COMMONWEALTH OF AUSTRALIA

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SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008

MONDAY, 14 APRIL 2008

D A R W I N

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SENATE STANDING COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

Monday, 14 April 2008

Members: Senator Crossin *(Chair)*, Senator Barnett *(Deputy Chair)*, Senators Bartlett, Fisher, Hurley, Kirk, Marshall and Trood

Substitute members: Senator Hogg to replace Senator Hurley

Participating members: Senators Abetz, Adams, Allison, Bernardi, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, George Campbell, Chapman, Colbeck, Coonan, Cormann, Eggleston, Ellison, Fielding, Fierravanti-Wells, Fifield, Forshaw, Heffernan, Hogg, Humphries, Hurley, Hutchins, Johnston, Joyce, Kemp, Lightfoot, Lundy, Ian Macdonald, Sandy Macdonald, McEwen, McGauran, Mason, Milne, Minchin, Moore, Murray, Nash, Nettle, O'Brien, Parry, Patterson, Payne, Polley, Robert Ray, Ronaldson, Scullion, Siewert, Stephens, Sterle, Stott Despoja, Troeth, Watson, Webber and Wortley

Senators in attendance: Senators Barnett, Bartlett, Brown, Crossin, Hogg, Kirk and Marshall

Terms of reference for the inquiry:

To inquire into and report on: Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008

WITNESSES

Committee met at 1.34 pm

CHAIR (Senator Crossin)—I declare open this hearing of the Senate Standing Committee on Legal and Constitutional Affairs. This is the first hearing of the committee's inquiry into the Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008. Before I begin my formal introduction on the first day of hearings into this bill I want to place on record my thanks to the Speaker of the Legislative Assembly of the Northern Territory, the Hon. Jane Aagaard, for letting us use this chamber. It is certainly a very salubrious place and we are most honoured and thrilled to conduct the hearings here.

The inquiry into this bill was referred to the committee by the Senate on 12 February 2008 and we need to report on 23 June 2008. This bill is a private senator's bill, introduced by Senator Bob Brown. It proposes to repeal the Euthanasia Laws Act 1997 to allow the Northern Territory, the Australian Capital Territory and Norfolk Island to make legislation for people who are terminally ill. The bill also aims to restore the Northern Territory Rights of the Terminally Ill Act 1995. The committee has received in excess of 1,200 submissions for this inquiry. Most of those submissions have been authorised for publication and many are available on the committee's website.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to the committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. We would prefer all evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to give evidence in camera. I also remind witnesses that, if they object to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

[1.37 pm]

BROWNHILL, Ms Sonia Lee, Crown Counsel, Department of Justice, Northern Territory Government

JOYCE, Mr Tim, Senior Policy Adviser, Department of the Chief Minister, Northern Territory Government

CHAIR—I welcome our first witnesses. The Northern Territory government has lodged a submission—I think it is yet to be numbered, but we do have a copy of it.

I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of the Territory shall not be asked to give opinions on matters of policy and should be given reasonable opportunity to refer questions asked to superior officers or to their minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers of the department are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim.

If either or both of you would like to make a short opening statement, I invite you to do so. When you are finished we will go to questions.

Mr Joyce—Thank you, Senators. Welcome to Darwin. The Northern Territory government will welcome the restoration of its legal capacity with regard to euthanasia so that it would in the future have the ability to make laws on the subject matter if it saw fit. That is, the Northern Territory government would welcome the removal of the limitation on its self-governing capacity. However, having said that, the Northern Territory has a number of problems with the current proposed bill. The intention of the bill would appear to be that section 50A of the Northern Territory (Self-Government) Act is to be repealed. But the bill does not say that directly or explicitly. It goes about the matter in a somewhat roundabout way. To get to the outcome that section 50A of the Northern Territory (Self-Government) Act is repealed, you have to come to a view as to the intention of the proposed legislation and then you have to have a legal interpretation of the Commonwealth Acts Interpretation Act to determine the outcome. Why the proposed legislation cannot simply say, 'Section 50A of the Northern Territory (Self-Government) Act is hereby repealed,' is beyond us.

The second aspect of the bill seeks to revive the Territory's Rights of the Terminally Ill Act, a spent act which has been effectively repealed for over 10 years. The Northern Territory has seen a number of legal views by commentators as to whether or not it is possible to revive something that is null and void and no longer in existence. In that regard, I would refer to the submissions you have received from the Northern Territory Law Reform Committee and the Gilbert & Tobin Centre for Public Law. We suggest that the consequence of someone seeking to rely on the protections of the Territory's legislation and later finding out that it is in fact not revived could be significant. It could amount to charges of manslaughter. Euthanasia is not a subject matter that sits well with uncertainty.

If the Northern Territory's self-governing capacity was restored, its position would be that it would review and reassess the issue before deciding whether to amend the legislation or to make new euthanasia laws. The Territory should not have a 10-year-old spent act involuntarily forced back on it, even if it is legally possible. It has been over 10 years since the Andrews act—that, is, the Euthanasia Laws Act 1997—struck down the Territory act. A lot of things have happened in that time. Community attitudes may have changed, there have been advances in medical science, palliative care facilities in the Northern Territory have been significantly improved and most members of this chamber, the Legislative Assembly, have changed since the issue was last debated here.

In conclusion, the Northern Territory would welcome the removal of the restriction on its self-governing capacity. It would welcome the restoration of its capacity to consider whether it should make laws in regard to euthanasia in the future. However, we have significant reservations about the term in the current bill. The way in which it seeks to restore legislative capacity to self-governing territories is convoluted and unclear. The Territory has doubts as to the legal capacity of reviving an act that has been spent and dormant for over 10 years and, in any event, the Territory is of the view that it is inappropriate through this bill to have the legislation involuntarily re-imposed on us. If the Northern Territory's legislative capacity was restored, it would review its position in regard to euthanasia before deciding whether to amend the old act or to make new laws in future. Finally, I note that, if the Northern Territory was a state with the same legislative capacity as the original states, this debate would not be occurring.

CHAIR—Ms Brownhill, do you have an opening statement?

Ms Brownhill—I have nothing to add, no.

CHAIR—I would like you to clarify something for me. Under the Northern Territory (Self-Government) Act, the Territory does not have the right to create legislation with respect to uranium mining, land rights or workplace relations laws. That is correct, isn't it?

Mr Joyce—I think so.

Ms Brownhill—Essentially. There is some qualification to the statement about uranium mining where it relates to any agreement between the Territory government and the Commonwealth government that the Territory issue licences, leases or whatever in relation to uranium mining. But, other than that, essentially what you said is correct.

CHAIR—So the Kevin Andrews bill, if we want to refer to it as that—I think that is what it is commonly known as—had the effect of adding euthanasia to that list, essentially?

Mr Joyce—It had the effect of withdrawing the Territory's legislative capacity in future on the subject of euthanasia, yes. Those other ones that you mentioned first of all were in the self-government act originally in 1978. It is only in regard to euthanasia that, since that grant of self-government, there has been a new restriction or limitation of our legislative capacity.

CHAIR—You are putting to us that the bill before us does not reinstate that right because it does not amend the self-government act.

Mr Joyce—We have doubts as to its effectiveness to do that, although we would welcome that outcome. We would welcome the restoration of our capacity to make legislation in regard to euthanasia in future.

Senator MARSHALL—I am not sure whether you are able to answer this question but, given the submission you have just made, are you saying to the committee that the Northern Territory government is not of the view that it supports the legislation that was repealed by the Andrews act.

Mr Joyce—By legislation do you mean the original Northern Territory act?

Senator MARSHALL—You have mentioned a number of times that you did not support a proposition that forcefully imposed that repeal legislation back on you. I am seeking to clarify the government's position now in respect of that.

Mr Joyce—I understand that the government's clear position was that, if it had its legislative capacity restored, it would seek to review and reassess its position in regard to euthanasia and that would include our original act.

Senator MARSHALL—If the effect of the bill we are inquiring into today did restore the previous act, would it be an option for the Northern Territory government to simply repeal that itself if it had a difficulty with that?

Mr Joyce—Technically, I think that is correct, yes.

Senator BARNETT—Thank you very much for your submission. It seems, the way I am reading it, that your view is pretty clearly that the bill is flawed and it would create considerable confusion and doubt in terms of relevance and the capacity to be euthanased in the Northern Territory.

Mr Joyce—Yes, that is correct—doubt and uncertainty. We would submit that this is not the subject matter that sits well with doubt and uncertainty.

Senator BARNETT—Page 3 of your submission says:

> It is the Territory's submission that the Bill is poorly drafted and does not provide a sufficiently clear and express indication of intention; relying as it does on a series of implied consequences.

You go on and say:

> In addition to this uncertainty, alternative views have been voiced ... as to the legal capacity to revive a spent Act that is not in force or currently existing.

Your views are reasonably firm. How do you reflect on the views of the Northern Territory Law Reform Committee? Their submission numbered 443 says that item 2 of the schedule may in fact entrench the Rights of the Terminally Ill Act 1995 as a law which derives its force from this new Commonwealth bill. If that is so then the Northern Territory Legislative Assembly would not have the power to amend or repeal the Rights of the Terminally Ill Act 1995. How do you feel about the possible outcome of that process and that opinion?

Mr Joyce—That would be of considerable concern to us. It would be an act that the Northern Territory could not repeal or amend as you suggested if it had the capacity. As I understand it, the Law Reform Committee's argument is that it would get its power of force

through the Commonwealth parliament rather than through the Northern Territory Legislative Assembly.

Senator BARNETT—Your Chief Minister is quoted in the ABC's *World Today* on 6 February in his reflections on this matter where he said:

I had an opinion back in 1995 that was supportive of the euthanasia bill as it stood. I would have to re-educate myself at this time, given the very sensitive nature of euthanasia.

He goes on to say:

And for Bob Brown to introduce legislation on such a sensitive subject in the Federal Parliament without any consultation with the people of the Northern Territory is arrogance of quite breathtaking proportions and the two issues shouldn't be linked.

Can you confirm that that is the view of the Chief Minister? Secondly, what consultation has there been with Territorians with respect to this federal legislative proposal by Senator Brown?

Mr Joyce—I do not think I can comment on the Chief Minister's personal views, but in regard to the second matter I think that the only consultation that has taken place is this inquiry. There was no prior consultation that I am aware of.

Senator BOB BROWN—Is it the view of the government that the matter should stay as it is with the Andrews override of the Northern Territory's euthanasia act?

Mr Joyce—No, clearly not. We would welcome the restoration of our capacity to legislate on this subject matter.

Senator BOB BROWN—As I read it, what the Territory government is looking for is a means to restore the powers of the assembly or of the government to legislate on behalf of the voters and people of the Northern Territory.

Mr Joyce—Yes, and express an explicit repeal of section 50A of the Northern Territory (Self-Government) Act.

Senator BOB BROWN—Can you tell the committee why that particular section needs review or appeal?

Mr Joyce—That is the section that was introduced by the Andrews act, which limited our self-governing capacity to legislate with regard to this subject matter, euthanasia. Once it is in our self-government act, this chamber that we are in no longer has the legislative capacity to make laws with regard to euthanasia.

Senator BOB BROWN—Yes. This is a very healthy and good exercise here because my intention is simply, through this process, to explore the best way, with the advice coming from the Territory, to remedy a situation which is unsatisfactory. So your advice to the committee is that the legislation ought to explicitly look at overriding or removing that section of the Andrews act?

Mr Joyce—Well, there is some debate as to whether it should repeal the amending act or whether it should directly and expressly repeal that section of the Northern Territory (Self-Government) Act. We would say it would be clearer and less uncertain if you simply say, 'Section 50A of the Northern Territory (Self-Government) Act is repealed.'

Senator BOB BROWN—That seems to me to be good advice. I will certainly take that on board.

Mr Joyce—Yes, rather than repealing the amending act. The bill as it is currently drafted does not expressly refer to the Northern Territory (Self-Government) Act. It is by implication that you get to that outcome.

Senator BOB BROWN—The Chief Minister's submission says at the end that 'the current bill should not proceed, and instead be replaced by a bill granting statehood to the Northern Territory'. I presume that does not remove the support the Territory would have for an alternative which improved the bill that I have put before the Senate to have the outcome that you are now talking about.

Mr Joyce—I think that was my initial opening comment. We welcome the intention.

Senator BOB BROWN—And it is your view that the bill as currently before the Senate would leave uncertainty if it were passed unamended?

Mr Joyce—Yes.

Senator BOB BROWN—You have put forward a very good way of getting around that uncertainty, which would at the end leave it to the assembly here in Darwin to go back and look at what its future path should be with regard to the interests of the terminally ill.

Mr Joyce—Yes. There are two aspects. The first is the question of reviving the Territory's legislative capacity, which we think is quite easily done by alternative words. Then there is the second issue as to whether the Territory's 1995 act should be revived. The position of the Northern Territory government is that that should be left to the Legislative Assembly to revisit as it considers fit rather than having the 1995 act reimposed.

Senator BOB BROWN—Finally, as for replacement 'by a bill granting statehood to the Northern Territory', I, as a senator in Canberra, would be a little bit tentative without the people of the Northern Territory having had an opportunity to express their view on that.

Mr Joyce—I do not think I can express a view. I am here to address the current bill rather than the—

Senator BOB BROWN—This is a submission from the Chief Minister. I thank you for that because that has been very helpful advice.

Senator BARTLETT—I want to raise two things. We are fairly clear about them, but we want to be 100 per cent sure because we are talking about different acts and different intentions. It seems the intention of the bill before us is to restore the operation of the Northern Territory Rights of the Terminally Ill Act 1995. The government's position here is that you do not want that. Whether or not the legislation does that in reality is another matter, but if it did—and I think it is pretty clear that that is the intention—you do not want that. You just want the power back to legislate in the future should the parliament so desire. Rather than repeal the Andrew's act, you think the best way is to take away section 50A of the Northern Territory (Self-Government) Act. Is that right?

Mr Joyce—That is correct.

Senator BARTLETT—Another issue, which goes back to Senator Crossin's initial question, is the powers of the Territory. I do not particularly want to canvass the broader issue of statehood; that is probably getting a bit too broad for the purposes of this inquiry. A lot of submitters have raised the specific issue of the powers of the Territory parliament as it exists now, regardless of statehood. The Territory parliament is proscribed from passing laws with regard to land rights, uranium mining up to a point and workplace laws. Is it the position of the government that it would like those proscriptions removed as well?

Mr Joyce—I am probably speaking without instructions here. I have instructions on the current bill. I think the position with regard to the Northern Territory on statehood is that its legislative capacity in the first instance should be as for the original states. With regard to workplace laws and whether we have that law and then immediately refer it back, our policy position is that it be the same as the original states.

Senator BARTLETT—I am not trying to catch you out or anything. I am just going to the principle issue being put forward that Canberra should butt out, to put it colloquially, on any state or territory and that people should be able to do what they want. Clearly, as things stand, Canberra—or the federal parliament, to be more accurate—is able to legislate on a few particular matters. So the principle of the federal parliament being able to legislate on some specific proscribed matters is not necessarily opposed; it is just that the matter of being able to do so on euthanasia is quite clearly opposed.

Mr Joyce—I think that is correct.

CHAIR—Can you clarify something for me, Mr Joyce? If this current legislation were passed by the federal parliament, it would be reinstate your 1995 legislation. But unless the change to the self-government act were made as well, you would not be able to amend or revise that original legislation. Is that correct?

Mr Joyce—That is melding two different issues together. Could you state that again?

CHAIR—If this piece of legislation were passed as it is now, that would reinstate your Rights of the Terminally Ill Act?

Mr Joyce—Arguably. There have been different views expressed as to whether it is possible to revive a dormant act of the Northern Territory. That was the submission of the Law Reform Commission and Gilbert & Tobin raising doubts as to whether or not that is a legal possibility.

CHAIR—If it is a legal possibility and the restrictions are in the Northern Territory (Self-Government) Act under section 50A, your hands would still be tied in relation to reviewing, amending or changing that original piece legislation?

Mr Joyce—That is a view that has been expressed by the Law Reform Committee. If the Northern Territory's capacity to legislate in this regard were in some way as a consequence of the Commonwealth act, then the Territory's capacity to amend that legislation in future may be impaired.

Senator KIRK—Thank you very much for your submission. It was most helpful. I understand what you are saying about the repeal of section 50A. It is something that certainly needs to occur in order to clarify some uncertainty. Taking it a step further, in the event that

the uncertainty is removed, whether through the repeal of section 50A or otherwise through some sort of interpretation, I am interested in the process that the government would be likely to put in place—I am not sure whether you can comment on this. Would there be further consultation with the Northern Territory community as to whether or not they wish to see a euthanasia act similar to, if not the same as, the 1995 act restored or re-enacted? What would be the process for consultation? Not knowing what the original process was leading up to the 1995 act, I am interested in finding that out.

Mr Joyce—I do not think I can comment on that, other than to say that our position is that we would review and reassess. But having said that, I am aware of the process that we went through in regard to the original 1995 act. It was an extensive public consultation process, which had public hearings and called for submissions. There was extensive public debate. There was an extensive debate in this chamber as to the act. Were the Territory to revisit it, I imagine that a similar process would occur.

Senator KIRK—Over what period of time was that consultation process leading up to the eventual enactment of the act?

Mr Joyce—It is over 10 years ago, and I do not recall. It was not short; it was ongoing for some months.

Senator KIRK—Was it only a matter of months rather than years?

Mr Joyce—I do not recall with any certainty.

CHAIR—Marshall Perron will be appearing before us a bit later. He is the person who drove it. He can probably answer those questions for us.

Mr Joyce—With great certainty.

Senator KIRK—I am just trying to work out in my own mind what potential period might be of either uncertainty or no legislation at all on the topic. Of course, it is always difficult to predict, depending on what the intentions are of the current government.

Senator HOGG—I have two questions. In respect of the construct of the chamber, I gathered from your opening statement that it has changed. Has it changed in terms of the personnel? Has it increased size or decreased in size?

Mr Joyce—It is about the same number. On the first point, I understand that, of the 25 members, only two or three are still the same.

Senator HOGG—What was the outcome on that occasion? What was the vote in the chamber? Do you recall?

Mr Joyce—I do not recall.

Senator HOGG—That is something we can find out.

Senator BOB BROWN—It was a majority of one.

Senator HOGG—I thought I had read that somewhere. In respect of section 50A that you have referred to, does that have application in the Northern Territory but none of the other territories?

Mr Joyce—I understand there is a similar amendment for the self-governing acts of the ACT and Norfolk Island.

Senator HOGG—I want to clarify that you are referring to a section that specifically referred to the Northern Territory.

Senator BOB BROWN—I would like to precipitate this out while you are here. What I am hearing is that the Territory government would have two main points here. The first is to remove section 50A so that the Territory was no longer restricted in its ability to legislate for its citizen in these matters. The second is that the Territory would prefer not to have a question mark over whether the euthanasia act of 1995 was resurrected but rather to have it taken away so that the Territory was free to act in the future on that matter as it so determined.

Mr Joyce—Yes.

Senator BOB BROWN—Thank you.

Mr Joyce—On that point, if there were some legal uncertainty as to the effectiveness of the revival of the Territory act and you were a medical practitioner signing off on the euthanasia thing, you would be a brave person to do so because of the legal uncertainty in the act.

Senator BOB BROWN—Having been a medical practitioner, I understand that very well.

Mr Joyce—It is an area that needs clarity and certainty.

Senator BOB BROWN—Sure. Thank you.

Senator BARNETT—I have one final question. In terms of the 1995 legislation, can you confirm or clarify whether or not it has a residency requirement? Dr Nitschke has made views that people from Victoria and New South Wales would have access to that legislative option for themselves. Can you confirm or clarify that position?

Mr Joyce—I would need to take that on notice. I have the act here but I would probably flip through it and not find it.

Senator BARNETT—Ms Brownhill, can you advise us?

Ms Brownhill—I do not know off the top of my head. I would have to look also.

Senator BARNETT—The views that I have read suggest that there is no residency requirement. I am seeking clarification. Are happy to take that on notice and advise the committee?

Mr Joyce—Yes.

Senator BARNETT—Thank you.

Senator MARSHALL—Given that your position is now fairly clear—I understand it to be the repeal of section 50A of the self-government act and ensuring that the existing Euthanasia Laws Act is not revived—is the Northern Territory government in a position to give us some precise amendments that would in fact put those things into effect in a way that would meet your legal counsel's approval?

Mr Joyce—I think I could off the top of my head: 'Section 50A of the Northern Territory (Self-Government) Act 1978 is hereby repealed.'

Senator MARSHALL—Does that deal with the second matter, about legally surety? I thought there was some legal doubt about what would actually happen to the old euthanasia act if that were to happen.

Ms Brownhill—In my view it should also state, 'For the avoidance of doubt, the Northern Territory's Rights of the Terminally Ill Act 1995 is not revived or otherwise rendered effective,' or something like that.

Senator MARSHALL—Our experience has been that things we think may be quite simple are not so simple once we start to put them on paper, which comes back to my question. I think it would be useful for the committee if the Northern Territory government would be prepared to specify a set of words which would form the required legislation. I think that would be useful, if it was able to be done.

Mr Joyce—I shall inquire. I do not know whether they would or not.

CHAIR—Thank you very much for your time today.

[2.09 pm]

FONG, Mrs Lois Kathleen, Northern Territory Director, Australian Christian Lobby

van GEND, Dr David, Advisor on Bioethical Issues, Australian Christian Lobby

GAWLER, Dr David Martin, Darwin Christian Ministers Association

Evidence from Dr van Gend was taken via teleconference—

CHAIR—I formally welcome the witnesses from the Australian Christian Lobby and the Darwin Christian Ministers Association. The Australian Christian Lobby has provided us with a submission, which we have labelled No. 422, and the Darwin Christian Ministers Association has provided us with a submission, which we have labelled No. 376. Before I ask you to make an opening statement, is there anything in those submissions that you need to change or alter?

Dr van Gend—I also have a submission, which I hoped would be with the committee, and, with permission, there is some supplementary material to that submission for my colleague Lois to table.

CHAIR—Yes, Dr van Gend, I see that. Your submission is No. 413 and Lois is giving us the supplements to that. Would you like to make a short opening statement to commence your evidence before us?

Mrs Fong—First of all, I would like to thank the senators of the legal and constitutional affairs committee for allowing the Australian Christian Lobby to present at this inquiry into the Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008. The Australian Christian Lobby is a political lobby representing individual Christians and is neither denominationally nor politically aligned.

It is only wise that small legislatures with no upper house should not be given the power to make decisions on life and death issues, such as euthanasia, which would radically change the social air we all breathe, by severely undermining the protection of life and setting a precedent for other Australian legislatures. Euthanasia is an extremely serious matter with an extensive list of negative repercussions. The ACL does not accept that making laws that legalise and regulate euthanasia meet the criteria of peace, order and good government.

The disturbing ramifications of legalised euthanasia include the acceptance of killing as a cost-effective form of treatment, the killing of terminally ill patients who have not asked to die, the mercy killing of wider groups of people whose lives are deemed worthless such as handicapped newborn babies, and a forever changed doctor-patient relationship. Three surveys over a 10-year period by Dutch researchers show that in Holland around 1,000 patients are killed every year against their wishes or without consent by their doctors. Like all human beings, people suffering terminal illness have the right to life and to the protection of the law against violation of this right. All levels of government in Australia, whether local, territory, state or federal, have an obligation to these international conventions.

The Australian Christian Lobby believes that society's duty to terminally ill people is to improve the quality of their palliative care as well as support those who are isolated and who

feel their lives are meaningless. This has been the traditional Christian response from the earliest days of the hospice movement. The negative impact on hospice and palliative care if euthanasia is legalised cannot be underestimated.

I will now hand over to the ACL's adviser on bioethical issues, Senior Lecturer in Palliative Medicine at the University of Queensland, former member of the Ministerial Advisory Panel on Palliative Care in Queensland and member of the Medical Advisory Board of the Toowoomba Regional Hospice, Dr David van Gend.

Dr van Gend—I would like to thank the Senate committee for this opportunity to contribute to your deliberations on this bill. I do a lot of palliative care lecturing and work with patients. I find in this area there is a great deal of common ground and goodwill because we all have memories of loved ones—my father recently died a long death from cancer—we all have unhappy memories and happy memories. As doctors, we all have patients who have been more or less easy to help through the dying phase of life. I have had two patients ask for euthanasia in the hospice. One, when we fixed her pain, said, 'Well doc, it's a completely different world, isn't it?' She no longer asked for euthanasia. The other lady was Dutch and she had really very little physical suffering but continued to ask to have her life ended sooner. When I explained that I could not make her die but could only accompany her through her dying process, she was very gracious in accepting that. For those of us who work in this field, there is a tension that we have to live with.

In my primary submission, I chose to focus on the heart of the matter which is that euthanasia laws are unjust and will bring in a culture which will lead to an unexpected and insidious form of oppression for the most vulnerable members of our society. Having said this, I am aware of the intense, small-picture issues of the hard cases of euthanasia and that people who desire mercy killing are doing it entirely out of goodwill.

The issue of justice in these laws has swayed all major international inquiries in the last 10 years, principally the concern voiced so magnificently by the House of Lords inquiry in 1993. This inquiry, which started off in favour of euthanasia, was headed by Lord Walton of Detchant, who was a medical advisor to the Voluntary Euthanasia Society, and included Baroness Warnock and other people of liberal mind nevertheless came around to a unanimous decision against euthanasia. I stressed their findings in my submission to show their depth of empathy with suffering people. Their conclusion, which I have quoted in my submission, said:

> Ultimately we concluded that none of the arguments we heard were sufficient to weaken society's prohibition of intentional killing, which is the cornerstone of law and social relationships. Individual cases cannot establish the foundation of a policy which would have such serious and widespread repercussions.

The most powerful quote of all, to my mind, which has been blazed on my memory from 1997 was when they said:

> We are concerned that vulnerable people—the elderly, lonely, sick or distressed—would feel pressure, whether real or imagined, to request early death.

And that:

> ... the message which society sends to vulnerable and disadvantaged people should not, however obliquely, encourage them to seek death but should assure them of our care and support in life.

If, in the Australian debate, you need one crystallising moment that conveys to many of us the fears we have of a culture of euthanasia that moment came in 1995 when the then Governor-General, Bill Hayden, was speaking to the Royal Australian College of Physicians on the Gold Coast. He spoke in defence of euthanasia and he said:

> There is a point when the succeeding generations deserve to be disencumbered—to coin a clumsy word—of some unproductive burdens.

This was from the head of state, not from some radical but from our Governor-General. To me that conveys the social attitude that would come with euthanasia whereby those 'unproductive burdens' in our nursing homes and hospitals, who have no self-esteem, who have no confidence, who suffer from depression and who feel they are a burden, would know that they are no longer welcome. They would know what it is that society has provided for them to do. That, I put to the committee, is a corruption of our relationship with the most vulnerable and frail in our community.

Finally, in the supplementary material I give a secondary set of considerations. These are not to do with euthanasia laws being unjust as much as they are to do with euthanasia laws being unsafe. First, there is the obvious inability of the Northern Territory act to achieve its meaningful safeguards. Second, there are the harmful implications for the culture of youth suicide. Third, there is the view of senior psychiatrists that there would be no capacity to protect patients from doctors who consciously or unconsciously desire their patient's death. Fourth, the act of making doctors participants in suicide will inhibit the necessary therapeutic relationship and distance we require in order to treat depression and suicide. Finally, we must look at the evidence of the so-called slippery slope—as occurred in Holland—that this further erosion of the general prohibition against intentional killing will take our culture to a place we never expected, never intended and do not want to go. Thank you very much.

CHAIR—Thank you, Dr van Gend. Dr Gawler, do you also want to add something as an opening statement?

Dr Gawler—Yes. I want to give you some statements first. This is a statement by an Aboriginal elder in Darwin and this is a statement signed by many, many Aboriginal people who are concerned about this.

The following is my own personal submission. My name is David Gawler and I am a consultant vascular surgeon at Royal Darwin Hospital. I was recruited seven years ago to provide services in the hope that we would lessen the number of amputations being done on diabetic patients. Over 80 per cent of my patients are Indigenous people. The Northern Territory is really the most unsuitable of all places in Australia to legislate to legalise patient killing. There are insufficient medical services—for example, radiotherapy is not available in Darwin for cancer sufferers. There are remote communities with inadequate health services. There is the tyranny of distance. Acutely ill patients are transferred 3,000 kilometres for services not available here. My feeling is that the health services should be improved, rather than even considering euthanasia. Economic rationalism may suggest that euthanasia is a simpler way to go and certainly cheaper, but this of course is an outrageous proposition.

The Indigenous people are the most vulnerable and sickest group in the Northern Territory. Aboriginal people occupy 80 per cent of the hospital beds and are the greatest users of health

services. English is poorly understood by many Indigenous people for whom English is a second, third or fourth language. Even with a high, level 3 interpreter, many medical and technical words do not translate into their languages. Aboriginal people will often agree out of respect to what an important or influential person might encourage them to do. Because of fears of racism, Aboriginal people also sometimes feel that white doctors treat them differently or inferiorly to the rest of the population. I have intervened to save the lives of some Aboriginal people whom other doctors have given up on. Among those for whom I intervened, one is still alive four years later. Euthanasia may be offered to Aboriginal people because of the white perception of quality-of-life issues. Euthanasia legislation has the potential to prevent Aboriginal people from seeking health care because of the fear that they could be misunderstood, that their lives would not be valued or that they could be put down with a needle.

I regularly fly out to remote communities to consult with patients who need surgery and to enable them to discuss their illness and operation. I also to try to establish a personal relationship with them because that is a very important thing for Indigenous people. Often a family member will accompany the patient to Darwin. These good relationships will be undermined by the suspicion that medical or nursing staff or health workers may prefer that patients be killed rather than treated. Euthanasia taints the medical profession by introducing the dual role of killing and treating.

I am a member of the Darwin Christian Ministers Association because I have provided pastoral care to the Aboriginal people of the Bagot community, which is the largest Indigenous community in Darwin. Aboriginal people from other communities in Darwin as well as tribal people from remote communities also attend services at the Bagot Indigenous Victory Church from time to time. My pastoral care includes assisting people in times of family crisis, such as sickness or death, domestic crises, problems with alcohol and marijuana addiction and financial crises. Sadly, many of the funerals I have conducted are for young people who have died because of alcohol and marijuana issues.

Traditional Aboriginal people believe that when you are dying there are certain processes to be followed, and Joy White's submission documents that. They include singing creation songs, and there are certain rituals. If these processes are followed, the person is comforted and the belief is that the person's spirit goes to its fatherland. Euthanasia—that is, deliberate killing—is unacceptable in the above process. It is totally against Aboriginal law and custom. Christian Aboriginal people are also strongly opposed to such killing.

Aboriginal people, with their history of displacement, marginalisation and even massacres at the hands of white people, find it difficult to form trusting relationships with white doctors. In Arnhem Land, the debate continues as to whether doctors are healers or witchdoctors. Consequently, many patients fear visits to white doctors and especially visits to hospitals, where they must often travel long distances to another part of the country. To add to this uncomfortable equation, the knowledge that the doctor may also kill people or have the power to do so will generally increase anxiety and may mean some patients refuse treatment.

In traditional Aboriginal thought, no death is natural apart from that of very elderly people. Usually witchcraft is thought to be involved, and the searches commence for the perpetrator. He or a family member is then punished. This is a payback system. In this context an

interpreter, nurse, health worker, doctor or people signing a prescribed form could be endangered. Close family may be punished if they appear to cooperate with euthanasia.

Aboriginal people are not autonomous in the Western sense. Usually a patient will not agree to an operation in isolation. Sometimes patients will not agree to or want an operation, but more culturally powerful relatives may tell them that they should have it, or the opposite may obtain. So it is obvious that a law based on autonomy will not work in this context. Young Aboriginal people who commit suicide under the influence of alcohol or marijuana cause communities great grief and sorrow. Certainly, taking one's life is not culturally acceptable.

There is a massive gap between the health services and health outcomes of the Northern Territory and those of southern states. This is reflected in the 17-year gap in the age of death—and it is my impression that in the town camps of Darwin the gap is much, much bigger than that. The Northern Territory needs a massive upgrade in health services to improve the quality of care. The Royal Darwin Hospital is almost in constant crisis for lack of theatres and lack of beds. Why we should be putting any thought, time or resources into euthanasia in the light of these problems amazes me. As mentioned before, we lack radiation therapy, neurosurgery, open-heart surgery and cardiac endovascular intervention, and patients have to travel far from family and friends and often become isolated. Some choose not to go and would rather die. We need more services.

In conclusion, let me say that 30 per cent of the Northern Territory population is Indigenous and that the overwhelming majority are opposed to doctor-killing. The Northern Territory is therefore clearly the most inappropriate part of Australia in which to legalise euthanasia. My own submission covers medical aspects of euthanasia and I would be happy to answer questions about those. Thank you very much for listening.

CHAIR—Thank you.

Senator KIRK—Thank you very much for your submission. I was interested that on page 4 of the submission by the Australian Christian Lobby there are quite a few statements which purport to make legal conclusions. I just wondered whether or not you received any legal advice in the preparation of your submission, particularly in relation to the constitutional and legal issues that present with the Commonwealth law vis-a-vis the 1995 NT law?

Mrs Fong—Can I follow up on that question?

Senator KIRK—You want to take it on notice; is that what you mean?

Mrs Fong—Yes.

Senator KIRK—That is fine. I also had a broader question for you. Again there are a number of statements made here in relation to territory legislatures. You mentioned the size of both the ACT and the Northern Territory legislatures and point out that they are reasonably small in number: 17 members in the ACT and 25 in the Northern Territory. It seems to me from my reading that you conclude that, given the size of these legislatures, there are certain subject matters that they ought not be able to legislate upon—this being one of them. Could you elaborate on that and point out to us what other subject matters you think should not be the province of the territory legislatures?

Mrs Fong—The basis of this conclusion is the potential abuse of the small legislatures. Being smaller in nature with no house of review is probably the biggest thing. When it comes to life matters that are of huge importance and are very serious they set a precedent for the rest of Australia to follow. The Australian Christian Lobby takes the perspective that it is probably safer for these things to be pursued through larger houses just because there is more capacity to debate and analyse.

Senator KIRK—Sorry, is it the size of the legislature that is the problem, the absence of review or both?

Mrs Fong—I think probably both because Queensland does not have the second house but it is a much larger legislature. They have more people and have more collective discussion.

Senator KIRK—Earlier—you may have been here—I was trying to ascertain, and did not get a comprehensive answer, the degree of community consultation that the Northern Territory government undertook in the first instance before it enacted the 1995 legislation. In your mind is the fact that the government did conduct extensive community consultation satisfactory—in other words, they gained the views of the community before they actually put it to a vote in the Northern Territory legislature?

Mrs Fong—That was quite some time ago and the Northern Territory has a highly transient population. I wonder if Territorians today feel the same or different. It would be interesting to go through that process again, particularly given the fact that we have seen the practice of euthanasia legalised in other places, certainly in Oregon, Belgium and Holland. It would be interesting to look at some of the studies that have come out of there and have them as part of the community discussion. I think it is much more than a personal choice. It is a huge issue and the ramifications are huge.

Senator KIRK—Let us suppose that this legislation is passed and it has the effect that it is intended to have—and that in itself is somewhat questionable, and we had that discussion earlier. If the slate were to be wiped clean and the Northern Territory government were to conduct another round of extensive consultation—I agree with you that it would be timely and appropriate for there to be another round of extensive consultation—and then were to form its conclusion one way or the other and put it to the vote, I assume from what you are saying you would still have a problem with whatever the outcome is merely because of the size of the legislature.

Mrs Fong—We need to get back to the basic principle. You would have to look at it in relation to international law. I think it is safe to say that all levels of Australian government are accountable to that in some form or another. Again it has to be analysed in that context.

Senator KIRK—These would be matters that would be debated in the parliament just like any other issue and a vote would be taken, which is the democratic process. Sorry, I am getting into a discussion/argument with you now. I think I will leave it there. Thank you.

Senator BOB BROWN—Thank you all for coming along. Mrs Fong, your submission and you have put to the committee that in Holland 1,000 patients were killed each year without giving permission to their doctors. You have used that figure for a report from 1991, 1996 and again 2001.

Mrs Fong—Yes. Sorry, what is the question?

Senator BOB BROWN—The euthanasia legislation in Holland was introduced in 2001, after all those figures that you have cited. Do you know to what degree the number of unpermitted killings by doctors has fallen since euthanasia was brought into Holland?

Mrs Fong—Do you mean the legalised practice of euthanasia, or do you mean—

Senator BOB BROWN—No, I mean what you called the killing of patients, without permission, by their doctors.

Mrs Fong—Can I refer that question to Dr David van Gend?

Senator BOB BROWN—Sure.

CHAIR—Dr van Gend, are you still with us on the line?

Dr van Gend—Yes. I think there was a 2001 report. The original Remmelink reports showed a consistent figure around 1,000 of non-voluntary euthanasia—that is, where the patients had not given consent and were not in a position to do so. It was not against their will so much as that they were euthanased without them being in a position to give consent. As to whether it has changed, I am sorry; I do not have that paper with me. I could find it and take that question on notice.

Senator BOB BROWN—If you would, Dr van Gend, because it is very important for the committee that we understand that the figures you are giving for unpermitted ending of life by doctors were figures that pertained before the euthanasia legislation was brought in.

Dr van Gend—Fine, I will do that.

Senator BOB BROWN—There is just one other reference here to the Territory assembly and the assembly of the ACT being 'immature'. Why did you make that comment?

Mrs Fong—I think it could well be an unfortunate use of terms, but it is 'immature' in the sense of it being a small legislature with no house of review. That is the context in which that word has been used.

Senator BOB BROWN—But it surely is a mature legislature. It followed self-government in 1978. We have heard that indeed, in the last decade or so, there has been turnover of most members of the assembly here. The assembly has been able quite well to look after—in a mature fashion, I would have thought—the interests of the people of the Northern Territory. Don't you find that referring to a self-government assembly elected by the people of the territory as 'immature' is in some way to imply that it does not have the ability or the wherewithal to legislate on all matters affecting its citizens, as compared to other elected assemblies, simply because it has not been here as long?

Mrs Fong—The context in which that word is used is in the aspect of it being a small legislature with no house of review.

Senator BOB BROWN—That is not what 'immature' means, though, is it?

Mrs Fong—That is the context that the word has been used in.

Senator BOB BROWN—I think it was an unfortunate term, but I will just move on from that. So the Australian Christian Lobby supports the rights of other assemblies, other

parliaments in Australia, to deal with the issue of euthanasia and the rights of the terminally ill?

Mrs Fong—As with all legislatures, I think it is really important that we keep in the perspective that we do have international law to account to. I think, as I said before, all levels of government in Australia need to keep that in mind.

Senator BOB BROWN—But the question I am putting, Mrs Fong—or Dr van Gend, if you would like to answer this—is: does the Australian Christian Lobby support the right of parliaments in Australia generally to legislate on the matter of the rights of the terminally ill?

Dr van Gend—I think it is 'support' in the sense of 'accept', because it is a fait accompli that states can, and it is within their powers to do so. To understand our mindset on the matter: we would far rather that nobody had the authority to bring in laws of intentional killing. We would prefer that it was something outside the realm of possibility for legislators to do, because it does violate the foundation of all law and social relationships. We would far rather that states could not legislate for euthanasia, and then retreat to the federal level, which had the one merit of being a national parliament that would thereby equally be influenced by and have its influence on the entire nation.

But, to be fair, please, it is not casting any aspersions on the professionalism or the responsibility of those people who live in the Northern Territory and occupy its legislature. It is simply to say that it is good that at least that legislature cannot make euthanasia laws, and wouldn't it be nice if all legislatures could not. But, surely, if we do have to have laws for euthanasia, it is more proportionate that a law which will affect the entire nation—remembering that people from around Australia used the euthanasia laws in 1996-97—be at least passed by a more proportionate legislature that represents a large slab of the nation rather than a very small legislature with only one per cent representation. That is a question of proportionality and appropriateness. It has no implications of casting aspersions on the individuals in the Northern Territory legislature.

Senator BOB BROWN—Dr van Gend, the territory legislatures, both here and in the ACT, represent 100 per cent of the people that vote for them. What I am hearing is that you believe that the people who vote for the Territory legislature should not have the right to have that legislature deal with the matter of the rights of the terminally ill.

Dr van Gend—Only because the matter of the rights of the terminally ill is an answer they will be giving for the entire nation, in that people did and will again travel from around the country to use the euthanasia provisions of the Northern Territory—just as I do not think it appropriate and proportionate for, say, Norfolk Island to bring in capital punishment. I think that would be quite out of proportion for something novel to be brought in by that small legislature. That is the sort of example of proportionate use of relationship between the size of the legislature and the momentousness of the national law that is being brought in.

Senator BOB BROWN—Are there any other matters that you think that the Northern Territory legislature should not be able to determine on behalf of the people of the Territory?

Dr van Gend—I would say capital punishment would be one. I cannot think of any others, because I think most other issues are already legislated in other states.

Senator BARTLETT—Given the time constraints, I have just one question. You have stated in the executive summary of the ACL submission:

Voluntary euthanasia is never a truly free decision …

That seems like a fairly absolutist statement. I appreciate all the views you have about the potential of people being pressured and those sorts of things, but do the doctors amongst you genuinely believe that never at any time is euthanasia, or indeed suicide more broadly, a truly free decision?

Dr van Gend—Is that question to me, Senator?

Senator BARTLETT—Any of you who wants to answer it. It was the ACL submission.

Dr van Gend—I will just say something on that. Lois may want to add something more. Certainly not. There are stoics amongst us, like former Governor-General Bill Hayden, for whom it would be a truly voluntary and free decision. It would enlarge their freedom of choice. It would be to them a good thing. But, if you stand back and look at the entire spectrum of the community, my concern is for my patients in nursing homes and hospices who do not have the stoic pride and resolve of a Bill Hayden or a Bob Dent but who have no self-confidence, no sense of particular worth or usefulness and who would hear, in the words of then Governor-General Hayden, that they are 'unproductive burdens'. They would hear this repeated the next day by the late Sir Mark Oliphant, former Governor of South Australia, who agreed that people should not clutter up the world when they are past being useful. They are hearing this not from Neo-Nazis but from governors, and that is the intimation of a new social attitude conveyed from the top down to the very bottom where the unbeautiful people live. That is where people will not have an enlargement of their rights, an enlargement of their choice; they will have a constriction of their choice, because what appears to be the choice to die will be to them the duty to die.

Senator BARTLETT—I do not want to get into a big, long philosophical discussion about it, but in terms of the conduct of the debate around the issue, it sounds to me like you are accepting that sometimes it can be a truly free decision for some people. Your response has gone more to the practical consequences of legalising rather than to the recognition of the principle that, even if it is in just a small number of cases, some people can make a truly free, rational decision for euthanasia or for suicide.

Dr van Gend—Yes.

Senator BARNETT—I have two questions—firstly to Dr van Gend and then to Dr Gawler. Dr van Gend, in your supplementary paper and in your introductory comments, you referred to the operation in practice of the Rights of the Terminally Ill Act 1995. We are looking at the years 1996 and 1997, when it operated in practice. You have tabled with the committee the *Lancet* article and you have referred to the 'Deadly Days in Darwin' article by David Kissane. Can you enlighten the committee as to how that legislation operated in practice?

Dr van Gend—Certainly. We are indebted to my professor from Melbourne, Professor David Kissane, for his work with Dr Nitschke in a prolonged analysis of the cases of the seven deaths in Darwin—in particular, the four deaths which were assisted suicide by Dr

Nitschke. I will certainly supply a copy of the 'Deadly Days in Darwin' if you do not have that.

The four levels of medical safeguard that were built into the act were either diminished or blatantly violated, even in the few cases that occurred in 1996-97. My question to the committee is: if, in the early springtime of the law the regulations and safeguards were not met when these cases were under the full spotlight of public attention, what hope have we of safeguards being met for the 102nd death—not the second death?

The first of the four levels, as you will know from the Territory act, is that the doctor should be the patient's usual GP—the doctor who has a relationship with the patient. That never applied because Dr Nitschke undertook the care of these people towards their assisted suicide. That is an incalculable loss when you are dealing with the complexities of chronic disease and dying.

Far more important, though, is the second level of safeguard. This requires, under the act, that a specialist in the field of the disease will give an opinion as to the prognosis and likely terminal nature of the disease—usually a cancer. The most glaring example of a broken regulation is the second case of Janet Mills, who had a condition called mycosis fungoides. That is a white blood cell cancer—a lymphoma. It affects the skin and ultimately invades the lymphatic systems in the body. Dr Nitschke asked a physician to certify that this lady had a terminal illness, and that was appropriate because a physician would know about this blood disease. The physician declined to do so, and then Dr Nitschke had an orthopaedic surgeon certify that this patient was terminally ill. This disease has nothing to do with bones, and orthopaedic surgeons would know nothing of mycosis fungoides within their professional sphere of expertise. That violated the regulations in a very blatant and basic way. Yet, as Professor Kissane notes in his report, the coroner of the day ignored the breaches of the regulations. That is the second level.

The third level is the psychiatrist level, which is a vital provision to assure the public that patients who are depressed and suicidal and whose depression can be treated and fixed will be treated and fixed so that they then look out through different lenses and out onto a different world. However, the first three deaths we looked at were, at best, dubious and at worst a parody of psychiatric assessment. We have the first case of Bob Dent. To get a psychiatric confirmation for him, a specialist was flown in from Sydney to confirm that he did not have depression. The problem was that he had advised the media that he was prepared to do this, that he was philosophically in favour of the legislation and that he had had only a single visit from the specialist, which did not uncover the subsequent layers of relevant matter in this man's psychiatric past. That is of concern.

The second case is that of Janet Mills. She was reviewed by a forensic psychiatrist. They do not deal with medically ill people like Janet. They deal with criminal psychiatric matters and so on. Professor Kissane said: 'Alas, she was reviewed by a forensic psychiatrist who did not have experience treating the medically ill.'

Finally, and most pitifully, was the third case of an isolated English migrant who appeared very ambivalent about depression. To Dr Nitschke's credit, he encouraged him to defer the decision and the signing of the papers. But when it came to the day he was due to die, that

was the day that Dr Nitschke got a psychiatrist to look at him. The psychiatrist rung back in 20 minutes and said, 'No. This one is all right.' Twenty minutes is a mockery of an assessment of an isolated man with a long, complex history and who was wishing suicide. I would take an hour with anyone in that predicament. To give you an idea of the context of people who choose suicide, I will read a moving passage from Professor Kissane's article, describing Dr Nitschke taking this man home:

From the psychiatrist's office, he was taken home to a musty house that had been shut up for several weeks. Nitschke had to hunt for sheets to cover the bare mattress. It rained heavily in Darwin that summer afternoon, and in administering euthanasia Nitschke felt sadness over the man's loneliness and isolation.

Does that not cry out to all of us that this man needed company? He needed social work intervention. He needed church groups to go and involve him in this society where he was so isolated. He needed anything else but a lethal injection. That is perhaps a slight diversion from your main question, Senator. That is the third level, the psychiatry level.

The final level of safeguards is the input of a palliative care expert. 'Expert' in the Territory means that you have just been a GP for five years, which is highly dubious in this very complex and very powerful field. Nevertheless, I have urged Dr Nitschke on a couple of occasions when I have discussed and debated with him to get some training in the field of palliative medicine so that he can know what can be done for these people, but he refuses to take that seriously.

Senator BARNETT—Doctor van Gend, I appreciate your response. In light of the time, if you are happy, I would like to leave it there. We do have the *Lancet* article and the *Deadly Days in Darwin* article.

Dr van Gend—Thank you.

Senator BARNETT—I would like to ask Dr Gawler one quick, brief question, and hopefully there will be a brief answer. You have talked very comprehensively about your Indigenous patients—80 per cent of your patients are Indigenous members of this community. What is the net effect of this legislation on Aboriginal health?

Dr Gawler—At best, it would not alter it. But I think it would be very likely to diminish trust in doctors, attendance to doctors and attendance to Royal Darwin Hospital or other hospitals around the Territory. I suspect, in the end, that it would cause a deterioration. I think the situation is so bad now that it is something that should not be even risked.

Senator BARNETT—Even contemplated.

Dr Gawler—Not even contemplated.

CHAIR—Dr Gawler, when the rights of the terminally ill bill was in operation, was there a significant difference in the number of Indigenous people who went to doctors or a significant difference in their attitude during that time? Is your comment about what you think a future reaction from Indigenous people might be based on any evidence during the period in which that bill was in operation?

Dr Gawler—There is certainly anecdotal evidence that patients left hospital when the bill came into being. I understand that according to the Territory health department there was not a

large change. However, what I would say to that is that the patients here who go to hospital and to doctors are usually extremely sick—far sicker than people down south, who will go to doctors for a headache or a minor cough. Indigenous patients here do not go to doctors unless they are really ill; by that I mean they often have life-threatening conditions. The suggestion that there was not much change may just be a reflection on the fact that the people who go to doctors and get care here are people who are heading towards a very serious outcome, are very sick and have exhausted all other possibilities. It is a lot different to down south, where people go to doctors with relatively minor problems and they also go very early. Also, the problems that we face as surgeons here are far more difficult than down south because the patients come much later and their lives are often in much more danger than with similar diseases down south. That would be my feeling about that. Patients probably did go to doctors less. Certainly there was a lot of fear around—I know that from talking to people—but as far as the figures go the Northern Territory health department said there was not a great change.

Senator MARSHALL—I hear, Dr van Gend, your preference that no body or legislature be able to legislate on these matters and I take that as your overriding argument in that respect. However, the purpose of this bill is clearly to restore the Northern Territory Rights of the Terminally Ill Act. It seems problematic legally that the bill as proposed will in fact do that and, in any case, the Northern Territory have a different position. I would like to get your response to the Northern Territory's position. They seek the right to be able to legislate on these matters into the future if this legislature so desires, but they do not seek the reviving of the Rights of the Terminally Ill Act 1995. What they seek is clearly to have their rights to determine these matters as a legislator restored without having that previous bill revived. So we would in fact start, going on their submission, with a blank piece of paper. Senator Kirk did raise these issues earlier in her questioning, but I would like to know whether or not you support the Northern Territory's position in this regard.

Dr van Gend—The answer would be no, because of the same reasons I mentioned before—and not only because, as you stated, we would prefer that no state could legislate and that it retreated to the federal level. Granted that the states can legislate, leave it with the states and not with the Territory, because the states represent a very large proportion of the population and they have houses of review, on the whole. The Territory is not a substantial enough vehicle to carry the weight of such momentous national legislation. That would be the point: remembering that it is national in its effect, even if it is only passed in the Territory.

Senator MARSHALL—Thank you.

Senator BOB BROWN—Dr Gawler, you might take these questions on notice. They will help the committee. You said that the Northern Territory health service had said that there was no great change in the approach to doctors or doctor treatments during the period during which the euthanasia legislation was potent here in the Territory. Did you mean no great change or no change at all? Could you provide the committee with any evidence that there was change and, if so, what it was? Secondly, there is anecdotal evidence that people left hospital. Can you provide the committee with any such anecdotal evidence which we might be able to put some substance to?

Dr Gawler—I would be happy to do that, Senator Brown.

CHAIR—Dr Gawler, Mrs Fong and Dr van Gend, thank you for your time this afternoon and for making the effort to put a submission in to our inquiry. We appreciate it.

[3.03 pm]

MANZIE, The Hon. Daryl William, Private capacity

PERRON, Mr Marshall, Private capacity

Evidence from Mr Perron was taken via teleconference—

CHAIR—I welcome Mr Marshall Perron, the former Chief Minister of the Northern Territory, and the Hon. Daryl Manzie, a former Northern Territory minister. We have before us submissions that you have both lodged. Mr Perron, your submission is No. 393 and, Mr Manzie, your submission is No. 411. Before I ask you to make an opening statement, do you have any changes or alterations you wish to make to those submissions?

Mr Manzie—No, not in my case.

Mr Perron—Nor mine.

CHAIR—I invite you both to make short opening statements. At the conclusion of that we will go to questions.

Mr Perron—Madam Chair, I take issue with your statement on the ABC in recent times:

...this is not about whether or not people believe euthanasia should be allowed or not allowed, this is about whether or not the Federal Parliament should reconsider re-instating the Territory's laws.

It is obvious that if a majority of senators believed this issue was about the Territory's authority to make laws and not about voluntary euthanasia, the Euthanasia Laws Bill would not have become an act in 1997 and we would not be having this debate today. Of the 20 senators who were on this committee and signed the report into the Euthanasia Laws Act in 1997, 18 of them based their decision on euthanasia issues and just two based theirs on the rights of the territories to manage their own affairs. Those two senators were those from the Northern Territory.

Sadly, I cannot see other than a small minority of federal members basing their decision on the Rights of the Terminally Ill (Euthanasia Laws Repeal Bill) 2008 on legal and constitutional issues. But, for those who do, the case is articulated completely and comprehensively in the remonstrance passed unanimously by the Northern Territory parliament and tabled in the Senate. *Hansard* shows that the majority of federal members supported the Euthanasia Laws Act because they opposed voluntary euthanasia. To them, crushing the principles of self-government was simply collateral damage. Put simply, the Euthanasia Laws Act means the citizens of the territories have 218 politicians whom they cannot vote for determining policy on voluntary euthanasia for them. The other 20 million citizens in this federation are not in that situation.

I do not propose to dwell on the case for VE as senators know it well. However, I want to make a couple of points in closing. Federal parliament, in passing the Euthanasia Laws Act, established for the first time a policy on voluntary euthanasia—it opposes it. I am sure that most members would rather not have had to address the issue at all. However, it was forced upon them by those who controlled the *Notice Paper* in 1996. I urge the committee, in considering the merits of the bill before it today, to recommend the parliament adopt a new

policy on voluntary euthanasia, a policy of neutrality. Such a policy would require the repeal of the Euthanasia Laws Act and a return to the territories of powers, which the states have, to manage their own affairs.

Finally, I ask for all submissions received from religious organisations opposing voluntary euthanasia be noted and dismissed as not contributing usefully to the debate. People who believe that only God can give life and only God can take it do not believe in rational suicide. They cannot accept that suffering exists that would justify someone taking their own life. People with such views are unable to contribute anything to the debate on how a mix of safeguards can be devised to make a voluntary euthanasia regime safe. They cannot agree to any return of voluntary euthanasia powers to the territories. Any democratic or constitutional arguments are irrelevant to them. The fundamental flaw in all of their submissions is that they are bound by their God's law beyond any other consideration. They should stand aside and allow those who are prepared to constructively contribute to get on and devise lawful ways to respect the competent individual's right to die with dignity. I wish the committee well in its deliberations.

CHAIR—Thank you, Mr Perron.

Mr Manzie—In my view, even though the subject and the talk is all about euthanasia, this bill is actually about restoring a basic democratic right to the people of the Northern Territory. That is a right which existed after powers were duly granted to the Northern Territory assembly by the federal parliament in 1978. They were properly acted upon by the Northern Territory parliament until such time as they were removed by the passage of the Euthanasia Laws Bill of 1996—better known as the Andrews bill.

The passage of that bill enacted legislation that the Commonwealth could not constitutionally impose upon existing states. Even though it is acknowledged that the Australian federal parliament can undo what a previous parliament has enacted in respect of the constitutional development of the Northern Territory, it is really interesting to note the comments of the federal Attorney-General's Department at the time that they were putting a submission to a Senate committee which was looking at the development of self-government here in the Northern Territory. That comment from the Attorney-General's Department related to the power to overturn a law in the Territory. Just before I give details of what that submission said, I remind members that that particular power was one the British used when they established colonies and provided them with self-governing powers. The British model operated around the world and, as they moved to provide self-governing powers and parliamentary privileges to the people they colonised, they retained a power which gave them the right to overturn any legislation in the colonies. That also included Australia when we were developing. That same power was taken up by the federal parliament, and I suppose that that is rightfully so, but the Attorney-General's Department at the time, when asked when that power should be used, said:

> … this has not happened in Australia's history, that it would be politically unthinkable and would only be done in times of revolt and disorder.

So the context of that power to override, which was based on a British law, was only in times when there was revolt or disorder. I do not think I need say any more about that.

The other thing that I think is important to remember is that the Territory parliament has the same powers as the states with respect to most issues. This was referred to a little bit earlier. I think somebody said we were immature at the time. As a former member, I guess they are the sorts of things that some people did say. But the Northern Territory's self-government came about due to the work of many previous members of the body politic in the Northern Territory. I will quote some names: Dick Ward, Tiger Brennan, Bernie Kilgariff, Joe Fisher, Len Purkiss, Duncan Matheson, Jock Nelson, Sam Calder—and there were a lot of others who worked to ensure we had self-government in the Territory.

When I first came to the Territory it was like coming to a colony; it was a colony of Canberra. It is very hard to emphasise the impact that had on me as a young Australian who believed what I was taught: one vote one value, everyone is equal in this country, democracy runs a course and we all have the same rights and obligations under law. In the Territory that did not happen. We had a nominated legislative council. They had very little power. Very select people were sent to the Northern Territory to administer us. They had two-year terms, because I think there were thoughts that any longer than two years here would addle people's brains, and then they moved away. It was really a very interesting time, but it was one that fomented feelings of revolt and mutiny—all sorts of things. It is obviously something that is ingrained in man that he has the ability to provide for his own destiny, and to have people 4,000 kilometres away imposing a view is not taken very well.

That is the background in which I am talking about these issues. We were given responsibility by the federal government to deal with delivering law and order—that is, appointing judiciary, setting up courts, police, establishing a health department, education departments, building roads, public works, looking after mineral developments, parks, environmental management, looking after ports. There were a whole range of normal issues. The list is long, but in essence it enables the Territory government to operate as a state in terms of dealing with its citizens. Those citizens have the right to remove the government whenever they feel as though they are not representing the views of the people.

In terms of the euthanasia debate, the euthanasia bill, all states retain the power to introduce laws in relation to this matter. This was taken away from us by the Andrews bill, but to me it is appropriate, and I think many Territorians would agree with me, that the issue is dealt with here in the Territory. There are many issues relating to allowing people who are dying, especially those who are terminally ill and who wish to have a choice, to die with dignity. I believe that is an issue that has to be debated here in this parliament if it affects people in the Northern Territory.

This parliament passed legislation on an issue that related only to Territorians. It was legislation that dealt with people who lived in the Territory or who had moved to the Territory. It was appropriate that the Territory parliament was the parliament that made the decision, that it dealt with the debate and that it gave Territorians the right to make submissions. That was the process we used. The same situation should relate to any state that deals with the issue of euthanasia or any other issue in which they have powers under the Commonwealth parliament.

CHAIR—Thank you, Mr Manzie. You were both heavily involved in the original euthanasia legislation. Mr Perron, you were an advocate of it and one of the people who

crafted and drafted the legislation. Was there any suggestion during the consultation period of the original rights of the terminally ill bill that, in some way, this was not acceptable to the parliament in Canberra? Was there ever a suggestion that, if you proceeded along this path, your rights as a Territory government to determine future matters when it came to euthanasia would be taken away?

Mr Perron—No, there was not. I was the Chief Minister at that time, as you are aware, and I can assure you that any such word that had been fed to the Northern Territory would certainly have come to my ears—it would probably have been directed at me. There was never such a suggestion at that time. In fact, on this point, I had always felt that, if there were ever to be an intervention by the federal government in regard to this act, that would be the time that the big brother clauses of the Northern Territory (Self-Government) Act—that is, sections 7, 8 and 9—would be used. These clauses provide that the Governor-General can refuse allowance to Territory legislation or, alternatively, send it back to the chamber with suggestions for change—an action which has to be taken within six months of Territory legislation being passed. Of course, an approach was made to the Prime Minister of the day, Prime Minister Keating, to use exactly those powers and refuse assent to the Northern Territory's legislation through the Governor-General. To his credit, the Prime Minister is on record as saying, in rejecting the approach, that this was a matter for the Territory, not the Commonwealth. That is where I believe the matter should have rested.

Those provisions were there specifically to allow for intervention, much as it would have caused a ruffle had it occurred, but there was a formal process for asking the Territory to review what it had done if someone felt it had stepped over the mark. Indeed, I call it the 'big brother clause'. But that was not exercised. In my view, a private member's bill that was introduced some many months later and that overrode the entire self-governing process and legislation was simply preposterous, as well as inappropriate.

CHAIR—Mr Manzie, did you want to comment about that?

Mr Manzie—No. I agree with what was said. There was a process, and I pointed out the background to that. It was totally taken out of our hands by people that the law did not relate to. They were not subject to that law, yet they decided to impose their views on others who agreed that that law was appropriate to them. That, in essence, was the whole process.

We have heard a lot of talk about Indigenous views, yet the law would not have become law if an Indigenous man, a traditional man who was a member of this parliament, had not voted in support of the bill. A lot of issues were dealt with very broadly in the Territory. There were a lot of special interest groups who felt that, because the majority of people disagreed with them, they could take their argument to another area and have it acknowledged. Of course, that cut out ordinary Territorians and Indigenous Territorians as part of that process.

CHAIR—Can I just ask one other question, with the indulgence of the committee. It was put to us this morning by the Australian Christian Lobby that, because the Northern Territory has 25 members in its legislative assembly, no upper house of review and a population of 200,000, it is somehow inferior to the legislatures of, say, South Australia, Victoria or New South Wales and that, therefore, it should not have the right to determine matters such as

euthanasia. You were both members of the parliament at the time. Was that position ever put to either of you during the consultation period of the original bill?

Mr Perron—I certainly do not remember anything specific, but the campaign opposing the rights of the terminally ill act was very intense. There were many outrageous statements, denigrating statements and patronising statements made by our opponents—and I regard that as one of them. I am sure it was brought to my attention that there were people, particularly of religious faith, who felt that we lacked the intellectual rigour to deal with such a matter. Obviously, I reject their views completely.

Mr Manzie—I just add to that that a number of issues were dealt with by the Territory parliament to which critics made such claims as, 'You're too small,' 'You're cowboys,' and a few other things. One such matter that we were dealing with was sacred sites, yet our sacred sites legislation is held up as the most effective legislation in the country. In terms of dealing with prostitution, I see that places like Western Australia are only now legalising and protecting people who are engaging in prostitution. There is also the area of classifications of publications. There were a lot of areas where we were accused of being immature or incapable because of our size or because of the length of time our parliament had sat. I would only say that we as a parliament, as a legislature, could only legislate in relation to the powers that were provided under the self-governing act. All legislation was drafted by skilled parliamentary counsel and it was also reviewed to make sure that it was within the powers of this assembly.

It was never a case of the assembly taking advantage or running off on some wild goose chase. These things were deliberated properly. I think you will find, if you look through *Hansard*s, debates in the Territory assembly were very full and frank and all members had the opportunity, and sometimes quite often, to speak on all matters in relation to a bill. That is something that is unique among parliaments across the country.

The last issue is that, when we look at the size of populations, do we then say: 'Tasmania is not very big—only 450,000 voters. Do we limit them because they are lot smaller in size than New South Wales or Victoria? Do we limit South Australia for the same reason? Do we end up with only letting New South Wales, as the most populous state, deal with issues?' That is a ridiculous proposition but, if you extend those sorts of claims, that is what you end up with. Democratic institutions recognise the difference in sizes, and I think that is all that needs to be said about that.

Mr Perron—One may look at the laws of New South Wales and make a few criticisms, too.

Senator BARNETT—Mr Perron, I would like to address your point that the views of people of a religious faith or conviction should be dismissed entirely. I am looking to get some clarity on that with two questions. The first question is: do you therefore dismiss the views of the Catholic Church, the Anglican Church and a range of other church groups that have a view on this matter? Accordingly, you would be dismissing the views of individuals who hold to the Christian faith. You would perhaps acknowledge that up to 70 per cent of the Australian population consider themselves to be Christian. I am just wondering whether you acknowledge that Australia's laws are based largely on the Judaeo-Christian ethic. That is the

first question. The second question is: do you also dismiss the views of Aboriginal communities that find euthanasia counter to their cultures and beliefs?

Mr Perron—No, I absolutely do not dismiss the views of every person who identifies with the Catholic faith or any other Christian denomination. The reference I made was very specific. It was about those religious organisations opposing voluntary euthanasia. I say that for this reason: the entire anti-euthanasia movement in the country, to the extent that it is a forceful, organised movement, is run by the hierarchy of churches—primarily the Catholic Church. The facts are that those hierarchies are not acting on the will of their flock. Polls clearly show that some 74 per cent of adults who identify as Catholics in Australia are supportive of a legal right to voluntary euthanasia. The figures for denominations other than Catholic are slightly higher than that, but all of the figures are by far a vast majority. It is the organisations of the churches and their hierarchies who run completely the anti-euthanasia campaign. They are obviously of the belief that they are following God's law. I guess they must feel that the other followers who support voluntary euthanasia are not following God's law. To answer your question: no, I am not dismissing all Christian votes at all. In fact, most Christians support what the Territory tried to do.

In answer to your question about Aboriginals and dismissing their views, never would I consider dismissing the views of Aborigines, having been a politician for 21 years in a place in Australia—the Northern Territory—where 25 per cent of the population are Aboriginal. They featured very significantly in virtually every decision my government ever made, as any block of the 25 per cent of the population obviously would. But let me say this in regard to the Aboriginal view, as it is put to us, of euthanasia: prostitution, abortion, organ donation, autopsies and cremation are probably all grossly offensive to Aboriginal culture. A group in our society finding them offensive does not stop us from having laws regulating those areas and indeed permitting them. In regard to the Aboriginal situation, there is clearly a huge amount to be done educating remote Aborigines about the health system, much of which is a complete mystery to truly remote and tribal Aborigines. It is hardly a reason to deny the terminally ill the relief they seek because we have a big job ahead in educating the Aboriginal community.

The facts are—and you know it and I know it—that voluntary euthanasia legislation does not require anybody to do anything. If you disagree with it, you can go through life pretending that the law does not even exist and it will never affect you. To presume that we should never have voluntary euthanasia legislation because an Aboriginal group somewhere will oppose it is not a sensible way to go.

Senator BARNETT—Mr Perron, I would ask you not to make assumptions about what I know. You can make assumptions and express views about what you know. In response, I would like to refer to the submission from the Aboriginal Resource and Development Corporation. I will quote just a sentence from their submission:

> If the Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008 is passed, then Indigenous health in the Top End of Australia can be expected to worsen even further, as Yolngu stay away from medical professionals and institutions.

Do you have a view as to the impact of this legislation on the Aboriginal communities in the Northern Territory?

Mr Perron—Yes I do. If the situation is handled sensibly, there will in my view not be an impact on Aborigines failing to come forward and seeking medical attention. These arguments were run quite strongly during the previous time this committee debated the Euthanasia Laws Act, and you will find on the record a statement from the Northern Territory Department of Health and Community Services—which I can assure you was not vetted by any politician—as to whether or not the rumours that had circulated at the time that Aborigines had reduced their frequency of attending health services as a result of the debate about the Rights of the Terminally Ill Act were true. The department of health figures disproved the allegation. I believe that would be the case again.

Senator BARNETT—I have a final question to Mr Manzie, who referred to the legislation as applying to people in the Northern Territory or people who moved to the Northern Territory. It is on the record from Dr Nitschke and others that people from Victoria, New South Wales and other parts of Australia and indeed overseas would move to the Northern Territory—and have moved—if such legislation were in place. I am seeking your response to that. Is it correct that people from other parts of Australia would move to the Northern Territory—and have moved—if this legislation were in place?

Mr Manzie—Unless the Australian government imposes restrictions on travel, that is obviously the case. That is exactly what I pointed out. In fact, people travel overseas now to avail themselves of the ability to make a choice. We are not talking about first of all forcing people to travel. It is up to them to make a decision that they are going to travel to seek laws in the sorts of jurisdictions where they can see doctors about dying comfortably. Once they reach the Northern Territory, it is still a choice process. I think that needs to be reinforced because a lot of people have a misconception that this is something that doctors or hospitals will do. That has been brought about by misinformation.

I would just like to comment on some Indigenous views. Anecdotally, I was told by some Indigenous people that they were informed that the government was going to be able to give them or their children a needle when they came to Darwin and get rid of them because it does not want too many Aborigines. I have been anecdotally informed that is the sort of information that was told to people. I guess misinformation can cause a lot of grief. These are very sensitive issues but they are also very emotive and they do generate a lot of comment from people. Sometimes it is very ill informed.

Senator BOB BROWN—Thank you, gentlemen. One question came out of the evidence given earlier today on behalf of the current government of the Northern Territory. It would prefer if this legislation were altered so that it would do away with section 50A, entitled 'Laws concerning euthanasia', of the Northern Territory (Self-Government) Act 1978, which is the provision to take away the power of the legislative assembly to make laws on the matter of euthanasia and also to make it clear that the Euthanasia Laws Act 1997of the Northern Territory be set aside so that the assembly could make new laws in the future once the deck had been cleared. What is your opinion on that proposition?

Mr Manzie—I would like to say that to be a politician you have to have a sense of bravery in a lot of respects. You have to pioneer issues. You have to be able to stand up and enunciate your beliefs and you have to be able to take the repercussions of decisions you make. I would only say that I believe the euthanasia legislation should be debated here in the Territory

parliament. If the politicians of today do not agree with the issue, they can bring the debate on when they have the power and they can dismiss the legislation in this parliament. They could repeal it, overturn it or amend it and I think that is the appropriate place. I would just suggest to any Territory politician that they need to stand up and be counted on this and any other issue. I think this might be a way of ducking some responsibility. But I do not want to get too political on the issue, so I will not say anymore.

Senator BOB BROWN—Can I just ask if you are effectively saying that it would be better if the euthanasia laws as enacted in 1997 were effectively enacted again and that it would be up to the Territory legislature to repeal that if they wish to?

Mr Manzie—Exactly. If the bill before the Senate actually restores the Territory's position, that would be appropriate and any changes would have to be made here. That is my personal view.

Senator KIRK—Thank you very much, gentlemen, for your submission. I have a question on the process that was conducted back in 1995 on community consultation in relation to that legislation. I am interested in particular in how long the process took, which parties were invited to make submissions and the like. Can you elaborate.

Mr Manzie—Marshall, would you like to answer that?

Mr Perron—Yes. There was extensive consultation of the community on an issue which obviously was very controversial and of huge interest generally to our community. The Northern Territory parliament established a select committee to take evidence. It travelled around the Northern Territory. Its report is available, including all its submissions, to the Senate committee if they seek it. The committee also brought in experts from interstate on both sides of the voluntary euthanasia argument to present their views. The antivoluntary euthanasia movement brought a very high-profile international anti-euthanasia campaigner from the United States who toured the Northern Territory espousing his views. Individual members of parliament had electorates at the time of around 3,000 constituents each. Many of the members of the assembly not only become personally known to many of their constituents over the period of a four-year term but they also polled their own electorates by phone where they could not get to everyone personally to test reaction. All of the polls that I am aware of from those individual MLAs showed absolutely overwhelming support for the Rights of the Terminally Ill Act.

Can I say on this subject, because it is very important, that it was heartening to watch the debate after the three-month process between the bill being introduced and coming up for debate and its passage in the assembly because the 25 members of parliament were without exception very knowledgeable on the subject of voluntary euthanasia in their supporting and opposing arguments. That is far more than I can say for the reflections in *Hansard* of both of the federal houses when they looked at the issue. The 25 members of the Territory parliament stood up to genuinely argue and try to convince their colleagues of their point of view. It was truly a parliament of independents. I had not seen it in 21 years of politics. Every member took virtually their entire debating time to put their views. Then a vote was taken and it divided ministers and members of the opposition on both sides of the house. It was true democracy at work, with no member voting the way they did because of the way any other

member voted. It was heartening to see true democracy at work as compared to what we mostly see in politics today.

Senator BARTLETT—I quite like that description of true democracy. It would be nice to see it tried more often—

Mr Perron—Hear, hear!

Senator BARTLETT—but we will not go further down that track at the moment. Can you just tell me what the final vote was on that bill.

Mr Perron—Fifteen to 10.

Mr Manzie—Yes. It was reasonably close. I think it is also important to reflect on the later debate when the Andrews bill was being discussed and a remonstrance was presented from the Northern Territory parliament. Those who were against euthanasia as well as those who supported it were all unanimous in their view of interference in the ability of the Territory parliament.

Senator BARTLETT—I guess that means putting aside arguments for and against euthanasia for a minute. On the issue of the power of the federal parliament to override the territories—and I appreciate nobody ever likes to be overridden—my understanding is that currently, under the Northern Territory (Self-Government) Act, the federal parliament and federal laws override in areas of land rights and uranium.

Mr Manzie—And you left out one other issue—that is, two national parks out of the 102 national parks that are run by the Northern Territory.

Senator BARTLETT—Okay. I did not know that. Is it your view that ideally those exceptions would not exist either?

Mr Manzie—Most certainly, and I think without a doubt that the Territory parliament has proved over the years that it has the capacity to handle those issues, and that is something that I think does not need any further discussion from me.

Senator BARTLETT—The other aspect of that is in regard to the broader principle of the federal parliament or government overriding state and territory governments. There is a dam being built in Queensland at the moment that I hope the federal government decides to override and prevent being built, for example. These sorts of things are always potentially going to happen around particular issues when people think it is of sufficient national importance that the federal parliament or government should override. We had the workplace relations debate, of course. Is your concern specifically about the fact that the Territory is in a less powerful position than the states?

Mr Manzie—Obviously for me the ability for Territorians to have the same rights through their elected representatives as other Australians is paramount, whatever the total power of state and territory parliaments is. That will move from time to time. I think you would all recall that when the Commonwealth was established in 1901 the Federation was only to deal with taxation—no, it was not even taxation; it was defence, customs and a few other issues. Gradually powers have moved, and some of them have been for the good because I think Tasmania, South Australia and, dare I say, the Northern Territory and Western Australia would be in dire straits without a federal taxation and distribution system. But, be that as it may,

those powers, whatever they are, should be the same for all those elected governments because the governments are representing the people and it is the people that need to have that ability.

Mr Perron—Can I add quickly that, if the federal parliament had moved to ban euthanasia laws anywhere in Australia under some external affairs power—if they had such a power, and I believe they do not—then the Northern Territory could not be running the argument that it is today, that it is being treated unfairly, that we do not have the representative democracy that the citizens of the states have. So I accept that there are broader national issues where in the national interest—obviously defence is the major one—the Commonwealth will always override the states. But we should not be treated disproportionately because, geographically, some citizens want to live in a territory rather than a state.

Mr Manzie—There is another area where we differ from the states, and that is in the area of Senate representation. I hope that before I die I am able to visualise equality for Territorians in that area as well.

CHAIR—I could not possibly comment! Mr Perron and Mr Manzie, thank you for your submission and for making the time to appear before the committee. It is much appreciated.

Mr Perron—Thank you.

Mr Manzie—Thank you very much.

Proceedings suspended from 3.44 pm to 4.05 pm

DENT, Ms Judy Barbara, President, Northern Territory Voluntary Euthanasia Society; and Private capacity

NITSCHKE, Dr Philip, Director, Exit International

CHAIR—I now welcome Dr Philip Nitschke of Exit International and Ms Judy Dent, who is the President of the Northern Territory Voluntary Euthanasia Society. We have submission No. 58 from the Northern Territory Voluntary Euthanasia Society. Dr Nitschke, you have lodged a submission with us, which is numbered 390. Before I ask you to make opening statements, do you want to change any aspects of your submissions?

Ms Dent—My submission is in two parts—No. 58a as president and No. 58b as a private individual.

CHAIR—I invite you both to make a short opening statement.

Ms Dent—As the President of the Northern Territory Voluntary Euthanasia Society, I would welcome the resurgence of the Rights of the Terminally Ill Act. We do things differently in the Territory. Our society is the only society incorporated after a voluntary euthanasia law was passed. Everybody else in this country is still waiting for their law, but we had ours first. That law survived two appeals in its first two months of use but was, unfortunately, overturned by Kevin Andrews's act. That was a big disappointment to our society, causing many members to give up their membership, saying, 'What is the point? We are no longer able to lobby our government to replace the law that has been taken away, so we won't bother.' However, the society is still in existence, and we would welcome very much a new law or the old law back again—however the territory government wants to do it.

As a private citizen, I resent being a second-class citizen in my chosen country. I am an Australian citizen, despite my accent, and I choose to live in a territory. I think I should have the same rights in the Territory as someone who lives in South Australia or Queensland or any other part of the country and, therefore, I would like those rights to be restored to the parliament of the Territory; however, it must be done legally and technically.

Dr Nitschke—First of all I would like to thank the Senate committee for the opportunity to address you today. I also start by saying that I am a little disappointed in the selection of people who are able to take up this valuable time to present to you something which is of such importance to them. I draw attention to the fact that no-one who is giving a personal presentation to you is a person who is specifically affected. Several of these people have written submissions, and you have been gracious enough to receive their submissions, but they did wish to address you and talk to you personally. These are the people who, depending on what happens here today and what subsequently happens in the Senate and House of Representatives, will find their lives either turned over or perhaps given some hope.

I am sorrowed by that, but I will do my best in this very brief—and I will keep it short because I am aware of the time—presentation to give some idea of the consequences of the piece of legislation which this piece of legislation seeks to address. Of course, I am referring to the impact of the 'Kevin Andrews bill' as we have referred to it largely today.

To give a little bit of background, I am a person who has spent 35 years in the Territory. I am an Australian registered doctor, registered in the Territory and in most states of Australia. I suppose that brings me to one of the two points that I wish to make, and that is the one that Judy has just alluded to. It is a little bit disappointing as a Territorian to find that one can be part of the democratic process on some things but other things are excluded. Of course we feel this and I have felt this particularly over this issue. But that is not really the main thrust. My main experience comes about because I was involved in the passage of the Rights of the Terminally Ill Act. When it was passed, I became the first doctor in the world to work under a piece of euthanasia legislation. It gave me a unique experience.

Four of my patients—dying people—qualified under that piece of civilising legislation and were given the peaceful death that they wanted, the first being Judy's husband, Bob. He said at the time that he felt that he was in the right place at the right time. I have had this unique experience of four patients and, as I said, I was the only doctor in the world and I am still the only doctor in Australia who has had the experience of working inside that legislative environment. That legislative environment changed dramatically—though hopefully not irreparably—with the passage of the Kevin Andrews law, which made it impossible for the Territory to continue with its unique piece of legislation.

I see the situation we have now as a very unsatisfactory one. I have had a decade like this now and I have a large number of people coming to me on a regular basis. I am going to talk about just two of them. These are people who are willingly out there—elderly, dying Australians—breaking the law to try and seek end-of-life choices. The first person is Don Flounders. I referred to him in my submission. He is a man who is dying of mesothelioma and travelled overseas to get access to the best euthanasia drug. He did that for another person who I referred to, Angy Belecciu, who is also dying of cancer. She paid for his trip. These are people who as far as I can see—though I cannot be absolutely certain on this—have never broken a law in their lives. They are elderly Australians who find themselves forced into the position of becoming quite significant law-breakers. It is one thing to import a class 1 drug, Nembutal, back into Australia; you break customs laws there. But, in the case of Angy, she has provided or paid for a trip. If another person, Don Flounders, on obtaining that drug were to use it, she finds herself in direct breach of other legislation in the state of Victoria—that is, she is assisting in a suicide.

We can say that isolated cases make bad law, but these are not isolated cases. We have what started off as a trickle but has now turned into a flood of people who are taking this so-called overseas option to try and establish for themselves viable end-of-life choices. What Kevin Andrews did when he overturned the Northern Territory law was to take away that unique safety net that people saw as existing in the Northern Territory. It was a discussion point earlier about whether people could come from other points to access it. Yes, they could. Two of the individuals who I helped to die—and I am sure that people who disagree with me would say, 'Who I killed'—came from other states: one from South Australia, Janet Mills; and the last person to use that law, Valerie, was from Sydney. The Territory provided a unique safety net.

I did not know of any people at that stage taking the so-called Swiss option or planning a trip to Tijuana so that they could acquire the precious drug Nembutal. Now I know of

hundreds. Last year we had 150 people make that trip and become serious breakers of Australian law as they effectively imported class 1 prohibited drugs. Why? Because they simply wanted the comfort of knowing that they had the option of a peaceful death should they so desire it. Those people would not have been prompted to take that law-breaking course, I would suggest—and they quite openly agree to this when asked—if they had a piece of legislation such as the one that the Northern Territory was uniquely prepared to offer back in 1996 and 1997 when it existed. Don Flounders could have simply come to Darwin, been given that drug—the 10 precious grams of Nembutal—taken it back to his home in Victoria and then, if and when he wanted to, drank it.

I am assuming, of course, he would have qualified for the very tight, controlled restrictions that that piece of legislation had in place, but I would say that Don Flounders would certainly have qualified. This is not a person affected by mental illness; this is not a person who is other than a rational adult suffering a very difficult disease and knowing that he wants to have that choice. The same goes for Angy Belecciu, the palliative care nurse in Victoria who is dying of breast cancer which has spread to her bones.

I hope that without being able to have these individuals present their particular, unique experiences to the Senate committee you will nevertheless get some insight into the fact that this is a very important issue for a large number of Australians, who will be sitting here watching what goes on in the assembly here today, watching what happens in Sydney and certainly watching what happens when this unique and much overdue legislation that we are here to consider—that is, the Bob Brown bill—is debated in Australia's federal parliament. I willingly take the opportunity now to answer any questions that the senators might have.

Senator BOB BROWN—Thank you both. We heard evidence earlier this afternoon from the current Northern Territory government that their preference would be that, in pursuing this course of action, the legislation be altered to remove section 50A of the Northern Territory (Self-Government) Act, which prevents Territorians from legislating for euthanasia. They would take that section away but, at the same time, effectively remove the potential of the 1997 Euthanasia Laws Act, which you, Dr Nitschke, have just described your role in implementing. The alternative, which the committee may pursue and which was the intent of the legislation, is to have that 1995 legislation reactivated—the legislation that actually came into force in 1997.

Ms Dent—It was on 1 July 1996 that it came into force.

Senator BOB BROWN—I am looking at the addendum—you are quite right. Thank you. What is your opinion of that?

Ms Dent—I would prefer the legislation to come back. But, if the Northern Territory legal beagles have some difficulty with this, we should at least change the self-government act back to what it was and then our society can lobby the government to enact another rights of the terminally ill act if the first one is going to cause some problems.

Dr Nitschke—I would generally agree with that. The Rights of the Terminally Ill Act was a particularly perceptive piece of legislation and I think somewhat ahead of its time. It took into account many of the concerns over the issue of voluntary euthanasia that many have been worried about. As to whether or not there was any evidence of people, including Aboriginal

people, not attending health services during the period it was in place—we had some reference to anecdotal evidence—the law was never in place for the statistics to be gathered. I am sure that when you get answers to the question that you put on notice you will find that there was no evidence other than that this was a uniquely well functioning piece of legislation that should have been given a greater chance. So if that can be brought back in the simplest way possible, and I imagine that that is your strategy, I would welcome it.

Senator BOB BROWN—There has been criticism of the way in which four people took advantage of the act and sought to end their lives and subsequently had their lives shortened during that period in which the act was available here in the Northern Territory. What is your take on that?

Dr Nitschke—I am not too sure which criticisms you are referring to. The four people were suffering dreadfully. I am sure Judy would give a better account of the exact misery that Bob was going through as the very first person in the world to ever receive a legal lethal voluntary injection to end his suffering. The other three people were suffering dreadfully too. I watched them in the position of a treating doctor, realising that for once there was actually some form of legal option that could be offered to them.

I think every one of them, it would be true to say, felt exactly as Bob did—that they were in the right place at the right time. They felt in some ways privileged and lucky. I should contrast that with the plight of Esther Wild, who was actually denied that option, having qualified for the Territory law, with the passage of the Kevin Andrews legislation. She saw that option chopped out from under her and lapsed back into the despair that can come only from knowing that there is no lawful option. That is, of course, the plight that everyone is in right now.

Ms Dent—One of the criticisms was that the relationship between the patient and the doctor was not the same as that of a longstanding relationship between the patient and his GP. My husband was the sort of person who would not go to the doctor if he could possibly avoid it, and so his visits from Dr Nitschke amounted to many more than the occasions on which he had actually seen his GP. So I would state that his relationship with Dr Nitschke was better than his relationship with his GP. The second signing doctor knew Bob quite well. It was only because of the drastic change in Bob between the time Dr Wardill saw him in July and then six weeks later in August that prompted Dr Wardill to be the second signer of the form that was required.

CHAIR—Before we go to the next question, I welcome Minister Len Kiely of the Northern Territory government, who has joined our committee hearings in the legislative assembly this afternoon.

Senator HOGG—Dr Nitschke, in respect of the 150 people who make the trip overseas, what countries do they go to?

Dr Nitschke—The predominant choice of nation is the easiest one from which they can lawfully acquire the drug Nembutal, and currently that is Mexico. One can also get that drug lawfully in Switzerland. You can end your life in Switzerland under their legal system, which allows access to that drug and use of that drug, provided you satisfy certain preconditions. Most Australians want to die in Australia, and so they have, as a hope, the idea that they can

acquire the best drug—no-one doubts it is the best drug; it is the drug we used in the Northern Territory—and bring it back to Australia. So Mexico is the chosen course.

Senator HOGG—How many of the 150 are terminally ill?

Dr Nitschke—Not a large number. I would estimate between about five and 10 per cent.

Senator HOGG—What do you base your estimate on?

Dr Nitschke—I know the people who are going. I know three people who went last week. I know four people who are going in two weeks time. Of those four people who are going in two weeks time, one person would be classed as terminally ill and the other three would not.

Senator HOGG—So the maximum is somewhere between eight and 15 who are terminally ill.

Dr Nitschke—That is true.

Senator HOGG—The rest are not terminally ill and do not have any sign of being terminally ill?

Dr Nitschke—That is true. These would be people whom you would describe as elderly folk who are simply aware of the fact that, in the current legal structure in Australia, they could find themselves in difficulty, and so they take this course.

Senator HOGG—What is the age profile?

Dr Nitschke—The age profile is pretty much the same age profile as those who join our organisation—75 is the average age.

Senator HOGG—I am not going to get into the rationale of this debate, but I want to find out from you where this issue intersects with the issue that we have been challenged with in the federal parliament, and that is stem cell development and the operation of the human embryonic stem cells as a cure for many of the diseases that I presume many of these people are trying to act against. Where do they intersect? A lot of money is being invested in the human embryonic stem cell area to find cures for many diseases, which may well make legislation like this in the longer term redundant.

Dr Nitschke—That is possible.

Senator HOGG—I am just trying to establish these things. How would this fit in over time?

Dr Nitschke—By and large, most of the people that I know who support a person's right to be able to end their life in the context of serious and unrelievable suffering are also those people who strongly support the idea that there should be access to stem cells for the purpose of research that is endeavouring to find cures for the very diseases that are currently forcing people into thinking that they might want to elect to take the euthanasia option. They do not see any conflict there. By and large, they would be the same group. Of course, our organisation strongly supports the idea of stem cell research.

Senator HOGG—In the longer term, what would prevail: the right to choose stem cells or euthanasia, or do you see euthanasia being phased out as a result of stem cells?

Dr Nitschke—I would hope that it would be phased out, as you say. With the alleviation of serious suffering associated with unrelievable and incurable diseases that exist at present, it is likely that the demand from people who want to be able to end their life will diminish—and we would totally support that. I do not suspect that it is going to disappear totally. I think that is a little bit too optimistic; but, nevertheless, we would like to see that happen and would welcome the lessening of interest and demand for people to access end-of-life choices. But, by the same token, it is also true to say that there will always be a small group of people out there who will find that, at a certain time, their quality of life, as they perceive it, warrants the elective choice of ending their life, and I think their needs should be served.

Senator HOGG—So you then move from the idea of being terminally ill to quality of life issues?

Dr Nitschke—Yes. The idea of terminal illness was always a vexed one. There are four legislative models that people have talked about: Holland, Belgium, Oregon and Switzerland. People talk about 'unrelievable suffering', and that certainly might involve psychic suffering as such. People have indeed broadened it out, because the definition of 'terminality' can become quite a complex issue. You may be aware that, in drafting the Northern Territory legislation, the legislators refused to put a time limit on the idea of a terminal illness or a disease which would be expected to bring about the end of one's life in six months. When the legislators were putting the rights of the terminally ill legislation together, they realised that this was a very difficult issue, and they left it open by saying 'a disease that could be reliably expected to bring about the end of one's life'. Of course, immediately, those who were opposed to the legislation said that diabetes is a terminal illness under those circumstances—and indeed it is by the definition used in the Territory's legislation.

Those are difficult issues but they are not ones that we should move away from. I personally believe that the 'unrelievable suffering' phrase is a better and more useful description. But having said all of that, 'terminal illness' will go a long way to taking away this particular anxiety from the concerned elderly of Australia.

Senator BARTLETT—Understandably, a lot of your commentary and the descriptions you have used relate to elderly people. However, in some circumstances, younger people and sometimes quite young people can have what you call 'serious and unrelievable suffering'. Is there any difference in the application of the principle to them?

Dr Nitschke—I do not think so. The Territory legislation said that you had to be an adult; you had to be over the age of 18. I found that an acceptable definition. People say: 'What if you are terminally ill at the age of 17? Do you have to wait until you are 18 and go through a year of suffering before you can qualify?' Those sorts of hypotheticals were put out, and I do not know what the simple answer is. The understanding was that you had to know the permanence of what it was you were about to embark upon. In other words, you had to understand that death was a permanent process—at some point children develop that understanding—and, at that point, you should have been able to get access to the law. An age had to be picked—there would be argument no matter what age you picked—and 18 was settled on.

Senator BARTLETT—A number of submissions have referred to a study that was published in an article in the *Lancet* in October 1998. I imagine you are aware of it, because your name was attached to it.

Dr Nitschke—Yes.

Senator BARTLETT—Are you comfortable with that article? Are there any factual errors in it?

Dr Nitschke—I was uncomfortable about the way the article was ultimately depicted. I think one should have been more cautious about the exact wording that was used in the article. Of course, I was in the situation of allowing it to go ahead without having spent as much time as I should have on its exact nature, and I have lived to regret that to some degree. I guess we often do things we live to regret. I would have been much more careful about it. The question revolved around showing signs of depression in each of the four people who made use of the Northern Territory legislation. All of them showed aspects of depression, and that, to my mind, was entirely expected. Ultimately, the question—and this was not brought out in the *Lancet* article—was: does that mean that they were so debilitated by that psychic condition that they had lost the ability to make rational thought? In other words, had they lost insight? That was certainly not the case. These were people who were certainly not happy people.

Bill, who was from the Northern Territory and the third person to use the Northern Territory law, was so concerned about having to go and see a psychiatrist to be confirmed as being of sound mind that he put off seeing the psychiatrists to the day he died, saying, 'I'll wait till I cheer up a bit or they might find I am depressed.' On that last day we took him to the psychiatrist, and two hours later he died. The point about that is that people were fearful of this description of sadness and, to some degree, they confused it with the rather more specific requirement that the legislation tried to put clearly in place, which is that a person who is suffering from a psychiatric illness called depression to a degree where they have lost insight should not be allowed to access that law.

Senator BARTLETT—I do not think psychiatrists are the font of all wisdom, but you are not trained as a psychiatrist, are you?

Dr Nitschke—No.

Senator BARTLETT—This is my final question, given the time: I am interested in the distinction between people who talk about a terminal illness or serious unrelievable suffering—they are usually thinking of a major disease of some sort—and other people regarding what I would call other types of suicide and the potential for people in those circumstances to still make what would in most respects be seen to be a rational decision: they just want to end their life. In terms of terminology like the rights of people to 'a lawful and peaceful death at the time of their choosing', do you think that sort of principle applies with regards to what are called other types of suicide?

Dr Nitschke—My personal position on this issue is one where I generally, by and large, think that adults of sound mind have the right to determine the time when they die. In some ways, our current legislation reflects that, because suicide itself is not a crime. With respect to the idea of whether or not the parliament of Australia—or, indeed, the parliament of the

Northern Territory—can make laws which, in some way, allow a certain group of people within society to have access to what no-one else in society has, and that is access to help to die, I think we have to be quite careful here. Because, if we start opening it up to what is a much broader philosophical argument, we will start to find it almost impossible to legislate. I think legislation has to restrict itself to very specific categories. The Territory, in a very sound and safe way, did that. You have to put up the barriers. Clearly, there will be arguments at the edge. Some people, who you think should have been given eligibility, would fail; some people, on the other hand, may be found to be eligible when you would think perhaps they should not have been. Those arguments will always exist, but, when legislation sets out to define a unique subset in society which can have lawful help to die, there will be difficulties, but that is not a reason for running away from it. And that is why I think the Territory should be proud of what it did. It was a world first. Other countries have followed it. It set out to solve a problem which many other countries, as I have said, have run away from, and we are now seeing these changes in society. It is a real pity that we have had to go back to the dark ages in the last 10 years.

Senator BARNETT—There are a range of criticisms by Dr van Gend and the Australian Christian Lobby, and indeed by some others, of your practices in about 1996 and 1997 here in the Northern Territory and the lack of safeguards that applied at the time. I think you referred to and reflected on a *Lancet* article, perhaps with some regret. If you want to be more specific about that, I would ask you to be more specific. I want to draw your attention to the example that you used in answer to some questions here regarding the lonely man who needed to see a psychiatrist on the last day of his life. I understand that meeting with the psychiatrist was for some 20 minutes. Do you believe that a 20-minute consultation with a psychiatrist on the last day of a person's life is and was appropriate?

Dr Nitschke—I have a couple of points. I did not say he was lonely; I said he was isolated. He was a person who lived alone most of his life. I do not think he was lonely. The fact that he saw a psychiatrist on the last day of his life was, effectively, his decision because he kept putting off the assessment which he so feared. He was fearful that the psychiatrist would, to some degree, rule him as ineligible. As it turned out, that particular visit to the psychiatrist in question was a pretty disgusting affair. It was not to do with the patient; it was to do with the psychiatrist.

Senator BARNETT—What was disgusting about the affair?

Dr Nitschke—I was told that on that particular day there would be no-one in the waiting room. The psychiatrist said he would be able to devote all his time to the assessment of this particular patient. I pointed out that the patient had planned to die on that very day. The patient was very sick. It was an ambulance transfer from the hospital to the psychiatrist's rooms, and he was wheelchaired in. When the patient got to the front desk, the person receiving him at reception said, 'This is a first visit. I have to fill out a first visit form.' This was an extremely sick man dying of stomach cancer. The first visit form, if any of you have done one for a psychiatrist, can go on for a long, long time. Questions about his weaning, et cetera were being asked. I watched him as he was collapsing in his wheelchair and I said, 'Is this really necessary?' The person who was admitting him said, 'Yes. We have to follow due protocol. It is a first visit.' I said, 'It's also his last visit. He's dying in two hours time.' And

then, when the nightmare was over, she said, 'Now there is the matter of doctor's remuneration.' There was a silence, and Bill said, 'What does that mean?' He had his little overnight bag—he had been in hospital for three months—and he had $40 in it. She said, 'Oh, no. Doctor needs $200.' Nothing was going to happen until someone materialised with the $200. I happened to have my cheque book in the car. They accepted my cheque, I am surprised to say, and then he was wheeled in and wheeled out in less time than it had taken to do the first assessment.

That is an indictment of that particular psychiatrist, and I would never suggest that it is a reflection on the psychiatric profession at large. When I tell this story at medical conferences, most psychiatrists put their head in their hands and say, 'My God.' That is a particular example of an assessment process which should have changed, but the change that was needed was not a change to the assessment process—it was a change for that particular doctor who was doing the review.

Senator BARNETT—How long was the consultation?

Dr Nitschke—It said 20 minutes. I think it was actually less.

Senator BARNETT—Do you believe that it was adequate and proper?

Dr Nitschke—I do. Whereas I am not a psychiatrist, I had a long experience of this particular patient and so I knew what he was going through. I knew that this was a particularly traumatic experience for him and I knew that he was very sound in his idea and belief that he wished to pursue this course, so I had no concerns about it. In a sense we were going through the requirements of the legislation.

Senator BARNETT—It is quoted in this article—I think it is called 'Deadly Days in Darwin'—that you recalled your sadness over the man's loneliness and isolation as you administered euthanasia. Is that correct? What is your reflection on that?

Dr Nitschke—I think that people go very wrong when they start to project their assessments of other people onto other people. This was a man who had lived alone all his life and was obviously pretty happy with it and was not overly interested in the idea of social interaction and company. So, whereas I was sitting around saying, 'I wouldn't like to live like this,' that is no suggestion that he was unhappy with his particular lot. In fact, he had electively chosen to live this life by himself and ultimately to die by himself. But he and I were the only people present during that final act when the machine that I developed provided the drugs.

Senator BARNETT—I want to ask again: it is your view that under the act his request for euthanasia could not be acted upon until a psychiatrist had 'confirmed that the patient is not suffering from a treatable clinical depression in respect of the illness'?

Dr Nitschke—That is true.

Senator BARNETT—Is that your view? Did that occur? Did the safeguards apply? Do you think that due process occurred in this case?

Dr Nitschke—It is hard. I would say that I would have liked it to have been done in a better way than it was. I had no doubt about the ultimate decision made by the psychiatrist involved but I wish it had been done in a better way.

Senator BARNETT—In an interview with *National Review Online* on 5 June 2001 you stated:

My personal position is that if we believe that there is a right to life, then we must accept that people have a right to dispose of that life whenever they want.

You went on to say:

So all people qualify, not just those with the training, knowledge, or resources to find out how to "give away" their life. And someone needs to provide this knowledge, training, or recourse necessary to anyone who wants it, including the depressed, the elderly bereaved, the troubled teen. If we are to remain consistent and we believe that the individual has the right to dispose of their life, we should not erect artificial barriers in the way of sub-groups who don't meet our criteria.

Do you think that the legislation in the Northern Territory should be expanded to take into account the depressed, the elderly bereaved and the troubled teenager?

Dr Nitschke—If one goes through the entire article, you will see that I was trying to establish guidelines, or what they were—the simplest of all criteria for whether or not a person could get help to end their life. I decided that a person had to be of sound mind and had to be an adult. It turns out that you can indeed be a teenager and an adult. On the question of being troubled, yes, you could be troubled and still maintain rational insight and still be capable of making a conscious, lucid decision and maintain that insight, so there are grey areas here. This takes us to the idea of debating the philosophy of suicide, which I am sure we can spend the next day or two on, or whether or not we should be looking at whether legislation can move away from that and start to try to codify a specific group of people. These, of course, are not going to be the people at the edge, whom we are talking of, or whom I was talking of at that *National Review* interview, but the people with whom very few people would disagree. That is exactly what the Northern Territory law attempted to do, that is exactly what the Kevin Andrews bill took away from us and that is exactly what Bob Brown's strategy hopefully will reinstate. I can argue about this for a long time—

Senator BARNETT—I am just asking for your preference, in the ideal world.

Dr Nitschke—My personal view is that a person needs to be rational and a person needs to be an adult.

Senator BARNETT—And that is pretty much it?

Dr Nitschke—That is pretty much it.

Senator BARNETT—Finally, I want to ask: in 2001 I think you said that you had assisted with about 20 deaths. We are now in 2008. How many deaths have you assisted with?

Dr Nitschke—The legal issues are of course all around us, and I feel the weight of them on my shoulders, to some degree, having had several difficulties with the authorities over this very issue, so one needs to tread carefully here. But the distinction really comes down to whether or not we provide information which allows a person to take that step, and I have been involved in providing that information to thousands of people. You may well be aware that my book that does just this is a banned book in Australia but sells widely in America. That particular issue is of providing information to people. In terms of assisting, people often would say, 'Does that mean you sat there and gave them injections?' No.

Senator BARNETT—But you said 20 in 2001. I wonder what the figure is today, in 2008.

Dr Nitschke—By that definition, I would say thousands.

Senator MARSHALL—I am more interested in the legal position that we are in with this bill. It has been put by a number of witnesses, including the Northern Territory government, that reinstating the 1995 bill is problematic legally. That egg may well and truly have been scrambled by now, and the Bob Brown bill, as you put it, may not be able to do that. The Northern Territory government put a proposition to us this morning that their position would be to restore their rights as legislature to deal with these matters if they so wish and that the 1995 bill not be reinstated because of those difficult issues. I am just wondering whether you have a view on whether that would be an adequate position to support, given that I did hear you say to Senator Brown earlier that you would like the original bill to be reinstated. I think the Northern Territory government made a very valid point that at the end of the day individuals will be relying on that legislation to make what they do legal, and if there is any unsoundness with that legislation it could—

Dr Nitschke—It is obviously a very difficult area, and these are complex legal issues which are very difficult for us as laypersons in this area to assess. I simply do not know the answer to that question. I would be very disappointed, however, if we did not see the Territory legislation with all its benefits come back into place. We have heard the very public statements made by the Chief Minister of the Northern Territory about his own particular reluctance to go down the particular path of reinstating a piece of legislation which he seems to be saying has seen its day, and that is very disappointing. Obviously, if this is going to be a case where the ability to pass such legislation is reinstated by some process and then it is left up to the current Northern Territory assembly—I guess we seem to be getting messages that not much is going to happen. I of course, given the numbers of people who come my way and want to see something like the Northern Territory legislation of the past come back into place, would welcome a strategy which would allow that. In other words, I would like to see legislation in the way it is currently structured pass.

CHAIR—I have one final question. Ms Dent, in respect of the Northern Territory Voluntary Euthanasia Society, what sort of work have you embarked on in the 10 years since the bill has been overturned?

Ms Dent—There has been very little that we can do, because the whole focus of the society is to change the law and we are not allowed to do that. We have asked the politicians each time there is an election, although we did not do it for the very last one, about their position if the Territory government gets back the right to pass such legislation. That was just to keep abreast of what members of parliament were thinking on the subject. But beyond that there is very little that we can do.

CHAIR—Thank you both for your time today.

Ms Dent—Madam Chair, may I ask one thing?

CHAIR—Certainly.

Ms Dent—If the removal of subdivision 50A brings back the rights of the Northern Territory government to have such legislation, would that also affect the Australian Capital Territory and Norfolk Island?

Senator BOB BROWN—On the face of it, it would.

CHAIR—But the process is that this committee will report to the Senate and then it will be up to the Senate as to whether the bill is debated. If it is debated and passed, it will then need to go to the House of Representatives, so going through both houses of parliament.

Ms Dent—Thank you.

CHAIR—Thank you, Ms Dent and Dr Nitschke.

[4.46 pm]

McKENZIE, Mr Desmond George, General Practice Registrar Training Advisor and Project Officer, Darwin, Aboriginal Medical Services Alliance of the Northern Territory

CHAIR—Welcome. We have just received the submission from AMSANT, which you have brought and tabled for us today. Thank you for that. If you would like to make a short opening statement that would be welcome, and then we will go to questions.

Mr McKenzie—Firstly, I would like to thank the Senate Standing Committee on Legal and Constitutional Affairs for giving AMSANT the opportunity to make a submission to you on behalf of our membership. We note the short notice for consideration of the Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008. We feel that a lot of work will have to be done before any of our member organisations will be engaged in any consideration of such a bill. As we say in our submission, and as per the recommendation in it, there has to firstly be a lot of consultation with our people. Remember that Aboriginal people make up to 30 per cent of the numbers in the Northern Territory. We feel that our people should firstly have free and fully informed consent before anything like this is considered; that is as to our representation anyway.

CHAIR—We will proceed to questions.

Senator MARSHALL—Mr McKenzie, I accept that the position you have stated, which is reflected in your submission's conclusions, goes to the question of euthanasia itself. While there may be differing views amongst our committee members, my main view is that this bill is really about the re-establishment of the right of the Territory to make laws on issues that affect Territorians. Putting to one side your views about the consultation that would be required on the issue of euthanasia, what do the people you represent feel about the rights of your legislature to make laws on issues such as euthanasia? I pick up your last comments that 30 per cent of the community in the Northern Territory is Aboriginal. I would suggest therefore that the Northern Territory legislature is probably the best opportunity for Aboriginal people to actually express their views on this sort of legislation. I would ask for your comments about that.

Mr McKenzie—From memory, the first time the bill was proposed in the Territory there was a lot of anxiety amongst a lot of the Aboriginal people here. A lot of our mob did not want to come into hospital for specific treatment and all that sort of stuff. The understanding of the whole bill, I think, was one of the sticking points apart from all the other fears that our people had and still have. I would be reluctant to comment on our people's views on the Territory's ability to make legislation.

Senator BOB BROWN—Thanks for coming, Mr McKenzie. Going back to that period when the euthanasia act was working here in the Northern Territory, do you know of any Aboriginal person who came to harm as a result of that?

Mr McKenzie—To be honest, no, I do not.

Senator BOB BROWN—To follow on from Senator Marshall's question, is there any feeling amongst the Indigenous community that you know of that the Northern Territory

should have less ability to make laws for the people of the Territory than, say, the parliament of New South Wales or the parliament of Western Australia?

Mr McKenzie—You have got me there, Senator.

Senator BOB BROWN—You can take that one away, if you like.

Mr McKenzie—I think if it were some other bill, like the land rights bill or something like that, I would be able to respond—do you understand what I am saying?

Senator BOB BROWN—That is fair enough. Your submission says that in this area, if the law comes back again, there needs to be a lot of effort put into explaining it to people and reassuring them about it.

Mr McKenzie—That is one of the major factors. As we stated in our submission, a lot of our mob did not want to go to hospitals because they were saying there is no journey back from the hospital. Even if you had a palliative care system set in place, I am not too sure whether our people would even consider it at the same time—if you know what I mean.

Senator BOB BROWN—Are you aware that under the euthanasia act, when it was working, nobody could be administered a dose by a doctor unless they had asked for it themselves and had got their medical—

Mr McKenzie—I am aware of that.

Senator BOB BROWN—But that is not what a lot of people thought, was it? They did not understand that was the case.

Mr McKenzie—That was probably the case, and I suppose at that time there was a lot of anti stuff going on too. They had heard whispers of a lot of stuff about the witness who was here just before me. Remember that, even though a lot of our people do live in isolated communities, they still get snippets of news and newspapers, so they had heard snippets about it which probably generated the fear a lot more. Little snippets of information can be dangerous for people if taken out of context.

Senator BOB BROWN—Thank you very much.

Senator BARNETT—Thank you very much, Mr McKenzie, for your submission and for doing it in the time frame available. It is very much appreciated. You have referred to the concerns of your community members in terms of the anxiety and fear they had, in and around the time of the previous legislation, about going to hospital to get care from doctors and even about using palliative care. Can you expand on why they were a bit fearful or why those anxieties arose in and around the time of 1996-97 when the previous legislation was around? Why were they fearful and concerned about it?

Mr McKenzie—They had never heard of anything like it before—put it that way. That is probably the best explanation.

Senator BARNETT—A lot of people have talked about the need for education and understanding the facts and so on. We had, for example, Dr Gawler here this morning. He is a doctor and he said 80 per cent of his patient load are Indigenous community representatives. He said there was anecdotal evidence that members of your community did not want to go to hospital, that they did not want to use health services and that they did not want to go to the

GP. He thought that in sum total there would be a negative health outcome for Aboriginal communities. He was expressing quite a lot of concern. Do you have similar concerns? What views do you have about the health consequences for people in the Aboriginal communities?

Mr McKenzie—As it is at the moment with AMSANT—can you take me through that again?

Senator BARNETT—Dr Gawler said that there was some anecdotal evidence of Indigenous community representatives not using doctors and not going to hospitals. He said that in his private view there was a negative health effect on members of the Aboriginal community. I was wondering what your thoughts were about the health consequences of legislation like this.

Mr McKenzie—The thing is that, if anything, you would have people avoiding coming to the health services altogether. Any one of our old people who have got a terminal illness—although it could even be diabetes or something like that—is going to have in their mind: 'I am not going into that place because it's the same old story. I might not come out.' I guess that fear still remains with our people.

Senator BARNETT—Can you reflect back on the time when the legislation was operating in the Northern Territory? Where those fears quite relevant? Were they alive? Was there anxiety?

Mr McKenzie—Yes, there was anxiety. There was fear amongst our people and—as I said—there still is.

Senator BARNETT—Is that based on your understanding? Was it anecdotal evidence from the people you talk to in your community? Were they very fearful?

Mr McKenzie—Yes, it was just from people we talk to among our membership. Some of our patients are actually board members and staff of the health services. They were going through the same sort of stuff. Of course they were fearful.

Senator BARNETT—I am going to read to you an extract from Aboriginal Resource and Development Services submission. They have put in submission No. 414. I just want to read to a you a couple of their comments. They said:

When the Northern Territory enacted the Rights of the Terminally Ill Act in 1995 many Yolngu walked out of hospital in fear that they would be killed.

Many of our elderly people believe there is little or no protection for them in the western health system. To add euthanasia back to this mix means that Aboriginal people will die because of the Bill even if it does not go through. That is if Yolngu and other Indigenous people in this country even just hear that this debate is on again then the message will spread that the white man has gone mad again and they are going to let doctors kill patients again then they will walk out or they will refuse to go to hospital.

They conclude:

If the *Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008* is passed, then Indigenous health in the Top End of Australia can be expected to worsen even further, as Yolngu stay away from medical professionals and institutions.

What do you think about that? Do you agree with those comments or do you relate to them?

Mr McKenzie—I do not agree with all of them but I certainly do relate to them. Put it this way: our people seeking further treatment for chronic conditions and those sorts of things are quite happy to visit their local health services in their communities but they are not too flash about going to the main centres and the main hospitals—for those sorts of reasons.

Senator BARNETT—They feel comfortable when the medical professional comes to them and their community rather than them going to the hospital?

Mr McKenzie—Yes.

Senator BARNETT—Thank you very much for that. I have type 1 diabetes and I am a member of the Parliamentary Diabetes Support Group. So I know about the impact of diabetes, at least to some degree, in Indigenous communities and I have a lot of empathy for you. We need to do a whole lot more there to help. I appreciate your feedback. Thank you very much.

Mr McKenzie—AMSANT is currently undertaking a cultural security project, which is about making people sure of what happens when they go to hospital. When our people go to hospital and have to go under an anaesthetic for an operation, they are not sure what happens to them when they are knocked out. That is why our organisation is undertaking that project for our people.

Senator BARNETT—Good on you.

Senator KIRK—Thank you very much for your submission, Mr McKenzie. At the time the Northern Territory legislation came into effect in 1995, was AMSANT in existence and did it make any submission or representation to the Northern Territory government about the legislation?

Mr McKenzie—I could not tell you offhand.

Senator KIRK—Maybe you could take that notice.

Mr McKenzie—Yes. I have only been employed there for a couple of years, so I do not know.

Senator KIRK—That is not a problem. If the Northern Territory parliament were to again consider this issue, how would you as an organisation consult with your communities about their views in relation to it? How would you go about doing that? Would you visit local communities? I see that you represent 26 Aboriginal community controlled health services. How would you go about finding out the views of your constituency?

Mr McKenzie—We are the peak organisation for those 26 organisations. We would prefer that individual organisations do the consultations within their communities.

Senator KIRK—So you would provide information to those organisations, who would then distribute it?

Mr McKenzie—Yes.

Senator KIRK—Do you think that would be effective? Would the information be communicated to those concerned or would there be difficulties in understanding the impact of the legislation? It seems from what you have told us that in the first instance there was still

confusion surrounding how it would work. How could you best communicate these things to your people so that they can understand how it would operate?

Mr McKenzie—In the same way we get any legislation out to our people. We break it down into plain English and words that we can use easily, and we go through an extensive consultation process with them. Given that we are on about full and free consent, we would have to go down that road.

Senator KIRK—Do you think this would be quite a lengthy process? Would it need 12 months or thereabouts?

Mr McKenzie—Easily.

CHAIR—Mr McKenzie, are you saying that the bill that has been tabled by Senator Bob Brown should not be passed by the federal parliament until such time as Indigenous community controlled organisations have had a chance to consult with their members and their communities and form a view about that?

Mr McKenzie—That is correct.

CHAIR—Ultimately, though, if there were such a view—that people understood it—that would not rule out you coming back at some stage and suggesting that the federal parliament should pursue this course of action?

Mr McKenzie—Or not proceed with the course of action, yes.

CHAIR—The Northern Territory government put a position to us this morning that the Kevin Andrews bill actually amended the self-government act. At this point in time, they are not able to contemplate any law or any changes or consider euthanasia at all. What they are seeking is to have that right reinstated. That is the first thing. The second thing they are saying is: 'If we wanted to go down the track of having any euthanasia legislation or changing legislation, that is a separate issue. We would consult widely with people about that.' Does that alter the view of AMSANT about how we should proceed—whether we should reinstate that right to the Territory government or whether your consultation should happen first?

Mr McKenzie—I would have to leave it up to my powers that be as to whether AMSANT were definite one way or the other on that.

CHAIR—Is that something that you would be able to consult with them about and perhaps write further to the committee about?

Mr McKenzie—Yes, we could do that.

CHAIR—That would help us in our determinations as a committee—whether or not that is another option AMSANT would think of. The question is whether the Territory government should have its rights given back to it to be able to deal with euthanasia as separate to what it then might do on the issue of euthanasia legislation.

Mr McKenzie—I understand.

CHAIR—And you will write back to us about that?

Mr McKenzie—Yes.

CHAIR—That would be appreciated.

Senator BARTLETT—I just have questions on two things. You have mentioned a number of times this perception of people being worried about going to hospital and those sorts of things. Others have said something similar. When we had Mr Marshall Perron, the former Chief Minister, and Mr Manzie before us, they said that the evidence provided at the time by the health department or something in the Territory in that year when the Rights of the Terminally Ill Act was operating was that there was not any drop-off in attendance of Aboriginal people at hospitals. I was just wondering—and I suspect you will probably need to take this on notice as well—whether you have any data from 10 years ago as to whether there was a drop-off. There are a lot of anecdotal things about people being fearful, but I want to know whether there is actually any evidence that when the euthanasia laws were in power people were not attending. It might be hard to find, but, if there is anything from that period, it would give us an idea.

Mr McKenzie—I suppose all our health services would have people with chronic conditions who would go and see their local health service but they would not jump on a plane and go into the regional centres for anything.

Senator BARTLETT—I totally understand people being fearful and the reasons why, but I am just trying to establish whether there is actually evidence that, when the law was in force 10 years ago, those fears were borne out—whether there is any evidence of fewer people going to hospitals.

Mr McKenzie—I could not tell you.

Senator BARTLETT—Just for the record, because it is one of the points about whether or not the federal parliament should have the power to override the Territory on any issue, my understanding is that it is a fairly strong view—maybe not unanimous, but a pretty widespread view—among Aboriginal people in the Territory that they would still prefer the federal parliament to have control over the land rights issue rather than handing that over to the Territory government. Is that correct?

Mr McKenzie—That is the perceived view of the majority of Aboriginal people in the Northern Territory, yes.

Senator BARTLETT—Thank you.

CHAIR—Thank you, Mr McKenzie, for making yourself available today and for the submission from AMSANT.

[5.10 pm]

BOUGHEY, Dr Mark, Private capacity

MURPHY, Mr Simon James, Private capacity

PALMER, Ms Jennifer, Private capacity

CHAIR—I welcome representatives from the palliative care unit at Royal Darwin Hospital. Thank you for your time this afternoon. Before we begin with a presentation from you, do you have any comments on the capacity in which you appear?

Ms Palmer—I am appearing today as a palliative care clinical nurse manager.

Dr Boughey—I am appearing today as a palliative care physician.

Mr Murphy—I am here today as a clinical nurse consultant for the palliative care team.

CHAIR—You have given us a submission this afternoon. Thanks for taking the time to do that. I am wondering if you would like to make some comments first, as an opening statement, and then we will go to questions.

Dr Boughey—I appreciate the time this afternoon to be able to speak to the committee. I guess today I am really talking about a personal reflection of working in the Territory over the last 3½ years, coming from Victoria and having been a palliative care physician for about 18 years, and really coming to terms with the legacy that the six-month period of the activation of the original euthanasia bill is still having, I believe, in the Territory. I think it is a timely reminder as to the sort of double effect—I know that is something that doctors in palliative care are accused of using—that repealing the Commonwealth law is going to have in reactivating the Territory's laws. So it is very much a personal reflection.

Even though populist opinion states that euthanasia is popular and is something that the Australian population wants, I think the reality when you are actually working with and dealing with people in the dying phase of their palliative condition is very different. The reality, which we are exposed to every day, is that people are still trying to engage actively in life, even though their life may be fast approaching the end. As a palliative care specialist, I think it is important that we do see this time in a lot of our work. It is important to understand that a lot of fear is expressed by patients coming to palliative care that somehow we are going to be involved in euthanasing them. It is not a view that is commonly known, but it is certainly a view such that, time and time again, we have to speak to patients, reassure them and give promises that palliative care is not part of the euthanasia process, that there is not some sort of subversive, covert operation. This has particularly been highlighted in the last 2½ years since we opened the Darwin hospice. It is the first purpose-built hospice in the Northern Territory. It has been in existence for about 2½ years. It is quite a common theme that we have to talk to people about before they come to the hospice so that they will even accept palliative care services in the community or accept admission to the hospice. It is also important that this often can delay engagement of palliative care services and optimum management of symptoms, which are pain and so forth.

Even though patients and families talk about euthanasia and we openly discuss the issues around euthanasia and the burden and so forth of illness and disease, and it seems to be a point that is open to discussion, it does not necessarily mean that people then want to act on that process. We have already heard today from a couple of the speakers about the broad concepts about Indigenous 'finishing off' and the anathema to cultural practice that euthanasia is for the majority, I believe, of Indigenous people.

We have had a couple of projects running that have highlighted this over the last couple of years. One year we had a project looking at the Indigenous model of palliative care, and we had a project officer and various people consulting widely in 2005 across the Territory, not just in the Top End but right across the Territory. There is a theme of the need to be finishing up on country in a timely manner, the telling of appropriate stories but also the capacity to return to country from tertiary hospitals, rural hospitals and so forth. I think a lot of the fears that play out in the concerns about the euthanasia situation are around the fact that most people have to come in to Alice Springs, Darwin, Katherine or Gove, where the major hospitals are, to have their illness diagnosed and so forth, and there is a real fear that they are not going to return to their country and somehow they are going to be left to die in that hospital. Interestingly, in that project we did, time and time again people who could remember back to the days of 1995 or 1996 would reflect on that process. Even with regard to palliative care services getting engaged with Indigenous patients, we spend a lot of time educating health workers and community people to dissipate some of the fears around death and dying, but still the current theme is that any intervention that is perceived as acting towards assisting the dying has negative consequences in terms of the bereavement period and so forth.

We also have another project running at the moment, a renal project, where we are looking at where palliative care sits with renal disease, which, as people know, is a major health issue. Increasingly we are coming to understand that, for a lot of Indigenous people, fear of getting on the renal treadmill towards dialysis, being pulled away from community, actually means that people are not connecting with health services. I am using that as an example of another situation where people are moving to outstations or not presenting to clinics through fear of this pull into the major cities and not being able to get home in a timely manner and so forth. There is this ongoing fear.

My second point is that I think under the original bill there really are—and this has also been discussed today—inadequate guidelines as to the capacity of what is seen as adequate palliative care and who defines that, what the role of the palliative care specialist is and where you get a signature and that sort of approval to move along the euthanasia process. I have spoken to a few of the people who were actually working with Territory palliative care prior to when the euthanasia law was in place, and certainly there were issues around the sense of rubber-stamping, that the guidelines were there but the guidelines were sort of malleable, and that really it was attracting a great deal of interest from interstate, so the scenario for Territorians could end up being very different to a scenario for somebody who had decided to move to the Territory. A situation was brought up where somebody could arrive, meet with their local doctor, have a CT scan to show progressive disease and see the palliative care specialist on that day, and that may be perceived by the patient as being adequate palliative care. What we see in palliative care is that really it needs time, often, to develop those

relationships. Adequate palliative care and the provision of the physical, social, psychological and emotional support need time to establish relationships and to nurture those relationships to see the burdens and problems that people facing death are coming under. I think it is important that somehow, if the legislation were to be re-enacted, the guidelines would certainly need to be tightened and there would certainly need to be more instruction as to how those guidelines would be activated.

I think it is also important to point out in this situation that, considered per head of population, services have developed significantly in the Territory. We are most probably above the national standards that Palliative Care Australia now proclaim in terms of service, personnel, hospice and hospital beds available for palliative care and services and so forth. We also seem to be above by about 25 per cent the kind of benchmark of how many palliative care patients you should be seeing per hundred thousand of population. I have made a reference to the palliative care document in my submission.

The third area that I think is important to understand, and I am being brief given the time, is this. From talking to staff that were present at the time, I know of the amount of scrutiny and stress—being emotional stress—that staff who were working in palliative care came under during that period and after. By their nature, staff working in palliative care and those who have been palliative care workers acknowledge and support each other as to emotional stress. But when I was talking to people at this time, I noted—and I mentioned this before—there was a real sense that there was a burden of scrutiny due to—and there was chaos in which they were working due to—fearful Territorians, who thought that somehow they were going to be covertly euthanased; euthanasia tourists who moved up here from interstate and placed further demands; the accountability that was imposed on them through the territory government; and certainly overt media scrutiny as well. There was quite a lot of covert media scrutiny, with a lot of people posing as family, staff and so forth to try to get information about patients. These are stories that I heard from the original staff in the last few days.

The fourth point, which I think arises from an important legacy, is that there have been a lot of advances in advanced care planning over the past 10 to 12 years. The norms as to advanced care directives have certainly become more taken up at a jurisdictional level and also at an operational level in palliative care and in a lot of other fields. I think the expression of people's wishes towards the end of their life often do not reflect the fact that looking at euthanasia is part of that. Interestingly, the Natural Death Act has been in the Territory since 1998 and I think that less than one per cent of people who have come to our service have had a signed piece of paper to say that in the event of their terminal illness and their incapacity they do not need to be resuscitated. Otherwise they can just acquiesce to the wishes of that particular act.

I think it is important to understand that when people are dying—this is in the nitty-gritty day-to-day process of dying—it is often not the person dying who is expressing the wish to be euthanased. Often the relatives and friends who are standing around the bedside are stressed by and distressed at seeing a loved one dying—but it is really not their dying. I think that we sometimes forget that the dying that the person wants and has expressed should be respected. It is of concern that, with a patient's loss of mental capacity and agents speaking on their

behalf, undue pressure can somehow be brought to bear on relatives to act towards taking a stance on euthanasia at that stage.

In conclusion, based on my comments and what is in my report, I think that unfortunately there is the double effect of re-enactment of the Northern Territory legislation that I am concerned about, because of the legacy that the previous legislation still plays out in terms of the fears and anxieties of patients, being the majority of people who come to palliative care. I hope that, as we have spoken about today, if the legislation is rescinded the euthanasia vote will not become actively part of the process again unless it has again been voted on by the Territory government.

CHAIR—Thank you, Mr Boughey. Ms Palmer or Mr Murphy, do you want to say anything?

Mr Murphy—No, as that has probably summarised my approach.

Ms Palmer—No, Chair.

CHAIR—All right. We will go to questions.

Senator BARNETT—Firstly, Witnesses, thank you very much for what you do. It is really appreciated. My father had motor neurone disease and was very involved with the motor neurone disease association. In terms of palliative care across the country and what people like yourselves do, it is all really appreciated, so thank you. Thank you for your submission. It is comprehensive, and I appreciate the short time you have had in which to pull it together. I refer to your first point. You say there is an ongoing public fear that referral to and engagement in palliative care will lead to a patient being euthanased. Is that across the board or would you highlight in particular Indigenous communities? Is it more apparent in Indigenous communities? We have heard different views in submissions to our committee today, and I am interested in your view.

Dr Boughey—I think it is across the board and it is not just Indigenous. As I mentioned, often when people are coming into the hospice—because it is a freestanding building there is a real decision making process around moving from the hospital to home and to the hospice—that fear is expressed at that point. If people are reluctant to come, we will often ask them why they are reluctant to come.

From a non-Indigenous point of view, interestingly only about 10 per cent of our referrals coming to the hospice are Indigenous. The reason for that is that we work very actively to get our Indigenous referrals back to country, and so about 35 per cent to 40 per cent of our referrals are Indigenous in the Top End and about 45 per cent to 50 per cent in Central Australia. But, because we work so actively in the hospital to get them back to country, very few actually end up dying in the hospice itself, and about 85 per cent of our patients get back to country, which is good.

But I think it is across the board. It is expressed in different ways, I think. Directly with non-Indigenous people you can have that dialogue individually and unpack those fears and burdens, but often for Indigenous people where it is more a family group discussion those fears might play out in a different way. They may just say they want to get back to country. That real fear of being stuck in town and people intervening and giving injections and so forth

seems to predominate, I would say. It is expressed in a different way but it is a reluctance to remain engaging in active medical management. Sometimes palliative care for those people in that sense is seen as active medical management, but when you get people back to community and you are working with them on community they actually see that we take a traditional role in doing the talking and finishing-off story and starting cultural processes towards dying.

Mr Murphy—Also, that process has been going on within the team for quite a while, and the relationships with families and communities, particularly in the Top End, have probably developed a sense of trust and awareness over time. That has taken quite a bit of time, I think.

Senator BARTLETT—Dr Boughey, I just want to clarify something. From what you have said, my impression is that this concern people have about entering palliative care and fear about ending up in a euthanasia situation is more emphasised in Darwin since you have come here. Is that right?

Dr Boughey—I think it is certainly more emphasised. I was head of palliative care at the Royal Melbourne Hospital in Victoria for about 13 years. We had a community arm and we had a hospice arm in Broadmeadows. Rarely would people associate palliative care with euthanasia. In fact, they would most probably tend to steer the other way and not become engaged, because somehow they would think we were actively dissuading people, which we do not do. We just tend to discuss and unpack and unburden a bit. But certainly up here it is really predominant. Interestingly, people mentioned the solitary guy in the country who lives by himself. I would say about 15 per cent of our referrals would be single, solitary people who live by themselves in a tent or a bus or a sort of humpy. Often it is those guys who, when they first understand that they cannot be there anymore because they have suddenly discovered they have got some advanced disease, will express the burden of the problem. That will often be: 'Can't you just end it and finish it now?' But when they actually get into the hospice environment—and we often become their only family—and when they are actually in the dying space, it is amazing how that turns around. We are not there to turn people around. It just happens by the nature of people caring for somebody and unpacking the burdens that are there. It is a much more predominant theme up here than I have ever experienced. I have really had to brush up on my discussions around this, because every week we would be talking to somebody about it.

Senator BARTLETT—One of the core principles that comes up has been voiced a number of times from each side of the debate: the right to choose the time and place of your dying and being able to make an unpressured, fully informed decision about that. I understand your views about why you do not think a legalised form of doctor assisted euthanasia is desirable, but do you accept that some individuals can make a fully informed, balanced decision to want to end their life prematurely?

Dr Boughey—I certainly would accept that. There are certainly people who have considered it and, whatever the particular time or stresses or issues concerning them, have made a decision around that.

Senator BARTLETT—The way I would perceive this balancing of principles is that you are saying you accept that people can do that but, if you grant them the legal right to do that, a consequence is that other people who are more vulnerable will be more at risk.

Dr Boughey—Yes. People most probably do have a right to suicide already. I guess the difference is in whether it is assisted by someone of a medical background. That is how I see it. Often our patients have the capacity to end their lives through the nature of the drugs and things that they take, but somebody else steps in to be part of the equation. Maybe that is to give certainty or to take away some of the distress and guilt around them having to do it for themselves or having to ask a couple of people to be involved. I see that as a very distinct difference. People can suicide but it is about whether they are assisted by somebody else to do it in a legal framework.

Senator BARTLETT—Do you think the other approach, which I would very loosely term 'the slippery slope argument', is not so much about leading to further law changes but about the pressures from relatives?

Dr Boughey—Yes. We see it time and time again—distressed relatives stepping back into the arena after 20 or 30 years of not having seen their brother or sister. We even had a situation recently where a biological mother reappeared just before her son's death. The threat that she was going to do something to end her son's life—even though he did not want to die; he wanted to stay alive as long as he could—was such that we had to engage the police and give him advice. That sort of threat is real and tangible sometimes, even in a hospice environment.

Senator MARSHALL—But that is not euthanasia or suicide. That is murder, isn't it? That has absolutely nothing to do with this.

Dr Boughey—It is about the pressure of families. They think they have a right to step in and intervene, or to suggest that this is what is best for the patient, when it is really their grief and distress that we are dealing with.

Senator MARSHALL—Then wouldn't the original bill actually offer more protection for the individual?

Dr Boughey—In theory, it could. Again, when people start to lose their capacity and become less lucid or less aware, you may get somebody saying that they are their legal agent or their medical power of attorney acting on their behalf. With advanced care planning and directives—

Senator MARSHALL—I think the original bill affords them more protection than the scenario that you are suggesting. But, sorry, I did not want to go into that.

Senator HOGG—What would be the average length of time you would have a patient in palliative care?

Dr Boughey—It varies considerably because we have the different arms of community hospice and hospital. Certainly in the Territory we have people in our program a lot longer than interstate because we are looking after a lot of people with chronic disease issues. About 35 per cent of our patients have chronic illnesses other than cancer, whereas in most interstate jurisdictions it is only about 15 to 20 per cent. So I would say that, on average, it is at least 12 months, if not longer. We have some people on our program for four or five years. It stretches out. For some people, it can be a few days. It just depends on the timing.

Senator HOGG—How much of that period is with pain that is completely beyond being borne by the patient? Is there some sort of benchmark you can give us there?

Dr Boughey—As you know, the dimensions of pain are broad, the make-up of people varies and the uncontrolled pain can range from physical pain to psychological pain and so forth. Because there is only one service in the Territory and only a couple of major hospitals, anyone who has significantly difficult pain comes to our attention and ends up at the hospice or in Alice Springs Hospital. It is rare for somebody with severely difficult to control pain to be back in their country or back home somewhere else. The difficulty of their pain precipitates interventions from anaesthetists and so forth to manage their pain. Last year we had 280-odd admissions to the hospice and we had about half a dozen people with pain that took a lot of medical input—anaesthetic nerve blocks, sedation and a whole lot of things. So the goal of pain management was not 'pain free at all times'; they would restrict it to 'pain at rest'.

Interestingly, even in these situations people have other reasons to still remain. Whatever their world is—and often it is a world stuck in bed, in a room—they still have children, family, things to do, even funerals to plan and so forth. Even though family members are standing around, saying, 'Why can't this all be over?' often that person is still wanting to engage in whatever is happening for them at that time.

Senator HOGG—So there is a fundamental underlying intent to live, is there? Is that what you are saying?

Dr Boughey—A desire for death, I think, can be a separate issue. When people are demoralised, it does not necessarily mean they are depressed. Some people do have a desire for death and they tend to gravitate towards places like the Territory, where euthanasia was enacted. We still get the odd person from interstate popping up on our doorstep expecting that euthanasia is still legal here. We get many tourists who end up here because they are searching for something and they think they will find it here.

Senator HOGG—For my sake, can you give me some idea of the age profile that you are dealing with in your palliative care units. Are there all ages?

Dr Boughey—We cover from postnatal—

Senator HOGG—In what age group would you find the predominance of patients?

Dr Boughey—The population of the Territory, by its nature, has a bit of a younger profile, so the majority of patients are sitting between perhaps the age of 40 and 70. You need to split it a little: in terms of Indigenous patients, often it includes a younger population, around the 50 to 60 age group, but we get many Indigenous people in their 20s and we get many non-Indigenous people in their 40s and 50s. Recently, somebody who was a centenarian died. The trend would be the same as for any non-Indigenous population in the rest of Australia. Because we are one service, we get to see everybody. We do not split off paediatric palliative care to another team and so forth.

Senator KIRK—Thank you for your submission. Your last point here today was that your main concern is the revival of the Northern Territory law in its previous form. As such, you do not object to the Northern Territory government reconsidering the matter, if it were given the opportunity to do so?

Dr Boughey—I guess that question has been asked of other people. As a layperson, I can see the dilemma of wanting reinstatement of state and territory rights. That is obviously important to the state or territory but, again, I think it should be up to the state or territory to reconsider the situation. It should not just automatically flow that one leads to the other.

Senator KIRK—So if the matter were to be reconsidered and there were to be a public consultation process and the like, similar to that which occurred in 1995, you would not have a problem with it?

Dr Boughey—Again, I think it should be up to the Territory to decide.

Senator MARSHALL—I am a bit puzzled by parts of your submission—and in this process I did not really want to talk much about the euthanasia issue because I see it as being more of a legal rights issue—but you indicated that suicide is not unlawful. Do some patients under your care commit suicide?

Dr Boughey—No, I do not think I have had a situation where, in my 3½ years here, anyone has committed suicide.

Senator MARSHALL—But you did say that if people wanted to make that choice that they are legally able to make that choice? It is a choice that is open to them. I thought you were arguing that on the basis that we do not need legislation for voluntary euthanasia because people have a choice to suicide, if they make that decision?

Dr Boughey—People can suicide without legal consequence. I do not see it as a choice. People could make it, and people do. We have the problem of Indigenous suicide and youth suicide—

CHAIR—To clarify for Senator Marshall, the Northern Territory does have the Natural Death Act, so it might assist if you talk about that in relation to suicide, because they interact, I think.

Dr Boughey—The Natural Death Act really allows people to withdraw from medical treatment or to not have it instigated. They have to have a terminal illness. They also have to then have two witnesses sign a document. If it is produced and people are aware of it, then treatment may or may not be initiated for the particular person. But it has to show a defined terminal illness before it comes into play.

Senator MARSHALL—The other issue that puzzles me is about relatives applying pressure. Your hospice has been operating for 2½ years—since well and truly after euthanasia was legal—and you have those problems now. Explain to me the link that you are making with that. If that happens now and it is illegal, are you saying if there were voluntary euthanasia legislation the family pressure that is put in place would be able to be implemented?

Dr Boughey—No. I think families can bring a lot of pressure to bear on various people—doctors, nurses or the family member who is dying. I think it has already been mentioned today that some people will agree to euthanasia even though it may not be their core belief; they will do it because of the pressure that they feel under or they are obligated to their family to participate in that. That would be a potential problem if euthanasia were again legal, I think.

Senator MARSHALL—The other thing that puzzles me is that you indicated that people were concerned about going into palliative care because they thought that they would be euthanased. But you then told us that the Northern Territory is above the national benchmark in numbers of beds and they are all full.

Dr Boughey—Again, it is part of the process of us talking about this issue. The majority of the patients on our books are at home or in a community and not in a hospital or hospice setting. I think it is part of the process of unpacking that fear. The point I was trying to make was that, even though there is a lot of palliative care education out there and a lot of time and money spent in educating the community, when it comes to the fact that they are facing their own death, people express their own fears and one of those fears is that somehow they are going to lose control and people are going to actively euthanase them. Because we put machines on people, put syringe drivers in and give injections and so forth, initially they may feel that somehow we are going to be involved in that.

Senator MARSHALL—It is important for individuals to know and be absolutely confident that the law puts the control in their hands only.

Dr Boughey—And we are very specific about that—we talk about that. A week does not go by when we are not talking to some patient about where things stand at the moment.

Senator MARSHALL—That was a feature, of course, of the Rights of the Terminally Ill Act 1995—it did place the control absolutely with the individual. You have clarified some of those issues for me, thank you.

Senator BOB BROWN—I thank all the witnesses. Just reiterate whether you believe the Northern Territory should have the right to legislate in the matter of euthanasia and the rights of the terminally ill.

Dr Boughey—It was stated before, I think, that the Territory should be able to re-examine the issue, yes.

Senator BOB BROWN—On the philosophical side of this, are you in favour of the right of a pregnant woman up to 20 weeks to be able to ask for the termination of her pregnancy?

Dr Boughey—I would have to say that I am not going to comment on that question because, really, I do not think it has any relevance to this discussion. It is certainly not my field of experience or expertise at all.

Senator BOB BROWN—Let me come to a dying person who asks you to end their suffering or their indignity. What is your response to that?

Dr Boughey—I think I would need to unpack and discuss their situation with them to see exactly what it is that has prompted this request from them at this particular time and to understand where that is coming from.

Senator BOB BROWN—So you do not accept that that person, if they have their intelligence about them, is able to judge that request, put that to you and have that accepted at face value?

Dr Boughey—I think in the majority of cases it needs to be discussed. As I said, a lot of people, when they are confronted with the reality of dying—and none of us know how we are

going to react until we get to that point—react in a way that may be reactive and an expression of the sense of burden.

Senator BOB BROWN—But, whatever happens, you are not going to be prepared under any circumstances—even if these laws come back—to see that person through to taking that option with their life?

Dr Boughey—Are you asking if it were made legal again?

Senator BOB BROWN—Yes.

Dr Boughey—I think you would find that there would be palliative care people who would not be working in the Territory—I think you would actually find it difficult to find them. I would not be involved with somebody at that stage.

Senator BOB BROWN—I think palliative care services are just magnificent, but the point is that they do not offer an intelligent adult who wants to forgo that and terminate their life because of their suffering or indignity that option—so there is no place for that option in a palliative care service.

Dr Boughey—Again I come back to the fact that, if somebody makes that statement, you need to understand what the indignities are and what the issues are. Often I think you can unpack those and discover what they are.

Senator BOB BROWN—At what point do you stop unpacking and accept that a rational adult, who may have been suffering an illness for a great deal of time—many years, potentially—and who is suffering enormous indignity and incurability, has a right to make that decision for themselves, or is there no point at which they have that right?

Dr Boughey—Obviously they do in the sense of refusal of treatments and refusing all sorts of interventions—if they get a chest infection and choose not to take antibiotics and so forth. There are choices around the treatments that could be initiated. A common one in cancer is that people's calcium levels become elevated. Often we choose to treat that, but a person can have a choice not to have that treated. They often then die in the next couple of days.

Senator BOB BROWN—I am aware of that. But there are people who will still say, 'Doctor, I want to have my life ended because I do not want to continue with the misery of the existence that I have.' At what stage do you accept that an adult who is terminally ill has the right to make that decision for themselves rather than having a decision imposed upon them by their medical attendants?

Dr Boughey—I think it is not just the medical attendants. Our team is not just about medical decision making; we may have other people, such as our counselling team, pastoral carers, nursing staff and so forth. As I said, if people's symptom issues—and we can go into this—are such that people feel that it is beyond them, as you know, we can offer symptom management. In fact, we have to end up sedating people if their symptom problems are so difficult.

Senator BOB BROWN—That is interesting, because the point I am making here is that I do not hear from you that you would agree there is any point at which an intelligent adult should be able to say, 'I want to be assisted to die.'

Dr Boughey—Again this is a personal statement for myself and certainly I would say as a palliative care physician that I could not offer to somebody to end their life in an expedient way like that.

Senator BOB BROWN—But that is not the realm of a palliative care physician. That is the realm, if the law were available, of a doctor who is prepared to assist a person, through humanity and compassion, to carry out their wishes—that they end their suffering.

Dr Boughey—If it were legal, then maybe there would be practitioners who would come forward to be trained and be experts or specialists in that field. That is not for me.

Senator BOB BROWN—And where you say that requests to intentionally intervene to cease people's lives predominantly come from distressed family members, after a person has asked at a palliative care or any other unit to have their life terminated, experience will be, won't it, that they will not come back and ask again when they have been told that is not an option or when they have had that request ignored?

Dr Boughey—I would disagree there. It is so rare that an individual dying asks to have their life terminated.

Senator BOB BROWN—That is not my experience. This is the common experience of palliative care units, because people understand that they are there to have their symptoms palliated.

Dr Boughey—As I have said, we talk to people and even if people have raised it we will still talk to them about it. Maybe we work in a different environment here, but certainly I do not strike that as common.

Senator BOB BROWN—Dr Nitschke brought up the case of Angy Belecciu, who is a palliative care nurse with disseminated breast cancer. Pathological fractures associated with the cancer that has spread to her bones mean that she can no longer travel easily, and she has had somebody else to get her Nembutal from Mexico. Can you see that there is a person who is experienced in palliative care who has taken for herself, nevertheless, the potential option of having her life shortened and that for her, obviously, there is a point at which palliative care is not going to satisfy her concern about the death that she may be facing?

Dr Boughey—Again, we are all individuals when it comes to facing our own death. I cannot really comment. I do not know the background of that case. The fact that she can actually travel to countries to me means that there is a certain level of functioning capacity for her.

Senator BOB BROWN—No. The point here is that she could not travel and she got somebody else to bring the Nembutal back for her.

Dr Boughey—I do not think that one individual who is a palliative care person who has decided to end their life and will have the capacity to do it should somehow influence the whole palliative care sector to be focused on that way or to change our minds when we are faced with those sorts of problems or issues.

Senator BOB BROWN—We are in a plural society where, at the end, people ought to be able to make decisions of this nature by themselves, oughtn't they? Ultimately, none of us ought to impose our beliefs on other people.

Dr Boughey—We all should be living by the laws of our country. That is the choice that they are making at that particular stage for a perception. It is still a perception that somehow they are going to have undue suffering at some stage towards the end of their life. If they are asking other people to break the law for them on their behalf and other people are happy to do that, then they are issues and concerns that are a matter for them.

Senator BOB BROWN—I will finish with a question: do you think the Dutch have the right to have euthanasia laws?

Dr Boughey—Again, I do not necessarily think making a comment on another country is particularly relevant. I think there needs to be reconsideration in a couple of the jurisdictions where this is now legal, for reasons that other people have talked about today.

Senator BARNETT—I have just one follow-up question.

CHAIR—Just be quick, because we are really short of time.

Senator BARNETT—I would love to be quick, but Senator Brown has asked a whole range of questions and taken a good deal of time.

CHAIR—As have you.

Senator BARNETT—I will be as quick and as brief as possible with one question. Dr Boughey, thanks again for your responses today. You referred to visitors from interstate to your centre for euthanasia purposes—that is the way I heard you say it. Could you clarify that and advise how many we are talking about here per year?

Dr Boughey—We have a number of patients who travel from interstate—somehow the Northern Territory is their last port of call—and who might have sold their houses and said goodbye to their relatives. I would say about a dozen such interstate people a year arrive in the Territory. A lot of interstaters get sick here because of the nature of travelling around Australia, but I would say we do get per year about a dozen people that come here with a sense that something is going to happen, and they are often not actually facing a terminal illness. I had somebody who said that she had leukaemia, and when we actually looked at her blood and so on we found she actually did not have it. Those situations crop up, and then we are left to look at where they are going to be housed or getting them back or whether they should stay here in the Territory and so forth.

Senator BARNETT—Is that because the euthanasia legislation creates the perception that euthanasia is available here in the Northern Territory?

Dr Boughey—There is a perception, still, that something is available here which can somehow end their life.

Senator BARNETT—Thank you very much.

CHAIR—Ms Palmer, Dr Boughey and Mr Murphy, thank you very much for your time this afternoon.

[5.57 pm]

ASCHE, The Hon. Keith John Austin, President, Northern Territory Law Reform Committee

CHRISTRUP, Mr Nikolai, Member, Northern Territory Law Reform Committee

CHAIR—I welcome representatives from the Northern Territory Law Reform Committee to our committee deliberations. We have a submission from you, which is submission No. 443 in our records. Would you like to make any amendments or alterations to that submission?

Mr Asche—No.

CHAIR—If you would like to make a short opening statement, we would welcome your doing so, and then we will proceed to questions.

Mr Asche—May I first convey the apologies of Professor Matthew Storey, who was with us but unfortunately has commitments to his students and had to leave. I, Professor Storey and Mr Christrup were the subcommittee that drafted our submission, which was circulated to the members of our committee and has their assent. The preliminary statement we make will follow very simply what the submission says. It really comes down to this: the Northern Territory law—I will call it the Northern Territory law for short—when enacted was valid—that is, within the powers of the Territory. That was ultimately established by a case before the full court of the Supreme Court of the Northern Territory. The Commonwealth act which took away the power of the Northern Territory—and also that of other territories—was of course within the Commonwealth power over territories. However, it was based on policy. In other words, it does not seem to have been based on any belief that the Territory was acting outside its power. In fact it was based on the opposite belief: the Territory was acting within its power but should now be restrained. In other words, its power should now be circumscribed.

Any Commonwealth enactment based on policy—that is, based on a difference of opinion between the Commonwealth and the Territory—is of course an interference with the self-government of the Territory. If the Commonwealth disagrees with a policy of a territory then the grant of self-government is really illusory. In our submission we say that the only proper way to attack the power of the Territory to pass that particular act was through the courts. That in fact was done by the application to the full court of the Supreme Court. That application was interrupted because the act was then repealed. But had it gone to the full length of an appeal to the High Court—although it may be temerarious to predict what the High Court will do—we feel that the High Court would probably have upheld the decision of the majority of the full court. The point we make is that that is the way to go. Either the Territory has the power, in which case it should be allowed to exercise it because it has been given self-government, or it does not have the power, in which case the court should so rule. Thank you.

CHAIR—Mr Christrup, would you like to add anything to those opening comments?

Mr Christrup—No, thank you.

CHAIR—With the indulgence of the committee I will ask a question to start things. The Northern Territory government put to us this morning that the Andrews legislation inserted a new clause, 50A, into the self-government act which prevented the Northern Territory

government from considering matters to do with euthanasia. They have suggested to us that even if the bill currently before us today were actually passed by the federal parliament it would reinstate the rights under the terminally ill legislation but may not give them sufficient powers to do otherwise. Do you have a view about that and whether this bill should be amended?

Mr Asche—Our view is that there is some uncertainty about it. It really comes down to this: there are two schools of thought about this. The first is that when the federal government took away the power it was exercising an overall power which took away the act itself as well. The second is that when the federal government took away the power it merely took away the power. If it restores the power, the act itself is restored. In our view, it does not really matter because that is a matter of draftsmanship. If, as was suggested by one or two legal submissions here, the restoring of the power to the Territory meant that the original Territory act sprang back into being, then it was still for the Territory parliament to decide whether or not to repeal it, amend it or let it go through. If, on the other hand, the Commonwealth power took away not only the power of the Territory but the act itself, then, again, it is up to the Territory parliament to decide whether or not to re-enact the act in a particular way or ignore the act and not pass it at all. The difference would only be in draftsmanship. If the Territory drafted an act which suggested that the original act was still there, then it would be for the courts to say whether that was right or wrong. If the Territory did not do that, it would be for the courts to say whether that was right or wrong. If the courts ruled that the particular draftsmanship was wrong, then it would just be a matter of the Territory reintroducing the act and passing it in the way the courts had suggested was the proper way. I am emphasising that this does not interfere with the policy. It is a matter of legal interpretation.

CHAIR—Some people who are opposed to this legislation have put to this committee that the Territory parliament is immature and not representative of the views of the rest of the country. They argue that the 25 members of the Legislative Assembly are elected from a body of less than 200,000 people, but they are making laws that have impacts on the rest of the country. Therefore the Territory should not have those powers. What is your response to that?

Mr Asche—My first response is that if that is the approach the Tasmanians ought to be starting to feel very uncomfortable, because there are only 400,000 or so of them. If you do grant self-government to a series of bodies, then you allow them to determine themselves within their own province. I will just reiterate something, which I know the chairwoman is well aware of: when the Commonwealth took over the Territory, the Territory did not have self-government. It did not have any government at all, except that of an administrator who was given the power by the Commonwealth to make any laws he liked, subject of course to direction by the Commonwealth. Gradually a legislative council was established, and even then the majority of the legislative council members were government appointed nominees. Then in 1978 the Territory was given self-government. The only point I am making is that it looks as if the Commonwealth agreed to the gradual process of moving forward from non-self-government to complete self-government. If they have done that, as I would suggest they have, then to take away particular power is a retrograde step, and you are taking it away. If you say that the citizens of the Territory are immature—and that means that perhaps the

citizens of Tasmania are just slightly more mature and the citizens of South Australia perhaps a little bit more mature—by all means do so, but that means that you should not be passing self-government acts. You should be taking it away.

Senator MARSHALL—Does the Territory government have a history of its legislation being challenged and overturned in the courts?

Mr Asche—Not to my knowledge, certainly no more than any other state or territory. There are always constitutional problems, as states have, that are always a challenge. I could be corrected, but I do not think it exhibits any more activity in that respect than anywhere else.

Senator MARSHALL—The argument has also been put to us that the Territory could make laws in this regard which would impact upon the rest of the country, because those who are outside the Territory who wish to make themselves available to those laws could simply fly, drive or walk here and somehow that is wrong and therefore there should be the broader responsibility exercised by the Commonwealth. Can you comment on that.

Mr Asche—First of all, I trust that the Commonwealth is not a nanny state and that it is not looking over every state and saying, 'Tut, tut; you mustn't do this and you mustn't do that because that's wrong.' The Commonwealth is obviously interested in moral questions; so are the states. If, as you say, one territory or state propounds a law which is attractive to certain people and certain people then move to that Commonwealth or state, that is a prerogative of self-government. One could say the same thing about another type of ethical problem: abortion. If one state made abortion totally free and easy and as fast as you could get it, no doubt a lot of people would go to that state, yet I do not think it would be proper for the Commonwealth to say, 'We mustn't let this state do those things.' The best example to mind is the well-known action of Mr Bjelke-Petersen in Queensland, abolishing death duties. When he did that a number of states said, 'This is rather silly of you; you are going to fall flat on your face.' In fact, many citizens of Victoria and New South Wales and their assets moved very quickly to the Gold Coast, and the result was that the Victorians, the New South Welshmen and the South Australians et cetera became very upset and worried. The result was that now we do not have any death duties anywhere in Australia.

Senator BARNETT—Thank you for your submission. If the bill before us were passed in its current form, would the Northern Territory Legislative Assembly have any power or ability to amend or repeal the Northern Territory Rights of the Terminally Ill Act 1995?

Mr Asche—I can only speak for myself here. I would think it would have. If what occurs is that an old act is revived, then you can always repeal or amend an old act. I think the simple answer is yes, but it may be that I am wrong about that.

Senator BARNETT—The Northern Territory government said in its submission that is on the public record, at page 3:

> It is the Territory's submission that the Bill is poorly drafted and does not provide a sufficiently clear and express indication of intention; relying as it does on a series of implied consequences.
>
> In addition to this uncertainty, alternative views have been voiced expressing doubt as to the legal capacity to revive a spent Act that is not in force or currently existing.

Do you agree?

Mr Asche—We have been in some uncertainty about that. But the answer again is that, if it is poorly drafted, it is a matter for the courts to tell us. If it is poorly drafted the courts will say, 'It is wrong and you haven't got the power to do it that way.' Then it goes back to parliament and parliament drafts a new act.

Senator BARNETT—But I am asking your opinion.

Mr Asche—My opinion is that it has some uncertainties. I would not like to be positive about it. I think as it stands it is with power, but even if it is without power that is a matter of draftsmanship.

Senator BARNETT—It would appear that the Gilbert and Tobin centre in Sydney have a view similar to that of the Northern Territory government. They say in part:

... there is significant judicial and academic opinion which suggests that laws made by territory legislatures are not merely suspended or dormant for the duration of any inconsistent Commonwealth law and then enter back into force upon its removal ...

What would you say to that?

Mr Asche—I think they go on to say that the solution is to get rid of the schedule. Am I right about that?

Senator BARNETT—Yes.

Mr Asche—Then they say, as I understand it, that the law would be properly drafted.

Senator BARNETT—Their thesis, as I read it, is that there is ambiguity, there is uncertainty and there is doubt and that to fix it the bill would need to be amended. So I am asking you your view. Is that your view?

Mr Asche—I cannot say that I have looked at it in any great detail, so I am not going to stick my neck out too far. It seems to me that it would be a perfectly valid bill as it stands at present. But the point I am making is that if it is not the courts will tell us and then you only have to redraft it.

Senator BARNETT—I am not asking whether it is valid. I am asking whether it is clear and without doubt and without uncertainty.

Mr Asche—To me it is.

Senator BARNETT—The Gilbert and Tobin centre say that to fix it you have to expressly repeal section 50A.

CHAIR—Of the self-government act.

Senator BARNETT—Yes, of the self-government act.

Mr Asche—Well, so be it, whichever way you pass it. The point here, I trust, is that if you agree with this bill you are restoring to the territory a power which it had before. If you are doing it in the wrong way, then the courts will tell you and then you will do it the right way.

Senator BARNETT—But you are here as a witness and we are asking for your expert opinion as the President of the Northern Territory Law Reform Committee.

Mr Asche—I am not putting myself up as an expert in constitutional law, I am sorry. I would hate to be thought of as being positive on constitutional law.

Senator KIRK—Mr Asche and Mr Christrup, thank you very much for your submission. It is most helpful. I am interested in the final paragraph of your submission where you talk about item 2 of the schedule to the bill and you say there is some potential for the Northern Territory act 'to be invested with a federal character that it did not possess prior to the commencement' of the Commonwealth law or 'would not possess following the mere repeal of that act'. That is an argument that we have not heard today, so I wonder if you could give us a bit more information about that and how you think that might be a problem here.

Mr Asche—I do not think that would be a problem. Perhaps Mr Christrup might help us here.

Mr Christrup—Thank you. All we are seeking to do with that paragraph is to point out that there is at least an argument or a risk that, apart from merely just repealing the act—which is what the first item of that schedule does—by taking the extra step of including item 2 in the schedule, the Territory act now somehow has a federal character to it. If that argument succeeds, then that would have the effect that you have just pointed out, which is that the NT parliament would not have the power to either amend or repeal it afterwards. Again, I suspect it is a matter of drafting. I suspect item 2 is there probably to achieve the opposite result, which is to avoid any doubt. It is something that could possibly be addressed by simply removing item 2 from the schedule.

Senator KIRK—If item 2 were to be removed, then that doubt that possibly exists would also be removed?

Mr Christrup—Yes.

Senator BOB BROWN—Would you then see any advantage or disadvantage in adding the removal of section 50A of the Territory establishment act—whatever the proper name is—or do you see some problem with that?

Mr Christrup—Off the top of my head, I would have some hesitation. I would need to consider that.

Senator BOB BROWN—You might look at that and either or both of you come back to us. It would be much better if you did have time to look at it and gave us your considered thoughts on that matter.

Mr Asche—I am happy to send you a submission on that. It would be pretty short. We have taken the position that, if there is any doubt, it is a matter that can be corrected. You are not interfering with the policy of the bill at all.

Senator BOB BROWN—As legislators, of course, the guiding principle should be that we should be as clear as possible in having the legislation go forward. But you are right, of course. The court will point it out if you have problems and perhaps guide you to a solution.

Mr Asche—Taking the coward's way out, I would say: 'Leave it to the parliamentary draftsmen. That is what they're there for.'

Senator MARSHALL—The chair just mentioned to me briefly what your background is, Mr Asche. It is probably worth putting that on the record in answering this question. I would like to put to bed the issue that has been expressed that legislatures of this size, which have one house and no legislative review process, are not competent to deal with this sort of legislation. Given your background, if you put that on the record, I think your personal view on that would be important for this committee.

Mr Asche—I can give you that now. My personal view as a fanatical Territorian is that of course we should have the power, and the fact that we have a unicameral legislature does not make any difference. You could say the same of Queensland. I think that once you are given the power—and sorry, but I am going to get very keen on the Territory here—you have been told that you are mature enough to handle it.

Senator MARSHALL—What offices have you held in the Territory?

Mr Asche—Chief Justice and Administrator.

Senator MARSHALL—Thank you.

CHAIR—I think that is all of our questions. Thank you very much for your time this afternoon. I am sorry we are very much over time, but we appreciate your deliberations and your learned opinions as always.

Mr Asche—We appreciate all of you coming to the sovereign city of Australia.

CHAIR—I would like to formally thank all of the witnesses who have given evidence to the committee today. I declare this meeting of the Senate Standing Committee on Legal and Constitutional Affairs adjourned until tomorrow morning.

Committee adjourned at 6.19 pm