



5 August 2022

The Hon Mark Dreyfus QC, MP
Attorney General
Parliament House
CANBERRA ACT 2600

CC: The Hon Mark Butler, Minister for Health and Aged Care
The Hon Anika Wells, Minister for Aged Care

Dear Attorney General,

RE: Commonwealth restriction on the use of a carriage service

Catholic Health Australia is the peak advocacy body representing Catholic hospitals, aged and community care providers which between them provide around 10 per cent of Australia's health care. This includes 7500 private hospital beds, 2500 public hospital beds and over 25,000 residential aged care beds nationally.

Through recent media reports, CHA has become aware of consideration being given to the amending of the Federal Criminal Code, which would allow for the use of a carriage service for the purposes of communicating, assessing and approving an individual's access to voluntary assisted dying (VAD).

CHA is concerned that any changes to permit the VAD process by carriage service under existing legislation could expose serious policy weaknesses and undermine many of the limited protections currently in place within various state legislation on VAD.

Health inequity in rural and regional Australia

Changes to the Federal Criminal Code would result in VAD being more accessible than ordinary end of life and palliative care.

The current disparity between access to, and funding of, health care from urban areas to regional, rural and remote communities is well documented. Far from creating a level playing field for accessing VAD amongst Australians, by amending the Criminal Code the Federal Government will



be increasing the vulnerability and risk to regional, rural, remote Australians who are the most likely to use telehealth or similar platforms/modes. Assessing telehealth for VAD exacerbates the lack of protection for those in rural and regional communities who may be experiencing duress, undue influence, elder abuse or mental impairment.

In some VAD legislations, the intolerability of treatment is one eligibility criteria. However, regional and rural Australia have long been plagued with access issues for critical, chronic, and palliative care. With unreliable care and treatment a reality, this criteria of 'intolerability' could be verified via telehealth, despite there being no existing avenue for the treatment being assessed in the first place. If one path is more accessible than the other then this does not provide an equal choice for all Australians. Any amendment to the Criminal Code would further skew the balance of this choice.

A thorough assessment is required for such a significant decision

Any assessment by means of telehealth or other similar technology for VAD would further exacerbate the lack of protection for patients experiencing duress, undue influence, elder abuse, mental impairment. The complex current architecture of the various state Voluntary Assisted Dying Acts that include protections to properly assess capacity, duress, and eligibility will be significantly eroded if any communications in the VAD process were to occur via a carriage service.

Some proponents have argued that formal and clinical requirements can all be addressed through telehealth, particularly where doctors have been involved in the patient's care before the request for VAD. The one great problem each state has, however, is that legislation does not require the assessing doctor/s to have any pre-existing relationship with the patient in order to ground their knowledge.

Consideration must also be given to the severity of the 'treatment' being consented to, which in VAD should require a higher standard of competency and capacity assessment. Telehealth may be suitable for the assessment of medical conditions and the checking of ongoing treatment plans, however it is no substitute for face-to-face assessment for more complex health-related matters.

These communications, particularly the assessments, call into question how a practitioner establishes informed consent, capacity, duress or any mental health impairment. This is further exacerbated by there being no requirement that the medical practitioner have any pre-existing knowledge or relationship with the patient.

Catholic Health Australia urges the Government to take a broad ethical approach to highlight the inherent weaknesses of the Acts and contrast that with the lack of alternative care options equally available across all states and territories. In this instance, permitting the VAD process by carriage



service has a perverse impact on the choices available to terminally-ill patients, while heightening the risk for the isolated, poor, vulnerable and victims of abuse.

We would welcome an opportunity to meet with your office and discuss this further with legal and medical experts from within Catholic Health Australia.

Your office can contact CHA's Director of Strategy and Mission, Brigid Meney at brigidm@cha.org.au or on 0432885823 to arrange a time to meet.

We look forward to hearing from you,

Your sincerley,

A handwritten signature in black ink that reads "Pat Garcia". The signature is written in a cursive style, with the first letter of each word being capitalized and prominent.

Pat Garcia
Chief Executive Officer
Catholic Health Australia