

## Victoria: Assisted suicide and euthanasia legal from 19 June 2019

Assisted suicide and euthanasia become legal in Victoria on 19 June 2019 when the [Voluntary Assisted Dying Act 2017](#), which [passed the Legislative Council on 22 November 2017](#) by just two votes (22-18) came into full operation. [Regulations](#) were gazetted in September 2018.

### *Eligibility criteria*

During debate on the Bill it became clear that there are uncertainties around the meaning of “incurable” and “will cause death” so that, for instance an insulin dependent diabetic who declines to take insulin may qualify under this criterion. It was also accepted that there are [misdiagnoses](#) and [errors in prognosis](#) so that there will inevitably be some wrongful deaths.

It is important to note that the fourth element in the criterion relating to “suffering” is specifically NOT to be assessed by the two doctors. It is entirely subjective and therefore entirely meaningless. A person is suffering in the required sense simply if the person asserts that this is the case. Suffering may include loss of autonomy, lack of capacity to enjoy former hobbies, feeling a burden on family or financial concerns to be the only suffering experienced. [There is absolutely no requirement for the person to be experiencing pain or other physical symptoms](#).

### *Mental illness*

It is entirely up to the assessing doctors to form their own view as to their expertise in assessing decision-making capacity. This provision is weaker than the [corresponding provision in Oregon](#) which refers to “impaired judgement” rather than a lack of “decision-making capacity” which is defined in section 4 in purely cognitive terms, taking no account of the effects, say, of depression or demoralisation on a person judging what is truly in his or her best interests. The evidence from Oregon shows that even with this stricter approach “[as many as 150 people with depression may have been helped to commit suicide without any such referral](#)”.

### *Disability*

There are no explicit provisions to protect people with disability from discriminatory assessment under the required processes by doctors who would consider a person with a particular disability as “better off dead”. People with disability [are more likely to experience undiagnosed depression](#) especially following initial acquisition of a disability or adverse developments in their physical, psychological or social condition. The Act explicitly provides for requests for assisted suicide or euthanasia to be made by gestures. It is not made explicit in the Act whether or not an accredited interpreter is required in this case. A [recent court case in the Netherlands](#) determined that “*hand squeezes, nods, eye blinking and crying were all sufficient signs of*” a request for euthanasia.

### *Coercion*

Assessing doctors will be required to complete training approved by the Secretary of the Department of Health on “*identifying and assessing risk factors for abuse or coercion*”. This training is likely to be [a simple online module](#) and cannot guarantee that assessing doctors never miss the signs of coercion or abuse [given the well-documented evidence of failure by professionals in Australia to identify elder abuse](#).



### *State issued permits*

Form 3 in the [Regulations](#) sets out what a VADSAP or “voluntary assisted dying self-administration permit” will look like: “*This self-administration permit in respect of Mary Brown authorises Dr John Smith for the purpose of causing Mary Brown death, to prescribe and supply the substance specified in this permit to Mary Brown that is able to be self-administered; and is of a sufficient dose to cause death*”.

The permit will be signed by the Secretary of the Department of Health and Human Services or his or her delegate. The permit will also directly authorise Mary Brown to “*use and self-administer the substance*” specified in the permit in order to cause her death. This is clearly not just State sanctioned suicide but – in a world first since ancient times – **State authorised suicide of a particular, named person using a specified lethal substance.**



Form 4 in the [Regulations](#) sets out what a VADPAP or “voluntary assisted dying practitioner administration permit” will look like: “*This practitioner administration permit is issued to Dr John Smith ... this practitioner administration permit in respect of Jim Brown for the purpose of causing Jim Brown death, authorises Dr John Smith to administer the substance to Jim Brown.*” This is **State authorised euthanasia of a named individual by a named doctor using a specified lethal substance**. It was last done in Germany in the 1940s.

The [Regulations](#) specify that the Secretary of the Department of Health and Human Services or his or her delegate will have 3 business days from receiving a VADSAP or VADPAP application form (accompanied by five other forms) to either issue the permit or refuse to do so. All that the Secretary or his or her delegate will do is to check that two doctors have ticked the right boxes and filled in the blanks on the six forms.

### *Assisted suicide*

The Alfred Hospital pharmacy is "the sole service for dispensing" the lethal poison across Victoria. "For people too sick to travel, the pharmacy service will deliver them their medication and provide information on administration". The notion of a kind of "uber-poison" service to country Victoria - where there is a chronic shortage in ready access to palliative care medicines as needed - is particularly disturbing.

There is no requirement for any doctor or other health practitioner to be present when the poison is ingested.

In [Oregon](#), under a similar scheme, in 2018 for nearly two out of three (62.5%) people there was no physician or other healthcare provider known to be present at the time of death. One in eight (12.5%) of those for whom information about the circumstances of their deaths is available either had difficulty ingesting or regurgitated the lethal dose or had other complications or regained consciousness and died subsequently from the underlying illness. The interval from ingestion of lethal drugs to unconsciousness has been as long as four hours while the time from ingestion to death has been as long as 21 hours. Imagine these complications occurring for a person who is home alone when they ingest the poison.

There are no requirements for where the locked box containing the lethal poison is to be kept. However, the Act does specifically exclude it from the usual protective requirements for dangerous medication in aged care services - so it may have to **be kept under grannie's bed in her aged care room**. Nor are there any limits on how many keys there can be to the box or on who can have a key (or the code in case of a combination lock). And of course if there is no witness we will never know if the person really self-administered the poison or if it was administered to them by a family member or other person under duress, surreptitiously or violently.

### *Euthanasia*

The Act allows for euthanasia (practitioner administration of the poison) as an alternative to assisted suicide in the case where a single doctor certifies that he or she is satisfied that “*the person is physically incapable of the self-administration or digestion of an appropriate poison or controlled substance or drug of dependence*”. It remains to be seen what criteria, if any, will be used by the Secretary in approving VADPAP requests. It is quite likely that any assertion of such physical incapacity by a doctor will be accepted at face value. If so, given the overwhelming preference for euthanasia over assisted suicide in the two jurisdictions where both means of causing death are available, euthanasia could, over time, become the more prevalent method in Victoria. Comparative statistics between jurisdictions permitting only assisted suicide and those permitting both assisted suicide and euthanasia suggest that where euthanasia is available the overall rate of deaths from assisted suicide and euthanasia is significantly higher.

How this plays out in Victoria remains to be seen.

### *Conclusion*

On 19 June 2019 Victoria embarked on the fifteenth in a series of experiments in legalised euthanasia or assisted suicide begun in the Northern Territory in 1996. Each of these experiments has proved to be [fatally flawed](#) resulting in wrongful deaths. There is nothing in the design of the Victorian experiment to justify any expectation of better results.

See <https://www.australiancarealliance.org.au/victoria> for more information.