

**Submission into the Voluntary Assisted Dying Bill 2021**

**Submission No.:** 1148

**Submitted by:** Queensland Council of Unions

**Publication:** Making the submission and your name public

**Position:** I/We support the Voluntary Assisted Dying Bill

**Comments in relation to:** Eligibility criteria\* ,Conscientious objection by either individuals or entities,Oversight and review,Other

**Attachments:** See attachment

**Submitter Comments:**

**Submission to the Qld Parliamentary Health and  
Environment Committee  
on the Voluntary Assisted Dying Bill 2021**



# Queensland Council of Unions

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## Introduction

The Queensland Council of Unions (QCU) is the peak union organisation in Queensland representing twenty-six affiliated unions and the voices of 360,000 Queensland union members.

Unions affiliated with the QCU have a substantial interest in voluntary assisted dying (VAD) laws from both a social justice and professional perspective. Unions advocate for a compassionate and just society in which human rights are considered paramount. An intrinsic part of an individual's human right to life and to health services without discrimination,<sup>1</sup> should be the right to elect to end their life in a manner of their choosing to avoid unnecessary suffering. This is also consistent with the well-established health law principle of autonomy and self-determination.

In addition to human rights, unions also have a strong interest in ensuring there are appropriate safeguards for health care and related workers who may work within or interact with any VAD legislative scheme.

Within this framework, the QCU supports the introduction of the Voluntary Assisted Dying Bill 2021. Our submission highlights several key issues contained within the Bill.

## Principles

Clause 5 of the Bill outlines the principles that will underpin the VAD legislative framework. These principles are consistent with the principles outlined in the *Human Rights Act 2019* (Qld) (HR Act). They incorporate the principle of autonomy and the importance of self-determination in decision-making about end-of-life care and options for all people. Importantly, they also recognise the need to provide protections for our more vulnerable people within our community. The principles are supported.

## Eligibility

Clause 10 of the Bill provides that an adult person is eligible to access voluntary assisted dying based on specific medical factors, decision-making capacity, voluntariness and lack of coercion, and residency status.

The QCU supports these core elements of eligibility. We draw attention to the adoption of a consistent definition of capacity as provided under the Queensland guardianship legislative framework for adults.<sup>2</sup> This includes a presumption of capacity and is supported to ensure consistency in its application across the health sector in Queensland.

The QCU notes that Clause 11 of the Bill recognises that a person with a disability or mental illness may still be eligible to access voluntary assisted dying where the person is found to have decision-making capacity. This is consistent with Section 37 of the *Human Rights Act 2019* (Qld) (the HR Act) which provides that every person has the right to access health services without discrimination. This recognises protection for persons with an impairment from accessing the system within the eligibility parameters.

However, the Bill still excludes persons with dementia who may not have capacity at the relevant time to be eligible to access voluntary assisted dying even if this was their specific instruction outlined in an advance health directive prior to them losing capacity. We note that this was a matter

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<sup>1</sup> *Human Rights Act 2019* (Qld) ss 16, 37.

<sup>2</sup> *Guardianship and Administration Act 2000* (Qld) s 3, Sch 4 (definition of 'capacity').

considered in detail by the Queensland Law Reform Commission and the previous Parliamentary Committee.

The QCU believes that where an adult has capacity and enters into an advance health directive about future health care, then a voluntary assisted dying legislative framework should also recognise the wishes of the person outlined under the advance health directive to uphold the person's wishes. This is consistent with the principle of autonomy and self-determination.

The concerns expressed in the QLRC that persons with dementia may be exploited or that they have no option to change their mind. The QCU believes that consistent with other health care decisions such as no resuscitation orders, the wishes outlined in a legal advance health directive should continue to apply where this is consistent with the legislative framework.

Within this context, the QCU supports recommendations to undertake further research and investigation of the extension of voluntary assisted dying under an advance health directive where a person meets the medical criteria outlined under the Bill but is suffering from dementia and unable to be assessed as having decision-making capacity. This should form part of a review of or interact with a review of the application of advance health directives under the guardianship legislative framework.

## Requests to access voluntary assisted dying

The QCU is cognisant that the application of the Bill should be such to support access to voluntary assisted dying for all Queenslanders, including those in remote, rural, and regional areas. Within this context, tele-health services are an important component of ensuring equity in access for all Queenslanders.

The QCU notes the Commonwealth offences which prohibit the use of a carriage service for improper purposes, including the use of a carriage service to access or transmit material which 'directly or indirectly counsels or incites committing or attempting to commit suicide'.<sup>3</sup> This has the strong potential to create uncertainty among health practitioners about the use of tele-health facilities to provide voluntary assisted dying services in Queensland.

The QCU notes the Qld Law Reform Commission's recommendation for the Queensland Government, in consultation with other state governments, to raise the uncertain state of the law in this area with the Commonwealth about the carriage service offences for suicide related material and the unintended consequences of these laws on the implementation of an effective and equitable voluntary assisted dying framework.

While this is not a matter for the drafting of the current Bill, it is an issue of import to the practical application of the Bill for all Queenslanders. On this basis, the QCU supports the State Government raising this issue as a matter of urgency with the Commonwealth to clarify that the Commonwealth offences will not apply to the provision of tele-health services supportive of the voluntary assisted dying framework in Queensland.

## Conscientious objections

The Bill provides for an individual registered health practitioner who has a conscientious objection to voluntary assisted dying the right to refuse to participate in the processes.

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<sup>3</sup> *Criminal Code (Cth)* s 474.29A(1).

Importantly, the Bill places an obligation on a conscientious objector to inform a person that other health practitioners, health service providers, or a service is likely to be able to assist the person. Clause 84.

The Bill also provides important protections for the rights of persons who are permanent residents at a facility that does not provide voluntary assisted dying services at the facility, to not hinder the person's access at the facility to information about voluntary assisted dying, and to allow reasonable access by a registered health practitioner or other relevant person to provide requested information about voluntary assisted dying to the resident.

This aspect of the Bill is particularly important to protect the rights of residents from being infringed on by the views of a religious or other organisation being able to effectively veto access to voluntary assisted dying because of their own organisational policies or views.

## Review Board

Part 8 Division 2 relates to the establishment of a Voluntary Assisted Dying Review Board. Clause 124 of the Bill outlines the relevant areas of expertise the Minister may consider appointment to the Review Board, including a range of medical areas, social work, ethics, and the law.

While this list is not exclusive (see Clause 1(a)(viii), (b)), the QCU recommends that consideration is given to including a community advocate representative to ensure inclusion of community representation within the board functions particularly as they relate to its functions under Clause 117(1)(e), (f), (h) and (i).

## Protection from liability

The Bill provides important protections for persons, particularly health practitioners from criminal liability when acting in good faith or by simply being present when another person self-administers or is administered a voluntary assisted dying substance. In addition, no civil or criminal liability arises for an act or omission made in good faith and without negligence. This includes protections for health practitioners and ambulance officers.

## Complaints Process

The Bill includes important review and appeal mechanisms to the Qld Civil and Administrative Tribunal (QCAT) as well as a Review Board to oversee the operation of the legislation.

However, there are no mechanisms to ensure there is an independent process for complaints to be made which lie outside of these parameters. For example, complaints in relation to:

- Lack of health practitioners or service providers in particular regional areas
- Decisions made by conscientious objectors or service providers who refuse to provide voluntary assisted dying services to not refer people or residents to trained health practitioners

The QCU supports the establishment of an Ombudsman style independent complaints process with respect to the implementation aspects of the Bill not subject to a statutory review or appeal process.

## Palliative Care

The QCU notes and fully supports the commitment of the Qld Government to provide additional resources for palliative care options for end-of-life care in the order of an additional \$171 million

investment in funding for the 2021-22 to 2025-26 years. Palliative care is an important option alongside of voluntary assisted dying to help support the rights of Queenslanders to choose their preferred end-of-life care options.

## Conclusion

The QCU supports the introduction of the Voluntary Assisted Dying Bill 2020 in its current format. We would encourage the Committee to consider the matter of access by people with dementia through advance health directives, and to highlight the issue of potential inequities for Queenslanders living in remote rural or regional areas if the Commonwealth carriage services offence are applied.

Additionally, given the extensive processes undergone to date in Queensland with the 2020 Qld Parliamentary Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee Report, and the Qld Law Reform Commission Report, the QCU supports a shorter introduction of the Bill provisions to ensure Queenslanders are not disadvantaged in comparison to other states with VAD laws.