



2 July 2021

Committee Secretariat  
Health and Environment Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

By email: [hec@parliament.qld.gov.au](mailto:hec@parliament.qld.gov.au)

Dear Committee

### **Voluntary Assisted Dying Bill 2021**

Thank you for the opportunity to provide feedback on the Voluntary Assisted Dying Bill 2021 (the **Bill**). Aged and Disability Advocacy Australia (**ADA**) appreciates being consulted on the potential introduction of this framework.

#### **About ADA Australia**

ADA is a not for profit, independent, community-based advocacy and education service with nearly 30 years' experience in informing, supporting, representing and advocating in the interests of older people, and persons with disability in Queensland.

ADA provides legal advocacy through ADA Law, a community legal centre and a division of ADA. ADA Law provides specialized legal advice to older people and people with disability, including those living with cognitive impairments or questioned capacity, on issues associated with human rights, elder abuse, and health and disability law.

#### **Review of proposed legislation**

ADA has reviewed the Bill and provides the following comments for the Committee's consideration.

#### **Part 1, Division 2 – Principles of voluntary assisted dying**

ADA supports the inclusion of principles underpinning the legislation as set out under clause 5.

However, we suggest that the section should expressly refer to and embed a human rights framework. A human rights-based approach to healthcare is person-centered, and seeks to ensure that the language of human rights is meaningfully implemented into practice.



We suggest the inclusion of wording under Division 2 in reference to the *Human Rights Act 2019* (Qld) (the **HR Act**), which clarifies that those rights enshrined pursuant to the HR Act are not abrogated.

Further, clause 5(c) may be strengthened as follows:

- (c) *a person's autonomy, including autonomy in relation to end of life choices, should be respected, supported and where required, facilitated, in accordance with the Act;*

#### Part 1, Division 4, clause 7 – Initiating a conversation about VAD

ADA is supportive of the drafting of clause 7 of the Bill, which clarifies the circumstances under which a medical practitioner or nurse practitioner may initiate a discussion about VAD as an end-of-life care option.

Clear and transparent communication with respect to the operation of a VAD scheme, including as an end-of-life option for an individual, is critical to ensuring that a person is provided with complete information to aid personal decision-making.

Comprehensive policies and guidance material must be created to ensure that initiating such a discussion is appropriate in the context of an individual, and to ensure that any unconscious bias regarding a person's *perceived* quality of life does not factor in a medical or nurse practitioner's decision to raise VAD as an end-of-life care option. This is critical for persons with disability of all ages, as well as for older patients.

In addition to the development of policies and guidance materials, training for medical and nurse practitioners must be developed in consultation and with contribution from Aboriginal and Torres Strait Islander Peoples, as well as representatives from culturally and linguistically diverse communities. This is critical to ensure that guidance materials and training programs will equip the recipient with the cultural awareness which they will require to assess whether initiating a discussion about VAD is appropriate, and delivered appropriately, in the context of an individual.

#### Part 2 – Requirements, eligibility and capacity

ADA supports the framework set out in clauses 9 – 11 of the Bill, which requires a person to demonstrate 'decision-making capacity' via a series of requests.

Use of the term 'decision-making capacity' is preferable, as opposed to the definition of 'capacity' in the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*. This is because 'decision-making capacity' has been drafted as a tool for interpretation in the context of a decision regarding VAD. It is therefore a more appropriate test to examine whether a decision to apply for or progress VAD as an end-of-life treatment is being made voluntarily, with free and informed consent.

ADA acknowledges that persons with a degenerative medical condition that causes diminution of capacity may ultimately be excluded from accessing the scheme, though they may have been eligible when initiating the process. We recognize that this may cause significant distress to affected persons who wish to gain access to the VAD scheme at a

designated point in the worsening of their condition, declared through advance care planning documentation.

We recommend that further consultation regarding the possible use of advance health directives be included upon review of the legislation, pursuant to the review provisions under clause 154(2).

#### Part 6 – Participation, conscientious objection and information about non-availability of VAD

ADA supports the inclusion of provisions set out at clauses 84 and 85 of the Bill, which relate to a registered health practitioner or speech pathologist who has a conscientious objection to voluntary assisted dying.

##### *Participation by an entity*

With respect to participation in the scheme by an entity, we consider the drafting set out in clauses 86 to 97 to be broadly appropriate. However, the examples of ‘serious harm’ contained under clauses 94(4)(a), 95(4)(a), 96(4)(a) and 97(4)(a) should expressly refer to emotional or psychological trauma.

Residents in aged care facilities often face significant obstacles when seeking access to specialised healthcare. ADA supports legislative and policy reforms that will improve choice and control for residents in aged care with respect to access and availability specialized health services. This applies in relation to all healthcare services, including VAD, palliative care, and resident choice of general practitioner.

##### *Publishing information about non-availability of VAD services*

Clause 98 should be amended to ensure that any information published pursuant to this section clearly sets out a relevant entity’s obligations under Division 2, such as permitting or facilitating an individual having reasonable access to qualified medical and nurse practitioners who participate in provision of voluntary assisted dying, and taking reasonable steps to facilitate transfer of the person to another facility, if required.

A new subsection (4) should be inserted after clause 98(3) to ensure that any information published clearly states that although a relevant entity does not provide services associated with voluntary assisted dying, it is otherwise required to take reasonable steps to provide or facilitate access for those persons who wish to discuss an application for voluntary assisted dying services.

As currently drafted, clause 98 may result in the production of published information that is interpreted by a resident at such a facility to mean that they cannot, or should not, raise a request regarding voluntary assisted dying services. This misunderstanding will have the effect that persons who wish to discuss their eligibility to access VAD do not initiate any enquiry, due to a misapprehension that their request will not be heeded.

#### Part 7 – Review by QCAT

ADA broadly supports the drafting of Part 7 of the Bill. We suggest inserting a definition of ‘agent’ in relation to clause 100, to clarify if the term includes a person with a power of attorney or other legally appointed representative. We recommend that the definition

should expressly include a solicitor or advocate appointed by the person who is the subject of the decision.

Thank you again for the opportunity to comment. ADA would be pleased to further assist the Committee with its inquiry. Should you wish to discuss this submission, please do not hesitate to contact Solicitor and Senior Policy and Research Officer, Vanessa Krulin on (07) 3637 6036 or at [vanessa.krulin@adalaw.com.au](mailto:vanessa.krulin@adalaw.com.au).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Geoff Rowe', with a long horizontal stroke extending to the right.

**Geoff Rowe**  
Chief Executive Officer