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30 August 2021

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee,

**RE: Submission to the Senate Standing Committee on Legal and Constitutional Affairs
Inquiry into the Ensuring Northern Territory Rights Bill 2021**

Go Gentle Australia is a health promotion charity established in 2016 to improve the national conversation around death and dying. We also advocate for the introduction of safe voluntary assisted dying laws, appropriate to the circumstances of Australian medical, political, and social culture.

Irrespective of debates about the merits of voluntary assisted dying, we support the aims of the Ensuring Northern Territory Rights Bill 2021 (the Bill) and its intentions – that is, to restore to the people of the Northern Territory and their representatives the right to make decisions for themselves on important social issues, including voluntary assisted dying, without Commonwealth interference.

At the outset, we'd like to suggest that this Bill be renamed to include the ACT in its scope. If these democratic rights are important for the citizens of the Northern Territory, they are equally important for those Australians living in the ACT.



Go Gentle Australia Limited is a registered charity. All donations over \$2 are tax deductible.

Go Gentle Australia is a health promotion charity founded by Andrew Denton. It was established to help relieve the distress, helplessness and suffering experienced by Australians with terminal illnesses, their families and carers. We are about a better conversation around death, dying and end of life choices, including voluntary assisted dying. More at www.gogentleaustralia.org.au.



WHY TERRITORY RIGHTS SHOULD BE RESTORED

The Bill aims to restore the rights and privileges set out under the Self Government ACT.

Self-government for the NT and the ACT was intended to foster self-management, determination and innovation. It also unburdened the Commonwealth of unwanted state-type administrative functions.

The spirit behind the devolution of powers is reflected in these quotes by the Hon. Clyde Holding when introducing the Australian Capital Territory Self Government Bill in 1988.

"It will allow 270,000 people the same democratic rights and social responsibilities as their fellow Australians... It ensures that the residents of the Territory will be properly and effectively represented in the management of their affairs. It is a milestone in the democratic processes of this country."

The 1997 Federal Act which removed Territory rights on certain issues discriminates against Australians on the ground of geography. At present almost 700,000 Territorians who happen to reside in the Territories cannot elect MPs who have the same powers to legislate on end of life issues as the citizens of the states.

While the authority of the Federal Parliament to override territory law is unquestioned, Westminster convention shows that such powers are intended to be exercised only in extreme circumstances such as civil unrest or where the national interest is threatened.

It is inequitable that so many Australians are disenfranchised solely on the grounds of geography. Territorians are no less intelligent, no less educated, no less moral than their counterparts in the states. Their elected representatives can be trusted to carry out their responsibilities in a responsible manner.

THE BILL DOES NOT MAKE VOLUNTARY ASSISTED DYING LEGAL

The right of the NT and ACT to pass legislation allowing a competent, terminally ill adult to seek assistance to die was removed in 1997 by a private members' bill (the Euthanasia Laws Bill, also called the Andrews Act). This was in response to the NT's Rights of the Terminally Ill (ROTI) Act, passed in 1995. The ROTI Act was the first voluntary euthanasia law passed anywhere in the world. Despite challenges against it having been dismissed by the Supreme Court of the Northern Territory, it was defeated in the Senate by 38 votes to 33.



In his submission to the 2008 Senate Legal and Constitutional Affairs Committee *Inquiry into the Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill*, the Australian Catholic University's Father Frank Brennan cited the argument he originally made against the ROTI Act back in 1996:

"The Commonwealth Parliament may not have the power to overrule a State law legalising the administration of requested lethal injections. It does have the power to overrule a Territory law. Should it ever exercise that power? Only in very rare circumstances; where no State has similarly legislated; where the Territory law is a grave departure from the law in all equivalent countries; where the Territory law impacts on the national social fabric outside the Territory; and where the Territory law has been enacted without sufficient regard for the risks and added burdens for its own vulnerable citizens, especially Aborigines. This is such a circumstance"

In 2021, none of the circumstances cited by Father Brennan as reasons for the Commonwealth to overrule Territory law exist:

- Four Australian states, Victoria (2017), Western Australia (2019), Tasmania (2021) and South Australia (2021) have now passed VAD legislation, with Queensland likely to do the same in September.
- Similar countries in Europe and North America have had such laws for almost quarter of a century as does, now, New Zealand. In total, they are available to over 250 million people worldwide.
- The national fabric of the country is – according to every published poll of the last decade – overwhelmingly supportive of VAD.
- The questions of risks and burdens for vulnerable people have been exhaustively debated in each state parliament that has made VAD legal, with all of those debates launched on the back of extensive public inquiries. It is worth noting that South Australia's Bill was introduced and championed by indigenous Australian and shadow Attorney General, Kyam Maher. And one of the first West Australians to use their VAD law was Wongatha-Yamatji woman, Mary-Ellen Passmore.

The existence of the Australian laws alone removes any reason to further deny the NT and ACT parliaments the authority to debate and pass voluntary assisted dying legislation should they choose to.

Australians in the NT and the ACT should have the same rights in this regard as Australians in other jurisdictions.



THERE SHOULD NOT BE TWO CLASSES OF VOTERS IN AN AUSTRALIAN DEMOCRACY

It was Father Frank Brennan himself, in that same 2008 Senate submission, who put the case most clearly for reinstatement of Territories' rights regarding VAD:

*"In terms of political morality, I am readily conceding that point. If, for example, New South Wales were to legislate tomorrow for euthanasia then I would say that in terms of political morality the territories should be given the power to make equivalent type laws."**

There is mounting evidence that continuing to deprive some Australians of their right to have their elected representatives legislate on their behalf potentially contravenes Australia's human rights obligations. This view is supported by ACT Human Rights Commissioner Dr Helen Watchirs, who has said,

"In my view, there is a serious question whether the Commonwealth's Euthanasia Laws Act 1997 is compatible with Australia's international human rights obligations."

THERE IS STRONG AND CONSISTENT PUBLIC SUPPORT FOR TERRITORY RIGHTS

Australians strongly support the notion that Territory parliaments should be able to consider voluntary assisted dying laws. A recent (2021) opinion poll of a nationally representative sample of 1,434 Australians conducted by the Australia Institute found that the vast majority (76%) supported the Commonwealth allowing Territory governments to legislate to legalise voluntary assisted dying within their jurisdictions.

This overwhelming support was across all voting intentions: Coalition voters 74% support, 18% oppose; Labor voters 80% support (12% oppose); Greens voters 77% support (15% oppose); One Nation voters 73% support (14% oppose); and Other voters 67% support (18% oppose).

Other polls and surveys specifically focused on assisted dying show similar results. [A Roy Morgan poll](#) in 2017 found support for VAD at above 80% across the country and across political and religious affiliation. The [Vote Compass survey](#) of half a million Australians conducted at the time of the last federal election found support for VAD at 89%. Earlier this year, Nationals Seniors Australia [polled its membership](#) and found 86% support for medical assistance to die for the terminally ill.



CONCLUSION

The Bill now before the Senate allows Australians in the Territories to have the same debate about a range of different issues, including voluntary assisted dying, as the rest of the nation – with the possibility of their democratically elected parliaments making laws if they so choose.

Should they do so, they will no longer be leading the world, as the Northern Territory was in 1995. Instead, they will be building on more than 20 years of such legislation in Europe and North America, and – since 2017 – in Australia.

We ask the committee members to remedy the existing democratic disparity between Australians living in the Territories and those living in States by endorsing Senator McMahon's bill.

Yours sincerely,

Kiki Paul
CEO, Go Gentle Australia