21 November 2023

The Hon. Mark Dreyfus KC MP
Attorney-General
PO Box 6022
Parliament House
Canberra ACT 2600

Dear Attorney-General,

RE: Voluntary Assisted Dying (VAD) and the Commonwealth Criminal code

The Society of Hospital Pharmacists of Australia (SHPA) is the national, professional organisation for the 6,100+ Hospital Pharmacists, and their Hospital Pharmacist Intern and Hospital Pharmacy Technician colleagues working across Australia's health system, advocating for their pivotal role improving the safety and quality of medicines use.

VAD services around the country are public, state-funded services, and have a multidisciplinary team of doctors, pharmacists, nurses, and care navigators, usually based in a single tertiary public hospital. Pharmacists working in VAD services support patients at the end of their life to die with dignity and in comfort.

SHPA believes there is an urgent need for clarification on the definition of 'suicide' in the Commonwealth Criminal Code (the Code), and the need to exempt VAD from this definition. This clarification would support VAD practitioners to provide VAD services to terminally ill patients via telehealth with the confidence they are practising within legal boundaries.

Voluntary Assisted Dying is now legal in every state of Australia and is likely to be legal in the ACT by the end of the year. Tasmania (End-of-Life Choices [Voluntary Assisted Dying] Act 2021) and Western Australia (Voluntary Assisted Dying Act 2019 WA) are currently the only states where the legislation specifically allows for the use of audio-visual telehealth in VAD. Although authorised by a state/territory law, it is unclear if this constitutes 'suicide' within the meaning of the carriage service offences contained in the Commonwealth Criminal Code.

A specific consideration is the supply of VAD substances occur within single specialist centres of each State and Territory due to their sensitive nature and complex supply chain, usually at a major teaching hospital in the capital city. This makes the use electronic communication of information and prescriptions between prescribers, pharmacists, patients, and their carers absolutely vital.

SHPA understands this is a matter that has been raised by Go Gentle Australia, Dying with Dignity Victoria, Voluntary Assisted Dying Australia and New Zealand (VADANZ), Western Australia Voluntary Assisted Dying Practice Group, Law Institute of Victoria, and has been considered by the Victorian Voluntary Assisted Dying Review Board Report of Operations and Queensland Law Reform Commission A Legal Framework for Voluntary Assisted Dying.

SHPA also understands that Kate Chaney MP has expressed her intention to introduce a private members' bill to exempt voluntary assisted dying appointments from the federal criminal code, which SHPA would support in-principle.

The relevant Sections 474.29A and 474.29B of the Criminal Code Act 1995 that create offence to use a 'carriage service' to publish or distribute material that counsels or incites committing or attempting to commit

suicide have been explored in the Medical Journal of Australia and Leah Ferris' APH Parliamentary Library article.

This covers the history of the provisions against 'carriage services' that were inserted into the Criminal Code via the Criminal Code Amendment (Suicide Related Material Offences) Act 2005. In introducing the Criminal Code Amendment (Suicide Related Material Offences) Bill 2005, the then Attorney-General, Philip Ruddock, argued that the provisions were 'to protect vulnerable individuals from people who use the internet with destructive intent to counsel or incite others to take their own lives'. There has been considerably medical and technological advancement since these amendments in 2005 and appropriate telehealth delivered by medical professionals in the context of legalised VAD should be distinguishable from the kind of bullying and harassment used to incite or promote suicide online.

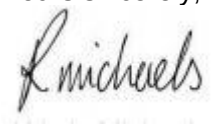
Patients seeking assessment for VAD are uniquely disadvantaged by the Code, given the challenges with timely assessment and the routine availability of telehealth for other medical treatment including palliative care. Most states have only one voluntary assisted dying service centre and pharmacy, requiring very ill patients to travel long distances to access life ending medication or the very small number of doctors who provide voluntary assisted dying and work in regional areas to travel to them which may require significant waiting times. This discrepancy creates a legal quandary and potential confusion for healthcare providers, patients, and their families. Additional challenges imposed by the Code on our practice include:

- Inability to provide administration information to approved practitioners other than through courier;
- Inability to provide training about administration online;
- Inability to transmit prescriptions electronically, delaying provision of VAD substance to patients after they have completed the required assessments;
- Inability for our pharmacy service to discuss medications and administration other than in vague terms, with consequent risk of miscommunication;
- Inability to respond to questions regarding the VAD substance during a first or consulting assessment by telehealth, despite this being a required component of the assessment;
- Inability to utilise a translator over the phone in an otherwise in person appointment; and
- Inability for an assessing medical practitioner who is not able to physically provide a patient who has already been approved for VAD other than with a paper script.

We understand that the suicide-related material amendments to the Code were never intended to apply to a legal end-of-life decision such as VAD, however this is not explicitly defined in the Code. Defining within the Code that VAD does not constitute 'suicide' would support the use of appropriate audio-visual telehealth as for other healthcare services. We have attached an Appendix with case studies of how the interpretation of the Code has impeded timely access to patients at the end of their life accessing VAD services.

If you have any queries or would like to discuss this issue further, please do not hesitate to contact Jerry Yik, Head of Policy and Advocacy on jyik@shpa.org.au.

Yours sincerely,



Kristin Michaels
SHPA Chief Executive

CC: The Hon Mark Butler MP, Minister for Health and Aged Care
Dr Stephen Donaghue KC, Solicitor-General
Senator the Hon. Michaelia Cash, Shadow Attorney-General, Liberal Party of Australia
Senator David Shoebridge, Justice Spokesperson, Australian Greens Party
Kate Chaney MP, Member for Curtin
Dr Monique Ryan MP, Member for Kooyong

Appendix: Examples of how interpretation of suicide in the Commonwealth Criminal Code has impeded timely access to VAD

Geographically isolated patients

A 70-year-old male from Yanchep WA, had completed the assessment process for VAD at the end of 2022. Upon deteriorating significantly, he requested administration of his VAD substance only to find both of his assessing medical practitioners were away in other rural areas. The VAD Pharmacy Service requires a prescription to be provided in physical form for a third practitioner to undertake the role of administering the VAD substance. Ultimately, the inability to use audio-visual telehealth infrastructure and carriage services caused substantial delays on the provision of VAD to a patient struggling at the end of their life. A variety of options were considered including a pharmacist flying to Albany to retrieve a paper script from the practitioner when in any other situation such a prescription could be provided by fax, emailed or other electronic means.

Translation and interpretation services

A 66-year-old male in rural Western Australia, required the assistance of a French interpreter for communication. Due to the current interpretation of the Code, all interactions discussing VAD substances were required to be undertaken in person. The challenges of facilitating travel for a practitioner, a VAD Care Navigator and an interpreter to many rural and remote locations in WA are logistically and financially challenging. For most other types of care, the use of audio-visual interpreting services would be entirely appropriate. In this instance, these challenges materially contributed to this man dying without access to his preferred end-of-life choice.

Inability to provide information or advice to practitioners and patients about VAD substances

Hospital Pharmacists at statewide voluntary assisted dying pharmacies cannot provide advice via telehealth to practitioners or patients who have questions about the correct usage of VAD substances. This is particularly an issue with new practitioners who would appreciate assistance with writing prescriptions, and it needs to be undertaken in such a way as to not mention the substance. This has the potential to lead to errors or miscommunication. This includes difficulty in collaborating with other VAD pharmacy services in other jurisdictions online to collaborate on service improvement and the inability to offer digital education opportunities or platforms to practitioners for the prescribing and administration of VAD substances.

Additional delays in collecting prescriptions

A 63-year old female with end stage Progressive Supranuclear Palsy in a hospital one an hour away from Perth CBD. She is close to death and has been approved for the expedited process. She had her consultation done and was found eligible. Her coordinating practitioner will travel to her on Saturday for final assessment and her administration date is set for Monday morning. Due to her illness she is only suitable for intravenous administration. Her administrating practitioner would appreciate it if her medications could be ready Monday morning for pick up on way to administer. As the administrating practitioner was unable to electronically send the prescription on Saturday it had to be delivered it in person and the administrating practitioner then needed to wait while pharmacy dispensed the medications. Requiring paper copies of VAD protocols, results in delays to updates due to the labour-intensive requirements for printing and distribution.