



Commonwealth telehealth ban is an unfair barrier to seeking voluntary assisted dying



What is this research about?

Each Australian state has passed voluntary assisted dying (VAD) laws. However, access to VAD, especially for those living regionally, is limited by the Commonwealth *Criminal Code*. This decades-old Commonwealth law, passed before VAD was lawful in Australian states, makes communication about 'suicide' over a 'carriage service' unlawful. As a result, health professionals risk prosecution if they carry out some VAD activities electronically (e.g. by telehealth, on the phone, or by email).

Each state has issued guidance for health professionals on this issue, with some states restricting electronic communication about VAD more than others. In modern health care, telehealth is becoming increasingly widespread to achieve equitable access, particularly for those living regionally. Imposing restrictions on telehealth in the context of VAD creates significant access barriers.

This research explored the operation of VAD laws in Australia and found a key barrier to access was this Commonwealth law.



What did we do?

Through our VAD research, we have interviewed over 140 people across Victoria, Western Australia, and Queensland:

- 3 patients seeking VAD;
- 35 family caregivers of patients who accessed VAD;
- 39 doctors involved in VAD;
- 10 nurse/nurse practitioners involved in VAD (an ongoing study); and
- 54 people involved in regulating VAD at a systems level.

We have analysed what people said about the impact of the Commonwealth law on their experience either seeking VAD or providing or supporting it for patients.



What did we find?

The Commonwealth law restricted how VAD could be carried out:

- Some VAD eligibility assessments could not be carried out using telehealth, so the doctor or patient had to travel for assessments, sometimes for long distances.

The barrier around what can and can't be discussed over a carrier service ... is just crazy, and in the era of telehealth.

- Prescriptions for the VAD medication could not be emailed and had to be mailed or hand-delivered.

[The Commonwealth law is] exceptionally challenging. [Patients have to] wait for a hard copy prescription which can't be scanned and emailed like a standard prescription.

The Commonwealth law caused burdens and harm to patients, family caregivers and health professionals, which included:

- Unreasonable, burdensome and distressing travel requirements (particularly regional travel).

[Family member] was in tears and distressed and in hysterics.

If I was able to use telehealth, I could get this done in 40 minutes, but instead, I've got to drive two hours, see the patient, drive two hours back ... From a personal life, work-life balance, family life point of view, it does make it hard on me and my family.

[My patient] was in a wheelchair coming in her jammies and her dressing gown because she was too sore and too tired to get dressed, but had to come in person to have another consultation ... because you're not allowed to talk over the phone.

- Delays, which in some cases, meant the patient could no longer access VAD.

By the time I managed to get a meeting with the pharmacist ... [my patient] was now on a syringe driver and semi-comatose and no longer eligible.

When you live regionally, everything takes at least another 24 hours ... Even if it's priority post that's coming from a regional area to the city, that's not going to happen overnight.



What should happen next?

The current Commonwealth law significantly impacts the delivery of VAD and creates access barriers for eligible people. This is especially problematic for those living regionally, particularly in states with vast geography, such as Western Australia and Queensland. This Commonwealth law was not designed to stop people receiving lawful VAD services.

People having to travel over 10 hours to get this done is cruel, and I don't think it's what was intended by this legislation.



A simple amendment to the Commonwealth *Criminal Code* could solve this issue by inserting either one of these two sections:

[1] 474.29C Subdivision does not apply to lawful voluntary assisted dying.

This subdivision does not apply to acts or omissions lawfully carried out in good faith in accordance with a voluntary assisted dying law of a State or Territory.

OR

[2] 474.29C Voluntary assisted dying is not 'suicide'.

For the purposes of this subdivision, any reference to 'suicide' does not include any acts or omissions carried out lawfully pursuant to a voluntary assisted dying law of a State or Territory.

As VAD is now lawful in each Australian state, this amendment will clarify legal uncertainty and minimise some barriers and harms faced by eligible Australians accessing VAD, family caregivers and health professionals. This is especially important for those living regionally who are most unjustly affected by the current law.

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Publications

This research briefing draws on a body of empirical work and legal analysis by the QUT Australian Centre for Health Law Research (with other publications in progress). Relevant publications to date include:

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* **219(5)**, 211-217 (2023) <https://doi.org/10.5694/mja2.52004>
2. Casey M Haining, Lindy Willmott and Ben P White "Comparing voluntary assisted dying laws in Victoria and Western Australia: Western Australian stakeholders' perspectives" *Journal of Law and Medicine* **30** (2023) (In Press)
3. Casey M Haining, Lindy Willmott and Ben P White "Accessing voluntary assisted dying in regional Western Australia: Early reflections from key stakeholders" *Rural and Remote Health* **23(4)**, 8024 (2023) <http://doi.org/10.22605/RRH8024>
4. Lindy Willmott, Casey M Haining and Ben P White "Facilitating regional and remote access to voluntary assisted dying in Western Australia: Targeted initiatives during the law-making and implementation stages of reform" *Rural and Remote Health* **23(1)**, 7522 (2023) <https://doi.org/10.22605/RRH7522>
5. Lindy Willmott, Ben P White, Marcus Sellars and Patsy M Yates "Participating doctors' perspectives on the regulation of voluntary assisted dying in Victoria: A qualitative study" *Medical Journal of Australia* **215(3)**, 125-129 (2022) <https://doi.org/10.5694/mja2.51123>
6. Marcus Sellars, Ben White, Patsy Yates and Lindy Willmott "Medical practitioners' views and experiences of being involved in assisted dying in Victoria, Australia: A qualitative interview study among participating doctors" *Social Science and Medicine* **292**, 114568 (2022) <https://doi.org/10.1016/j.socscimed.2021.114568>
7. Katrine Del Villar, Eliana Close, Rachel Hews, Lindy Willmott and Ben P White "Voluntary assisted dying and the legality of using a telephone or internet service: The impact of Commonwealth 'Carriage Service' offences" *Monash University Law Review* **47(1)**, 125-173 (2022) <https://doi.org/10.26180/20364222>
8. Katrine Del Villar, Ben P White, Eliana Close and Lindy Willmott "Voluntary assisted dying by practitioner administration is not suicide: A way past the Commonwealth Criminal Code?" *Journal of Law and Medicine* **29(1)**, 129-141 (2022) <https://eprints.qut.edu.au/229735/>
9. Eliana Close, Katrine Del Villar, Lindy Willmott and Ben P White "Voluntary assisted dying and telehealth: Commonwealth carriage service laws are putting clinicians at risk" *Medical Journal of Australia* **215(9)**, 406-409 (2022) <https://doi.org/10.5694/mja2.51287>

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