



15 August 2021

Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
Parliament House
Canberra ACT 2600

Dear Secretary

Ensuring Northern Territory Rights Bill 2021

Thank you for the opportunity to make a submission to this inquiry. I do so in a personal capacity.

This Bill is required because Australians are not treated equally when it comes to their democratic rights. In particular, any person living in a self-governing territory is treated as a second-class citizen. This is due to laws passed by Parliament and the Australian Constitution. That document reserves rights and privileges to the states and Australians who live there, while permitting these to be denied to Territorians.

For example, each original state is guaranteed the same representation in the Senate, and no state citizen can be subject to discrimination due to their state residence. It is also impermissible to impose taxes in a way that discriminates between states.

None of these protections apply to the territories. They lack even the most basic right of representation in the federal Parliament and must take what they are given by the Commonwealth. It was only in the 1960s that the territories were granted a full voting member in the House of Representatives. It took until 1975 to achieve representation in the Senate.

Territorians also receive inferior voting rights when Australians cast a ballot in a referendum to change the Constitution. A successful referendum requires the support of a majority of Australians and a majority of states. This means that voters living in a state have their ballot counted twice, whereas the vote of a Territorian counts only towards the national majority. Australians living in the ACT and Northern Territory only get half the vote of their state counterparts.

This entrenched discrimination is made all the worse by the special powers of the Commonwealth to intervene in territory affairs. Self-government in the ACT and the Northern Territory depends upon the favour of the Commonwealth. It can at any time remove their right to be governed by a local assembly and can return either to direct federal rule.

The Commonwealth can also overturn any law made by a territory parliament. Euthanasia is the most visible example of this. When the Northern Territory decriminalised the practice, the Commonwealth Parliament responded in 1997 by overriding that law. It then went further in denying the Northern Territory and the ACT the power to ever enact such a law in the future.

The discrimination between those who live in states and territories is indefensible. Australian citizens living in Canberra and Darwin are just as fit to make decisions for themselves as their counterparts in Perth or Sydney. There is no good reason why they are denied the same control over their lives.

It lies within the power of the Federal Parliament to address this problem. The framers of the Constitution foresaw the need and provided a straightforward means of doing so. Section 121 of the Constitution says that a territory can become an Australian state by a vote of the federal Parliament. No referendum is required, though in the case of the ACT the transition would be challenging because of the need to separate the federal Parliament and its surrounds from the new state.

In the absence of such a large change, the Federal Parliament can ensure that its laws provide Territorians with the same rights, as far as possible, as other Australians living in the States. The Bill should be supported in seeking to achieve this.

However, the Bill should be changed in two respects. First, section 50(1) of the *Northern Territory (Self-Government) Act 1978* should not be repealed. This clause limits the power of the Legislative Assembly to acquire property otherwise than on just terms. The Commonwealth itself is subject to such a limitation and it is appropriate that this remains for a territory. Ideally, the states should also be subject to the same limitation to provide a minimum level of property rights protection.

The restriction on enacting laws with respect to euthanasia should be repealed. However, there is no justification for only removing this bar from the Northern Territory. The same issues of self-government and democratic rights apply with respect to the ACT, and so the equivalent clause in its self-government act should also be repealed. Without this, this Bill would introduce another invidious form of discrimination, this time between Australians living in the Northern Territory and the ACT.

Yours sincerely

Professor George Williams AO