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Senator the Hon Sarah Henderson
Chair
Legal and Constitutional Affairs Legislation Committee
PO Box 6100, Parliament House
CANBERRA 2600

Dear Senator Henderson

Thank you for your letter of 13 August 2021 inviting the ACT Government to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the *Ensuring Northern Territory Rights Bill 2021*. Thank you also for Committee's subsequent agreement to consider a submission by the ACT Government after the original timeframe given our need to attend to the public health emergency in the ACT.

The *Ensuring Northern Territory Rights Bill 2021* (the Bill) highlights an important issue affecting the democratic rights of Australians living in both the Australian Capital Territory (ACT) and the Northern Territory (NT). Under Australia's Constitution, Territorians do not experience the same rights enjoyed by citizens in other state jurisdictions. The disparity is rooted in the ability of the Federal Parliament to pass laws that interfere with or override any laws made by Territory parliaments. This means that the elected parliaments of the ACT and the NT cannot pass legislation without the risk of Commonwealth interference. History has shown this risk to be a real concern for Territory Legislatures.

The Rights of the Terminally Ill Act 1995 (NT) established a framework for a person with a life limiting illness in the NT to request assistance from a medically qualified person to voluntarily and humanely end their life. That Act reflected the views and convictions of a majority of elected representatives in the NT.

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In response to the law coming into effect on 1 July 1996, the Commonwealth Parliament passed the *Euthanasia Laws Act 1997* (Cth) which effectively nullified the NT legislation and prevented the NT and the ACT from passing any future legislation in relation to euthanasia or voluntary assisted dying. Since then, Victoria, Western Australia, Tasmania and South Australia have legislated for voluntary assisted dying. Assisted dying legislation is currently before the Queensland Parliament for consideration, and a draft Bill for New South Wales has been released. Yet Territorians are prevented from passing legislation on the same terms. As a result, Territory citizens are being denied their democratic rights and are disadvantaged based on where they live.

This situation is inconsistent with Australia's international human rights obligations. The *International Covenant on Civil and Political Rights* (ICCPR), to which Australia is a party, guarantees citizens the right to take part in the conduct of public affairs, directly or through freely chosen representatives. The legislative restrictions placed on the NT and ACT in the area of voluntary assisted dying may limit this right. Further, pursuant to the right to equality and non-discrimination in sections 2 and 26 of the ICCPR, individuals are entitled to enjoy their human rights without distinction or discrimination of any kind. Citizens of the ACT and NT are denied their right to participate in public life on questions relating to voluntary assisted dying on the basis of their residence in a Territory while their counterparts in neighbouring states are able to decide such questions for themselves. These human rights may be subject only to reasonable limits that can be demonstrably justified in a free and democratic society.

Regardless of any personal views on voluntary assisted dying, there should not be any controversy in allowing the ACT and NT to decide for themselves whether to introduce such legislation and to allow citizens of the ACT and NT an opportunity to legislate on this matter on the same terms as other jurisdictions if their communities desire. This would resolve an inequitable situation persisting in Australia and be consistent with Australia's international human rights obligations.

The ACT Government supports efforts to remove federal legislation which discriminates against or diminishes the rights of citizens in the Territories, including those proposed in this Bill. We will continue to call on Federal Parliament to support the rights of Territorians as a matter of priority, including by removing subsections 23(1A) and (1B) from the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth).

Thank you for the opportunity to make a submission to the Committee on this important matter.

Yours sincerely

Andrew Barr MLA
Chief Minister

Tara Cheyne MLA
Minister for Human Rights

10 September 2021