THE RIGHT OF SELF-DETERMINATION: BRIGHTWATER CARE GROUP INC V ROSSITER

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I INTRODUCTION

While the case of *Brightwater Care Group (Inc) v Rossiter*[1] ('*Rossiter*') was closely followed by the media and held out as a case which affirmed the right to die, Chief Justice Martin observed in the opening lines of his judgment, that this was not a case 'about euthanasia ... [n]or is it about the right to life or even the right to death'.[2] His Honour regarded it as a case which sought determination as to what the legal obligation of a medical service provider was when the patient did not wish to continue receiving medical services, and which if discontinued would inevitably lead to the patient's death.[3] In arriving at his decision, Martin CJ affirmed the principle of self-determination and autonomy under both the common law and statutory provisions prevailing in Western Australia. He found that the new statutory provision was aimed at giving force and effect to the common law principle of autonomy and self-determination.[4] The *Acts Amendment (Consent to Medical Treatment) Act 2008* (WA) introduced a new subsection (2) to s 259 of the *Criminal Code 1913* (WA) ('the *Criminal Code*') which provided that a person is not criminally responsible for not administering or ceasing to administer medical treatment if it is reasonable, having regard to the patient's state and the circumstances.[5]

II THE FACTS

Mr Christian Rossiter ('Rossiter') was admitted to residential care facility for the disabled in November 2008. The facility was operated by the Brightwater Care Group ('Brightwater'). Rossiter was a quadriplegic as a result of a series of accidents over a 20 year period. He was totally

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1 *Brightwater Care Group (Inc) v Rossiter* [2009] WASC 229 (Unreported, Martin CJ, 14 August 2009).

2 Ibid [2].

3 Ibid [3].

4 Ibid [48].

5 The new statutory provision came into force on 27 June 2009; Ibid [36].

dependent upon others, and in particular upon those employed by Brightwater for 'the provision of the necessaries of life'.[6] Being unable to take nutrition and hydration orally, he has to take these through a percutaneous endoscopic gastronomy tube ('PEG'), which was inserted directly into his stomach. Although he was not terminally ill, he had been advised that there was no prospect that his condition would improve.

On many occasions, Rossiter clearly and explicitly indicated to staff at the facility as well as his own doctor that he wished to die. Lacking the physical capacity to bring about his own death, he repeatedly directed the staff at Brightwater to 'discontinue the provision of nutrition and hydration through the PEG'.[7] However, he also indicated that he wanted the PEG to be maintained 'for such hydration as is necessary to dissolve his painkilling medication to be provided.'[8] While Rossiter was aware that this would cause him to die from starvation, the extent of his knowledge of the precise physiological consequences of starvation was still in question.[9]

III Issues and Outcome

In more general terms, Chief Justice Martin identified the issue before the court as one which sought determination as to what were 'the legal obligations under Western Australian law of a medical service provider which has assumed responsibility for the care of a mentally competent patient when that patient clearly and unequivocally stipulates that he does not wish to continue to receive medical services which, if discontinued, will inevitably lead to his death.[10] In narrower terms, his Honour stated that the court had to decide whether 'Brightwater is legally obliged to comply with Mr Rossiter's direction or, alternatively, legally obliged to continue the provision of the services which will maintain his life.'[11]

In order to determine the issue before the court, it had to firstly consider whether Rossiter had the mental capacity to make a decision regarding his future medical treatment, which would involve being able 'to give a direction to discontinue the provision of nutrition and hydration'.[12] The court then had to consider whether Brightwater's 'compliance with Mr Rossiter's directions might result in criminal prosecution.'[13] A further

6 *Brightwater Care Group (Inc) v Rossiter* [2009] WASC 229 (Unreported, Martin CJ, 14 August 2009) [7].
7 Ibid [11].
8 Ibid [11].
9 Ibid [12].
10 Ibid [3].
11 Ibid [16].
12 Ibid [13].
13 Ibid [17].

issue to resolve was whether Rossiter's doctor could face criminal prosecution for prescribing medication 'for the purposes of sedation and pain relief as he [Rossiter] approaches death by starvation.'[14]

The court found that Rossiter had full mental capacity and the ability to communicate his wishes.[15] Chief Justice Martin examined the issue of acquiescing or complying with Rossiter's request to discontinue treatment necessary to sustain his life, from both the common law and statutory perspectives. He held that after Rossiter had been properly informed of the consequences of starvation, if he still wanted to cease treatment, Brightwater could not legally continue administering the treatment.[16] Chief Justice Martin also held that both Brightwater and Rossiter's doctor could not be held criminally responsible for Rossiter's death as they were afforded a full defence under the amended statute.[17]

A *Mental Capacity And Right of Self-Determination*

The main requirement for self-determination is that the person should have full mental capacity to make the decision.[18] A person is presumed to have mental capacity unless there is evidence to the contrary.[19] There was no evidence to disprove Rossiter's capacity. His doctor stated that he had the capability to comprehend and retain information relating to his treatment.[20] Evidence was also submitted from a neuropsychologist who had examined Rossiter that he was capable of making

> reasoned decisions concerning his own health and safety, and in particular, was capable of making decisions in respect of his future medical treatment after weighing up alternative options, and was capable of expressing reasons for the decisions which he made in that respect'.[21]

As Chief Justice Martin deemed it important that Rossiter fully understood the consequences of his decision, in his final order he made it a condition that Rossiter was to be given advice by a qualified medical practitioner about the effects of starving to death.[22] Rossiter was deemed to have full mental capacity and therefore the ability to exercise his right of self-determination in relation to his future medical treatment, including discontinuing it.[23]

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14 Ibid [21].
15 Ibid [13], [16].
16 Ibid [58].
17 Ibid [58].
18 Ibid [13], [16].
19 Ibid [13].
20 Ibid [13].
21 Ibid [14].
22 Ibid [58].
23 Ibid [16].

B *Complying with Rossiter's Request – The Common Law Position*

In determining whether, under the common law, Brightwater had to comply with Rossiter's decision to discontinue the provision of nutrition and hydration and medical treatment, Chief Justice Martin referred to two established principles. The first principle is that 'a person of full age is assumed to be capable of having the mental capacity to consent to, or refuse, medical treatment.'[24] The second principle is the right of autonomy and self-determination, which also includes the right to decide what can or cannot be done to a person's own body.[25] This principle underpins the legal requirement that a patient's informed consent is required before any medical treatment can be lawfully undertaken.

From these principles, Chief Justice Martin drew upon two corollaries. The first being that

> an individual of full capacity is not obliged to give consent to medical treatment, nor is a medical practitioner or other service provider under any obligation to provide such treatment without consent, even if the failure to treat will result in the loss of the patient's life.[26]

The second corollary is that a medical practitioner or service provider who provides treatment contrary to the wishes of a mentally competent patient would thereby commit a trespass against the patient's body.[27]

Relying upon the above the court held that at common law, Rossiter had a clear legal right to refuse the services and treatment provided by Brightwater, and that consequently Brightwater would be acting unlawfully if it continued to provide such services and treatment contrary to Rossiter's wishes.[28]

C *Complying With Rossiter's Request – Effect of Statute*

One of the major questions before the court was whether the clear position on self-determination at common law was altered by statute.[29] Chief Justice Martin examined s 262 and s 259 of the *Criminal Code*, which as mentioned earlier in the Introduction, contained a new subsection introduced by the *Acts Amendment (Consent to Medical Treatment) Act 2008* (WA). While s 262 established a duty to provide

24 Ibid [23].
25 Ibid [24].
26 Ibid [26].
27 Ibid [31].
28 Ibid [32].
29 Ibid [33].

the necessaries of life, s 259 dealt specifically with the administration of surgical and medical treatment.

Chief Justice Martin found that s 262 did not apply to the circumstances of this case as it was clearly aimed at the care of people who 'lack the capacity to control or direct their own destiny and to provide themselves the necessaries of life'.[30] Rossiter, while not able to physically control his destiny, was able to make informed decisions and give directions about his future care.[31] Further, having the financial capacity to control his future, Rossiter could also change service providers if the need arose.[32] Hence, the court concluded that s 262 did 'not impose upon Brightwater a duty to provide the necessaries of life to Mr Rossiter against his wishes.'[33] In arriving at this decision, the court observed that s 262 'should not be read as extending to the imposition of duties which would be unlawful at common law.'[34] This was based upon the strength of the principle of self-determination under the common law, which Chief Justice explained as follows:

> Given the strength of the principle of self-determination to which I have referred, it seems inherently unlikely that the Parliament intended such a drastic change when enacting s 262 in its current form, and I would only conclude that it was Parliament's intention to make such a drastic change if compelled to that conclusion by the clear and unequivocal language of the section. It seems to me that there is no such clear and unequivocal language in that section and that therefore the first answer to the proposition that s 262 might apply to the circumstances of this case is that the section should not be read as extending to the imposition of duties which would be unlawful at common law.[35]

Notwithstanding the above decision that s 262 did not apply to the case at hand, Chief Justice Martin went on further to state that even if he was wrong in holding that view, the newly introduced statutory provision, s 259(2), would in fact provide Brightwater 'with a good defence to any claim that it would contravene the *Criminal Code* by discontinuing treatment in accordance with Mr Rossiter's informed decision to that effect.'[36] On this point, he also made the following pertinent observations concerning the interaction of common law and statute law:

> It is therefore clear that the entire thrust of the legislation which resulted in the introduction of subsection (2) of s 259 was aimed at giving force and effect to the common law principle of autonomy and self-determination to which I have referred. It would be utterly inconsistent with that legislative objective to construe

30 Ibid [39].
31 Ibid [40], [41].
32 Ibid [41].
33 Ibid [42].
34 Ibid [38].
35 Ibid [38].
36 Ibid [43].

> s 259 as detracting from that common law position. Plainly, it was intended to give effect to it. This reinforces my view that s 259(2) of the Criminal Code provides Brightwater with a complete defence if they discontinue providing nutrition and hydration services at Mr Rossiter's request.[37]

Thus, the court confirmed that the statutory provisions were intended to give effect to the common law position on the right of self-determination, and not alter it.[38]

The court then went on to consider what it termed as 'the more difficult question'[39] in relation to the provision of palliative care to Rossiter following his withdrawal of consent to the provision of nutrition and hydration. This would fall under s 259(1).[40] This section exempts a person from criminal liability for administering medical treatment, including palliative care, to a person in circumstances that are reasonable. Chief Justice Martin outlined three general principles which applied to the issue under s 259(1):

1) Firstly, the legal rights and obligations relating to the provision of palliative care are unaffected by the circumstances in which the need for that care comes about. Thus, it would not matter that the occasion for the provision of palliative care comes about as a consequence of the patient's decision to discontinue treatment to sustain his life.[41]
2) Secondly, no question of breach arises where the palliative care is administered with the informed consent of the patient and it does not hasten the death of the patient.[42]
3) Thirdly, it is unlawful for any person, including health professionals, to administer medication for the purposes of hastening the death of another person.[43]

The court then concluded that as long as Rossiter's doctor complied with the terms and principles under s 259(1) he would not be criminally responsible for Rossiter's death.[44]

37 Ibid [48].
38 Ibid [48], [49].
39 Ibid [51].
40 Ibid [51]-[52], [35].
41 Ibid [52].
42 Ibid [53].
43 Ibid [54].
44 Ibid [55], [56].

IV Discussion

As mentioned in the Introduction, Chief Justice Martin stressed early in his judgment that he did not regard this case as one which deals with euthanasia,[45] or the right to life, or the right to die. However, this case has raised some questions as to whether it has affected the law in Australia in regards to euthanasia and the right to die.[46]

A *Mental Capacity and Right of Self-Determination*

In *Rossiter*, Chief Justice Martin emphasised the importance placed on the capacity of the person making the decision.[47] The right of self-determination only exists as long as a person has the capacity to make decisions regarding his or her future. It would appear in this case that mental capacity is not just the ability to make decisions. The person must also be able to weigh up various options and decide on what he or she believes to be the best course of action. The individual in question should understand the consequences of his or her decision, and in the case of Rossiter the consequences of starving to death. It appears that a person must be able to make a reasoned decision in light of all the information available. The right of self-determination is not simply a matter of the capacity to make decisions, but the ability to make informed and reasoned decisions. It was apparent to Chief Justice Martin that Rossiter was able to make an informed and reasoned decision. As he was a man unable to move or function on his own, and with no hope of improvement, his decision to die appears to be a choice not to extend his daily suffering and humiliation.

Each case is determined with regard to its own facts and circumstances - there is no blanket right to self-determination. Mental capacity could be labelled a pre-requisite for self-determination to exist. The case of *Hunter and New England Area Health Service v A*[48] ('*Hunter*') was decided only a couple of weeks before the decision of *Rossiter*.[49] In *Hunter* it was decided that a man could validly refuse to have the

45 The Penguin English Dictionary, 2nd ed (2003), 479 Robert Allen (ed) defines euthanasia as 'the act or practice of killing incurably sick or injured individuals for reasons of mercy'.

46 See for eg, George Williams, 'There are more humane ways to die than starving' The Sydney Morning Herald (Sydney), 25 August 2009.

47 *Brightwater Care Group (Inc) v Rossiter* [2009] WASC 229 (Unreported, Martin CJ, 14 August 2009) [16].

48 *Hunter and New England Area Health Service v A* [2009] NSWSC 761 (Unreported, McDougall J, 6 August 2009).

49 *Brightwater Care Group (Inc) v Rossiter* [2009] WASC 229 (Unreported, Martin CJ, 14 August 2009).

dialysis treatment that was keeping him alive.[50] The New South Wales Supreme Court found that the man had the mental capacity to make the decision.[51] One interesting element of *Hunter* was that there was some evidence that the man made his choice due to his religious beliefs.[52] However, as Justice McDougall said in *Hunter*, the reasons for a person's decisions are irrelevant.[53] In saying that, the lack of reasons for a decision may be taken into account when assessing the competence or validity of the decisions.[54] In *Rossiter*, the patient's general condition and the lack of any hope of improvement were the obvious reasons for Rossiter's decision. The neuropsychologist stated in her report that Rossiter was able to give reasons for his decision.[55] The high emphasis placed on mental capacity and the ability to make reasoned decisions is probably due to the controversial nature of the right to self-determination and the competing need to preserve life.

In another recent case on self-determination, *Australian Capital Territory v JT*,[56] an application to stop medical treatment, other than palliative care, was rejected. The man receiving treatment suffered from paranoid schizophrenia and was held therefore not mentally capable of making a decision regarding his treatment. The mental illness caused the patient to stop eating in an effort to get closer to God. He relied on intravenous methods of nutrition to survive. Chief Justice Higgins found that it would be unlawful for the service providers to stop providing treatment.[57] The Chief Justice distinguished this situation from *Rossiter*, as the patient lacked 'both understanding of the proposed conduct and the capacity to give informed consent to it'.[58] It is clear that mental capacity is the determining factor in cases relating to self-determination. Since the right of self-determination requires the ability to make an informed choice about the future, the requirement of mental capacity would be an obvious prerequisite.

Another aspect of mental capacity is that while Rossiter retains his capacity, he has the right to revoke his decision to stop receiving treatment at any

50 *Hunter and New England Area Health Service v A* [2009] NSWSC 761 (Unreported, McDougall J, 6 August 2009).
51 Ibid [54].
52 Ibid [55].
53 Ibid [15]; *Re T* [1992] 4 All ER 649.
54 *Hunter and New England Area Health Service v A* [2009] NSWSC 761 (Unreported, McDougall J, 6 August 2009) [15].
55 *Brightwater Care Group (Inc) v Rossiter* [2009] WASC 229 (Unreported, Martin CJ, 14 August 2009) [14].
56 *Australian Capital Territory v JT* [2009] ACTSC 105 (Unreported, Higgins CJ, 28 August 2009).
57 Ibid [66].
58 Ibid [29].

time.[59] This is an important element of the right of self-determination. It goes to the very principle that a person of sound mental capabilities is able to determine what should happen to his or her body. If a patient was only able to make a single irreversible decision about whether or not to receive treatment, then the right of self-determination would not really exist. Patients make decisions for varying reasons. Chief Justice Martin stated that Rossiter would need to re-affirm his decision to stop treatment after the trial,[60] as after receiving adequate information about the effects of starvation on the body, he may change his mind.

B *Complying With Rossiter's Request – The Common Law Position*

The case of *Rossiter*[61] affirms the existence of the right of self-determination. It does not create a right to life, or even a right to die.[62] This is a case about the right of a mentally capable person to decide what to do with his or her body. The right of self-determination has had a long history under the common law. In 1914, the case of *Schloendorff v Society of New York Hospital*[63] recognised that:

> Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent, commits an assault, for which he is liable in damages.[64]

Historically, this has given rise to much controversy. The right of self-determination has been weighed against the protection and sanctity of life.[65] The principle of self-determination has consistently won out.[66] Any decision exercising this right is a moral decision, rather than a medical one.[67]

The right to die does not exist in Australia under common law or statute. In 1995, the Northern Territory enacted the *Rights of the Terminally*

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59 *Brightwater Care Group (Inc) v Rossiter* [2009] WASC 229 (Unreported, Martin CJ, 14 August 2009) [57].

60 Ibid [57].

61 Ibid.

62 Ibid [2].

63 *Schloendorff v Society of New York Hospital* (1914) 211 NY 125.

64 Ibid, 129.

65 See, Lindy Willmott, 'Advance Directives and the Promotion of Autonomy: A Comparative Australian Statutory Analysis' (2010) 17 *Journal of Law and Medicine* 556, 556.

66 See, *Airedale National Health Service Trust v Bland* [1993] AC 789; *Re T* [1992] 4 All ER 649; *Hunter and New England Area Health Service v A* [2009] NSWSC 761 (Unreported, McDougall J, 6 August 2009).

67 See, Loane Skene, 'When Can Doctors Treat Patients Who Cannot or Will Not Consent?' (1997) 23(1) *Monash University Law Review* 77, 79.

Ill Act 1995 (NT), which allowed terminally ill people the right to die, but it was subsequently invalidated by the *Euthanasia Laws Act 1997* (Cth).[68] Euthanasia is a contentious issue that gives rise to a lot of ethical debate. The case of *Rossiter* was not about euthanasia,[69] although there have been claims to the contrary.[70] The case caused a re-emergence of the euthanasia debate, with many supporters of euthanasia claiming the outcome a victory for the cause.[71] However, there is a striking difference between wanting to be killed and simply accepting death.[72] The argument from euthanasia supporters is that if a patient is terminally ill, both withdrawing treatment and assisting them to die will have the same result. This argument does not take into account the means but only the end result.[73] From a legal viewpoint, this raises an interesting question, as one of the requirements of criminal law is that the accused must have the *mens rea* or intent to kill. If a medical practitioner actively helps someone to die, the medical practitioner would have the *mens rea* or intent to kill; however, if the medical practitioner simply withdraws treatment, the medical practitioner's only intent would be to comply with the patient's wish.[74]

Rossiter was not petitioning anyone to actively assist him to die. He was simply asking the carers at Brightwater to discontinue the provision of nutrition and hydration, which would ultimately lead to his death.[75] It is arguable that this decision to stop treatment is the same as the decision of a cancer patient to stop receiving chemotherapy. Rossiter was making a decision to stop a course of treatment, the result of which would be his death. This is not an issue of the right to life or the right to die, but the right of a mentally capable person to determine what is to be done to his or her body. It is an interesting debate, but in this author's opinion the decision to allow Rossiter to refuse medical treatment was not a step towards assisted euthanasia, but a confirmation of a long-standing common law right to determine what can be done to an individual's body.

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68 This overturned the NT legislation and prohibited the Australian Territories (ACT and NT) from enacting any legislation permitting euthanasia.

69 *Brightwater Care Group (Inc) v Rossiter* [2009] WASC 229 (Unreported, Martin CJ, 14 August 2009) [2].

70 See, James Maasdorp, 'Doctors Stopping Euthanasia Reform'(2009) ABC News Online, <http://www.abc.net.au/news/stories/2009/09/21/2692313.htm> at 29 August 2010.

71 Ibid.

72 Margaret A Somerville, 'Euthanasia by Confusion' (1997) 20(3) *University of New South Wales Law Journal* 550, 554.

73 Ibid, 557.

74 Ibid, 561.

75 *Brightwater Care Group (Inc) v Rossiter* [2009] WASC 229 (Unreported, Martin CJ, 14 August 2009) [11].

Despite the right of self-determination being firmly entrenched in Australia's legal system, in practice doctors are often reluctant to follow a patient's wishes.[76] There are several justifications provided for treating a patient who is unable to refuse treatment.[77] The first is the common law doctrine of emergency, whereby the doctor must believe on reasonable grounds that the treatment is essential to prevent some serious and imminent threat to the patient's life.[78] There may also be a claim that the treatment was necessary, where the patient is unable to provide consent.[79] However, while these exceptions may apply to a patient who is unable to consent to treatment, it is a different matter when dealing with a competent patient.[80] Rossiter was found by the court to be competent to make decisions concerning his medical treatment; therefore, these exceptions would not have been available in this case.

C *Complying with Rossiter's Request - The New Statutory Provisions*

In *Rossiter*, Chief Justice Martin made a detailed examination of the new statutory provisions introduced by the *Acts Amendment (Consent to Medical Treatment) Act 2008* (WA), particularly s 259(2).[81] This section establishes a statutory protection for the service providers in situations similar to that of Brightwater. Medical practitioners have been reluctant to cease life-saving treatment on the basis of the protection afforded them at common law.[82] In looking at s 259(2) Chief Justice Martin referred to the second reading speech in Parliament given by the Hon Jim McGinty in support of the Bill:

> The principle of personal autonomy is central to the bill… The bill, however, will not change the position at common law whereby a health professional is under no obligation to provide treatment that is not clinically indicated. In other words, although a patient, or someone on the patient's behalf, will be entitled to refuse lawful treatment, there will still be no legal entitlement by a patient to demand treatment.[83]

It is clear from this statement that the common law right of self-determination has been upheld and reinforced by the statute.

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76 Skene, above n 67, 81.
77 Skene, above n 67, 81.
78 Skene, above n 67, 81.
79 Skene, above n 67, 82; see also *Re F* [1990] 2 AC 1.
80 Skene, above n 67, 84.
81 *Criminal Code 1913* (WA).
82 Willmott, above n 65, 563.
83 Explanatory Memorandum, *Acts Amendment (Consent to Medical Treatment) Act 2008* (WA) s 4061b; *Brightwater Care Group (Inc) v Rossiter* [2009] WASC 229 (Unreported, Martin CJ, 14 August 2009) [47].

Both Brightwater and Rossiter's doctor sought declaratory relief to avert criminal conduct. Chief Justice Martin gave declaratory relief on the basis that Brightwater and Mr Rossiter's doctor would not be criminally responsible under the *Criminal Code*.[84] Many of the provisions in the *Acts Amendment (Consent to Medical Treatment) Act 2008* (WA) deal with the increasingly common creation of 'living wills'. 'Living wills' allow patients to give directions as to the course of medical treatment, which must be followed after the patient loses mental or physical capacity.[85] It would therefore follow that while a person has mental capacity they have the right to direct his or her treatment. Section 259(2) of the *Criminal Code* provides a complete defence to those who cease to provide medical care to a patient. The section provides that it must be reasonable to cease the provision of treatment having regard to the circumstances and the patient's state. This section may provide a defence for care givers; however it will probably not prevent cases being brought before the courts. The question of whether a decision was reasonable requires an examination of the circumstances and the patient's state and these are all issues that turn on the facts of each individual case. The common law right of self-determination may be injected into statute law by this provision, but the examination of each individual case must still occur.

The doctor was afforded protection under s 259(1) of the *Criminal Code*. The provision of palliative care was not altered by the circumstances that brought about the need for that care.[86] The right of self-determination does not mean that a person has to suffer when he or she chooses to stop receiving treatment that is keeping him or her alive. It would be inhumane if this were the case. Rossiter was able to continue receiving pain medication and even receive medication particularly designed to help prevent him suffering from the process of starvation. The doctor would be in breach of the law if he were to administer medication that would cause or hasten Rossiter's death.[87] But ensuring that Rossiter was not in pain and allowing him to die with dignity is not a breach of the law.

V Conclusion

Christian Rossiter died five weeks after the conclusion of the trial. The case of *Rossiter* has provided a solid framework for the right of self-determination. The test of mental capacity is established as a prerequisite for the right to exist. Other recent cases have confirmed this approach.

84 *Brightwater Care Group (Inc) v Rossiter* [2009] WASC 229 (Unreported, Martin CJ, 14 August 2009) [42], [58].

85 Ibid [45].

86 Ibid [52].

87 Ibid [54].

The examination of the new statutory provisions under the *Acts Amendment (Consent to Medical Treatment) Act 2008* (WA) confirms the clear common law position on the right of self-determination. The right to self-determination does not de-value life. It places an emphasis on recognising that individuals can make choices regarding their own bodies. It does not allow a patient to receive euthanasia, but to decide whether or not to receive medical treatment. It would appear that while the right to life or the right to die are elusive, the right of self-determination is well-entrenched in the Australian system of law.