27 August 2021

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Canberra ACT 2600

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To whom it may concern,

HOPE is pleased to present a submission to the Inquiry regarding the *Ensuring Northern Territory Rights Bill 2021* (the Bill) which has been referred to the Senate Legal and Constitutional Affairs Committee.

HOPE: Preventing Euthanasia and Assisted Suicide is a coalition of groups and individuals who oppose the legalisation of euthanasia and assisted suicide. We are opposed to euthanasia and assisted suicide from a human rights and justice perspective, based upon the firm belief that euthanasia and assisted suicide pose significant risks for vulnerable people of all ages.

In accordance with the terms of the inquiry, this submission addresses the question that is being considered by the Committee, which is the right of the Northern Territory to legislate without Commonwealth interference.

However, it must be noted that the issue of whether the Northern Territory should be able to legislate for voluntary assisted suicide cannot be separated from this question[1]. The inquiry question before the Committee is inseparable from the issue of euthanasia, as the primary reason this particular bill has been introduced into the Commonwealth Parliament is to remove the impediment that currently prevents the Northern Territory from legislating on this issue. The campaign to 'restore territory rights' has been promoted by pro-euthanasia advocates for the purpose of legalising euthanasia and assisted suicide in the Northern Territory. Thus, arguments against allowing the Northern Territory government the right to legislate with respect to euthanasia and assisted suicide are relevant to the inquiry question.

We will not be addressing the remaining two questions related to this inquiry, namely the issue of acquisition of property on just terms and provisions related to the *Fair Work Act 2008*.

We would be pleased to speak with the Committee in relation to any aspect of this Submission.

Yours sincerely,

Branka van der Linden

[1] https://www.canberratimes.com.au/story/7367396/euthanasia-is-a-rotten-law-whoever-can-stop-it-should/

It is our considered view that the legislation that currently prohibits the Northern Territory Legislative Assembly from enacting laws with respect to euthanasia and assisted suicide **is an appropriate restraint on the legislative power** of the Territory. There are a number of reasons for this which we outline below.

The Commonwealth's responsibility for laws of the Territories

Section 122 of the Commonwealth Constitution confers on the Commonwealth plenary power to make laws in relation to the territories. The Northern Territory was granted the right to self-government by an Act of the Commonwealth Parliament: the *Northern Territory (Self-Government) Act 1978*. This Act regulates the legislative power of the Northern Territory Legislative Assembly.

The Commonwealth Constitution establishes the Commonwealth of Australia, reflecting the agreement between the Commonwealth and the States to unite in one indissoluble Commonwealth. It outlines the relative powers of both the Commonwealth and the States. The Territories in contrast were not members of this agreement at Federation, and do not have any legislative power other than that which is conferred on them by the Commonwealth. The Commonwealth's power to legislate for the territories is not in dispute.

The Northern Territory's system of self-government is by way of a unicameral system; it is comprised only of the Legislative Assembly, which functions as both upper and lower house of parliament. There is no upper house or house of review to scrutinise legislation that is passed by the Assembly. The Commonwealth Parliament therefore serves as the only restraint on legislation that is passed by the Legislative Assembly.

The Commonwealth Parliament exercised this authority in 1996 by overturning the *Rights of the Terminally Ill Act 1995* (NT) (**ROTI**), when it passed the *Euthanasia Laws Act 1997*. It considered that the ROTI was a breach of the Territory's responsibilities to the vulnerable and terminally ill and elderly people in their jurisdiction, and it was therefore not only the right – but the responsibility – of the Commonwealth Parliament to enforce restraint. The parliament also considered the laws to be a matter of national significance.[2]

Following the passage of the *Euthanasia Laws Act 1997*, a referendum on statehood for the Northern Territory was held. For all the talk about a desire for 'territory rights' preceding and following the passage of the *Euthanasia Laws Act 1997*, a majority of Territorians voted against the change. Nothing has changed in the intervening period that makes the Commonwealth's supervisory powers unnecessary.

While it is acknowledged that Queensland also has a unicameral system of parliament, there are 93 members in its Legislative Assembly, compared to the 25 members for the Northern Territory Legislative Assembly. The passage of the Bill would mean that euthanasia and assisted suicide laws could be passed in the Northern Territory of a simple majority, i.e. by just 13 people. This is a significant responsibility to place in the hands of such a small number of people.

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[2] See Second Reading Speeches accessed here: https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansardr%2F1996-10-28%2F0092;query=Id%3A%22chamber%2Fhansardr%2F1996-10-28%2F0097%22

It is therefore critical that the Commonwealth retains this oversight when it comes to the issue of euthanasia and assisted suicide, given the gravity of the issue involved and the potential for wrongful deaths to occur.

Impact on Aboriginal and Torres Strait Islander peoples in the Territory

The Northern Territory has a proportionately higher number of Aboriginal and Torres Strait Islanders residents that elsewhere in Australia. Aboriginal and Torres Strait Islander peoples make up 25.5% of the total Northern Territory's population.[3] Thus, any laws that allow euthanasia and assisted suicide in the territory must be examined in relation to their particular impact upon Aboriginal and Torres Strait Islander peoples. This is what the Commonwealth parliament undertook to do during the debate in relation to the *Euthanasia Laws Act 1997*. The parliament concluded that the risks were too high, and could adversely affect the willingness of Indigenous people to access appropriate health care.

During the debate in relation to the Euthanasia Laws Bill in 1996, evidence was provided in relation to the impact of such laws on the Indigenous population in the Territory. Chips Mackinolty, a long-time Darwin resident, gave evidence about his consultations with Aboriginal and Torres Strait Islander people in the Northern Territory. Mr Mackinolty was commissioned by the Northern Territory government to deliver education programs to Aboriginal Communities about the ROTI. Mackinolty and his team conducted 21 community meetings across the Territory with 900 Aboriginal people from approximately 100 communities between June and October 1996. "The results were virtually unanimous; every one of the meetings were strongly opposed to the ROTI." This led Mr Mackinolty to conclude that the Northern Territory was the wrong jurisdiction to introduce euthanasia and assisted suicide laws.

Submissions from indigenous groups to a 2008 inquiry into a bill which would have had a similar effect to the Bill said that when euthanasia was legal in the Northern Territory, many elderly walked out of hospitals in fear they would be killed, and were reluctant to seek health care services.[4] Consequently, even if they do not 'choose' euthanasia, its legalisation could have a negative impact on Indigenous health. This is troubling, particularly when there is already a significant gap between life expectancy for indigenous and non-indigenous Australians.

Indigenous Australians and Palliative Care

In addition to the above, we consider that the passage of this legislation would be irresponsible while Aboriginal and Torres Strait Islander Australians still lack access to basic palliative care services.

A review commissioned by the Australian government recently confirmed that more needs to be done to ensure Aboriginal and Torres Strait Islander Australians are receiving palliative care.

In 2010, the National Palliative Care Strategy represented the combined commitment of federal and state governments, palliative care service providers and community based organisations to the development and implementation of consistent palliative care policies, strategies and services across Australia.

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4 Aboriginal Resource and Development Services. Submission for *Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008* to the Senate Legal & Constitutional Affairs Committee, April 2008.

A 2016 review of this strategy found:

"There remain significant barriers to access to palliative care services for a number of people within the population, particularly for Aboriginal and Torres Strait Islander peoples... The Strategy does not focus on groups which have traditionally not accessed palliative care services; developing culturally-specific activities to address the needs of Aboriginal and Torres Strait Islander peoples may help to improve access to services for those who need it."

Unless and until there has been significant investment – at a federal level – of responding to this review by investing in culturally-specific activities to address the needs of Aboriginal and Torres Strait Islander peoples, paving the way for euthanasia and assisted suicide in the Northern Territory would leave our indigenous Australians particularly vulnerable.

Euthanasia laws cannot be made safe

We wish to conclude by highlighting some important facts related to the issue of euthanasia and assisted suicide:

1. In October 2019, the World Medical Association reaffirmed its position against euthanasia and assisted suicide. The following statement received 115 votes in favour, none opposed, and 12 abstentions: "The WMA reiterates its strong commitment to the principles of medical ethics and that utmost respect has to be maintained for human life. Therefore, the WMA is firmly opposed to euthanasia and physician-assisted suicide."[5]

2. In 2016-7, in Belgium:
   - 3 children;
   - 77 people suffering from mental health issues; and
   - 173 people with no physical suffering but afflicted by conditions such as addiction, loneliness and despair,

were euthanised.[6]

3. Since the legalisation of assisted suicide in Oregon 24 years ago, the top five reasons given by those who request (and are given) assisted suicide drugs have been:
   - Losing autonomy
   - Less ability to engage in activities making life enjoyable
   - Loss of dignity
   - Burden on family, friends and caregivers
   - Losing control of bodily functions.

Notably, pain or fear of it does not appear in the top reasons.[7]

[5] https://www.wma.net/wp-content/uploads/2019/12/wmj_3_2019_WEB.pdf
[6] https://organesdeconcertation.sante.belgique.be/sites/default/files/documents/8_rapport-euthanasie_2016-2017-fr.pdf
[7] Oregon Public Health Division, Oregon Death With Dignity Act: Data Summary 2020 https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year23.pdf

4. In 2020 in Oregon, the median length of the relationship between the patient and the doctor who prescribed the lethal drugs was 8 weeks, and the median length of time between the first request for assisted suicide and patient death was 32 days.[8] This means that the median time between the first encounter between a drug-prescribing doctor and a request for death is less than four weeks.
5. Only 1.2% of those who have been given assisted suicide drugs in Oregon were sent for a psychiatric evaluation beforehand.[9]
6. The legalisation of assisted suicide has a contagion effect, increasing the rate of suicide in the community. The suicide rate in Oregon, where assisted suicide was legalised in 1997, has been increasing. In 2012, Oregon's suicide rate was 42% higher than the national average.[10] This does not include deaths by assisted suicide, as they are recorded as being deaths due to the underlying condition.
7. No doctor has been successfully prosecuted for violating a safeguard in The Netherlands, despite regular breaches of the law being recorded by the Euthanasia Commission.
8. Prior to the legalisation of assisted suicide in Canada, 78% of doctors expressed a willingness to be involved in assisted suicide. These numbers have now inverted, with 77% now claiming a conscientious objection to killing a patient.[11]
9. In the first two years of legalised euthanasia in Quebec, 62 deaths (5.6% of all euthanasia deaths) were deemed by the Commission on End of Life Care to have been of abuse by the doctor who prescribed and administered the lethal injection, but did not recommend any for prosecution.[12]
10. In the United States, in states where assisted suicide is legal, insurance companies have refused to cover chemotherapy treatment for cancer patients, instead offering the insured assisted suicide drugs.[13]

Conclusion

The current legislative restraint on the Northern Territory government being able to make laws with respect to euthanasia and assisted suicide are appropriate, given that the Commonwealth parliament, under section 122 of the Constitution, has ultimate responsibility for the Territories. Laws with respect to euthanasia and assisted suicide have the potential to significantly and adversely affect Aboriginal and Torres Strait Islanders living in the Territory.

[8] Ibid
[9] Ibid
[10] https://www.oregon.gov/oha/PH/DISEASESCONDITIONS/INJURYFATALITYDATA/Documents/NVDRS/Suicide%20in%20Oregon%202015%20report.pdf
[11] Opatrny L., Bouthillier M. "Décoder l'objection de conscience dans le cas de l'aide médicale à mourir," Le Spécialiste, 2017, 19:4, 36-40
[12] https://www.mercatornet.com/careful/view/two-years-of-euthanasia-in-quebec-the-facts/20831
[13] Stephanie Packer in California was denied chemotherapy treatment by her health insurance company but offered to pay for assisted suicide https://www.washingtontimes.com/news/2016/oct/20/assisted-suicidelaw-prompts-insurance-company-den/ See also case of Barbara Wagner in Oregon – denied health cover but offered assisted dying http://abcnews.go.com/Health/story?id=5517492&page=1

The Commonwealth parliament's fundamental and ongoing responsibility to Aboriginal and Torres Strait Islander peoples means that it must retain this right to oversee laws that could have such an adverse effect on our First Nation peoples. Nowhere is this more pressing than in the Northern Territory of Australia.