Submission to the Senate Legal and Constitutional Affairs Legislation Committee on the

Ensuring Northern Territory Rights Bill 2021

by the Australian Care Alliance

The Australian Care Alliance was initially formed in March 2018 by health professionals, lawyers and community activists who had worked together informally to oppose the passage of the *Voluntary Assisted Dying Bill 2017* through the Parliament of Victoria.[1]

In August 2018 the Australian Care Alliance helped defeat the *Restoring Territory Rights (Assisted Suicide Legislation) Act 2015* by providing Senators with information and research demonstrating that **no law** of the kind prohibited by Section 50A of the *Northern Territory Self-Government Act 1978* or Section 23 (1A) of the *Australian Capital Territory (Self-Government) Act 1988* could be made safe by guaranteeing there would be no wrongful deaths under such a law.

Since then, the Australian Care Alliance has actively opposed laws permitting euthanasia and assistance to suicide in Western Australia, South Australia, Tasmania and Queensland, as well as monitoring the implementation of the *Voluntary Assisted Dying Act 2017* in Victoria.

Noting the Committee's warning that submissions solely addressing the matter of so-called "voluntary assisted dying" may not be considered, this submission addresses **why the Commonwealth Parliament ought to maintain the existing prohibition on the Northern Territory making a law permitting** "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".

The submission also addresses the prohibition on the Northern Territory making a law permitting the acquisition of property on unjust terms to help illustrate the principles involved.

The Australian Care Alliance is willing and able to provide witnesses to give evidence if the Committee holds hearings into the Bill as part of its inquiry.

[1] https://www.australiancarealliance.org.au/

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EXECUTIVE SUMMARY

The *Ensuring Northern Territory Rights Bill 2021* seeks to make changes in relation to the legislative powers of the Legislative Assembly of the Northern Territory under the Commonwealth's *Northern Territory Self-Government Act 1978*.

Specifically, the Bill would remove limitations on the making of laws by the Assembly on:

- the making of laws with respect to the acquisition of property otherwise than on just terms;
- the making of 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; and
- the making of a law conferring on any court, tribunal, board, body, person or other authority any power in relation to the hearing and determining of disputes, claims or matters relating to terms and conditions of employment.

In the Second Reading speech, the mover of the Bill, Senator Sam McMahon, only briefly mentioned the provisions of the Bill dealing with the acquisition of property otherwise than on just terms and the conferring on courts, etc. of powers in relation to industrial disputes.

While the Australian Care Alliance holds no specific views on the terms on which governments should acquire property, it is worth noting that the "*rights*" being advanced by the Bill are the rights of the NT Government not the rights of Territorians. This provision would empower the Assembly to make a law enabling the government to acquire the property of individual Territorians, or of Aboriginal land rights holders, on patently unjust terms!

This observation is relevant to the provision that would remove the limitation on laws permitting intentional killing and assistance of a person to terminate his or her life. This would remove the protection of the life of every Territorian by empowering the Assembly to make laws allowing them to be intentionally killed – with or without a voluntary request.

In relation to this matter, Senator McMahon stated as an argument for removing the limitation on the making of such laws by the Assembly:

While Territorians are unable to access voluntary assisted dying, the states of Victoria, Western Australia and Tasmania have already passed laws to allow people to pass away with dignity, and to avoid suffering and pain, through voluntary assisted dying.

This statement seeks to characterise laws permitting "*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*" as laws that enhance dignity and prevent suffering and pain.

In our submission this is questionable characterisation of such laws. The evidence from jurisdictions that have enacted laws permitting euthanasia and assistance to suicide – including the Northern Territory in 1995-96 and Victoria since 2019 – is that many of the deaths are wrongful deaths, and some of them involve pain and suffering.

Northern Territory Self-Government

Section 122 of the Constitution of Australia provides, in part, that: "*The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth*".

The Northern Territory was surrendered to the Commonwealth by South Australia on 1 January 1911.

Constitutionally, it is entirely a matter for the Commonwealth Parliament whether, and under what terms, the Northern Territory may exercise self-government.

Section 6 of the *Northern Territory Self-Government Act 1978* empowers the Legislative Assembly, "*Subject to this Act … to make laws for the peace, order and good government of the Territory*".

It is our submission that:

- no law permitting the intentional killing of or the assistance to suicide of a person is a law for peace, order or good government because no such law can be made safe and guarantee no wrongful deaths;
- short of the Northern Territory becoming a State or an amendment by referendum to the Constitution of Australia, the Commonwealth Parliament retains the ultimate responsibility for ensuring the good government of the Northern Territory. It can devolve that responsibility to the Assembly but it cannot renounce it altogether;
- the *Rights of the Terminally Ill Act 1995* passed by the Legislative Assembly was an inherently bad law and demonstrably caused harm, including to the health of Aboriginals – for whom since the 1967 referendum the Commonwealth Parliament has a special constitutional responsibility;
- the Commonwealth Parliament acted wisely and in accord with its ultimate constitutional responsibility for the territories when it enacted the *Euthanasia Laws Act 1997*;
- the Senate acted wisely in 2018 when it defeated the *Restoring Territory Rights (Assisted Suicide Legislation) Bill 2015*; and
- as it is good public policy to have a consistent approach to suicide prevention for all the Commonwealth Parliament ought to exercise all its constitutional powers – including the territories power under Section 122 of the Constitution – as required to achieve this.

Accordingly, the Bill should be opposed.

RECOMMENDATION: The Committee should recommend that the *Ensuring Northern Territory Rights Bill 2021* not be passed.

NO LAW PERMITTING THE INTENTIONAL KILLING OF, OR THE ASSISTANCE TO SUICIDE OF, A PERSON CAN BE MADE SAFE AND GUARANTEE NO WRONGFUL DEATHS

No law permitting the intentional killing of or the assistance to suicide of a person is a law for peace, order or good government because no such law **can be made safe and guarantee no wrongful deaths**. Such laws are therefore *impliedly* prohibited by Section 6 of the

There are **twelve categories of wrongful death** that **any such law** will **inevitably fail to prevent**. Examples have been included from jurisdictions which have been or are experimenting with such laws, including from the four cases in the Northern Territory when the *Rights of the Terminally Ill Act 1995* was in operation.

The information on the four Northern Territory cases is sourced from a published study[2] of which the principal author is Professor David Kissane, a consultant psychiatrist and professor of palliative medicine. Philip Nitschke is a co-author of the study.

Full documentation and further examples for each category are available on the Australian Care Alliance website at: https://www.australiancarealliance.org.au/wrongful_categories and in the publication *Twelve Categories of Wrongful Death by Assisted Suicide or Euthanasia* available at:https://d3n8a8pro7vhmx.cloudfront.net/australiancarealliance/pages/54/attachments/original/1624935190/Wrongful_deaths_by_assisted_suicide_or_euthanasia.pdf?1624935190

1. A **wrong diagnosis** – doctors make mistakes, so the person may not even have a terminal illness; as the deaths are usually made not reportable to the coroner there will be no autopsies and we will never know about most of these cases (**Example**: Pietro D'Amico, Switzerland 2013, found after an autopsy not to have had a terminal illness despite diagnosis by both Italian and Swiss doctors)

2. A **wrong prognosis** – many people have outlived a 12 month prognosis by months, years or even decades (**Example**: Jeanette Hall, Oregon, all set for assisted suicide in Oregon in 2000 based on prognosis of terminal cancer with less than "six months to live" – another doctor persuaded her to try treatment and she is still alive today.)

   NT example: Of the four people intentionally killed under the *Rights of the Terminally Ill Act 1995* [ROTI] in one case, there was no consensus that the person was terminally ill. The person was diagnosed with mycosis fungoides. "*One oncologist gave the patient's prognosis as 9 months, but a dermatologist and a local oncologist judged that she was not terminally ill. Other practitioners declined to give an opinion. In the end an orthopaedic surgeon certified that the ROTI provisions for terminal illness had been complied with*."

3. **Unaware of or unable to access effective treatment** – doctors many not know of new, effective treatments or treatment may not be readily available locally. (**Example**: Case 15 of

[2] http://www.healthprofessionalssayno.info/uploads/1/0/9/2/109258189/seven_deaths_in_darwin_case_studies_unde.pdf

the Netherlands 2011 Regional Euthanasia Review Committees involved a woman who was not given the proper treatment for back pain.)

NT examples: In one case the patient may have benefited from radiotherapy or strontium but neither of these was available in the Northern Territory.

In another case, the patient had an obstruction and was clinically jaundiced. The ROTI Act required Dr Nitschke as a "*medical practitioner who receives a request*" to have "*informed the patient of the nature of the illness and its likely course, and the medical treatment, including palliative care, counselling and psychiatric support and extraordinary measures for keeping the patient alive, that might be available to the patient*." However, Kissane reports that "*when questioned about options like stenting for obstructive jaundice or the management of bowel obstruction*" Dr Nitschke "*acknowledged limited experience, not having been involved in the care for the dying before becoming involved with the ROTI Act*."

This raises doubts as to whether the patient in this case – who was reported by Dr Nitschke to exhibit "*indecisiveness*" over a two month period about whether or not to request euthanasia – would still have done so if he had been given better symptomatic relief for the jaundice and obstruction.

4. **No access to palliative care** – palliative care is underfunded and unevenly available in Australia (and particularly in the Northern Territory) also many doctors are inadequately trained in palliative care; people may die whose suffering – whether physical, psychological or existential - could have been relieved to their satisfaction with gold standard palliative care.

   NT Examples: Kissane observed in relation to the four cases in the Northern Territory in 1995-96, that "*palliative care facilities were underdeveloped in the Northern Territory, and patients in our study needed palliative care… There is a need to respond creatively to social isolation, and to treat actively all symptoms with early and skilled palliative care*."

5. **Denied funding for medical treatment** – no one should have their life ended because they can't afford treatment. (Example: Roger Foley, a 45 year-old man with a neurodegenerative disease when seeking home care was repeatedly told by Canadian hospital staff that he could access euthanasia instead.)

6. **Mentally ill at risk of wrongful death** – depression associated with a terminal diagnosis can be treated but is often missed by doctors. (Example: Belgium is now openly euthanasing young people with mental illness caused by domestic violence, psychological neglect and sexual abuse – 25 people under 40 years of age between 2014 and 2017 alone. Canada is scheduled to start euthanasing the mentally ill in March 2023.)

   NT examples: In the Northern Territory, where euthanasia was legal from July 1996-March 1997, and compulsory screening by a psychiatrist was required, there was a failure to adequately identify depression, demoralization or other psychiatric issues which may have been treatable in all four cases of persons killed under that regime.

In one case (case 3), the patient had received "*counselling and anti-depressant medication for several years*". He spoke of feeling sometimes so suicidal that "*if he had a gun he would have used it*". He had outbursts in which he would "*yell and scream, as intolerant as hell*" and he "*wept frequently*".

Neither the patient's adult sons nor the members of the community palliative care team who were caring for him were told he was being assessed for euthanasia. "*A psychiatrist from another state certified that no treatable clinical depression was present*."

In another case (case 4), "*the psychiatrist noted that the patient showed reduced reactivity to her surroundings, lowered mood, hopelessness, resignation about her future, and a desire to die. He judged her depression consistent with her medical condition, adding that side-effects of her antidepressant medication, dozepin, may limit further increase in dose*."

Kissane comments that "*case 4 was receiving treatment for depression, but no consideration was given to the efficacy of dose, change of medication, or psychotherapeutic management*." While Dr Nitschke "*judged this patient as unlikely to respond to further treatment*", Kissane, comments that "*nonetheless, continued psychiatric care seemed warranted – a psychiatrist can have an active therapeutic role in ameliorating suffering rather than being used only as a gatekeeper to euthanasia*".

In a further case (case 6) a key factor seemed to be the patient's distress at "*having witnessed*" the death of her sister who also had breast cancer, "*particularly the indignity of double incontinence*". She "*feared she would die in a similar manner*". She "*was also concerned about being a burden to her children, although her daughters were trained nurses*".

Kissane noted that "*fatigue, frailty, depression and other symptoms*" – not pain – were the prominent concerns of those who received euthanasia.

Further concerns are raised by the report on case 5. Dr Nitschke reported that "*on this occasion the psychiatrist phoned within 20 min, saying that this case was straightforward*". This assessment took place on the day on which euthanasia was planned. This case involved an elderly, unmarried man who had migrated from England and had no relatives in Australia. Dr Nitschke recalled "*his sadness over the man's loneliness and isolation as he administered euthanasia*". Dr Nitschke later revealed in testimony to a Senate committee, that he personally paid for this psychiatric consultation and that it in fact took less than 20 minutes.[3]

So all four cases of people intentionally killed by Dr Nitschke under the *Rights of the Terminally Ill Act 1995* raise concerns regarding the protection of people vulnerable due to mental health matters.

7. **Better off dead than disabled** – many people with disabilites have been told by a doctor that they would be better off dead. Laws permitting intentional killing or assisatcne to suicide validate that disccriminatory attitude. (**Example**: Belgium and the Netherlands allow euthanasia for intellectual disabilities such as Asperger's and physical disabilities such as blindness.)

[3] https://www.aph.gov.au/~/media/wopapub/senate/senate/commttee/S10740_pdf.ashx

8. **Can we rule out coercion if we legalise assisted suicide?** Doctors miss the signs of elder abuse and coercion. The Bill will not prevent an elderly person being bullied or subtly persuaded to ask for their life to be ended – for someone else's convenience or gain. (**Examples**: Jennifer Morant was persuaded to commit suicide by her husband Graham, who was subsequently convicted under Queensland law prohibiting such acts. Laws permitting euthanasia or assisted suicide necessarily facilitate such acts – instead of persuading a burdensome relative to hang or gas themselves you just persistently remind them that euthanasia is now "their legal right". Nurse Claire-Marie Le Huu-Etchecopar reports repeatedly witnessing such coercion in Belgium between 2008 and 2014.)

9. **Social contagion of suicide** – overall suicide rates have gone up where these laws are in place. (Example: By 2020 suicides in Victoria had increased by 21.2% since assisted sucide was legalised in 2017 – based on a claim it would prevent 50 suicides per year - instead there were 148 additional suicides in 2020).

10. **Killed without request or while resisting** – evidence shows that some doctors get used to ending people's lives "on request" and go on to end the lives of other patients without a request. (**Example**: In the Netherlands in 2015 there were 431 cases of euthanasia without an explicit request, representing 6.06% of all cases of euthanasia that year.)

11. **Lacking decision-making capacity** – a terminal diagnosis can affect decision-making capacity in a way missed by many doctors. Under laws permitting assistance to suicide there is generally no check of decision-making capacity when self-administration of a prescribed lethal poison occurs – which may be months after it was prescribed. If the person was tricked or bullied into ingesting it, who would know?

12. **Inhumane, lengthy deaths** – all substances used to cause death have a significnat complication rate and do not guarantee a peaceful, rapid, painles death. Some people will experience seizures, a prolonged time to loss of consciousness and/or to death. Some deaths will be painful. The professional journal *Anaesthesia* reported in 2019: *Complications related to assisted dying methods were found to include difficulty in swallowing the prescribed dose (≤9%), a relatively high incidence of vomiting (≤10%), prolongation of death (by as much as seven days in ≤4%), and failure to induce coma, where patients re-awoke and even sat up (≤1.3%). This raises a concern that some deaths may be inhumane.*

It is the considered position of the Australian Care Alliance, based on a review of all the available evidence, that none of the jurisdictions that have legalised euthanasia and/or assisted suicide – including the Northern Territory in 1995 - have succeeded in establishing a genuinely safe framework for assisted suicide and euthanasia and that no such law can be designed.

THE COMMONWEALTH PARLIAMENT RETAINS THE ULTIMATE RESPONSIBILITY FOR ENSURING THE GOOD GOVERNMENT OF THE NORTHERN TERRITORY

Section 122 of the Constitution of Australia provides, in part, that: "*The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth*".

The Northern Territory was surrendered to the Commonwealth by South Australia on 1 January 1911. Constitutionally, it is entirely a matter for the Commonwealth Parliament whether, and under what terms, the Northern Territory may exercise self-government.

Section 6 of the *Northern Territory Self-Government Act 1978* empowers the Legislative Assembly, "*Subject to this Act … to make laws for the peace, order and good government of the Territory*".

Since its passage in 1973 the *Death Penalty Abolition Act 1973* has provided that "*The punishment of death must not be imposed as the penalty for any offence*" in the Territories, including the Northern Territory. So, from its establishment in 1978, the Northern Territory Legislative Assembly has had no power to make a law imposing the "*punishment of death*" as the "*penalty for any offence*".

The Bill does not seek to give the Northern Territory Legislative Assembly such a power, so it is clearly selective in which additional powers it is seeking for that legislature.

(From 13 April 2010, the operation of the Commonwealth's *Death Penalty Abolition Act 1973* was extended to also apply to the States. In our submission, the Commonwealth ought to give serious consideration to whether it has a relevant head of power to extend the prohibition on the making of laws permitting "*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*" to cover the States as it has done in relation to the death penalty.)

The passage of the *Euthanasia Laws Act 1997* was an entirely justified and constitutionally valid exercise of the duty of the Commonwealth Parliament to ensure that only laws "*for the peace, order and good government of the Territory"* may be made by the Northern Territory Legislative Assembly.

The prohibition on making laws permitting the acquisition of property on other than just terms may also be seen as similarly an entirely justified and constitutionally valid exercise of the duty of the Commonwealth Parliament to ensure that only laws "*for the peace, order and good government of the Territory"* may be made by the Northern Territory Legislative Assembly.

THE *RIGHTS OF THE TERMINALLY ILL ACT 1995* PASSED BY THE LEGISLATIVE ASSEMBLY WAS AN INHERENTLY BAD LAW AND DEMONSTRABLY CAUSED HARM, INCLUDING TO THE HEALTH OF ABORIGINALS

The initial experiment with legalised euthanasia carried out in the Northern Territory is of particular relevance to the consideration as to whether the Northern Territory Legislative Assembly should eb empowered to conduct another such experiment.

Four people were killed under the provisions of the *Rights of the Terminally Ill Act 1995* before its operation was stopped by the enactment of the *Euthanasia Laws Act 1997*.

Of these there is evidence in three cases (75%) of untreated depression or other mental health issues; in one case (25%) that the person was not terminally ill and in two cases (50%) that further treatment could have relieved their condition. In none of the four cases (0%) was there any evidence of uncontrolled pain.

A detailed analysis is available at: https://www.australiancarealliance.org.au/northern_territory and in this fact sheet:
https://d3n8a8pro7vhmx.cloudfront.net/australiancarealliance/pages/95/attachments/original/1547093789/The_Northern_Territory_experiment.pdf?1547093789

In a speech given in the Senate on 28 October 2010 on the *Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010,* Senator Chris Back (WA, Liberal) said:

> *I actually communicated at length this morning with a senior surgeon from Darwin, Dr David Gawler.*
> *[T]the point he made to me was:*
>
> > *Importantly, if Indigenous people think medical staff have the power to terminate lives, the fear and distress will prevent many Aboriginal people from seeking and accepting medical treatment.*
>
> *He went on to tell me that, bearing in mind Indigenous cultural and linguistic differences, there may be 'insurmountable problems' in ensuring in each and every case that they have fully informed and have given consent for euthanasia. He makes the point that Aboriginal people do not enjoy good standards of health and are most frequent users of health services.*
>
> *If I can quote these figures, the Northern Territory has the smallest population of the Australian states and territories, the highest proportion of Aborigines within that—27 per cent was the last figure I saw—but almost 50 per cent of deaths in the Northern Territory are of Aboriginal people.*
>
> *Dr Gawler is of the belief the proposed legislation puts at risk the most vulnerable members of the*
> *population, and that is Aboriginal people in the Territory.*
>
> *It is interesting that in a paper in 1997 in the Lancet, John Collins and Frank Brennan agreed very much with Dr Gawler on the adverse effect on Aboriginal people in the Northern Territory of euthanasia. They report that the traditional Aboriginal viewpoint prohibiting*

euthanasia was rejected by the Northern Territory parliament as an argument against the act at a time of heightened concern
around Australia about Aboriginal self-determination and health. The healthcare systems for Aboriginal patients are part of a unique complex which includes description of wellbeing, cause of illness, healing practices and the prerequisite social behaviours that a person experiences. They said at the time that the Northern Australian Aboriginal Legal Service admitted that euthanasia and suicide were not well known or understood in Aboriginal culture and that the most non-English-speaking Aborigines in the Territory were being denied their opportunity to make informed
comment or response to the proposed legislation at that time due to a lack of interpreters.

It was interesting to note the similarity between the concerns expressed by Collins and Brennan in
1997 and those of Dr Gawler to me this morning. He then went on to talk about intervention by outside agents under Aboriginal law and the possible concern associated with payback.

The likely impact of a law permitting euthanasia or assistance to suicide on the health of Aboriginal people in the Northern Territory was eloquently expressed by Senator Pat Dodson (WA, Labor) in his speech delivered in the Senate on 15 August 2018 opposing the *Restoring Territory Rights (Assisted Suicide Legislation) Bill 2015*:

We know that Australia's attempt to achieve the realisation of that right, through the Closing the Gap campaign, has been an abysmal failure. First Nations people do not enjoy the same quality of life in this country at every stage of their existence, as shown in the national figures. In the womb, a First Nations child is at higher risk of contracting life-threatening bloodborne diseases. Last year, six First Nations babies died of syphilis. Our children are more likely to be diagnosed with chronic health conditions such as type 2 diabetes. They are at greater risk of contracting meningococcal and rheumatic heart disease. As teenagers, they watch their friends, their cousins and their siblings prematurely end their own lives. These facts are true of the Northern Territory and nationally. In the Kimberley region, where I come from, the suicide rate is the highest in the world.

By what most Australians call middle age, many First Nations people are already living with kidney failure, without sufficient access to dialysis. The burden of disease and disability in First Nations communities is far higher than it is in the general population. First Nations people are more likely to live with a severe or profound disability. They also die younger. On a national basis, First Nations men can expect to live to an average age of 69, while non-First Nations men can expect to live to 80. First Nations women can expect to live to an average age of 73, while non-First Nations women can expect to live to 83.

All governments—state, territory and federal—have failed to enact the necessary action to close the gap. The government is currently undertaking a refresh process, with the Minister for Indigenous Affairs announcing at Garma earlier this month that some two dozen new targets would be added as part of the refresh process. That seems a drastic amount of new targets, and only emphasises how we've failed to address the health issues suffered by First Nations people to date. With so many of our people suffering complex health conditions at an early age, there is a desperate need for culturally appropriate palliative care services in regional and remote areas. A review recently commissioned by the Australian government confirmed that more needs to be done to ensure that First Nations people are receiving palliative care within their communities.

> ***Where First Nations people are already over-represented at every stage of our health system, it is irresponsible to vote in favour of another avenue to death. Paving the way for euthanasia and assisted suicide leaves First Nations people even more vulnerable, when our focus should be on working collectively to create laws that help prolong life and restore their right to enjoy a healthy life.***

The Commonwealth Parliament has since the1967 constitutional referendum a constitutional responsibility under Section 51 (xxvi) of the Constitution of Australia "*to make laws for the peace, order, and good government of the Commonwealth with respect to … the people of any race for whom it is deemed necessary to make special laws*", including First Nations people.

In our submission this constitutional responsibility also (morally if not formally) obliges the Commonwealth Parliament to consider the likely impact of any proposed law on First Nations people, including Aboriginal people in the Northern Territory.

On all the available evidence presented since 1996 there is a real and substantive danger of any law permitting euthanasia or assistance to suicide in the Northern Territory to have a particular adverse impact on the health of Aboriginal people in the Northern Territory and that therefore the Commonwealth Parliament should continue to reject – as the Senate did as recently as 15 August 2018 – any measure that would facilitate the passing of such a law.

CONSISTENT APPROACH TO SUICIDE PREVENTION FOR ALL

It is good public policy to have a consistent approach to suicide prevention for all Australians and consequently the Commonwealth Parliament ought to exercise all its constitutional powers – including the territories power under Section 122 of the Constitution – as required to achieve this.

The *Criminal Code Act 1995 (Cth),* sections 474.29A and 474.29B prohibit any use of a carriage service in relation to "*suicide related material*", defined as material "that directly or indirectly (i) counsels or incites committing or attempting to commit suicide; or (ii) promotes a particular method of committing suicide; or (iii) provides instruction on a particular method of committing suicide".

These provisions prohibit the use of a carriage service (phone, internet, etc.) for acts otherwise authorised under Victoria's *Voluntary Assisted Dying Act 2017* and Western Australia's *Voluntary Assisted Dying Act 2019* which involve counselling suicide or instructing in a method of suicide.

Regulation 3AA of the *Customs (Prohibited Imports) Regulations 1956* prohibits absolutely the *"importation of a device designed or customised to be used by a person to commit suicide, or to be used by a person to assist another person to commit suicide*" and of any "*document that promotes the use of [such] a device … or counsels or incites a person to commit suicide using one of those device …. [or] instructs a person how to commit suicide using one of those devices*".

It is entirely consistent with this public policy position to maintain the provisions preventing either of the territory legislatures from passing any law "*permitting or having 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*." (*Australian Capital Territory (Self-Government) Act 1988*, Section 23 (1A) and *Northern Territory Self-Government Act 1978, Section 50A*.)

The National Mental Health and Suicide Prevention Plan was endorsed by the Council of Australian Governments on 4 August 2017 and is in place until 2022.[4]

It commits all Australian governments, including the Commonwealth, the ACT and the Northern Territory to:

- *Address **the appallingly high rate of suicide for "Aboriginal and Torres Strait Islander peoples.** Among this population, suicide was almost unheard of prior to the 1960s, yet in 2014 it was the fifth leading cause of death among Aboriginal and Torres Strait Islander peoples, and the age-standardised completed suicide rate was around twice as high as the non-Indigenous rate".*

As explained above, any law permitting euthanasia and assistance to suicide will have **an adverse impact on indigenous health**. One of the key reasons the Senate passed the *Euthanasia Laws Act 1997* was the devastating effect of the Northern Territory's euthanasia law on Aboriginal health.

- *Aim for **zero suicides within health care settings**.*

Laws permitting assistance to suicide **actively facilitate suicide within healthcare settings**!

- *Reduce the **availability, accessibility and attractiveness of the means to suicide***

Laws permitting assistance to suicide specifically **make lethal poisons available and accessible** to people to use to commit suicide. Such laws also **glamorise suicide** and **make suicide seem attractive**.

- *Establish public information campaigns to support the understanding that **suicides are preventable**.*

During debate on the Victoria's *Voluntary Assisted Dying Bill 2017* the then Minister for Health accepted the appalling claim by the Coroner that the **suicides** each year of 50 Victorians with deteriorating physical health **were entirely unpreventable** despite evidence given by the Manager of the Coroners Prevention Unit that earlier intervention may have been possible.[5]

- *Ensure that "There is **a whole-system approach to suicide prevention**, with government, business and the community **working together towards the one outcome**"*

Any law permitting and facilitating assistance to suicide contradicts and undermines this "*whole-system approach*" by proposing suicide as a wise choice for some Australians and actively facilitating it. This inevitably sends the message that some of us are better off dead and that suicide can be a peaceful, beautiful thing and a wise choice.

[4] http://www.coaghealthcouncil.gov.au/Portals/0/Fifth%20National%20Mental%20Health%20and%20Suicide%20Prevention%20Plan.pdf

[5] https://d3n8a8pro7vhmx.cloudfront.net/hopeaustralia/pages/43/attachments/original/1502812139/Answering-the-Coroners-case-for-assisted-suicide-FACT-SHEET.pdf?1502812139

Legalising assisted suicide has been shown to lead to an increase in the overall rate of suicides of 6.5% and of the elderly (65 years and older) by 14.5%.[6]

This conclusion is supported by **evidence from Victoria**.

When arguing for the legalisation of State-approved and funded assistance to suicide, then Minister for Health and Human Services, the Hon Jill Hennessy, claimed that:

> *Evidence from the coroner indicated that one terminally ill Victorian was taking their life each week*.[7]

The *Voluntary Assisted Dying Act 2017*, which she introduced on behalf of the Victorian Government, excluded deaths by self-administration of a "voluntary assisted dying substance" for the purpose of causing a person's death from being considered as caused by suicide.

By this legal fiction, which is replicated in Section 8 of the Bill, such deaths are recorded as caused by the disease, illness or medical condition cited by a doctor in the application for a self-administration permit under the Victorian Act.

If Ms Hennessy's claim was correct there ought to have been **a decrease of around 50 deaths by suicide each year** once the Act came into operation, as it did on 19 June 2019, as these terminally ill Victorians would now have access to a State-approved and State-funded way to intentionally cause their own deaths by ingesting a lethal poison.

However, according to the Coroners Court of Victoria there were 694 deaths by suicide in Victoria in 2017.[8]

There were slightly more - 698 - in 2020, which was the first full calendar year in which State issued suicide permits and the State-funded poison delivery service were in operation.

So there is no evidence that the anticipated decrease of 50 deaths by (non-authorised) suicide each year has been achieved.

Moreover, putting aside the legal fiction declaring suicides pursuant to a permit issued by the Victorian Secretary of the Department of Health and Human Services there were an additional 144 suicides in 2020 which were officially recorded by the Voluntary Assisted Dying Review Board as "*Confirmed deaths - Medication* [sic = poison] *was self-administered*".

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[6] Jones, David A and D. Paton. "How Does Legalization of Physician-Assisted Suicide Affect Rates of Suicide?" *Southern Medical Journal* 108 (2015): 599–604.

[7] https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2017/Assembly_Daily_Extract_Thursday_21_September_2017_from_Book_12.pdf

[8] https://www.coronerscourt.vic.gov.au/sites/default/files/2021-01/Coroners%20Court%20Monthly%20Suicide%20Data%20Report%20-%20December%202020.pdf

Adding these 144 State-approved, State-funded suicides by the ingestion of State-supplied lethal poison to the 698 suicides without such State approval and facilitation gives a total of 842 suicides in 2020 - an increase of 21.2% on 2017.

The 144 suicides with State approval in 2020 are nearly three times the 50 suicides of terminally ill persons each year claimed by Minister Hennessy during the 2017 parliamentary debate.

Additionally, 31 Victorians were killed by injection of State-funded and supplied lethal poisons by a doctor who had been issued, a voluntary assisted dying physician administered permit, by the Secretary of the Department for Health and Human Services, specifically **authorising the doctor to administer the poisons in order to cause the death of the person**.

If these are added to the count of suicides - insofar as they are at least purported to be **performed at the request of the person with the intention of causing that person's death** - then the total for 2020 would be 873 - a 25.8% rise since 2017.

To pass the Bill would be inconsistent with the shared commitment to reduce suicides throughout Australia.

CONCLUSION AND RECOMMENDATION

Notwithstanding its additional impacts relating to industrial relations and empowering the Northern Territory Legislative Assembly to makes laws permitting the acquisition of property on other than just terms, the principal impact of the *Ensuring Northern Territory Rights Bill 2021* would be to empower the Northern Territory Legislative Assembly to makes laws permitting "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".

This submission has argued that the Commonwealth Parliament has:

- ultimate constitutional responsibility to make laws for the good government of the Northern Territory;
- responsibility in making any law to consider the likely impact on the health and well-being of Aboriginal people, including those in the Northern Territory; and
- responsibility to exercise all its legislative powers in accordance with a consistent approach to the prevention of suicide.

In light of the evidence that:

- no law permitting "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" could be made safe and could guarantee that there will be no wrongful deaths under its provisions;
- the Northern Territory's previous experiment with such a law was fatally flawed;
- that law did, and any such law would, have an adverse impact on the already disadvantaged Aboriginal population in the Northern Territory; and
- any such law would undermine the shared commitment to a consistent national suicide prevention strategy

the Commonwealth Parliament ought not to pass the *Ensuring Northern Territory Rights Bill 2021* and the Committee should so recommend.

RECOMMENDATION: The Committee should recommend that the *Ensuring Northern Territory Rights Bill 2021* not be passed.