

VOLUNTARY ASSISTED DYING BILL 2021

We have been asked for feedback in relation to the *Voluntary Assisted Dying Bill 2021* and the amendments proposed by the Member for Davenport, Mr Steve Murray MP.

We have consulted our various policy advisory groups and used existing consultation feedback and surveys to inform our response.

Support for Voluntary Assisted Dying (VAD) among older Australians is very high. The COTA Federation *State of the Older Nation* survey undertaken in 2018, the first ever comprehensive national survey of older Australians, indicated that 84% of older Australians supported the introduction of voluntary assisted dying. The 2021 survey, not yet released, indicates that this support remains at 76%. Further in 2021, more than half of older Australians (55%) said they would consider VAD as an option for themselves and 39% of older Australian said they would definitely look into VAD. In both 2018 and 2021 the responses of older South Australians were consistent with the national picture. COTA SA has concluded that older South Australians want VAD legislation and want it to be an option available to them.

Two things are central to voluntary assisted dying legislation – ensuring there are sufficient safeguards and protecting individual self-determination and choice.

COTA SA respects the right of an individual to conscientiously object to assisting in VAD. This is grounded in respect for each person's right to choose including because of personal moral or religious beliefs.

COTA SA opposes amendments that enable institutions to refuse to engage in VAD.

This directly impedes the principles of choice and self-determination, including at the point when VAD may become a relevant consideration. The Murray amendments would enshrine in legislation the ability of certain institutions to prioritise their values and beliefs over the rights of older South Australians to choose a lawful option.

Consistent with our response to the religious discrimination laws proposed by the Federal Government in 2019, we do not support any legislation that prioritises an institution over the human rights of individuals.

Health professionals are bound by codes of conduct¹ that guide practice when a conscientious objection is identified, assisting practitioners to balance patient rights and setting out the need for appropriate information provision and referral. COTA SA would like to see an obligation reflected in the legislation for a health professional with a conscientious

¹ Ahpra Medical Board (2020). Good medical practice: a code of conduct for doctors in Australia. Viewed 3 June 2021, <https://www.medicalboard.gov.au/codes-guidelines-policies/code-of-conduct.aspx>

objection to provide information, referral and support for an individual seeking VAD, to enable access to a health practitioner able to support this option.

We are concerned that explicitly laying out the right for certain institutions to conscientiously object to VAD - and accompanying this with ambiguous language about their obligations under the legislation - will lead to some older people being denied their right to access VAD.

This is illustrated in the use of the subjective term "reasonable steps" regarding the transfer of an individual from an institution holding a conscientious objection to an institution supportive of VAD. This ambiguity in language opens the door for limited, delayed or otherwise restricted action by an institution in assisting an individual to access VAD.

According to the Queensland Law Reform Commission paper, there is evidence from Canada of the detrimental impact of institutional objections to VAD. The condition of a patient may prohibit transfer to another facility or add trauma, pain and stress. Additional pain relief needed to assist in the transfer, along with the distress caused by moving to another facility, may also impact the decision making of the individual as they attempt to take up VAD with another provider². The advice we have of the operation of the legislation in Victoria is that institutional conscientious objection would directly contradict the right of an individual to choose VAD.

It will not always – indeed often – be practical for an individual to decide before entering an institution that they understand that VAD is not available because of an institutional conscientious objection. Often occupation is taken up before any consideration or anticipation of wanting to access VAD is considered and so acknowledgement upon entry will be hypothetical and abstract.

COTA SA believes that institutional conscientious objection is not in step with community sentiment nor consistent with the overwhelming view that people in the last stages of life should be able to choose assisted death. This individual choice is sacrosanct and should not be at risk of being trumped by an institutional policy.

I am happy to provide further information on telephone 0408 814 483 or by email jmussared@cotasa.org.au.



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² Queensland Law Reform Commission (2021). A legal framework for voluntary assisted dying. Viewed, 3 June 2021, https://www qlrc qld gov au / _ data / assets / pdf _ file / 0020 / 681131 / qlrc - report - 79 - a - legal - framework - for - voluntary - assisted - dying . pdf