



Key Amendments to the Victorian Voluntary Assisted Dying Act

What does the research say?

This policy briefing presents evidence from our research in support of three key amendments proposed to Victoria's Voluntary Assisted Dying Act. It also identifies an omission in the proposed law changes, which should be addressed.

Our research is part of a 4-year project "**Optimal Regulation of Voluntary Assisted Dying**" funded by the Australian Research Council. This is the first major study of voluntary assisted dying (VAD) in Australia. We interviewed 149 people about how VAD is working in practice (mainly in Victoria): patients, family caregivers, doctors providing VAD, other health practitioners involved in VAD as well as representatives from health institutions, professional bodies, and government bodies and boards. We also did detailed evaluations of VAD law and policy, training and system design.



Two key studies

Part of this project was Australia's first study of patient and family experiences of seeking VAD. We interviewed 32 family caregivers and one patient, who told us about the experiences of 28 patients seeking VAD in Victoria. We investigated the factors that helped patients when seeking access to VAD and factors that made it harder.

Our study in the *Medical Journal of Australia (MJA)* found 5 barriers which made it more difficult for people seeking VAD to receive it:

1. The prohibition of health practitioners raising VAD with their patients
2. Finding trained and willing doctors to assess eligibility for VAD
3. The time required for the application process (especially given how ill the applicants were)
4. Institutional objections to VAD
5. The prohibition of telehealth consultations

Our second study, in the international journal *Health Expectations*, found 4 barriers that patients encountered specifically at the time when they were first trying to connect with the Victorian VAD system:

1. Not knowing VAD exists as a legal option
2. Not recognising a person is potentially eligible for VAD
3. Not knowing next steps or not being able to achieve them in practice
4. Challenges with patients being required to raise the topic of VAD because doctors are legally prohibited from doing so

This research shows why three of the proposed amendments to the Victorian VAD Act are urgently needed.



Health practitioners should be able to raise VAD with patients

Our research overwhelmingly supports removing the “gag clause” in Victorian law. People interviewed from all groups identified this as a problem. In every other context, doctors can inform people about all their options, but the gag clause prevents this for VAD. Our legal analysis of this clause also shows it cannot be justified.

The *Health Expectations* study found this part of the law was the major barrier to connecting with the VAD system. It can stop people knowing VAD exists or that they might be eligible. It also makes conversations about VAD more difficult and uncertain.

Our research comparing states shows not having gag clauses has helped patients know VAD is a lawful option. It also supports VAD being accepted as a legitimate end-of-life choice.

“It’s ridiculous that the doctors can’t proactively mention this ... it’s the equivalent of withholding an important medical option from a patient.” (family caregiver)

“The legal prohibition on registered health practitioners raising VAD with patients was the most significant challenge for point of access ... we propose it be repealed.” (White et al, *Health Expectations* study)



Extending the expected time to death to 12 months

Our research showed the time required for the VAD application process can be a barrier. Allowing 12 months will provide a longer time for people to consider their options and complete the process of applying for VAD.

“This prerequisite was identified by many participants as needing revision. Concerns were expressed about ‘missing the boat’, and many participants referred to the ‘race’ to gain access to VAD before the applicant died...” (White et al, *MJA* study)



Conscientiously objecting health practitioners should provide VAD contact details

Our research showed conscientious objection was a major barrier to accessing VAD. When asked about VAD, some objecting health practitioners would not tell patients anything about it or who they could contact to get information.

“My very first move was to approach the GP. His answer was ‘No. I won’t have any part of it.’... A blanket no.... when I just asked him would he assist and he just said ‘No. I won’t.’ Then there was a silence.” (patient)

Without any information, people did not know what to do next or how to find a contact in the VAD system.

“We propose doctors be required to connect patients ... either via a referral to a doctor willing to assess eligibility or the contact details of Care Navigators ... This duty already exists in other Australian states’ VAD laws and we propose the Victorian law be amended accordingly.” (White et al, *Health Expectations* study)



An omission: Institutions should not block patient access to VAD

One important omission from the amendments is addressing the harms caused by institutional objection. These two studies, and a third, show that objections by institutions are a significant barrier to accessing VAD.

Our **third study**, in the international journal *BMC Medical Ethics*, identified a range of harms that institutional objection in Victoria caused:

1. Delays in patients being able to access VAD
2. Patients having to transfer out of a facility to seek VAD
3. Patients having to choose between continuing the VAD process or staying in a facility to receive palliative or other care
4. Emotional suffering by patients and families
5. Patients and families to distrust objecting institutions

“It will always be a great sadness for me that the last few precious hours on Mum’s last day were mostly filled with stress and distress, having to scurry around moving her out of her so-called ‘home’.” (family caregiver)

Given these harms, the Victorian amendments should address institutional objection as four other Australian jurisdictions do. Legislation should require institutions to be transparent about their position and provide greater protection for patient access to VAD.

“Better regulation may be needed to address this issue as the existing policy approach [in Victoria] appears to preference institutional positions over patient’s choice given existing power dynamics.” (White et al, *BMC Medical Ethics* study)



For more information

This policy briefing draws on three key studies cited above:

1. Ben P White, Ruthie Jeanneret, Eliana Close and Lindy Willmott, "Access to voluntary assisted dying in Victoria: a qualitative study of family caregivers' perceptions of barriers and facilitators" *Medical Journal of Australia* 2023; 219: 211-217

Available as a **short summary** and **published study**

2. Ben P White, Ruthie Jeanneret and Lindy Willmott, "Barriers to connecting with the voluntary assisted dying system in Victoria, Australia: A qualitative mixed method study" *Health Expectations* 2023; 26: 2695-2708

Available as a **short summary** and **published study**

3. Ben P White, Ruthie Jeanneret, Eliana Close and Lindy Willmott, "The impact on patients of objections by institutions to voluntary assisted dying: a qualitative study of family caregivers' perceptions" *BMC Medical Ethics* 2023; 24: 22.

Available as a **short summary** and **published study**

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This briefing has focused on three key amendments to Victoria's VAD Act. Our research also provides evidence on a range of the other proposed amendments and that research it is available on the project website below.

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