



## SPEAKER

Senator Trish Crossin  
Chair  
Senate Legal and Constitutional Affairs Legislation Committee  
Parliament House  
Canberra  
ACT 2600

Dear Senator Crossin

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

During the hearing on Wednesday 16 March 2011, Senator Humphries, asked for my views concerning a previous proposal he attributed to Senator Bob Brown to use the Commonwealth's s.122 Territories Power to override (since repealed) legislation requiring mandatory minimum sentencing for certain offences in the Northern Territory.

I would like to clarify some aspects of the response I gave at the hearing. I have circulated a copy of this letter to all members of the Northern Territory Legislative Assembly Standing Committee on Legal and Constitutional Affairs and they have agreed to the content herein.

I support the removal of s.9 of the *Northern Territory Self Government Act 1978* because I take the view the people of the Northern Territory have the democratic right, and indeed responsibility, to determine the membership of the Legislative Assembly of the Northern Territory and at each election to decide whether to give them another term.

Mandatory Sentencing was the policy of a particular Government in the Northern Territory. The then Opposition made a commitment to abolish mandatory sentencing if it was elected.

It is far too simplistic to attribute an election loss or victory to a single policy. The electors of the Northern Territory voted for a new government in 2001 which had amongst its policy platform the abolition mandatory sentencing for certain offences which was repealed shortly thereafter in the Northern Territory.

Senator Humphries' line of questioning asked that if this had not been the outcome, then might I support Senator Bob Brown's proposal for the Commonwealth to override the Northern Territory, and if indeed I did, is that not inconsistent with the support I am now giving to the removal of s.9 of the *Self Government Act*?

Firstly, I do not support unilateral action by the Commonwealth singling out one jurisdiction.

I support the existing constitutional arrangements in Australia where the Commonwealth may legislate for the entire nation where it has the power to do so.

If the Commonwealth has the power to legislate in the area of prohibiting mandatory sentencing for the whole of Australia, then as far as I am concerned, that may be an equitable and desirable outcome.

I have stated publicly I do not support euthanasia and I would not support a Bill introduced into the Northern Territory Assembly to permit euthanasia. That is not to say that I support the Commonwealth's prohibition under s.50A of the *Self Government Act*.

I take the same position as I do with mandatory sentencing.

If the Commonwealth has not legislated nationally on the matter, then it is up to the people and the Assembly of the Northern Territory to decide.

Secondly, as I indicated in my evidence I recognise the existing arrangements with regard to s.122 Constitutional power so long as the Northern Territory is not a State. The Northern Territory is an inferior jurisdiction in that regard.

I take the view that the Commonwealth Parliament, acting as a whole to override Northern Territory laws is not desirable, but it is at least more transparent than the use of the s.9 power under the *Self Government Act* by the Commonwealth Government of the day.

I look forward to a time in the not too distant future when the Commonwealth exercises its powers under the Australian Constitution in regard to the Northern Territory as the seventh state and thus cannot discriminate directly against one jurisdiction over another.

Yours sincerely

  
JANE AAGAARD  
17 March 2011