Voluntary assisted dying legislation keeps gaining pace

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If there were any doubt where the right to die in Australia was headed, the argument has now been settled. It's only weeks since Victoria's landmark voluntary assisted dying law for the terminally ill came into effect and the goalposts have already shifted.

The changes are subtle but immensely significant. The legislation that the West Australian parliament began to debate this week works waters down or dispenses with key safeguards in the Victorian law, while a draft bill circulating in Queensland — the work of former full-time members of the state law reform commission — goes even further in widening access to doctor-assisted suicide.

Call it what you will — the slippery slope, mission creep, progress — but the direction is undeniable: the scope of assisted-dying law in Australia is being expanded when the ink is barely dry on the prototype law, gaining any realistic assessment of its effectiveness.

The discussion is being conducted piecemeal, sided in one state parliament or another, with little regard to how the emerging regimes would interact at the national level. Yet the momentum seems unstoppable.

Opponents and proponents of voluntary euthanasia agree on this: "The draft legislation in Western Australia is more liberal than Victoria and the draft bill in Queensland is more liberal again," the former primate of the Anglican Church of Australia and the Archbishop of Brisbane, Phillip Aspinall, told a state parliamentary inquiry last week, warning of the slipperiness.

Testifying at the same hearing, Joe Hall of the Dying with Dignity organisation urged the MPs to consider extending assisted dying to under-8s and sufferers of end-stage dementia who had prepared when they were mentally competent to an advance healthcare directive to be euthanised. His group's 1300 members and supporters in Queensland also wanted the residency requirement dropped and VAD to be extended to the non-terminally ill, a position backed by the father of euthanasia law in Australia, former Northern Territory chief minister Marshall Peron.

Asked by Inquirer if she accepted Aspinall's point, Hall says "He's right. People have looked at the Victorian legislation and said, 'This is too light'... and come up with some very carefully considered miller points of change to improve it while keeping the protections in place.'"

It's important to remember that the Victorian law was framed and delivered by Daniel Andrews' Labor government as a 'minimalist' reform, bracketing with safeguards for those accessing voluntary assisted dying and the doctor who would necessarily be involved. Eligibility is confined to adult Australian citizens diagnosed with a terminal illness who have been resident in the state for at least 12 months before making an initial request for VAD. The patient has to be assessed to have less than six months to live, or a year in the case of those with a neurogenerative condition such as motor neurone disease.

Their pain and suffering must be such that it "cannot be relieved in a manner that the person considers tolerable," Victorian doctors are prohibited from raising VAD in the first instance; once the request is made by the patient, two doctors of at least five years standing, each trained in VAD and approved by the state, one of them a specialist and both independent of the other financially, have to agree that the patient qualifies. In all, a minimum of three separate requests to die must be entered by the patient. The first can be verbal, but a nine-day cooling-off period is mandated before the second, written request is lodged with an official review panel, possibly in tandem with the final request. If accepted, a permit for VAD is issued by the state health department.

The default position in the Victorian law is that the patient self-administers the lethal dose by drinking it, most likely at home. No doctor is required to be present. Only in exceptional circumstances — typically where the person is unable to swallow or ingest the medication — can a medical professional be involved.

In that event, an additional deathbed request must be made by the patient. To date, 11 people have been given access to VAD in Victoria.

The WA legislation picks up most of the eligibility criteria and process but differs critically at the starting point: doctors are permitted to suggest VAD. The Australian Medical Association says this is a very big deal.

"The intention was to protect the treating doctor and also to some degree put a barrier to the possibility that it becomes the default position of the doctor," says Chris Moy, an Adelaide GP who chairs the AMA's ethics and medical-legal committee. "We saw that as a very important protection in the Victorian legislation."

The requirement for the involvement of a medical specialist in the clinical assessment process — likely an oncologist for a dying cancer patient or a neurologist in the case of an MND sufferer — is waived in the McGowan government's bill in WA, as is the need for a permit to be issued by both consulting doctors in every instance.

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