MARTIN CJ: As I indicated, I will give my decision now. Obviously, I have had to prepare these reasons on the run to some extent so I reserve the right to edit them prior to formal publication and I will insert the case references for the propositions that I will be advancing, which I won't read out now. I could also advise that the transcript of these proceedings and of this decision will be published on the Supreme Court web site, hopefully within a couple of hours, and I would invite the media present to advise readers, listeners and viewers of that fact so that anybody who wants to inform themselves of the full reasons for my decision can do so by accessing that web site.

It is important I think to emphasise at the outset what this case is not about. It is not about euthanasia. Nor is it about physicians providing lethal treatments to patients who wish to die. Nor is it about the right to life or even the right to death. Nor is the court asked to determine which course of action is in the best interests of a medical patient. The only issue which arises for determination in this case concerns 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.

I will set out the particular circumstances in which that question arises in this case by identifying the findings of fact which I make on the basis of the evidence which has been produced and which is largely uncontested. The proceedings have been brought by Brightwater Care Group (Inc). Brightwater operates a facility in Marangaroo, a suburb of Perth, which provides residential care for people with disabilities. The defendant, Mr Christian Rossiter, was admitted to Brightwater's facility on 4 November 2008. Since then Brightwater has assumed the responsibility of providing all necessary services to Mr Rossiter, in conjunction with Mr Rossiter's treating medical practitioner, Dr Richard Benstead.

Mr Rossiter is quadriplegic. Over about 20 years he has suffered three serious injuries, which have combined to cause that condition. In about 1988 he fell approximately 30 metres from an apartment in Sydney, as a result of which he suffered head and other injuries. He made a substantial recovery from those injuries with the assistance of rehabilitation programs. However, in 2004 he sustained cervical spine injury following a collision with a motor vehicle whilst he was riding a bicycle.

During 2008 he suffered two further falls, one whilst visiting his mother at her nursing home and the second in

kitchen of his mother's house in Joondalup on or about 3 March 2008. This last fall caused his spastic quadriplegia. Following that fall he was admitted to the Joondalup Health Campus. He was then transferred to Sir Charles Gairdner Hospital on 8 March 2008. He was transferred from that hospital to the Brightwater facility on 4 November 2008, as I have mentioned, and he has remained at that facility since then.

As a consequence of his injuries, Mr Rossiter is generally unable to move. The extent of his capacity to move is limited to limited foot movement and the ability to wriggle one finger. He is only able to talk through a tracheotomy. He is totally dependent upon others, generally those employed by Brightwater, for the provision of the necessaries of life. The services which he requires include regular turning, cleaning, assistance with bowel movements, physiotherapy, occupational therapy and speech pathology.

Mr Rossiter is unable to take nutrition or hydration orally. The nutrition and hydration which he requires in order to survive is provided by way of a percutaneous endoscopic gastrostomy tube. That is a tube which has been inserted directly into his stomach by way of surgical intervention. Appropriate nutrition and hydration, determined in accordance with medical protocols, is provided to Mr Rossiter by Brightwater staff through that tube, and I will describe that process by its acronym, the acronym for the tube, which is PEG.

Mr Rossiter is not terminally ill, nor is he dying. If the services to which I have referred are maintained, he could continue to live for many years. However, he has been advised that there is no prospect that his condition will improve and in some respects, for example, in relation to his eyesight, his condition is deteriorating.

This clinical description of Mr Rossiter's condition fails to adequately convey the tragedy of his present circumstances, nor does it recognise the sympathy which any reasonable person would properly have for Mr Rossiter and the predicament in which he finds himself.

These matters are, of course, profoundly significant at a human level, but for reasons which I will explain they are irrelevant to the legal issues which I am required to determine. My lack of reference to these matters in the balance of my reasons should not be construed as any lack of appreciation of the significance of these matters to Mr Rossiter, but my task is to apply the law as dispassionately as I can.

Mr Rossiter has clearly and unequivocally indicated to representatives of Brightwater and to Dr Benstead that he wishes to die on many occasions. However, because of the limitations upon his movements to which I have referred, he lacks the physical capacity to bring about his own death. He has therefore directed the staff of Brightwater to discontinue the provision of nutrition and general hydration through the PEG.

He has repeated that direction on a number of occasions and maintains, through his evidence and through his counsel, that he requires that service to be discontinued. However, he wishes the PEG to be maintained and for such hydration as is necessary to dissolve his painkilling medication to be provided. Where in these reasons I refer to the withdrawal of hydration, I mean general hydration not including the limited hydration which Mr Rossiter wishes to continue to receive.

Mr Rossiter is aware that he will die from starvation if nutrition and hydration is no longer administered through the PEG. The evidence of Dr Benstead is that he has described to Mr Rossiter as best as he can the physiological consequences which will ensue during the process of starvation. However, in a statement given to his legal advisers Mr Rossiter asserted that apart from what he had read, he had received no specific advice on the effects of starving to death.

He augmented that statement in his evidence before me to refer to advice he had received from Dr Colin Eagle, who is a friend of his, but it is not clear from that evidence that his advice covered all aspects of the physiological consequences of discontinuing the provision of nutrition and hydration. This is a matter to which I will return.

Mr Rossiter is assumed to have the mental capacity to give a direction with respect to continued treatment unless and until there is evidence which would suggest that he lacks that capacity. There is no such evidence in this

case. On the contrary, Dr Benstead deposes that based upon his observations of Mr Rossiter, he has the capacity to comprehend and retain information given to him in relation to his treatment and has the capacity to weigh up that information and bring other factors and considerations into account in order to arrive at an informed decision.

Also in evidence is a report from Dr Rachel Zombor who is a clinical neuropsychologist. That report is dated 19 February 2009. In that report Dr Zombor sets out the various observations which she made during her neuropsychological assessment of Mr Rossiter and the tests which she administered.

As a result of those observations and the results of the tests she administered, she concluded that Mr Rossiter 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.

She also reported that in her view Mr Rossiter unequivocally demonstrated that he understood the consequences of withholding the provision of nutrition and hydration through the PEG and displayed insight into the consequences of that decision.

Although Mr Rossiter was previously the subject of a guardianship order made under the Guardianship and Administration Act 1990, on 10 March 2009 the State Administrative Tribunal revoked that order. This case therefore lacks many of the factors which have complicated other cases in this area. Mr Rossiter is not a child, nor is he terminally ill, nor dying. He is not in a vegetative state, nor does he lack the capacity to communicate his wishes.

There is therefore no question of other persons making decisions on his behalf. Rather, this is a case in which a person with full mental capacity and the ability to communicate his wishes has indicated that he wishes to direct those who have assumed responsibility for his care to discontinue the provision of treatment which maintains his existence.

The question I am asked to decide is whether in those circumstances 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.

Each of Brightwater and Mr Rossiter ask the court to make declarations with respect to their respective rights and obligations. In the case of Brightwater, their concern

includes the prospect that compliance with Mr Rossiter's directions might result in criminal prosecution. Declaratory relief is sought to avert that prospect.

The court will only grant declaratory relief in respect of the criminality of a proposed course of conduct in exceptional circumstances. That approach is taken for a number of sound reasons, including the fact that whether or not conduct is criminal may depend critically upon a range of precise facts and circumstances which cannot always be accurately estimated in advance.

Another reason for this approach is that in our system of justice the determination of whether particular conduct is criminal or not is, in serious cases, generally left to a jury, not a judge, but the cases recognise that in exceptional circumstances declarations may be made in respect of conduct that could be the subject of criminal charges. Those cases also establish that in this respect there is a vital distinction between making a declaration with respect to the lawfulness of conduct which is proposed but has not occurred, and making a declaration as to whether or not conduct which has occurred constitutes a criminal offence.

Declarations in respect of proposed future conduct add to the practical utility of the court's exercise of this jurisdiction, but a declaration in respect of conduct which has occurred has little practical utility and would usurp the jurisdiction and role of the criminal courts and for those reasons will not ordinarily be made.

The exceptional nature of the jurisdiction I am exercising imports two significant constraints. They are, firstly, I should only answer questions directly and explicitly raised by the facts of this particular case and refrain from making any observations with respect to any other hypothetical scenarios. Secondly, I should only grant declaratory relief if I am satisfied that I have received all the evidence which is relevant to the issues to be determined and all the facts necessary to determine the issues which arise have been established to an appropriate level of satisfaction.

If I conclude that Brightwater is legally obliged to comply with Mr Rossiter's informed direction there is a subsidiary question which I am also asked to determine. That is because Mr Rossiter wishes Dr Benstead to prescribe analgesics for the purposes of sedation and pain relief as he approaches death. Dr Benstead is concerned that he might face criminal prosecution in the event that he prescribes medication for those purposes and to that end Brightwater also seeks declaratory relief on that issue. For reasons which I will give, that subsidiary issue seems to me to raise more complex questions than the primary question which I am asked to resolve.

I will deal now with the position at common law. Leaving to one side the statutory provisions relevant to these issues in Western Australia, the answer to the primary question posed in this case at common law is, I think, clear and unambiguous. That answer comes about as a consequence of a number of well-established principles.

The first is that a person of full age is assumed to be capable of having the mental capacity to consent to or refuse medical treatment. That presumption applies in this case but in any event, as I have mentioned, there is direct medical evidence which establishes to my satisfaction that Mr Rossiter has the mental capacity necessary to make an informed decision in respect of the future provision of treatment and, if provided with the necessary information, could do so with a full appreciation of the consequences of that decision.

Another principle well established at common law is the principle which has been described in the cases as the right of autonomy or self-determination. Lord Hoffmann has described this right as being related to respect for the individual human being and in particular for his or her

right to choose how he or she should live his or her life. Included within this right of autonomy or self-determination is the right described as long ago as 1914 in the United States by Cardozo J as the right of, "Every human being of adult years and sound mind to determine what shall be done with his own body."

That right has been recognised in a number of cases in Australia and referred to with approval by the High Court of Australia. That right also underpins the established legal requirement that the informed consent of the patient is required before any medical treatment can be undertaken lawfully. That principle has been affirmed by the High Court on a number of occasions.

The corollary of that requirement is of course 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. That principle has been established by decisions in each of the major common law jurisdictions including the United States, Canada, United Kingdom, New Zealand and Australia. I will give the references to those cases in my published decision.

The principle is applied without regard to the reasons for the patient's choice and irrespective of whether the reasons are rational, irrational, unknown or even nonexistent. However, the conflict in the evidence on the extent to which Mr Rossiter has been informed of the precise aspects and effects of the physiological deterioration which will occur during the process of starvation raises a question on the extent to which the decision to refuse to consent to treatment must be an informed decision.

In Hunter and New England Area Health Service v A, a decision delivered very recently, McDougall J rejected the notion that a refusal to consent had to be informed to be effective, but that was in the context of an advance directive given by a person who at the time of the court hearing lacked the capacity to receive further information or to make any further decision.

The circumstances of this case are quite different. Mr Rossiter has the capacity to receive and consider information he is given and to make informed decisions after weighing that information. Also relevant is the fact that Brightwater have assumed responsibility for providing nutrition and hydration through the PEG for quite some time now, so the question is whether there should be a change in that regime.

As I have mentioned, it is clearly established that medical practitioners have a legal duty to inform patients of all aspects and risks associated with any medical procedure at the time of or before seeking their consent to such a procedure. With respect to McDougall J, in the circumstances of this case where it is perfectly feasible to ensure that Mr Rossiter is given full information as to the consequences of any decision he might make to discontinue treatment before he makes that decision, I can see no reason why his medical service providers should not be under a similar obligation.

This view is consistent with views which have been expressed in the English and Canadian cases to which I have referred where emphasis is placed on the need for an informed decision to discontinue life support. There will obviously be cases in which it is not possible to obtain such an informed decision but this is not one of them and consistently with the general constraints to which I referred earlier I will refrain from proffering any view as to what should be required in such cases. At the moment, on the current state of the evidence before me, there is some doubt as to whether Mr Rossiter has been given the information that he would need to be fully informed on these issues.

Another corollary of the principles to which I have referred is that a medical practitioner or a service provider who provides treatment contrary to the wishes of a mentally competent patient breaks the law by committing a trespass against the person of that patient. It follows from these principles that at common law the answers to the questions posed by this case are clear and straightforward. They are to the effect that Mr Rossiter has the right to determine whether or not he will continue to receive the services and treatment provided by Brightwater and at common law Brightwater would be acting unlawfully by continuing to provide treatment contrary to Mr Rossiter's wishes. In the particular circumstances of this case, in my view, Brightwater has a duty to ensure that Mr Rossiter is offered full information on the precise consequences of any decision to discontinue the provision of nutrition and hydration prior to him making that decision.

I turn then to answer the question of whether that position at common law has been altered by any relevant statutory provisions in force in Western Australia. The provisions to which the parties have pointed are those to be found within the Criminal Code. Prominent amongst them is section 262 - I won't read it out now; it will be available to anybody who wants to look at it through the Web - but that section must also be read in conjunction with section 259 of the code, which makes specific provision in relation to surgical and medical treatment.

There is, I think, no doubt that the nutrition and hydration provided to Mr Rossiter through the PEG is surgical or medical treatment within the meaning of section 259. The tube was inserted by surgical means and the precise mix of nutrition and hydration is supplied in accordance with medical principles and protocols. This conclusion is consistent with views expressed in cases in other jurisdictions. It is, I think, of considerable significance to the resolution of the issues in this case that section 259 was amended by the Acts Amendment (Consent to Medical Treatment) Act 2008. Indeed, subsection (2) of section 259 only came into operation on 27 June 2009, and I will explain the significance of that amendment a little later.

There are other provisions of the Criminal Code which could come into operation if section 262 is construed as imposing upon Brightwater a legal duty to continue to provide Mr Rossiter with the necessaries of life even if he directed them not to. For example, if section 262 has the effect of imposing such a duty on Brightwater, it may be arguable that breach of that duty would lead to the conclusion that Brightwater had caused the death of Mr Rossiter within the meaning of section 270 or section 273 of the code, with the consequence that the

homicide provisions of the code, including sections 268 and 277, might apply. Further, section 304 might also apply. That section provides that if a person omits to do any act that it is the person's duty to do as a result of which the life, health or safety of any person is likely to be endangered, that person is guilty of a crime.

I digress to observe that if section 262 of the code is to be construed as imposing a legal duty to provide medical treatment against the wishes of a mentally competent patient, it would represent a drastic alteration of the common law position to which I have referred. That is because it would require a medical service provider, who is under a common law duty to not provide services against the wishes of a patient, to provide services against that patient's wishes or face criminal prosecution for not doing so.

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 section 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 section 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.

I haven't been able to find any previous cases dealing with the scope and application of section 262 or any similar statutory provision in circumstances such as these. On a superficial reading of the section, it might be thought to apply to this case and to impose a duty on Brightwater to provide Mr Rossiter with the necessaries of life irrespective of Mr Rossiter's wishes. That's because the section appears to apply in circumstances where a person has charge of another who is by reason of sickness unable to withdraw himself from such charge and is unable to provide himself with the necessaries of life.

However, upon a more considered reading, it is I think clear that the section is aimed at a wide variety of circumstances in which, by reason of age, sickness, mental impairment, detention or any other cause, a person lacks the capacity to control or direct their own destiny and to provide themselves with the necessaries of life. Put another way, it seems to me that in section 262 the reference to a person "having charge of another" is a reference to a person who, by reason of one or more of the various disabilities identified in the section, lacks the capacity to direct or control their own destiny and is

therefore dependent upon the person "having charge" of them.

Mr Rossiter lacks the physical capacity to control his own destiny but enjoys the mental capacity to make informed and insightful decisions in respect of his future treatment. In that respect, it seems to me that he is not relevantly within the charge of Brightwater, rather, Brightwater is in that respect, consistent with the well-established duties at common law to which I have referred, subject to Mr Rossiter's direction.

There might be another reason why section 262 might have no application to the circumstances of this case. Mr Rossiter has the capacity to give directions as to his future care and it seems may have the financial capacity to implement those directions. There would be nothing to prevent him from finding another service provider and discharging himself from Brightwater and into the care of that other provider. If that were the case he would not, therefore, be a person who is unable to withdraw himself from the charge of Brightwater but I lack the evidence to arrive at any final conclusions on this aspect of the possible application of section 262.

For the reasons that I have given, I have concluded that section 262 of the code does not in the circumstances of this case impose upon Brightwater a duty to provide the necessaries of life to Mr Rossiter against his wishes. Even if I am wrong in that view, in my opinion section 259 of the code provides Brightwater with a good defence to any claim that it would contravene the Criminal Code by discontinuing treatment in accordance with Mr Rossiter's wishes. Subsection (2) of that section specifically provides that a person is not criminally responsible for not administering medical treatment if that course is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

Plainly, the phrase "all the circumstances of the case" is quite broad enough to include the expressed wishes of a mentally-competent patient. Having regard to the common law principle of self-determination to which I have referred, it is clearly reasonable to act in accordance with the expressed wishes of a mentally-competent patient who refuses to consent to medical treatment. That proposition is strongly reinforced by other provisions of the act which caused subsection (2) to be introduced into the code, which were all aimed at providing measures sometimes described as "living wills," whereby persons are given the legal capacity to give directions as to the course of medical treatment which is to be followed after they lose mental or physical capacity.

Many of those provisions have not yet been proclaimed but their enactment provides clear guidance to the intention of the legislature when enacting subsection (2) of section 259. It would be utterly inconsistent with the

philosophy evident in that legislation to construe subsection (2) of section 259 in any other way than as reflecting the right of a patient to give directions in respect of their medical treatment and as recognising the legal obligation in medical service providers to not provide services contrary to those directions.

If and to the extent that it's said that there's any ambiguity in the terminology used in subsection (2) of section 259, it's appropriate and legitimate to have regard to the parliamentary debates at the time of its enactment. In the second reading speech given in support of the bill, the Honourable Jim McGinty said:

> The principle of personal autonomy is central to the bill. The bill establishes a simple, flexible scheme whereby persons can ensure that, in the event that they become mentally incompetent and require medical treatment for any condition, including a terminal illness, their consent or otherwise to specified treatment can be made clear in an advance health directive or, alternatively, treatment decisions can be made by an enduring guardian chosen by them. 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.

It is therefore clear that the entire thrust of the legislation which resulted in the introduction of section (2) of section 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 objection to construe section 259 as detracting from that common law position. Plainly, it was intended to give effect to it. This reinforces my view that section 259 subsection (2) of the code provides Brightwater with a complete defence if they discontinue providing nutrition and hydration services at Mr Rossiter's request.

I, therefore, conclude that the statutory provisions to which I have referred do not in any way alter the clear position established pursuant to the common law principles to which I have referred. It follows to me that it seems to me to be absolutely clear that, after he has been provided with full information with respect to the consequences of any decision he might make, Mr Rossiter has the right to determine and direct the extent of the continuing treatment he receives, in the sense that treatment cannot and should not be administered against his wishes. If, after the provision of full advice, he repeats

his direction to Brightwater that they discontinue the provision of nutrition and hydration to him, Brightwater is under a legal obligation to comply with that direction.

In the course of submissions reference has been made to the possible application of subsection (1) of section 259 of the code and in particular to the proposition that this subsection might provide Brightwater with a defence to any claim or charge brought as a consequence of the provision of medical treatment to Mr Rossiter against his wishes in the past.

It would be entirely inappropriate for me to express any view on that issue. As I have mentioned, while declarations are sometimes given in respect of the criminality of proposed future conduct, directions are not generally made in respect of the criminality of conduct which has already taken place.

To do so would entirely usurp the criminal process and the possible role of a jury, and in any event the expression of a view by me on that subject would depend upon findings of fact with respect to the precise circumstances in which medical treatment has been provided in the past and I do not have adequate evidence before me to enable me to make those findings.

This brings me to the more difficult question of the provision of palliative care to Mr Rossiter if and when he withdraws his consent to the continued provision of nutrition and hydration. That issue squarely raises the prospective application of subsection (1) of section 259 and in particular that portion of the subsection which refers to the provision of palliative care.

There are, I think, a number of general principles which can be confidently stated in relation to this issue. The first is that the legal rights and obligations relating to the provision of palliative care are unaffected by the circumstance that the occasion for the provision of that care comes about as a consequence of Mr Rossiter's withdrawal of consent to the continuing provision of other medical treatment; namely, the provision of nutrition and hydration.

Put another way, Dr Benstead's rights and obligations or the right of any other medical practitioner treating Mr Rossiter with respect to the provision of palliative care if and when Mr Rossiter directs Brightwater to discontinue the provision of nutrition and hydration are no different to the obligations which attend the treatment of any other patient who may be approaching death.

Even more specifically, in my view there is no reason why section 259(1) would not apply to the provision of palliative care to Mr Rossiter even though the occasion for the provision of that palliative care might come about as a consequence of Mr Rossiter's informed decision to discontinue the treatment necessary to sustain his life.

The second general principle that I think can be stated with confidence is that if and to the extent that palliative care is administered with the informed consent of the patient and does not have the effect of causing or hastening the death of that patient, no question of breach of legal obligation arises. The third general principle which can be stated is that it is unlawful for any person,

including any health professional, to administer medication for the purpose of causing or hastening the death of another person.

It will be seen that the general principles which I have enunciated cover the ends of a spectrum of possible facts and circumstances. Within that spectrum is a vast range of other possible facts and circumstances. They include the circumstance in which medication might be administered for the dominant purpose of relieving pain or easing discomfort but which might have the incidental effect of hastening death.

The application of the provisions of subsection (1) of section 259 of the Criminal Code within that spectrum of possible facts and circumstances will depend critically upon the particular facts and circumstances of the individual case. I have insufficient evidence before me to make any findings with respect to the particular facts and circumstances that might apply to the administration of palliative care to Mr Rossiter if and when he gave a direction to Brightwater to discontinue the provision of nutrition and hydration.

It seems to me, therefore, that I should not grant any specific declaratory relief in relation to those issues other than to declare that any person providing palliative care to Mr Rossiter on the terms specified in subsection (1) of section 259 would not be criminally responsible for providing that care notwithstanding that the occasion for its provision arises from Mr Rossiter's informed decision to discontinue the treatment necessary to sustain his life.

However, I would hope that the general principles that I have enunciated in that general declaration would provide sufficient guidance to Dr Benstead and any other medical practitioner treating Mr Rossiter to enable them to provide appropriate palliative care to Mr Rossiter if and when the occasion for that care arises.

Finally, I would observe that although the evidence establishes that Mr Rossiter has on a number of occasions in the past directed Brightwater to cease the provision of nutrition and hydration, the question of whether or when he repeats such an instruction after this ruling and after the issue of the extent of the information given to him on the consequences of such a direction has been put beyond doubt by the provision of advice to him on that subject - that those are entirely matters for Mr Rossiter.

I would also observe that any such direction given by him would not be irrevocable and while Mr Rossiter retains his capacities it could, of course, be revoked by him at any time. It follows that the precise terms of any

declaratory relief granted in order to give effect to these reasons should take account of those contingencies.

I will hear from the parties as to the declarations which should be made so as to give effect to these conclusions, but in order to get the ball rolling I will enunciate some tentative declarations that occur to me to give effect to the views which I have formed and I do so by reference to Brightwater's amended minute of summons. One possible formulation of the declaratory relief could be in the following terms:

If after the defendant -

that is of course a reference to Mr Rossiter:

> If after the defendant has been given advice by an appropriately qualified medical practitioner as to the consequences which would flow from the cessation of the administration of nutrition and hydration, other than hydration associated with the provision of medication, the defendant requests that the plaintiff cease administering such nutrition and hydration, then the plaintiff may not lawfully continue administering nutrition and hydration unless the defendant revokes that direction, and the plaintiff would not be criminally responsible for any consequences to the life or health of the defendant caused by ceasing to administer such nutrition and hydration to him.

I would also perhaps incline to the grant of a second declaration in the terms that:

> Any person providing palliative care to Mr Rossiter on the terms specified in section 259(1) of the Criminal Code would not be criminally responsible for providing that care notwithstanding that the occasion for its provision arises from Mr Rossiter's informed decision to discontinue the treatment necessary to sustain his life.

Are counsel in a position to respond to those formulations now or would you like me to adjourn to give consideration to them?

BLACK, MS: I have no difficulty with the declarations your Honour has proposed so I don't need to comment further.

MARTIN CJ: Thank you. Mr Mitchell?

MITCHELL, MR: I have no further comment.

MARTIN CJ: Mr Allanson?

ALLANSON, MR: Your Honour, we would commend declarations being made in those terms.

MARTIN CJ: Very well. Is there anything else that I need to deal with?

BLACK, MS: No, there's no other matters.

MARTIN CJ: Very well. There will be declarations granted in those terms and, as I say, hopefully those reasons will be available electronically during the course of the afternoon. It only remains for me to wish Mr Rossiter well and to thank you for your attendance today. Good luck, Mr Rossiter. The court will now adjourn.

AT 12.44 PM THE MATTER WAS ADJOURNED ACCORDINGLY