

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
QUESTIONS ON NOTICE  
AUSTRALIAN CHRISTIAN LOBBY

**Senator KIRK**—Thank you very much for your submission. I was interested that on page 4 of the submission by the Australian Christian Lobby there are quite a few statements which purport to make legal conclusions. I just wondered whether or not you received any legal advice in the preparation of your submission, particularly in relation to the constitutional and legal issues that present with the Commonwealth law vis-a-vis the 1995 NT law?

**Mrs Fong**—Can I follow up on that question?

**Senator KIRK**—You want to take it on notice; is that what you mean?

**Mrs Fong**—Yes.

ACL did not seek legal advice on the constitutional issues of Commonwealth versus Territory powers, which have been highlighted by euthanasia but does not accept that there are any legal conclusions drawn on page 4 of the submission. Rather an argument is made based on publicly acknowledged facts such as:

- The object of the current bill being to return the right to legislate on euthanasia to the territories, as part of their right to make laws for the peace, order and good government of the territories (a direct quote from the bill itself);
- The fact that the territories cannot currently legislate on euthanasia (a fact of history);
- The fact of the small size and unicameral composition of the territory legislatures (it is a matter of fact that there are 17 members in the ACT and 25 in the NT and that neither assembly has an upper house);
- The fact that the original NT euthanasia law passed the NT legislature by only one vote.

Such matters are undisputed facts. Based on these facts, ACL then argued that such small legislatures with no house of review should not be given the power to legislate on a matter as serious as euthanasia and, in the rest of our submission we sought to substantiate our belief that euthanasia laws did not further the 'peace, order and good governance' of any jurisdiction.

We do not agree that this constitutes drawing legal conclusions. Rather an argument is made based on undisputed facts of history.

**Dr van Gend**—Yes. I think there was a 2001 report. The original Rummelink reports showed a consistent figure around 1,000 of non-voluntary euthanasia—that is, where the patients had not given consent and were not in a position to do so. It was not against their will so much as that they were euthanased without them being in a position to give consent. As to whether it has changed, I am sorry; I do not have that paper with me. I could find it and take that question on notice.

**Senator BOB BROWN**—If you would, Dr van Gend, because it is very important for the committee that we understand that the figures you are giving for unpermitted ending of life by doctors were figures that pertained before the euthanasia legislation was brought in.

This question has been answered in detail by Dr David van Gend.

It is misleading to imply that euthanasia was prohibited in Holland until it was officially legalised in 2002. Parallels can be drawn with the current situation of abortion in Victoria, where abortion remains technically illegal unless carried out under the terms of the Menhennit Ruling, but is nonetheless widely practiced and can be usefully studied.

In 1984 the Dutch Medical Association (KNMG) ruled that performing euthanasia was ethically permissible provided certain criteria were met. The Ministry of Justice confirmed in 1985 that physicians who performed euthanasia using the KNMG's criteria and reported it to the coroner would not be prosecuted.

Prestigious international medical journals such as the *New England Journal of Medicine*, and *The Lancet* evidently believed that the Netherlands experience was yielding valuable

information on euthanasia as they published studies that had been conducted in Holland beginning in the early 1990s.

Given this history, it can be argued that the legalisation of voluntary euthanasia occurred in 1984 not 2002. It should also be noted that Holland has never legalised involuntary euthanasia. This was illegal prior to 2002 and illegal after 2002 but, disturbingly, it seems that it continues to be practiced in that country.

As Dr David van Gend has made clear in his response to the Committee, "On the question of unpermitted killing of patients by doctors – non-voluntary euthanasia – which had been running at about 900 - 1000 deaths per year in earlier studies, the evidence finds that legalisation of euthanasia in Holland in 2002 has not significantly reduced this disturbingly high figure."

Dr van Gend cites the following studies in support of his statement:

- Analysis of the 2005 data in Holland, in comparison to data for the decade prior to legalisation of intentional killing by doctors (in 2002), was published a year ago: van der Heide, A. et al. End-of-Life Practices in the Netherlands under the Euthanasia Act, *New England Journal of Medicine*, Vol. 356:1957-1965, May 10, 2007 and can be viewed at: <http://content.nejm.org/cgi/content/full/356/19/1957>
- Concerning unpermitted killings by doctors – that is, where there is no request from the patient for euthanasia - this study finds no significant change from previous years: "0.4% of all deaths were the result of the use of lethal drugs not at the explicit request of the patient; this percentage was not significantly different from those in previous years." (p 1960)
- For reference, the data for the earlier surveys, from 1991, 1995, 2001, is discussed in: Onwuteaka-Philipsen BD, van der Heide A, Koper D, et al. Euthanasia and other end-of-life decisions in the Netherlands in 1990, 1995, and 2001. *Lancet* 2003;362:395-399

**Dr van Gend**—The answer would be no, because of the same reasons I mentioned before—and not only because, as you stated, we would prefer that no state could legislate and that it retreated to the federal level. Granted that the states can legislate, leave it with the states and not with the Territory, because the states represent a very large proportion of the population and they have houses of review, on the whole. The Territory

is not a substantial enough vehicle to carry the weight of such momentous national legislation. That would be the point: remembering that it is national in its effect, even if it is only passed in the Territory.

**Senator MARSHALL**—Thank you.

**Senator BOB BROWN**—Dr Gawler, you might take these questions on notice. They will help the committee. You said that the Northern Territory health service had said that there was no great change in the approach to doctors or doctor treatments during the period during which the euthanasia legislation was potent here in the Territory. Did you mean no great change or no change at all? Could you provide the committee with any evidence that there was change and, if so, what it was? Secondly, there is anecdotal evidence that people left hospital. Can you provide the committee with any such anecdotal evidence which we might be able to put some substance to?

**Dr Gawler**—I would be happy to do that, Senator Brown.

These questions were addressed to, and have been answered by, Dr David Gawler of the Darwin Ministers' Fraternal.