

Senate Standing Committee on Legal and Constitutional Affairs: Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008*

Editor's note: In 1995 Commonwealth government stepped in and effectively repealed the radical Act passed by the Northern Territory Government which had legalised euthanasia in that Territory (*Rights of the Terminally Ill Act 1995*). The debate in the Commonwealth parliament at that time had been passionate and moving on both sides of the issue. Euthanasia remains one of the most controversial issues of public policy and personal morality.

For these reasons I have included in this edition of the journal an abbreviated, edited version of the 2008 Senate report on the Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008 (Bill), a bill introduced by Green's Senator Bob Brown which proposed to repeal the *Euthanasia Laws Act 1997* (Cth) and thereby allow the Northern Territory, the Australian Capital Territory and Norfolk Island to make legislation permitting voluntary euthanasia. For the full report with examples of many submissions and detailed closing statements from the members of the committee, please see www.aph.gov.au/SENATE/committee/legcon_ctte/terminally_ill/report/d03.pdf -

Chapter 1 — Introduction

Purpose of the Bill

1.1 On 12 March 2008, the Senate referred the Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008 (Bill) to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry and report by 1 May 2008. On 18 March 2008, the Senate agreed to extend the reporting date to 23 June 2008.

1.2 The Bill, a private senator's bill introduced by Senator Bob Brown, proposes to repeal the *Euthanasia Laws Act 1997* (Cth) and thereby allow the Northern Territory, the Australian Capital Territory and Norfolk Island to make legislation permitting voluntary euthanasia. It also proposes to revive the Northern Territory *Rights of the Terminally Ill Act 1995*.

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Chapter 2 — Overview of the Bill

2.1 Clause 3 of the Bill states that the object of the Bill 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.

2.2 Schedule 1 of the Bill contains two items. The first item would repeal the *Euthanasia Laws Act 1997* (Cth) (Euthanasia Act). The second item aims to restore the Northern Territory (NT) *Rights of the Terminally Ill Act 1995* (RTI Act), stating that:

To avoid doubt, the enactment of the Legislative Assembly of the Northern Territory called the *Rights of the Terminally Ill Act 1995* has the same effect after the commencement of this Act as it had before the commencement of the *Euthanasia Laws Act 1997*.

2.3 In his second reading speech, Senator Bob Brown explained that:

This is a Bill for an Act to repeal the *Euthanasia Laws Act 1997*, through which the national parliament overturned the Northern Territory *Rights of the Terminally Ill Act 1995*. It restores the legitimacy of the Northern Territory legislation ... [\[1\]](#)

2.4 Senator Brown also advanced several arguments in favour of the Bill:

Every opinion poll conducted over the last two decades has shown that approximately three-quarters of Australians support the concept of voluntary euthanasia ... A Newspann in February 2007 found that eighty percent Australians believe that terminally ill people should have a right to choose a medically assisted death.[\[2\]](#)

2.5 He further pointed out that:

In the decade since the Euthanasia Laws Act was introduced here, the legal right to die with dignity has been available to the citizens of The Netherlands, Belgium, Oregon in the United States, Israel and Albania. In Switzerland, assisted suicide has been legal since 1918.[\[3\]](#)

Background to the Bill

Rights of the Terminally Ill Act 1995 (NT)

2.6 In May 1995, the NT Legislative Assembly enacted the RTI Act. The RTI Act came into force on 1 July 1996.[\[4\]](#) The Act allowed a doctor, in defined circumstances, to comply with a request from a patient that the doctor assist the patient to end his or her own life. The RTI Act set out certain criteria to be met before such assistance could be provided. These included, for example, that the patient must be at least 18 years old; two medical practitioners must be of the opinion that the patient is suffering from a terminal illness; and a qualified

psychiatrist must certify that the patient is mentally competent to elect euthanasia.^[5] Between August 1996 and March 1997, four patients made use of the RTI Act to end their lives.^[6]

2.7 The RTI Act was challenged in the NT Supreme Court in 1996.^[7] This challenge queried, among other matters, whether the NT Legislative Assembly had the power to enact the RTI Act. A majority of the Full Court of the NT Supreme Court held that the NT Legislative Assembly had the power and that the RTI Act was a valid law of the NT. An appeal was lodged with the High Court, but this was adjourned until parliament had completed its consideration of the Euthanasia Laws Bill 1996. ^[8] As a result of the enactment of the Euthanasia Act, no further action was taken.^[9]

2.8 In September 1996, Mr (as he then was) Kevin Andrews, Member for Menzies in the House of Representatives, introduced the Euthanasia Laws Bill 1996 as a private member's bill. The main purpose of that bill was to overturn the NT RTI Act by amending the self-government legislation of the NT to remove the power of the NT Legislative Assembly to make legislation permitting euthanasia.^[10]

2.9 The Euthanasia Laws Bill 1996 was considered by the then Senate Legal and Constitutional Legislation Committee (1997 Euthanasia Inquiry).^[11] That inquiry generated considerable interest, and received over 12,000 submissions. An analysis of the submissions received by that inquiry indicated that 93% were in favour of the Bill and/or opposed to euthanasia. However, the majority of that committee made no recommendation to the Senate on the Euthanasia Laws Bill 'because it is a private member's Bill and is subject to a 'conscience vote''.^[12] The Euthanasia Laws Bill 1996 was subsequently passed by the Federal Parliament, and the Euthanasia Act came into force on 27 March 1997.

The Euthanasia Act

2.10 The Euthanasia Act amended the *Northern Territory (Self-Government) Act 1978* (Cth); the *Australian Capital Territory (Self-Government) Act 1988* (Cth) and the *Norfolk Island Act 1979* (Cth). The Euthanasia Act removed the power under the Self-Government Acts of the three territories to enact laws:

... which permit or have the effect of permitting (whether subject to conditions or not) the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her life.^[13]

2.11 The Euthanasia Act provides that each Legislative Assembly does have the power to make laws with respect to:

- a. 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;

- b. medical treatment in the provision of palliative care to a dying patient, but not so as to permit the intentional killing of the patient;
- c. the appointment of an agent by a patient who is authorised to make decisions about the withdrawal or withholding of treatment; and
- d. the repealing of legal sanctions against attempted suicide.[\[14\]](#)

2.12 The Euthanasia Act also contains a clause that specifically provides that the NT's RTI Act 'has no force or effect as a law of the Territory'.[\[15\]](#)

2.13 The Euthanasia Act does not define the terminology it uses.

Terminology

2.15 For the purposes of this inquiry, as with the 1997 Euthanasia Inquiry, the committee considers that 'euthanasia' can be divided into four categories:[\[17\]](#)

Active voluntary euthanasia: where medical intervention takes place, at a patient's request, in order to end the patient's life.

Passive voluntary euthanasia: where medical treatment is withdrawn or withheld from a patient, at the patient's request, in order to end the patient's life.[\[18\]](#)

Passive in/non-voluntary[\[19\]](#) *euthanasia:* where medical treatment or life-support is withdrawn or withheld from a patient, without the patient's request, in order to end the patient's life.

Active in/non-voluntary euthanasia: where medical intervention takes place, without the patient's request, in order to end the patient's life.

2.16 The Bill and the NT RTI Act, and therefore this inquiry and report, focus on active voluntary euthanasia.

2.17 Other important terms used during this report include:

Physician-assisted suicide: suicide using a lethal substance prescribed and/or prepared and/or given to a patient by a doctor for self-administration for the purpose of assisting the patient to commit suicide.[\[20\]](#)

Double effect: the administration of drugs (such as large doses of opioids) with the intention of relieving pain, but foreseeing that this might hasten death even though the hastening of death is not actually intended.[\[21\]](#)

Legal position in other Australian jurisdictions

2.18 No Australian state or territory has a law which allows voluntary active euthanasia. Rather, an act of voluntary active euthanasia is considered to be 'assisted suicide', which is a crime; the penalty for which varies in each state or territory jurisdiction.[\[22\]](#)

2.19 There have been several inquiries by state and territory parliaments into voluntary euthanasia legislation, as well as several unsuccessful attempts to

introduce and/or enact voluntary euthanasia legislation in state and territory jurisdictions, including, for example, in the Australian Capital Territory (ACT), South Australia, New South Wales, Western Australia and Tasmania.^[23] In Victoria, a private member's bill, the Medical Treatment (Physician Assisted Dying) Bill 2008, has recently been introduced into the Victorian Parliament. That Bill apparently proposes to allow doctors to prescribe a liquid medication to assist in a patient's death.^[24]

2.20 Some states and territories do have legislation whereby people may be allowed to die through the withdrawal or lack of implementation of medical treatment. For example, under section 6 of the NT *Natural Death Act 1988*, the non-application of medical treatment in compliance with a direction under the Act is not considered a 'cause of death'. Most states and territories also have legislative schemes which allow patients to make 'advance directives' or 'living wills' which provide for patients to specify what medical treatments they would like in the future, if at some point they cannot make decisions for themselves. Such directives enable patients to record decisions about their preferences on a range of treatments, including refusal of life-sustaining treatments.^[25]

Chapter 3 — Legal and Constitutional policy issues **Should Federal Parliament override territory laws?**

3.3 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. Even opponents of the Bill conceded this.

3.4 The question for the Committee's inquiry was whether the Parliament should exercise this power.^[2]

3.5 The Parliamentary Library 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 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]

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 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) 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’.[\[6\]](#)

3.11 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: 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’.[\[11\]](#)

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 submitted that the passage of the Euthanasia Act ‘was a fundamental, and unwarranted attack on the democratic rights of the people of the Northern Territory’.[\[13\]](#)

3.16 In this context, Mr Marshall Perron, who was the NT Chief Minister at the time the NT RTI Act 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.[\[18\]](#) He argued that

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

3.20 Similarly, the Law Council submitted that:

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.[\[22\]](#)

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.[\[25\]](#)

3.24 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’.[\[27\]](#)

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.

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]

3.31 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]

3.37 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]

3.39 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]

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]

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]

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.[\[67\]](#)

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—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.[\[70\]](#)

3.61 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.[\[72\]](#)

3.64 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.[\[78\]](#)

*Other issues**International obligations*

3.88 An 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 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 fulfilling 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]

Chapter 4 — Euthanasia policy issues

Introduction

4.1 This chapter examines some of the key moral, ethical and social arguments for and against the legalisation of voluntary euthanasia

Key arguments in favour of voluntary euthanasia

4.6 In summary, some of the key arguments advanced in support of legislating for voluntary euthanasia included that:

it is a matter of individual rights, autonomy and choice;

it is the compassionate and merciful answer to insoluble pain, suffering and indignity in the case of terminal illness;

it is merely regulating what in reality is already common practice, particularly now that Australians have resorted to travelling overseas to obtain euthanasia;

opinion polls show that the overwhelming majority of Australians support voluntary euthanasia; and

several overseas jurisdictions (such as Switzerland, Belgium, the Netherlands and Oregon) have legalised voluntary euthanasia.

Individual rights, autonomy and choice

4.7 Many submissions supporting voluntary euthanasia put forward arguments based on the principle of individual rights and autonomy. That is, a competent individual should have the right to determine how and when to die as long as this does not interfere with the rights of others.[\[6\]](#)

4.8 For example, the NSW Council for Civil Liberties told the committee that ‘the principal argument for legalising voluntary euthanasia is that a terminally-ill adult should have the right to choose to end their own suffering.’[\[7\]](#) The NSW Council for Civil Liberties further submitted its belief that:

... the Bill will restore respect for the rights of the terminally ill in the Northern Territory to choose the time of their own death. The Bill will ensure that the terminally ill, if they so choose, can die with dignity and in a humane manner. The Bill will respect the fundamental principle that the individual is sovereign over their own body and mind.[\[8\]](#)

4.11 Mr Marshall Perron also argued that:

... voluntary euthanasia legislation does not require anybody to do anything. If you disagree with it, you can go through life pretending that the law does not even exist and it will never affect you.[\[11\]](#)

4.12 However, concerns were expressed that if a legal right to euthanasia were granted, more vulnerable people would be at risk, particularly if they feel they may be a burden to family or society.[\[12\]](#) As a result, the Australian Catholic Bishops

Conference argued that the demands of the common good must be measured against claims of liberties:

A request for voluntary euthanasia is a request to be killed by another. It is not a private matter. Aspects of the common good affected by the legislation of euthanasia include equal protection under the law, the ethos of the practice of medicine, and factors affecting an individual's sense of security at times when they are particularly vulnerable.[\[13\]](#)

Compassionate answer to pain, suffering and indignity

4.14 Proponents also argued that voluntary euthanasia is the compassionate and merciful answer to insoluble pain, suffering and indignity in the case of terminal illness.[\[15\]](#) For example, Emeritus Professor Philip Ley pointed to reasoning given by patients seeking euthanasia in the US state of Oregon and the Netherlands. Key concerns for these patients, included loss of autonomy and dignity and a decreasing ability to participate in activities that make life enjoyable.[\[16\]](#)

4.15 The committee also received many submissions detailing case studies of patients who had a difficult death and who may have benefited from the availability of voluntary euthanasia.[\[17\]](#) In this context, Dr David Leaf told the committee that 'death is not the worst outcome for them at times like this':

... if you are ... subject to daily incurable pain, loss of dignity, immobility and being a burden to your family, to many such patients that is a worse outcome than quietly passing away at a time of their own choosing in a painless manner.[\[18\]](#)

4.17 In contrast, the ACL argued that:

There is no dignity in euthanasia, which effectively means a person's life is viewed as so awful it should be brought to a premature end. Rather there is dignity and comfort in knowing that Australian society recognises that all human beings, even in the agony of suffering or in a twilight mental state, deserve respect, empathy and protection from abuse, harm, manipulation or wilful neglect and which affirms that every patient, no matter how deformed the body, deranged the mind or diminished the personality, should receive equal protection and medical care.[\[20\]](#)

4.19 Many submissions opposing euthanasia also pointed to the need for good palliative care (discussed later in this chapter). Others told the committee that 'hard cases make bad laws'.[\[22\]](#) However, the Australian Federation of AIDS Organisations argued to the contrary:

... when individual cases are clinically evaluated and confirmed for their presentation and specific circumstances, and it is evident there are no other options to relieve a person's pain and distress, that it is entirely appropriate to have a process whereby that person can rationally request an end to their life ...

Surely when no other options are open to a person in the final stages of a terminal illness, a person suffering unrelievable pain and distress who consistently and rationally requests an end to their agony, there should be some process whereby their dying wish can be granted.[\[23\]](#)

Opinion polls indicate popular support

4.20 Most submissions supporting the Bill pointed to opinion polls indicating that the vast majority of Australians (80%) support voluntary euthanasia.[\[24\]](#) For example, the Voluntary Euthanasia Society of NSW submitted that:

In the last two decades, surveys have consistently shown that a majority of Australians believe that terminally ill individuals should have a right to seek and obtain assistance to end their life with dignity. In 1962 it was close to a majority (47%) and by 1978 it was up to 67%, and in 2002 was 73%+. An independent poll [was] conducted by Newspoll in 2007 and found 80% of Australians in favour, and just 14% opposed.[\[25\]](#)

4.21 Others disputed the legitimacy of arguments based on opinion polls. For example, Dr Brian Pollard submitted that:

... many people have erroneous ideas of what actually constitutes euthanasia ... it is well-known that the wanted results can be manipulated by the structure of the questions, opinion polls can carry no certainty about euthanasia. Would it really become OK to rob old ladies when 80% thought so?[\[26\]](#)

4.23 Support for voluntary euthanasia within the medical profession was a matter for debate. For example, Dying with Dignity Victoria pointed to opinion polls indicating that 78% of Victorian nurses favoured law reform (in 1992), and 80% of nurses in NSW gave support in 1997.[\[28\]](#) However, in its submission, the Australian Medical Association (AMA) opposed the Bill and voluntary euthanasia.[\[29\]](#) At the same time, it recognised:

... the divergence of views regarding voluntary euthanasia and physician-assisted suicide in Australia. Indeed, the range of views, from those who fully support voluntary euthanasia to those who totally oppose it, is reflected within the medical profession itself.[\[30\]](#)

Regulating a common practice

4.24 Another argument raised in favour of legalising voluntary euthanasia is that it is regulating what in reality is already common practice.[\[31\]](#) Submitters pointed to a study, also examined during the 1997 Euthanasia Inquiry, indicating that, in practice, many Australian doctors already take steps that lead to an earlier death for patients.[\[32\]](#) It was therefore suggested that it was better to regulate the process to ensure that it was open to scrutiny. For example, the Humanist Society of Victoria argued that:

The practice [of euthanasia] occurs frequently, in a clandestine mode, as testified by doctors and nurses. It is essential that the process be open to scrutiny and performed by experienced and accountable medical practitioners.[\[33\]](#)

4.25 The Australian Federation of AIDS Organisations similarly submitted that:

... some seek assistance to end their own lives at a time they choose despite the fact that doing so is illegal. Numerous studies and polls suggest that acts of euthanasia and assisted euthanasia are not isolated occurrences ... work on HIV positive people also reveals cases of 'botched' suicide attempts resulting from euthanasia's illegality, and the dreadful impact on all involved.[\[34\]](#)

4.26 In this context, Associate Professor Cameron Stewart, from the Division of Law at Macquarie University, submitted that:

By providing a different process for dying the Rights of the Terminally Ill Act does not depart in a massive way from existing laws but rather it provides a safeguarded process for the management of death in the terminally ill.[\[35\]](#)

4.27 Dying with Dignity Victoria was also concerned that 'continuous deep terminal sedation' is 'now commonly used in palliative care', in the same circumstances where a person might otherwise request voluntary euthanasia:

Its undoubted advantage is that it relieves intolerable suffering, but it has two major disadvantages. It is often provided without any explicit discussion with the patient, and it may take days before death occurs. In addition there is no reporting procedure and no prescribed safeguards.[\[36\]](#)

4.28 Dying with Dignity Victoria therefore queried 'why it is acceptable to deliberately put a person with intolerable suffering to sleep for days before they die, but not to allow the same person the choice for a quick death.'[\[37\]](#)

4.29 There also appears to have been another significant development since the 1997 Euthanasia Inquiry: Australians are now travelling overseas to obtain euthanasia. In particular, Dr Philip Nitschke of Exit International gave examples of patients seeking euthanasia who had ended up travelling overseas.[\[38\]](#) Dr Nitschke explained that there were two key overseas options. Mexico was the 'predominant choice of nation', as people could lawfully acquire the drug Nembutal and bring it back to Australia (illegally) to die here. Australians are also opting to die in Switzerland under their system of legalised euthanasia, where certain preconditions must be met.[\[39\]](#) Indeed, the committee heard directly from submitters who had travelled overseas – for example, one whose husband had travelled to Switzerland to obtain euthanasia,[\[40\]](#) and another who had travelled to Mexico to obtain 'a product leading to a 'peaceful death''.[\[41\]](#)

4.30 Dr Nitschke told the committee that he knew of at least 150 people who made a trip to Mexico last year to obtain the drug Nembutal – and effectively broke Australian law to import a class 1 prohibited drug.[\[42\]](#) Dr Philip Nitschke told the committee at its hearing in Darwin that:

... what started off as a trickle but has now turned into a flood of people who are taking this so-called overseas option to try and establish for themselves viable end-of-life choices.[\[43\]](#)

4.31 Supporters of voluntary euthanasia expressed the view that this meant that those who could afford to travel overseas were ‘lucky’, but that those who could not afford to do so were ‘penalised’.[\[44\]](#)

Overseas examples

4.32 In support of the Bill, the committee also heard that several overseas jurisdictions have now legalised voluntary euthanasia. For example, the Voluntary Euthanasia Society of NSW submitted that:

In the Netherlands, Belgium, Switzerland, and the American state of Oregon physicians are permitted to assist a patient in ending his or her life by means other than withdrawing life-sustaining medical treatment.[\[45\]](#)

4.33 The committee notes that the practice of euthanasia in the Netherlands, Switzerland and the US State of Oregon were considered during the 1997 Euthanasia Inquiry.[\[46\]](#) Since then, legislation relating to voluntary euthanasia and/or physician assisted suicide has now come into force in: the Netherlands (in April 2002 — prior to that, guidelines had been in place since 1990);[\[47\]](#) the US State of Oregon (in October 1997);[\[48\]](#) and Belgium (in September 2002).[\[49\]](#)

4.34 Some suggested that the experience in those places would reassure those opposed to legalising voluntary euthanasia. For example, Dying with Dignity Victoria submitted that:

Practice in those places has been carefully studied. It is no longer a matter of conjecture as to the effects on the community and the medical profession of such laws. As a result, attitudes of many significant people and bodies have changed towards acceptance of VE [Voluntary Euthanasia].[\[50\]](#)

4.35 However, there was considerable debate in evidence about the practice and regulation of euthanasia overseas, particularly in the Netherlands. Many opposing euthanasia expressed concerns about the experience in the Netherlands.[\[51\]](#) This is discussed further later in this chapter in the section on the potential for a ‘slippery slope’ in the regulation of euthanasia.

4.36 Others opposing the Bill pointed to several international inquiries which have rejected proposals for euthanasia.[\[52\]](#) Many of these inquiries were canvassed by the 1997 inquiry into the Euthanasia Laws Bill 1996.[\[53\]](#) Some also noted the defeat of a Bill for voluntary euthanasia in the House of Lords in the United Kingdom in 2006.[\[54\]](#)

Key arguments against voluntary euthanasia

4.37 Some of the key arguments against legislating for voluntary euthanasia included:

the availability of quality palliative care for people with terminal illnesses;

the problem of adequate safeguards and the possibility that it would lead to a 'slippery slope' — for example, acceptance of voluntary euthanasia would lead to involuntary euthanasia and/or euthanasia for lesser diseases and conditions;

the potential for erosion of the doctor-patient relationship;

that it places pressure on people to end their lives even if they are not ready, for example, to reduce the burden on their family or the health system;

the sanctity of human life; and

in the case of the NT legislation, the particular impact on the Indigenous community.

Palliative care

4.38 Many suggested that, rather than legalising voluntary euthanasia, there should be an increased emphasis on, and funding for, palliative care.^[55] For example, Palliative Care Australia submitted that:

... informed community discussion about euthanasia cannot be had until quality palliative care is available for all who require it and there is enhanced community understanding of existing end of life decision making options, including advance care planning.^[56]

4.39 Similarly, the ACL submitted that:

Whilst no-one wants to see someone they love endure pain, euthanasia is not the answer to this. Instead, we should put far greater resources into high quality, easily accessible palliative care so that people's last days can be made as comfortable as possible.^[57]

4.40 Mrs Lois Fong, NT Director of the ACL told the committee that:

... society's duty to terminally ill people is to improve the quality of their palliative care as well as support those who are isolated and who feel their lives are meaningless ... The negative impact on hospice and palliative care if euthanasia is legalised cannot be underestimated.^[58]

4.41 Indeed, many were concerned that, if euthanasia were legalised, there would be a negative impact on palliative care. For example, Mr Christopher Menev of the Life and Marriage Centre of the Catholic Archdiocese of Sydney told the committee:

It is also easier and cheaper to kill a patient than to provide palliative care. Good palliative care can become a secondary concern and [is] less likely to be able to be accessed by those patients not wanting to be euthanised.^[59]

4.42 Similarly, the ACL argued that:

... once a society rejects the right to life and instead legalises killing as a form of treatment it will quickly begin to ask why it should foot the bill for expensive medical care that will, in any case, fail to save the life of a terminally ill patient.

Why bother paying for expensive palliative care and support when euthanasia is so cheap?[60]

4.43 The NSW Council for Civil Liberties disputed these sorts of suggestions:

It is argued that if we allow the 'easy' option of voluntary euthanasia, researchers will not make the effort they otherwise would to improve palliative care, both by relieving pain and by reducing or eliminating the side effects. This supposes that we should require patients to suffer intense pain, so that others will do what they ought to be doing anyway. This is obnoxious: a denial of the moral significance of the person, who is to be used, contrary to his or her own values, for others' benefit. This view also presupposes that everyone will choose voluntary euthanasia.[61]

4.44 Other evidence suggested that requests for voluntary euthanasia are often revised when palliative care alternatives are offered. For example, some pointed to evidence from the US State of Oregon indicating that where palliative care and/or counselling was offered:

... nearly half of those initially requesting PAS [Physician Assisted Suicide] changed their minds after treatment for pain or depression commenced or referral to a hospice was undertaken. Where no active symptom control commenced, only 15% changed their minds.[62]

4.45 In this context, several submitters emphasised the importance of psychological considerations and counselling.[63] For example, Mr Christopher Meney, from the Life, Marriage and Family Centre of the Catholic Archdiocese of Sydney, told the committee that:

A wish to die can often be an expression of depression, pain or poor symptom control rather than a sincere desire to be killed.[64]

4.46 However, the Australian Psychological Society recognised that:

A patient's depression may be a response to a loss of control over the situation which could be alleviated by the perception of choice over terminating one's life. A diagnosis of clinical depression should therefore not automatically negate a person's right to request euthanasia. Rather, the presence of a depressive illness needs to be carefully assessed and treated, and form part of a detailed and thorough clinical assessment, administered on more than one occasion with a reasonable time interval between assessments.[65]

Advance care planning

4.48 Associate Professor Cameron Stewart advised that there are now legislative schemes in most state and territory jurisdictions which have enshrined the right to make an 'advance directive'.[68] Associate Professor Stewart explained further that:

'Advance directives' or 'living wills' are decisions made by patients about what medical treatments they would like in the future, if at some point, they cannot make decisions for themselves. Advance directives ordinarily record decisions about

refusing life-sustaining treatments, but they can also contain the patient's preferences and desires about a whole range of treatment matters.^[69]

4.49 In the context of the euthanasia debate, the AMA endorsed advanced care planning 'as a means for supporting patients' wishes in their end of life care'. The AMA submitted that:

Some patients may fear that when they lose decision-making capacity, their goals and values in relation to their end of life care will be unknown or even disregarded by their families and/or the health care team since the patient can no longer actively participate in their own health care decisions. As such, this fear may lead some patients to consider undergoing euthanasia or physician-assisted suicide before they lose decision-making capacity.^[70]

4.50 The AMA expressed its view that an advance care plan reassures patients that 'they can participate in future decisions regarding their health care by articulating their wishes and goals of care in their plan'.^[71]

Palliative care in the Northern Territory

4.52 The committee received evidence that, at the time of the enactment of the NT RTI Act, the standard of palliative care in the NT was 'poor'.^[73] Dr Mark Boughy told the committee that palliative care services have developed significantly in the NT in recent years, and are now probably above national standards.^[74] Indeed, Mr Gerry Wood, MLA, a current member of the NT Legislative Assembly, submitted his belief that 'the NT and specifically Darwin now has a world class Palliative Care Unit'.^[75]

4.53 At the same time, several submissions called for further improvements to palliative care and other medical services in the NT.^[77] Dr David Gawler of the Darwin Christian Ministers' Association, told the committee that:

The Northern Territory is really the most unsuitable of all places in Australia to legislate to legalise patient killing. There are insufficient medical services—for example, radiotherapy is not available in Darwin for cancer sufferers. There are remote communities with inadequate health services. There is the tyranny of distance.^[78]

Limits to palliative care

4.54 Some suggested that the option of good palliative care makes euthanasia altogether unnecessary — because, for example, it addresses the issue of pain, suffering and indignity in dying.^[79] However, the committee also heard that palliative care does not always provide a solution.^[80] For example, Dr David Leaf told the committee that, in his experience, 'palliative care is like any other medical specialty: it does not always have the answers ... palliative care has its limits'.^[81]

4.55 Similarly, Dying with Dignity Tasmania submitted that:

Advances in palliative care have undoubtedly done much to make the final days of those suffering from terminal disease more comfortable and more bearable. However, there remain a small proportion of patients whose pain can not be relieved and there are others for whom freedom from pain is not the single factor that makes a life worth living.^[82]

4.57 The AMA submitted that:

The AMA absolutely recognises that for most patients in the terminal stage of illness, pain and suffering can be alleviated by therapeutic and comfort care; however, there are still currently instances where the satisfactory relief of suffering cannot be achieved.

We must, therefore, ensure that all patients have access to appropriate palliative care and advocate that greater research must go into palliative care so that no patient endures such suffering. No one should feel that their only option for satisfactory relief of pain and suffering is to end their own life.^[84]

Committee view on palliative care

4.60 The committee welcomes evidence that palliative care has improved markedly in the NT since the 1997 Euthanasia Inquiry. Nevertheless, the committee is concerned about evidence, particularly from Palliative Care Australia, that palliative care is not widely available and that demand for palliative care in some areas is not being met. The committee suggests that Commonwealth, state and territory governments consider increasing funding and resources for palliative care as a high priority.

Safeguards and slippery slopes

4.61 Many arguments against voluntary euthanasia were based on the notion of a 'slippery slope' and/or the 'thin edge of the wedge' – that is, for example, that acceptance of voluntary euthanasia would lead to involuntary euthanasia and/or euthanasia for lesser diseases and conditions.^[88] For example, the ACL submitted that:

Once legalised, death becomes an acceptable treatment for an ever-increasing list of treatable, non-terminal conditions such as depression or for those whose quality of life is judged by others to be too poor to make caring for them worthwhile.^[89]

4.64 Others disputed these arguments. For example, the NSW Council for Civil Liberties submitted that:

If there is a real moral difference between two cases, accepting that one is permissible does not in any way commit us to the other. Each case should be accepted on its own merits.^[92]

4.65 Many also argued that the notion of a 'slippery slope' has been disproved by the experience from overseas jurisdictions which have allowed voluntary

euthanasia, such as the Netherlands, Oregon in the US and Belgium.[\[93\]](#) For example, Dr Alan Rothschild submitted that:

... the *Oregon Dying with Dignity Act* ... actually has fewer safeguards than the *Rights of the Terminally Ill Act 1995* but its annual reports show that it has not been abused. The vulnerable such as the poor, uneducated and elderly have not been targeted. Research shows that it is largely the educated, employed, and medically insured who make use of the Oregon Act.[\[94\]](#)

4.66 At the same time, many alluded to the experience in the Netherlands to illustrate their concerns about the potential for a ‘slippery slope’ in the regulation of euthanasia.[\[95\]](#) Many pointed to studies indicating a high level of non-voluntary euthanasia in the Netherlands.[\[96\]](#) Others argued that more recent studies, conducted since the introduction of legislation in 2002, indicate that there is no slippery slope and that both non-voluntary euthanasia and voluntary euthanasia have declined.[\[97\]](#) However, this was also disputed.[\[98\]](#)

Impact on doctor-patient relationship

4.68 Several submissions expressed concern about the impact of voluntary euthanasia legislation on the doctor-patient relationship.[\[103\]](#) The AMA, in opposing the Bill, believed that medical practitioners should not be involved in interventions that have the ending of a person’s life as their primary intention: We cannot confuse the role of the medical practitioner as someone who supports life with someone who takes life.[\[104\]](#)

4.72 As outlined earlier, others also submitted that, in practice, many Australian doctors already take steps that lead to an earlier death for patients,[\[108\]](#) and that many doctors and other medical professionals support voluntary euthanasia.[\[109\]](#)

4.73 The Australian Nursing Federation took a neutral position on the issue of euthanasia. It recognised that its ‘members hold a range of ethical views on the subject of voluntary euthanasia’. The Federation further noted that if voluntary euthanasia becomes legalised, ‘nurses and midwives have the right to conscientiously object to participating in the carrying out of voluntary euthanasia.’[\[110\]](#)

Pressure and fear of being a burden

4.74 The committee also received evidence suggesting that the legalisation of voluntary euthanasia would place pressure on people to end their lives even if they are not ready so as to reduce the burden on their family or the health system.[\[111\]](#)

4.75 The ACL was particularly concerned that vulnerable people, such as those who are elderly, lonely, depressed or disabled will feel such pressure.[\[113\]](#) Similarly, Mr Christopher Meney expressed the belief that:

Legalisation over time affects hospital practice and societal expectations, ultimately resulting in undue pressure on patients to not overburden family, medical staff and/or resources. The subtle or not so subtle forms of persuasion ultimately diminish a person's freedom and

4.78 However, the ACT Committee of the Voluntary Euthanasia Society of NSW claimed that:

Arguments that older people will be exploited by being pressured into decisions to die are disproved by anecdotal and any other evidence available. Younger family members are more likely to resist the rationally thought-out wishes of an older member to seek release.[\[118\]](#)

Sanctity of human life

4.79 Many of those who opposed the Bill and the concept of voluntary euthanasia did so on the basis of the sanctity of human life.[\[119\]](#) These arguments were often based on religious beliefs. [\[120\]](#)

4.83 However, others countered the arguments based on the sanctity of human life with arguments relating to individual autonomy, as outlined earlier in this chapter. In particular, where this argument stemmed from religious beliefs, Emeritus Professor Philip Ley submitted that:

... the issue is voluntary euthanasia. Those with religious beliefs forbidding euthanasia do not have to avail themselves of it. Nor does anybody, religious or not, have to take up the option.[\[124\]](#)

4.86 Indeed, several submitters were at pains to make a distinction between voluntary euthanasia and the withdrawal of futile treatment.[\[127\]](#) The committee notes in this context that most submissions commenting on the sanctity of human life had no objection to the refusal or withdrawal of treatment.[\[128\]](#) This led some, such as the Australian Federation of AIDS Organisations, to argue that:

Laws allowing patients to refuse medical interventions mean those requiring interventions or life support are 'lucky' – they can refuse. Others whose conditions are as painful or worse, are given only the right to refuse palliative care to reduce their pain, ironically the same care which may eventually expedite their deaths.[\[129\]](#)

Impact on the Indigenous community

4.87 Several submissions expressed concerns about the impact of the Bill, and any subsequent voluntary euthanasia legislation, on the Indigenous population in the NT, which comprises approximately 30% of the NT population.[\[130\]](#) As the Aboriginal Medical Services Alliance of the Northern Territory (AMSANT) submitted:

The jurisdiction of the Northern Territory is comprised of some 30% Indigenous residents, many of whom are from remote and isolate communities. This fact

marks the NT as being a highly unique jurisdiction in the Australian context with significant cross-cultural issues, challenges and opportunities being a regular part of business and life in the NT.[\[131\]](#)

4.88 AMSANT continued:

As such, we believe the NT is a special case when considering such issues as the *Rights of the Terminally Ill Bill* of 2008 in that significant ground-work and consultation needs to occur with Aboriginal residents to ensure understanding of such a Bill and also whether communities are in support of the Bill, or otherwise.[\[132\]](#)

4.89 It was put to the committee that the Indigenous population of the NT was opposed to euthanasia, or that euthanasia was contrary to Indigenous law.[\[133\]](#) For example, the Aboriginal Resource and Development Services (ARDS) submitted that it was opposed to euthanasia on the basis that it conflicts with traditional law. ARDS quoted its Chairperson, Rev Dr Djiniyini Gondarra:

Euthanasia is murder according to our traditional law. If our people want to die because they are in pain the patient tells the whole family that they will close their mouths to water and food and then spend the time left to get ready to transit to the other side. For someone to administer any form of substance to end the life of a person is murder in the eyes of our traditional law.[\[134\]](#)

Fears and impact on Indigenous health

4.95 ARDS submitted that ‘the prospect of legalised euthanasia has added to the confusion and fear that Yolngu [of north-east Arnhem Land] have of western medical practices and procedures’.[\[141\]](#) ARDS explained that this fear was exacerbated by historical experiences and by the language divide.[\[142\]](#) ARDS was therefore concerned that the Bill could exacerbate the Indigenous health crisis: ‘Indigenous health in the Top End of Australia can be expected to worsen even further, as Yolngu stay away from medical professionals and institutions’.[\[143\]](#)

4.96 Similarly, Dr David Gawler told the committee that:

Aboriginal people, with their history of displacement, marginalisation and even massacres at the hands of white people, find it difficult to form trusting relationships with white doctors. In Arnhem Land, the debate continues as to whether doctors are healers or witchdoctors. Consequently, many patients fear visits to white doctors and especially visits to hospitals, where they must often travel long distances to another part of the country. To add to this uncomfortable equation, the knowledge that the doctor may also kill people or have the power to do so will generally increase anxiety and may mean some patients refuse treatment.[\[145\]](#)

4.100 However, The Hon Daryl Manzie told the committee that there was some misinformation at the time of the NT RTI Act:

Anecdotally, I was told by some Indigenous people that they were informed that the government was going to be able to give them or their children a needle when they came to Darwin and get rid of them because it does not want too many Aborigines ... [M]isinformation can cause a lot of grief. These are very sensitive issues but they are also very emotive and they do generate a lot of comment from people. Sometimes it is very ill informed.[\[150\]](#)

4.101 In response to questioning from the committee about the impact of euthanasia legislation on Aboriginal communities in the NT, Mr Perron expressed the view that:

If the situation is handled sensibly, there will in my view not be an impact on Aborigines failing to come forward and seeking medical attention.[\[151\]](#)

4.102 Mr Perron then pointed to evidence given to the 1997 Euthanasia Inquiry which disproved rumours that Indigenous Territorians had avoided attending health services as a result of the RTI Act.[\[152\]](#)

4.103 Indeed, the issue of the impact of the NT RTI Act on the Aboriginal community was also of significant concern during the 1997 Euthanasia inquiry.[\[153\]](#) The inquiry considered whether misinformation was being provided to Aboriginal communities about the legislation,[\[154\]](#) and whether or not there had been a decrease in the numbers of Indigenous Territorians seeking health care.[\[155\]](#) Appendix 3 of that report outlined statistics, provided by the NT Government, on hospital services supplied to Aboriginal people in the NT, which concluded that:

There is no evidence from hospital separations or patient travel data that the introduction of the Euthanasia Act affected the willingness of Aboriginal people to present to hospital for medical treatment.[\[156\]](#)

Conclusion

4.105 This chapter and previous chapters are a summary of the views and evidence presented to the committee during the inquiry. However, there is no majority or minority view attached to this report. The next chapter sets out the views of the Senators who participated in this inquiry.

Chapter 5 — Summary of the views of Committee members

5.1 Committee members elected not to form a majority view on whether or how the Bill should proceed.

5.2 Committee members agree that the Bill should not proceed in its current form. Committee members also agree with evidence that there is no room for doubt or uncertainty in the area of regulation of voluntary euthanasia. The committee is also of the view, as suggested at paragraph 4.60 of Chapter 4, that Commonwealth, state and territory governments should consider increasing funding and resources for palliative care as a high priority.

5.3 However, at this point the views of committee members diverge. Senators Barnett (Deputy Chair), Fisher and Trood consider that the Bill should not proceed in any form and that the Euthanasia Act should remain in force. Similarly, Senator Hogg's perspective is that the Euthanasia Act should not be repealed. Senator Bartlett's view is that the Bill should not proceed, and that there should be a debate around a possible legislative framework governing euthanasia at a national level, with any changes to the laws in this area applying consistently to all Australians.

5.4 The Chair's view, endorsed by Senators Kirk and Marshall, is that an amended version of the Bill should proceed. These Senators do not necessarily support the legalisation of voluntary euthanasia, but rather are of the view that the territories should have the right to self-government without arbitrary interference from the Commonwealth. ▲

Notes to Chapter 2 — Overview of the Bill

[1] Senator Bob Brown, Second Reading Speech, Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008, *Senate Hansard*, 14 February 2008, p. 8.

[2] Senator Bob Brown, Second Reading Speech, Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008, *Senate Hansard*, 14 February 2008, p. 8.

[3] Senator Bob Brown, Second Reading Speech, Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008, *Senate Hansard*, 14 February 2008, p. 8.

[4] For a more detail examination of the *Rights of the Terminally Ill Act 1995* (NT) and its enactment, see Senate Legal and Constitutional Legislation Committee, *Euthanasia Laws Bill 1996*, March 1997 (1997 Euthanasia Inquiry), Chapter 2, pp 5–11.

[5] *Rights of the Terminally Act 1995* (NT), subsection 7(1).

[6] 1997 Euthanasia Inquiry, pp 10–11.

[7] *Wake v Northern Territory* (1996) 124 FLR 298.

[8] *Wake v Northern Territory*, High Court of Australia, No. D10 of 1996, transcript of proceedings, 15 November 1996, p. 4.

[9] *Wake v Northern Territory* (1996) 124 FLR 298; see also 1997 Euthanasia Inquiry, pp 8–10; Northern Territory Law Reform Committee, *Submission 443*, pp 2–3.

[10] At the same time, it also amended the self-government legislation of the Australian Capital Territory (ACT) and Norfolk Island: see discussion of the Euthanasia Act below.

[11] 1997 Euthanasia Inquiry.

[12] See further 1997 Euthanasia Inquiry, especially p. 114 and Appendix 1.

[13] Euthanasia Act, Schedules 1–3; and the *Northern Territory (Self-Government) Act 1978*, subsection 50A(1); the *Australian Capital Territory (Self-Government) Act 1988*, subsection 23(1A) and the *Norfolk Island Act 1979*, paragraph 19(2)(d).

[14] Euthanasia Act, Schedules 1–3; and the *Northern Territory (Self-Government) Act 1978*, subsection 50A(2); the *Australian Capital Territory (Self-Government) Act 1988*, subsection 23(1B) and the *Norfolk Island Act 1979*, subsection 19(2)(2A).

[15] Item 2 of Schedule 1 of the Euthanasia Act.

[16] See also AMA, *Submission 375*, p. 3.

[17] 1997 Euthanasia Inquiry, p. xi; also Natasha Cica, *Euthanasia — the Australian Law in an International Context: Part 1: Passive Voluntary Euthanasia*, Research Paper No. 3 1996–97, Parliamentary Research Service, p. iv; and AMA, *Submission 375*, p. 3; and NSW Council for Civil Liberties, *Submission 418*, pp 9–10.

[18] Some submissions to this inquiry made a distinction based on intention: that is, if there is no intention to kill, then it is not euthanasia: see, for example, Dr David van Gend, *Submission 413*, p. 8; also Australian Family Association (WA), *Submission 380*, p. 4; Christian Democratic Party, *Submission 1001*, p. 6.

[19] Non-voluntary euthanasia can be defined as the killing of a patient who does not have the capacity to understand what euthanasia means and cannot therefore form a request or withhold consent (for example, where a patient is unconscious); involuntary euthanasia refers to a situation where the patient is competent to make a request, but does not do so — so effectively something is done (or not done) in spite of the person's wish to stay alive: see 1997 Euthanasia Inquiry, pp xi–xii.

[20] *Rights of the Terminally Ill Act 1995* (NT), s. 3 (definition of assist); see also Australian Medical Association, *Submission 375*, p. 3.

[21] 1997 Euthanasia Inquiry, p. xii; see also Dr Alan Rothschild, *Submission 452*, pp 16–17.

[22] For a useful summary and analysis of the Australian law in this area, see Associate Professor Cameron Stewart, *Submission 729*. Note that suicide in itself is no longer a crime in Australia.

[23] See, for example, Ben White and Lindy Willmott, 'Private thoughts of public representatives: assisted death, voluntary euthanasia and politicians', *Journal of Law and Medicine*, Vol. 11(1), August 2003, pp 77–92; also, Parliament of Tasmania, Community Development Committee, *Report on the Need for Legalisation of Voluntary Euthanasia*, Report No. 6, 1998; Parliament of South Australia, Social Development Committee, *Inquiry into the Voluntary Euthanasia Bill 1996*, 20 October 1999, pp 33–49, available at: <http://www.parliament.sa.gov.au/NR/rdonlyres/A42EAD4B-4D4B-4050-A8DD-F4D209D4CBBB/4724/12threportvoluntaryeuthanasiabill.pdf> (accessed 19 May 2008).

[24] It was introduced into the Victorian Parliament on 28 May 2008: see <http://www.legislation.vic.gov.au/> (accessed 12 June 2008); see also Nader, C., 'Euthanasia Bill to Bar Death Tourists', *The Age*, 18 March 2008, p. 7; Dying with Dignity Victoria, <http://www.dwdv.org.au/ParliamentaryBill.html> (accessed 19 May 2008).

[25] 'Advanced directives' are discussed further in Chapter 4 of this report.

Chapter 3 — Legal and Constitutional policy issues

[1] 1997 Euthanasia Inquiry, especially Chapter 3 and pp 111–112.

[2] p. 131.

[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.
- [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.
- [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.
- [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.
- [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.
- [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.
- [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).
- [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.
- [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.
- [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.
- [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.
- [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.
- [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.
- [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.
- [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.
- [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.
- [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.
- [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.
- [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 Boughiey, *Committee Hansard*, 14 April 2008, p. 42; Associate Professor Cameron Stewart, *Submission 729*, p. 6.
- [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.
- [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

[12] See, for example, Dr Mark Boughey, *Committee Hansard*, 14 April 2008, p. 40; also Dr David van Gend, ACL, *Committee Hansard*, 14 April 2008, p. 14 and *Submission 413*, p. 6.

[13] *Submission 410*, p. 3; see also p. 5.

[14] Australian Family Association (WA), *Submission 380*, p. 4; see also Christian Democratic Party, *Submission 1001*, p. 6.

[15] See also 1997 Euthanasia Inquiry, pp 61–62.

[16] *Submission 363*, p. 3; see also Oregon Department of Human Services, at <http://oregon.gov/DHS/ph/pas/index.shtml> and 'Summary of Oregon's Death with Dignity Act — 2007' at: <http://oregon.gov/DHS/ph/pas/docs/year10.pdf> (accessed 19 May 2008).

[17] See, for example, NSW Council for Civil Liberties, *Submission 418*, pp 4–5; Dr David Leaf, *Submission 57*, p. 2 and *Committee Hansard*, 16 April 2008, p. 15.

[18] *Committee Hansard*, 16 April 2008, p. 16.

[19] *Committee Hansard*, 16 April 2008, p. 17.

[20] *Submission 422*, p. 16.

[21] *Committee Hansard*, 16 April 2008, p. 28; see also p. 29.

[22] See, for example, the National Alliance of Christian Leaders, *Submission 359*; Dr Ruth Powys, *Submission 388*, p. 3; Pro-Life Victoria, *Submission 408*, p. 2.

[23] *Submission 400*, p. 3.

[24] Mr Marshall Perron, *Submission 393*, p. 5; West Australian Voluntary Euthanasia Society, *Submission 370*, p. 2; Humanist Society of South Australia, *Submission 454*, p. 1; Council of Australian Humanist Societies, *Submission 396*, p. 2. See also Chapter 7 of the 1997 Euthanasia Inquiry, which canvasses the history of opinion polls on the issue of euthanasia.

[25] *Submission 216*, p. 1; see also Humanist Society of Victoria, *Submission 382*, p. 2.

[26] *Submission 47*, pp 8–9; see also the Committee on Bioethics of the Uniting Church in Australia (Victorian Synod), *Submission 384*, p 1.

[27] *Committee Hansard*, 14 April 2008, p. 37.

[28] *Submission 399*, p. 4.

[29] *Submission 375*, pp 1–2.

[30] *Submission 375*, p. 1.

[31] For example, Dying with Dignity Victoria, *Submission 399*, p. 4; Mr Marshall Perron, *Submission 393*, p. 4; see also 1997 Euthanasia Inquiry, pp 62–63 and pp 87–89.

[32] See, for example, Emeritus Professor Philip Ley, *Submission 363*, p. 2 and Dr Alan Rothschild, *Submission 452*, pp 17–18, referencing Kuhse, H., Singer, P., Baume, P., Clark, M. and Rickard, M. (1997) "End of Life decisions in Australian Medical practice", *Medical Journal of Australia*, Vol. 166(4), 17 February 1997, pp 191–197. See also 1997 Euthanasia Inquiry, pp 87–89.

[33] *Submission 382*, p. 3; see also Council of Australian Humanist Societies, *Submission 396*, p. 2.

[34] *Submission 400*, p. 2.

[35] *Submission 729*, p. 14.

[36] *Submission 399*, p. 6.

[37] *Submission 399*, p. 7; see also Dr Alan Rothschild, *Submission 452*, pp 12–16.

- [38] *Submission 390*, pp 2–3.
- [39] *Committee Hansard*, 14 April 2008, p. 26.
- [40] Mrs Angelika Elliott, *Submission 383*.
- [41] Mr Don Flounders, *Submission 110*, p. 1; see also *Submission 110A*.
- [42] *Committee Hansard*, 14 April 2008, p. 25.
- [43] *Committee Hansard*, 14 April 2008, p. 25.
- [44] See, for example, Mrs Angelika Elliott, *Submission 383*, p. 2.
- [45] *Submission 216*, p. 1; see also Humanist Society of Victoria, *Submission 382*, p. 2; Dying with Dignity Victoria, *Submission 399*, p. 2; Mr Marshall Perron, *Submission 393*, p. 3.
- [46] 1997 Euthanasia Inquiry, Chapter 8, pp 93–110.
- [47] See further: Ministry of Health, Welfare and Sport (Netherlands), <http://english.justitie.nl/themes/euthanasia/index.aspx> (accessed 20 May 2008); also Dr Alan Rothschild, *Submission 452*, p. 26. For the situation prior to 2002, see 1997 Euthanasia Inquiry, pp 96–106.
- [48] Note that this legislation was first approved in 1994 but subject to various court challenges: see further: Oregon Department of Human Services, "Death with Dignity Act", <http://oregon.gov/DHS/ph/pas/index.shtml> (accessed 15 May 2008).
- [49] See further: South Australian Voluntary Euthanasia Society, Fact Sheet 26, Voluntary Euthanasia in Belgium, available at: <http://www.saves.asn.au/resources/facts/fs26.php> (accessed 15 May 2008).
- [50] *Submission 399*, p. 2; see also Dr Alan Rothschild, *Submission 452*, pp 4–5.
- [51] See, for example, Dr Brian Pollard, *Committee Hansard*, 16 April 2008, p. 26; Darwin Christian Ministers' Association, *Submission 376*, p. 4; ACL, *Submission 422*, pp 8–9; Festival of Light Australia, *Submission 361*, p. 8.
- [52] See, for example, Dr David van Gend, *Committee Hansard*, 14 April 2008, p. 9 and *Submission 413*, pp 3–5; Festival of Light Australia, *Submission 361*, pp 5–8; Dr Brian Pollard, *Documents tabled at public hearing of 16 April 2008*.
- [53] 1997 Euthanasia Inquiry, Chapter 8, pp 93–110.
- [54] Father Frank Brennan, *Committee Hansard*, 16 April 2008, p. 13 and *Submission 428*, p. 2; Festival of Light Australia, *Submission 361*, p. 5.
- [55] That is, care that provides coordinated nursing, medical and other allied services for people with a terminal illness: see Palliative Care Australia, *Submission 424*, p. 12. See also, for example, Catholic Health Australia, *Submission 419*, p. 4; Little Company of Mary Health Care, *Submission 425*, p. 5; Family Council of Victoria, *Submission 263*, pp 5–6; and 1997 Euthanasia Inquiry, pp 74–79.
- [56] *Submission 424*, p. 1.
- [57] *Submission 422*, p. 16.
- [58] *Committee Hansard*, 14 April 2008, p. 8.
- [59] *Committee Hansard*, 16 April 2008, p. 28; see also Medicine with Morality, *Submission 242*, pp 1–2.
- [60] *Submission 422*, p. 11.
- [61] *Submission 418*, p. 8.
- [62] Life, Marriage and Family Centre of the Catholic Archdiocese of Sydney, *Submission 360*, p. 4; see also Mr Christopher Meney, *Committee Hansard*, 16 April 2008, pp 31–32.

- [63] See, for example, Australian Psychological Society, *Submission 429*, pp 1–2; Dr Dianne Grocott, *Submission 387*; Suicide: NO, *Submission 395*, p. 2; ACL, *Submission 422*, pp 12–13.
- [64] *Committee Hansard*, 16 April 2008, p. 28 and see also *Submission 360*, p. 4.
- [65] *Submission 429*, pp 1–2. In this context, the Australian Psychological Society was concerned that certain safeguards need to be included in euthanasia legislation, and that the NT RTI Act did not make adequate provision ‘to address the psychological needs of close relatives of the patient through counselling’.
- [66] See, for example, the Australian Nursing Federation, *Submission 591*, p. 1; Palliative Care Australia, *Submission 424*, p. 3.
- [67] See, for example, Mr Mark Boughey, *Committee Hansard*, 14 April 2008, p. 38; also Associate Professor Cameron Stewart, *Submission 729*, pp 4–5; Australian Federation of AIDS Organisations, *Submission 400*, p. 2.
- [68] *Submission 729*, pp 4–5. See especially the table in this submission summarising the regulation of advance directives in each state and territory under common law and legislation.
- [69] *Submission 729*, pp 4–5; see also AMA, *Submission 375*, p. 3.
- [70] *Submission 375*, p. 3.
- [71] *Submission 375*, p. 4.
- [72] *Submission 424*, p. 2.
- [73] See, for example, Professor David Kissane, *Submission 589*, p. 1; Mr Gerry Wood MLA, *Submission 453*, p. 1.
- [74] *Committee Hansard*, 14 April 2008, p. 38; see also *Submission 592*, p. 2.
- [75] *Submission 453*, p. 1.
- [76] *Submission 452*, p. 1.
- [77] Darwin Christian Ministers’ Association, *Submission 376*, p. 4; Dr David Gawler, *Submission 445*, p. 4.
- [78] *Committee Hansard*, 14 April 2008, pp 9–10.
- [79] See, for example, Medicine with Morality, *Submission 242*, p. 1; Australian Catholic Bishops Conference, *Submission 410*, p. 6; Catholic Health Australia, *Submission 419*, pp 3–4; Mr Gerry Wood MLA, *Submission 453*, p. 1.
- [80] See, for example, ACT Committee of the Voluntary Euthanasia Society of NSW, *Submission 238*, p. 1; Emeritus Professor Philip Ley, *Submission 363*, pp 5–6; Dying with Dignity Victoria, *Submission 399*, p. 6; NSW Council for Civil Liberties, *Submission 418*, p. 8.
- [81] *Committee Hansard*, 16 April 2008, p. 15.
- [82] *Submission 412*, p. 1.
- [83] *Committee Hansard*, 16 April 2008, p. 17.
- [84] *Submission 375*, p. 2.
- [85] *Committee Hansard*, 16 April 2008, pp 17–18.
- [86] *Submission 424*, p. 3.
- [87] *Submission 424*, p. 4.
- [88] See, for example, Dr David Gawler, *Submission 445*, p. 2; Life, Marriage and Family Centre, Catholic Archdiocese of Sydney, *Submission 360*, pp 4–5.

- [89] *Submission 422*, p. 11; see also Mrs Lois Fong, ACL, *Committee Hansard*, 14 April 2008, p. 8; *Medicine with Morality, Submission 242*, p. 2.
- [90] *Committee Hansard*, 16 April 2008, p. 27.
- [91] *Committee Hansard*, 16 April 2008, p. 29.
- [92] *Submission 418*, p. 8.
- [93] See, for example, the ACT Committee of the Voluntary Euthanasia Society of NSW, *Submission 238*, pp 1–2; Emeritus Professor Philip Ley, *Submission 363*, pp 6–7; *Dying with Dignity Victoria, Submission 399*, pp 2–5; Mr Marshall Perron, *Submission 393*, p. 3.
- [94] *Submission 452*, p. 4 and see also p. 5; cf Festival of Light Australia, *Submission 361*, pp 7–8; Right to Life Australia, *Submission 441*, p. 5.
- [95] See, for example, Darwin Christian Ministers' Association, *Submission 376*, p. 4; Committee on Bioethics of the Uniting Church in Australia (Victorian Synod), *Submission 384*, pp 3–4; Katrina George, University of Western Sydney, *Submission 398*; Festival of Light Australia, *Submission 361*, p. 8.
- [96] See, for example, ACL, *Submission 422*, pp 8–9.
- [97] *Dying with Dignity Victoria, Submission 399*, p. 4; see also, for example, Dr Alan Rothschild, *Submission 452*, p. 22; and Dutch Ministry of Health, Welfare and Sport in May 2007 at <http://www.minvws.nl/en/themes/euthanasia/default.asp> (accessed 20 May 2008).
- [98] ACL, *Answers to Questions on Notice*, received 8 May 2008, pp 1–2 and Dr David van Gend, *Answers to Questions on Notice*, received 6 May 2008.
- [99] In this context, many 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, 3 October 1998, pp 1097–1102. See also Dr Nitschke, *Committee Hansard*, 14 April 2008, pp 28–30 and *Submission 390A*; Dr David van Gend, *Committee Hansard*, 14 April 2008, pp 14–15; Professor David Kissane, *Submission 589*; Dr Mark Boughey, *Committee Hansard*, 14 April 2008, p. 38; ACL, *Submission 422*, p. 9; Festival of Light Australia, *Submission 361*, pp 2–4.
- [100] See, for example, the Coalition of the Defence of Human Life, *Submission 367*, p. 3; Katrina George, University of Western Sydney, *Submission 398*, pp 1–24; Family Council of Victoria, *Submission 263*, p. 5. It was also noted that several other inquiries, such as House of Lords, *Report of the Select Committee on Medical Ethics*, 1994, and Parliament of Tasmania, Community Development Committee, *Report on the Need for Legalisation of Voluntary Euthanasia*, Report No. 6, 1998, had concluded that voluntary euthanasia legislation could not adequately provide the necessary safeguards against abuse.
- [101] *Submission 47*, p. 11.
- [102] *Submission 422*, p. 7.
- [103] See, for example, *Medicine with Morality, Submission 242*, p. 2; Father Frank Brennan, *Committee Hansard*, 16 April 2008, p. 11; Dr David Gawler, *Submission 445*, p. 3 and *Committee Hansard*, 14 April 2008, p. 10; Dr John Murtagh, *Submission 450*, p. 2; Life, Marriage and Family Centre, Catholic Archdiocese of Sydney, *Submission 360*, p. 3; Australian Catholic Bishops Conference, *Submission 410*, pp 6–7; Dr Christopher Meney, Life, Marriage and Family Centre, Catholic Archdiocese of Sydney, *Committee Hansard*, 16 April 2008, p. 29; see also Dr Alan Rothschild, *Submission 452*, pp 19–20.
- [104] *Submission 375*, p. 2.
- [105] *Submission 422*, p. 7; see also Dr David van Gend, ACL, *Committee Hansard*, 14 April 2008, p. 9.

- [106] *Committee Hansard*, 16 April 2008, p. 21; see also *Submission 57*, p. 2; and NSW Council for Civil Liberties, *Submission 418*, pp 7–8.
- [107] *Committee Hansard*, 16 April 2008, p. 16; see also Dying with Dignity Victoria, *Submission 399*, p. 4; NSW Council for Civil Liberties, *Submission 418*, pp 7–8.
- [108] See, for example, Emeritus Professor Philip Ley, *Submission 363*, p. 2, quoting from Kuhse, H., Singer, P., Baume, P., Clark, M. and Rickard, M. (1997) "End of Life decisions in Australian Medical practice", *Medical Journal of Australia*, Vol. 166(4), 17 February 1997, pp 191–197; also Dying with Dignity Victoria, *Submission 399*, p. 4.
- [109] Humanist Society of Victoria, *Submission 382*, p. 3; Dying with Dignity Victoria, *Submission 399*, pp 4–5.
- [110] *Submission 591*, p. 3.
- [111] Medicine with Morality, *Submission 242*, p. 2; see also Dr David van Gend, *Submission 413*, p. 5; Rita Joseph, *Submission 371*, pp 12–13; Dr David Gawler, *Submission 445*, p. 3; Life, Marriage and Family Centre, Catholic Archdiocese of Sydney, *Submission 360*, pp 3–4; Committee on Bioethics of the Uniting Church in Australia (Victorian Synod), *Submission 384*, p. 2; National Civic Council, *Submission 417*, p. 3.
- [112] *Submission 422*, pp 13–14.
- [113] *Submission 422*, p. 14; see also Australian Catholic Bishops Conference, *Submission 410*, p. 6; and Life, Marriage and Family Centre, Catholic Archdiocese of Sydney, *Submission 360*, p. 6. See further the Women's Forum Australia, who opposed the Bill based on concerns about the particular impact of euthanasia on women: *Submission 397*.
- [114] *Committee Hansard*, 16 April 2008, p. 28; see also Life, Marriage and Family Centre, Catholic Archdiocese of Sydney, *Submission 360*, pp 3–4.
- [115] See, for example, Dr David van Gend, ACL, *Committee Hansard*, 14 April 2008, p. 9; also 1997 Euthanasia Inquiry, pp 93–94.
- [116] *Committee Hansard*, 14 April 2008, p. 38; see also pp 39–40 and *Submission 592*, pp 2–3; and Dr Brian Pollard, *Committee Hansard*, 16 April 2008, p. 25.
- [117] *Committee Hansard*, 14 April 2008, p. 42.
- [118] *Submission 238*, p. 2.
- [119] See, for example, Federal Presbyterian Church of Australia, *Submission 366*, p. 1; Life, Family and Marriage Centre, Catholic Archdiocese of Sydney, *Submission 360*, p. 6; Right to Life Australia, *Submission 381*, p. 1; Australian Catholic Bishops Conference, *Submission 410*, pp 3–4.
- [120] *Submission 410*, p. 3.
- [121] *Submission 360*, p. 6.
- [122] *Committee Hansard*, 16 April 2008, pp 28 and 29.
- [123] *Submission 395*, p. 3; see also, for example, National Civic Council, *Submission 417*, p. 3; ACT Right to Life Association, *Submission 434*, p. 5; Dr David van Gend, ACL, *Committee Hansard*, 14 April 2008, p. 9; Family Council of Victoria, *Submission 263*, p. 4.
- [124] *Submission 363*, p. 4.
- [125] *Submission 418*, p. 3; see also 1997 Euthanasia Inquiry, pp 59–60, para 6.13.
- [126] *Submission 452*, p. 5.
- [127] See, for example, AMA, *Submission 375*, p. 2; Mr Christopher Meney, Director, Life, Marriage and Family Centre, Catholic Archdiocese of Sydney, *Committee Hansard*, 16 April 2008, p. 28.

- [128] See, for example, Federal Presbyterian Church of Australia, *Submission 366*, p. 1; Life, Marriage and Family Centre, Catholic Archdiocese of Sydney, *Submission 360*, p. 2.
- [129] *Submission 400*, p. 2.
- [130] See also 1997 Euthanasia Inquiry, Chapter 5; and Father Frank Brennan, *document tabled at hearing on 16 April 2008*: John Collins, Frank Brennan, 'Euthanasia and the potential adverse effects for Northern Territory Aborigines', *The Lancet*, Vol. 349, June 28 1997, pp 1907–1908.
- [131] *Submission 660*, p. 2; see also Dr David Gawler, *Committee Hansard*, 14 April 2008, p. 11.
- [132] *Submission 660*, p. 2; see also Dr Teem-Wing Yip, *Submission 394*, p. 2.
- [133] Dr David Gawler, *Committee Hansard*, 14 April 2008, p. 11 and pp 9–10; Ms Isobel Gawler, *Submission 432*, p. 1.
- [134] *Submission 414*, p. 2.
- [135] *Submission 447*; see also *Submission 449*.
- [136] Mr Desmond McKenzie, AMSANT, *Committee Hansard*, 14 April 2008, p. 32; see also *Submission 660*, pp 2–3.
- [137] *Committee Hansard*, 14 April 2008, p. 20.
- [138] *Submission 660*, p. 3.
- [139] Father Frank Brennan, *Submission 418*, p. 3; Dr Teem-Wing Yip, *Submission 394*, p. 2; Standard letter, *Submission 447*, p. 1; Ms Lorraine Erlandson, *Submission 448*, p. 1.
- [140] *Committee Hansard*, 16 April 2008, p. 13.
- [141] *Submission 414*, p. 3.
- [142] *Submission 414*, p. 2; see also Dr David Gawler, *Submission 445*, pp 1–2.
- [143] *Submission 414*, p. 6 and see also p. 4.
- [144] *Committee Hansard*, 14 April 2008, p. 10.
- [145] *Committee Hansard*, 14 April 2008, p. 10; see also Dr Mark Boughey, *Committee Hansard*, 14 April 2008, p. 37 and p. 39; also *Submission 592*, p. 1.
- [146] Dr David Gawler, *Committee Hansard*, 14 April 2008, p. 15; see also ARDS, *Submission 414*, p. 4.
- [147] Dr Teem-Wing Yip, *Submission 394*, pp 2–3.
- [148] *Submission 660*, p. 2; see also Mr Desmond McKenzie, AMSANT, *Committee Hansard*, 14 April 2008, pp 32–33.
- [149] *Committee Hansard*, 14 April 2008, p. 33.
- [150] *Committee Hansard*, 14 April 2008, p. 21.
- [151] *Committee Hansard*, 14 April 2008, p. 21.
- [152] *Committee Hansard*, 14 April 2008, p. 21.
- [153] 1997 Euthanasia Inquiry, Chapter 5.
- [154] 1997 Euthanasia Inquiry, Chapter 5, pp 40–46.
- [155] 1997 Euthanasia Inquiry, Chapter 5, pp 52–52 and Appendix 3.
- [156] 1997 Euthanasia Inquiry, Appendix 3, p. 198.