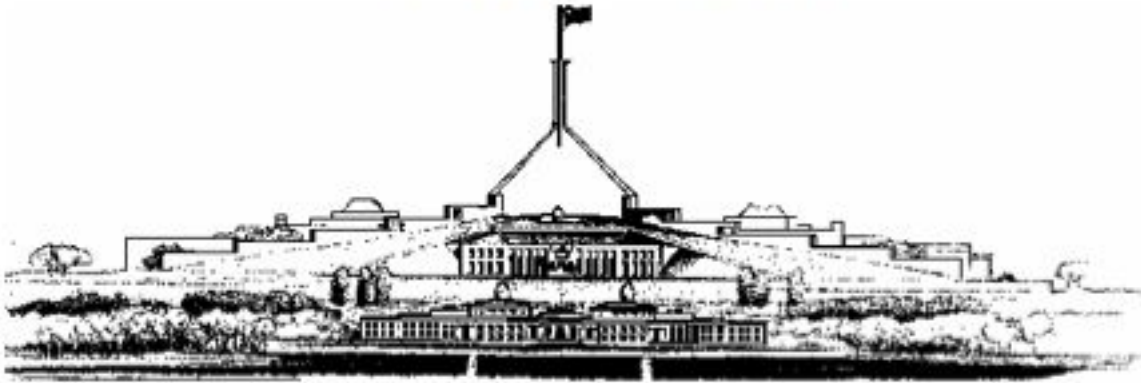




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

BILLS

**Restoring Territory Rights (Assisted
Suicide Legislation) Bill 2015**

Second Reading

SPEECH

Tuesday, 14 August 2018

BY AUTHORITY OF THE SENATE

SPEECH

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Speaker Abetz, Sen Eric	Question No.

Senator ABETZ (Tasmania) (13:31): The Restoring Territory Rights (Assisted Suicide Legislation) Bill 2015 deserves to be defeated. It deserves to be defeated on a number of grounds. Firstly, the bill displays a sad misunderstanding of our constitutional arrangements. Secondly, it shows a complete disregard of the general basic ethical foundations of our society, where every single life is valued. Thirdly, it shows a disregard for the sensitivities of our Indigenous community, especially in the Northern Territory.

These three major points were considered by a Senate committee, which I had the privilege of chairing, some time ago, when we looked at the Andrews bill. In the years since, can I simply observe that the Constitution hasn't changed, the ethical foundations of our society haven't changed and the needs of our Indigenous community haven't changed.

Let's be clear on the constitutionality. The Commonwealth parliament only exists because of the states coming together in a federation by a popular vote in 1901. The territories' governmental arrangements are only present because of federal government legislation. Local government, at the state level, only exists because of the will of the state parliament. Local government powers are determined by state legislation. Local governments are suspended, they are amalgamated, they are given fewer powers and they are given extra powers—all at the whim of a state parliament. And so it is with territory governments and the Commonwealth. The legislatures in the territories only exist because of the Commonwealth parliament designating the relevant powers—which, I might add, are specifically limited.

The bill before us erroneously asserts in section 3 certain objectives, and one of them is that the bill is designed to reduce Commonwealth interference. Well, given the fact that the territories and their governments are fully the creatures of Commonwealth legislation, it is somewhat bizarre to then assert that the Commonwealth is interfering in its own creation. Then we are told the bill is designed to 'facilitate competitive federalism'. Well, as I said before, the territories are not states. And might I just interpose at this stage that, after the Andrews bill was passed by this parliament, the people of the Northern Territory were given a specific opportunity at a referendum as to whether or not they wanted to adopt statehood. That would have given the people of the Northern Territory the constitutional and legal right to have assisted suicide legislation. The people of the Northern Territory voted no. Let's be clear: the people of the Northern Territory voted no to the possibility of being granted statehood.

Similarly, here in the ACT, it was the federal parliament that inflicted self-government on the ACT. When it was put to the people of the ACT—'Do you want self-government in the Australian Capital Territory?'—the people of the territory voted no. These people, with respect—my colleagues who come in here and assert that there are somehow fundamental territory rights here that cannot be dealt with in the manner that the Andrews bill dealt with them—overlook the fact that the people in the ACT shunned self-government. They didn't want it when they were asked. Nevertheless, it was imposed. When the people of the Northern Territory were asked, 'Do you want statehood?'—and part of the campaign was, 'If we grant statehood, we can then overturn,' and, legally, they would have been entitled to do so—they voted no. As a result, I think we are clear in the constitutionality of this matter: the issue of so-called states' rights clearly doesn't apply, and, what's more, the people in both territories have deliberately voted against such a possibility.

To those who do say that there should be no interference in the territories' capacity to legislate, I put this proposition: if, for example, the Northern Territory or the ACT sought to reintroduce the death penalty, would they say, 'Let it rip. That's fine. I know we've got constitutional power in the federal parliament to override it, but, oh, it's their right. It's a territory right, so, if they want the death penalty, they can have it'? I trust we would live up to our responsibility in this chamber and, given that we are at the apex of the legislative authority as it relates to the territories, seek to override their powers in that regard. I trust that, for colleagues, this is not a situation where you simply say that territory rights prevail irrespective of the issue. My own view is that you should only intervene in exceptional circumstances, such as life-and-death matters. If the Northern Territory were to seek the death penalty, I would be one of the first to say, 'Let's have legislation to ensure that that legislation is never enacted.'

That deals with the issue, I trust, of constitutionality and territory rights. I ask those that assert that territory rights should prevail over everything to look at themselves in the mirror. If the territory were to legislate for the death penalty, would they still be saying territory rights trump everything? I trust they wouldn't. Similarly, I trust that they will look seriously at the issue of what assisted suicide actually means and how it undermines the very fibre of our society.

Let's be very clear: there are many good men and women, with and without religion, who have expressed very real concern about the concept of state supported suicide. In my own home state of Tasmania, the state government, to its great credit, runs advertisements alerting people to the possibility of elder abuse—financial elder abuse and physical elder abuse. As a lawyer, before I came into this place, I knew that wills were disputed and that people were after the money that might be left behind. On both sides of the argument, you had greatly qualified psychiatrists asserting that the person making the will was of sound mind and equally qualified individuals saying that they were of unsound mind. So when we talk about 'safeguards' for state-supported suicide, I say to you that they don't exist. I will quote somebody that may be of interest to some of my colleagues, especially those on the other side of this chamber. I quote:

Is it possible to reduce to black and white law on the pages of a statute book the circumstances, and the safeguards, in which we would allow the taking of a life? I have spoken to many experts, people engaged on both sides of this argument, and what has shaped my bottom line conclusion is the view that it is not possible to codify in a law the safeguards, the circumstances, in which the extinguishing of a human life would be possible.

So said former Labor Premier Bob Carr—and I agree with him.

A former Supreme Court judge in Tasmania before whom I appeared, rest his soul, the Hon. Henry Cosgrove, said in a very pithy submission to the Senate Committee—and allow me to read the two long-established principles on which he relied—firstly:

Private citizens are not permitted to destroy life—

and the private citizen in this case would, of course, be the doctor—

The state may do so but only in carefully circumscribed circumstances.

And, secondly:

No person can consent to an assault on his person unless the assault is done in order to save life or health. As soon as we allow the concept to permeate our society which would allow another person to be involved in the death of a fellow human being, we must have come to the conclusion that that life is not worth living. The concept of a life not worth living challenges to the very core our nations of civilisation. As soon as such a concept takes hold within the psyche of our nation, we will demean the value of human life.

I, unfortunately, hear some arguments in the community and, sadly, also in this debate about dying with dignity—that if people suffer from a particular disability, they somehow lose dignity.

It was for that very reason that the disability sector in the state of Victoria so passionately opposed the Victorian legislation in relation to state-supported suicide. They were appalled at the concept that people would start saying, 'Well, if you've got that disability, of course your life isn't worth living'. They were appalled by it. The value of a human life is not dependent upon its particular circumstances. It is an inherent value that can never be taken away from that life and we, as a society, should never, when a person who has come to a consideration that 'My life is not worth living' say, 'Yes, we'll be caring and compassionate; we'll help you get rid of your life.' A caring, compassionate society would say, 'We understand where you're coming from, but, despite your disability, despite the circumstances in which you find yourself, you are a valuable member of our community. We love you dearly and we will do everything we possibly can for you.'

Indeed, the committee that I chaired heard story after story. One person had asked his brother, who was a medical doctor, to assist him to go a week before he died naturally—and a very poignant story it was, because the brother said, no. Within that remaining week of that young man's life, he was able to reconcile himself to his mother and father and, as he was dying, he said to his brother, who was the doctor, 'Thank goodness you did not agree with my request. These past few days have been the most valuable of my life.'

Another example is a young man who went on to marry and become a veterinary surgeon. He had been diagnosed with terminal illness. He was in the palliative care section of the hospital—a young bloke, no attachments at all—and was of the view that chances were, if state-assisted suicide was available to him, he may well have availed himself of it because he was under the misapprehension that he was going to die in a few days anyway. I don't know what occurred, but, to the amazement of the doctors, he walked out of that palliative care unit. He went on to get married; he had children and became a veterinary surgeon.

So for every one story of an alleged painful death, we have another story on the other side of the equation—and that is why these debates have to be determined on fundamental underlying principles and not the anecdotal evidence or assertion of one or the other side of the debate. And can I simply say to those who bring stories from the past: palliative care has come a long, long way. I think we should be celebrating that and acknowledging that. Most people now in the medical profession tell me that you are able to have a pain-free death courtesy of all the treatments that are available.

I wonder how many people know that about five per cent of deaths that are assumed by the medical profession to have been caused by one particular issue are found, post-mortem, to have in fact been caused by a different issue. With the best will in the world, misdiagnosis occurs. So I ask: why is it that in my former profession the vast majority opposed the death penalty? I could regale you with stories of the most heinous crimes, and people may well say, 'Somebody who's committed all these heinous crimes surely has forfeited his right to remain in society.' But we lawyers know that, even with the best will in the world, there are miscarriages of justice. That is why the vast bulk of lawyers are against the death penalty.

Similarly, with the best will in the world, the vast majority of doctors acknowledge that, despite all their training, despite everything they seek to do, misdiagnosis occurs. That is why so many doctors, if not the majority of them—and I think it is a clear majority of them—oppose state-supported suicide. Once you make a mistake with a death penalty, there's no turning back. Once you make a mistake with state-supported suicide, there's no turning back. It is final. It is over.

I will quickly turn to the issue of Indigenous Australians. In the committee inquiry into the Andrews bill, which I had the privilege of chairing, there were more than 12,000 submissions from the community. Some 200 came from the Indigenous community. Without fail, each and every one of them pleaded with the federal parliament to pass the Andrews bill, because within the Indigenous culture the idea of euthanasia was anathema. Also, euthanasia, state-assisted suicide, was a white man's idea. There was very real concern that the Indigenous community, as a result, would stay away from the medical clinics throughout the Northern Territory.

What was very informative was that the committee—I will just read this bit—said:

The Committee also heard evidence from Mr Chips Mackinolty, who was engaged by the Northern Territory Government to provide an unbiased and factual education campaign on euthanasia to Aboriginal communities, following the enactment of the legislation. Mr Mackinolty told the Committee that, even though he personally supported his own right to euthanasia as a non-Aboriginal, his experience in conducting the education campaign had brought him to the view that the Northern Territory's Rights of the Terminally Ill Act should be repealed because of its potential to deter Aborigines from seeking prompt medical attention. Mr Mackinolty expressed the view that the very existence of the Northern Territory legislation is a significant threat to Aboriginal health.

Given the blessings we now have in our community with palliative care, there is no need for state-supported suicide. So, in brief, the constitutional arguments asserted by the movers of this bill simply do not hold water. And if we deal with the principle of taking another human life, saying that there is such a concept as a human life not worth living, we undermine and, indeed, threaten the security of each and every one of us as individuals within a civilised society. In particular, given that this seeks to override or allow the Northern Territory parliament to deal with this issue again, the concern of the Indigenous community must also be front and centre. I oppose the bill.