

Submission of the

NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES

to the

Senate Legal and Constitutional Committee's

Inquiry into the Provisions of the

**Criminal Code Amendment
(Suicide Related Material Offences)
Bill 2005**

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Author: Michael Walton

Abbreviations

CCL	New South Wales Council for Civil Liberties
Cth	Commonwealth of Australia
NSW	New South Wales

The **Criminal Code Amendment (Suicide Related Material Offences) Bill 2005** ('the Bill') proposes to introduce three new offences into the Commonwealth Criminal Code:

474.29A(1) – to use a carriage service to obtain or distribute material that directly (or indirectly) counsels or incites suicide with the intention that the accused (or someone else) will use that material to counsel or incite suicide;

474.29A(2) – to use a carriage service to obtain or distribute material that directly (or indirectly) promotes (or provides instructions on) a particular method of committing suicide with the intention that the accused (or someone else) will use that material to promote (or provide instructions on) that method of committing suicide; and,

474.29B(1) – to possess, control, supply etc material that directly (or indirectly) counsels or incites suicide or promotes (or provides instruction on) a particular method of committing suicide with the intention that the accused (or someone else) will use that material to commit an offence against **474.29A**.

Submission

This Bill is a disproportionate response to a vaguely defined mischief. The Bill fails to strike the right balance between protecting the vulnerable and protecting freedom of speech.

The New South Wales Council for Civil Liberties ('CCL') opposes this Bill in the strongest of terms and encourages the Committee to reject it in its current form.

The purpose and need for this Bill are unclear

1. The purpose of the Bill appears to be to ensure that electronically-available information on suicide does not fall into the hands of 'vulnerable individuals' who are being preyed upon by 'people who use the internet with destructive intent to counsel or incite others to take their own lives'.¹
2. Presumably the Attorney-General, when he refers to 'vulnerable individuals' in his Second Reading speech is referring to juveniles and adults suffering mental illness. However, in his speech the only concrete example the Attorney-General offers is a media report of suicide pacts in Japan – a nation that will not be affected by this legislation.
3. The Attorney-General also makes reference in his Second Reading speech to research concerning the internet and suicide.² Unfortunately Mr Ruddock does not disclose the identity of that research. The Bills Digest does not identify such research.³ Nor does the Explanatory Memorandum.⁴ Nor does the Explanatory Notes to the exposure draft.⁵

The Committee should not conclude the Inquiry into this Bill until the research upon which the Bill is premised has been identified and scrutinized.

4. If the Committee has access to this research, CCL would appreciate the opportunity to view and comment upon it.

¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 10 March 2005, 4 (Philip Ruddock, Attorney-General).

² Second Reading Speech, n 1, 5.

³ Angus Martyn, *Criminal Code Amendment (Suicide Related Material Offences) Bill 2005* (12 March 2005) Bills Digest 133, 2004-05

<<http://parlinfoweb.aph.gov.au/piweb/Repository/Legis/Billsdgs/9DHF62.pdf>>.

⁴ <<http://parlinfoweb.aph.gov.au/piweb/Repository/Legis/ems/Linked/10030502.pdf>>.

⁵ Attorney-General's Department, *Explanatory Notes: Crimes Legislation Amendments (Telecommunications Offences and Other Measures) Bill 2004*,

<<http://www.ag.gov.au/www/agdHome.nsf/AllDocs/28614E7E165BD55DCA256E5500B56F6>>.

The appropriate policy approach is regulation, not criminalisation

5. If the purpose of this Bill is to protect the vulnerable, then that objective can be achieved through appropriate *regulation*, rather than criminalisation. By regulating who has access to this information, it might be possible to identify vulnerable individuals and ensure they receive appropriate counselling.
6. 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.

the Bill criminalises the acquisition of knowledge

7. CCL is concerned that the Bill criminalises the acquisition of knowledge about suicide with an intention of sharing that knowledge.
8. For example, 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. This Bill would criminalise the obtaining of such information – even if the information is never passed on and even if there is no attempt at euthanasia.
9. CCL is also concerned about this Bill because there is no defence of entrapment in Australia.⁶ There is nothing to stop the Australian Federal Police from lawfully setting up bogus websites offering information on suicide and/or euthanasia in order to entrap honest citizens under these new provisions. Evidence obtained this way will only be excluded if it is improperly or unlawfully obtained.⁷

an exception: exclusive personal use

10. Suicide is no longer illegal in New South Wales.⁸ This Bill should not make it illegal to take preparatory steps, using a carriage service, to commit what is not an unlawful act – the termination of one's own life.
11. It is unclear from the Bill whether an individual can incite or counsel themselves to suicide, or provide themselves with instructions on methods of suicide. For example, a self-addressed email saying "Reminder: thought of a great way to end it all – just do X, Y & Z. Best to do it next Monday" may or may not engage these new suicide-related provisions.
12. Another example is a person at a medical library who is researching, for their own personal use, the best or quickest way to commit suicide. If that person emails notes of their research to themselves, CCL is concerned that they will be guilty of an offence under 474.29A(2).

⁶ *Ridgeway v The Queen* (1995) 184 CLR 19.

⁷ *Evidence Act 1985* (Cth) s 138.

⁸ *Crimes Act 1900* (NSW) s 31A.

13. In fact, in that medical library scenario above, simply sitting in the library in possession of suicide-related literature with an intention of emailing yourself notes from that literature could be enough to attract criminal liability under section 474.29B(1).
14. Expressing one's own thoughts is a fundamental civil right. To the extent that this Bill infringes upon freedom of personal expression, the Committee should recommend that the Bill not proceed.

The Bill needs to be amended to ensure expressly that a person who seeks, transmits, possesses etc information about suicide *exclusively for their own personal use* is not liable for prosecution under these provisions.

The Bill will chill debate on euthanasia

15. CCL is long-time supporter of the right of every terminally-ill citizen to access voluntary euthanasia, to chose the time and method of her or his death.⁹ CCL considers this a matter of civil liberty.¹⁰
16. CCL is concerned that, despite the statutory defences under section 474.29A, the Bill will nevertheless chill public debate on euthanasia because advocates will not be certain when their speech is lawful and when it is not. For example, the statutory defence may or may not succeed in protecting a euthanasia advocate who writes something like: "Why should we not be able to tell people that the most humane euthanasia option is..." and then goes on to describe that option in some detail.
17. CCL is deeply concerned that the workshops of Exit International, a euthanasia advocacy organisation, will be silenced or criminalised. People attend these workshops of their own free-will seeking to be better informed. Because the information on how to attend these workshops is available on the Internet <<http://www.exitinternational.net/>>, CCL is concerned that this organisation's ability to communicate its message will be severely hampered by the Bill.
18. The fines are exorbitant and unprecedented in the Criminal Code.¹¹ CCL sincerely hopes that Parliament is not attempting to silence one man – Dr Philip Nitschke, Australia's leading euthanasia advocate – by financially crippling him. If that is so, this Bill is an abuse of the Parliament's power.

⁹ resolution, Annual General Meeting 28th October 1978, see NSWCCCL, *Policy Decisions 1964-1979*, <http://www.nswccl.org.au/docs/html/policies_1964_1979.htm>.

¹⁰ motion, Committee Meeting 28th March 1979, see NSWCCCL, *Policy Decisions 1964-1979*, <http://www.nswccl.org.au/docs/html/policies_1964_1979.htm>.

¹¹ all other offences attracting similar fines, also attract custodial sentences – reflecting Parliament's intention that such offences be treated as very serious. E.g. *Criminal Code 1995 (Cth)* s 73.1 (people smuggling: max penalty 1000 penalty units or 10 years imprisonment).

The Bill is overbroad and infringes freedom of speech and privacy

19. In an attempt to stop information being generally available in the 'public sphere' of the Internet (world-wide web, publicly-accessible chatrooms, newsgroups, etc), this Bill reaches far beyond that aim and criminalises speech in the 'private sphere' of the Internet (personal emails, members-only websites, etc).
20. The Bill fails to recognise this important distinction between public and private information exchange on the internet. Parliament has no place intervening in a private email conversation between two consenting adult citizens discussing the possibility of voluntary euthanasia for one of them.
21. The Bills Digest suggests that the reach of this legislation goes beyond the internet and could encompass private telephone conversations.¹² If this is an accurate interpretation, then Parliament has no place intervening in a private conversation between two consenting adult citizens discussing euthanasia options over the telephone.
22. In the United States, where there is a long line of First Amendment (freedom of speech) caselaw, the 'overbreadth doctrine' prohibits the government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process.¹³ This Bill qualifies as overbroad because it simply places a blanket ban on all speech made by all people in relation to methods of suicide and euthanasia.

This Bill overreaches its objective, trespasses into private communications and infringes on freedom of speech by chilling debate on euthanasia and suicide. The Committee should recommend that the Bill not proceed.

¹² Bills Digest, n 3, 6.

¹³ *Broadrick v Oklahoma*, 413 U.S. 601 (1973).