

STATEMENT

BY SENATOR ANDREW BARTLETT

1.1 The debate and vote in the federal parliament on the *Euthanasia Laws Act 1997* (often known as the Andrews Bill) occurred just before I entered the Senate. As my term in the Senate expires on 30 June, I will also not be there if any future debate proceeds in the Senate on either some form of the Bill currently before the Committee, or on another Bill dealing with euthanasia issues. If and when such a debate does occur, it is appropriate that it be an informed conscience vote for all members of the Senate at that time.

1.2 However, as someone who has followed the debates on euthanasia closely for many years, and as a member of this Committee for its examination of the Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008 put forward by Senator Bob Brown, I feel obliged to express my opinion on the issue in this report.

1.3 There are two main arguments at the heart of the issue put before the Committee. Firstly, whether or not the Territories should have equal rights to the states in legislating on this matter. Secondly, whether laws allowing euthanasia in some form should be adopted.

Equal Rights for the Territories

1.4 I have a lot of sympathy for the view that people in the Territories in Australia should have the same rights in regards to self-government as Australians who live in the states. However, this ideal is not the constitutional reality. The federal parliament has the power to consider laws specific to the territory and should such a law be put before the federal parliament, the Senate has a responsibility to consider it.

1.5 As was made clear in the inquiry, euthanasia is not the only area where the rights of the Northern Territory to legislate as it sees fit is currently overridden by existing federal laws.

Senator BARTLETT— putting aside arguments for and against euthanasia for a minute. On the issue of the power of the federal parliament to override the territories—and I appreciate nobody ever likes to be overridden—my understanding is that currently, under the Northern Territory (Self-Government) Act, the federal parliament and federal laws override in areas of land rights and uranium.

Mr Manzie—And you left out one other issue—that is, two national parks out of the 102 national parks that are run by the Northern Territory.

Senator BARTLETT—Okay. I did not know that. Is it your view that ideally those exceptions would not exist either?

Mr Manzie—Most certainly, and I think without a doubt that the Territory parliament has proved over the years that it has the capacity to handle those issues, and that is something that I think does not need any further discussion from me.¹

1.6 Without commenting on how well or otherwise the Territory parliament has proved its capacity to handle those issues, the argument that it is wrong to prevent the Territory to legislate in regard to euthanasia does not hold water **unless** it is also proposed to remove the current federal laws in the area of Aboriginal Land Rights. Whilst Mr Manzie undoubtedly holds this view, I am not aware of any party in the federal parliament who currently proposes such a course of action. Indeed, in the same week as this Committee's report is tabled, the Senate debated and passed without dissent a Bill dealing with Land Rights issues.

1.7 I believe it would be better to have consistency at national level on euthanasia laws and believe consideration should be given to having constraints or future regulatory controls regarding euthanasia applying equally across the states and territories. But in the absence of such a proposed law being before the Parliament, one can only pass judgement on what is before the Senate, and there is no consistency in invoking the principle of equal rights for the Territory on euthanasia, but not in the area of Land Rights.

The principle of Euthanasia and the 'right to die'

1.8 As stated above, any proposed law must be a matter of an informed conscience vote for any future Senate which considers it. This inquiry was not comprehensive enough to deal fully with all facets of this very vexed issue.

1.9 I am supportive of the principle of people having the right to decide and control the manner and time of their own death, but am yet to be convinced that such a principle can be safely legislated for, without a genuine risk that more people who are vulnerable and powerless would be subjected to an at least partially unwilling early termination of their lives.

1.10 I fully accept there are grey areas that apply in the current laws which leave people in situations of extreme and unwelcome suffering. But whatever laws are in place will involve grey areas on one of the most fundamental and mysterious questions of human existence. Loosening the historic and almost absolute social prohibition on the deliberate killing of another person should not be done without extremely thorough debate and analysis across our entire society, not just the Parliament.

1.11 I am not convinced that adequate debate of that nature has occurred as yet. I believe it needs to occur. Bills such as that before the Committee are part of that

1 *Committee Hansard*, 14 April 2008, p. 22.

process and I would welcome any future proposed laws on euthanasia being put forward at national level to further facilitate such debate.

1.12 One of the reasons why I retain concerns is the loose use of 'rights' language in this area, with general terms such as 'the right to die' being used without much deep examination of what the full consequences might be should such a right become generally accepted. I am not necessarily opposed to the recognition of such a right, but it should not occur unless society fully understands and accepts what it could mean. As someone who has examined issues of depression and the factors behind suicide over many years, I am uneasy about the potential tangential impacts if our society were to accept a principle which is generally perceived as embodying a 'right to die' and a right to seek help in being able to die.

1.13 The evidence given to the inquiry by Dr Philip Nitschke in Darwin was very informative and he argued his position extremely well. He is consistent in how he approaches the principles in this area.

Senator BARTLETT—This is my final question, given the time: I am interested in the distinction between people who talk about a terminal illness or serious unrelievable suffering—they are usually thinking of a major disease of some sort—and other people regarding what I would call other types of suicide and the potential for people in those circumstances to still make what would in most respects be seen to be a rational decision: they just want to end their life. In terms of terminology like the rights of people to 'a lawful and peaceful death at the time of their choosing', do you think that sort of principle applies with regards to what are called other types of suicide?

Dr Nitschke—My personal position on this issue is one where I generally, by and large, think that adults of sound mind have the right to determine the time when they die. In some ways, our current legislation reflects that, because suicide itself is not a crime. With respect to the idea of whether or not the parliament of Australia—or, indeed, the parliament of the Northern Territory—can make laws which, in some way, allow a certain group of people within society to have access to what no-one else in society has, and that is access to help to die, I think we have to be quite careful here. Because, if we start opening it up to what is a much broader philosophical argument, we will start to find it almost impossible to legislate. I think legislation has to restrict itself to very specific categories. The Territory, in a very sound and safe way, did that. You have to put up the barriers. Clearly, there will be arguments at the edge.²

1.14 I believe the "arguments at the edge" still need to be had before the 'edge' in Australia is moved. Once it is moved, at the national level at least, it is unlikely to be moved back.

1.15 I do not believe the Bill before the Committee should proceed. I believe a debate around a possible legislative framework governing euthanasia should proceed at national level, and any changes to the laws in this area should apply consistently to all Australians.

Senator Andrew Bartlett

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