



Voluntary Assisted Dying Bill 2021

Submission to the Queensland Parliament Health and
Environment Committee

1 July 2021



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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into the inquiry by the Health and Environment Committee ('the Committee') into the Voluntary Assisted Dying Bill 2021 ('VAD Bill').
2. This response has been compiled by the ALA's Queensland State Committee whose members have substantial expertise in this area.
3. Although the ALA broadly supports the introduction of a voluntary assisted dying ('VAD') scheme in Queensland and welcomes the introduction of the VAD bill, it considers that a number of amendments should be made to the proposed VAD Bill to increase the eligibility of persons who can access the scheme and to promote access to persons living in remote and regional parts of Queensland.

Initiating discussions

4. Section 7(1) of the VAD Bill prevents a health care worker from initiating discussions about VAD with a person who wishes to access VAD or to suggest VAD to a person. However, section 7(2) enables a medical practitioner or nurse practitioner to initiate such discussions provided that at the same time, they also give the person information about the treatment options available to the person and the likely outcomes of the treatment, as well as about the palliative care and treatment options available to the person and the likely outcomes of that care and treatment.
5. The prohibition on health care workers initiating discussions or suggesting VAD to a person is similar to the VAD scheme in Western Australia.² However, it is broader than the Victorian VAD scheme, which only prevents registered health practitioners from initiating discussions about VAD or suggesting VAD to a person.³
6. Allowing medical practitioners and nurse practitioners to initiate discussions or suggest VAD to a person, mirroring the scheme in Western Australia,⁴ would enable persons who are

² *Voluntary Assisted Dying Act 2019* (WA) s 10(1)-(2).

³ *Voluntary Assisted Dying Act 2017* (Vic) s 8(a).

⁴ *Voluntary Assisted Dying Act 2019* (WA) s 10(3).

suffering from illnesses, diseases or other medical conditions to understand all of their options before deciding what pathway best meets their needs.

7. However, the ALA considers that there should be penalties for registered health practitioners who contravene section 7 of the VAD Bill. For example, in Western Australia, a contravention of s 10(2) of the *Voluntary Assisted Dying Act 2019* (WA) is unprofessional conduct for the purposes of the *Health Practitioner Regulation National Law (Western Australia)*.⁵ The ALA considers that it would be appropriate for similar provisions to be inserted into the VAD Bill.

VAD not suicide

8. Section 8 of the VAD Bill states that a person who dies through their participation in the VAD scheme does not die by suicide and is taken to have died from the disease, illness or medical condition from which the person suffered. The ALA supports the inclusion of this provision, as it will ensure that access to a person's death insurance is not impacted by the introduction of a VAD scheme.

Eligibility for access to scheme

9. The VAD Bill outlines a number of eligibility requirements for a person to access VAD.

Temporal connection to expected death

10. Section 10(1)(a)(ii) of the VAD Bill only allows persons to access VAD if they have been diagnosed with a disease, illness or medical condition that is expected to cause death within 12 months. The proposed provision will enable greater access to VAD than in other jurisdictions.
11. In Victoria, a person must be diagnosed with a disease, illness or medical condition that "is expected to cause death within a period, not exceeding 6 months".⁶ However, if the person suffers from a neurodegenerative condition, that period of time is extended to 12 months.⁷

⁵ *Voluntary Assisted Dying Act 2019* (WA) s 10(3).

⁶ *Voluntary Assisted Dying Act 2017* (Vic) s 9(1)(d)(iii).

⁷ *Ibid* s 9(4).

12. In Western Australia, one of the eligibility requirements is that the disease, illness or medical condition “will, on the balance of probabilities, cause death within a period of 6 months or, in the case of a disease, illness or medical condition that is neurodegenerative, within a period of 12 months”.⁸
13. In Tasmania, section 6(1)(c) of that state’s legislation means a disease, illness, injury, or medical condition that is expected to cause the death of the person within six months;⁹ or, if the disease is neurodegenerative, within 12 months.¹⁰ However, section 6(5) allows for the Voluntary Assisted Dying Commission, established by section 110 of the legislation, to find on the application of a person that they are exempt from this requirement. The Tasmanian Act includes the term “injury” and provides a possible avenue for exemption.
14. Although the ALA agrees with the sentiment behind the VAD Bill that there should be no differentiation between neurodegenerative diseases and other diseases, the ALA remains of the view that a specific timeframe should not be specified in which a person’s death is likely to occur. Rather than prescribing any temporal requirement, the ALA considers that an individual should be able to access VAD if they are experiencing grievous and irremediable suffering related to an advanced and progressive terminal, chronic or neurodegenerative disease, illness or condition that cannot be relieved in a manner tolerable to the person. This definition of medical condition emphasises the degree of suffering, the advanced or progressive nature of the condition, and the inability of suffering being ameliorated.
15. The ALA notes that the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee’s VAD report (the ‘VAD report’) recommended that the Queensland scheme should not impose any precise timeframes for anticipated death due to the “complex, subjective and unpredictable nature of the prognosis of terminal illness”.¹¹ While the VAD report did not recommend a timeframe, the definition of ‘medical condition’ limited the availability of the scheme to persons with a condition that “will cause death”.¹²

⁸ *Voluntary Assisted Dying Act 2019* (WA) s 16(1)(c)(ii).

⁹ *End-of-Life Choices (Voluntary Assisted Dying) Act 2021* (Tas) s 6(1)(c)(i).

¹⁰ *Ibid* s 6(1)(c)(ii).

¹¹ Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, Parliament of Queensland, *Voluntary Assisted Dying* (Report No 34, March 2020) Recommendation 5.

¹² *Ibid* Recommendation 4 at page 120.

16. If a disease, illness or medical condition will cause death, the ALA considers that there should be no temporal requirement to when the person is expected to die from the disease, illness or medical condition in question. The ALA considers that including such a requirement complicates the process for the coordinating and consulting practitioner, given the “complex, subjective and unpredictable nature of the prognosis of terminal illness”, as stated in the VAD report.¹³ The ALA also considers that a person should not be excluded from a VAD scheme because their disease, illness or medical condition, which causes them intolerable suffering, is expected to cause their death in a slower timeframe.

Decision-making capacity

17. The ALA considers it is vital to any VAD scheme that the person has decision-making capacity and agrees that it should be a requirement as set out in section 10(1)(b) of the VAD Bill. The definition of ‘decision-making capacity’ in section 11 of the VAD Bill is the same definition as ‘capacity’ in the *Guardianship and Administration Act 2000* (Qld) and, given the complexities associated with determining a person’s ‘capacity’, it is appropriate that the definition is consistent with other legislation in Queensland.

Minimum age

18. The ALA accepts that it would be appropriate to limit eligibility to VAD to persons who are at least 18 years of age, as set out in section 10(1)(d) of the VAD Bill. However, the ALA considers that in due course, further consideration should be given as to why children, who otherwise meet the eligibility requirements, should be excluded from a VAD scheme if they have a disease, illness or medical condition that is causing them intolerable suffering. This question should be considered even more so if one of the eligibility requirements of the VAD scheme is that the disease, illness or medical condition will cause the person’s death. In this situation, the ALA considers that children who otherwise meet the eligibility requirements should be given the same end of life options as adults.

Citizenship and residency requirements

19. The ALA considers that the citizenship and residency requirements in section 10(1)(e) of the VAD Bill are appropriate to prevent VAD ‘tourism’. Further, the ability for the chief executive

¹³ Ibid Recommendation 5 at page 120.

to grant exemptions under section 12 of the VAD Bill will enable flexibility with those requirements, where appropriate, which the ALA supports especially given the restrictions on international and domestic travel over the past 15 months.

Mental health conditions

20. The ALA agrees that section 13 of the VAD Bill should prevent a person from accessing VAD if they only have a mental illness, as defined under section 10 of the *Mental Health Act 2016* (Qld).

Process for accessing VAD

21. In Queensland, the request and assessment process adopted in the VAD Bill is largely similar to the process contained in VAD legislation in Victoria, Western Australia and Tasmania.
22. The proposed process consists of three requests – one of which must be in the form of a written declaration – along with two clear and documented independent assessments by registered medical practitioners confirming a person’s eligibility to access the scheme.¹⁴
23. Section 82(a) of the VAD Bill provides that a medical practitioner is eligible to act in the role of coordinating practitioner or consulting practitioner, if the medical practitioner:
 - (a) holds specialist registration and has practised for at least one year as the holder of that registration; or
 - (b) holds general registration and has practised for at least five years as the holder of that registration; or
 - (c) holds specialist registration and has practised for at least five years as the holder of general registration; or
 - (d) is an overseas-trained specialist who holds limited registration or provisional registration.

¹⁴ Queensland Law Reform Commission, *A Legal Framework for Voluntary Assisted Dying* (Report No 79, May 2021), 190 at 8.27-8.28.

24. The required qualifications of the medical practitioners are similar to the approach in Western Australia. The VAD Bill did not, as was the case in Victoria, require either the coordinating practitioner or the consulting practitioner to be a specialist with at least five years' experience, and for either one to be a specialist in the person's disease, illness or medical condition. These requirements for medical practitioners accord with the Queensland Law Reform Commission's (QLRC) views that this requirement would be a barrier to access in regional and remote areas.¹⁵
25. Section 21 of the VAD Bill provides that if a coordinating practitioner or consulting practitioner is unable to determine a specific matter relating to eligibility, they must refer the matter to another practitioner with the relevant skill set for determination. The QLRC was of the view that the referral requirement contained in section 21 ensures that persons in remote areas of Queensland are being referred to practitioners including specialists with the appropriate skill set.¹⁶
26. The VAD Bill does not permit substituting a medical practitioner for a qualified nurse practitioner for the purpose of undertaking eligibility assessments. The ALA considers that where a first or second medical practitioner is unavailable, suitably qualified nurse practitioners should be permitted to participate in the VAD scheme to enable delivery of VAD services in rural and remote areas of Queensland. Given that under the VAD Bill, nurse practitioners are able to initiate discussions and suggest VAD to a person and can act as an 'administering practitioner' (along with suitably qualified registered nurses),¹⁷ it seems reasonable to allow appropriately qualified and trained nurse practitioners to act as a 'coordinating practitioner' under the VAD scheme.
27. The VAD Bill does not include any requirement for persons wishing to access VAD to participate in mandatory counselling. The ALA does not consider that such a requirement would be appropriate given the requirement that the person has 'decision-making capacity' and the information that is required to be provided to the person considering VAD.

¹⁵ Queensland Law Reform Commission, *A Legal Framework for Voluntary Assisted Dying* (Report No 79, May 2021) 403 at 13.114.

¹⁶ *Ibid* 403 at 13.115.

¹⁷ Voluntary Assisted Dying Bill 2021 (Qld) s 83; *Ibid* 404 at 13.121.

Conscientious objections

28. The VAD Bill enables health practitioners and speech pathologists to refuse to participate in the VAD scheme if they hold a conscientious objection.¹⁸ The ALA considers that medical and health practitioners should be allowed to conscientiously object to VAD and should not be forced to participate in any VAD scheme. The ALA recognises that there is a wide range of personal views and beliefs that will determine whether individuals support the introduction of a VAD scheme in Queensland, including within the health profession. The ALA strongly believes that the personal beliefs and values held by medical and health practitioners should not be devalued by their forced participation in a VAD scheme. Inclusion of these clauses would also ensure consistency with other legislative schemes in Queensland,¹⁹ as well as with codes of conduct.²⁰
29. However, the ALA also strongly supports the current requirements in the VAD Bill for medical practitioners to immediately advise a person of their conscientious objection.²¹ The ALA also supports the requirement for medical practitioners who refuse to act as a coordinating practitioner following a person's first request, to provide the person with information as set out in section 16(4) of the VAD Bill, provided that there is a VAD care navigator service available for practitioners to refer to. These provisions will promote the autonomy of persons to make their own decisions about their end of life options and to ensure that medical and health practitioners' personal views about VAD do not adversely impact on the care of their patients and prevent their access to a lawful end of life option. It should be noted that requiring practitioners to refer a person to another practitioner in these circumstances is consistent with concepts of good medical practice in codes of conduct and medical ethics.²²

¹⁸ Voluntary Assisted Dying Bill 2021 (Qld) ss 16(2)(a), 26(2)(a), 84–5.

¹⁹ See, eg, *Termination of Pregnancy Act 2018* (Qld) s 8.

²⁰ Medical Board of Australia, *Good medical practice: A code of conduct for doctors in Australia* (at March 2014) rr 2.4.6-7.

²¹ Voluntary Assisted Dying Bill 2021 (Qld) ss 16(6), 26(5)(a).

²² Medical Board of Australia, *Good medical practice: A code of conduct for doctors in Australia* (at March 2014) r 2.4.6.

30. The ALA also supports the inclusion of section 90 of the VAD Bill to ensure that facilities cannot prevent a person from accessing information about VAD or their access to the scheme.

Conclusion

31. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the VAD Bill. The ALA is available to provide further assistance to the Committee on the issues raised in this submission, should the Committee consider that to be useful.



Sarah Grace

**Queensland President
Australian Lawyers Alliance**