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Telehealth continues to be illegal for terminally ill people seeking Voluntary Assisted Dying

Rural and regional Australians will continue to be disadvantaged by today's Federal Court decision making it illegal for doctors to use telehealth to support people applying for Voluntary Assisted Dying (VAD), says Dying with Dignity Victoria (DWDV).

Communicating with terminally ill people about their end-of-life options via a phone call or Zoom call could fall foul of current Federal 'carriage' laws. This significantly impacts rural and regional Australians trying to access quality health advice regarding VAD.

Dr Nick Carr, GP and Board Member of DWDV, brought an application to clarify the meaning of suicide in relation to VAD. The Federal Court today ruled not to change the current interpretation, meaning telehealth will continue to be unavailable to support the most vulnerable people seeking VAD.

DWDV began tackling this matter back in 2020, when Victoria was still the only State with VAD laws. Now with all States having VAD laws, the issue has become a national priority. In light of today's decision, DWDV calls on Federal Parliament to fix this issue and welcomes Kate Chaney MP's planned introduction of a private member's bill in the new year exempting voluntary assisted dying appointments from the Federal Criminal Code.

A 2005 Federal Criminal Code amendment has caused major problems for some people applying for VAD. The amendment banned discussion that was said to incite or counsel an individual about suicide over a carriage service, which led to VAD being interpreted as equating to suicide.

"This an enormous disappointment for terminally ill people in rural and regional Australia who are too ill to travel to medical appointments to seek VAD," said Dr Carr.

"The law should be changed to allow conversations about VAD to be conducted, when appropriate, by telephone and videoconference so that all terminally ill Australians who meet their state's VAD criteria have end-of-life choices," he said.

Since the introduction of the VAD Act in Victoria in 2019, the process has brought enormous relief and the opportunity to choose a dignified death for many terminally ill Victorians.

More than a third of 2203 Victorian applications started to access VAD between June 2019 and June 2023 were from people who lived in regional Victoria.

There are fundamental differences between suicide and VAD (see table below). Put simply, suicide is a choice between life and death, while VAD is a choice about how to die.

"Disappointingly, the arguments in the Federal Court were about words, language and dictionaries," said Dr Carr. "Nowhere was the gulf between the horrors of suicide and the comfort of VAD discussed. The human experience was absent from the court."

"This case is about access to medical treatment. The issue has not been resolved by successive federal governments, each of which has said, in effect, they cannot tell doctors if the Criminal Code applies to voluntary assisted dying treatment under State legislation, and we will have to work that out for ourselves. There has been no willingness to confirm the position by making a legislative

change. The government preferred to hide behind ambiguity in whether the Criminal Code was or was not a barrier to those services, because the issue was just too hard.

Well, there are no longer any excuses. The Court has now taken away the government's capacity to say there is no urgency in legislative change because the need for it is not clear. The need for legislative change is very clear. That need is to remove the impact of the Criminal Code on especially regional and remote patients wishing to access information about and arrange for VAD services."

With VAD laws now legislated in all Australian states and more Australians availing themselves of VAD, DWDV will continue to work for legislative change to allow telehealth, remove the ban on doctors instigating conversations with patients about VAD, to make suffering the key criterion for accessing VAD, rather than having a terminal illness, and to explore ways in which dementia sufferers may be able to access VAD.

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VAD is Not Suicide

Voluntary assisted dying	Suicide
Person is dying with a terminal illness	Person not otherwise dying
Requires two medical assessments of the person's capacity, illness, prognosis, suffering and treatment options	No medical pathway or scrutiny
Person must have decision-making capacity; the decision must be enduring, and not be the result of mental illness	Often impulsive, with mental illness usually involved: Depression, schizophrenia, bipolar illness, substance abuse, personality disorder
Death is peaceful, reliable, with the person surrounded by loved ones	Suicide is generally done alone, often 'botched' and violent
Good bereavement outcomes	Terrible bereavement outcomes
Our community overwhelmingly wants VAD to be available	Our community overwhelmingly wants to prevent suicide

in this regard.

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