

Legislative Charter

Victorians Want Change

Survey research shows that **85%** of Australiansⁱ believe that terminally ill individuals should have a **right** to seek and obtain assistance to end their life with dignity. This right does not exist in Victoria. **Current legislation therefore lags significantly behind the will of the people.**

Dying With Dignity Victoria (DWDV) has clear, simple and safe aims for updated Victorian legislation—to recognise the right of terminally and incurably ill people with profound suffering to *choose* to die with dignity. This document describes DWDV's Legislative Charter in support of these aims. Its purpose is to spell out what legislative results DWDV aims for. Overall, the aim is to achieve a practical and positive Parliamentary Act to allow people suffering intolerably and without medical or palliative relief from a terminal illness or the advanced stage of an incurable illness the right to end their life by *choice*, legally, with medical assistance, and with dignity.

A central tenet of DWDV's Charter is to promote *choice*, not to compel anyone to either pro- or anti-behaviour.

Current Situation

Under existing law it is not an offence to commit suicide. However, it is an offence to assist a person to commit suicide. There is also potentially a legal risk for others in merely being present at their death. Individuals suffering a terminal or incurable illness with profound suffering do not have access to information or methods to voluntarily end their life in a humane and dignified manner. The effects of the current law include:

- Terminally or incurably ill people may suffer physically, mentally, emotionally and existentially in a needless way. Some of them, when suffering becomes too profound, may wish to end their life at a chosen point. Current law does not support this choice. The efficacy of palliative care in these circumstances is limited and does not allow dying with dignity and control.
- Some terminally ill people attempt to end their life in a violent and undignified manner such as a drug overdose, car exhaust gassing, drowning, use of a firearm or knife, leaping off a tall structure or jumping in front of a train. These strategies also have the following additional consequences:
 - The person dies: relatives then have to identify the disfigured, mangled or bloated body, and suffer long-term grief and guilt.
 - The person does not die: but is left in a serious physically and/or mentally damaged vegetative state in addition to their terminal illness.
 - The community suffers through effects on bystanders, train drivers, emergency and rescue personnel as well as property damage and the costs to society of coronial investigations.

- Loved ones who attend the planned suicide of a terminally ill person may be liable to prosecution under criminal charges. Therefore, the terminally ill person must end their life in isolation rather than with the loving support of family and friends.
- Any medical practitioner (or other person) who assists the terminally ill person to end their life in a humane way is liable to criminal prosecution.
- Individuals and groups frustrated with the current state of the law and legislative inaction will seek alternative “remedies” such as publishing information on how to make a “death pill” from commonly available materials. The consequences of such an action would be:
 - The information falls into the hands of psychologically vulnerable people (such as children, teenagers or the clinically depressed) who use it to end their life instead of seeking and receiving appropriate, effective medical help.
 - Once the information is in the public domain, it cannot be recalled. This is a development that cannot be withdrawn or corrected by further legislation.

DWDV’s Legislative Charter

DWDV advocates the following charter to recognise the autonomy of patients, and to allow *choice* of death with dignity. These are the values that DWDV wishes to have enacted in legislation. This charter is presented to (a) indicate clearly what DWDV *is* proposing (and it is not particularly controversial), (b) what it *isn’t* proposing, and (c) to facilitate a fast track to sponsorship, drafting of an Act or Acts, debate and voting support by politicians.

Principles

In summary, the DWDV Charter promotes the following **four** legislative principles:

- ① Patients with a terminal or incurable illness that creates unrelievable, profound suffering shall have the right to *choose* to die with dignity in a manner acceptable to themselves and shall not be compelled to suffer beyond their wishes.
- ② No individual, group or organisation shall be compelled against their will to either participate or not participate in an assisted or supported death of a sufferer.
- ③ It shall not be an offence to confidentially advise a sufferer or relatives/guardian regarding death with dignity, to assist or support such a death, or to be present at the time.
- ④ Sufficient safeguards shall be in place to prevent abuse of the process.

The DWDV Charter does not support the following:

- ✗ Assisted or supported death for individuals who are not suffering a terminal or the advanced stage of an incurable illness causing intolerable suffering, nor for people who are unable to properly document their choice in a state of mental competence.
- ✗ A publicly-available “peaceful pill”.

Legislative Charter Objectives Versus Current Victorian Law

Sufferer: A person with a terminal illness or the advanced stage of an incurable illness, with intolerable suffering that cannot be relieved to the patient’s satisfaction with medical treatment or palliative care that is acceptable to the person.
The person themselves must be mentally competent to make a decision.

Sufferer’s Right	Current Victorian Law	DWDV Legislative Charter
Refuse medical treatment for a current condition	Yes	Yes
Refuse medical treatment for a future condition; “living will” (advance directive)	Partial (common law, can be challenged)	Yes (statutory)
Request doctor injection to die with dignity	No	No
Request oral prescription to consume voluntarily to die with dignity—with safeguards	No	Yes
Continued palliation	Yes	Yes
Decision to die made by anyone other than the sufferer exclusively	No	No
Publicly available “peaceful pill”	No	No

Charter

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Medical Assistance: Doctor-supplied medication that, with continued palliation, hastens the Sufferer's death. The Sufferer must voluntarily consume the medication.

1. A Sufferer may, under current mental competence, document the circumstances under which they wish to voluntarily die in a peaceful and humane manner with Medical Assistance, and receive that assistance. The request must be unwavering and be subject to a reasonable cooling-off period.
2. Written statements are required from at least two doctors and/or psychiatrists that the Sufferer is of current mental competence. Such assessment shall take reasonable steps to ensure that the Sufferer has not been coerced or placed under duress by other persons to reach their decision.
3. A Sufferer who is not currently mentally competent may, via an Advance Directive made under prior mental competence, specify the refusal of any and all medical procedures (including artificial feeding and hydration) in order to die. (Palliative care will still be offered during this process.) Advance Directives are to be protected by Statute and must be followed.
4. Written statements are required by at least two relevant doctors that the Sufferer does in fact suffer a terminal or incurable illness.
5. The doctors and any other persons present at the Sufferer's death, whether assisting or not, shall not be subject to legal or disciplinary prosecution.
6. Any medically-assisted death shall be in secured quarters where uninvited, unauthorised parties cannot inadvertently enter and become aware of the procedure in progress.
7. Should a Sufferer subsequently lose mental competence, their Advance Directive(s) cannot be challenged, cancelled or altered by relatives, guardians or health care professionals, but may be by an individual or authority who has been granted medical power of attorney by the Sufferer.
8. Any doctor or other health care professional who does not wish to participate in a medically assisted or supported death should not be required or compelled to participate or be present.
9. Any non-Government-owned medical facility if it so chooses may refuse to permit assisted or supported deaths to occur at its facilities.
10. It shall be a criminal offence to forge documents or create false evidence that leads to or could lead to or covers a past act of voluntary or supported death that is not otherwise lawful under this legislation. A doctor who has assisted or supported a Sufferer's death in good faith under such circumstances shall be immune from prosecution.

Specific Exclusions

DWDV's legislative charter specifically does *not* include or support the following:

- Assisting the death of a Sufferer who is not mentally competent and has no Advance Directive. This includes babies, infants and young children, as well as any adult who has lost mental competence and has no Advanced Directive that specifies their wishes.
- Assisting the death of a person who is psychologically disturbed and wants to die in the absence of a terminal or incurable illness.
- Assisting the death of "inconvenient" persons in any way or under any circumstances. An assisted or supported death must *always* be the mentally competent and legally documented choice of the Sufferer alone.

- Allowing a person with a genetically-identified terminal illness to end their life prior to any symptoms causing actual suffering. The intention of the legislation is to *only* avoid actual suffering due to the illness and to allow such individuals to *choose* a medically assisted or supported death.
- Requiring or forcing any health care professional or private health care facility to participate in, support or allow assisted or supported deaths where this is against their own wishes.
- Promoting “do-it-yourself” death formulae in the public domain. This could allow significant abuse of proper process. Assisted-death resources should remain exclusive to registered medical practitioners.

ⁱ For decades, independent surveys have consistently shown a majority in favour of physician assisted dying law reform. The latest survey shows 85% of the community supports this right. See independent Newspoll research conducted in September 2009 at <http://www.dwdv.org.au/Surveys.html>