

Inquiry into Suicide in Australia

1. The Inquiry's first term of reference (a) includes the personal and social cost of suicides presently occurring in Australia. Dying With Dignity (NSW) is an organization seeking legalisation of assisted suicide under controlled conditions. Under term (a) the ACT Branch of Dying With Dignity (NSW) draws to the notice of the Committee the unacceptable and increasingly desperate position of large numbers of ageing or afflicted Australians who wish to suicide but are forced to do so in the most painful and undignified of ways.

2. whilst we do not seek to minimise the problems of suicides occurring in high risk groups such as indigenous youth or rural communities we find it unsatisfactory and not in keeping with the standards of the Australian Senate as a contemplative house of review that terms of reference should be finalised on 10 September 2009 without showing a more explicit awareness of the problem for the ageing and the afflicted.

3. We point out that in two Australian States and the Australian Capital Territory the issue of assisting individuals to achieve suicide had been *in previous weeks* before the Courts attended by widespread publicity and that in all three instances reference had been made to the inadequacy of our legislation to guide the judicial system in the protection of civil rights.

4. In Western Australia Chief Justice Wayne Martin found on 14 August in what became known internationally as the Rossiter Case that Christian Rossiter, a 49 years old paraplegic of clearly sound mind, had the right in law to determine his own medical treatment by requesting his Brightwater nursing home to cease feeding him from a feeding tube. Rossiter died on 21st September.

5. Despite stressing by Martin CJ that his decision was not to be interpreted as establishing a 'right to die' the judgement was hailed as a landmark, with clear implications for interpretation of the Criminal Code with respect to duty of care.

6. Judgment in this application followed by only a few days a publication of reasons for judgment on the other side of Australia in the NSW Supreme Court by McDougall J (*Hunter and New England Area Health Service v A [2009] NSWSC 751*) which recognized the right of a Jehovah's Witness adherent to refuse treatment, in this case through an advance care directive which he had executed well before entering hospital.

7. This judgement, in the absence of NSW law specifically covering the right to refuse treatment, canvasses the guidance offered by evolution in the common law. It refers back to

the well known 1914 Schloendorff judgement in US New York Court of Appeals in which Justice Cardozo (later appointed to the Supreme Court) declared that the removal of a tumour contrary to the applicant's instruction constituted battery and enunciated the celebrated principle that a human being of sound mind has 'the right to determine what shall be done with his own body'. The judgement traverses principles subsequently laid down by the Judicial Committee of the House of Lords and our own High Court.

8. It is drawn to attention of the Committee that in its para 17 the Judgement states the nub of the question for the Australian community in terms of *personal* cost as: **'It is in general clear that, whenever there is a conflict between a capable adult's exercise of the right of self-determination and the State's interest in preserving life, the right of the individual must prevail.'** Being of comparatively short length it is submitted respectfully that the judgement would be helpful reading for the Committee.

9. In the ACT Supreme Court in late August Higgins CJ rejected the application by ACT Health seeking approval by the Court to a 69 year old schizophrenia sufferer's wish to be allowed to starve to death. Chief Justice Higgins castigated ACT Health for making the application because the man was not capable in a legal sense, yet a more open minded view would recognize that in the absence of legislation and in consideration of the patient having signed an Advance Care Directive, ACT Health were justified in approaching the Court for guidance. It is certainly evident that they showed compassion in a situation in Australia which is becoming increasingly viewed as inhumane.

10. At the present time there is a large body of Australians in their latter seventies and beyond who are living much longer than their parents but who are concerned at possible loss of independence and lapse into dementia. A significant proportion of these persons are contemplating suicide by choice and many are investigating and preparing methods available. They are doing this because they wish to be in a position to act before dementia should overtake them and they have been made aware that they must act alone or risk involving friends as was the case with the unfortunate former Qantas captain Graeme Wylie in Sydney in 2006 (Ref R v Justins-Jenning NSWSC 2007).

11. There are as yet no Government surveys of numbers involved but anecdotal impressions of increase are supported by what may be inferred from results of regular public opinion polling of attitudes to assisted suicide. These have shown approval responses rising progressively to high majorities. Action by successive Commonwealth and State Governments to tighten laws prohibiting assisted suicide has made no change to this trend. On the contrary there appears to be an increasingly widespread acceptance of a need to break the law if necessary.

12. It is surprising to find terms of reference for an inquiry into suicide in Australia which shows no apparent awareness of what is so well known to the public, particularly the older segment, but at all levels of health, educational background, and income, and in all areas. The

ABC Four Corners programme entitled *Final Call* airing on 7 May 2007 and the SBS Insight programme *Last Rights* a few weeks earlier have been followed recently on 27 August last by ABCTV's screening of the documentary *The Suicide Tourist* on the difficulties faced by those unable to obtain assisted suicide in their own countries, followed by a live forum which attracted much public support for better legislation in Australia. Whilst these may have been addressed to a more selective segment of the viewing audience we believe members of the Committee will be aware that discussion of assisted suicide is taking place in service clubs and women's social groups right across Australia.

13. In commenting on the Rossiter Case judgement in Western Australia Prof. George Williams, professor of constitutional law at University of NSW, stated recently: 'It is remarkable that this outcome has been achieved in the face of what might have seemed the clear terms of the criminal law. The result speaks volumes for the principle of self-determination.' Importantly for the members of the Committee and for the Senate he added: '**...this decision has exposed the need for legislative change.** Allowing a person to starve themselves to death over a fortnight is far from the most compassionate or dignified outcome.'

Beryl Rawson

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