

Briefing: Voluntary assisted dying and the Criminal Code

We call on the Attorney General to

Urgently amend the Criminal Code to exempt VAD from its purpose. This move is supported by leading voices in health and law, including the Australian Medical Association¹ and the Law Council of Australia.²

The issue

In 2005, the *Criminal Code Act 1995* (Cth) was amended to, in the words of the then-Attorney General, 'protect vulnerable individuals from people who use the internet with destructive intent to counsel or incite others to take their own lives'. The intent was to restrict pro-suicide chatrooms and materials being distributed online. Sections 474.29A and 474.29B prohibited the use of a carriage service to incite or encourage suicide, and those sections still apply today.

Unfortunately, state voluntary assisted dying (VAD) laws are caught by the same prohibition. In *Carr v Attorney-General* (Cth) [2023] FCA 1500, the Federal Court of Australia found the word 'suicide', as used in these sections of the Act, to include voluntary assisted dying (VAD).

This means that health professionals who use a carriage service in VAD care risk breaking the law, and VAD access is limited for patients too frail or far away to seek face-to-face care.

The Australian Medical Association has called for urgent reform

The Australian Medical Association (AMA) has consistently supported reform in this area and has said medical practitioners are rightly concerned about potential prosecution. It has written to the former Commonwealth Attorney General to urge for immediate reform of the Criminal Code.³

Current President Danielle McMullen said ahead of the 2025 Federal Election:

The next government must act to ensure eligible patients have equal access to the end-of-life planning of their choice. This is not a new issue and problems with the current legislation are well known to the federal government.⁴

The AMA's position statement on VAD (2025) clearly states:

Legislation should not prohibit the use of telehealth to provide VAD services as this may severely disadvantage patients living in regional, rural and remote communities and those who are physically unable to travel for face-to-face consultations.⁵

¹ Australian Medical Association 2025, Attorney General must act on telehealth and voluntary assisted dying, media release 29 March, viewed 23 May 2025. <<https://www.ama.com.au/media/attorney-general-must-act-telehealth-and-voluntary-assisted-dying>>

² McIntyre SC, G 2024, 'Full medical not a given when deciding to end one's life', Law Council of Australia website, 25 Oct, viewed 23 May 2025. <<https://lawcouncil.au/media/news/opinion-piece-full-medical-not-a-given-when-deciding-to-end-ones-life>>

³ Australian Medical Association 2023, AMA urges Attorney-General to amend laws relevant to VAD and telehealth, media release 7 Dec, viewed 23 May 2025. <<https://www.ama.com.au/ama-rounds/8-december-2023/articles/ama-urges-attorney-general-amend-laws-relevant-vad-and>>

⁴ Australian Medical Association 2025, Attorney General must act on telehealth and voluntary assisted dying, media release 29 March, viewed 23 May 2025. <<https://www.ama.com.au/media/attorney-general-must-act-telehealth-and-voluntary-assisted-dying>>

⁵ Australian Medical Association (2025) Position statement on voluntary assisted dying, viewed 23 May 2025. <<https://www.ama.com.au/articles/ama-position-statement-voluntary-assisted-dying-2025>>

Impact on patients and families

The Criminal Code causes:

- Inequitable access for people who are too sick, frail or far away to travel to in-person consults
- Distress, delays and unnecessary suffering for dying people and their families.

Tom, lung disease, far-north Queensland

Living with end-stage lung disease, Tom*, 79, found there were no authorised medical practitioners in the Townsville Hospital and Health Service District able to travel to conduct his VAD assessments. Too sick to travel himself, he was unable to access VAD.

One week after Tom requested VAD, a coordinating practitioner was found 1,500km away in Ipswich. The doctor made the 3,000km return trip to conduct the first assessment in-person, as required by Queensland's interpretation of the Criminal Code.

A week later, a second doctor who acted as the consulting practitioner travelled 2500km to do the second assessment. Finally, the coordinating practitioner took another 3000km round trip to conduct the final assessment.

Five days later, the pharmacy received the prescription (which was required to be hand delivered) but Tom died before the substance could be dispensed. Telehealth would have saved three weeks, enabling Tom's wish for VAD to be honoured.

**Tom's name has been changed to protect his family's privacy*

Alan Clark, progressive supranuclear palsy, Warragul, regional Victoria

Alan had a rare neurological condition called progressive supranuclear palsy. He lived in Warragul in regional Victoria. Alan applied and was approved for VAD, but died a day before he was due to receive the VAD medication following long delays – caused in part by the ban on telehealth. His wife Zenda told ABC News:

By the time all the approvals went through, it was too late. It was just the most horrific end. Everything he dreaded happened.⁶

Mrs Clark said the Criminal Code restrictions and the lack of assisted dying doctors in regional Victoria combined to make the process almost impossible. Alan ended up dying without VAD, in the circumstances he feared the most.

Terry Hargreaves, metastatic prostate cancer, Melbourne

If telehealth had been an option, it would have made an enormous difference. It could have changed the outcome and, most importantly, empowered my dad in his final moments.

– Emma, Terry's daughter

Terry was diagnosed with prostate cancer in 2011 and lived with the disease for 13 years. However, towards the end of 2024 his health sharply declined and he was hospitalised for a short period. Determined to die in his own home, he decided it was time to apply for VAD.

Unfortunately, this proved very difficult. Being mid-December, there were fewer oncologists available to provide assessments and Terry was advised he would need to attend in person. His daughter Emma told us:

There was no way he could move. We had a hospital bed in the home, he was so weak and exhausted from not eating, and generally feeling awful. The idea of getting him from a carpark to the waiting rooms was not possible.

After three weeks of receiving hospice care at home, Terry was moved into a palliative care unit, and died a day later.

⁶ Chwasta M (2022). 'Victoria's voluntary assisted dying program under the spotlight after regional man's long wait' ABC 6 Dec. Available at: <<https://www.abc.net.au/news/2022-12-06/zenda-alan-clark-voluntary-assisted-dying-victoria/101706420>> Accessed 26 May 2025.

Impact on health professionals

A strict interpretation of the Criminal Code's provisions means all consults must be done face-to-face, nurses cannot respond to calls and emails from patients and scripts for VAD substances must be hand-delivered or sent by post. The consequences are:

- Heightened stress and uncertainty within the VAD health profession
- States implementing workarounds which are costly, resource-inefficient and unsustainable
- Reports of cancelled telehealth appointments by practitioners anxious about the Criminal Code
- Fears indemnity insurances will not cover VAD practice (particularly for GPs/private practice)
- Reinforcing harmful stigma that VAD health professionals are doing something 'wrong'.

Preventing any part of the VAD assessment process to take place via any carriage service means:

- Victoria, Tasmania, South Australia and NSW require permits to be issued before the prescription of a VAD substance. These permits must be hand-delivered or couriered to a person's doctor;
- Scripts for VAD medications, which must come to a single statewide pharmacy service, cannot be accepted via email; they must be hand-delivered, couriered or posted;
- Updates, for example to practitioner protocols, must be sent to all qualified VAD practitioners by paper, which is inefficient and risks proper version control; and
- Parts of the state's care pathways are rendered unworkable.

There is nothing novel or new about using telehealth for important decisions that may have life and death consequences for a patient. In fact, it's part of usual practice for many clinicians - especially if they are working with patients in rural and remote regions.

– Dr Roger Hunt, a palliative care specialist in South Australia

"Unacceptable delays and waste"

– Professor Liz Reymond, Director of Queensland VAD Support and Pharmacy Service

Three patient/VAD clinician consultations must take place, at disparate times, before a VAD prescription can be couriered, posted or personally delivered to the central VAD pharmacist, and then the substance dispensed and hand-delivered either to the patient at their home or the practitioner. Given Queensland's transportation constraints, this process is unacceptably time consuming. Patients risk increased suffering, loss of cognitive capacity (rendering them ineligible for VAD), and indeed some have died while waiting.

Face to face consultation is always preferred

The peak body for VAD clinicians, Voluntary Assisted Dying Australia and New Zealand (VADANZ), recommends at least one face to face consultation during the VAD assessment process:

There are distinct advantages in conducting VAD assessments in person, and this remains the preferred modality for at least one, if not both of the VAD eligibility assessments required.⁷

However, VADANZ is in full support of Criminal Code reform to allow telecommunications to be used in VAD:

It is the position of Voluntary Assisted Dying Australia New Zealand (VADANZ) that people can receive high-quality and effective Voluntary Assisted Dying (VAD) services using telehealth and that telecommunications are important for the timely access and delivery of health information and care.⁸

The Criminal Code causes legal uncertainty

Reform of the Criminal Code is supported by leading legal voices.

The Law Institute of Victoria, a peak legal body, says it is: *deeply concerned about the lack of clarity and exposure for medical practitioners supporting the needs of patients, particularly in remote areas or extreme circumstances.*⁹

Before Queensland's VAD legislation came into effect, the state's Law Reform Commission report warned: *It is inherently undesirable that health practitioners should be left under such an apparently unintended grey cloud.*¹⁰

The Law Council of Australia has written to the former Attorney-General calling for changes to the Code to exclude application to VAD in 2024. Its President Mr Greg McIntyre SC is also supportive of reform:

Not being able to seek assistance from a medical professional can limit people's ability to fully discuss and weigh all their options and access approved VAD medicines. To ensure Australians considering VAD can do so armed with all the medical knowledge and support they deserve, the Criminal Code must be urgently amended to allow for consultations on VAD to occur via a carriage service.¹¹

⁷ VADANZ (2023) Telehealth and VAD Assessments viewed 23 May 2025, <<https://www.vadanz.com.au/telehealth-and-vad-assessments/>>

⁸ VADANZ (2024) Position on telehealth use in voluntary assisted dying practice, viewed 26 May 2025. <<https://www.vadanz.com.au/position-statements/>>

⁹ Law Institute of Victoria 2021, Telehealth ban for voluntary assisted dying needs to end now says LIV, media release 20 Apr, viewed 23 May 2025. <https://www.liv.asn.au/Web/Advocacy__Media/Media_Releases/Web/Advocacy/Media_Releases/Telehealth_ban_for_voluntary_assisted_dying_needs_to_end_now_says_LIV.aspx>

¹⁰ Queensland Law Reform Commission (2021) A legal framework for voluntary assisted dying (Report No. 79). Viewed 23 May 2025. <<https://www qlrc.qld.gov.au/publications/reports>>

¹¹ McIntyre SC, G, Law Council of Australia (2024) 'Full medical not a given when deciding to end one's life'. Available at: <<https://lawcouncil.au/media/news/opinion-piece-full-medical-not-a-given-when-deciding-to-end-ones-life>> Viewed 26 May 2025.

Suicide prevention leaders say VAD is not suicide

In the wake of the Federal Court's judgement, Lifeline, Blackdog Institute, Beyond Blue and EveryMind issued a joint statement to emphasise that VAD is not suicide:¹²

VAD is not treated as suicide in coronial data nor suicide statistics. Why should it be in the law?

Suicide prevention and VAD should be discussed separately. Confusing these terms can delay access to suicide prevention services for people in distress, and complicate or delay care for people with terminal illness who are seeking an additional choice at the end of life.

In any public communication, it is important that we refrain from talking about VAD as suicide or using language that associates the two.

¹² Joint statement by Australia's suicide prevention leaders (2023) VAD should not be described as suicide. Available at: https://assets.nationbuilder.com/gogentleaustralia/pages/2982/attachments/original/1702513241/Joint_statement.pdf?1702513241> Viewed 26 May 2025.

Contact

Frankie Bennett

Policy & Advocacy Manager

policy@gogentleaustralia.org.au

Updated May 2025