

SUBMISSION TO THE SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

INQUIRY INTO THE RIGHTS OF THE TERMINALLY ILL (EUTHANASIA LAWS REPEAL) BILL 2008

PREAMBLE:

To decide if the Rights Of The Terminally Ill (Euthanasia Laws Repeal) Bill 2008 should be supported one must examine if the federal act it would repeal (Euthanasia Laws Act) has been 'good' or 'bad' for Australia. This submission examines some of the issues involved in making that judgement and concludes with the view that the Euthanasia Laws Act should be abolished for the following reasons.

- a. The act deprives 550,000 Australians of the ability to elect or lobby parliamentary representatives to develop policy and legislative responses to the processes involved in dying on the grounds of residential geography alone.
- b. The existence of the Euthanasia Laws Act requires every federal member of parliament to have a position on voluntary euthanasia, a situation it seems many would rather avoid.
- c. In passing the Euthanasia Laws Act the Senate failed a duty to protect the standing of subordinate legislatures it had granted powers to in 1974 and 1988.
- d. The territories' self government acts contain provision for federal intervention by withholding assent or returning legislation for review. These procedures obviate the need for the Euthanasia Laws Act.
- e. Representative democratic principles were abandoned when the Euthanasia Laws Act passed through both houses of federal parliament with the support of 126 members, not a single one of them electorally responsible to Territorians.
- f. Hansard debates show a high level of ignorance by federal members regarding the NT Rights Of Terminally Ill Act, who that act applied to and provisions contained therein. (samples below)
- g. The constitutional case to repeal the Euthanasia laws Act is articulated unemotionally and in detail in the Remonstrance adopted unanimously by the NT Legislative Assembly and tabled in the Senate on 28th October 1996. I attach a copy to this submission.

AUSTRALIANS ALL ?

It is reasonable to presume that the founding fathers of federation envisaged all Australians would have somewhat equal status before the law (aboriginals excepted at the time) and would see themselves as having the same rights and responsibilities notwithstanding where they lived.

Administration of the northern part of South Australia was passed to the Commonwealth to relieve the financial burden on the colony in 1911 and in the same year the Australian Capital Territory was excised from NSW to create the neutral ground necessary for the home of the Commonwealth Government. I see no basis in either of these actions for those Australians who have chosen to reside in these Territories to be disadvantaged by way of local political representation.

It seems the Commonwealth, in establishing Self Government for the NT in 1974 and the ACT in 1988 also believed Australians residing in those places should be entitled to the same political rights and responsibilities as the citizens of the states.

That status was changed with the passage of the Euthanasia Laws Act in 1997. From that date the 550,000 Australian residents of the two territories have policy on major end of life issues determined for them by 218 representatives they cannot vote for. The other 20 million Australians can turn to their state members of parliament.

One might ask – What gives 500,000 Tasmanians a greater capacity to run their own affairs than 340,000 ACT ites ?

Repeal of the Euthanasia Laws Act would redress this inequity.

IGNORANCE OR ARROGRANCE ?

A reading of the Hansard debates of 1996/7 shows the passage of the Northern Territory Rights Of The Terminally Ill Act and its subsequent use by four people offended the religious beliefs of the former prime minister and senior members of his government. This group, combined with cross party religious support and a surprising ignorance of the provisions of the NT Rights Of The Terminally Ill Act, saw enough support for the Euthanasia Laws Act to pass narrowly in the senate. (38/35)

The Euthanasia Laws Act was enacted because at the time it was considered the Northern Territory parliament had overstepped the bounds of responsibility by passing a law permitting voluntary euthanasia. This view was no doubt compounded

by the fact that at the time, no other state or country had passed a similar law anywhere in the world.

During the 11 years since the Euthanasia Laws Act passed, other western jurisdictions have passed laws similar to the NT Rights Of The Terminally Ill Act, eliminating the 'unprecedented' status that was attached.

Experience in Oregon, The Netherlands and Belgium where right to die laws have been operating has not produced the dire consequences forecast by opponents to voluntary euthanasia. Official records from organisations charged with monitoring the operation of voluntary euthanasia in The Netherlands and physician assisted suicide in Oregon has shown responsible laws can be framed to control medically assisted death.

Hansard records many examples of MHR's and Senators who clearly did not know who the NT Rights Of The Terminally Ill Act assisted or under what conditions.

examples;

Sen. Chapman p1891

"Legalisation of euthanasia creates a very real possibility of selective culling of Australians"

"Do we allow the young man who lost his legs in a car accident to request that he be euthanased?"

Sen. Tierney p1903

"The first incremental step is voluntary euthanasia, which is followed by involuntary euthanasia. The third step is euthanasia for prescribed classes of persons: the aged and babies with deformities under one month or so."

Sen. Boswell p 1404

"Will senators have.... the determination to save innocent, vulnerable victims from an undeserved and unwanted fate..."

Mrs. West (Bowman) p7630

"State sanctioned murder is not what I believe we, as parliamentarians, were elected to ratify."

Mrs. Vale (Hughes) p7676

"It is about legally sanctioned administration of death upon one human being by another and the ultimate prospect that it will be so administered without any choice upon us all."

Many other members acknowledged that their decision to support vetoing the NT legislation stemmed from their obedience to religious dogma, a personal belief that

“only (their) god can give life and only (their) god can take it”. This position was not only an abuse of the principle of the separation of church and state, it was contrary to the wishes of the electorate as a whole. Additionally it was contrary to the wishes of a large majority of Australians with religious belief.

If Australians thought they lived in a tolerant secular representative democracy, they learned otherwise when the Senate voted on the Euthanasia laws Bill 1996.

That this level of religious fundamentalism and ignorance has resulted in many individuals who would have used the NT law dying slow painful undignified deaths and caused violent lonely suicides over the past 10 years is a tragic, unnecessary shame.

UNSEEN TRAGEDY.

ABS statistics continue to tally an awful record of elderly Australians who feel compelled to suicide, most commonly by violent methods. Four Australians 70 or older suicide every week. Historical figures and the aging population projected forward indicate over the next 10 years more than 2200 elderly Australians will take their own lives.

We know that the majority of the elderly wish to have the option of medical assistance to die at a time they choose in case their demise becomes insufferable. Current options of a trip to a death clinic in Switzerland, smuggling lethal drugs from Mexico or worse, the rope, the gun or leaping from a high place are sad choices that have to be made by those who demand control over the circumstances of their death.

Added difficulties are that life has to be taken prematurely, before one loses the ability, and the trauma faced by loved ones who are forbidden from being consulted or bidding a last goodbye in fear of police inquiry.

There is growing evidence of a new wave of unrecorded suicide occurring now as hopelessly ill people turn to the use of inert gas for self-deliverance. This method provides a tranquil death and if an assistant removes the equipment, cause of death cannot be determined and is attributed to the underlying disease. Such deaths will not appear in ABS statistics.

The trauma caused by these circumstances in our society needs to be understood and considered by members of federal parliament now they carry the responsibility of voluntary euthanasia policy. Alternatively they could handball the issue back to the territories by repealing the Euthanasia Laws Act.

CONCLUSION:

There is no doubt the Euthanasia Laws Act has been bad law in that it has denied suffering terminally ill Territorians the ability to choose a death they consider dignified. It has also denied a broader group the comfort of knowing they had an option of medical assistance to die if that became necessary as their disease progressed.

The act diluted democracy and the meaning of self government. It ignored the proper provisions laid down for compelling review or change to laws made by a territory parliament.

The act has perpetuated a situation whereby some doctors do assist some suffering patients to die without safeguards or scrutiny. A situation ripe for abuse.

The act is contrary to the wishes of the vast majority (80%) of adult Australians who believe doctors should be allowed to provide a lethal dose to a patient experiencing unrelievable suffering with no hope of recovery. Significantly, 74% of those who responded positively identify as followers of a religion.

Support for vetoing the NT voluntary euthanasia legislation and withdrawing legislative authority to enact such laws from all territories stemmed largely from religious ideology and a belief that Northern Territory politicians did not have the intellectual rigour to deal with such an important subject.

Events post 1996 show that the NT parliament was simply first in a chain of jurisdictions that have had voluntary euthanasia under consideration for some time. At least three places elsewhere in the world have legal options for citizens meeting strict criteria to receive medical assistance to die. Others, including Australian states have the subject under consideration.

I urge the senate committee to recommend strong support for the Rights Of The Terminally Ill (Euthanasia Laws Repeal) Bill 2008.

SIGNED

MARSHALL PERRON

Attached; A Remonstrance from the NT legislative Assembly to the Federal Parliament October 1996.

THE REMONSTANCE

The Legislative Assembly of the Northern Territory with respect and humility addresses itself to –

The Honourable The President and Members of the Senate;
And The Honourable The Speaker and Member of the House of Representatives in Parliament assembled.

Whereas:- The Commonwealth Parliament conferred by way of the *Northern Territory (Self-Government) Act 1978*, a substantial grant of self-governing powers on the Northern Territory with its own legislature (the Legislative Assembly of the Northern Territory) with a plenary grant of legislative power for the peace, order and good government for the Northern Territory, with its own new body politic under the Crown with a wide grant of executive power (see Northern Territory (Self Government) Act Regulations) and with its own judicial system.

Whereas:- In 1995 the Legislative Assembly of the Northern Territory enacted the rights of the Terminally III Act and the Administrator assented to that Act.

Whereas:- The Full Court of the Northern Territory Supreme Court held in *Wake and Gondarra v Northern Territory* that the Rights of the Terminally III Act was within the legislative and executive powers of the self-governing Northern Territory.

Whereas:- A Bill entitled the Euthanasia Laws Bill 1996 was introduced into the House of Representatives by the Honourable Member for Menzies. This Bill seeks to restrict the plenary grant of legislative power of the Legislative Assembly of the Northern Territory under the *Northern Territory (Self-Government) Act 1978*.

Whereas:- The Euthanasia Law Bill 1996 constitutes a direct attack on the self government powers of the Northern Territory.

Whereas:- The Legislative Assembly of the Northern Territory is fully elected on democratic principles to represent the people of the Northern Territory and to act on their behalf.

The Legislative Assembly of the Northern Territory presents its grievances to the Commonwealth Parliament.

THE GRIEVANCES

- 1 **The Northern Territory having been granted self-governing powers, the duly elected representatives of the people of the Northern Territory are aggrieved that there should be any attempt to diminish these self governing powers by the proposed enactment of the Euthanasia Laws Bill 1996.**

As Witness:-

The Northern Territory and its residents have had a long history of seeking autonomy in control of their own affairs. However up until 1978 the Northern Territory was largely controlled by Commonwealth Ministers and public servants from Canberra.

This changed in 1978 with the passage of the *Northern Territory (Self-Government) Act 1978*, in which the Commonwealth Parliament publicly recorded that it was “desirable by reason of the political and economic development of the Northern Territory, to confer self-government on the Territory, and for that purpose to provide, among other things, for the establishment of separate political, representative and administrative institutions in the Territory and to give the Territory control over its own Treasury:” (see 4th preamble to the *Northern Territory (Self-Government) Act*).

That Act created or recognised all three traditional arms of government (legislative, executive and judicial), and thereby granted the Northern Territory self government separate from the Commonwealth.

The legislative arm of this grant, the Legislative Assembly of the Northern Territory was given plenary powers to make laws for the peace, order and good government of the Territory (see s.6 *Northern Territory (Self-Government Act 1978)*).

The High Court has since recognised that the grant of legislative power is not exercised as a mere delegate of the Commonwealth Parliament but is in fact exercised by self-governing Territories in their own right.

The Legislative Assembly of the Northern Territory is fully elected on democratic principles to represent the people of the Northern Territory and has full power and authority to make laws on matters such as voluntary euthanasia.

Whilst the Commonwealth Parliament has constitutional power to make laws for the government of the Northern Territory and the Legislative Assembly of the Northern Territory can't make laws that are inconsistent with laws of the Commonwealth which apply in the Northern Territory, the Commonwealth parliament has never before sought to take away any of the legislative powers conferred upon the Northern Territory's Legislative Assembly.

It is one of the conventions of self government in the Westminster tradition that once self government is granted to a political entity, it should not thereafter be taken away except in the most extreme circumstances, for example, war or civil disturbance. See submission of the Commonwealth Attorney-General's Department to the Joint Parliamentary Committee on the Northern Territory, page 8 of Parliamentary paper No.281 of 1974 where it also states that it would be politically unthinkable to take away such powers after they had been granted.

The Euthanasia Laws Bill as introduced in the House of Representatives seeks to directly diminish the plenary grant of legislative powers to the Legislative Assembly of the Northern Territory conferred by s.6 of the *Northern Territory (Self-Government) Act 1978*.

The Bill if enacted would be in clear breach of the above mentioned convention and would constitute an undermining of the principles of self government.

2. **The duly elected representatives of the people of the Northern Territory are aggrieved that the Euthanasia Laws Bill 1996 would, if enacted, terminate the future operation of a law already lawfully enacted by the Legislative Assembly of the Northern Territory.**

As Witness:-

The Euthanasia Laws Bill 1996, if enacted, would have a dual effect. It would not only result in the diminution of the plenary legislative powers of the Northern Territory Legislative Assembly as per 1 above, but it would also terminate the operation of an existing Northern Territory law lawfully enacted and assented to, namely the Rights of the Terminally III Act 1995.

The Commonwealth Parliament has never previously enacted legislation to terminate a law of the Northern Territory lawfully enacted. The Euthanasia Laws Bill would in this respect also be in breach of the conventions of self-government.

3. **The duly elected representatives of the people of the Northern Territory are aggrieved that the enactment of the Euthanasia Laws Bill 1996 will create uncertainty as to the operation of other existing laws of the Northern Territory.**

As Witness:-

The Euthanasia Laws Bill 1996 proposes to diminish the legislative power of the Legislative Assembly of the Northern Territory in respect of certain forms of intentional killing and the assisting of a person to terminate his or her life. It is not limited to preventing the enactment of a Rights of the Terminally III Act.

This has the capacity to create uncertainty as to the validity of a number of other existing Northern Territory laws and possible future laws. For example laws regarding criminal responsibility. It is highly undesirable that there should be any uncertainty in respect of such laws.

4. **The duly elected representatives of the people of the Northern Territory are aggrieved, given the significance of the matter, that it is proposed to enact the Euthanasia Laws Bill 1996 through a separate but concurrent sittings of the House of Representatives in a side chamber, rather than with full debate in the normal Parliamentary Chamber.**

As Witness:-

The Euthanasia Laws Bill 1996 raises issues of great public importance. The most important of these is the constitutional question of whether a parliament, having once granted self governing powers to another political entity, can thereafter unilaterally take back that grant in whole or part. This a point of fundamental constitutional significance, with ramifications going well beyond the Northern Territory.

The second point of public importance is whether under existing constitutional arrangements in Australia it is appropriate for the Commonwealth Parliament to determine issues concerning voluntary euthanasia.

A third issue of public importance is the merits or otherwise of legally recognising voluntary euthanasia.

These issues of public importance are matters of considerable public interest, which the representatives of the Northern Territory consider if they are to be considered by the Commonwealth Parliament at all, should not be assigned to a side chamber of the Commonwealth Parliament.

5. **The duly elected representatives of the people of the Northern Territory are aggrieved that the Commonwealth Parliament, in debating the Euthanasia Laws Bill 1996, is proposing to enact legislation for self-governing Territories that constitutionally it could not enact for existing States.**

As Witness:-

Under s.51 of the Australian Constitution the Commonwealth Parliament has no legislative power in respect of the subject matter of voluntary euthanasia. This is a 'state type' matter.

Since the grant of self-government to the Northern Territory in 1978 the Commonwealth Parliament as a general rule has not sought to legislate for the Northern Territory in 'state type' matters except in respect of specific reserve powers. (See Regulation 4(2) under the *Northern Territory Government (Self-Government) Act 1978*). The subject of voluntary euthanasia is not such a reserved power.

The Commonwealth Parliament has no power to either diminish the legislative power of a State parliament or to terminate a State law. The only power of the Commonwealth Parliament is to enact laws on matters for which it has Federal responsibility under S.51 of the Constitution. Such laws would override a State law under S.109 of the Constitution to the extent of any inconsistency.

6. **The duly elected representatives of the people of the Northern Territory are aggrieved that the Euthanasia Laws Bill 1996 would, if enacted, be inconsistent with the undertakings that have already been given for a grant of Statehood for the Northern Territory.**

As Witness:

The Northern Territory is progressing along a path of constitutional development.

The grant of self-government was an important step in that process but does not amount to a grant of Statehood. With a view to facilitating the future grant of Statehood, the Commonwealth already treats the Northern Territory as far as possible as if it were a State, for example, for financial purposes through the Grants Commission process and the Loans Council.

The proposal for a grant of Statehood now has general support from most Australian governments including the Commonwealth, although no time lines have yet been fixed.

To now enact the Euthanasia Laws Bill 1996, being a Bill that deals with 'state type' matters under the Constitution, would be to act contrary to the general progression towards Statehood and create future impediments to such a grant.

Constitutionally the Euthanasia Laws Bill 1996, if enacted, could only operate in the Northern Territory up until the grant of Statehood but not beyond that date (subject to the terms and conditions under s.121 of the Constitution, although there are strong arguments that such terms and conditions could not be used to support the validity of the Euthanasia Laws Bill after a grant of Statehood). On this basis the Euthanasia Laws Bill if enacted would only be of transitional effect.

Given such a limited effect, the duly elected representatives of the Northern Territory are aggrieved that the Commonwealth Parliament should be used in this ad hoc fashion to undermine the principles of self-government and to create impediments to the future constitutional development of the Northern Territory.

The Prayer:-

The Legislative Assembly of the Northern Territory humbly prays that the Parliament of the Commonwealth of Australia give consideration to the grievances herein set out and seek means to alleviate the distress of the people of the Northern Territory by not proceeding further with the Euthanasia Laws Bill 1996.

And your petitioners as in duty bound will ever pray.
