

Submission into the Voluntary Assisted Dying Bill 2021

Submission No.: 937

Submitted by: Queensland Nurses and Midwives' Union

Publication: Making the submission and your name public

Position: I/We support the Voluntary Assisted Dying Bill but recommend some changes to it.

Comments in relation to: Eligibility criteria* ,The request and assessment process,Safeguards,Conscientious objection by either individuals or entities,Oversight and review

Attachments: See attachment

Submitter Comments:



Submission to

Health and Environment Committee

Voluntary Assisted Dying Bill 2021

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submission

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Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Health and Environment Committee (the Committee) for the opportunity to comment on the *Voluntary Assisted Dying Bill 2021* (the bill).

Nursing and midwifery is the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing and midwifery workforce including registered nurses (RN), registered midwives, enrolled nurses (EN) and assistants in nursing (AIN) and students who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 66,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU. As the Queensland state branch of the Australian Nursing and Midwifery Federation, the QNMU is the peak professional body for nurses and midwives in Queensland.

The QNMU supports legislative reform to enable persons who have an incurable physical illness that creates unrelieved, unbearable and profound suffering to have the right to choose to die with dignity in a manner acceptable to them. They should not be compelled to suffer beyond their wishes.

While the QNMU is responding on behalf of the union as a whole, our membership comes from diverse cultural, religious, and ethnic backgrounds and hold a range of beliefs and attitudes about voluntary assisted dying. We acknowledge the sensitivity and delicacy of this issue and that nurses and midwives have the right to hold their own opinion and for their opinion to be respected. The QNMU supports those health practitioners who do not wish to participate in the voluntary assisted dying scheme and conscientiously object to involvement.

The QNMU would like to acknowledge our members who are employed in palliative and end-of-life care. Their role in caring for terminally ill patients sees them provide high-quality, evidence-based health care to those who are approaching their end of life. For some of our members who work in palliative care, they believe voluntary assisted dying goes against the very work they do in providing good palliative care. We respectfully acknowledge their voice on this issue and support their right to conscientiously object.

The QNMU makes the distinction that voluntary assisted dying is not an alternative to palliative care. Nor is it an adjunct to palliative care nor a finalisation of palliative care. The QNMU will continue to lobby for adequate resourcing of palliative care (including suitably

qualified and adequate numbers of nurses) for those requesting and/or requiring palliation. As part of a palliative care strategy must be the commitment to ensuring palliative care services are delivered in a range of settings and that there is better and more equitable access to high quality palliative care, not only in the south-east corner of Queensland but extends to regional, rural and remote areas. If voluntary assisted dying is made legal in Queensland, this must not divert resources and/or funding from palliative care. There must still be a focus on the need for adequate and timely palliative care in Queensland.

We acknowledge there are some circumstances in which palliative care cannot alleviate all pain and suffering. By permitting voluntary assisted dying in limited circumstances, health practitioners are provided with legislative protection and those who wish to hasten their death to avoid suffering can access a voluntary assisted dying scheme.

In February 2021, the QNMU polled (the QNMU poll) our membership to gauge the level of support for voluntary assisted dying. We asked QNMU members if they support “in principal” the legalisation of voluntary assisted dying in Queensland. Almost 87% of the 3,495 respondents said yes. We then completed a follow up survey (the QNMU survey) of our members in June 2021 on aspects of the draft legislation (see Appendix 1). In this survey, we asked members to respond to a number of statements based on key sections of the bill. While we did not ask outright whether they supported voluntary assisted dying, of the 3,678 respondents the majority supported these key sections of the bill. The QNMU’s submission has been guided by our members’ responses to the QNMU survey.

The QNMU is comfortable that the QNMU’s survey and poll results align with community sentiment. YouGov polling commissioned by the Clem Jones Trust in February 2020, found 77% of Queenslanders supported laws that would allow voluntary assisted dying in circumstances where a person is in the late stages of advanced disease (Smee, 2020).

We note the Committee has access to previous submissions to the *Inquiry into aged care, end-of-life and palliative care and voluntary assisted dying*. The QNMU has made a submission to this inquiry and provided feedback to the Queensland Law Reform Commission’s (QLRC) consultation on a *Legal framework for voluntary assisted dying* (the QLRC report). Thus, this submission does not repeat our previous positions on voluntary assisted dying but responds to certain aspects of the bill.

Recommendations

The QNMU recommends the following changes to the bill:

- Remove clause 10 (1) (aii) of the bill ‘is expected to cause death within 12 months.’
- Include nurse practitioners in the role of consulting practitioner.
- Review the bill to ensure it is culturally inclusive.

General comment

With the development of modern medical technology, life can now be prolonged for conditions that were previously terminal. This has resulted in a growing number of people who may experience pain and suffering towards the end of life. Palliative care services can effectively and compassionately support the overwhelming majority of these people. However, for a small minority of people, even palliative care is unable to prevent their suffering (Australian Nursing and Midwifery Federation, 2019). The QNMU considers that a person experiencing intolerable suffering caused by disease, illness or medical condition have the right to choose to die in a manner acceptable to them and shall not be compelled to suffer beyond their wishes. The draft law for voluntary assisted dying provides those with life-limiting conditions the choice about how, when and where they die.

We believe that alongside the legal obligations of health practitioners, sits the need to identify the patient who is accessing the voluntary assisted dying scheme is a unique individual. Their view of death and dying and grief and loss are deeply personal and often shaped by their culture and community. The QNMU believes the bill may benefit from a review through a cultural sensitivity lens to ensure it is inclusive of all cultures.

If voluntary assisted dying becomes a legal option in Queensland, education and training must be provided to health practitioners. This education must have input from nurses, be comprehensive, evidence-based and ongoing and be available to all who wish to undertake it. Further, the QNMU is supportive of an education campaign for the public.

Our submission responds to specific aspects of the bill, using some of the headings from the *Explanatory notes* of the bill by way of organising our submission. The headings used are:

- eligibility criteria to access voluntary assisted dying;
- eligibility to act as coordinating practitioner or consulting practitioner;
- eligible disease, illness or medical condition;
- conscientious objection;
- voluntary assisted dying review board;
- protections from liability;
- notification and certification of death.

Eligibility criteria to access voluntary assisted dying

The QNMU supports the need for strict eligibility criteria to access voluntary assisted dying. We will discuss several aspects of the eligibility criteria:

- expected death within 12 months;
- decision-making capacity;
- being at least 18 years of age; and
- citizenship and residency.

Expected death within 12 months

We recognise the bill (cl 10) includes provisions for a person's eligibility for access to voluntary assisted dying. In our view, a person diagnosed with a disease, illness or medical condition which is expected to cause death should not have the barrier of a prescribed timeline of death within 12 months.

Death must be *reasonably foreseeable* because of the condition. We seek the amendment of the bill to read:

10 Eligibility

(1) A person is eligible for access to voluntary assisted dying if –

(a) the person has been diagnosed with a disease, illness or medical condition that -

- (i) is advanced, progressive and will cause death; and
- (ii) ~~is expected to cause death within 12 months; and~~¹
- (iii) is causing suffering that the person considers to be intolerable; and

The QNMU believes there should be no precise timeframe for a person's anticipated death. By imposing a timeframe that a person can only access voluntary assisted dying if their prognosis is that they are expected to die within 12 months, not only removes the individual's autonomy but diminishes the complexity of a prognosis.

Our view is consistent with one of the recommendations made by the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee's report from the *Inquiry into aged care, end-of-life and palliative care and voluntary assisted dying* (2020) (the inquiry report) where the committee recommended that any voluntary assisted dying scheme should not include a precise timeframe for a person's anticipated death. Further, just over a quarter (27%) of respondents to the QNMU survey, answered the statement 'The person's disease, illness or medical condition is expected to cause death within 12 months' with *not sure, disagree or strongly disagree*.

We respectfully suggest that there may be an opportunity to establish a panel to revise the 12 month time period for expected death. The ethical burden placed on those accessing voluntary assisted dying and those health practitioners who provide the prognosis will be spared this stress if this barrier was removed.

Decision-making capacity

The bill (cl 10)(b) provides that to be eligible for voluntary assisted dying the person must have decision-making capacity in relation to voluntary assisted dying. Feedback received in the QNMU's survey, suggests that for some of our members there is concern around the role

¹ Deletions in ~~strikethrough~~

of an individual's advance health directive (AHD) to express a person's wish for voluntary assisted dying. In the QLRC's (2021) report they take the view that an amendment to the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998* is needed to exclude an adult from making decisions about voluntary assisted dying in an advance health directive. Yet, a small number of the survey respondents (45) believe that a person should be able to provide provisions in their AHD for voluntary assisted dying particularly in the event of loss of decision-making capacity. Perhaps if the bill does pass, a review could be conducted that investigates the functions and issues related to the voluntary assisted dying legislation including AHDs.

Be at least 18 years of age

In clause 10(1)(d) of the bill it sets out that the applicant for voluntary assisted dying be at least 18 years of age, thus limiting the scheme to adults. While the QNMU supports this regulation, we acknowledge 18% of respondents to the QNMU survey answered *disagree* and *strongly disagree* and 16% were *unsure* to the statement 'The person accessing voluntary assisted dying is at least 18 years of age'. This suggests that some of our members believe that young people who are suffering from a life-limiting illness, be afforded the capability to make the decision of accessing voluntary assisted dying.

Citizenship and residency

The bill (cl 10)(e)(i-iii) stipulates that a person is eligible to access voluntary assisted dying if they are an Australian citizen, permanent resident or have been ordinarily resident in Australia for at least three years immediately before they make their first request. The QNMU supports this eligibility criteria within the bill. However, one fifth (21%) of respondents of the QNMU survey either *disagreed* or *strongly disagreed* and (20%) were *unsure* suggesting that for some of our members citizenship and residency were not necessarily needed to access voluntary assisted dying in Queensland.

Eligibility to act as coordinating practitioner or consulting practitioner

The QLRC report (2021) considered whether nurse practitioners should be eligible to act as a coordinating practitioner or consulting practitioner. The QLRC determined that at this time nurse practitioners be excluded from this part of the process and medical practitioners have the sole responsibility for assessing people against the eligibility criteria.

We believe nurse practitioners have a role to play in the process for accessing voluntary assisted dying as a consulting practitioner. The provisions of clause 82(1) of the bill prescribe that medical practitioners are eligible to act as coordinating practitioner or consulting practitioner. However, the QNMU believes that once the medical practitioner has assessed the person as meeting the eligibility requirements, we believe they can then refer the person to either another medical practitioner or a nurse practitioner.

The role of a nurse practitioner is an advanced practice role that has been successfully regulated with clear authority, endorsement and scope of practice. Nurse practitioners are highly skilled and an integral component of Australia's healthcare system. Nurse practitioner services have largely been designed to meet gaps in service delivery. This is particularly true in rural and remote areas where they support patients over wide geographical areas (Currie et al., 2019). According to the Nursing and Midwifery Board (NMBA) (2021) in the period between 1 January 2021 to 31 March 2021 there were 2,212 registered nurses who are endorsed nurse practitioners. Of these, 568 are in Queensland and constitute the largest group of nurse practitioners of all Australian health jurisdictions. Given Queensland covers a large land mass, extending the consulting role to include nurse practitioners would increase accessibility to the scheme for those who live in rural and remote areas.

One model where nurse practitioners or medical practitioners are involved in voluntary assisted dying is in Canada. The federal legislation, *Medical Assistance in Dying* provides for medical practitioners or nurse practitioners to assess whether a person meets the eligibility criteria for medical assistance in dying. This was also a recommendation in the inquiry report. The QNMU's survey results show that over a quarter of the respondents (28%) answered either *disagree* or *strongly disagree* with the statement 'A nurse practitioner is not eligible to approve a person's request for voluntary assisted dying'.

Eligible disease, illness or medical condition

The QNMU supports the bill in clause 13 in stipulating that those with a disability or mental illness are not excluded from accessing voluntary assisted dying if they satisfy all eligibility criteria.

Conscientious objection

The QNMU endorses that health practitioners have the right to refuse to provide or participate in voluntary assisted dying. We believe the bill (cl 84) provides protection for those who have a conscientious objection to voluntary assisted dying. The results from the QNMU survey show 9 out of 10 respondents (89%) said they *agree* or *strongly agree* that health practitioners who have a conscientious objection to voluntary assisted dying have the right to choose not to participate. We support our members who conscientiously object to voluntary assisted dying.

When asked in the QNMU survey if an entity (e.g. residential aged care facility, private hospitals and hospices) may refuse to provide a voluntary assisted dying service on the basis of what is sometimes known as an 'institutional conscientious objection', the survey respondents were evenly distributed in their views. The respondents indicated they *disagree* (22%) or *strongly disagree* (18%) with 21% *not sure*, and 20% *strongly agree* and 19% *agree*.

These responses may suggest that for our members there are complex issues around whether an entity can choose to participate or not participate in voluntary assisted dying. The QNMU supports the regulation (cl 86) of institutional objection rather than leaving it to the development of policies. Regardless of whether an entity is supportive or not supportive of voluntary assisted dying, in following the requirements for each stage of the voluntary assisted dying process, the institution must perform their obligations with respect and dignity for those wishing to seek information or access to voluntary assisted dying. Entities who support voluntary assisted dying must also respect the right of individual nurses to conscientious objection.

Voluntary assisted dying review board

The QNMU supports the establishment of an assisted dying review board to oversee the implementation of the legislation (cls 116 -119). We believe this is an appropriate safeguard for voluntary assisted dying. The expertise of this review board is critical to ensuring the law is understood and followed. The majority of respondents to the QNMU survey were supportive with 46% answering *strongly agree* and 38% answering *agree* with the statement that 'A review board be established and provide independent oversight of the voluntary assisted dying scheme'.

Protections from liability

The QNMU is supportive of the provisions in the bill (cl 149) that are protective of health practitioners from criminal or civil liability for providing treatment that causes death if they have acted in accordance with the requirements in the voluntary assisted dying legislation. Further, professional indemnity insurance (PII) that provides coverage for activities which are performed by our members which are within the scope of nursing, would rightly encompass the activities associated with voluntary assisted dying.

Notification and certification of death

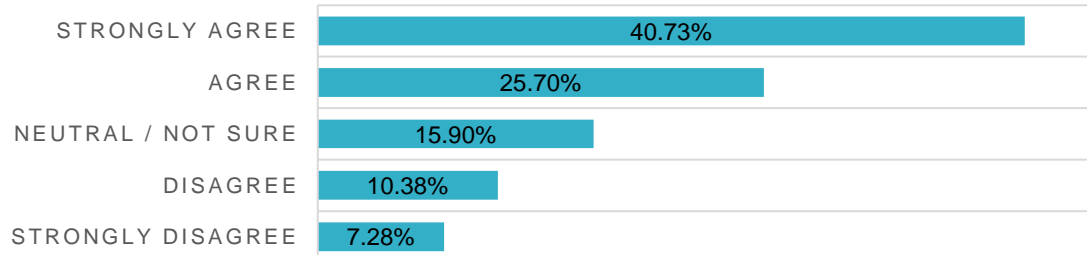
The QNMU appreciates that the time parameters within the bill are to ensure information is provided to the Voluntary Assisted Dying Review Board (the board) in a timely manner. However, non-compliance with these recordkeeping and reporting requirements may be unavoidable in particular circumstances such as dying on country. Once a person has died on country, the bill in clause 55(4) prescribes the need for the administering practitioner to notify the Board of their passing within 2 business days. This may not be achievable due to geographical challenges. Placing regulatory timeframes on aspects of the voluntary assisted dying process, may not suit all specific circumstances concerning someone's death.

References

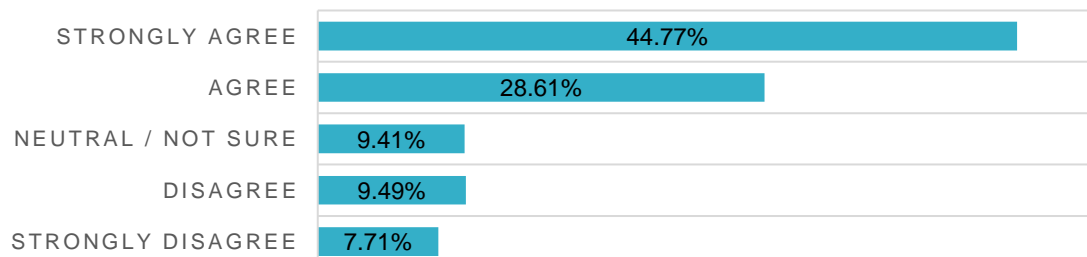
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- Smee, B. (2020, 8 August). Most Queensland churchgoers say they support voluntary assisted dying. *The Guardian*, 2020. Retrieved from <https://www.theguardian.com/australia-news/2020/aug/08/most-queensland-churchgoers-say-they-support-voluntary-assisted-dying>

Appendix 1. QNMU member survey - Voluntary assisted dying bill 2021

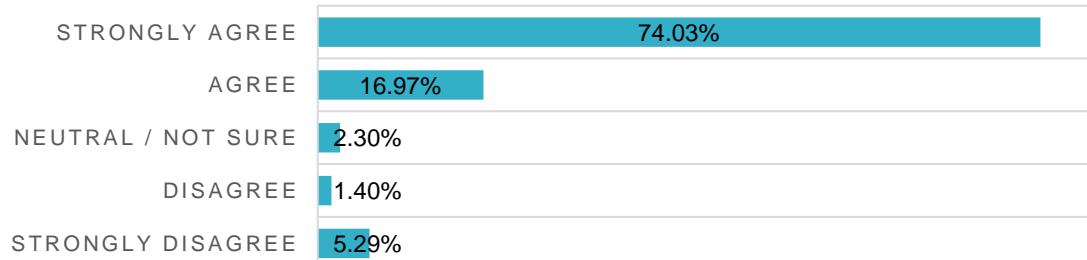
The person is at least 18 years of age.



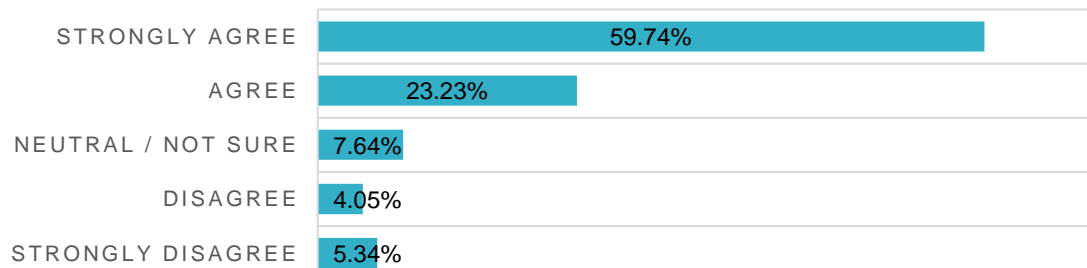
The person's disease, illness or medical condition is expected to cause death within 12 months.



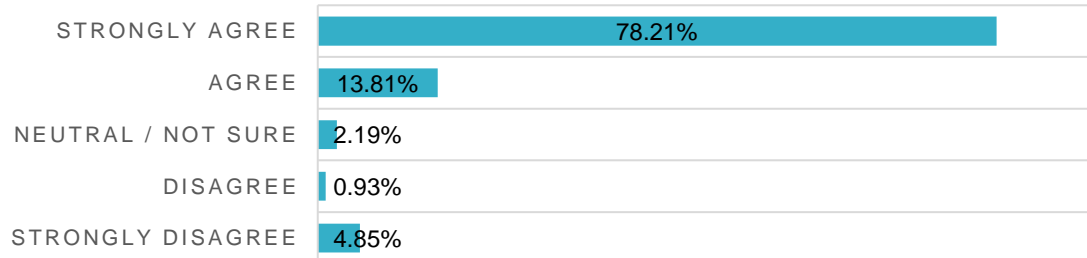
The person's disease, illness or medical condition is causing suffering that the person considers to be intolerable.



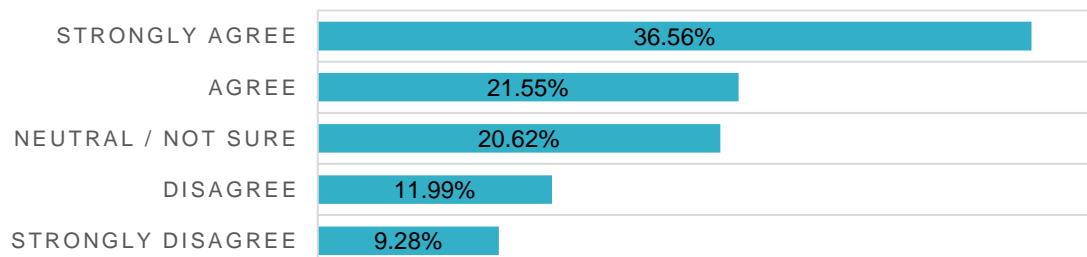
The person has decision-making capacity.



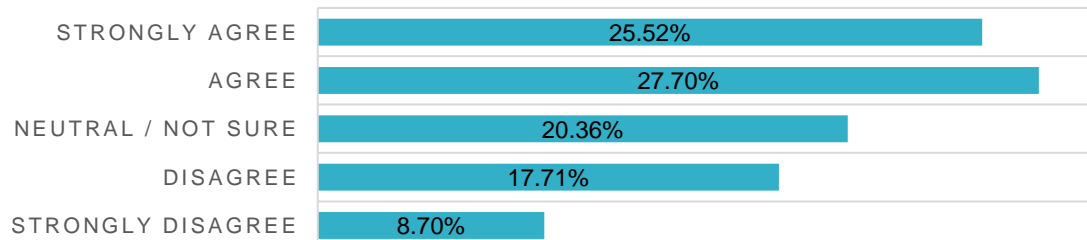
The person is acting voluntarily and without coercion.



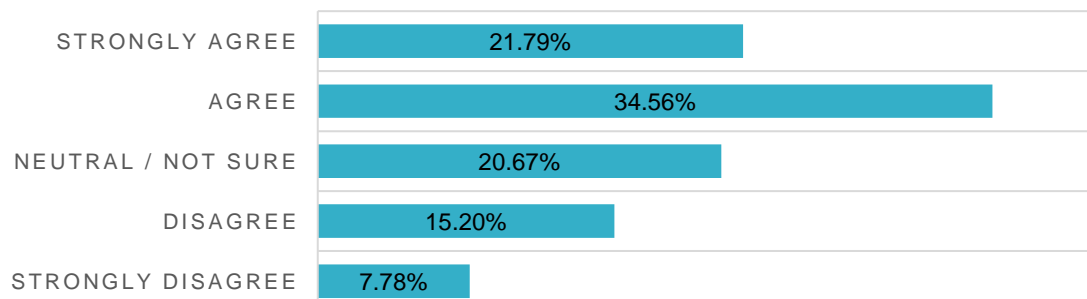
The person is an Australian citizen and a resident of Queensland for at least 12 months.



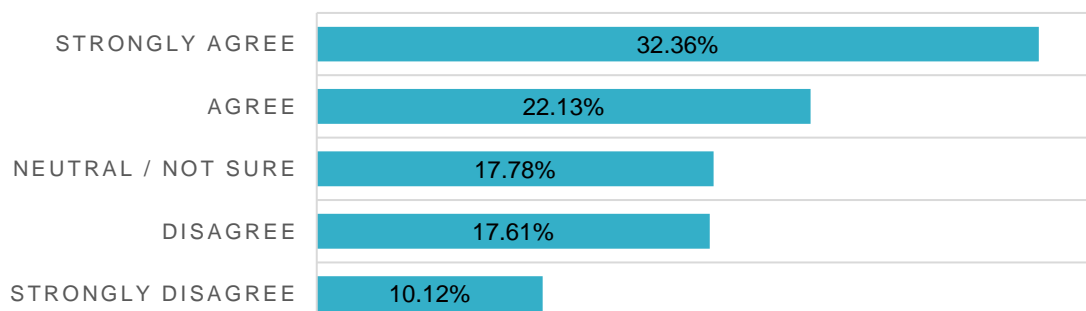
The person is required to make three requests to access voluntary assisted dying.



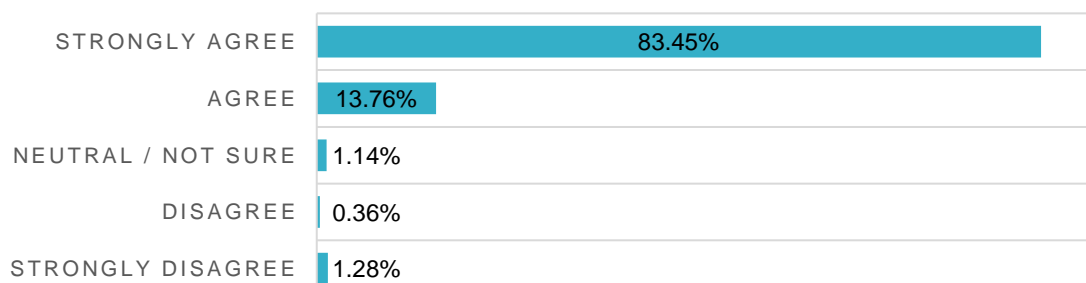
The medical practitioner can accept or refuse the request based on their assessment.



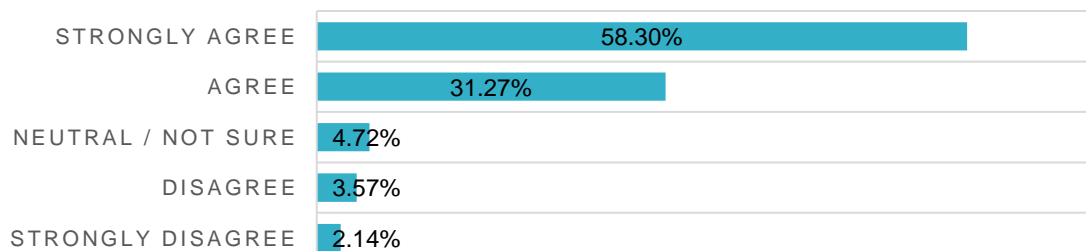
A nurse practitioner is not eligible to approve a person's request for voluntary assisted dying.



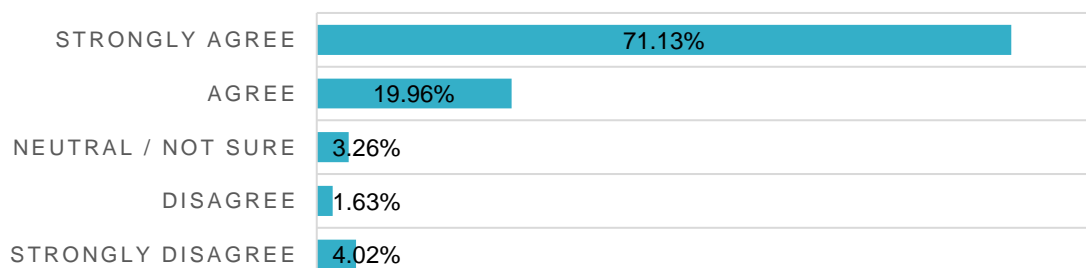
At any stage, the person may decide not to continue.



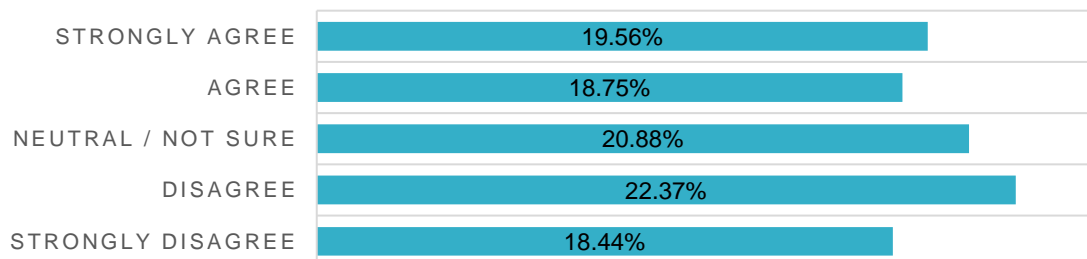
Doctors, nurses and other health practitioners who have a conscientious objection to voluntary assisted dying will have the right to choose not to participate.



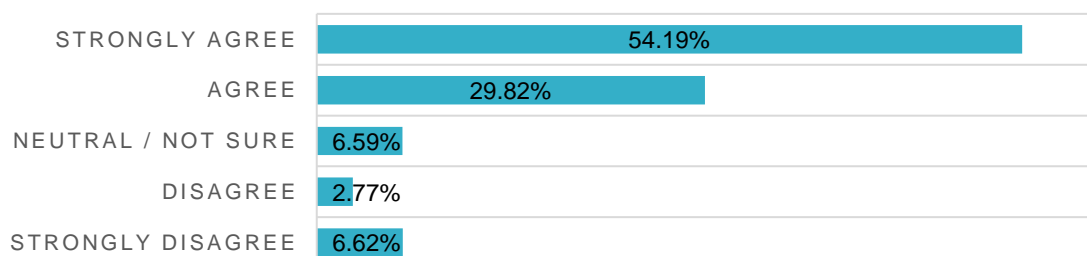
A practitioner who refuses to participate in the voluntary assisted dying scheme is required under the bill to inform the person that other health practitioners, health service providers or services may be able to assist them and provide them with information...



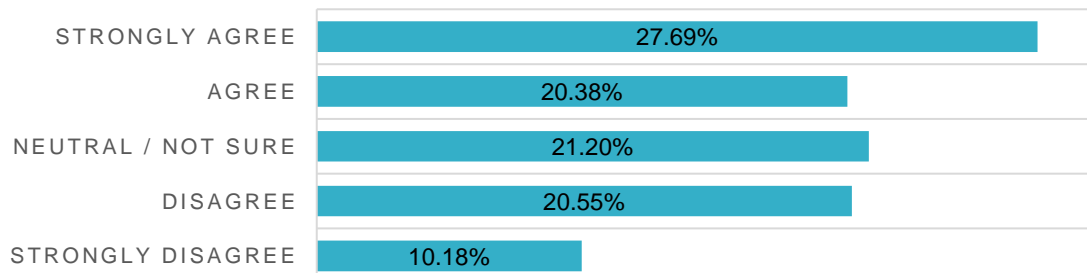
An entity may refuse to provide a voluntary assisted dying service on the basis of what is sometimes known as an 'institutional conscientious objection'.



The person may choose between two options for the administration of a voluntary assisted dying substance, which are: Self-administer or Practitioner administer



A health care worker cannot initiate discussion about voluntary assisted dying.



A Voluntary Assisted Dying Review Board is to be established to provide an independent oversight of the voluntary assisted dying scheme and provides for its operation.

