

**SENATE LEGAL AND CONSTITUTIONAL COMMITTEE INQUIRY
CRIMINAL CODE AMENDMENT (SUICIDE RELATED MATERIAL
OFFENCES) BILL 2004**

1. The Criminal Code Amendment (Suicide Related Material Offences) Bill 2004 introduces 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. The Bill aims to criminalise the use of the internet 'where the intention of that use is to counsel or incite suicide, or promote or provide instruction on a particular method of committing suicide'.¹ The offences were originally contained within the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill 2004.
2. There are three categories of offence. Proposed s.474.29A(1) will make it an offence for a person to use a carriage service to access, transmit to themselves, transmit generally, make available, or publish or otherwise 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. 'Access' is intended to be defined broadly to include the display of material by a computer or any other output of the material from a computer, the copying or moving of the material to any place in a computer or to a data storage device and the execution of a program.
3. Proposed s.474.29A(2) will make it an offence for a person to use a carriage service to access, transmit to themselves, transmit generally, make available, or publish or otherwise distribute material that *directly or indirectly* promotes, or provides instruction on, a particular method of committing suicide, with the intention that they, or another person, will use the material to promote or provide instruction on that method of committing suicide. This section will also make it an offence to engage in the above conduct with the intention that the material be used by another person to commit suicide.
4. Proposed s.474.29B(1) will make it an offence for a person to possess, control, produce or supply suicide related material (as covered by proposed s.474.29A), with the intention that it be used, by that person or another person, in committing an offence against proposed s.474.29A. This proposed offence is intended to cover a broad range of preparatory conduct undertaken with the intention to commit a primary offence. For example, the offence would apply to the possession or production of paper leaflets providing instruction on a particular method of suicide, provided the person had the requisite intention.² Subsection 474.29B(2) provides that a person can be found guilty under ss474.29B(1) even if it is impossible to commit a primary offence.
5. The maximum penalties for the proposed offences are 1000 penalty units, which is \$110,000 under the existing value for a penalty unit in the Crimes Act.

¹ Second Reading Speech.

² Explanatory Memorandum.

Specific defences are not available in the Bill because as stated in the Explanatory Memorandum ‘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.’

Issues raised by the Bill

6. The Explanatory Memorandum states as follows:

These offences are not intended to capture Internet material that advocates or debates law reform on euthanasia and/or suicide related issues, as this type of material will generally not counsel or incite suicide, nor promote or provide instruction on particular methods of committing suicide. For similar reasons, Internet material dealing with suicide-related research and suicide prevention or support material will generally not be caught by the offences.

7. However, despite these assurances, the Bill does not specifically provide any defences for euthanasia groups or euthanasia materials. If the intention of such research is to counsel suicide or promote a particular method of suicide, there will be an offence under the Bill. Consideration should be given to including defences for euthanasia groups or euthanasia materials.
8. The amendments proposed are broad and include material that ‘indirectly’ counsels or incites suicide. It might be questioned whether material that ‘indirectly’ counsels suicide or ‘indirectly’ promotes a particular method of suicide should make a person liable for criminal prosecution. In addition it might be questioned whether the use of ‘indirectly’ in this context provides a sufficiently certain legal standard.
9. Further, by application of the default fault elements in s.5.6 of the Criminal Code, the fault element of recklessness will apply to them.

Relevant human rights issues

10. Article 6(1) of the ICCPR provides that ‘[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.’ Article 6(1) does not specifically address the issue of euthanasia and the HRC has been conspicuously silent regarding the right to life issues raised by the practice of euthanasia.³ There is no clear statement that active voluntary euthanasia is permissible under article 6(1) although it is possible to refer to the arguments in favour of this position and the fact that there is an international human rights dialogue on this issue.
11. Accordingly, in making the arguments set out above, it would be necessary to base the analysis on article 19 of the ICCPR, freedom of expression. That is, infringements will only be permissible if they conform to the principle of proportionality.

³ Joseph, p.137.