

**ABORIGINAL RESOURCE AND DEVELOPMENT SERVICES INC.
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YOLŊU LAW AND EUTHANASIA

YOLŊU LAW – EUTHANASIA – A SUMMARY

There are two main objections which we **Yolŋu**¹ have to euthanasia and hence the ‘Rights of The Terminally Ill Act’ of the Northern Territory :

- 1. The new law is not dhapirrk.** (It is inconsistent with, and does not recognise our pre-existing foundational Law.)

Our ancient Law/**Madayin**, does not empower our Traditional **Närra**’/Parliaments, to create Acts of Law/**Wäyuk**, that give an individual the right to take the life of another. The same Law/**Madayin** states, as a principle of law, that death should be by natural causes only, except of course in the case of capital punishment.

We believe the Northern Territory Legislative Assembly is a subordinate law-making body to our pre-existing **Madayin** and the Traditional **Närra**’/Parliaments of Arnhem Land, therefore the Northern Territory Legislative Assembly has no authority to make law that is contrary to, and which conflicts with, our ancient Law/**Madayin**.

- 2. The new law does not establish Mägaya.** (It does not create a state of peace, freedom from hostilities, true justice for all.)

Our Law/**Madayin** empowers our Traditional **Närra**’/Parliaments to make Acts of Law/**Wäyuk**, that are **Mägayamirr**. Our term **Mägaya** is similar in its scope and depth of meaning to the ancient Hebrew word 'Shalom'. This Act of the Northern Territory Legislative Assembly does not create a state of peace and true justice, for our people; therefore it is not **Mägayamirr**.

This Act fails to recognise that the **Yolŋu** of North East Arnhem Land and other traditional people of the Northern Territory, are a severely marginalised group of people, having suffered a violent and confused history since contact with white people. Through fear and suspicion, this Act is driving **Yolŋu** and other Traditional Aboriginal people of the Northern Territory further from the health services they so desperately need.

¹ Yolŋu means Aboriginal people of the North East Arnhem Land Region.

Therefore the Yolŋu of North East Arnhem Land are opposed to any form of euthanasia where an individual's life is terminated by another individual. Accordingly the creation of Law for such action is abhorrent and to be condemned.

Yolŋu of North East Arnhem Land have challenged and continue to challenge any move to legislate for euthanasia.

The legal argument for this challenge comes from our **Madayin**. Our **Madayin** is our ancient system of law (see Attachment 2):-

- a law that pre-dates the Westminster system of law in this country;
- a law that we assent to by a ceremonial process to this day;
- a complete system and rule of law for all Yolŋu to live under.

1. Nowhere does our constitutional law within our Madayin give our Traditional Njarrra'/Parliaments the right to make an Act of Law that gives an individual the right to take the life of another. Death must be by natural means only.

We are greatly encouraged when we see aspects of international law which we believe support the legal position enshrined in our **Madayin**. This is why we have challenged the Rights of the Terminally Ill Act of the Northern Territory Legislative Assembly, for we do not believe the Act itself is **dhapirrk**. That is, the Act has no right to stand because the ancient law, the **Madayin**, having jurisdiction in this land thousands of years before any other parliament came into being, does not convey this right at law.

According to the Laws of our **Madayin**, the type of action that is authorised through legalised euthanasia (i.e. the taking of a life through lethal injection), is called '**Galka Djäma**'/ **sorcery**, whether it is voluntary or not. According to the **Madayin**, all acts of sorcery are illegal.

2. Our Madayin creates a state of Mägaya (a state of peace, free from hostilities, true justice for all). Legalised euthanasia does not do this. The NT Act has added to the confusion and fear that Yolŋu have of western medical procedures.

- (i) Since white man came to this land of ours, Yolŋu have been trying to work out if western doctors are **Marrŋgitj** (healers) or **Galka** (sorcerers), (see Attachment 3). Some people have felt that maybe the western doctors are **Marrŋgitj**. However, when one of our people die, especially in hospital or after a big operation, the majority of our people believe the western doctors are **Galka**. When this happens it makes our people very sad and frightened of the health systems.

- (ii) Many of the **Yolŋu** in North East Arnhem Land have had operations and medical procedures carried out on them and they had no idea what they were for. Many **Yolŋu** have had medical procedures carried out on them against their will. In fact, 90% of the **Yolŋu** would not know it is their right as a citizen to refuse medical procedures, because almost all of the communication between **Yolŋu** patients and the health system is conducted in a 'foreign' language.

Just imagine how frightened and confused other Australians would feel if they were hospitalised in a foreign country and had to have operational procedures carried out on them by doctors and sisters who had strange customs and spoke a foreign language. This is the frightening experience we face in our own land on a daily basis.

- (iii) When this new NT Law was talked about, then passed, many of the **Yolŋu** said, "See, we knew all along that this was the **Balanda** (non-Aboriginal) way, their doctors are **Galka**, sorcerers, and killers". When their loved ones are sent from one hospital to another, then die, some of the people say that, "the doctors were just practising sorcery on them, learning how to kill people".

The Act of the Northern Territory Legislative Assembly has not, and any euthanasia legislation will not, create a state of **Mägaya**. The basic foundational principle of our **Madayin** law and also of the Australian Commonwealth (Section 51 of the Federal Constitution).

All Australian Parliaments have legislative responsibility to their citizens and to international covenants to create law that recognises basic human rights where their citizens can live in an absence of fear and harassment. (See Attachment 1.)

3. A significant factor in the **great cost of medical care** for indigenous people is the lack of early intervention. Individual patients often present to the health system with their sickness or illness at an intermediate or advanced stage, and only go to the local clinic as a last resort. This is due to many reasons, but one is definitely because the health system is foreign and not 'user-friendly' from our people's point of view. **Legislating to legalise euthanasia does nothing to create a more friendly and peaceful environment (mägaya) for indigenous patients.**
4. **Some people have labelled Yolŋu as 'uncaring' for those who are suffering.** Some have said that this organisation has spread this fear to the **Yolŋu** of North East Arnhem Land. I say to these people, "Have you been there at midnight or in the early hours of the morning when I get a call from a countryman or their relative, woken from deep sleep, asked to go with the family to the hospital, having to make a decision to go or to stay and sleep?Then going because I know the fear and uncertainty the people have of the hospital system.

Spending many early morning hours sitting with the families and the patients, asking questions of the doctor and nursing staff trying to calm both patient and family, assuring them that the doctor is doing the right thing. Have they also sat there many times with the patient's hand in theirs till death"? I am sure I have seen many, many more people die in all sorts of conditions than any of our accusers.

In the past we have suffered massacres from pastoralists, adventurers and police. Australian law has not recognised our birthright to our estates or to ownership of our resources on these Estates. We have had our commerce and our way of life destroyed by Acts of Australian Parliaments. We only ask for our right as fellow human beings to live in a state of peace, free from fear and hostility, having the justice that all deserve.

5. Some people have the luxury of fighting for **State and Territory rights**. We are fighting for *the right of our people to survive*. The Northern Territory Government is talking about moving towards Statehood for the year 2000. They want to talk to Aboriginal people about the Land Rights Law being moved from the Federal jurisdiction to the legislative authority under a new State Government.

If the NT Government can't hear our legal concerns that arise from our law/**Madayin** and cannot see the negative effects 'The Rights of the Terminally Ill Act' is having on our people, if our cries and fears cannot be recognised on this issue; then will their ears be open when it comes to talk about our rights under a State Government I'm not sure ? The assurance and firm commitment that **Yolŋu** seek concerning these most critical issues of law has not been evidenced in the passage or handling of this new legislation.

6. **To die with dignity** is an ideal that human societies everywhere subscribe to. The desire to care for those who are dying, whether of a terminal illness or otherwise, is common to all cultures.

We Yolŋu have certain procedures which are followed when a person is gravely ill. First we sing a traditional song that makes the person feel better and stronger. If the person feels they are ready to die the person then may refuse or reject food (dhä yupthun), no one forces them. They might continue to drink for a time and then later refuse to drink. The songs that are sung as the person moves close to death are of the person's clan history, of their ancestors, and of the Great Creator Spirit. Their family is there and supports them through the whole process. This is our **Madayin** law way of dying.

Control is in the hands of the Creator and the responsibility upon us is to care for the dying person. It is not to take life into our own hands. The problem with the legalised euthanasia is that it authorises a lethal injection of poison by another person or a machine, which raises all sorts of questions at law in the minds of the deceased's relatives.

7. **Legalised euthanasia has the ability to change the relationship between doctors and patients forever.** Rational thinking doctors have great difficulty with it. Yolŋu and other traditional Aboriginal people are being driven further from the health services they are so desperately in need of, because of the fear and suspicion generated by the existence of the new NT legislation.

8. We support Federal intervention in the NT because **a subordinate chamber of law, the Northern Territory Legislative Assembly, which has a fiduciary responsibility at law to create laws for peace, order and good government of the people, has not fulfilled its duty.** The 'Rights of the Terminally Ill' Act of the NT does not create peace, and order, therefore it is not good government and must be overturned so the collective rights of the citizens prevail.

The 'Rights of the Terminally Ill' Act was introduced by the former Chief Minister as a Private Member's Bill on the eve of his early retirement. It spent its time in the womb of a committee room, born prematurely without the full course of public debate, it is being kept alive in the humidicrib of 'political face-saving' and Territory Rights.

I believe Yolŋu political leaders are joined by other Aboriginal leaders right across this land, whose traditional law has similar foundational principles. As a society we must not allow legislation like the Northern Territory's to stand, and we must ensure no other parliaments move to legalise euthanasia.

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GLOSSARY OF TERMS

| | |
|-------------------------|---|
| Balanda | Non-Aboriginal person or people |
| Dhapirrk | even, level, well-balanced, orderly; has authority because of due process; is constitutionally correct. |
| Dharpa dhäwumirr | letter stick - see Attachment 1. |
| Dhä yupthun | to refuse food or drink. |
| Djalkiriṅur | at the roots, foundational. The foundational set of laws from time immemorial. |
| Galka | a sorcerer |
| Madayin | a complete system of law for the Yolṅu. |
| Mägaya | a state of peace, free from hostilities, true justice for all. |
| Mägayamirr | with mägaya (i.e. peace creating, justice giving) |
| Marrṅgitj | a traditional healer. |
| Ṇärraṅ | a traditional Parliament of Arnhem Land. |
| Wäyuk | an act of law. |
| Yolṅu | an Aboriginal person or people of North-East Arnhem Land. |

**A LETTER STICK
FOR THE FEDERAL PARLIAMENT**

This letter stick (Dharpa dhäwumirr) is sent because it follows the ancient practice of our people (Yolŋu) when communicating with trading partners, in diplomatic alliances, or between parliaments. This message is a special form of communication between the Parliaments of the Yolŋu Nation-States within North-East Arnhem Land, and the Commonwealth Parliament of Australia.

It contains, within the markings, a reference to Mägaya, which is the responsibility of the Parliament to the citizens. Mägaya is the peace, order and good government afforded the people constitutionally under Customary Law in a manner similar to the Australian Constitution as stated in section 51.

The ‘Rights of the Terminally Ill’ Act of the Northern Territory is seen as breaking these fundamental constitutional responsibilities placed upon the parliament. Further, Yolŋu Customary Law, as the Common Law of the people, defines the enactment of the NT Act as an illegal action of sorcery punishable at law. For this reason this message endorses the action of Kevin Andrews MP to bring a Private Member’s Bill which will overturn the NT Act. Indeed it is the sacred responsibility of this parliament to do this.

This message urges the members of both houses to support the Bill’s passage into legislation.

MEDIA RELEASE - 17th October 1996

Rev Dr Djiniyini Gondarra, OAM

'Rights of the Terminally Ill' Act, Northern Territory.

THE LETTER STICK - A DIPLOMATIC COMMUNICATION

We the Yolŋu delegation from North-East Arnhem Land come to Canberra **bearing a diplomatic request** in the form of a Letter Stick

***from:* the Traditional N̄arra'/Parliaments of Arnhem Land**

***to:* the Federal Parliament of the Commonwealth of Australia.**

The request comes from the **Traditional N̄arra'/Parliaments** of our lands:

- * that derive their power from our ancient law/Madayin ;
- * existing since the beginning of time (djalkiriŋur);
- * having an authority and responsibility according to that ancient law, to create a state of M̄gaya (peace, freedom from hostilities and true justice for all) through the establishment and maintenance of a recognised system of laws.

We appeal through this diplomatic request to the Federal Parliament, (which according to section 51 of the Constitution for the Commonwealth of Australia; 'have power to make laws for the peace, order, and good government of the Commonwealth'), **to listen to the indigenous N̄arra'/Parliaments,** whose subjects are both bewildered and deeply offended by the 'Rights of the Terminal Ill Act' of the Northern Territory. We see this new law as an act of institutionalized sorcery, abhorrent to our ancient Law given to us by the Great Spirit Creator; a law which to this day allows us to live in peace and harmony, and without fear.

THE MADAYIN

The Madayin is the name for a complete system of law for the Yolŋu of North-East Arnhem Land.

It embodies the rights of the owners of the law, or citizens (rom wataŋu walal) who have the rights and responsibilities in this particular embodiment of law.

This Madayin includes; all the people's law (rom), the instruments and objects that encode and symbolise the law (Madayin girri), oral dictates, names and song cycles and the holy, restricted places (dhuyu nungat wäŋa) that are used in the maintenance, education and development of law.

This law covers the ownership of land and waters, the resources on or within these lands and waters, it controls the production and trade, the moral, social and religious law including the laws for the conservation of, and farming of fauna, flora and aquatic life.

Yolŋu of Arnhem Land believe that if they live out their life according to the Madayin it is a right and civilised way to live.

The Madayin creates the state of **Mägaya**. Mägaya is a state of peace, free from hostilities, true justice for all.

Through a ceremony called wana lup'thun, all the citizens of this particular Madayin, ceremonially swim under the symbols of this law, in a physical act of assenting to the law.

WESTERN MEDICAL PROCEDURES - GALKA OR MARRŊGITJ?

Yolŋu have been confused about the western way of medicine since white man came to our country. We recognise two types of doctors. One type of doctor is a Marrŋgitj, (i.e. healers and persons of great knowledge; of high standing and of great credit in our society; persons who have nothing to hide because of the goodness and lawfulness of their actions).

The other doctor is the Galka, a sorcerer. They are 'doctors' who do everything in secrecy because they work and live against our Law, the Maḏayin. They have the power to put their victim into a hypnotic state so they can steal their body fluids, or get the victim to kill themselves in an accident, or by other means. (This is why Yolŋu have no security or comfort in the voluntary nature of this Act.)

Yolŋu are confused about whether the western doctors are Marrŋgitj (healers) or Galka (sorcerers). Most Yolŋu want to believe that western doctors are marrŋgitj (healers). However when a Yolŋu person dies after there has been western medical intervention, especially if it occurs in a hospital or after a big operation, then many people may again wonder whether the western doctors are Galka. The people have many past experiences which lead them to this conclusion. Some of these reasons are explained below:

- * *When bodies are returned to our communities, after a post mortem, we have our own coronial inquests and we have seen the way the bodies are all cut up; this resembles the work of a Galka/sorcerer.*
- * *Western doctors do operations by cutting the body; they are acting like Galka. Our Marrŋgitj healers can do operations without cutting the body, through the manipulation of muscles and skin tissue.*
- * *Western doctors use body fluids for testing; the Galka uses body fluids to kill their victims.*

I know as a western-educated person the reason for all these medical procedures but most other Yolŋu of Arnhem Land don't.

This new Act is perceived by most Yolŋu as sorcery. If doctors are allowed to practice sorcery and this is sanctioned by the NT Government - then it calls into question the validity, safety and protection at law offered by all other medical procedures. I know some people are refusing to go to hospital. Older people who think they have no rights to refuse do what the doctor says and go to hospital in 'deathly' fear of what is going to happen to them.

One old lady two years ago told her relatives two days before she died that her death wish was "if I had the strength to get out of bed, get a stick and kill two of the Balanda (non-Yolŋu) staff before I meet my death I would". This was because she was being held in Darwin hospital against her will. It was freezing cold in the air conditioning, and she was not at home with her people to die where she could speak her own language and be understood. This situation occurred before this debate started. Many hundreds of traditional people have died in a strange environment surrounded by people speaking English which is as good as a foreign language to them, spending their last hours with strangers who have strange customs.

We have no interpreter service so we original Australian citizens are not able to hear our rights and understand medical procedures in our own languages? Our voice, our fears, our confusion, our concerns are not heard.

*Yolŋu die twice when they are in hospital;
once from the fear of being there,
and then secondly from the sickness itself.*

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