

STATEMENT BY THE CHAIR AND SENATORS KIRK AND MARSHALL

1.1 The Chair acknowledges that the Commonwealth clearly had the power under section 122 of the Constitution to override the NT RTI Act as it did in enacting the Euthanasia Act. However, the committee heard contrasting views on whether the enactment of the Euthanasia Act was an appropriate use of that power.

1.2 On the one hand, many argued persuasively that, in enacting the Euthanasia Act, the Commonwealth inappropriately interfered in the affairs of a democratically-elected self-governing territory, and that the Euthanasia Act effectively discriminates against territories and territory citizens compared to states and state citizens.

1.3 At the same time, the committee heard strong evidence that the Commonwealth was justified in enacting the Euthanasia Act, given the nature of the subject matter, and that the self-government powers of territories are derived from the Commonwealth itself.

1.4 The Chair notes with particular concern the evidence that, at the time of the enactment of the Euthanasia Act, there was little or no exploration of the possibility of a national approach to the issue of voluntary euthanasia – that is, legislation which applies equally to both states and territories.

1.5 Indeed, the Chair is concerned that the Commonwealth's approach to territories in the past has been somewhat inconsistent and even ad-hoc, depending on the particular issue in question. Rather than singling out territories for different treatment, the Chair agrees with evidence that in the future the Commonwealth should either take a national approach to such issues, or alternatively to leave such issues as matters for each state and territory to decide for themselves. At the very least, if the Commonwealth is to intervene in territory matters in the future, there should be some consideration of objective criteria to ensure greater consistency in the use of Commonwealth power to overrule territory legislation. However, in respect of the Commonwealth's approach to the Northern Territory, the Chair supports the position of the Northern Territory Government outlined in their submission:

To provide certainty in regard to the future legislative capacity of the Northern Territory generally, the Territory is of the firm view that the current Bill should not proceed, and instead be replaced by a Bill granting Statehood to the Northern Territory.¹

1.6 The Chair therefore considers that the Bill should be amended in three key ways:

1 *Submission 446*, p. 4.

1. item 2 of Schedule 1 should be deleted and replaced with an item which specifically provides that the *Rights of the Terminally Ill Act 1995* (NT) is NOT revived by the Bill;
2. a provision be included expressly removing section 50A from the *Northern Territory (Self-Government) Act 1978* and equivalent provisions from ACT and Norfolk Island self-government legislation (rather than merely repealing the Euthanasia Act); and
3. clause 3 of the Bill should be amended to accurately reflect the legal position of the powers of territory legislative assemblies.

1.7 The first amendment would be necessary due to the apparent uncertainty as to whether or not the Bill is able to revive the NT RTI Act, which is the aim of item 2 of Schedule 1. The Chair considers that, in any case, it is not appropriate to revive the NT legislation given that over 10 years have now elapsed since the passage of the Euthanasia Act. Rather, the revival or otherwise of the legislation should be left to the NT Government and the NT Legislative Assembly. If the Bill were to proceed, item 2 of Schedule 1 of the Bill should therefore be deleted and replaced with an item which specifically states that the NT RTI Act is NOT revived by the Bill.

1.8 In this context, the Chair notes concerns raised in relation to the operation and provisions of the NT RTI Act, particularly whether that legislation contains adequate safeguards. The Chair considers that this is a matter for the NT Legislative Assembly should it decide to re-enact that legislation (if it were to be given the opportunity through the enactment of an amended version of the Bill). Nevertheless, if the Bill passes, and the NT Government and Legislative Assembly were to reconsider the issue of legalising voluntary euthanasia, the Chair suggests that the NT Government and Legislative Assembly should be mindful of the concerns raised about the RTI Act during this inquiry.

1.9 The second proposed amendment reflects the view of the NT Government that the Bill should not just repeal the Euthanasia Act, but for the sake of clarity should also specifically remove:

- section 50A from the *Northern Territory (Self-Government) Act 1978* (Cth);
- subsections 23(1A) and (1B) from the *Australian Capital Territory (Self-Government) Act 1988* (Cth); and
- paragraph 19(2)(d) and subsection 19(2A) from the *Norfolk Island Act 1979* (Cth).

1.10 The last amendment would be necessary due to the misleading wording in clause 3, as discussed in Chapter 3 of this report. Re-drafting is required to ensure that clause 3 accurately reflects that the Bill and Euthanasia Act affect the powers of territory legislative assemblies (not the people of those territories) to make laws permitting voluntary euthanasia (as opposed to laws for the terminally ill).

1.11 The Chair does not intend to make any findings or recommendations as to whether Federal Parliament, or indeed, any other Australian parliament, should legislate either to prohibit or allow euthanasia. Rather, the Chair considers that this is a matter for parliament, and, if the issue of euthanasia is ever to be considered by the Federal Parliament, is an issue most appropriately left to a conscience vote.

Chair's Recommendation 1

1.12 The Chair recommends that the Bill proceed subject to the following amendments:

- (a) item 2 of Schedule 1 be deleted and replaced with an item which specifically provides that the *Rights of the Terminally Ill Act 1995* (NT) is NOT revived by the Bill;**
- (b) Schedule 1 be amended to include a provision expressly removing section 50A from the *Northern Territory (Self-Government) Act 1978* (Cth) and equivalent provisions from ACT and Norfolk Island self-government legislation (rather than merely repealing the *Euthanasia Laws Act 1997*); and**
- (c) clause 3 of the Bill be amended to accurately reflect the legal position of the powers of territory legislative assemblies by:**
 - deleting the word 'people' and replacing it with 'legislative assemblies'; and**
 - deleting the words 'terminally ill' and replacing them with 'voluntary euthanasia'.**

Senator Trish Crossin

Senator Linda Kirk

Chair

Senator Gavin Marshall

