SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

REF: Australian Capital Territory (Self Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010

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INTRODUCTION

I limit my remarks to the situation pertaining to the Northern Territory as I am familiar with the history of the quest for, transition and implementation of self government there. No doubt some of the points I make will be relevant to the other self governing Territories.

The Frazer government's decision to bestow self governing powers on the Northern Territory on the 1st July 1978 was in response to decades of discontent and political agitation by the citizens of the Northern Territory. Commonwealth administration of the Northern Territory by a distant, disinterested public service was marked by poor, inappropriate and wasteful decision making. Locals rightly believed that given the same resources they could do the job better. The Commonwealth desire to impose state like levels of taxation was also a consideration. Territorians had long resisted paying higher taxes for what were considered substandard levels of service. "No taxation without representation" was the cry.

Self government in the NT has been a substantial success, led by individuals with a commitment to the Territory and a strong belief in the unexploited potential. Economic and social development since self government has been impressive as successive governments strove to exploit the mineral, agricultural, marine, tourism and geographic assets. More progress would have been made but for restrictions imposed by the Commonwealth in regard to mining and inalienable freehold land title.

One area where progress can be legitimately questioned is that of aboriginal advancement. Despite decades of massive financial allocation and good intention, there remains widespread social dysfunction in many aboriginal communities. These problems are not restricted to the Northern Territory and the Commonwealth shares responsibility for allowing them to continue and for their resolution.

THE ISSUE

Self Government was intended by those who initiated it as placing the one sixth of mainland Australia which is the Northern Territory on a footing similar to that of a state. While representation in the Senate would remain unequal and special arrangements applied to uranium, national parks and aboriginal land, the authority to legislate for " Peace, order and good government" was unfettered but for a power for the Governor General (the executive) to return to the Territory Parliament any law with suggested amendments or to withhold assent.

My understanding of this provision was that it was a hangover from the era when Westminster permitted distant colonies some self rule but intended to restrict their ability to engage in unfriendly acts toward the motherland or other constitutional crises.

Some commentators advocate that this executive veto power should be exercised whenever a Federal government objects to laws passed by a Territory Parliament. Such action would be contrary to the very principle of self rule. The only occasion an application was made to the Federal Government to veto a law made by the Northern

Territory Legislative Assembly was in December 1995. The law was the Rights of the Terminally Ill Act (NT) 1995* and the then Prime Minister Keating rejected the application in February 1996. To this date I am not aware of any other occasion an application was made or accepted by the Federal Executive to withhold assent to a Northern Territory law.

*Subsequent to this failed application a private members bill, the Euthanasia Laws Act 1996 was passed by Federal Parliament, nullifying the Rights of the Terminally Ill Act (NT) 1995 and withdrawing the authority of all territory parliaments to process voluntary euthanasia legislation.

CONCLUSION

The history of the Rights of the Terminally Ill Act (NT) 1995 demonstrates conclusively that an executive power to veto Territory legislation is unwarranted and unnecessary. A decision to veto a law passed by the duly elected representatives of Australians living in the territories is a grave matter. It should not be done on the whim of a Minister or Prime Minister but duly considered by both houses of Federal Parliament.

The Northern Territory Parliament and Executive has, for 33 years, responsibly administered a Judiciary (including the appointment of Judges of the Supreme court), a police force, health, education and other services with an annual budget of billions. It has drawn up a criminal code, legislated for the termination of pregnancy, organ donation, prostitution, aboriginal sacred sites, firearms and casinos. The NT has, in the past, led the States in developing ties with Indonesia, motor accidents compensation scheme, privatising government audit and banking and digital land titles.

There is no ongoing need for a ‘big brother’ clause that allows a Federal Government minister to veto a law passed by the legislative Assembly. If a proposed law is considered so dangerous or offensive to warrant trampling the decision of a subordinate democratically elected legislature, it should only be done by Federal Parliament in full session.

END

The author was a member of the NT Legislative Council from 1974 to 1978 and the NT Legislative Assembly 1978 to 1995. He was a Minister for 8 years and Chief Minister for 7 years.