

This Remonstrance containing Grievances in regard to restriction on the plenary grant of power of the Northern Territory was presented to the President of the Senate, the Honourable Margaret Reid and the Speaker of the House Representatives the Honourable Bob Halvorson MP on 27 October 1996.



THE REMONSTRANCE

The Legislative Assembly of the Northern Territory with respect and humility addresses itself to –

The Honourable The President and Members of the Senate; and The Honourable The Speaker and Member of the House of Representatives in Parliament assembled.

Whereas:- The Commonwealth Parliament conferred by way of the *Northern Territory (Self-Government) Act 1978*, a substantial grant of self-governing powers on the Northern Territory with its own legislature (the Legislative Assembly of the Northern Territory) with a plenary grant of legislative power for the peace, order and good government for the Northern Territory, with its own new body politic under the Crown with a wide grant of executive power (see Northern Territory (Self-Government) Act Regulations) and with its own judicial system.

Whereas:- In 1995 the Legislative Assembly of the Northern Territory enacted the Rights of the Terminally III Act and the Administrator assented to that Act.

Whereas:- The Full Court of the Northern Territory Supreme Court held in *Wake and Gondarra v Northern Territory* that the Rights of the Terminally III Act was within the legislative and executive powers of the self-governing Northern Territory.

Whereas:- A Bill entitled the Euthanasia Laws Bill 1996 was introduced into the House of Representatives by the Honourable Member for Menzies. This Bill seeks to restrict the plenary grant of legislative power of the Legislative Assembly of the Northern Territory under the *Northern Territory (Self-Government) Act 1978*.

Whereas:- The Euthanasia Laws Bill 1996 constitutes a direct attack on the self government powers of the Northern Territory.

Whereas:- The Legislative Assembly of the Northern Territory is fully elected on democratic principles to represent the people of the Northern Territory and to act on their behalf.

The Legislative Assembly of the Northern Territory presents its grievances to the Commonwealth Parliament.

THE GRIEVANCES

- 1 The Northern Territory having been granted self-governing powers, the duly elected representatives of the people of the Northern Territory are aggrieved that there should be any attempt to diminish these self governing powers by the proposed enactment of the Euthanasia Laws Bill 1996.**

As Witness:-

The Northern Territory and its residents have had a long history of seeking autonomy in control of their own affairs. However up until 1978 the Northern Territory was largely controlled by Commonwealth Ministers and public servants from Canberra.

This changed in 1978 with the passage of the Northern Territory (Self-Government) Act 1978, in which the Commonwealth Parliament publicly recorded that it was “desirable by reason of the political and economic development of the Northern Territory, to confer self-government on the Territory, and for that purpose to provide, among other things, for the establishment of separate political, representative and administrative institutions in the Territory and to give the Territory control over its own Treasury:” (see 4th preamble to the Northern Territory (Self-Government) Act.

That Act created or recognised all three traditional arms of government (legislative, executive and judicial), and thereby granted the Northern Territory self government separate from the Commonwealth.

The legislative arm of this grant, the Legislative Assembly of the Northern Territory was given plenary powers to make laws for the peace, order and good government of the Territory (see s.6 Northern Territory (Self-Government Act 1978).

The High Court has since recognised that the grant of legislative power is not exercised as a mere delegate of the Commonwealth Parliament but is in fact exercised by self-governing Territories in their own right.

The Legislative Assembly of the Northern Territory is fully elected on democratic principles to represent the people of the Northern Territory and has full power and authority to make laws on matters such as voluntary euthanasia.

Whilst the Commonwealth Parliament has constitutional power to make laws for the government of the Northern Territory and the Legislative Assembly of the Northern Territory can't make laws that are inconsistent with laws of the Commonwealth which apply in the Northern Territory, the Commonwealth parliament has never before sought to take away any of the legislative powers conferred upon the Northern Territory's Legislative Assembly.

It is one of the conventions of self government in the Westminster tradition that once self government is granted to a political entity, it should not thereafter be taken away except in the most extreme circumstances, for example, war or civil disturbance. See submission of the Commonwealth Attorney-General's Department to the Joint Parliamentary Committee on the Northern Territory, page 8 of Parliamentary Paper No.281 of 1974 where it also states that it would be politically unthinkable to take away such powers after they had been granted.

The Euthanasia Laws Bill as introduced in the House of Representatives seeks to directly diminish the plenary grant of legislative powers to the Legislative Assembly of the Northern Territory conferred by s.6 of the Northern Territory (Self-Government) Act 1978.

The Bill if enacted would be in clear breach of the above mentioned convention and would constitute an undermining of the principles of self government.

2 The duly elected representatives of the people of the Northern Territory are aggrieved that the Euthanasia Laws Bill 1996 would, if enacted, terminate the future operation of a law already lawfully enacted by the Legislative Assembly of the Northern Territory.

As Witness:-

The Euthanasia Laws Bill 1996, if enacted, would have a dual effect. It would not only result in the diminution of the plenary legislative powers of the Northern Territory Legislative Assembly as per 1 above, but it would also terminate the operation of an existing Northern Territory law lawfully enacted and assented to, namely the Rights of the Terminally Ill Act 1995.

The Commonwealth Parliament has never previously enacted legislation to terminate a law of the Northern Territory lawfully enacted. The Euthanasia Laws Bill would in this respect also be in breach of the conventions of self-government.

- 3 The duly elected representatives of the people of the Northern Territory are aggrieved that the enactment of the Euthanasia Laws Bill 1996 will create uncertainty as to the operation of other existing laws of the Northern Territory.**

As Witness:-

The Euthanasia Laws Bill 1996 proposes to diminish the legislative power of the Legislative Assembly of the Northern Territory in respect of certain forms of intentional killing and the assisting of a person to terminate his or her life. It is not limited to preventing the enactment of a Rights of the Terminally Ill Act.

This has the capacity to create uncertainty as to the validity of a number of other existing Northern Territory laws and possible future laws. For example laws regarding criminal responsibility. It is highly undesirable that there should be any uncertainty in respect of such laws.

- 4 The duly elected representatives of the people of the Northern Territory are aggrieved, given the significance of the matter, that it is proposed to enact the Euthanasia Laws Bill 1996 through a separate but concurrent sittings of the House of Representatives in a side chamber, rather than with full debate in the normal Parliamentary Chamber.**

As Witness:-

The Euthanasia Laws Bill 1996 raises issues of great public importance. The most important of these is the constitutional question of whether a parliament, having once granted self governing powers to another political entity, can thereafter unilaterally take back that grant in whole or part. This a point of fundamental constitutional significance, with ramifications going well beyond the Northern Territory.

The second point of public importance is whether under existing constitutional arrangements in Australia it is appropriate for the Commonwealth Parliament to determine issues concerning voluntary euthanasia.

A third issue of public importance is the merits or otherwise of legally recognising voluntary euthanasia.

These issues of public importance are matters of considerable public interest, which the representatives of the Northern Territory consider if they are to be considered by the Commonwealth Parliament at all, should not be assigned to a side chamber of the Commonwealth Parliament.

- 5 The duly elected representatives of the people of the Northern Territory are aggrieved that the Commonwealth Parliament, in debating the Euthanasia Laws Bill 1996, is proposing to enact legislation for self-governing Territories that constitutionally it could not enact for existing States.**

As Witness:-

Under s.51 of the Australian Constitution the Commonwealth Parliament has no legislative power in respect of the subject matter of voluntary euthanasia. This is a 'state type' matter.

Since the grant of self-government to the Northern Territory in 1978 the Commonwealth Parliament as a general rule has not sought to legislate for the Northern Territory in 'state type' matters except in respect of specific reserve powers. (See Regulation 4(2) under the Northern Territory Government (Self-Government) Act 1978.) The subject of voluntary euthanasia is not such a reserved power.

The Commonwealth Parliament has no power to either diminish the legislative power of a State parliament or to terminate a State law. The only power of the Commonwealth Parliament is to enact laws on matters for which it has Federal responsibility under S.51 of the Constitution. Such laws would override a State law under S.109 of the Constitution to the extent of any inconsistency.

- 6 The duly elected representatives of the people of the Northern Territory are aggrieved that the Euthanasia Laws Bill 1996 would, if enacted, be inconsistent with the undertakings that have already been given for a grant of Statehood for the Northern Territory.**

As Witness:

The Northern Territory is progressing along a path of constitutional development.

The grant of self-government was an important step in that process but does not amount to a grant of Statehood. With a view to facilitating the future grant of Statehood, the Commonwealth already treats the Northern Territory as far as possible as if it were a State, for example, for financial purposes through the Grants Commission process and the Loans Council.

The proposal for a grant of Statehood now has general support from most Australian governments including the Commonwealth, although no time lines have yet been fixed.

To now enact the Euthanasia Laws Bill 1996, being a Bill that deals with 'state type' matters under the Constitution, would be to act contrary to the general progression towards Statehood and create future impediments to such a grant.

Constitutionally the Euthanasia Laws Bill 1996, if enacted, could only operate in the Northern Territory up until the grant of Statehood but not beyond that date (subject to the terms and conditions under s.121 of the Constitution, although there are strong arguments that such terms and conditions could not be used to support the validity of the Euthanasia Laws Bill after a grant of Statehood).

On this basis the Euthanasia Laws Bill if enacted would only be of transitional effect.

Given such a limited effect, the duly elected representatives of the Northern Territory are aggrieved that the Commonwealth Parliament should be used in this ad hoc fashion to undermine the principles of self-government and to create impediments to the future constitutional development of the Northern Territory.

The Prayer:-

The Legislative Assembly of the Northern Territory humbly prays that the Parliament of the Commonwealth of Australia give consideration to the grievances herein set out and seek means to alleviate the distress of the people of the Northern Territory by not proceeding further with the Euthanasia Laws Bill 1996.

And your petitioners as in duty bound will ever pray.

Dated this 10th day of October, 1996

The Honourable T.R. McCarthy, MLA
The Honourable S.L. Stone, MLA
Mrs M.A. Hickey, MLA
The Honourable M.A. Reed, MLA
The Honourable B.F. Coulter, MLA
The Honourable S.P. Hatton, MLA
The Honourable E.H. Poole, MLA
The Honourable D.G. Burke, MLA
The Honourable F.A. Finch, MLA
The Honourable D.W. Manzie, MLA
The Honourable M.J. Palmer, MLA
Mr P.F. Adamson, MLA
Mr T.D. Baldwin, MLA
Mrs L.M. Braham, MLA
Dr R.S.H Lim, MLA
Mr P.A. Mitchell, MLA
Mr R.A. Setter, MLA
Mr J.D. Bailey, MLA
Mr S.J. Stirling, MLA
Mr J.L. Ah Kit, MLA
Mr N.R. Bell, MLA
Ms C.M. Martin, MLA
Mr M.J. Rioli, MLA
Mr P.H. Toyne, MLA
Mrs C.N. Padgham-Purich, MLA