CHAPTER 3

LEGAL AND CONSTITUTIONAL POLICY ISSUES

3.1 This chapter examines some of the key legal and constitutional policy issues raised during the committee's inquiry. These include:

- whether it was appropriate for the Federal Parliament to have used its power to override legislation in the territories;
- drafting issues in relation to the Bill; and
- other issues, including issues relating to the NT legislation which the Bill proposes to revise.

3.2 These issues are considered in detail below.

Should Federal Parliament override territory laws?

3.3 Section 122 of the Constitution confers a plenary power on the Commonwealth to make laws for the government of any territory. It is clear that the Commonwealth had the power, under section 122 of the Constitution, to override the laws of the NT as it did when it enacted the Euthanasia Act.

3.4 The key issue, however, is whether the enactment of the Euthanasia Act was an appropriate use of that power from a constitutional policy perspective. Whether Federal Parliament should have used its power to override the NT RTI Act was also a crucial question at the time of the 1997 Euthanasia Inquiry.[1] As the report of that inquiry stated:

> The Commonwealth Parliament has the power under s.122 of the Constitution to enact the Bill. Even opponents of the Bill conceded this.
>
> The question for the Committee's inquiry was whether the Parliament should exercise this power.[2]

3.5 The Parliamentary Library also observed in 1997:

> The main constitutional issues raised by the Andrews [Euthanasia Laws] Bill [1996] are political rather than legal. The central question is whether or

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1 1997 Euthanasia Inquiry, especially Chapter 3 and pp 111-112.

2 p. 13l.

not it is acceptable politically for the Commonwealth to take back part of the legislative powers it conferred on these Territories at self-government.[3]

3.6 This committee's current inquiry reignited this debate. The key constitutional policy arguments for and against Commonwealth involvement raised during this inquiry are discussed in turn below.

Support for the Bill

3.7 Submissions supporting the Bill on constitutional policy grounds did so on the basis that it was inappropriate for the Federal Parliament to override the decision of the democratically-elected NT Parliament. These objections appeared to be based on three key grounds which are discussed further below – that is, that the Euthanasia Act:

- interfered with democracy and self-government in the territories;
- discriminated against territories and territory citizens when compared to states and state citizens; and
- demonstrated inconsistent treatment of territories by the Commonwealth.

Interference in democratic and self-government processes

3.8 On the first point, several submissions argued that, in enacting the Euthanasia Act, the Commonwealth was interfering in the affairs of the self-governing territories. For example, the NT Law Reform Committee described this 'interference with the policy of a self-governing legislature' as a 'direct contradiction of self-government'.[4]

3.9 Similarly, the Law Council of Australia (Law Council) submitted its belief that the Euthanasia Act 'constituted unnecessary interference by the Commonwealth Parliament in the internal affairs of the properly-elected Northern Territory (NT) government'.[5] The Law Council expressed the view that, having passed the *Northern Territory (Self Government) Act 1978*, 'the Commonwealth should not seek to derogate from that grant of self-government on a domestic issue'.[6]

3.10 The Hon Austin Asche, President of the NT Law Reform Committee, suggested that:

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3 Natasha Cica, "Constitutional Arguments in Favour of Removing the Territories' Power to Make Laws Permitting Euthanasia", *Parliamentary Library Research Note 32 1996-97*, available at: http://www.aph.gov.au/library/pubs/rn/1996-97/97rn32.htm; and "Constitutional Arguments Against Removing the Territories' Powers to Make Laws Permitting Euthanasia", *Parliamentary Library Research Note 33 1996-97*; available at: http://www.aph.gov.au/library/pubs/rn/1996-97/97rn33.htm (accessed 2 April 2008).

4 *Submission 443*, p. 2.

5 *Submission 442*, p. 2; see also NSW Council for Civil Liberties, *Submission 418*, p. 5.

6 *Submission 442*, p. 2.

> Any Commonwealth enactment based on policy—that is, based on a difference of opinion between the Commonwealth and the Territory—is of course an interference with the self-government of the Territory. If the Commonwealth disagrees with a policy of a territory then the grant of self-government is really illusory.[7]

3.11 The Gilbert and Tobin Centre of Public Law (Gilbert and Tobin Centre) expressed the view that the Euthanasia Act was a 'bad law in that it discriminated against the territories and weakened self-government in those jurisdictions'.[8] The Centre argued that:

> The Euthanasia Laws Act 1997 should be repealed because it is inappropriate that the Commonwealth Parliament remove power pre-emptively from any self-governing jurisdiction within Australia. The law is inconsistent with basic principles of democracy and indeed with the very concept of self-government in the Australian Territories.[9]

3.12 The ACT Attorney-General, Mr Simon Corbell MLA, also supported the Bill, stating that:

> The ACT's position is that it is simply inappropriate for the Commonwealth parliament to determine a policy setting that is only relevant to the people of the Australian Capital Territory. Senator Brown's bill restores to the territory the ability to legislate as the territory deems fit on the issue of euthanasia. That is entirely consistent with the grant of self-government to the territory, and that is why we support the bill.[10]

3.13 The NT Government stated that, in principle, it 'would welcome the removal of the limitation on its self-governing capacity'.[11] However, it had reservations about the drafting of the Bill, which will be discussed later in this chapter.

3.14 Several submissions further suggested that, in overriding the laws of a self-governing territory, the Euthanasia Act was against the 'spirit of democracy' because it overturned the laws of a democratically-elected territory parliament.[12]

3.15 The NT Government and NT politicians were particularly vociferous on this point. The NT Government submitted that the passage of the Euthanasia Act 'was a

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7 *Committee Hansard*, 14 April 2008, p. 46.

8 *Submission 46*, p. 1.

9 *Submission 46*, p. 1; see also Professor George Williams, *Committee Hansard*, 16 April 2008, p. 2.

10 *Committee Hansard*, 16 April 2008, p. 22.

11 *Submission 446*, p. 4.

12 South Australian Voluntary Euthanasia Society, *Submission 74*, p. 1; see also, for example, Voluntary Euthanasia Society of NSW, *Submission 216*, p. 1; ALP (ACT Branch), *Submission 415*, pp 1-2; Western Australian Voluntary Euthanasia Society, *Submission 370*, p. 1; Civil Liberties Australia, *Submission 365*, p. 1.

fundamental, and unwarranted attack on the democratic rights of the people of the Northern Territory'.[13] Mr Terry Mills MLA, current Leader of the Opposition in the NT, submitted that, in passing the Euthanasia Act, the Commonwealth Parliament 'directly contradicted the will of the Territory people as expressed through its parliament'.[14] Several submitters noted that the NT Government had undertaken extensive consultation, debate and inquiry prior to the passage of the NT RTI Act.[15]

3.16 In this context, Mr Marshall Perron, who was the NT Chief Minister at the time the NT RTI Act was passed, gave the committee a copy of a 'Remonstrance' adopted unanimously by the NT Legislative Assembly and tabled in the Senate on 28 October 1996.[16] The Remonstrance expressed the view that the Euthanasia Act constituted 'a direct attack on the self government powers of the Northern Territory.' Mr Perron further told the committee that:

> 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.[17]

3.17 The Hon Austin Asche further pointed out to the committee that the power of the NT Legislative Assembly to pass the RTI Act, had been challenged and upheld in the courts, as discussed in Chapter 2 of this report.[18] He argued that this was the appropriate way to overturn such laws:

> … the only proper way to attack the power of the Territory to pass that particular act was through the courts. That in fact was done by the application to the full court of the Supreme Court. That application was interrupted because the act was then repealed. But had it gone to the full length of an appeal to the High Court—although it may be temerarious to predict what the High Court will do—we feel that the High Court would probably have upheld the decision of the majority of the full court. The point we make is that that is the way to go. Either the Territory has the power, in which case it should be allowed to exercise it because it has been

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13 *Submission 446*, p. 4; see also The Hon Daryl Manzie, *Committee Hansard*, 14 April 2008, p. 17; and Mr John Bailey, former member of the NT Legislative Assembly, *Submission 430*, p. 1.

14 *Submission 451*¸ p. 2.

15 The Hon Daryl Manzie, *Committee Hansard*, 14 April 2008, p. 20; Australian Federation of AIDS Organisations, *Submission 400*, p. 1.

16 *Submission 393*, p. 1; see also The Hon Daryl Manzie, *Submission 411*¸ pp 1-7; Mr Terry Mills MLA, *Submission 451*, p. 2; and *Journals of the Senate No. 46*, 28 October 1996, p. 765.

17 *Submission 393*, p. 1; see also South Australian Voluntary Euthanasia Society, *Submission 74*, p. 1.

18 *Wake v Northern Territory* (1996) 124 FLR 298.

> given self-government, or it does not have the power, in which case the court should so rule.[19]

3.18 In the same vein, the ACT Attorney-General, in supporting the Bill, told the committee that:

> …only the elected members of the ACT Legislative Assembly can claim a legitimate mandate to represent the views of the people of the territory. It is a direct attack on the democratic principle for others without such a mandate to substitute their own views for the views of those elected to represent the people of the ACT.[20]

3.19 Mr Corbell further told the committee:

> While the ACT government will not necessarily move to make laws to legalise voluntary euthanasia, the issue at stake is the constitutional right of this government to make laws for the governance of the people of the Australian Capital Territory.[21]

3.20 Similarly, the Law Council submitted that:

> Territorians elect representatives to their local assemblies in the expectation that those representatives will make laws for the peace, order and good governance of their communities within the parameters of the law making powers afforded them by the self-government Acts. It is an affront to the democratic process in which Territorians participate if legislation lawfully passed by their elected representatives is rendered invalid by the operation of Commonwealth laws, which are not of general application, but which are exclusively targeted at the Territories for the express purpose of interfering in their legislative processes.[22]

3.21 Finally, the South Australian Voluntary Euthanasia Society submitted that:

> …the overturning of the Rights of the Terminally Ill Act 1995 by the Federal Parliament, which has a minimal representation from the Northern Territory, was an anathema to the spirit of democracy and a contravention of the democratic rights of the people of the Northern Territory. The will of Territorians, which had been decided by their representative agents, who were elected under a free electoral system, was denied by federal groups in which they were minimally represented.[23]

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19 *Committee Hansard*, 14 April 2008, p. 46; see also Northern Territory Law Reform Committee, *Submission 443*, pp 2-3; and discussion in Chapter 2 of this report.

20 *Committee Hansard*, 16 April 2008, p. 20; see also *Submission 471*, p. 1.

21 *Committee Hansard*, 16 April 2008, p. 20; see also *Submission 471*, p. 2.

22 *Submission 442*, p. 5.

23 *Submission 74*, p. 1.

Discrimination against territories and territory citizens

3.22 It was further suggested that because the Euthanasia Act only applies to territories, not states, it therefore discriminates against territories and the citizens of those territories.[24] Some suggested this meant territory citizens were effectively second-class citizens in the Australian Federation. For example, Civil Liberties Australia suggested that the actions of the Federal Parliament in overturning valid territory laws made:

> …a mockery of the rights of citizens living in the Territories, and [made] them second-class Australian citizens in relation to the fuller democratic rights held by citizens of Australian States. The Australian Parliament has a clear responsibility to correct this inequality of rights between its citizens. All Australians should have equal rights.[25]

3.23 Similarly, Darwin Senior Citizens submitted that:

> The passage of this bill would redress the injustice done to Australians who happen to live in a territory, instead of a state, by returning to the legislative assemblies the right to make euthanasia laws if they see fit. It may have been only the Northern Territory whose law was overturned but the people of three territories became second-class citizens twelve years ago. We deserve better.[26]

3.24 As Mr Marshall Perron, former NT Chief Minister, put it: 'we should not be treated disproportionately because, geographically, some citizens want to live in a territory rather than a state'.[27]

3.25 Dr Philip Nitschke, Director of Exit International, expressed the view that, after the passage of the Euthanasia Act:

> …citizens of the Northern Territory realised immediately that their voice was not as significant in Australian society as that of other Australians. The effect was to undermine the status and sense of worth of the people living in the Territories of Australia. This generated resentment and anger from within this part of the Australian population…[28]

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24 For example, Atheist Foundation of Australia, *Submission 55*, p. 1; South Australian Voluntary Euthanasia Society, *Submission 74*, p. 1; Voluntary Euthanasia Society of NSW, *Submission 216*, p. 1; West Australian Voluntary Euthanasia Society, *Submission 370*, p. 1; Council on the Ageing NT, *Submission 373*, p. 1; Darwin Senior Citizens, *Submission 377*, p. 1; ALP (ACT Branch), *Submission 415*, pp 1-2; Civil Liberties Australia, *Submission* 365, p. 1; Gilbert and Tobin Centre, *Submission 46*, p. 1 and Professor George Williams, *Committee Hansard*, 16 April 2008, p. 2; Mr Terry Mills MLA, *Submission 451*, p. 1.

25 *Submission 365*, p. 1.

26 *Submission 377*, p. 1.

27 *Committee Hansard*, 14 April 2008, p. 23; see also *Submission 393*, pp 1-2.

28 *Submission 390*, pp 1-2.

3.26 Ms Judy Dent exemplified this resentment, telling the committee:

> I resent being a second-class citizen in my chosen country. I am an Australian citizen…and I choose to live in a territory. I think I should have the same rights in the Territory as someone who lives in South Australia or Queensland or any other part of the country and, therefore, I would like those rights to be restored to the parliament of the Territory...[29]

Inconsistent treatment of territories

3.27 The Law Council also expressed the view that the 'Commonwealth's interferences in the Territories' law making powers, via the Euthanasia Laws Act was arbitrary and ad hoc'.[30] The Law Council then gave two other examples of the Commonwealth's involvement in territory legislation, which it felt:

> …demonstrate that the Commonwealth has no consistent, transparent criteria for intervention in the law-making powers of the Territories. These examples suggest that populist political agendas, rather than any objectively assessed national interest criteria, guide the Commonwealth's decision as to whether or how to intervene.[31]

3.28 The first example given by the Law Council was the Commonwealth's decision *not* to intervene to override NT laws for providing a harsh mandatory sentencing regime, despite 'clear evidence that the regime was having a disproportionate impact on the indigenous population' and breached Australia's obligations under international conventions.[32] The second example was the disallowance of the ACT's *Civil Unions Act* in 2006 by the Governor-General, on the advice of the Commonwealth Government.[33]

3.29 Based on these examples, the Law Council argued that:

> …it is clear that Territorians currently live with a degree of uncertainty, unsure of when and how the Commonwealth may seek to intervene in and override the actions of their democratically elected representatives.
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> This is an entirely unsatisfactory state of affairs in a stable, democratic country committed to the rule of law and open and transparent government.[34]

3.30 In the same vein, the NT Law Reform Committee pointed out that the Euthanasia Act was:

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29 *Committee Hansard*, 14 April 2008, p. 24.

30 *Submission 442*, p. 6.

31 *Submission 442*, p. 7.

32 *Submission 442*, p. 7.

33 *Submission 442*, p. 8.

34 *Submission 442*, p. 8.

> …passed on the basis that the Federal Parliament disapproved of the policy of the NT Act. The clear implication is that, if any of the three named Territories passes legislation of which the Federal Parliament disapproves, the Federal Parliament will take away its power to do so.[35]

3.31 Others suggested that there should be some form of objective and consistent criteria to determine the circumstances where the Commonwealth could appropriately intervene in the affairs of the territories. In particular, Father Frank Brennan, a Professor of Law at the Australian Catholic University, although opposed to the Bill, suggested some specific criteria for the 'very rare circumstances' in which the Commonwealth should exercise its power to overrule territory law. The criteria suggested by Father Brennan (which he felt that the Euthanasia Act met) were:

> …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 to its own more vulnerable citizens, especially Aborigines.[36]

Arguments against the Bill

3.32 Those who opposed the Bill on constitutional policy grounds argued that it was appropriate for the Commonwealth to override territory legislation, particularly since the territories derive their legislative capacity from the Commonwealth, whereas the states do not.[37]

3.33 In 1997, a Parliamentary Library paper put this argument as follows:

> The grant of self-government to the Northern Territory in the *Northern Territory (Self-Government Act) 1978* (Cth) did not erode the supremacy of the Federal Parliament over this Territory. This grant of self-government did not in any way limit the Commonwealth's plenary legislative power over the Territory in section 122 of the Australian Constitution.[38]

3.34 Several submissions agreed with this argument during this inquiry. For example, the Federal Presbyterian Church of Australia submitted that:

> We recognise that some may consider supporting the Bill on something analogous to 'States' Rights' grounds. However, at this stage in our constitutional development, the territories remain subject under the

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35 *Submission 443*, p. 2.

36 *Submission 428*, p. 1; see also *Committee Hansard*, 16 April 2008, p. 10.

37 See, for example, Christian Democratic Party, *Submission 1001*, p. 1; Festival of Light Australia, *Submission 361*, p. 9.

38 See Natasha Cica, "Constitutional Arguments in Favour of Removing the Territories' Power to Make Laws Permitting Euthanasia", *Parliamentary Library Research Note 32 1996-97*, available at: http://www.aph.gov.au/library/pubs/rn/1996-97/97rn32.htm (accessed 17 March 2008).

> Constitution to the oversight of the Federal Parliament, and while this oversight continues, the moral issues addressed in Bills such as this should override all other considerations.[39]

3.35 Similarly, the Christian Democratic Party submitted that:

> We support the Commonwealth Constitution which does not give the two Territory Governments – the ACT and Northern Territory, the same self governing powers as a State Government.
>
> Territorial Assembly legislation can be overruled by the Federal Parliament, when necessary, for a variety of reasons.[40]

3.36 Similarly, Mr John Ryan argued in his personal submission that:

> …control of the Northern Territory lies in the hands of the Commonwealth Parliament… A Territory, even the Northern Territory, is not a State and does not have the Constitutional powers and rights of a State…All of the rights of the Northern Territory only exist at the whim of the Commonwealth Parliament.[41]

Limits on territories' self-government

3.37 The committee also heard that there are several limits on the powers of the territory governments which are imposed by their self-government legislation as granted by the Commonwealth. As the parliamentary library pointed out in 1997:

> When it attained self-government in 1978, the Northern Territory was not granted the full range of legislative and executive powers. For example, the Federal Parliament specifically and expressly withheld from Northern Territory Ministers the executive authority over the mining of uranium and over Aboriginal land rights. These are both matters of political sensitivity and of national importance.[42]

3.38 The paper therefore put forward an argument in favour of the Euthanasia Act:

> Euthanasia is also a politically sensitive issue of national importance. Had the Federal Parliament turned its mind to the issue when it was granting self-government to the Northern Territory, it would have excluded

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39 *Submission 366*, p. 1.

40 *Submission 1001*, p. 1.

41 *Submission 409*, p. 1.

42 Natasha Cica, "Constitutional Arguments in Favour of Removing the Territories' Power to Make Laws Permitting Euthanasia", *Parliamentary Library Research Note 32 1996-97*, available at: http://www.aph.gov.au/library/pubs/rn/1996-97/97rn32.htm (accessed 17 March 2008); see also Father Frank Brennan, *Submission 428*, p. 1 and Attorney-General's Department, *Answer to Question on Notice*, received 9 May 2008, pp 1-2.

> euthanasia from the legislative and/or executive competence of the Territory government.[43]

3.39 The Law Council recognised that the Commonwealth retains the constitutional power to make laws in respect of territories, and 'retains a largely unfettered power to disallow or override Territory legislation'. The Law Council noted that it was argued during the 1997 Euthanasia Inquiry that:

> …the existence of this power is in itself evidence of an intention on the part of both the drafters of the Constitution, and the Parliaments which subsequently passed the self-government Acts, to confer an ongoing responsibility on the Commonwealth to supervise the governance of the Territories and a corresponding power to intervene when deemed appropriate.[44]

3.40 However, the Law Council pointed out that these arguments 'ignore the role of convention in Australia's legal order' and, in particular, the 'strong convention [that] has developed against revoking powers granted to subordinate legislatures'.[45]

3.41 The ACT Attorney-General also acknowledged that the *Australian Capital Territory (Self-Government) Act 1988* (Cth) constrains the ACT from legislating on certain matters, such as in the operations of the Australian Federal Police, industrial relations matters and the ability to increase the number of elected representatives within the ACT Legislative Assembly.[46] However, the ACT Attorney-General argued that:

> …we accept as a territory that there are certain constitutional limits on our activities. The Constitution is clear on the powers of the federal parliament as it relates to territories. Whilst we believe that it would be desirable for those hindrances or restrictions to be removed in the constitutional framework, we also recognise that that is unlikely, at least in the short term or even in the medium term. But there needs to be greater respect given to the territories to determine their own affairs.[47]

3.42 Similarly, the NT Law Reform Committee submitted that the 'Northern Territory Legislative Assembly should have unrestricted plenary legislative power and its supports the primary aim of the Bill for this reason'.[48]

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43 See Natasha Cica, "Constitutional Arguments in Favour of Removing the Territories' Power to Make Laws Permitting Euthanasia", *Parliamentary Library Research Note 32 1996-97*, available at: http://www.aph.gov.au/library/pubs/rn/1996-97/97rn32.htm (accessed 17 March 2008).

44 *Submission 442*, p. 4; see also 1997 Euthanasia Inquiry, p. 19.

45 *Submission 442*, p. 4.

46 *Committee Hansard*, 16 April 2008, p. 22; see also Attorney-General's Department, *Answer to Question on Notice*, received 9 May 2008, p. 2.

47 *Committee Hansard*, 16 April 2008, p. 23.

48 *Submission 443*, p. 2.

3.43 It was also pointed out to the committee that the Commonwealth – through the Governor-General – retains a power to disallow or override territory legislation. This power is contained in the territories' self-government legislation.[49]

3.44 The former NT Chief Minister, Mr Marshall Perron, argued that 'these procedures obviate the need for the Euthanasia Laws Act'.[50] Mr Perron further told the committee that this power was not exercised at the time of the NT RTI Act:

> …an approach was made to the Prime Minister of the day, Prime Minister Keating, to use exactly those powers and refuse assent to the Northern Territory's legislation through the Governor-General. To his credit, the Prime Minister is on record as saying, in rejecting the approach, that this was a matter for the Territory, not the Commonwealth. That is where I believe the matter should have rested.[51]

3.45 The ACT Attorney-General went further, suggesting that these disallowance powers were also inappropriate, and that the ACT's Self-Government Act 'should be amended to remove the power of the Commonwealth executive to recommend the disallowance of territory laws'.[52]

Issues with territory legislatures

3.46 Many submitters who opposed the Bill suggested that territory legislatures should not be able to legislate on issues such as euthanasia because they are only small legislatures with no upper house of review.[53] For example, the Australian Christian Lobby (ACL) submitted that:

> The territory legislatures are small assemblies with no upper house of review and very few members (17 members in the ACT and 25 in the NT). In the ACT just nine politicians form a government on behalf of 300,000 people. In the Northern Territory's case, a small territory with the population of a suburban council district in Melbourne or Sydney passed the euthanasia law by one vote.
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> Such small legislatures with no upper house should not be given the power to make decisions on a life and death issue such as euthanasia which would

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49 Law Council of Australia, *Submission 442*, p. 3; and see, for example, s.9 of the *Northern Territory Self-Government Act 1978* (Cth).

50 *Submission 393*, p. 1.

51 *Committee Hansard*, 14 April 2008, p. 19.

52 *Committee Hansard*, 16 April 2008, p. 21.

53 See, for example, Mrs Nita Woodward, *Submission 117*, p. 1; Festival of Light Australia, *Submission 361*, p. 9; Darwin Christian Ministers' Association, *Submission 376*, p. 3; ACL, *Submission 422*, p. 4; Right to Life Australia, *Submission 441*, p. 3; Life, Marriage and Family Centre, Catholic Archdiocese of Sydney, *Submission 360*, p. 5 and Mr Christopher Meney, *Committee Hansard*, 16 April 2008, pp 30-31; Dr David van Gend, *Submission 413*, p. 2.

> radically change the social air we all breathe by severely undermining the protection of life.[54]

3.47 Dr David van Gend, a Senior Lecturer in Palliative Medicine at the University of Queensland,[55] in his personal submission, agreed:

> The Bill before the Committee lacks any sense of 'legislative proportion' in that it would allow a tiny Territory legislature to pass a radical law that no State legislature sees fit to pass.
>
> A legislature which lacks the checks and balances of a house of review, with a constituency comparable to the Toowoomba Regional Council, is not a substantial enough vehicle to carry such weighty legislation.
>
> The existing Federal legislation is not obstructing the valid expression of the will of the Australian people on euthanasia – State parliaments are free to consider euthanasia, which they do from time to time, and wisely they continue to reject it. But a matter of such magnitude, being so radical a departure from settled law, cannot validly be introduced by a subsidiary legislature representing only 1% of the nation.[56]

3.48 Dr van Gend clarified this point further during the committee's hearing in Darwin:

> …it is not casting any aspersions on the professionalism or the responsibility of those people who live in the Northern Territory and occupy its legislature. It is simply to say that it is good that at least that legislature cannot make euthanasia laws, and wouldn't it be nice if all legislatures could not.[57]

3.49 In the same vein, Father Frank Brennan suggested that the territories should not be given legislative power in relation to the issue of euthanasia 'unless and until a state parliament in Australia has so legislated'.[58] Father Brennan told the committee that:

> …given that the society we have is a national society, it is wrong for these small legislatures to view themselves as social laboratories for trying different sorts of moral and social answers which are out of kilter with those of the states generally.[59]

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54 *Submission 422*, p. 4; see also Mrs Lois Fong, ACL, *Committee Hansard*, 14 April 2008, p. 8.

55 Also a member of the Medical Advisory Board, Toowoomba Regional Hospice and Queensland secretary for "TRUST: Palliative Care, not Euthanasia".

56 *Submission 413*, p. 2.

57 *Committee Hansard*, 14 April 2008, p. 13.

58 *Committee Hansard*, 16 April 2008, p. 10 and pp 12-13; see also Mr Christopher Meney, Life, Marriage and Family Centre, Catholic Archdiocese of Sydney, *Committee Hansard*, 16 April 2008, p. 31.

59 *Committee Hansard*, 16 April 2008, p. 12.

3.50 Others disputed the criticisms of territory legislatures. In response to these suggestions, the ACT Attorney-General stated that:

> The ACT does not view itself as a social laboratory, but I think it is fair to say the ACT does consider itself to be a progressive jurisdiction. Whether it has been a Labor or a Liberal administration, it has always tended to be more progressive on a range of social policy matters.[60]

3.51 The ACT Attorney-General continued:

> …one of the strengths of the federation model [is] that states and territories are able to legislate to meet the needs of their particular jurisdiction. The difficulty we have is that we are limited in what we can do in a number of areas—particularly as it relates to euthanasia…[61]

3.52 Professor George Williams, Anthony Mason Professor and Foundation Director of the Gilbert and Tobin Centre also observed:

> …there is a link between the quality of governance and the size of legislatures, but…[o]nce you get below a size of 150 or so, frankly, it does not make much difference in terms of how the legislature operates. For that reason, I do not think that the size of the legislature there casts any doubt upon their capacity for self-governance. In the same way, I would not cast any doubt on the capacity to govern of the Tasmanian parliament, another very small parliament by Australian standards.[62]

3.53 Similarly, The Hon Austin Asche, of the Northern Territory Law Reform Committee pointed out that if the size of the legislature or a jurisdiction's population became a reason to query the legitimacy of a legislature, then:

> …the Tasmanians ought to be starting to feel very uncomfortable, because there are only 400,000 or so of them. If you do grant self-government to a series of bodies, then you allow them to determine themselves within their own province...If you say that the citizens of the Territory are immature—and that means that perhaps the citizens of Tasmania are just slightly more mature and the citizens of South Australia perhaps a little bit more mature—by all means do so, but that means that you should not be passing self-government acts.[63]

3.54 As to the absence of a house of review, it was noted that other jurisdictions, including Queensland, also have a unicameral legislature. As Professor Williams told the committee:

> …if we took the absence of a house of review as being bad then Queensland is in a difficult position, because it only has one tier of

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60 *Committee Hansard*, 16 April 2008, p. 23.

61 *Committee Hansard*, 16 April 2008, p. 23.

62 *Committee Hansard*, 16 April 2008, pp 4-5.

63 *Committee Hansard*, 14 April 2008, p. 47.

> government. Equally, you can look, for example, at the United Kingdom. It has the House of Lords, but that house does not have full powers of review. In Canada, their upper house is an appointed upper house and certainly does not operate as an effective house of review. In fact, the Senate is a very unusual chamber by world standards in operating as a house of review...Clearly, the Northern Territory Legislative Assembly—and the ACT Legislative Assembly—is elected by democratic means after fair and free elections. It is a proper representative body of the people.[64]

3.55 The Hon Austin Asche further pointed out to the committee that the power of the NT Legislative Assembly to pass the RTI Act, had been challenged and upheld in the courts, and that this was the proper way to overturn any territory laws.[65]

National interest – national approach?

3.56 Others opposed to the Bill argued that it was in the national interest for the Federal Parliament to override the NT's RTI Act. As Father Frank Brennan put it: 'state and territory rights are not necessarily trumps at the federal card table when an issue affects the national ethos'.[66]

3.57 A key argument against the Bill, and in favour of the Euthanasia Act, was that it was appropriate for the Commonwealth to use its power because the NT RTI Act had implications for the whole of Australia. In particular, the impact of the RTI Act extended outside the NT, since there was no requirement in the NT legislation for a person requesting euthanasia to be a NT resident. Therefore, patients could travel from other parts of Australia to the NT to use the RTI Act and interstate medical specialists could have a role under the Act.[67] For example, Dr David van Gend was concerned that:

> …the nation will be affected by such a law: euthanasia under the ROTI [RTI] Act has no residency test, and would be open to the entire Australian population.[68]

3.58 As Dr David Leaf, a medical practitioner, told the committee:

> I think we all realise that if voluntary euthanasia becomes legal in the Northern Territory then it is not just going to be Territorians who seek it—

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64 *Committee Hansard*, 16 April 2008, p. 5; see also The Hon Austin Asche, Northern Territory Law Reform Committee, *Committee Hansard*, 14 April 2008, p. 49 and Law Council, *Submission 442*, p. 5.

65 *Committee Hansard*, 14 April 2008, p. 46; see also Northern Territory Law Reform Committee, *Submission 443*, pp 2-3; and discussion in Chapter 2 of this report.

66 *Submission 428*, Attachment, p. 2.

67 See further 1997 Euthanasia Inquiry, p. 14; The Hon Daryl Manzie, *Committee Hansard*, 14 April 2008, p. 21; Dr David van Gend, ACL, *Committee Hansard*, 14 April 2008, p. 13; National Civic Council, *Submission 417*, p. 3.

68 *Submission 413*, p. 2.

> unless there is a provision saying that people must live there for a period of time.[69]

3.59 However, as The Hon Daryl Manzie, a former NT Minister and member of the NT Legislative Assembly at the time the NT RTI Act was passed, pointed out to the committee:

> We are not talking about first of all forcing people to travel. It is up to them to make a decision that they are going to travel to seek laws in the sorts of jurisdictions where they can see doctors about dying comfortably. Once they reach the Northern Territory, it is still a choice process.[70]

3.60 Others felt that the issue of euthanasia was intrinsically an issue of national interest, due to its moral and social aspects. For example, the Darwin Christian Ministers' Association argued that it was 'imperative' that the Commonwealth use its power 'to protect the people of Australia and the value and dignity of human life in keeping with international conventions'.[71]

3.61 Although some considered euthanasia to be an issue of national interest, and were concerned about 'euthanasia tourism' to the NT, others noted that the issue of euthanasia no longer stops at Australia's borders because Australians are now travelling overseas to obtain euthanasia.[72]

3.62 Nevertheless, several submissions – those expressing views both for and against the Bill – suggested that if the Commonwealth wished to enact laws on the topic of euthanasia, it should take a consistent national approach that applies to all states and territories.[73] For example, the Law Council expressed the view that:

> If the Commonwealth Parliament believed that euthanasia was an appropriate subject for Commonwealth legislation then it should have explored ways that the Commonwealth could have passed laws of national application, rather than singling-out the Territories.[74]

3.63 Similarly, Mr Gerry Wood MLA, Independent Member for Nelson in the NT, in opposing the Bill, submitted that:

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69 *Committee Hansard*, 16 April 2008, p. 19.

70 *Committee Hansard*, 14 April 2008, p. 21.

71 Darwin Christian Ministers' Association, *Submission 376*, p. 3; see also, for example, Festival of Light Australia, *Submission 361*, p. 9; ACL, *Submission 422*, p. 4; Dr David van Gend, *Submission 413*, p. 2; Father Frank Brennan, *Submission 428*, p. 1.

72 See, for example, Dr Philip Nitschke, *Submission 390*, pp 2-3.

73 See, for example, Mr Geoff Bolton, *Submission 101*, p. 1; ALP (ACT Branch), *Submission 415*, p. 2; Darwin Christian Ministers' Association, *Submission 376*, p. 4; Mr Gerry Wood MLA, *Submission 453*, p. 2.

74 *Submission 442*, p. 5; see also Professor George Williams, Gilbert and Tobin Centre, *Committee Hansard*, 16 April 2008, p. 6.

> If Mr Brown believes that euthanasia should be legal in Australia then he should argue for it to be legal all over Australia and pass Commonwealth laws to match. By asking the NT to carry the can if this bill…is passed would mean that the Territory (pop. 205 000) would be the centre for those wanting to use euthanasia to end their lives…The NT would become the guinea pig in this debate as it was in 1995.[75]

3.64 However, the committee notes that it is not clear whether the Commonwealth has the constitutional power to pass a national law to prohibit or permit euthanasia.[76] The committee received evidence that it might be possible, for example, for the Commonwealth to use its external affairs power to legislate to prohibit euthanasia based on Australian's international human rights obligations. Other suggestions included the corporations power, the implied nationhood power, and the appropriations power.[77] As Professor George Williams from the Gilbert and Tobin Centre told the committee:

> It [the Commonwealth] is not shy of intervening in a range of matters where it wishes to or of using the full ambit of its financial and other powers. Given the capacity and ability it has shown in other areas, I would be very surprised if the Commonwealth could not get its way on a topic like this if it so wished.[78]

Drafting issues

3.65 A number of drafting issues were also raised in relation to the Bill during the committee's inquiry. In particular, the NT Government submitted that 'the Bill is poorly drafted and does not provide a sufficiently clear and express indication of intention'.[79] The following issues will be considered in this section:

- whether the NT RTI Act can be revived;
- whether the Bill should repeal the Euthanasia Act or whether the amendments to the territories self-government legislation made by the Euthanasia Act should be expressly removed from that legislation; and
- whether clause 3 of the Bill is misleading.

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75 *Submission 453*, p. 2.

76 This issue was also canvassed during the 1997 Euthanasia Inquiry: see pp 22-24.

77 Law Council of Australia, *Submission 442*, p. 5; Professor George Williams, *Committee Hansard*, 16 April 2008, p. 6; Sydney Centre for International Law, *Submission 421*, p. 4. See also 1997 Euthanasia Inquiry at paragraph 3.45; and Natasha Cica, "Constitutional Arguments Against Removing the Territories' Powers to Make Laws Permitting Euthanasia", *Parliamentary Library Research Note 33 1996-97,* Argument 6.

78 *Committee Hansard*, 16 April 2008, p. 6.

79 *Submission 446*, p. 3.

Can the RTI Act be revived?

3.66 Item 2 of Schedule 1 of the Bill aims to restore the NT RTI Act. However, submissions expressed doubt as to whether the NT RTI Act could in fact be reinstated by the Bill. For example, the Gilbert and Tobin Centre observed that:

> …there is significant judicial and academic opinion which suggests that laws made by territory legislatures are not merely suspended or dormant for the duration of any inconsistent Commonwealth law and then enter back into force upon its removal…[80]

3.67 The Centre concluded that:

> In short, there are strong grounds for suggesting that item 2 of Schedule 1 is insufficient to revive the *Rights of the Terminally Ill Act 1995* (NT). The rights of individuals and interests at stake are too important to allow uncertainty on this score. The Northern Territory's Legislative Assembly should be advised to re-enact the 1995 legislation if it wishes to do so in order to ensure it is valid and operative after the Commonwealth Parliament passes this bill.[81]

3.68 Similarly, the NT Law Reform Committee submitted that:

> The argument could be made that the repugnancy of the Territory Act to the federal *Euthanasia Laws Act 1997* (Cth) whilst it was in force, had the effect of rendering the Territory Act null and void. It would not have been held in mere suspension pending the repeal of the Commonwealth statute.[82]

3.69 On the other hand, the NT Law Reform Committee raised a concern that:

> …Item 2 has the potential to provide the basis for an argument that the [NT RTI] Act would be invested with a Federal character that it did not possess prior to the commencement of the *Euthanasia Laws Act 1997* (Cth) or would not possess following the mere repeal of that Act. There is a real danger of the Act becoming entrenched and thus leaving the Assembly powerless to amend or repeal it, should it want to do so once the Bill becomes law. Item 2 of the Schedule should therefore be removed.[83]

3.70 As the NT Government pointed out 'this is not a subject matter that sits well with legal uncertainty and confusion'. Indeed, it noted that, if the Bill were passed in its current form:

> Serious consequences would flow if someone relied on the protections provided by the [Northern] Territory's *Rights of the Terminally Ill Act*, only

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80 *Submission 46*, p. 2.

81 *Submission 46*, p. 2.

82 *Submission 443*, p. 3.

83 *Submission 443*, p. 3; see also Mr Nikolai Christrup, NT Law Reform Committee, *Committee Hansard*, 14 April 2008, p. 49.

> to find after the event that in fact the Act had not been revived. It would clearly be imprudent to act on the basis that the Territory legislation had been revived by the provisions of the current Bill.[84]

3.71 Professor George Williams of the Gilbert and Tobin Centre told the committee that the Bill should be amended to repeal the limitation in the self-government acts. This would ensure that the territories retain the ability to legislate in the future on the topic of euthanasia. Professor Williams explained that:

> That would mean that, instead of the Northern Territory law being revived, the Legislative Assembly there and in the other territories would be able to pass a new law, should they so wish. I think that is appropriate given the principles of democracy involved, given the time that has elapsed and also given the constitutional issues [rather] than to attempt to revive something that may not be possible to do and it would certainly be inappropriate to leave practitioners and others in a situation where they may be unclear as to the legality of their actions.[85]

3.72 The NT Law Reform Committee agreed that the Bill should:

> …leave it to the Northern Territory Legislative Assembly as a mature legislature to decide whether to re-enact (so as to remove any doubt regarding its validity) or repeal the Act. The decision whether the Act should again come into operation properly belongs to the Territory Assembly not the Commonwealth Parliament.[86]

3.73 Indeed, a representative of the NT Government told the committee that:

> The Territory has doubts as to the legal capacity of reviving an act that has been spent and dormant for over 10 years and, in any event, the Territory is of the view that it is inappropriate through this bill to have the legislation involuntarily re-imposed on us. If the Northern Territory's legislative capacity was restored, it would review its position in regard to euthanasia before deciding whether to amend the old [A]ct or to make new laws in future.[87]

Repeal of the Euthanasia Act

3.74 Another concern raised by the NT Government related to item 1 of Schedule 1 of the Bill. As outlined in Chapter 2, item 1 proposes to repeal the Euthanasia Act, which in turn amended the territories' self-government legislation to insert provisions

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84 *Submission 446*, p. 4; see also Professor George Williams, Gilbert and Tobin Centre, *Committee Hansard*, 16 April 2008, pp 2-4; and NT Government, *Committee Hansard*, 14 April 2008, p. 2.

85 *Committee Hansard*, 14 April 2008, p. 2; see also Gilbert and Tobin Centre, *Answer to Question on Notice*, received 6 May 2008, p. 2 for a suggested amended version of the Bill.

86 *Submission 443*, p. 3; see also Law Council, *Submission 442*, pp 8-9.

87 *Committee Hansard*, 14 April 2008, p. 2.

removing the power of their legislative assemblies to enact laws permitting euthanasia.[88]

3.75 The NT Government submitted that it had legal advice to indicate that, by repealing the Euthanasia Act, the Bill's intention was to repeal section 50A of the *Northern Territory (Self-Government) Act 1978* (Cth). This in turn would remove the restriction on the NT's future capacity to legislate in regard to euthanasia. However, the NT Government noted that:

> This advice relies on an interpretation of the intent of the bill and s.8 of the *Acts Interpretation Act 1901* (Cth), which provides that where an Act repeals a former Act, then unless a contrary intention appears, the repeal does not revive anything not in force or existing at the time when the repeal takes effect.[89]

3.76 As a representative of the NT Government told the committee:

> The intention of the bill would appear to be that section 50A of the Northern Territory (Self-Government) Act is to be repealed. But the bill does not say that directly or explicitly. It goes about the matter in a somewhat roundabout way. To get to the outcome that section 50A of the Northern Territory (Self-Government) Act is repealed, you have to come to a view as to the intention of the proposed legislation and then you have to have a legal interpretation of the Commonwealth Acts Interpretation Act to determine the outcome. Why the proposed legislation cannot simply say, 'Section 50A of the Northern Territory (Self-Government) Act is hereby repealed,' is beyond us.[90]

3.77 In response to the committee's questions on this issue, the Hon Austin Asche agreed that there was some uncertainty in the drafting of the Bill.[91] In a subsequent answer to a question on notice, the NT Law Reform Committee stated that:

> …there cannot be any real argument against the proposition that the repeal of the 1997 [Euthanasia] Act will have the effect of removing section 50A of the Northern Territory Self-Government Act 1978 (Cth), notwithstanding the absence of a provision expressly repealing section 50A.[92]

3.78 The NT Law Reform Committee elaborated on this:

> …the conclusion that section 50A and its counterparts are removed from the Self-Government Acts by the repeal of the 1997 Act is inescapable. What other effect could its repeal have? The express repeal of those

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88 *Northern Territory (Self-Government) Act 1978*, s.50A; *Australian Capital Territory (Self-Government) Act 1988*, s.23; and *Norfolk Island Act 1979*, s.19.

89 *Submission 446*, p. 3.

90 *Committee Hansard*, 14 April 2008, p. 2.

91 *Committee Hansard*, 14 April 2008, p. 46.

92 *Answer to Question on Notice*, received 6 May 2008, p. 1.

> provisions, when coupled with the repeal of the 1997 Act, would be superfluous no doubt, but could also give credence to an argument that something less than the complete repeal of the 1997 Act was intended.[93]

3.79 Nevertheless, the committee notes again the evidence of the NT Government that 'this is not a subject matter that sits well with legal uncertainty and confusion' and that the Bill 'does not provide a sufficiently clear and express indication of intention; relying as it does on a series of implied consequences'.[94]

Wording of clause 3 of the Bill

3.80 A final drafting issue related to the wording of the objects clause, in clause 3 of the Bill, which states:

> The object of this Act is, in recognising the rights of the people of the Australian Capital Territory, the Northern Territory and Norfolk Island to make laws for the peace, order and good government of their territories, including the right to legislate for the terminally ill, to repeal the Euthanasia Laws Act 1997 which removed that right.

3.81 Several submissions took issue with this clause. For example, the ACL submitted that this clause was misleading because 'the territories can already legislate on behalf of the terminally ill: they simply cannot legislate for euthanasia'.[95] The ACL pointed out that, although the Euthanasia Act removed the power of the three territories to enact laws which permit euthanasia, it does provide each legislative assembly with the power to make laws with respect to other matters which could be characterised as laws for the 'terminally ill'. For example, the territory legislative assemblies may make laws with respect to the 'withdrawal or withholding of medical or surgical measures for prolonging the life of a patient but not so as to permit the intentional killing of the patient'.[96] The committee was also told that the NT does have a *Natural Death Act 1988* which allows people to withdraw from medical treatment.[97]

3.82 The final point in relation to clause 3 was made by Father Frank Brennan, who pointed out that it is the *legislative assemblies* that have the power to 'make laws

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93 *Answer to Question on Notice*, received 6 May 2008, p. 2.

94 *Submission 446*, pp 3 and 4; see also Professor George Williams, Gilbert and Tobin Centre, *Committee Hansard*, 16 April 2008, p. 4.

95 *Submission 422*, p. 6; see also Rita Joseph, *Submission 371*, p. 2; Darwin Christian Ministers' Association, *Submission* 376, p. 3.

96 *Northern Territory (Self-Government) Act 1978*, paragraph 50A(2)(a).

97 *Natural Death Act 1988*, sections 4 and 6; see also, for example, Darwin Christian Ministers' Association, *Submission 376*, p. 3; Dr Mark Boughey, *Committee Hansard*, 14 April 2008, p. 42; Associate Professor Cameron Stewart, *Submission 729*, p. 6.

for the peace, order and good government' of their territories, rather than the *people* as stated in clause 3 of the Bill.[98]

Other issues

Impact of Euthanasia Act in particular jurisdictions

3.83 Some submissions were concerned about the particular impact of the Bill and/or the Euthanasia Act in certain jurisdictions. For example, some submissions were concerned about the impact of the Bill and the Euthanasia Act on proposals for the NT to become a state.[99] Indeed, the NT Government suggested that the Bill be replaced by a Bill granting statehood to the Northern Territory.[100] Others were anxious about the impact of euthanasia legislation on the Indigenous community in the Northern Territory – this issue is considered further in Chapter 4 of this report.

3.84 In relation to the ACT, the Gilbert and Tobin Centre was concerned that the Euthanasia Act could have a 'serious long-term impact' on the ACT. This was because, as the seat of federal government under the Constitution, 'unlike the Northern Territory, [the ACT] appears unable ever to escape the affects of the Act because it cannot become a State'.[101]

3.85 As outlined earlier, the ACT Government supported the Bill, noting that:

> The removal of [sub]sections 23(1A) and (1B) of the *Australian Capital Territory (Self-Government) Act 1988* does not necessarily mean that the elected representatives of the Australian Capital Territory would immediately move to enact euthanasia laws. It would simply enable the people of the Australian Capital Territory to determine their own path in relation to this issue. That is the democratic way.[102]

Issues relating to the RTI Act (NT)

3.86 Several submissions suggested that, in any case, the Bill should not revive the RTI Act due to concerns in relation to the content and adequacy of that legislation. For example, Father Frank Brennan told the committee 'if we wanted to design a good

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98 *Committee Hansard*, 16 April 2008, p. 9; see, for example, subsection 22(1) of the *Australian Capital Territory (Self-Government) Act 1988* (Cth).

99 Despite an unsuccessful referendum on statehood held in the NT in October 1998, proposals are still on foot. In 2004 a NT Statehood Steering Committee was established to assist with the 'development of a new Territory constitution and with promoting statehood education and awareness': see further Dr Nicholas Horne, "Northern Territory statehood: major constitutional issues", *Parliamentary Library Research Paper*, 15 February 2008, no. 21 2007-08.

100 *Submission 446*, p. 4.

101 *Submission 46*, p. 1 cf Festival of Light Australia, *Submission 361*, p. 9.

102 *Submission 471*, p. 2.

euthanasia law we would not simply repeat the Rights of the Terminally Ill Act'.[103] There was also considerable debate during the committee's inquiry about the operation of the RTI Act while it was in force, and the circumstances of the deaths that did occur under the RTI Act.[104]

3.87 A key concern raised in relation to the provisions of the RTI Act was whether the safeguards contained in the RTI Act were adequate. For example, Dr Brian Pollard canvassed many potential problems with the provisions of the RTI Act, and queried whether Federal Parliament should restore legislation which it could not itself amend.[105] Some, as noted earlier, were particularly concerned about the lack of residency requirement in the RTI Act to prevent 'euthanasia tourism' to the NT.[106] However, others believed that the NT legislation's safeguards were adequate.[107]

International obligations

3.88 Another issue raised was whether the Bill and the RTI Act are compatible with Australia's international human rights obligations.[108] For example, in opposing the Bill, the ACL argued that 'this bill is totally incompatible with basic human rights as outlined by the United Nations and assented to by Australia'. Citing the *Universal*

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103 *Committee Hansard*, 16 April 2008, p. 11; see also Katrina George, University of Western Sydney, *Submission 398*, pp 1-24; Mr John Ryan, *Submission 409*, pp 4-7.

104 In this context, many witnesses and submissions referred to the following study: D.W. Kissane, A. Street, P. Nitschke, "Seven deaths in Darwin: case studies under the Rights of the Terminally Ill Act, Northern Territory, Australia", *The Lancet*, Vol. 352, October 3 1998, pp 1097-1102. See also Dr Philip Nitschke, *Committee Hansard*, 14 April 2008, pp 28-29 and *Submission 390A*; Dr David van Gend, *Committee Hansard*, 14 April 2008, pp 14-15; Professor David Kissane, *Submission 589*; Dr Brian Pollard, *Submission 47* and *Committee Hansard*, 16 April 2008, pp 26-27; ACL, *Submission 422*, p. 5; Festival of Light Australia, *Submission 361*, pp 2-4; Dr Mark Boughey, *Submission 592*, pp 1-3 and *Committee Hansard*, 14 April 2008, p. 38; Dr Alan Rothschild, *Submission 452*, pp 3-4.

105 *Submission 47*, p. 10; see also the NSW Council for Civil Liberties, who supported the Bill and the RTI Act, but made several suggestions for improvements to the RTI Act, which it believed 'might help to allay the fears of some of the RTI Act's critics': *Submission 418*, pp 5-6.

106 See, for example, Dr David van Gend, *Committee Hansard*, 14 April 2008, p. 13; National Civic Council, *Submission 417*, p. 3; Father Frank Brennan, *Committee Hansard*, 16 April 2008, p. 13.

107 See, for example, Associate Professor Cameron Stewart, *Submission 729*, p. 14; Australian Federation of AIDS Organisations, *Submission 400*, pp 2-3; Voluntary Euthanasia Society of Queensland, *Submission 431*, p. 1.

108 See, for example, ACL, *Submission 422,* p. 6; also Dr Brian Pollard, *Committee Hansard*, 16 April 2008, pp 24-25; Rita Joseph, *Submission 371*, pp 4-12; Mrs Lois Fong, *Submission 907*, pp 1-2 and *Committee Hansard*, 14 April 2008, p. 8; cf NSW Council for Civil Liberties, *Submission 418*, pp 2, 9; Sydney Centre for International Law, *Submission 421*. See also Human Rights and Equal Opportunity Commission (HREOC), *Submission 436* and their paper referred to in that submission: "Human Rights and Euthanasia", *Occasional Paper*, December 1996, available at: http://www.humanrights.gov.au/human_rights/euthanasia/index.html (accessed 5 May 2008).

Declaration of Human Rights and the *International Covenant on Civil and Political Rights* (ICCPR), the ACL submitted that:

> Like all human beings, people suffering terminal illness have the right to life and to the protection of the law against violation of this right. They also enjoy the right to medical care and social services. People also have the right to effective remedy against violations of these rights, 'notwithstanding that the violation has been committed by persons acting in an official capacity'.
>
> Finally, people are subject to limitations on their freedom by law but only for the purpose of 'securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a democratic society'.[109]

3.89 The Sydney Centre for International Law also considered whether the Bill is compatible with Australia's international law obligations, in particular the duty to protect the 'right to life' under article 6(1) of the ICCPR. The Centre concluded that:

> …the kind of euthanasia legalised by the *Rights of the Terminally Ill Act 1995* (NT) does not amount to an arbitrary deprivation of life under article 6(1). It is accordingly within the Commonwealth Parliament's power in fulfiling its duty to safeguard against the arbitrary deprivation of life to effectively reinstate the *Rights of the Terminally Ill Act 1995* (NT).[110]

3.90 At the same time, the Centre suggested that the Commonwealth could consider enacting legislation to:

> …specify the minimum safeguards which would be necessary in order for Australia to comply with its obligation to protect the right to life. Such framework legislation could permit variation in State and Territory euthanasia laws as long as such laws remained above the floor laid by the federal legislation.
>
> In our view, the Commonwealth would possess the power to legislate even in respect of the States pursuant to the external affairs power in the Commonwealth Constitution, since such a law would be reasonably appropriate and adapted to fulfilling Australia's international treaty obligation to positively safeguard the right to life under article 6 of the ICCPR.[111]

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109 *Submission 422*, pp 6-7; see also Rita Joseph, *Submission 371*, pp 4-12.

110 *Submission 421*, p. 3; see also HREOC, *Submission 436*.

111 *Submission 421*, pp 3-4.