Submission to the Legal and Constitutional Affairs Committee

Inquiry into the Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010

Submission to:

legcon.sen@aph.gov.au

Michael Moore

6 March 2011

The legislation under consideration:

I understand that the legislation being considered by the Committee is to amend the *Australian Capital Territory (Self-Government) Act 1988* to repeal the provision which enables the Governor-General to disallow and recommend amendments to any Act made by the Australian Capital Territory Legislative Assembly. The stated object of the Bill and the amendments is to give exclusive legislative authority to their local legislatures.

Support for the legislation:

I believe that the legislation is an important part of the development of the powers of the Australian Capital Territory (and as foreshadowed by Senator Brown) also for the Northern Territory and Norfolk Island.

The Territories have powers that are less than those of the States and, as such, should be reviewed from time to time to determine why it is that the Federal Parliament allows reduced democratic rights for approximately 800,000 Australian citizens.

Many have been critical of decisions that have been made by the ACT Legislative Assembly since self-government in 1989. However, this is the nature of democracy. There has also been criticism of many decisions taken by Federal governments in the same period, not to mention neighbouring New South Wales. We should have similar rights as other jurisdictions when it comes to decisions by our locally elected representatives.

Therefore, I urge the Senate Committee to recommend support for the legislation currently being considered by the subject of inquiry.

Exclusive legislative authority:

The legislation will not provide exclusive legislative power to the ACT. The fundamental difference between the States and a Territory is the source of power. As a Territory source of power originates from the Federal Parliament without changes to the Constitution the power to make legislation will always remain subject to the decisions of the Federal Parliament.

This power was exercised following the introduction by Kevin Andrews in 1996 of the "Euthanasia Laws Bill". When this legislation passed through both houses of the Federal Parliament it removed the power of the Legislative Assemblies in the ACT and the NT to make laws in this area. In that case members and senators from all over Australia decided they had higher moral standards than the people of the ACT and the NT.

There are Senators arguing that this legislation will reintroduce such powers. Such arguments are simply wrong. Senator Brown's amendment is simply to repeal Section 35 of the 'Self-Government Act 1988'. It does not go so far as to remove powers of the federal parliament and turn the ACT into a state. Moreover, there is no attempt at this stage to repeal Section 23 in which the Andrews' subsection 1A states: "The Assembly has no power to make laws 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".

However, at least it was a decision of the whole parliament. The legislation proposed by Senator Brown removes the over-riding of legislation by the Governor-General (on advice from a Minister) but does not undermine the power of the whole parliament to change the Self-government Act.

In the last federal election both major parties emphasised the importance of decision making at the local level regarding hospitals and health. The government is prepared to appoint local people with

special expertise to hospital and primary healthcare boards. How much more fundamental is the right of local decision making when it comes to a duly elected representative body?

Where an elected parliament passes legislation and then can have it overturned by a single person simply flies in the face of good democratic practice.

Comparison of Legislatures:

There is an irony that this Bill was introduced by a Tasmanian senator and that there are two other Tasmanian senators on the Committee (including the chair). The ABS statistics of March 2011 reflect that irony. Tasmania, with a population of 507,000 compared to the 359,000 in the ACT has full statehood without the threat of their legislation being stomped on. They also have twelve senators to represent them compared to two in the Territories. Their 'Gross State Product' is less than that of the ACT at $22,564,000 compared to the ACT at $24,916,000. The 'State Final Demand' of the ACT at $43,978,000, which takes into account household, government and the private sector, dwarfs Tasmania with $25,379,000.

Despite this Tasmania has its own governor and is not under the threat of having legislation arbitrarily over-ridden without review by a parliament.

Conclusion:

The ACT Legislature has matured considerably since Self-government was established in 1989. It is an appropriate time to ensure that the elected members of the ACT Legislative Assembly can exercise their power in an appropriate way without the threat of having their legislation reversed by a non-elected, appointed official.

I would be delighted to provide further information to the Inquiry should members consider it helpful.

6 March 2011