

STATEMENT

BY LIBERAL SENATORS

1.1 Liberal Senators are deeply concerned about this Bill and consider that the Bill should not proceed under any circumstances. We are therefore unable to support the Chair's report, for the reasons discussed below.

Concerns with the drafting of the Bill and lack of consultation with NT Government

1.2 There are a number of drafting concerns with the Bill, as highlighted in Chapter 3 of the report. Liberal Senators consider that the evidence indicates that the Bill is inaccurate, unclear and creates considerable uncertainty about the status of the Northern Territory *Rights of the Terminally Ill Act 1995* (RTI Act) and of the powers of the territories' legislatures in relation to euthanasia.

1.3 We further consider that the amendments to the Bill put forward by the Chair would amend the Bill so substantially that it would bear little resemblance to the original legislation as introduced.

1.4 Liberal Senators are also concerned about the lack of consultation with the NT Government prior to the introduction of this Bill.¹ In particular, the Chief Minister of the Northern Territory, The Hon Paul Henderson has drawn attention to the lapse of time since the RTI Act was debated and the need for a fresh consideration of all the issues before it or any similar legislation should be enacted in the Northern Territory:

Mr Henderson says the make up of the Territory Parliament is different and palliative care has improved since the voluntary euthanasia legislation was enacted.

"Back in 1995 I was a supporter of euthanasia, but I have to say I haven't been in to the detail of how we provide palliative care, and all of the legal and ethical issues that are inherent in our society in 2008 as opposed to 1995," he said.²

Problems with RTI Act

1.5 Liberal Senators are particularly disturbed by evidence received during the committee's inquiry relating to the problems with the RTI Act itself. This included evidence about the operation of the RTI Act during the nine month period in which the Act was in effect. Of considerable concern is the study published in *The Lancet*,³

1 NT Government, *Committee Hansard*, 14 April 2008, p. 4.

2 "Brown's moves on NT euthanasia bill labelled arrogant", *ABC News*, 5 February 2008, at: www.abc.net.au/news/stories/2008/02/05/2155259.htm (accessed 16 June 2008).

3 Kissane, D.W., Street, A., Nitschke, P. "Seven deaths in Darwin: case studies under the Rights of the Terminally Ill Act, Northern Territory, Australia", *The Lancet*, Vol. 352, 3 October 1998, pp 1097-1102. See also Professor David Kissane, *Submission 589*.

which has as its principal author Professor David Kissane, a consultant psychiatrist and professor of palliative medicine. Dr Philip Nitschke is a co-author of the paper. Four people were assisted to terminate their lives by Dr Nitschke under the RTI Act. No other medical practitioner made use of the provisions of the Act to assist any other person to terminate his life.

1.6 *The Lancet* study, as well as evidence from Dr Nitschke himself during this inquiry,⁴ raises serious doubts about the effectiveness of the RTI Act in ensuring competent psychiatric assessments of patients before they were administered euthanasia. The previously undisclosed admission that Dr Nitschke personally paid the fee for the psychiatric assessment of one of the patients he euthanased⁵ gives rise to a serious concern about a potential conflict of interest.

1.7 Dr David van Gend summarised other problems with the administration of the RTI Act:

The four levels of medical safeguard that were built into the act were either diminished or blatantly violated, even in the few cases that occurred in 1996-97. My question to the committee is: if, in the early springtime of the law the regulations and safeguards were not met when these cases were under the full spotlight of public attention, what hope have we of safeguards being met for the 102nd death—not the second death?⁶

Aboriginal issues

1.8 We also have considerable concerns about the impact of the Bill, and any subsequent voluntary euthanasia legislation, on the Indigenous population in the NT, as discussed in Chapter 4 of the majority report. For example, the Aboriginal Resource and Development Services explained in its submission that laws permitting euthanasia were not compatible with traditional law.⁷ The committee also received a standard letter signed by several hundred Indigenous residents of the NT raising concerns about the revival of the RTI Act from an Indigenous perspective.⁸ Of particular concern is the evidence outlined in Chapter 4 explaining how the RTI Act poses a threat to Indigenous health.

Euthanasia tourism

1.9 Finally, if the RTI Act were to be revived, this would raise the possibility of euthanasia tourism to the NT. There is no residency requirement in the RTI Act, and it was apparent from evidence received during the committee's inquiry that the revival

4 *Committee Hansard*, 14 April 2008, pp 28-30.

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

6 *Committee Hansard*, 14 April 2008, pp 14-15.

7 *Submission 414*, p. 2.

8 *Submission 447*.

of the RTI Act would lead, as it did in 1996-97, to the provision of legalised euthanasia for all Australians, and indeed any person willing to travel to the NT. Of the four people killed in the NT under the provisions of the RTI Act when it was in effect from 1 July 1996 to 27 March 1997, two of the four people were not residents of the NT but went there from other parts of Australia to access legalised euthanasia.⁹ The committee also heard evidence that if the RTI Act was still in effect, Australians who are currently travelling overseas to obtain euthanasia would instead be travelling to Darwin.¹⁰

Problems with laws permitting euthanasia

1.10 Evidence was given that there is a majority international consensus – especially in the common law nations – that laws permitting euthanasia are intrinsically incompatible with the common good.

1.11 Father Frank Brennan summarised developments since 1997 as follows:

[W]hat has changed in 10 years? In terms of what has changed, if you look at the United States, Oregon is still the only state which has euthanasia. Since the Commonwealth exercise the US Supreme Court has said there is no right to euthanasia. Lord Joffe's United Kingdom legislation has gone down, and we have had very clear statements from the medical authorities in the United Kingdom and a quite eloquent submission here from the AMA. So it would seem to me that on balance nothing has changed or, if anything, the anti-euthanasia case is probably slightly strengthened if we look at developments in equivalent jurisdictions.¹¹

1.12 The Festival of Light Australia expanded on some of these developments, noting that 'on 12 May 2006 the House of Lords voted 148-100 against the Assisted Dying for the Terminally Ill Bill' and that 'from 1994 through 2007, no fewer than 89 legislative proposals in 22 states of the United States that would have legalized assisted suicide have failed'.¹²

1.13 Several submissions drew attention to problems in those jurisdictions where euthanasia (the Netherlands) or physician-assisted suicide (Oregon) is legalised. For example, the Festival of Light Australia pointed out that:

Since legalised euthanasia was introduced in the Netherlands, initially by court decision (1973) and subsequently by statute (2002), there is no doubt that there has been a rapid expansion of the categories of people considered eligible for physician administered death.

9 Dr Philip Nitschke, *Committee Hansard*, 14 April 2008, p. 25.

10 Dr Philip Nitschke, *Committee Hansard*, 14 April 2008, p. 25.

11 *Committee Hansard*, 16 April 2008, pp 9-10.

12 *Submission 361*, pp 5 and 7.

Children aged 16 and over can request euthanasia without parental agreement.

Children aged 12 to 16 can be killed by euthanasia if they request it and a parent agrees.

Children up to the age of 12, including newborns, may be killed by lethal injection with parental consent.

Psychiatric conditions such as depression or anorexia have been accepted as sufficient justification for requesting euthanasia.¹³

1.14 This submission also detailed problems with the administration of Oregon's Death With Dignity Act:

Complications arising from self-administration of medication, including vomiting, and one case of a person being unconscious for 65 hours and then waking up.

Possible coercion or undue influence by a family member on a woman with dementia to request physician assisted suicide.

Patients with a history of depression being prescribed lethal drugs without a psychiatric referral, which is optional under Oregon's law.

Oregon's Medicaid program funds an ever decreasing list of medical treatments while assisted suicide remains Medicaid funded.

Although Oregon's law limits physicians to prescribing lethal drugs to those whose life expectancy is six months or less official reports indicate that several of those who have taken lethal drugs prescribed under the law have done so more than six months after the drugs were prescribed.

Although Oregon's law requires at least 15 days between a patient's first request for a lethal prescription and the supply of the prescription official reports indicate that this condition is often breached.¹⁴

Legitimate role for the Commonwealth

1.15 Chapter 3 of the report discusses the queries raised during the committee's inquiry about the implications of international human rights law for laws permitting euthanasia.¹⁵ These comments highlight the proper role for the Commonwealth in considering any law permitting euthanasia passed by a state or territory legislature for its compatibility with Australia's international human rights obligations. As Professor George Williams of the Gilbert and Tobin Centre admits, there is some doubt about the Commonwealth's constitutional power to take such an action.¹⁶

13 *Submission 361*, p. 8.

14 *Submission 361*, pp 7-8.

15 See, for example, Rita Joseph, *Submission 371*, pp 4-12; ACL, *Submission 422*, p. 6; Dr Brian Pollard, *Committee Hansard*, 16 April 2008, pp 24-25; Sydney Centre for International Law, *Submission 421*; HREOC, *Submission 436*.

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

1.16 So far no state legislature has passed a law permitting euthanasia despite the fact that bills for laws permitting euthanasia have been introduced into several state legislatures so any Commonwealth action in this regard would be both premature and doubtful in its effect. Nonetheless if a state legislature does pass such a law, or appears likely to pass such a law, then it is open for the Commonwealth to explore all avenues to nullify such a law.

1.17 We also note that, at no time in 1997, and in no submission or evidence given to this current inquiry, has anyone raised any doubt whatsoever as to the validity of the *Euthanasia Act Laws Act 1997* as an exercise by the Commonwealth Parliament of the unrestricted power given to it by section 122 of the Constitution to 'make laws for the government of any territory'.

Recommendation 1

1.18 That the Bill should not proceed and the *Euthanasia Laws Act 1997* should remain in force.

Senator Guy Barnett
Deputy Chair

Senator Mary Jo Fisher

Senator Russell Trood

