

Victoria's Voluntary Assisted Dying legislation:



Dying with Dignity's case for reform

Why is legislative reform crucial to support access and equity?

The recent Centre for Evaluation and Research Evidence's review of Victoria's Voluntary Assisted Dying (VAD) legislation found that overall, it is working as was intended and that VAD provides a safe and compassionate end-of-life choice to eligible Victorians. However, the review also found that access is variable across the State and that there are barriers for particular communities – such as Aboriginal and Torres Strait Islander people and those from culturally and linguistically marginalised groups – in accessing timely and relevant information about VAD. Further, the review clearly demonstrates that despite access to VAD now being a legal right in Victoria, there are pockets of resistance along with unclear guidance for health professionals that can create barriers for individuals wishing to access VAD.

Dying With Dignity Victoria's campaign, Voices for VAD Reform, is advocating for changes to Victoria's Voluntary Assisted Dying Act that will make access to VAD more compassionate, more equitable and better aligned with the needs of people at the end of their lives.

We welcome the Victorian Government's commitment to strengthening the Voluntary Assisted Dying Act and fully support reforms that bring Victoria's legislation into closer alignment with national best practice. These changes are vital to ensuring safe access for all eligible Victorians and to address the issues that were raised as part of the 5-year review.

In 2019 when Victoria's VAD legislation came into effect, we were leading the country. As other States and Territories have introduced their own voluntary assisted dying legislation, there is now an opportunity to bring our legislation in line with national best practice and ensure that any eligible Victorian who wants to access VAD can do so in an equitable, timely and compassionate way.

Voluntary Assisted Dying is a legitimate, regulated form of healthcare. It is delivered by qualified health professionals and is governed by rigorous clinical standards, just like any other form of healthcare. Recognising VAD as healthcare affirms the rights of patients to make informed decisions about their care and the responsibility of medical professionals to provide adequate information and equity of access.

Required legislative reforms

Dying with Dignity Victoria's advocacy is driven by the priorities of our members, stakeholders, and our expert board, and is focused on reforms that are timely, achievable and most impactful in improving access, clarity and effectiveness of the Act. We are championing changes to Victoria's VAD legislation that reflect lived experience and frontline insight.

In addition to the below legislative reforms, there is a range of other regulatory, policy and procedural improvements that are required to support the effective, safe, and equitable implementation of VAD in Victoria over the longer term. To learn more about these, or to discuss our legislative reform recommendations, or for the opportunity to speak to a VAD trained medical professional or someone who has experienced VAD, please contact us on the details at the end of this document.

Each of the legislative reforms we are advocating for in Victoria has been successfully implemented in one or more other jurisdictions across Australia.

1 Allow health practitioners to initiate discussions about VAD in appropriate settings

Victoria's current VAD laws are obstructing access to VAD. By prohibiting health practitioners from initiating conversations about VAD with their patients, individuals are left uninformed, unsupported and facing unequal access to their end-of-life choices.

Not only is this an especially unfair burden to place on people who are terminally ill and are coming to terms with their disease and their own mortality, it disadvantages individuals with cultural or language barriers, limited health literacy or restricted access to technology.

2 Extend the prognosis requirement period from 6 months to 12

Access to VAD in Victoria is limited to people expected to live six months or less (or 12 for those with neurodegenerative conditions). This prognosis-based limit on VAD is outdated and unjust, and excludes people who endure prolonged, extreme suffering simply because their illness progresses more slowly. Reform must focus on suffering, not arbitrary timelines.

We support reform that centres on suffering, not timelines. Amending the Act to extend eligibility requirements to 12 months would restore fairness and compassion to the law.

3 Remove the requirement for a second neurological assessment for neurodegenerative conditions

People with neurodegenerative conditions face an added hurdle in accessing VAD. A second doctor who is also a specialist in the underlying neurodegenerative condition is required to confirm the 12-month prognosis, creating systemic delays in accessing care.

This requirement causes unnecessary distress without improving safety. This is especially so for individuals in regional and rural areas, where specialist access is limited or requires extended travel in order to see a specialist face-to-face, or requires waiting weeks or months for an appointment.

Removing this unnecessary barrier by only requiring one specialist to deliver this extended prognosis will allow increased access and safe, timely support for those with neurodegenerative conditions.

4 Ensure objecting health practitioners provide basic information on VAD

No individual should ever be denied basic information about their legal end-of-life options. Victoria's current VAD laws allow health practitioners to withhold details about VAD based on their personal conscientious objection, disproportionately disadvantaging individuals with cultural or language barriers, limited health literacy or restricted access to technology.

This reform is about fairness and transparency and ensuring that all individuals, regardless of background, receive basic, unbiased information. Objecting health practitioners must be required to share minimum information with their individuals, including a referral to the Statewide Care Navigator Service.

5 Redress the power imbalance between individuals seeking VAD and institutions that object to participating in VAD

Victoria's VAD law allows for individual health professionals to conscientiously object to VAD, but fails to specify how institutions should deal with residents or clients in their care who choose to seek VAD.

Addressing this issue via policy rather than legislation has allowed some aged care facilities, hospitals and personal care providers to obstruct individuals seeking to access VAD. As a result, Victoria's current legislation has failed to ensure consistent, compassionate, person-centred care for people seeking access to VAD.

Every Victorian deserves equal access to information and healthcare under the law, including VAD, regardless of where they reside or are living out their final days. Victoria's VAD law should support access to VAD by balancing the interests of a person seeking VAD with the interests of an entity that does not want to provide these services. While some institutions may choose not to participate in the provision of VAD services due to faith-based or in-principle objections, they must not be allowed to impede access to VAD for those who wish to pursue it.

At a minimum, institutions that object to participating in VAD must be required to allow those in their care to access basic information about VAD. This would be aligned with broader reforms to the VAD legislation, which will also require individual health professionals who conscientiously object to provide basic information on VAD.

Ideally institutions should also be required to publicly state their stance on VAD and provide pathways of support for individuals in their care who wish to access VAD.

6 Allow people to choose how they want VAD administered, instead of defaulting to the self-administration method

Victoria's rigid default of self-administration of VAD is causing unnecessary suffering. If someone loses the ability to take the medication themselves, they must then apply for a separate permit that allows the VAD substance to be physician-administered, delaying care and, in some cases, dying before access is granted.

In other Australian jurisdictions where there is a choice of delivery administration, most people request that the VAD substance be administered by a physician. Removing the default self-administration method in our legislation and allowing people to choose their delivery method will ensure Victorians have the same right to timely, compassionate end-of-life care.

7 Let nurse practitioners or VAD-trained registered nurses administer the VAD substance

Victoria's VAD system places the entire burden of administering VAD on doctors, making access to VAD care in rural and remote areas difficult and sometimes impossible.

Allowing VAD-trained nurse practitioners and trained registered nurses to administer the VAD substance will ease pressure on doctors and ensure that all Victorians, regardless of their postcode, can access timely, compassionate end-of-life care.

8 Establish a process for compassionate exemptions

Victoria's current legislation doesn't allow for decisions blocking access to VAD to be reviewed/appealed by an individual, or for compassionate exemptions to be granted.

Under our current legislation, a lack of a compassionate exemption process means:

- that a person undergoing kidney dialysis could not access VAD unless they cease dialysis, because the dialysis is keeping them alive.
- for some people suffering multiple comorbidities the doctor is prevented from providing a permit because there is not a single underlying condition that makes them eligible for VAD.

Legislating a compassionate exemption and review mechanism will provide comfort and assurance to individuals that their unique circumstances can be taken to account.

9 Shorten the minimum time between first and final VAD request to 5 days

In Victoria, nine days must pass before accessing VAD. These nine days must occur between a person's first and final request to access VAD. This mandated delay occurs whilst people are enduring profound suffering, uncertainty or distress at the end-of-life.

For people facing profound distress and rapid decline, every day matters. Reducing this wait to five days will bring Victoria into line with other jurisdictions and ensure more timely, compassionate access to care when it's needed most.

10 Amend residency requirements

Currently, to be eligible for VAD an individual must be an Australian citizen or permanent resident, and must have ordinarily resided in Victoria for at least 12 months. This provision was originally designed to address concerns of 'VAD tourism' when Victoria was the only State with VAD. However, now that every Australian State and the ACT has VAD legislation, this clause is no longer required.

Extending access to VAD to Australians who can demonstrate that they have lived in Australia for three or more years means that anyone who calls Victoria home is able to access VAD and can come home to die with dignity.

11 Allow exemptions to the interpreter requirement

Access to interpreters for VAD support is currently limited to those who are accredited by the National Accreditation Authority for Translators and Interpreters (NAATI). However not all language groups have accredited translators meaning there is limited access to VAD support for some who speak English as a second language.

Reforms will allow exemptions to interpreter accreditation requirements in exceptional circumstances, facilitating equity of access by enabling individuals to more readily access VAD support in their own language.

12 Reduce the required years of experience for doctors to participate in VAD

Victoria's VAD law requires one doctor to have five years' post-fellowship experience, which sets an unnecessarily high bar and leaves individuals struggling to find qualified doctors to support their access to VAD.

Slightly lowering this threshold will expand the pool of willing VAD-trained practitioners, ease pressure on the system and ensure more Victorians can access timely, compassionate end-of-life support.

13 Ensure that VAD-trained health practitioners cannot treat their family members

Victoria's Act does not expressly prohibit health practitioners from treating their relatives and those for whom they are a beneficiary. This can create a real or perceived conflict of interest at a time when clinical impartiality and trust are paramount.

Victoria's VAD Act needs to align with professional codes of conduct that recommend health practitioners do not treat family members or where they stand to benefit.

14 Simplify the permit process to reduce unnecessary delays if an individual is changing the substance administration method

Victoria's VAD system is overly complex and slow. Individuals going through the VAD process have died waiting for permits that are required in order to administer the VAD substance, including those who have to change the substance administration method as their health declines.

Allowing individuals to have a choice in how the VAD substance is administered, and which VAD-trained medical professional administers the substance – rather than have legislation mandate that it must be the 'coordinating doctor' as is currently the case in Victoria – is crucial.

Simplifying the permit processes will increase access, reduce administrative burdens, and ensure that people facing rapid decline can make timely, dignified choices at the end of their life.

15 Include VAD forms in regulation rather than legislation

VAD forms are prescribed within Victoria's VAD legislation, making them difficult to update as practice evolves. Requiring the use of specific forms and templates via regulation rather than legislation means they can more readily be updated and improved to reflect evolving clinical, legal and cultural best practice.

16 Ensure an independent review of the operation of the legislation after 3 years

The Victorian VAD Act did not legislate for further regular reviews of the legislation following the mandated initial five-year review. The proposed Government five-year review period sets Victoria behind other Australian jurisdictions that have opted for more frequent reviews.

Without formal, ongoing feedback mechanisms in place, a five-year review cycle is too infrequent to respond to emerging issues, ensure safety and refine access pathways. A three-year timeframe is supported by national and international recognition that early monitoring is essential to address emerging issues and avoid entrenching known barriers to access.

It would also ensure feedback from patients, families and practitioners is more regularly captured and addressed, making sure Victoria's legislation remains compassionate, effective and fit-for-purpose.

Who is Dying With Dignity Victoria?

Founded in 1974, DWDV is a charitable organisation pursuing public policies and laws in the state of Victoria to enhance self-determination and dignity at the end-of-life. Our purpose is to relieve distress, helplessness and suffering for Victorians with untreatable, painful or terminal illnesses.

As a member-based organisation, we support individuals and their families by providing information, education and advice related to end-of-life choices. We are a leader in monitoring and reporting on outcomes and effects of end-of-life legislation and the quality of services provided for end-of-life care.

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