

27 January 2023

Inspector-General of Aged Care Taskforce
MDP 411
GPO Box 9848
Canberra
ACT 2601

Via email: IGTF@health.gov.au

Dear Inspector-General of Aged Care Taskforce,

RE: Consultation on the draft Inspector General of Aged Care Bill

Go Gentle Australia is grateful for the opportunity to contribute our views regarding the draft Inspector-General of Aged Care Bill.

Go Gentle Australia is a national charity that promotes choice at the end of life. We were founded in 2016 by Andrew Denton and have played a critical role in the introduction of voluntary assisted dying (VAD) laws across Australia. We work to ensure people can choose the care that is right for them, including the option of VAD.

VAD laws have passed in every state and are now effective, following implementation periods, in Victoria, Western Australia, Tasmania and Queensland. South Australia's law will take effect on 31 January 2023, followed by New South Wales on 28 November 2023. The prohibition on the Territories legislating on VAD was lifted in December 2022.

Broadly, we support the draft bill. However, we have some comments on the consultation question: **Do you support the proposed approach to reviews, reports, and monitoring?**

Although we understand the review topics will be chosen in relation to complaints received, we believe VAD should be a key concern from the legislation's inception and that the Inspector General should include data collection on VAD as part of the monitoring architecture.

In particular, it would be important that the Inspector General monitors and reports on the care received by Australians requesting VAD in aged care institutions and facilities.

We appreciate your time and effort in preparing the draft bill and hope you will consider our views. Further information on any of these recommendations is available on request.

1. VAD is relevant to aged care, and will only become more so

A significant proportion of people choosing VAD are engaging with aged care systems. The most recent reporting shows the median age of people who accessed VAD in Victoria to be 73, with 8.3% in long term care or an assisted living facility. In WA, the average age is also 73.

The number of people accessing VAD is expected to rise as all states' laws take effect and more people become aware of the option, and it follows VAD will become an option that more people in aged care – and who are eligible – will want to pursue. For the longevity and relevance of the Bill, we believe VAD should be referenced.

2. VAD is a legal medical option, and must be treated this way

While VAD may be a new option that not all aged care providers are familiar with or wish to engage, it is now law and people have a right to access this medical treatment if they are eligible.

Including reference to VAD in the mandate of the Inspector-General is an important part of the role and ensures VAD is recognised as a valid treatment. VAD should be afforded equal respect and access as other end-of-life care options, such as hospice or palliative care.

3. Non-participation by healthcare institutions in VAD must not become obstruction

All six state VAD laws enshrine the right of individual healthcare professionals to conscientiously object to participating in VAD provision. However, the laws differ when it comes to an institution's right to block access to VAD on its premises.

The non-participation of any facility must be balanced with the rights of individuals in their care to access VAD. This is especially so for aged care facilities which are often people's homes.

The Victorian, WA and Tasmanian laws are silent on the issue of institutional participation in VAD. This has resulted in very different practices and directives from different institutions and reports of unreasonable obstruction in some instances.

South Australian, Queensland and New South Wales laws impose obligations on facilities to:

- Inform the public in advance that they do not provide VAD
- Ensure they do not hinder a person's access to information about VAD

- Provide **permanent residents** with reasonable access to VAD assessments and administration, meaning an external participating doctor must be allowed on-site. Only where this is not possible should transfer to a participating entity be considered, taking into account if transfer will cause any of the following harm factors:
 - cause serious harm to the person
 - likely to adversely affect the person's access to VAD
 - cause undue delay and prolonged suffering
 - whether a place to transfer is available
 - incur financial loss or costs to the person.
- Take reasonable steps to transfer **non-permanent residents** to a participating entity. If this is not possible, on-site access to VAD services must be provided.

The Inspector-General will be well-placed to monitor the policies, procedures and actions of facilities to ensure best practice is adhered to and to make sure non-participating institutions, regardless of their philosophical stance on VAD, fulfill the obligations they have to the people in their care.

We envision that the Aged Care Complaints Commissioner will have a role to play in cases of obstruction, however a retrospective complaints process is not sufficient for those individuals with limited time left to live who are seeking access to VAD. A proactive approach will ensure facilities embed best practice into their processes and procedures in advance of a person requesting access to VAD, and we believe this is best handled by the Inspector-General.

Thank you for the opportunity to contribute our views to the consultation on the draft Inspector General of Aged Care Bill. For any questions about this letter, please do not hesitate to get in touch.

Yours sincerely

Dr Linda Swan,
CEO