



STUART GRIMLEY MP

Member for Western Victoria
State Leader of Derryn Hinch's Justice Party

MEDIA RELEASE



Grimley Introduces Voluntary Assisted Dying Bill to Address Issues on Telehealth and Permanent Residency Interpretation

Embargoed until 12am Tuesday 4 May 2021

State Leader of Derryn Hinch's Justice Party Stuart Grimley will today introduce a Bill to the Legislative Council of Victorian Parliament to change the *Voluntary Assisted Dying Act 2017* (VAD Act).

The *Voluntary Assisted Dying Amendment (Telehealth and Other Matters) Bill 2021* aims to address two concerns:

1. Telehealth – allowing doctors to use telehealth to conduct all requests and correspondence about voluntary assisted dying, except the first request which is required to be in person
2. Permanent residency – redefining a 'permanent resident' (for the purposes of the VAD Act) as someone who has lived in Australia for three years, as opposed to holding a permanent residency visa, which is the current interpretation in the Act*

The Federal Criminal Code currently states that it is illegal to "incite or counsel" another person to commit suicide through online communication – this was brought in due to cyber bullying through emerging online technologies. However its interpretation may now conflict with Victoria's Voluntary Assisted Dying Act, so there has been argument that registered doctors could potentially be breaching the code by consulting on VAD with patients.

According to stakeholders, including some registered practitioners, the inability to conduct VAD by telehealth has had huge implications on the uptake of co-ordinating medical practitioners (registered doctors for VAD).

The latest VAD Review Board report of operations (for July-Dec 2020) showed 36 per cent of applicants were from regional Victoria yet there is an unresolved issue of specialists located in regional and rural areas which are often required to satisfy the many safeguards within the legislation.

The Bill now explicitly allows all requests, except the first request, to be made by audio-visual means where "it is not practicable" for the request or consultation to be made in person. The first request will now be legislated to be in person to ensure no coercive behaviour is involved in the VAD process.

The definition of permanent residency has been interpreted as that from the Federal Migration Act Regulations, requiring the person accessing VAD to hold a permanent residency visa. This has restricted those who have lived in Australia (and Victoria) for many years from accessing VAD. One example, John Doe, had lived in Australia for 14-15 years and hadn't left Australia in the 10 years preceding his application. He had been a homeowner for nine years and had not left Victoria for two years as well. This is impractical and restrictive.

Mr Grimley acknowledged there are still other issues with the Voluntary Assisted Dying Act, including situations where a registered practitioner doesn't feel comfortable in administering the lethal VAD



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substance (but indemnity is limited in its passing onto nurses), but that this Bill was a first step to urgently address two issues.

Further Mr Grimley acknowledged the Minister's legislated requirement to conduct a review in 2022 of the VAD Act, but says the Act isn't performing as it should and so needs urgent addressing.

*The eligibility criteria in the current Act will still apply including being of sound mind, living in Victoria for at least 12 months and being ordinarily a resident in Victoria among other criteria.

Quotes Attributable to Stuart Grimley MP:

"This Bill will encourage more regional and rural doctors and specialists to sign up to voluntary assisted dying care, with the threat of persecution from telehealth consultations all but removed.

I am still encouraging the Federal Government to review their Criminal Code and 'get with the times' on this. Voluntary euthanasia and telehealth are both part of our future and here to stay.

If you have lived in Australia for more than three years and for all intents and purposes are an Australian but don't hold a permanent residency *visa*, you shouldn't be stopped from accessing VAD.

I'd like to thank Derryn Hinch; a long time advocate for dying with dignity. I'd like to also thank Dying With Dignity Victoria for their support and assistance with this Bill."

Comments attributable to Dying with Dignity Victoria President, and several doctors are below.

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***Voluntary Assisted Dying Amendment (Telehealth and Other Matters) Bill 2021* Explainer/Backgrounder:**

The Bill itself is attached for your perusal, however the Bill deals with two main issues:

1. Telehealth – allowing doctors to use telehealth for all requests/correspondence except the first request
2. Permanent Residency definition allowing those who have lived in Australia for 3 years to access VAD in Victoria

Telehealth Amendments:

Currently there is an issue of conflict between the Voluntary Assisted Dying Act 2017 (VAD Act) and the Federal Criminal Code Act 1995 (FCCA) (specifically Division 474.29A and 474.29B).

COVID-19 introduced an increased reliance on (and sometimes, no other option than to participate in) telehealth for health consultations. This included those receiving advice and information to participate in Voluntary Assisted Dying (VAD) and also to satisfy some of the many safeguards (for example, to meet with a number of independent doctors to make sure the participant is of sound mind).

However, The Federal Criminal Code Act 1995 (through the Criminal Code Amendment (Suicide Related Material Offences) Bill 2005) currently states (1) *A person is guilty of an offence if: (a) the person: (iii) uses a carriage service to transmit material; (b) the material directly or indirectly counsels or incites committing or attempting to commit suicide; and (c) the person: (i) intends to use the material to counsel or incite committing or attempting to commit suicide.* (Refer to the Act for other clauses that also relate).

Carriage service is defined in the Telecommunications Act 1997 as “a service for carrying communications by means of guided and/or unguided electromagnetic energy”.

The purposes of the Criminal Code’s 2005 amendments were to criminalise cyberbullying and especially the incitation of suicide by those on the internet, as outlined in the Minister’s second reading speech: “This bill contains important measures that will protect our most vulnerable and help to prevent the internet from being used for destructive purposes towards those individuals.” (2005). However this has caused unintended consequences to provision of telehealth services under Victoria’s VAD laws.

This Bill endeavours to provide clarity and reassurance that doctors who currently provide VAD care will not be prosecuted for providing this care via a carriage service in counselling those patients on VAD.

It has been reported from Dying With Dignity Victoria *and* doctors participating in VAD care that they had been advised by Victoria’s Department of Health & Human Services that participating in VAD via telehealth would be a breach of the Federal Criminal Code.



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Dying With Dignity, some registered medical practitioners had also expressed their concern that if audio-visual communication is legalised for VAD appointments, the first appointment should be in person, to ensure no coercive behaviour is taking place in the background.

Western Australia had experienced this problem in their drafting of their respective Bill and Tasmania (who have just passed VAD laws after four unsuccessful attempts) have explicit clauses that deal with the allowance of “audio-visual link” for VAD care. It should be also noted that both WA and Tasmania have explicit clauses that **do not** authorise the use of communications that are inconsistent with the Commonwealth law (ie to genuinely incite suicide). The Victorian Bill emulates this protection also by stating (s44C): that the Bill does not authorise “means of communication if, or to the extent that, the use is contrary to or inconsistent with a law of the Commonwealth.”

Permanent Residency Amendments:

Those who are permanent residents (through holding a permanent residency visa) are able to access VAD but there has been a narrow interpretation of what this means, as those who have lived here for long periods of time, but who **do not** hold a permanent residency visa have been unable to access VAD (an eg below).

There is currently an accessibility issue for those who are not permanent residents according to Federal legislation, but have lived in Australia for a long period of time, through the undefined wording of “permanent resident” in the VAD Act. One example was a man who was deemed ineligible to receive VAD by Department of Health and Human Services (as they were known at the time). This gentleman had lived in Australia for the preceding 14-15 years and hadn't left Australia in the 10 years preceding his application, including ownership of a house in Australia for 9 years and not leaving Victoria for 2 years. This was appealed at VCAT but they ruled that they did not have the jurisdiction to decide on someone's permanent residency status.

The original purpose of the relevant clause was to deter ‘medical tourism’ to access VAD in Victoria but this broad definition has limited genuine Victorian residents from accessing VAD.

Quotes Attributable to Dying With Dignity Victoria President, Hugh Sarjeant:

“It appears the restriction on the residence requirement is much more stringent than was intended. The suggested change would cause no weakening of the safety requirements but would provide for a more reasonable arrangement.

The restriction on use of such communication means as telehealth have placed a heavy burden on doctors, particularly when the patient is in regional Victoria. Again, the removal of the ban on its use for consultations after the first would not place the patient at any additional risk.”

Quotes Attributable to Dr Cam McLaren, Medical Oncologist, MonashHealth:

“The proposed amendments [regarding permanent residency] go a long way to clarifying eligibility criteria that has already led to two disputes that have required VCAT review for clarification.

The stipulation of the use of telehealth in the practice of VAD shows support for the doctors who are trying to provide an equitable services across the state, however more definitive action is needed by



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the Commonwealth to exclude VAD services from the Criminal Code Act amendment regarding the use of carrier services.

The inclusion of telehealth-based assessments in the Act will allow us to join the rest of medical practice in the shift to virtual medicine - not only in standard medical care, but in assisted dying services worldwide. In the event of further waves of COVID, this will help keep us and our patients safe while continuing to provide quality, patient-centred end-of-life care."

Quotes Attributable to Dr Nick Carr, GP in St Kilda & DWDV Board Member:

"Julian was my first VAD patient. He had horrible pancreatic cancer, and was hugely relieved to know he had the VAD option. But, despite living in Australia for 40 years, paying taxes, being on the electoral roll and now a pensioner, he had never taken Australian citizenship. He was deemed ineligible for VAD. He was distraught, and in desperation took his own life; exactly the kind of outcome the VAD law was intended to prevent. The VAD law was never meant to exclude people like Julian, and the proposed amendment on Permanent Residency will ensure that those in his position are not excluded in the future."

Dr Carr can be contacted on 0419 569 621