increased teenage suicide statistics; however that is a weak and false premise upon which to base a case, especially when such statistics should rightly be addressed by greater collective societal involvement as opposed to legislative stop gaps such as this Bill...There are other ways and means to address these issues. Legislation outlawing the right of persons to seek their own exit from this life, with grace and dignity, will simply drive the proponents underground. The practice will not cease. It will simply become more difficult, for those who so desire, to achieve creating more pain and misery for those people, and ultimately placing a wholly unnecessary burden on the rest of society.¹⁴

10 *Committee Hansard*, 14 April 2005, p. 16.

11 *Submission 4*, p. 1.

12 *Submission 15*, p. 1.

13 *Committee Hansard*, 14 April 2005, p. 14.

14 *Submission 22*, p. 1.

3.14 The New South Wales Council of Civil Liberties suggested that, if the purpose of the Bill is to protect the 'vulnerable', then that objective would be better achieved through appropriate regulation, not criminalisation:

By regulating who has access to this information, it might be possible to identify vulnerable individuals and ensure they receive appropriate counselling.¹⁵

3.15 And further:

Regulation will also be a useful mechanism for ensuring that people who are medically certified as terminally-ill can lawfully access the information. Regulation will also help ensure that only people over a certain age can access the information, to inform themselves appropriately.¹⁶

3.16 Ms Irene Graham from EFA told the committee that she was unsure who the 'vulnerable' individuals to be protected by the Bill actually are:

I certainly hope that the word 'vulnerable' is referring to, for example, depressed teenagers, as distinct from adults wishing to make a rational decision about their end of life options... [O]ur view, as a general civil liberties position, would be that adults should have rights to access the kind of information and counselling that this bill seeks to prohibit. So if the vulnerable individuals that the bill is referring to are terminally ill people and older people that are wanting to know information, we do not consider that they should necessarily be considered to be vulnerable and so be prevented from being able to obtain information. As far as whether it will actually achieve the objective of protecting whomever the vulnerable people are, we do not believe it is going to do that either because we do not see how this Australian legislation can do anything about the information on web sites all over the world.¹⁷

3.17 Critics of the Bill made much of the fact that it would not, and could not, prevent Australians from accessing suicide related material or chat rooms on websites hosted outside Australia.¹⁸ This, it is argued, will render the Bill meaningless. Ms Irene Graham from EFA told the committee that:

[The Bill] will not have any effect on international communication except to the extent of criminalising Australians that are participating in any such international communication. This bill will not stop the amount of information that is on the internet on overseas sites. To the best of my knowledge, there is no way that any ISP can block access to material on international sites short of the development of the great Australian firewall, which was discussed back in 1999 and 2000 with regard to the issue of

15 *Submission 27*, p. 3.

16 *Submission 27*, p. 3.

17 *Committee Hansard*, 14 April 2005, p. 23.

18 See further the discussion at para 3.22.

blocking access to pornography. Nothing has changed since 1999-2000. It is still simply impractical to do that.¹⁹

3.18 The Atheist Foundation of Australia agreed:

The Internet is a World-Wide-Web with its benefits of instantaneous and voluminous information sharing capacity not controllable by any one country. To attempt this action is not only futile in the long term, but will negatively affect non-targeted persons.²⁰

Arguments in favour of the Bill and its policy objectives

3.19 The Bill and its objectives also received strong support from several groups. For example, Mr Richard Egan from the Coalition for the Defence of Human Life told the committee that the Bill 'addresses in a useful way the threat to innocent and vulnerable people posed by material that counsels or incites suicide or promotes or instructs in methods of suicide.'²¹ Mr Egan explained that, in his view, 'innocent and vulnerable' means:

...anyone...who has access to a carrier service and who has a suicidal predisposition through depression or facing the particular stresses in life that lead people to commit suicide. They may be people of any age or condition in society.²²

3.20 Mr Graham Preston from Right to Life Australia agreed:

We think that that should be taken very broadly. Simply by definition, it is those who are open to the possibility of committing suicide...20 per cent of Australians have indicated that they have thought at times that life is not worth living and 10 per cent have seriously considered suicide. That would obviously take in a large number of people, presumably right across the spectrum. The very fact that a person may consider life not worth living or seriously consider suicide, we would see that as making them vulnerable.²³

3.21 Salt Shakers agreed that the Bill was a positive move:

The strategy of making the dissemination of suicide-related material via the internet an offence is a positive move. The internet is often used by the younger generation, particularly to access chat rooms and an 'online community'. The promotion of suicide via websites/chat rooms allows young people to have an easy access to unhelpful and potentially dangerous information.²⁴

19 *Committee Hansard*, 14 April 2005, p. 22.

20 *Submission 23*, p. 1.

21 *Committee Hansard*, 14 April 2005, p. 2.

22 *Committee Hansard*, 14 April 2005, p. 4.

23 *Committee Hansard*, 14 April 2005, p. 8.

24 *Submission 26*, p. 3.

3.22 While acknowledging that there has been a reduction in suicide rates since the availability of the Internet,²⁵ and that 'no-one should walk away from this bill thinking that suicide prevention has been tackled in some major way',²⁶ Mr Egan from the Coalition for the Defence of Human Life argued that the Bill is a worthy measure that could prove useful in preventing at least some suicides in Australia:

All we are saying is that there is evidence in some psychiatric case histories and in general media reports that some individuals have committed suicide after following detailed instructions from either web sites or chat rooms on the internet. We are not making a statistical argument for this at all.²⁷

3.23 Mr Preston from Right to Life Australia drew an interesting analogy between suicide and policies relating to cigarette advertisement:

Our organisation does not take lightly supporting a bill which is intended to prohibit access to information. However, we would see the situation as being similar to that of advertising cigarette smoking. Smoking is not illegal but it is generally accepted that because of the harm it causes it is appropriate not to allow it to be advertised. In the same way suicide is not illegal but, due to the harm that promotion of it can cause, we believe is appropriate for this bill to prohibit promotion of it through carriage services, particularly the internet.²⁸

3.24 Some supporters of the Bill also argued that the Bill could be strengthened further in order to better achieve its aim. For example, the Festival of Light Australia argued that, as currently drafted, the Bill contains a loophole in relation to suicide promotion websites hosted overseas which should be rectified.²⁹ Mr Egan from the Coalition for the Defence of Human Life contended that 'once the URLs of such sites are drawn to the attention of [Australia-based] internet service providers there [should be] a penalty on them if they do not block access to those sites'.³⁰ Without such a provision, Mr Egan suggested that the Bill's effectiveness 'may be more symbolic than real'.³¹

3.25 Mr Egan also suggested that the Bill could be bolstered further by including specific provisions regarding advertising for sale of supply devices designed or customised to be used by a person to commit suicide, or the advertising of meetings at

25 *Committee Hansard*, 14 April 2005, p. 5.

26 *Committee Hansard*, 14 April 2005, p. 3.

27 *Committee Hansard*, 14 April 2005, p. 5.

28 *Committee Hansard*, 14 April 2005, p. 7.

29 *Submission 29*, p. 2.

30 *Committee Hansard*, 14 April 2005, p. 3.

31 *Committee Hansard*, 14 April 2005, p. 3.

which instructions and methods of suicide are given.³² In its submission, the Australian Christian Lobby suggested a similar amendment to the Bill.³³

The extent to which the Bill unduly impacts on free speech

3.26 The committee received considerable evidence in relation to the impact of the Bill on free speech; on personal and private communications between individuals; and on access to and possession of information.

Public discussion or debate about euthanasia

3.27 A number of submissions expressed concern that the Bill impacts adversely on free speech and the implied constitutional right to freedom of political communication. It was submitted that the Bill's offence provision could encompass debate about law reform and that, to the extent that such communication is protected by the implied freedom of political communication, the Bill could be struck down as being unconstitutional.³⁴

3.28 However, a representative from the Department told the committee that the Department did not agree with that assessment:

What has to be borne in mind in addition to anything else is that these are criminal offences. If there are ambiguities in the provisions they would be read by the court, in the normal order of construction, in favour of the defendant. When you see a provision like this, which is a clear indication of the intention of parliament, then the courts are not going to look for fine distinctions and work their way through it. So I do not share those views.³⁵

3.29 Nonetheless, the committee received considerable evidence indicating widespread concern in this regard. For example, the Voluntary Euthanasia Societies in each state argued that the Bill would seriously impinge on their activities in trying to legitimately change the law in relation to voluntary euthanasia.³⁶

3.30 The Voluntary Euthanasia Society of Tasmania (VEST) argued that, since suicide is not a crime, it is reasonable for any adult to seek information in relation to it. That is, '(i)t should not be illegal to supply information to rational responsible adults regarding a legal act regardless of how it will be used.'³⁷ VEST also submitted

32 *Committee Hansard*, 14 April 2005, p. 2.

33 *Submission 13*, p. 1.

34 For example, see Electronic Frontiers Australia, *Submission 28*, pp. 7-8 and New South Wales Council for Civil Liberties, *Submission 27*, pp. 4-5.

35 *Committee Hansard*, 14 April 2005, p. 29.

36 For example, see Voluntary Euthanasia Society of Tasmania, *Submission 6*.

37 *Submission 6*, p. 2.

that the greatest impact of the Bill will be upon poorer elderly, frail and/or incurably suffering people who are not familiar with the legal system.³⁸

3.31 The Voluntary Euthanasia Society of Victoria (VESV) argued that in order for it to inform and influence opinion, both in general and within the political arena, it is necessary to encourage debate about voluntary euthanasia. Such debate could include arguments about the merits of allowing the self-administration of lethal substances by a rational, terminally ill person in order to relieve their suffering. VESV was also of the view that proving that one did not have the requisite intention not to encourage suicide while at the same time discussing the possibility of medically assisted dying would be difficult.³⁹

3.32 In evidence, Dr Nitschke from Exit International contended that the Bill has the ability to seriously threaten any ability to openly debate suicide and related issues.⁴⁰ He explained that the addition of subsections 474.29A(3) and (4) to the Bill did little to allay his concerns in relation to the practical reality of dealing with these issues:

...the fundamental concerns we have [is] that the border between a discussion of a so-called method and the necessary discussion about a political change in a way to achieve that political change is exceedingly grey. So I do not find much reassurance in that particular statement [in those subsections] which seems to, if you like, protect the legitimate political process—and the process of discussing it in the broader community—that might be involved in this social issue, but at the same time try to delineate between that and what I see as the inevitable next question that I will get.⁴¹

3.33 Dr Nitschke also posed some interesting questions:

Again, where does one draw the line here? It is almost impossible to disentangle legitimate discussions about legal changes to the voluntary euthanasia situation in this nation and the very specific question that people almost invariably go on to ask: ‘If the law won’t change, how do I get an option for myself personally?’ So a person who one minute is talking about how they might go and lobby their politicians, the next minute is asking you: ‘I’ve got 50 morphine tablets here. If I take them, will I die?’ At which point do I hang up the phone? I am suggesting that at least this sort of legislation has the ability to seriously threaten any ability to openly politically debate this important social issue.⁴²

38 *Submission 6*, p. 4.

39 *Submission 11*, p. 1.

40 *Committee Hansard*, 14 April 2005, p. 12.

41 *Committee Hansard*, 14 April 2005, p. 13.

42 *Committee Hansard*, 14 April 2005, p. 12.

3.34 Ms Sandra Milne, who informed the committee that she had been diagnosed with inoperable cancer, emphasised the importance of informed debate in relation to suicide:

I believe that an informed debate about suicide results in a reduction in the number of suicides in this country. Persons aware of all their options will often extend their life by not acting prematurely. Unsuccessful suicide attempts often lead to unintended physical or mental harm. Many elderly people commit suicide in the most horrendous ways, and all because they were unable to source or were deprived of meaningful information and help. It is likely that, had these people been able to discuss their intention, some lives would not have been lost. For some, an attempt at suicide is a cry for help. This law would ensure that that cry would not be heard. Indeed with the risk of prosecution this law brings, it is more likely to ensure that attempts to suicide are successful.⁴³

3.35 However, the committee also received evidence from those who disagreed with this view. For example, Dr David M Gawler argued that the Bill is very precise in its offences and, since it 'quite plainly places no limitation on political communication regarding laws relating to euthanasia or suicide',⁴⁴ it is wrong 'to provide special privileges for the advocates of euthanasia or suicide'.⁴⁵

3.36 The Department's response to concerns raised in relation to the 2004 Bill regarding the criminalisation of information protected by the implied right to freedom of political communication was to insert the two clarifying provisions. Proposed subsections 474.29A(3)-(4) provide that a person does not commit an offence merely because they use a carriage service to engage in public discussion or debate about euthanasia or suicide or advocate reform of the law in relation to euthanasia or suicide. The Department explained:

There had been concern raised in the submissions to this Committee in its consideration of the 2004 version of the Bill that the Bill could be applied to organisations that have as their objective the reform of the law on voluntary euthanasia but as a corollary, discussed different methods of suicide and suicide statistics in order to make their case. It is considered that a person who engages in genuine debate over euthanasia related law reform or suicide would not have the requisite intent.⁴⁶

3.37 However, for some this provided little reassurance. For example, Ms Irene Graham from EFA told the committee that in her view the additional clauses are 'completely worthless'⁴⁷ since they merely restate the offence provisions:

43 *Submission 14*, p. 1.

44 *Submission 12*, p. 1.

45 *Submission 12*, p. 1.

46 *Submission 32*, p. 7.

47 *Committee Hansard*, 14 April 2005, p. 24.

[T]hey [do not] say anything different to what the offences themselves say. We think the offences themselves say 'will interfere with political communication'. I am not sure whether that was clear. To us, the exception that has been put in there simply will not work because it is still predicated on the intent of the person. When you look at the offences, the intent of the person depends on whether there was a substantial risk that something may happen or that something may happen in the ordinary course of events, because of the default fault elements in the Criminal Code.⁴⁸

3.38 She contended further:

To us, the bill is saying on the one hand that political communication will not be interfered with but then on the other it is saying, 'Provided that you did not intend to cause counselling or inciting or promoting to happen.' We believe it will simply chill freedom of political expression and discussion. Whether it will actually ban it is open to question, because it depends on the extent to which law enforcement agencies are going to run around trying to enforce this and, of course, on what a court decides about the specific wording of the legislation. But, to us, it will at the very least chill political communication.⁴⁹

3.39 The committee is aware of the suggestions from Professor George Williams in relation to how the original Bill might be amended to protect the Bill from possible unconstitutionality, including the insertion of a savings clause that might indicate that the Bill does not apply to the extent that it limits political communication.⁵⁰ The committee notes that, in order to address concerns about its impact on the implied right to political communication, the Government has altered the Bill in line with Professor Williams' suggestions.

Personal and private communications between individuals

3.40 Several submissions and witnesses expressed concern that the Bill would impact negatively on the ability of individuals to engage in private communications via electronic media since the offences in the Bill would apply to personal and private communications by means of telephone calls and email, including communications between friends or relatives, or discussions in the context of a doctor-patient relationship.

3.41 Ms Irene Graham from EFA articulated this point as follows:

...under the definition of 'communication' in the Criminal Code Act currently, the proposed offences will definitely apply to personal and private communications by means of telephone and email between two friends or relatives. We are absolutely opposed to parliament legislating to

48 *Committee Hansard*, 14 April 2005, p. 24.

49 *Committee Hansard*, 14 April 2005, pp 24-25.

50 *Submission 21*, p. 2.

prohibit individuals from communicating one-to-one by telephone or email.⁵¹

3.42 Dr Philip Nitschke from Exit International held a similar view:

We should be very clear: we are not talking just about information freely available for anyone who can work a keyboard; we are talking about the very personal communications that go on here, sometimes in the privileged context of doctor-patient relationships, with some protections because of that, but a large number which are just consultations between private individuals in society. We should not, I suggest, be introducing legislation which strikes right at the heart of that ability for people to access information.⁵²

3.43 Further, Dr Nitschke argued that the Bill:

...has the ability to very seriously restrict essential communication between Australians—and I am not just talking about doctor-patient communications; I am talking about communications between sons and parents, between parents and parents and between individuals in Australia who have a very reasonable right to be able to openly communicate with each other about what we would describe as end of life options. This legislation has that ability.⁵³

3.44 In the submission from Gilbert and Tobin Centre of Public Law, Professor George Williams also argued that, since the Bill criminalises not only public or mass communication regarding suicide, but also private communications between individuals, it would 'have a significant impact on the capacity of individuals who are seriously or terminally ill to access information about suicide'.⁵⁴ Specifically:

This raises an issue which merits consideration: the degree to which we wish to protect both freedom of speech which falls outside the definition of 'political communication', and the right of citizens to access information and make informed choices. We are concerned that legislation such as this, in limiting communication about an activity that is not illegal and in regulating the subject matter beyond existing State law, may go too far in restricting free communication.⁵⁵

3.45 The New South Wales Council for Civil Liberties was strongly opposed to the Bill's failure to recognise the distinction between public and private information exchange:

51 *Committee Hansard*, 14 April 2005, p. 21.

52 *Committee Hansard*, 14 April 2005, p. 11.

53 *Committee Hansard*, 14 April 2005, p. 12.

54 *Submission 21*, p. 2.

55 *Submission 21*, p. 2.

...Parliament has no place intervening in a private conversation between two consenting adult citizens discussing euthanasia options over the telephone.⁵⁶

3.46 Dr Nitschke also explained his views in relation to the specific impact on doctor-patient relationships:

There are certain protections that can be implied and accessed in the doctor-patient confidentiality relationship. The problem we have with this legislation is that, because it relates to electronic communications or carriage services, it specifically impacts on the ability to talk on the phone to one's patients. As far as I know, there is no other proposed legislation or existing legislation that prohibits such discussions. This legislation would seemingly specifically target the ability of doctors to communicate on the phone with patients if the question of suicide should arise.⁵⁷

3.47 Dr Nitschke expressed the fear that the Bill could have a serious impact on the work of Exit International because of the capacity to intrude into private and personal communications:

...it does seem perfectly plausible that, if such a law were to pass and if someone were to, for example, suspect that Exit's work would require specific surveillance because we talk a lot to people who wish to think about end of life options, this legislation might then be used to seek and obtain the necessary abilities to tap phones. So the legislation has the ability to provide that next step.⁵⁸

3.48 While a representative from the Department told the committee at the public hearing that the proscription of private communications between individuals was not part of the publicly-stated or direct intention of the Bill,⁵⁹ in its response to questions on notice the Department maintained that personal and private conversations over the telephone or email should come within the ambit of the Bill.

3.49 The Department's justification for this approach was expressed as follows:

The Bill has the same application as the related telecommunications offences in the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act 2004*. Mobile phone text messaging and email has the potential to transmit the same sort of information as contained on the Internet. It was also intended that these offences address all material transmitted by way of a carriage service, including personal telephone and email conversations.⁶⁰

56 *Submission 27*, p. 5.

57 *Committee Hansard*, 14 April 2005, p. 11.

58 *Committee Hansard*, 14 April 2005, p. 12.

59 *Committee Hansard*, 14 April 2005, p. 26.

60 *Submission 32*, p. 8.

3.50 Further:

The aim of the Bill is to protect the vulnerable in society from this sort of influence in a moment of crisis and it is irrelevant if the incitement or instruction comes through the Internet or by way of a personal phone call. If the intent was to counsel or incite suicide or to promote or provide instruction on a particular method of committing suicide, the Government intends this conduct to be captured by these offences.⁶¹

3.51 The Department pointed out that state and territory laws currently capture instances where a person counsels or incites another person during a private telephone conversation or email exchange to commit suicide. These laws have even broader application in this regard since they would also capture private face-to-face conversations held in a private residence and which counsel or incite the suicide or attempted suicide of another.⁶²

3.52 In response to questioning by the committee in relation to the criminalisation of counselling over the telephone, particularly in the context of doctor-patient communications, the departmental representative stated that:

[The Bill] would capture it if the counselling involved an incitement to commit suicide. If a doctor, in the course of that telephone communication, were to provide information about a method of suicide which encouraged the use of that method it would be caught.⁶³

Impact on access to and possession of information

3.53 Several submissions and witnesses opposed the Bill's criminalisation of access to and possession of information about suicide, particularly where that information is never passed on or where there is no attempt at suicide.⁶⁴

3.54 Mr Anthony and Mrs Beryl Saclier argued that:

61 *Submission 32*, p. 8.

62 *Submission 32*, p. 8.

63 *Committee Hansard*, 14 April 2005, p. 27.

64 For example, see New South Wales Council for Civil Liberties, *Submission 27*, p. 3; Electronic Frontiers Australia, *Submission 28*, p. 11. The committee also notes that there are inconsistencies with state and territory legislation in relation to accessing and possessing suicide-related information. For example, under section 31C of the NSW Crimes Act, a person must actually 'aid or abet' or 'incite or counsel' another person to commit or attempt suicide. Therefore, obtaining information in hard copy form from a library (perhaps with the intention of passing it to a terminally ill relative) would not be an offence under NSW law until actual assistance or incitement occurs (and suicide or an attempt results). Obtaining exactly the same material from the Internet (with the intention of passing it to a terminally ill relative for their use) would be an offence under the Bill. See further Angus Martyn, Parliamentary Library, *Criminal Code Amendment (Suicide Related Material Offences) Bill 2005*, Bills Digest No. 133 2004-05, p. 7.

An exchange of knowledge may have no 'intent' other than to share facts among those who want them. This bill attacks the innocent research of rational people intent on conducting their lives according to their own rights, with no intention of harming others.⁶⁵

3.55 The Department's response to such concerns was that the Bill does not criminalise simple access to or possession of material and that for a criminal offence to be proven there must also be an intention to use the material for a particular purpose, namely to commit an offence against proposed section 474.29A.⁶⁶

Definitional issues

3.56 Some submitters, in particular EFA, raised a number of issues in relation to certain elements of the offences and some of the definitions used in the Bill. These included the following:

- the application of the fault element of recklessness to the question of whether material 'incites suicide'; and
- the use of the words 'counsels or incites' in the proposed offence provisions.

Recklessness

3.57 In relation to the fault element of recklessness, Ms Irene Graham from EFA explained her concerns at the hearing:

It appears to us that part of the reason those fault elements and so forth are being used in that way is that the Commonwealth does not have the constitutional power to prohibit the conduct of inciting or counselling suicide. So once again it is prohibiting the conduct of using a carriage service, and we think this is part of the reason that the way in which the fault elements apply is so objectionable. The actual intent to commit to counsel or incite is not the actual criminal offence. A lower fault element of recklessness applies to intent to counsel or incite, because the actual legislation is not making it illegal to do that; it is making it illegal to use a carriage service when there is a circumstance that something else may happen.⁶⁷

3.58 Since the offences in the Bill are framed in this way, and because of the application of the fault elements in the Criminal Code, EFA argued that a person may be found guilty of the offences when they did not intend to engage in conduct to incite or counsel a person to commit suicide.⁶⁸

65 *Submission 8*, p. 3.

66 *Submission 32*, p. 9.

67 *Committee Hansard*, 14 April 2005, p. 25.

68 *Submission 28*, p. 9.

3.59 The Department rejected this analysis of the offences in the Bill. It argued that the concerns of the Model Criminal Code Committee⁶⁹ are satisfied by the current drafting of the Bill. In particular, the Department reiterated that the fault element of recklessness applies to the requirement that the material must directly or indirectly counsel or incite suicide, or directly or indirectly promote or provide instruction on a particular method of committing suicide. However, even if a person is reckless as to these matters, it does not automatically follow that they have committed an offence under the Bill.⁷⁰

3.60 This is because:

For an offence to be committed the person must also have intended that the relevant material be used, by the person who engages in the offending conduct or another person, to counsel or incite suicide, or to promote or provide instruction on a method of committing suicide. Alternatively, where the material promotes or provides instruction on a method of committing suicide, a person could also be guilty of an offence if they intended that another person use the material to actually commit suicide.

Without that intention, no offence would be committed.⁷¹

Counsels or incites

3.61 In relation to use of the word 'incites' (particularly in combination with the word 'indirectly'), Ms Graham of EFA stated that:

...we note that the model criminal code committee has previously rejected use of that word in criminal offences because some courts have interpreted 'incites' as only requiring causing. Given research findings of a link between media coverage of suicides and additional suicides, the proposed offences have the potential to criminalise journalists and ordinary individuals reporting on and discussing suicide. We also think that at least some internet material such as suicide related research, prevention and support material will be caught by the offences.⁷²

3.62 EFA also noted that the term 'counsels' is not defined in the Bill and that the phrase 'counsels suicide' is 'dangerously broad'.⁷³ There appeared to be a widely held

69 The Model Criminal Code Committee, in considering the offence of inciting the commission of an offence, rejected the use of the word 'incites' because 'some courts have interpreted incites as only requiring causing rather than advocating the offence'. That committee decided that 'the word 'urges' would avoid this ambiguity while capturing the essence of the offence'. The committee was also concerned that the fault element of 'recklessness in incitement was too great a threat to free speech' and, as a result, the word 'urges' was used and intention, not recklessness, applies: see further EFA, *Submission 28*, pp 8-9.

70 *Submission 32*, p. 9.

71 *Submission 32*, p. 9.

72 *Committee Hansard*, 14 April 2005, p. 21.

73 *Submission 28*, p. 12.

concern that the term 'counsel' was intended to capture doctor-patient communications and other forms of counselling, such as those provided by Lifeline. EFA expressed the view that:

(i)t would include information that advises someone not to commit suicide, as well as information that advises someone to do so. We are highly concerned that the use of the word "counsels" would enable prosecution (or at least harassment) of people who counsel other people who are considering committing suicide but intend to discourage, not encourage, those other people from taking that course of action.⁷⁴

3.63 At the hearing, departmental representatives explained that the term is a legal one and would be given a narrow legal meaning by the courts. That is:

...it is a legally used concept which appears widely throughout Commonwealth law or Australian law. In the Commonwealth context, if you go to a person who aids, abets, counsels or procures the commission of an offence, you have to read the word 'counsels' in the context of aiding, abetting and procuring. It is not counselling in the medical sense of providing assistance and information; it is actually encouraging the person with an intent to bring about a result.⁷⁵

3.64 In answers to questions on notice, the Department elaborated:

In the context of these offences, the term 'counsels' is intended to have a narrow meaning. It would cover the encouragement or urging of a person to commit suicide and the giving of advice or assistance directed at the actual commission of suicide. The Bill will not capture the counselling of a person who is considering committing suicide by friends and family or organisations such as Lifeline.⁷⁶

3.65 Similarly, the Department explained that the term 'indirectly or directly' is a commonly used drafting device in criminal offences and does not widen the intended operation of these offences due to the intention element of the offences.⁷⁷

3.66 The South Australian Voluntary Euthanasia Society suggested that the phrase 'counsels or incites suicide' should be changed to read 'promotes or incites suicide'.⁷⁸ At the hearing, the committee asked the Department to give some consideration to this suggestion. It later informed the committee that:

The term 'counsels or incites' suicide was introduced after public consultation on the exposure draft of the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill 2004, which

74 *Submission 28*, p. 12.

75 *Committee Hansard*, 14 April 2005, pp 28-29.

76 *Submission 32*, p. 10.

77 *Submission 32*, p. 10.

78 *Submission 10*, p. 1.

originally contained these offences. Prior to this change, it was proposed that a person would be guilty of an offence if they used a carriage service to access, transmit or make available material that was suicide promotion material and the person intended that that material be used to promote, counsel or incite suicide. It was considered that a broad interpretation of these draft offences could have resulted in material that advocates, debates or promotes euthanasia-related law reform being caught. To ensure that the Bill did not inadvertently criminalise such debate, the current formulation of words were adopted.⁷⁹

3.67 The Department also noted that:

The term ‘promotes’ has a broader reach than the widely used ‘counsels’ and may pick up a discussion of the merits of committing suicide that falls short of advising or recommending it and accordingly this change should not be made.⁸⁰

3.68 And:

The offences do not refer to counselling about suicide, such as the services provided by Lifeline. Rather, they cover the situation where someone intends to use material to counsel suicide. In this context, the term counsels is intended to have the narrow meaning of encouraging or urging the commission of a suicide or the giving of advice or assistance directed at the actual commission of suicide.⁸¹

3.69 The Department also made a suggestion as to how the Bill might be amended to make the provision clearer than it currently stands:

It may make this provision clearer if the word ‘committing’ was inserted in between the phrase ‘counsels or incites suicide’ in section 474.29A(1) (b) and (c). The phrase would then read ‘counsels or incites committing suicide’. It would put beyond doubt that counselling about suicide would not be captured unless the person encouraged or gave advice on the actual commission of a suicide.⁸²

Inconsistency with Customs Regulations

3.70 As mentioned above, a stated aim of the Bill is to prevent the Internet being used to circumvent the Customs Regulations (which prohibit the physical importation of suicide related material).

3.71 EFA submitted that the offences proposed in the Bill cover a vastly broader range of material than that prohibited by amendments to the Customs Regulations,

79 *Submission 32*, p. 3.

80 *Submission 32*, p. 4.

81 *Submission 32*, p. 4.

82 *Submission 32*, p. 4.

which these offences are intended to complement. That is, the Bill would prohibit accessing and making available material by means of the Internet and other carriage services that remain lawful to import, export, access and distribute by other methods.⁸³

3.72 Further, EFA argued that:

...the Bill should not prohibit information that is not illegal to import and export, nor information that is not illegal to access or distribute within Australia by means other than a telecommunications carriage service.⁸⁴

3.73 The Department agreed that the Bill does cover a broader range of material than that prohibited by the amendments to the Customs Regulations.⁸⁵ Specifically:

The Bill deals with information on the Internet that instructs on the construction and use of a suicide device as well as step by step guides on how to commit suicide using available medicines, poisons and other non-devices. Both types of material result in the same sort of harm. The Bill is intended to capture material and conduct in chat rooms and bulletin boards which actively encourage and provides information on specific methods of suicide.

These offences reflect the increased dependence of the community on telecommunications technology and the harm that can be done by its misuse.⁸⁶

The committee's view

3.74 The committee recognises that the topic of suicide (including euthanasia) raises extremely complex and sensitive issues which require a cautious and well-informed policy approach. The committee is also conscious that the issue of suicide and how best to respond to it remains a difficult one for the Australian community. This is reflected in the sharp divide between those submissions and witnesses who supported the Bill and its purpose, and those who strongly objected to it.

3.75 The committee is also mindful of the balance of the evidence presented to it in the course of the inquiry. The committee notes stated concern within sections of the community that the Bill represents a misguided and unrealistic approach to a complicated policy matter that would not be effective in preventing suicide. In the committee's view, these arguments carry some weight. However, on balance, the committee does not consider that they are such as to prevent passage of the Bill. The committee notes again that assisting or encouraging another person to commit suicide is an offence in all states and territories. Moreover, to assist or encourage another

83 *Submission 28*, p. 6.

84 *Submission 28*, p. 6.

85 *Submission 32*, p. 6.

86 *Submission 32*, p. 7.

person to attempt to commit suicide remains an offence in most Australian jurisdictions.

3.76 The committee's view is that the issues raised by the Bill are best addressed as part of a broader, multifaceted policy or strategy by Australian governments that is required to address the problem of suicide and related issues in Australia. Yet the committee also acknowledges that, without a broader range of research, initiatives and proactive measures to address suicide and related issues, it is clear that the Bill is unlikely to be effective in meeting its aims. The Bill, for example, will only apply to Australian hosted websites. The committee notes that the Senate Select Committee on Mental Health has recently been established and that its broad terms of reference would encompass consideration of the issues surrounding suicide in Australia and the national, state and territory policies or strategies required to address those issues.

3.77 The committee acknowledges concerns that the measures in the Bill will extend to personal and private communications between individuals including – potentially – discussions in the context of doctor-patient relationships and counselling services offered by organisations such as Lifeline. The committee is also concerned by these aspects of the Bill. However, the committee also notes that adequate safeguards and limits are in place, such as the requirement to satisfy a court beyond any reasonable doubt that a defendant had the requisite intent. Precedents for such offences do exist.⁸⁷ The committee also notes and supports the Department's suggested addition of the word 'committing' to the phrase 'counsels or incites suicide' in paragraphs 474.29A(1)(b) and (c) of the Bill, so that the phrase reads 'counsels or incites committing suicide', to help create greater certainty in relation to the kind of behaviour captured by the Bill's offences.

3.78 The committee acknowledges that concerns exist with respect to safeguards provided by proposed subsections 474.29A(3) and (4). As explained above, these provide that a person does not commit an offence merely because they use a carriage service to engage in public discussion or debate about euthanasia or suicide, or advocate reform of the law in relation to euthanasia or suicide. The committee's view is that the operation of these statutory safeguards should be subject to review. To this end, a report on the first 12 month's operation of these provisions should be prepared and presented to Parliament for its consideration.

87 Existing federal legislation already intrudes into the area of private electronic communications between individuals. Section 474.14 of the Criminal Code, for example, prohibits the use of a telecommunications network (including a carriage service) with intention to commit a serious offence. A 'serious' offence includes any offence against a law of the Commonwealth, a state or a territory that is punishable by imprisonment for a period of 5 or more years or for life. This includes state and territory criminal offences in relation to suicide. The type of conduct captured by the offence in section 474.14 would include using a telephone to facilitate commission of state and territory offences concerning suicide.

Recommendation 1

3.1 The committee recommends that proposed paragraphs 474.29A(1)(b) and (c) be amended so that the phrase 'counsels or incites suicide' reads 'counsels or incites another person to commit or attempt to commit suicide'.

Recommendation 2

3.1 The committee recommends that the Bill be amended to insert a requirement that, as soon as practicable after the end of 12 months from the date of the Bill's commencement, the Attorney-General must cause to be laid before each House of Parliament a comprehensive report on the operation of proposed subsections 474.29A(3) and (4).

Recommendation 3

3.2 Subject to the preceding recommendations, the committee recommends that the Senate pass the Bill.

Recommendation 4

3.3 The committee supports and calls for the implementation of additional broader research, strategies, resourcing and policy initiatives by the Federal Government and state/territory governments in order to address jointly and consistently issues relating to suicide in Australia.

Senator Marise Payne
Chair

**DISSENTING REPORT
SENATOR BRIAN GREIG
AUSTRALIAN DEMOCRATS**

As the Australian Democrats' spokesperson for IT, I cannot support this Bill.

It reinforces and promotes mythology about the internet and cannot possibly achieve the outcome that it pretends to provide for.

This Bill is simply another foolish attempt to censor the internet, and will fail for exactly the same reasons that previous well intended but clumsy attempts at banning internet pornography and online gambling have been demonstrably unsuccessful.

It may be the case that if passed, the Bill will restrict the activities of legitimate domestic Voluntary Euthanasia (VE) advocacy groups, but with the click of a mouse, any PC user can access literally hundreds of thousand of pages of information on VE from overseas websites.

This Bill has no international reach.

Simply by typing the words, "How to Kill Yourself" into the Google search engine, I was able to access more than 7, 230 000 hits in 0.10 seconds. This includes the site, "How to Kill Yourself Using the Inhalation of Carbon Monoxide Gas," and which comes complete with pictures.

This Bill will not and cannot ban this site.

However, the Bill creates the extraordinary situation, whereby it may be deemed that simply providing VE information domestically constitutes unlawful "counselling" or "inciting" when provided via the internet (including e-mail), or over the phone, yet this is not unlawful if the same information is provided by regular post.

It means for example, that the VE Society of NSW, may find itself in breach of the law simply by advocating for the introduction of VE in State Parliament and discussing this online with members and supporters.

I suggest this is the real agenda behind those conservative and religious organisations which most push for this Bill. I predict it will likely result in civil disobedience, with VE groups around Australia daring the Commonwealth to prosecute them in an environment where the populace overwhelmingly supports VE.

The Bill also creates the bizarre situation, for example, that providing quotes and chapters of the book "Final Exit" by author Derek Humphry, via e-mail, may be unlawful, yet buying the book from a newsagent remains lawful.

Then there is the question as to whether purchasing this book from online company Amazon.com constitutes an offence under the Act. I suggest it may well do, even though it remains freely available in bookshops and libraries.

This is ridiculous and brings public policy into disrepute. The Bill lacks rationale and consistency and demonises the internet. It also completely fails to address the causes of suicide or offers any suggestions to help mitigate against this tragedy.

Suicide is a difficult social issue, and more common with elderly people than with the young, as is the perception.

I have long had an interest in youth suicide prevention, particularly from the demographic of gay and lesbian youth. A shocking statistic is that up to one third of all 'same-sex attracted' youth, those who are lesbian or gay, 'questioning' their sexuality or perceived to be homosexual, attempt or succeed at killing themselves. One third.

Australian and international research has repeatedly shown that harassment, discrimination, intolerance and prejudice aimed at young people who are homosexual, or presumed to be so, is a key reason for youth suicide.

The Commonwealth and the States have, to varying degrees, recognised this phenomenon and taken some steps to address it. Counselling, support and self esteem programs, such as the "Working It Out" program in Tasmania are examples of this.

However, I note the harsh irony that many of the conservative religious organisations and individuals which made submissions in support of this Bill, are also some of the most vehement opponents of civil and human rights for gay and lesbian people, and host, refer to, or advocate websites that vilify homosexual people. This includes anti-gay websites which state or infer that gay and lesbian people are mentally ill, morally depraved, diseased and child abusers – amongst other things.

This anti-gay hatred and promotion is part of the problem that leads many young people to kill themselves. It contributes to an environment of fear and isolation many young homosexual people can face, and it can result in homophobic harassment and violence towards vulnerable youth. There is a link between the fear and loathing promoted by anti-gay groups, and the death of many young people. However, the Commonwealth remains silent on this nexus, despite its professed desire to limit suicides in Australia.

Conclusion

While I can support the committee's recommendations (1) & (2), as these will improve the operation of the Bill a little, I believe the Bill itself should be scrapped.

I can also support committee recommendation (4), but would argue that there is a particular urgency to address sexuality related suicide amongst young people, and which requires mandatory anti-homophobia teaching and training in schools, and proper resources for Gay, Lesbian, Bisexual, Transgender and Intersex (GLBTI), youth to access support, education and counselling.

Brian Greig
Australian Democrats

SENATE LEGAL AND CONSTITUTIONAL COMMITTEE

Committee inquiry into the provisions of the Criminal Code Amendment (Suicide Related Material Offences) Bill 2005

QUALIFYING COMMENTS

SENATOR BRIAN HARRADINE

Suicide is violence – lethal violence, constituting serious public and mental-health problems worldwide.¹

The *Criminal Code Amendment (Suicide Related Material Offences) Bill 2005* is legislation designed to protect the public from individuals, organisations or groups that promote suicide using a carriage service such as the Internet.

The legislation prohibits using the Internet, email, telephones, fax machines, radio or television “for the purposes of counselling or inciting suicide, or promoting or providing instruction on a particular method of suicide. Possession or supply etc of material that is intended to be used for such offences is also itself an offence.”²

Suicide is a serious problem in Australia. More than 2200 people commit suicide each year.³ That’s more than the annual road toll of over 1500 deaths per year that we see regularly reported on the television news.⁴ Images of broken and crushed cars are more easily seen and understood than the private shattered lives and anguish of people who resort to suicide.

The World Health Organisation (WHO) states that suicide is “...a huge but largely preventable public health problem, causing almost half of all violent deaths and resulting in almost one million fatalities every year ...”.⁵

The WHO reminds us that “deaths from suicide are only a part of this very serious problem. In addition to those who die, many more people survive attempts to take

¹ Leenaars, A (2003), Suicide and human rights: a suicidologist’s perspective. *Health and Human Rights*, Vol 6(2), pp 128-148.

² Parliamentary Library Bills Digest, *Criminal Code Amendment (Suicide Related Material Offences) Bill 2005*. 15 March 2005. Page 2.

³ Australian Bureau of Statistics (2004), *Suicides: recent trends, Australia*. 15 December. Catalogue 3309.0.55.001.

⁴ Australian Transport Safety Bureau (2005), *Road Deaths Australia: Monthly Bulletin January 2005*. Australian Transport Safety Bureau, Canberra.

⁵ “Suicide huge but preventable public health problem, says WHO”. Media release for World Suicide Prevention Day - 10 September. World Health Organisation. Issued 8 September 2004 (<http://www.who.int/mediacentre/news/releases/2004/pr61/en/>)

their own lives or harm themselves, often seriously enough to require medical attention. Furthermore, every person who kills himself or herself leaves behind many others – family and friends – whose lives are profoundly affected emotionally, socially and economically. The economic costs associated with self-inflicted death or injuries are estimated to be in the billions of US dollars a year.”⁶

A number of organisations have provided submissions to the Committee opposing the Bill because they provide or may want to provide information which assists a person to commit suicide or because they want that information to continue to be available.⁷

One submission stated that it was agreed at its recent annual general meeting “... there was no doubt that if the Bill becomes law, it will stifle, hamper and inhibit the work of VES, its various branches, and the work of VE societies and their branches all over in Australia.”⁸

It appears therefore that a number of Australian euthanasia groups may already be involved in using 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.”⁹

The legislation therefore clearly addresses a problem that exists in Australia.

The Internet and suicide

A number of published studies have indicated a link between information provided on the Internet and suicide. The very serious problem of suicidal people gaining information on suicide from the Internet has been documented by international researchers.

Rajagopal found that “an increasing number of websites graphically describe suicide methods, including details of doses of medication that would be fatal in overdose. Such websites can perhaps trigger suicidal behaviour in predisposed individuals, particularly adolescents.”¹⁰

⁶ World Health Organisation (2002), *World report on violence and health*. WHO Geneva. Page 185.

⁷ West Australian Voluntary Euthanasia Society, submission 4; Voluntary Euthanasia Society of New South Wales, submission 5 and 5A; Voluntary Euthanasia Society of Tasmania Inc, submission 6 and 6A; South Australian Voluntary Euthanasia Society, submission 10; Voluntary Euthanasia Society of Queensland, submission 15; Exit International, submission 16 and 16A.

⁸ Voluntary Euthanasia Society of NSW, submission 5A.

⁹ Explanatory Memorandum, *Criminal Code Amendment (Suicide Related Material Offences) Bill 2005*, page 1.

¹⁰ Rajagopal, S (2004), Suicide pacts and the Internet. *British Medical Journal*, Vol 329, pp 1298-1299.

Professor Keith Hawton from Oxford University's Centre for Suicide Research said "these sites are dangerous ... One of their founding theories is that they should be placed under no supervision whatsoever and feature no input from experts at all, and what you are left with is suicidal people counselling suicidal people, which is about as dangerous as it can get."

Professor Hawton comments that "a recurring feature of these sites seems to be the presence of voyeuristic people who get their kicks from encouraging others to commit suicide. There is definitely a seductive element."¹¹

Mehlum explains the particular dangers of the Internet to people considering suicide:

"First, there are many new web sites ... which present suicide as a solution rather than a problem."

"But there exist really very few legal, technical, or financial obstacles to those who wish to provide the millions of Internet users with detailed information on how to commit suicide."

"Second, and even more problematic from a suicidological perspective, is the new and increasingly interactive internet resources such as discussion groups."

"The establishment of the internet as a world-wide forum available to an increasing number of people has dramatically increased the possibility for otherwise widely scattered suicidal youngsters to rapidly and directly interact."¹²

Becker and Schmidt provide information on how suicide chat rooms function:

"Other suicide chat rooms, however, place no restrictions on participants, their mean position being that suicide is a deliberate decision. They postulate an antipsychiatric attitude and give clear instructions about methods, locations, and how to write suicide notes. Some also deal in suicide utilities.

"Webmasters, laymen at therapeutic counselling, are opinion leaders within a chat room. They are responsible for group consensus, often pro-suicide. Other opinions are not tolerated. Internet use diminishes other modes of communications and heightens social withdrawal, causing a rise in psychopathological characteristics.

"Ambivalence, an often-precarious balance between a chosen life and a chosen death, which is considered common to suicidal attitude, may tip in the direction of death in response to suicide chat rooms. Suicidal adolescent visitors risk losing their doubts and fears about committing suicide. Risk factors include peer

¹¹ Hill, A (2003), Sorry you're still here. *The Observer*, 27 April.

¹² Mehlum, L (2000), The Internet, suicide, and suicide prevention. *Crisis: The Journal of Crisis Intervention and Suicide Prevention*, Vol. 21(4), pp 186-188.

pressure to commit suicide and appointments for joint suicides. Furthermore, some chat rooms celebrate chatters who committed suicide.”¹³

One particular case is cited by Baume, Cantor and Rolfe, demonstrating the pressures of expectation that some suicidal people feel as a result of using chat rooms:

“The plea of Nick W (“I’m gonna do it any day now really I promise”) suggests that he may have felt compelled by his internet participation to follow through with suicide. If it were not for his public commitments he might have been able to adopt a more constructive approach to problem-solving without losing face.”¹⁴

A study of the potential of Internet sites to trigger suicidal behaviour concludes that:

“A general prohibition of suicide sites is neither practicable nor reasonable, but the owners of suicide sites should be aware of their responsibility for adolescents. They should know and follow the fundamental rules of suicide prophylaxis as they should be applied to other media (no information on suicide methods, their efficiency or availability; no acceptance of demands or meetings for joint suicide, no publication of suicide).”¹⁵

Becker and Schmidt argued further that the “... legal options to prevent cybersuicides should be discussed from a national and an international perspective because of the criminal abuse of the Internet communities.”¹⁶

This advice is consistent with the Government’s legislation. The legislation is also consistent with the conclusion of other research that one of the most effective ways of reducing the suicide rate is to limit people’s access to the means of suicide.¹⁷ This would reasonably be expected to include measures such as stopping distribution on a carriage service of the details of or advice on how to commit suicide.

Other carriage services and suicide

The Bill also deals with carriage services other than the Internet, such as telephones, faxes, radio, television and email. There is evidence that each of these methods of communication can be used to promote, counsel or incite suicide.

¹³ Becker, K and Schmidt, M (2004), Internet chat rooms and suicide. *J Am Acad Child Adolesc Psychiatry*, Vol 43(3), pp 246-247.

¹⁴ Baume, P, Cantor, C and Rolfe, A (1997), Cybersuicide: the role of interactive suicide notes on the Internet. *Crisis: The Journal of Crisis Intervention and Suicide Prevention*, Vol 18(2), pp 73-79.

¹⁵ Becker, K et al (2004), Parasuicide online: Can suicide websites trigger suicidal behaviour in predisposed adolescents? *Nord J Psychiatry*, Vol 58(2), pp 111-114.

¹⁶ Becker, K and Schmidt, M (2004), Internet chat rooms and suicide. *J Am Acad Child Adolesc Psychiatry*, Vol 43(3), pp 246-247.

¹⁷ Gunnell, D and Frankel, S (1994), Prevention of suicide: aspirations and evidence. *British Medical Journal*, Vol 308, pp 1227-1233.

Exit International's Philip Nitschke gave evidence on the importance of email and methods of communication other than the Internet for providing suicide information:

“We are concerned about the legislation's ability to impact on private communications. All of the material that we are talking about – which perhaps would be considered to be in the area of discussing methods and the like – takes place on a one-to-one basis or through email and the like. But all of that is covered by this law.”¹⁸

Dr Nitschke was very specific about the subject of those communications, saying “we invariably talk about suicide; this is the reason they contact us.”¹⁹

Evidence of the importance of telephones came from the professed intention of one overseas suicide group to set up a telephone hotline:

“... one newsgroup which calls itself ‘The Church of Euthanasia’ ... suggests suicide as a positive act for all, and have announced their intention to set up a ‘suicide assistance telephone hotline’ to pursue this further.”²⁰

The caution that must be exercised by radio and television outlets in how they report suicide is acknowledged by Electronic Frontiers Australia, which states that research shows there is “... a substantial risk that general discussion and media reports about suicide causes suicide.”²¹ Yet the EFA appears not to have the same concern about the effect of counselling or inciting suicide on the Internet or other carriage services.

Suicide and the law

Legislators have a responsibility to protect the community, for the common good of all, even if this involves some interference in the interests of some members of the public. It is important to ensure that those who are vulnerable to influence do not have unrestricted access to advice or materials that would encourage or assist them to end their life rather than seeking help. The community has a responsibility to protect vulnerable people and to provide the best medical and social care.

The law also has an educative dimension. Laws such as the bill under consideration educate society that there is value in the life of every human being, and that special care should be provided to those who are vulnerable for any number of reasons.

¹⁸ Philip Nitschke, Exit International, Committee Hansard, 14 April 2005, page 13.

¹⁹ Philip Nitschke, Exit International, Committee Hansard, 14 April 2005, page 10.

²⁰ Thompson, S (1999), The Internet and its potential influence on suicide. *Psychiatric Bulletin*, Vol 23, pp 449-451.

²¹ Electronic Frontiers Australia, submission 28, pages 11-12.

A number of organisations and individuals have argued that given suicide is no longer a crime, providing information to assist suicide should not be restricted by the Bill.²²

But just because suicide is not a crime does not mean it is a public good that should be promoted or facilitated. Suicide was decriminalised because there was little value in prosecuting someone who was dead or who had attempted suicide. Suicidal people need help, not prosecution. But there is great value in protecting the general public from people who assist suicide.

It is for this reason that aiding or abetting a suicide is illegal in every state and territory in Australia.²³ To restrict access to harmful material, it is important to strengthen the law to ensure that using a carriage service to counsel or incite suicide or the possession or supply of suicide material intended to assist a suicide is also illegal.

Vulnerable people

There was some debate in submissions and testimony before the committee as to the definition of the vulnerable people that this bill is designed to protect.

Electronic Frontiers Australia said "... if the vulnerable individuals that the bill is referring to are terminally ill people and older people that are wanting to know information, we do not consider that they should necessarily be considered to be vulnerable and so be prevented from being able to obtain information."²⁴

Voluntary Euthanasia Society of NSW president Kep Enderby demonstrated that there are sometimes very different understandings of the term "vulnerable" and "rational" suicide between members of groups that counsel, incite or promote suicide and the general public. Mr Enderby described a woman:

"...who has twice tried to kill herself, not irrationally but in the most rational way. She has had a good life, too. She is 51 now. She was a highly qualified nurse. She lived in Perth; she married a Perth chap. She had three children, all of whom were grown up. She was very maternalistic. She had an IVF child, a little boy called James, who is now eight. She had hardly had him, by arrangement with the fertility clinic, when she came down with a very nasty form of malignant brain tumour, which led to her having surgery. This had to be followed by radiation therapy, and she changed. Her whole personality changed.

"She is not vulnerable in any sense. She has lost her right to drive a motor car because she has epileptic turns. She is on heavy doses of morphine for the headaches and so forth. That led to her elder daughter bringing an action in the

²² For example: Ms Gillian Walker, submission 3; West Australian Voluntary Euthanasia Society, submission 4; Voluntary Euthanasia Society of NSW, submission 5A, Voluntary Euthanasia Society of Tasmania, submission 6, page 2, etc.

²³ Ms Julianne Smith, submission 25

²⁴ Irene Graham, Electronic Frontiers Australia, Committee Hansard, 14 April 2005, page 21.

Family Court of Western Australia to take the boy away from her, and she fought that in a litigation She lost the child. She has access to him and can ring him up. She moved over to the eastern states. ... She rings the little boy up every Saturday and she has him three weeks a year over here ...

“With all these things going on, she took an overdose of morphine one night. It was not enough, and she survived. She later took another dose, but she was saved because her neighbour came in and called an ambulance. She now lives up in Wyong, but she has a most miserable life. She lives on a disability pension. ... she is obviously still a very unhappy human being. She might die any time, but she might live for another 20 years. She might also do what she has unsuccessfully tried to do twice, and I would not blame her.”²⁵

Most people would consider such a woman vulnerable and entitled to community protection and assistance. It is a concern that some organisations may provide suicide information to such a vulnerable woman, who may well be suffering from depression.

Geoffrey Gray from the Attorney General’s Department put the question in some context:

“Its all very well to talk about adults making informed choices. I agree with that entirely, but are people who are vulnerable and considering suicide in a position to make an informed choice? That is the real problem. If this information is so readily available, it can be used by people before they have had the opportunity to make an informed choice.”²⁶

This caution was reinforced by research which demonstrated how people with suicidal thoughts, but ambivalent about committing suicide, could be encouraged on Internet sites to take their life. The research “... noted the ambivalence of the notes posted [on the Internet] by some subjects, and how their resolve strengthened following the encouragement of others, eventuating in successful suicides in some cases. They also felt there was evidence that vulnerable individuals were compelled so strongly by others that to back out or seek help would involve losing face.”²⁷

There is, for instance, a significant pool of young people who consider suicide or self harm. “Some 7%-14% of adolescents will self harm at some time in their life, and 20%-45% of older adolescents report having had suicidal thoughts at some time.”²⁸ Each of these young people is vulnerable and could be pushed over the edge to their death by individuals or groups promoting suicide.

²⁵ Kep Enderby, Voluntary Euthanasia Society of NSW, Committee Hansard, 14 April 2005, page 20.

²⁶ Geoffrey Gray, Attorney General’s Department, Committee Hansard, 14 April 2005, page 30.

²⁷ Thompson, S (1999), The Internet and its potential influence on suicide. *Psychiatric Bulletin*, Vol 23, pp 449-451.

²⁸ Hawton, K and James, A (2005) Suicide and deliberate self harm in young people. *British Medical Journal*, Vol. 330, pp 891-894.

Autonomy and rational suicide

A number of submissions argued that the proposed legislation should not restrict access to information, as that would impact on a person's autonomy.²⁹ But while the autonomy argument implies that anyone should be able to die how, when and where they want, this is not supported by a number of other submissions which argue suicide information should only be available for "rational" suicide or suicide by a "rational adult"³⁰ or "competent adult".³¹

The Voluntary Euthanasia Society of Tasmania for example argues "it should not be illegal to supply information to rational responsible adults regarding a legal act regardless of how it will be used."³²

The Voluntary Euthanasia Society of NSW's Kep Enderby said "... it is my view and the view of the society that I represent that a rational, sane adult – more often than not the elderly and those who are ill – have the right to be able to bring their life to an end if they want to, if they rationally decide that that is what they want."³³

Philip Nitschke complains "... the Bill's main aim is to prevent rational adult Australians from using a carriage service to access any type of information about their end of life options."³⁴ But his position is not consistent. Dr Nitschke is on the record saying that suicide pill information should be provided to all who want it – not just rational adults: "someone needs to provide this knowledge, training, or recourse necessary to anyone who wants it, including the depressed, the elderly bereaved, [and] the troubled teen".³⁵

Deciding who is and who is not "rational" then becomes controlled by those holding the suicide information. In this situation people seeking information on suicide actually have less autonomy, because they are only given the information if their life is judged by others to be no longer worth living. If any community were to accept euthanasia groups controlling this information, it would also be endorsing their view of vulnerable people as expendable.

Already vulnerable people who are considering ending their lives see in suicide advice an endorsement of their disordered thinking. They see a justification for committing the act of suicide rather than seeking the help they obviously need.

²⁹ For example: Ms Gillian Walker, submission 3; WA Voluntary Euthanasia Society, submission 4

³⁰ Marshall Perron, submission 1; VES Tasmania, submission 6; VES Victoria, submission 11, Exit International, submission 16A; Electronic Frontiers Australia, submission 28

³¹ South Australian Voluntary Euthanasia Society, submission 10

³² Voluntary Euthanasia Society of Tasmania, submission 6.

³³ Kep Enderby, Voluntary Euthanasia Society of NSW, Committee Hansard, 14 April 2005, page 18.

³⁴ Exit International, submission 16A

³⁵ Lopez, K J (2001), Euthanasia sets sail. *National Review Online*, 5 June. <http://www.nationalreview.com/interrogatory/interrogatoryprint060501.html>

If it becomes routine to give certain people access to information on suicide, it then becomes a pressure on those types of people to see suicide as a solution so they won't be a burden, or so that their physical, psychological or spiritual pain can end. One writer notes that "fear of dependency and reluctance to burden family members may be important mediators of decisions about suicide."³⁶ So those people seeking information from suicide groups actually have no effective autonomy. Control over their suicide rests with the approval of others.

The autonomy argument is further undermined by one submission, which argues that:

"... it is not right to criminalise a friend or relative of a terminally-ill person who, in anticipation that their dying loved one will seek their help in alleviating their suffering, obtains information from the Internet about methods of suicide."³⁷

The real question is why would such a person obtain suicide information if there has not been an explicit request? What does this say about the family member's attitude to their terminally ill relative or of their respect for autonomy? There would be a high risk of that ill person feeling as if they were a burden and that they should consider suicide if they are offered information on how to take their life.

Depression

It is worth mentioning that none of the submissions opposing this legislation mentioned depression. Yet depression is one of the major factors driving the suicide rate. And depression is a treatable condition.

Whether a patient is suffering from depression or not is clearly an important matter that deserves expert medical assessment. The World Health Organisation has determined that "depression plays a major role in suicide and is thought to be involved in approximately 65-90% of all suicides with psychiatric pathologies."³⁸

One study found that "patients with depressive symptoms were more likely to change their minds about desiring euthanasia or PAS [physician-assisted suicide]".³⁹ In another study depression and hopelessness were the strongest factors predicting a patient's desire for an early death.⁴⁰

³⁶ Johnson, T (2003), Book review: Suicide and euthanasia in older adults: a transcultural journey. *Psychiatric Services*, Vol 54, pp 261.

³⁷ NSW Council for Civil Liberties, submission 27

³⁸ World Health Organisation (2002), *World Report on Violence and Health*. WHO, Geneva. Page 192.

³⁹ Emanuel, E et al (2000), Attitudes and desires related to euthanasia and physician-assisted suicide among terminally ill patients and their caregivers. *Journal of the American Medical Association*, Vol 284(19), pp2460-2468.

⁴⁰ Breitbart, W et al (2000), Depression, hopelessness, and desire for hastened death in terminally ill patients with cancer. *Journal of the American Medical Association*, Vol 284(22), pp 2907-2911.

A further study reported a very high association between suicide in adolescents and depression. “Psychological postmortem studies of suicides show that a psychiatric disorder (usually depression, rarely psychosis) is present at the time of death in most adolescents who die by suicide.”⁴¹

Given the high association between depression – a treatable condition – and being suicidal, it is important that depression is always considered when suicide is discussed. Depression is often missed or not treated properly.⁴²

Despite the importance of depression in contributing to suicidal behaviour, it was reported earlier this year that Exit International’s director Dr Philip Nitschke refused to seek expert opinion on whether those who approach him are suffering from depression. Dr Nitschke said that:

“The idea that psychiatrists should be the ultimate arbiters does not sit well with me or many of the people that come to see me. I would say common sense is a good enough indicator. It’s not that hard to work out whether you are dealing with a person who is able to make rational decisions or not.”⁴³

It is important to note that depression is more difficult to detect than many other health conditions because those suffering the condition are often unaware of their illness:

“Unfortunately, because a common symptom of depression is a loss of insight and a feeling of hopelessness, depressed people usually have little understanding of the severity of their illness. They are often the last to recognise their problem and seek help. It is therefore critical that primary care physicians develop the skills to recognise depression in patients, particularly the terminally ill and elderly, whose depressive symptoms may be masked by coexisting medical conditions such as dementia and coronary artery disease.”⁴⁴

Undiagnosed depression is clearly a major danger for suicidal people. Yet it appears to be ignored by providers of do-it-yourself suicide information.

The Australian experience

The danger of groups or individuals providing suicide information to vulnerable individuals is well illustrated by Australia’s experience with euthanasia in the

⁴¹ Hawton, K and James, A (2005) Suicide and deliberate self harm in young people. *British Medical Journal*, Vol. 330, pp 891-894.

⁴² Hitchcock Noel, P et al (2004), Depression and comorbid illness in elderly primary care patients: impact on multiple domains of health status and well-being. *Annals of Family Medicine*, Vol 2(6), pp 555-562.

⁴³ Pelly, M (2005), A better option: the wait for a way out. *The Sydney Morning Herald*, March 19.

⁴⁴ New York State Taskforce on Life and the Law (1994), When Death is Sought: Assisted Suicide and Euthanasia in the Medical Context. New York State Department of Health. Page 15.

Northern Territory. In a review of the issue, the University of Adelaide's Professor Robert Goldney commented:

“... even with ostensibly strict guidelines embodying most issues considered by proponents of euthanasia to be important, as a result of the clinical details provided there exist reservations about what occurred with two of the four persons who died under the Northern Territory legislation. This is hardly a reassuring record for examples of euthanasia which would inevitably be subjected to the most intense public scrutiny.”⁴⁵

Depression was a major factor in the Northern Territory's experiment with euthanasia, as it is a major factor in the problem of suicide. In a major review of the case notes of seven people who sought euthanasia in the Northern Territory, published in *The Lancet*, there was evidence of inadequate consideration of depression:

“To what extent was the psychiatrist trusted with important data and able to build an appropriate alliance that permitted a genuine understanding of a patient's plight? In case 1, there was important background detail about the death of one child and alienation from another, which was withheld during the psychiatric assessment. These experiences may have placed the patient in a lonely, grieving, demoralised position: an unrecognised depression may have led to suicide.

“Four of the seven cases had symptoms of depression, including reduced reactivity, lowered mood, hopelessness, and suicidal thoughts. Case 4 was receiving treatment for depression, but no consideration was given to the efficacy of dose, change of medication, or psychotherapeutic management. PN judged this patient as unlikely to respond to further treatment. Nonetheless, continued psychiatric care appeared warranted ...”⁴⁶

The Australian experience with euthanasia shows that the significance of depression and psychiatric illness in euthanasia and by implication in suicidal people should not be underestimated.

Rationalising suicide

A number of submissions opposing the Bill attempted to rationalise the serious life and death nature of suicide away, arguing that somehow 2200 deaths per year are not a national tragedy:

“no one is able to claim that inciting suicide has reached an alarming proportion ...”⁴⁷

⁴⁵ Goldney, R (2001), Euthanasia: The Australian Experience. In: *Suicide and Euthanasia in Older Adults: A Transcultural Journey*, De Leo D, ed. Seattle: Hogrefe and Huber, pp172-179.

⁴⁶ Kissane, D, Street, A, Nitschke, P (1998), Seven deaths in Darwin: case studies under the Rights of the Terminally Ill Act, Northern Territory, Australia. *The Lancet*, Vol 352, pp1097-1102.

⁴⁷ WA Voluntary Euthanasia Society, submission 4

“... the risk to the vulnerable temporarily depressed young people. Suicide in these cases is tragic. This in itself does not justify the censorship ... The plight of the greater number of people denied relief from suffering [through suicide] ... is equally tragic.”⁴⁸

“... we do know that people have and are committing suicide in the most horrendous ways possible, and all because they were unable to source or were deprived of meaningful [suicide] information and help from a compassionate and sympathetic society.”⁴⁹

The concern seems to be with ensuring the swift and efficient death of suicidal people rather than helping them to avoid suicide.

Groups arguing against this bill reject the notion that suicide is a bad thing that should be prevented. There is apparently no consideration given to the issue of depression. They instead want to provide people with information on how to suicide in a more effective way.

Preventing suicide

Not one of the submissions opposing this legislation offered comment on how to reduce the suicide rate. Opponents of the legislation merely lobbied to be able to provide information and advice on suicide without the proposed restrictions.

Preventing suicide is a very complex issue which requires further significant study and long term investment.⁵⁰ The Australian Government provides approximately \$10 million per year for the National Suicide Prevention Strategy.⁵¹ This is good, but doesn't do justice to the size of the problem.

One report commented that “the primary risk factors for completed suicides are major depression, substance abuse, severe personality disorders, male gender, older age, living alone, physical illness, and previous suicide attempts. For terminally ill patients with cancer and AIDS, several additional risk factors are also present.”⁵²

Older people are at particular risk from suicide attempts. One study noted that “late life suicide is characterised by less warning, higher lethality and greater prevalence of depression and physical illness. However, suicide risk often remains undetected.”⁵³

⁴⁸ Voluntary Euthanasia Society of Tasmania, submission 6.

⁴⁹ WA Voluntary Euthanasia Society, submission 4.

⁵⁰ De Leo, D (2002), Why are we not getting any closer to preventing suicide? *The British Journal of Psychiatry*, Vol 181, pp 372-374.

⁵¹ New National Advisory Council on Suicide Prevention. Media Release from the Hon Trish Worth MP, Parliamentary Secretary for Health, 29 March 2004.

⁵² New York State Taskforce on Life and the Law (1994), page 12.

⁵³ Rahim, S et al (2005), Elderly suicide: an analysis of coroner's inquests into two hundred cases in Cheshire 1989-2001. *Med Sci Law*, Vol 45(1), pp 71-80.

The main thrust of prevention work for older people has been to detect and treat depression and other psychiatric illnesses. It has been found that "... approximately 75% of all elderly suicide victims suffer from some sort of psychiatric disorder at the time of their death, with affective disorders representing the most common diagnosis."⁵⁴

There are indications that among the elderly suicide rates fall when there are better levels of psycho-geriatric and community services.⁵⁵

One recent study found that a decline in elderly suicide rates was associated with increases in the number of general practitioners and in the numbers of medical staff in hospitals; increases in the number of social workers in the field and increases in the number of hospital outpatients receiving treatment for mental illness.⁵⁶

While there are a great number of approaches to preventing suicide that have to be examined further by the experts, none of them involve providing information on how to commit suicide. On the contrary, it is important to establish effective alternate, life affirming Internet sites. Mehlum acknowledged that "... the new technologies will obviously create new risk scenarios. But new opportunities for prevention will also be created. We'd better use them for all they're worth."⁵⁷

One study of suicide prevention techniques commented that "the greatest potential seems to arise from limiting the availability of methods [of suicide]".⁵⁸

Ways to improve the bill

There were a number of suggestions on how to improve the protections that the Bill offers to suicidal people.

Richard Egan suggested a way of improving the protection of Australians from overseas suicide sites:

"Where the use of the carriage service to induce a person to commit suicide or to attempt suicide actually results in someone either attempting or actually committing suicide we think the penalties should be similar to those in state legislation for the same offence, which is imprisonment for 10 years. We are

⁵⁴ De Leo, D and Spathonis, K (2004), Culture and suicide in late life. *Psychiatric Times*, Vol XX 11, October pp 14-17.

⁵⁵ Pritchard, C and Hansen, L (2005) Comparison of suicide in people aged 64-74 and 75+ by gender in England and Wales and the major Western countries 1979-1999. *Int J Geriatr Psychiatry*, Vol 20(1), pp 17-25.

⁵⁶ Lodhi, L and Shah, A (2005), Factors associated with the recent decline in suicide rates in the elderly in England and Wales, 1985-1998. *Med Sci Law*, Vol 45(1), pp 31-8.

⁵⁷ Mehlum, L (2000), The Internet, suicide, and suicide prevention. *Crisis: The Journal of Crisis Intervention and Suicide Prevention*, Vol. 21(4), pp 186-188.

⁵⁸ Gunnell, D and Frankel, S (1994), Prevention of suicide: aspirations and evidence. *British Medical Journal*, Vol 308, pp 1227-1233.

also concerned that the bill has a loophole in that internet sites hosted offshore are not easily caught, because, rightly, there is an exception for internet service providers who do not know that suicide related material is being accessed through their service. We believe that the bill certainly needs a provision to ensure that once the URLs of such sites are drawn to the attention of the internet service providers there is a penalty on them if they do not block access to those sites.”

This is a sensible precaution which should be adopted. It would go some way to meeting the suggestion of Graham Preston from Right to Life Australia, who recommended an amendment to “... require internet service providers to restrict access to web sites which provide promotion and instruction material referring to suicide.”⁵⁹

The suggestion would also go some way towards the protection suggested by the Festival of Light which asked for a system similar to the Online Content Co-Regulatory Scheme, set up to protect the Australian public from unwanted pornography where “for a website hosted on a web server in Australia [the Government] would issue a take-down order; for a foreign hosted website it would order Australian ISPs to block access.”⁶⁰

Egan also suggested a further sensible amendment to this or to other legislation to amend Australian classifications so that books counselling or inciting suicide would also be restricted, to protect vulnerable individuals.

“Our proposal is that either in this bill or at a later stage the Senate look at amending the classification act. It seems to me that publications such as *Final Exit*, which instruct in detail in methods of suicide, are just as harmful as the same material on the internet. That publication was at least temporarily banned in at least one state in Australia when it first came out, but unfortunately since then it has been classified R and the book has been implicated in some successful suicides in Australia.”⁶¹

Conclusion

Compassion is not giving someone information on how to commit suicide when we should be looking to the reasons they want to take such desperate action. Compassion is addressing people’s pain, depression, loneliness or fear.

There’s no dignity in being told that you’re right to want to commit suicide because your life is awful. Dignity comes from knowing that whatever your health and your personal shortcomings, there are people there who will love and support you, no

⁵⁹ Graham Preston, Right to Life Australia, Committee Hansard, 14 April 2005, page 7.

⁶⁰ Festival of Light Australia, submission 29, page 2.

⁶¹ Richard Egan, Coalition for the Defence of Human Life, Committee Hansard, 14 April 2005, page 2.

matter what. We should concentrate efforts on helping to make sure this kind of assistance is available to all.

The *Criminal Code Amendment (Suicide Related Material Offences) Bill 2005* is necessary because it targets those who prey on the despair, depression, sadness or loneliness of other people by counselling or inciting suicide, or by providing information on methods of suicide. But the legislation is not enough in itself. The Government must also address the social and personal factors which drive people to consider suicide in order to come up with a well-rounded solution to this very serious problem.

More resources are needed for proactive approaches to finding and helping suicidal people to overcome their personal difficulties and to live long and fulfilling lives. A greater investment of resources would be more than justified by the World Health Organisation's estimate of the high economic cost of suicide, let alone the personal cost. Suicide is an act of self-destructive violence which leaves in its wake further pain and suffering for those who are left behind.

Senator Brian Harradine
Independent Senator for Tasmania

APPENDIX 1

SUBMISSIONS RECEIVED

- 1 Mr Marshall Perron
- 2 Right to Life Australia
- 3 Ms Gillian Walker
- 4 West Australian Voluntary Euthanasia Society
- 5 Voluntary Euthanasia Society of New South Wales
- 5A Voluntary Euthanasia Society of New South Wales
- 6 Voluntary Euthanasia Society of Tasmania
- 6A Voluntary Euthanasia Society of Tasmania
- 7 Mr KR & Mrs LM Ray
- 8 Mr Anthony L & Mrs Beryl M Saclier
- 9 Coalition for the Defence of Human Life
- 10 South Australian Voluntary Euthanasia Society
- 11 Voluntary Euthanasia Society of Victoria
- 12 Dr David M Gawler
- 13 Australian Christian Lobby
- 14 Ms Sandra Milne
- 15 Voluntary Euthanasia Society of Queensland
- 16 Exit International
- 16A Exit International
- 17 Dr Fiona Stewart
- 18 The Law Society of New South Wales
- 19 Ms Dorothy Trezise

- 20 Australian Broadcasting Authority
- 21 Gilbert and Tobin Centre of Public Law
- 22 Mr Neil D. Cook
- 23 Atheist Foundation of Australian
- 24 Australian Civil Liberties Union
- 24A Australian Civil Liberties Union
- 25 Ms Julianne Smith
- 26 Salt Shakers, Christian Ethics, Research and Action
- 27 New South Wales Council for Civil Liberties
- 28 Electronic Frontiers Australia
- 29 Festival of Light Australia
- 30 Catholic Women's League Australia
- 31 Confidential
- 32 Attorney General's Department

Documents tabled at the public hearing

Documents tabled by Mr Richard Egan, Coalition for the Defence of Human Life

Documents tabled by Mr Graham Preston, Right to Life Australia

Killing Me Softly, Dr Philip Nitschke and Dr Fiona Stewart, Penguin Books, Victoria, 2005, tabled by Dr Philip Nitschke, Exit International

Documents tabled by the Attorney-General's Department

APPENDIX 2
WITNESSES WHO APPEARED
BEFORE THE COMMITTEE

Canberra, Thursday 14 April 2005

Coalition for Defence of Human Life

Mr Richard Egan, Board Member, Treasurer and Spokesman

Right to Life Australia

Mr Graham Preston, Queensland Coordinator

Exit International

Dr Philip Nitschke, Director

Voluntary Euthanasia Society of New South Wales

Mr Kep Enderby QC, President

Electronic Frontiers Australia

Ms Irene Graham, Executive Director

Attorney-General's Department

Mr Geoff Gray, Acting Assistant Secretary, Criminal Law Branch, Criminal Justice Division

Ms Kimberley Williams, Senior Legal Officer, Criminal Law Branch, Criminal Justice Division