

27 August 2021

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Ensuring Northern Territory Rights Bill 2021 - Restoring the Territory's right to pass its own laws.

Dying With Dignity Victoria is a charity registered with the ACNC. Founded in 1974, our Purposes are "to relieve distress, helplessness and suffering for Victorians with untreatable, painful or terminal illnesses."

Summary

The Explanatory Memorandum notes "The purpose of the Ensuring Northern Territory Rights Bill 2021 is ...(so)...Commonwealth involvement with laws of the Northern Territory will be more aligned to the interaction of the Commonwealth with laws of Australian states."

The issue then is whether this is a reasonable or desirable outcome. We conclude that it is, and so we support this Bill.

In detail:

1. Alignment with Australian States

Section 108 of the Australian Constitution provides
"Every law in force in a Colony which has become or becomes a State, ..., shall ...continue in force in the State; and ... the Parliament of the State shall have such powers of alteration and of repeal in respect of any such law as the Parliament of the Colony had until the Colony became a State."

Territories are those parts of Australia which are not States, and as such have limited powers of their own if they have a government at all.

This is plainly reasonable in cases where the populations are too small to be able to be credible as a legislature. Conversely, where the basis is sufficient for provision of a legal system, the distinction between States and Territories reduces to the nature of the creation of the Federation early last century, when the ACT did not exist, and

where the Northern Territory did not have its own government, having been annexed by South Australia In 1863. And so might have no justification in logic.

It should be noted that

- The Commonwealth Parliament has conferred a large measure of self-government on the people the Australian Capital Territory, Norfolk Island, and the Northern Territory.
- The Northern Territory became self-governing on 1 July 1978 under its own administrator. The Australian Capital Territory (Self-Government) Act 1988 established self-government in the ACT.
- The population of the State of Tasmania is estimated at around 540,000. This value compares with populations of the ACT and Northern Territory, now of the order of 430,000 and 250,000 respectively. For 2020 values of the 235 Countries listed as part of the United Nations, this would have the ACT ranked around number 175 by size, equivalent to Malta, and the Northern Territory at 186, below French Polynesia, but ahead of Kiribati and the Federated state of Micronesia.

We then contend that any argument based on capacity to run an effective government cannot be part of any argument to deny the ACT and NT the same rights as the Australian States.

2. Alignment with the Human Rights (Parliamentary Scrutiny) Act 2011

Signed by Australia 18 December 1972

From 3. Definitions we have

“human rights means the rights and freedoms recognised or declared by the following international instruments:”

...

(c) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23);

This covenant notes “Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”

... PART II Article 2. 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Bill is in accordance with these general principles.

3. Actions sought by the Bill

The Bill seeks to amend the Northern Territory (Self-Government) Act 1978 by

- (a) Repealing subsection 50(1) – seeks to remove limitations that apply to the Northern Territory Parliament pertaining to the acquisition of property

To remove the limitations on the ability of the Northern Territory Legislative Assembly to make laws conferring powers in relation to the hearing and determining of employment disputes by

- (b) Adding at the end of subsection 53(4) “Sections 29 and 40 of the Fair Work Act 2009 deal with inconsistency between awards and agreements made under that Act and laws of the Territory.”
- (c) Repealing subsections (including the note) 53(5) and (6)

Addressing legislation in relation to laws concerning voluntary assisted dying, by

- (d) Repealing subsection 50A – relates to ‘euthanasia’
- (e) Repealing the Euthanasia Laws Act 1997

All address matters of inconsistency. In relation to (d) and (e), the speaker notes that Victoria, Western Australia, Tasmania, and South Australia have passed relevant legislation, and Queensland appears poised to do so. For many years, surveys have noted a consistent and increasing level of public support for assisted dying, with that level now being around 75% or higher. It appears ridiculous to deny Territorians what will soon become available to most Australians.

We are content to have this submission published on the internet.

Hugh Sarjeant
President

Jane Morris
Vice President