

The right to die with dignity

Victoria leads the states to recognise compassionate choice for the terminally ill.

by Neil Francis

History was made at 4:10 pm on Wednesday 22 November, when the Victorian Parliament's upper house voted 22 to 18 to pass the government's Voluntary Assisted Dying (VAD) Bill. The amended bill was ratified by the lower house and has now been signed into law by the Victorian Governor. It gives terminally ill Victorians the right, if they are suffering unbearably and without reasonable prospect of relief, to ask for medical assistance to die peacefully.

Opinion polls have shown consistently an overwhelming majority of Australians (now 75% or more) want this right, and opinion has been in the majority now for half a century. Of course, we don't all want assistance to die – but most of us do want to have the option should our end-of-life go badly.

Victoria is the first state in Australia to enact such legislation. But it's not the first jurisdiction.

NORTHERN TERRITORY LED THE WAY

Twenty-two years ago, the Northern Territory beat the states to it and introduced the Rights of the Terminally Ill (ROTI) Bill. Its architect was NT's then Chief Minister, Mr Marshall Perron. He believed so strongly in the reform that he sponsored the bill himself, and allowed a conscience vote. To avoid undue influence on his fellow NT parliamentarians, Mr Perron also



resigned his position as Chief Minister on the eve of the debate and before a vote was taken.

The ROTI Bill passed, becoming an Act which four people used to legally and peacefully escape their suffering. But after only eight months, ROTI was extinguished by the federal parliament via a private member's bill introduced by conservative Liberal MP, Mr Kevin Andrews. Before he became a member of parliament, Mr Tony Burke (now a Labor shadow minister) also actively championed Mr Andrews' bill.

It's important to understand that while the federal parliament has the power to intervene in territory legislation, it can't overturn state-based VAD laws. Nevertheless, despite more than 40 attempts to pass a bill through one or other of the state parliaments since

then, none have succeeded – until now. As recently as the week before the vote on the Victorian bill, a bill in the NSW Parliament upper house was defeated by just one vote – 20 votes to 19.

In the 20 years since the NT's legislation, choice has remained illegal, and anyone providing assistance in hastening death, no matter how egregious the dying person's suffering, faced up to 14 years in prison.

In the meantime, other jurisdictions have legalised VAD, respecting the rights of their citizens to make their own choices at the end of life, including the Netherlands, Belgium, Luxembourg, Germany, Colombia, Canada, and the USA states of Oregon, Washington, Vermont, California, and Colorado. VAD has been legal in Switzerland, too, since 1942.



THE AWFUL CONSEQUENCE OF DENIAL

Some of those in extremis at the end of life have felt abandoned by the legal denial of choice, falling back on a far worse option. To spare their loved ones any risk of prosecution for assisting dying, some Australians have suicided alone, often by violent means such as firearms, hanging, falling from heights, or jumping in front of trains. The Victorian coroner reported even the use of a nail gun in one case.

Demand for choice has been increasing for decades, particularly among baby boomers. So why has it taken so long, since the ROTI act, for the terminally ill to wrest back the right to VAD, and so far only in Victoria?

The answer is revealing. There are four main reasons.

1. Can you hear the voices?

It is an unfortunate reality that the people who are most deeply involved and who most urgently need a change to the law are disenfranchised by their own health. They are too frail and sick to get out and march down Main Street to lobby actively for their last right... *because they are dying.*

Most suffer in private. Only their family, doctors, and nurses bear witness to their deeply-held wish for a hastened, peaceful death – only these few are able to hear the failing voices of the dying.

It is a rare individual who can muster enough strength in the last few months of life to campaign publicly. Nevertheless, there have been some, like Annie Gabrielides in NSW, Victorians Peter Short and Steve Guest, and Tasmanian Rob Cordova

Once they've passed away, however, their voices have traditionally fallen silent. But now, social media and video blogs have helped record their stories to keep their memories and wishes alive and in front of legislators.

2. Religious influence

Most politicians believe that if they deal with voluntary assisted dying law reform, they'll be attacked by religious constituents, placing their re-election in jeopardy.

While it's true that opposition to assisted dying is almost entirely religious, the belief in 'electoral Armageddon' is misplaced. Although many clerics are opposed to assisted dying law reform, their flocks (voters) support it. An Australian National University study last year found 74% of Catholics, 79% of Anglicans, and 78% of Uniting Church members (plus 91% of those with no religion) support reform.

A 2012 Newspan study also found that voters would, at a general election, punish opposing politicians far more than they would punish supporting ones. Around 23% of voters would vote against their usual candidate for opposing assisted dying law reform, while just 7% would vote

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against their usual candidate if the politician supported it.

It's a hard to shift the electoral Armageddon belief amongst politicians, but the evidence of voter attitudes and intentions was presented clearly to Victorian legislators, and they paid attention.

So while Victoria's former Premier, Mr Ted Baillieu, used the language of diversion to stall – saying he would not deal with VAD because it is "an incredibly divisive issue" (which would've been an excuse to leave black people enslaved and women disenfranchised from voting) – current Premier Daniel Andrews showed greater leadership in reflecting the will of the great majority of voters.

3. Pedalling misinformation

Some of the deeply religious have also overwhelmed politicians with misinformation about assisted dying in lawful jurisdictions, cherry-picking data, and indeed making stuff up, to scare legislators into thinking the world will end if they legalise VAD.

For example, Catholic bishops misled the Victorian parliament's end-of-life choices inquiry, claiming wrongly that Oregon's suicide rate had increased dramatically from a very low base since its VAD law came into effect.

Other fake claims include the Dutch supposedly carrying little cards saying "Please don't euthanise me", and that Dr Els Borst, the architect of the Dutch euthanasia law, regretted her reform.



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The imaginative list is extensive.

I and others have been actively countering the fear, uncertainty and doubt (FUD) campaign for years, and the work is paying dividends in helping politicians understand the truth and reject lies and innuendo.

4. Government vs private members' bill

The fourth critical factor in Victoria's success was the sponsorship of the reform process. As well-known media personality and VAD campaigner Mr Andrew Denton has said, "The most important thing was that this was a government-sponsored process and that's the first time that's happened."

Previous reforms had been attempted through private members' bills, but were not backed by the determination and resources of government. Victorian Premier Andrews, a Catholic, had opposed VAD until the death of his own father, who endured terrible suffering despite the best that palliative care had to offer.

Government attention not only facilitated wide, formal community consultation to help craft the VAD Bill and related policies, but also provided

the authority to ensure that the parliament debated it.

MOVING FORWARD

The Victorian VAD law will come into operation in June 2019, providing time to plan the details of its implementation. However, with a state election due before then (November 2018), religious opponents including the Australian Christian Lobby (ACL) have threatened to lobby against MPs who supported the bill.

The Catholic Church, the largest anti-VAD lobby, proclaims that God has exclusive sovereignty over life and death: the reason for its opposition to contraception, abortion and VAD. But Pope Leo XII in 1829, ruled that anyone who accepted vaccination was "no longer a child of God" because it infringed on God's sovereignty. And the church recently overturned its ruling on 'Limbo' so perhaps it might update its views on other issues over time as well.

Nevertheless, I welcome these religious moves, because, as I've pointed out, more voters will change their vote to a supporting MP than to an opposing one, so it can only help to

publicise that sitting MPs respected the will of their electorates.

There will also be a campaign by VAD supporters against selected MPs who lobbied and voted against the VAD Bill: there will be consequences for disrespecting most of the electorate.

In other states, WA is currently in the process of following the Victorian consultation and legislation model, and VAD Bills will soon come up again in NSW, South Australia and Tasmania.

While the reboot of VAD law since the NT's in 1996 has been long in coming, the political landscape is now stronger than ever to facilitate choice for those who want it, while allowing those who strongly disagree to have nothing to do with it. ●

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