

SUBMISSION

FOR

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

TO

**The Senate
Legal & Constitutional Affairs Committee**

Prepared by :

ABORIGINAL RESOURCE & DEVELOPMENT SERVICES INC.

April 2008

Introduction

When the Northern Territory passed the Rights of the Terminally Ill Act 1995, the Yolngu (traditional Aboriginal people) of north-east Arnhem Land called upon ARDS to do whatever was necessary to get the Parliament to withdraw or overturn the Act.

The Yolngu people were particularly afraid of what it would mean for them in hospitals.

The fear that many Aboriginal people have is based on fundamental cultural and linguistic differences.

Summary

The Yolngu people of north-east Arnhem Land are opposed to euthanasia as it:

1. conflicts deeply with traditional law (Madayin)
2. creates fear exacerbated by historical experiences
3. creates fear exacerbated by the language divide

The Current Situation

1. Euthanasia Conflicts with Traditional Law

The Madayin is our ancient system of law that:

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

“Euthanasia is murder according to our traditional law. If our people want to die because they are in pain the patient tells the whole family that they will close their mouths to water and food and then spend the time left to get ready to transit to the other side. For someone to administer any form of substance to end the life of a person is murder in the eyes of our traditional law.”

Rev Dr Djiniyini Gondarra, Chairperson, Aboriginal Resource and Development Services Inc.

The new law is not dhampirrk - it is inconsistent with, and does not recognise our pre-existing foundational Law – as nowhere does our constitutional law within our Madayin give our Traditional Ngarrá/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.

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 Djama'/ **sorcery**, whether it is voluntary or not. According to the Madayin, all acts of sorcery are illegal.

Therefore we Yolngu of north-east Arnhem Land are opposed to any form of euthanasia where an individual's life is terminated by another individual.

2. Historical Experience

The prospect of legalised euthanasia has added to the confusion and fear that Yolngu have of western medical practices and procedures.

Since white man came to this land of ours, Yolngu have been trying to determine if western doctors are Marrnggitj (healers) or Galka (sorcerers). Some people have felt that maybe the western doctors are Marrnggitj. However, when one of our people die, especially in hospital or after a big operation, a lot of our people believe the western doctors are Galka. When this happens it makes our people very sad and frightened of the health systems.

Many of our people have had operations and medical procedures carried out on them and they had no idea what they were for. Many Yolngu have had medical procedures carried out on them against their will. In fact, the majority of the Yolngu would not know it is their right as a citizen to refuse medical procedures, because almost all of the communication between Yolngu patients and the health system is conducted in a 'foreign' language.

3. Language Divide

There are many misunderstandings and miscommunications which occur in hospitals and other health institutions as a result of the language divide. We speak many languages in north-east Arnhem Land. Even for those of us who are able to communicate well in English, it is often not our first language. This means when we are trying to explain ourselves to medical professionals we are thinking and speaking in multiple languages. The communication process is further complicated by unfamiliar medical terminology and a foreign way of communicating (see *Communication Mores in Why Warriors Lie Down and Die* by Richard Trudgen, pp 78 - 79).

There are no Yolngu Health Workers working in either the Gove District Hospital or the Royal Darwin Hospital or any of the other major hospitals that we need to attend in times of severe health crisis.

Although there is an Aboriginal Interpreter Service in the Northern Territory, it is severely under-resourced and the Interpreters receive insufficient professional training. Medical and legal interpreting requires a NAATI¹ Level 3 and 4. Yolngu Interpreters currently operate at a NAATI Level 2 (see *Absence of Mutual Respect Report*, ARDS publication).

These interpreters are naturally struggling to translate the often specialised and complex medical concepts relating to interactions between medical professionals and Yolngu people. Sending these interpreters to hospitals to translate is an extremely dangerous practice. Due to this very dangerous and under resourced situation existing in the area of medical interpreting, ARDS, in conjunction with Royal Darwin Hospital, have developed a patient education service to help train our people about medical issues and the right of hospital patients in Darwin Hospital. This is the ARDS Patient Education Service.

¹ National Accreditation Authority for Translators and Interpreters

The Patient Educators can also do education with Yolngu Health Workers and Yolngu Interpreters. In fact, it has been the ARDS Patient Educators that have done almost all Yolngu Matha (the language of the Yolngu people) interpreter training in the medical arena in the last 9 years. Plus these same educators have been called upon to do medical interpreter training with other Aboriginal Languages in the Northern Territory because no other medical interpreter trainers exist.

However one would think that a vital service like patient education would get full support and funding from all levels of government. Sadly this is not the case and ARDS will have to scale back our level of patient educator support because of the lack of commitment from all governments. We have also been trying to get a Patient Educator service to Gove District Hospital for the last six years, but to no avail.

With this background, when we have governments at all levels not ready to roll out the necessary services that will address these chronic situations like supporting the long term roll out of patient educator who can fast track the primary health care education of the Yolngu community in general, the fast tracking of Yolngu Health Worker training and Yolngu medical and legal interpreters and when they are not ready to resource language centers that can also resource these interfacing communication resources. Then how are we going to be able to address the fears that Yolngu have of the present medical systems.

The Patient Education Service works on the basis where we recruit Registered Nurses or other English first language professionals and train them in the language of the people. This allows the Patient Educator to operate in the Royal Darwin Hospital working with patients at the hospital interface. So patients can understand their condition. Our Patient Educators see potential crisis day after day because of the failure of the medical service to communicate with Yolngu patients. This is not the fault of the medical service, it is just a current reality.

By passing this Bill and not providing funding to expand patient education, the Indigenous health crisis will be exacerbated.

The Inquiry

For many Yolngu patients to attend a hospital is a frightening experience especially for the elderly.

As the Senate Standing Committee on Community Affairs Inquiry into the operation and effectiveness of the patient assistance travel scheme heard:

"Rather than face the traumatic experience of travelling to a far-off and unfamiliar destination where they do not know anyone, do not know the country and are confronted with western medicine that is downright frightening to them (they stay in their communities)."

Dale Campbell, CEO, Wurli Wurlijang Health Service, Katherine, quoted in "Sick 'scared' of patient travel system", www.news.com.au 26 March 2008

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.

If the long term problem of access to communication experts can be fixed, so that we Yolngu can understand what is being said to us in the health system and we can feel safe and secure, then it may be possible to return to the very complex subject of euthanasia.

For as Yolngu say "When you go to a English speaking hospital you die twice, once from the sickness or disease and also of absolute fear and fright of what will happen to you while you are there."

It is frightening when every machine in the hospital becomes a potential killing machine that the doctor or nurse can use to finish your life.

Without competent cross-language and cross-cultural communication to address this fear this feeling is real and deadly.

Absence of fear and harassment. 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. This is a basic foundational principle of our Maḍayin law and also of the Australian Commonwealth (Section 51 of the Federal Constitution).

The *Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008* undermines this principle by creating a deep fear of the medical system in our eyes.

Lack of early intervention. A significant factor in the cost of medical care for Indigenous people is in the lack of early intervention. Individual patients often present to the health system when the illness is at an intermediate or advanced stage, and only go to the local clinic as a last resort. This is due to many reasons, including that the health system is foreign and frightening from our people's point of view.

Dying with dignity. To die with dignity is an ideal that human societies the world over recognise. The desire to care for those who are dying, whether of a terminal illness or otherwise, is common to all cultures.

We Yolngu 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 (dha 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 Maḍayin law way of dying.

Legalised euthanasia has the ability to change the relationship between doctors and patients forever. Yolngu and other traditional Aboriginal people are being driven further from the health services they so desperately need, due to fear and suspicion generated by the concept euthanasia.

It is these concerns that the Legal and Constitutional Affairs Standing Committee and the Senate must understand in order to appreciate the Yolngu perspective on this issue.

Conclusion

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.

Without effective patient education², interpreter services and other linguistically and culturally appropriate support services in the health system, the passing of this Bill is also going to impact negatively on Closing the Gap targets and outcomes.

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² Go to www.ards.com.au/health_medtrans.htm for more information on the ARDS Patient Educator Service.