

LANDMARK SOUTH AUSTRALIAN SUPREME COURT DECISION

In June 2010 another landmark Australian judicial decision was handed down.

Justice Kourakis of the South Australian Supreme Court made a declaration (H LTD v J & ANOR – [2010] SASC 176) that reconfirmed the right of a competent person to refuse medical treatment and to refuse food and fluid. Moreover, he directed that carers (in this case a nursing home) must abide by that decision. He also indicated that the carers did have a duty to provide oral hygiene to palliate pain and discomfort.

J was a 74 year old woman suffering from post-polio syndrome and Type 1 diabetes – she was in pain and dependent (confined to a wheelchair or bed) in a high-dependency nursing home. She had made an anticipatory direction (advance directive) that, if she were ever in the terminal phase of a terminal illness or in a persistent vegetative state, her medical practitioner was not to provide hydration and nutrition, but in that case she requested only palliative care even if that shortens her life.

She had written of her despair which she could no longer endure. Justice Kourakis stated that “it was his impression that J was a sensible person, who has formed a considered decision based on the importance to her of an independent and dignified life”.

He declared that “I find that refusal of sustenance and medication is not suicide within the common law meaning of the term”. That being so, doctors and nurses can (indeed must) provide palliative assistance to relieve any suffering associated with such a course of events. Such assistance cannot be considered to be aiding or abetting suicide in law (counter intuitive though this conclusion may be).

Justice Kourakis drew heavily on common law precedents from around the world (USA, UK, Canada, NZ and Australia) – in particular from Bland (UK), Hunter v A (NSW), and Rossiter (WA).

He also stated that an enduring guardian must “give medical decisions in accordance with any specified conditions of his or her appointment”.

The following conclusions may be drawn from this decision.

- 1. A competent person has a legal right to refuse food and fluid**
- 2. Carers are obliged to provide palliative mouth care**
- 3. Death as a result of refusing food and fluid is not suicide**
- 4. Palliative care for relief of suffering incurred cannot be construed as aiding or abetting suicide.**