

**Submission**

on the

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

to the

**Senate Legal and Constitutional Committee**

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# 1. Introduction

On 10 March 2005, the Commonwealth Attorney-General stated:

*‘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.’<sup>1</sup>*

Accordingly, on 16 March 2005, the Senate referred the *Criminal Code Amendment (Suicide Material Offences) Bill 2005* (the Bill) to the Senate Legal and Constitutional Committee for inquiry and report on 10 May 2005. The Bill creates the new offences of using a carriage service (such as the Internet) to counsel or incite suicide and possessing, producing or obtaining material that incites suicide or instructs a person in how to commit suicide.<sup>2</sup>

In 1996-1998, the Australian suicide rate among young people aged between 15 and 24 years was approximately 16.8 per 100,000 people in that age range. This rate is significantly higher than England and Wales, and the Netherlands,<sup>3</sup> and represents a substantial increase over the last few decades.<sup>4</sup>

Access to material that might encourage or assist a person to commit suicide over the Internet becomes a greater problem as more households are connected to the Internet. Approximately 46% of households in Australia have access to the Internet in 2002 and those households with children under 15 years of age are the most likely to be connected.<sup>5</sup> The danger on the Internet is therefore relevant to more and more people, especially young people.

Festival of Light Australia is committed to promoting the well-being of families and the wider society, and is therefore pleased to commend the government’s proposal, and we are pleased to make a further recommendation to the proposal that would strengthen the government’s response to the suicide epidemic.

## 2. Contemplating Suicide

Since the government has the responsibility for the protection of its citizens, it is necessary to consider how to protect people by limiting access to harmful material.

### 2.1 Inciting suicide

Vulnerable and impressionable people - especially children and teenagers - should be protected from material that may counsel or incite a person to commit suicide. In discussing such things on the Internet, a person is placing a measure of trust in those to whom he or she communicates and they may be unworthy of that trust. It is therefore appropriate for the government to penalise someone who uses that trust to promote or encourage suicide.

Consequently, the Bill rightly creates the offence of encouraging a person to commit suicide, through the a carriage service such as the Internet.<sup>6</sup> Suicidal teens may not feel comfortable discussing their suicidal thoughts with friends and family, and may be attracted to Internet conversations where there is the protection of anonymity.

### 2.2 Freedom of speech

Opponents of the Bill might assert that there exists an absolute right to freedom of expression. While Australia does not have an explicit right to free speech, the High Court of Australia has held that the *Commonwealth Constitution* contains an implicit right to freedom of political expression.<sup>7</sup> The Bill’s

proposal specifically allows for political expression on the subject of suicide and euthanasia. The Bill would penalise only expression intended to counsel or incite suicide. Freedom of speech has never been an unqualified right to do harm - for example, defamation laws limit speech which unfairly undermines a person's reputation.

## **3. Committing Suicide**

### **3.1 Supporting suicide**

The number of people who succeed in committing suicide is much lower than the number who attempt suicide but do not succeed. Statistics on the suicide problem in this country reveal that there are many failed attempts at suicide, which are often pleas for help.<sup>8</sup> Unfettered and growing access to suicide instruction and equipment would increase the tragic likelihood of suicide completion.

Hence the need for the government's proposal for the second offence - that of using a carriage service such as the Internet to possess, control, produce, supply or obtain suicide related material.<sup>9</sup> The proposal is a prudent response to the Internet's provision of easy access to instruction and information that may be harmful.

### **3.2 Criminal intent**

A great many items which could be used to commit suicide are found in the home, ranging from rat poison to kitchen knives. Many other potentially harmful things are available via the Internet for legitimate purposes and should not be subject to interference. The Bill includes an appropriate limitation on its application by requiring that a person charged with the proposed offence have the intention that the material be used in relation to suicide.

## **4. Preventative Action**

A major problem is that the Bill does not contain provisions for penalising operators of websites hosted overseas. To protect Australian families from websites that promote or encourage suicide, the government should establish an independent authority which is responsible for receiving complaints from the public. That authority would determine whether a complaint is justified. If so, for a website hosted on a web server in Australia it would issue a take-down order; for a foreign hosted website it would order Australian ISPs to block access.<sup>10</sup>

The requirement to block out foreign websites identified as promoting suicide is slightly stricter than the current law relating to pornography on the Internet, but there are far fewer websites advocating suicide than those dealing with pornography. A decision to take down or block a website would need to be subject to appeal and an ISP which refuses to obey an order should be subject to a penalty.

### ***Recommendation***

*The government should create an independent statutory authority, drawn from people with a public record of working to prevent suicide, which is empowered to hear complaints from the public, to determine if website is promoting or encouraging suicide, and issue a take down order or blocking order to Australian Internet Service Providers.*

## 5. Conclusion

The *Criminal Code Amendment (Suicide Material Offences) Bill 2005* proposes two new offences intended to protect people who might be influenced to commit suicide. The proposed amendments are in accordance with the government's responsibility to protect its citizens and are not too broad in their application. The proposed amendments are however reactive in nature and could be strengthened through the proactive removal of websites that promote suicide, in a similar fashion to the current laws relating to pornography.

## References

1. Philip Ruddock MP, '*Criminal Code Amendment (Suicide Material Offences) Bill 2005: Second Reading Speech*' (Speech delivered in House of Representatives, Canberra, 10 March 2005).
2. [http://www.aph.gov.au/senate/committee/legcon\\_ctte/suicide/index.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/suicide/index.htm), at 6 April 2005.
3. Dr David Phillips, 'Youth suicide - why the epidemic?', *Light* (Adelaide), May 2002, 9.
4. Australian Bureau of Statistics, *Australian Social Trends 2000: Health - Mortality and Morbidity: Suicide*.
5. [www.abs.gov.au/ausstats/abs@.nsf/0/12d74a6c075e8cc4ca256e7d00002651?OpenDocument](http://www.abs.gov.au/ausstats/abs@.nsf/0/12d74a6c075e8cc4ca256e7d00002651?OpenDocument), at 6 April 2005.
6. *Criminal Code Amendment (Suicide Material Offences) Bill 2005* sch 1(1).
7. *Australian Capital Television v Commonwealth* (1992) 177 CLR 106 at 135, per Mason CJ.
8. Dr David Phillips, 'Youth suicide - why the epidemic?', *Light* (Adelaide), May 2002, 9.
9. *Criminal Code Amendment (Suicide Material Offences) Bill 2005* sch 1(1).
10. This system is similar to that in Schedule 5 of the *Broadcasting Services Act 1992* (Cth) which deals with pornography on the Internet.