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Dr Tanzil Rahman (Chair)
Legal and Constitutional Affairs Committee

Public Submission: Consultation Paper Voluntary Assisted Dying in the Northern Territory

Dear Dr Rahman,

Thank you for the opportunity to make a submission to the Consultation Paper ‘Voluntary Assisted Dying in the Northern Territory’ dated July 2025.

As per the scope of the Consultation Paper, in developing a VAD Model for the Northern Territory, the following consultation topics are relevant for consideration: 1. Legislating VAD in the NT, 2. Delivering VAD in the NT, 3. Eligibility, 4. VAD Process, 5. Oversight and Review, and 6. Other Issues.

The following submission addresses questions relating to topics 3 and 4.

I. BACKGROUND

I am a Professor in criminal law and procedure based at the University of Southern Queensland. My research interests include criminal law and procedure and how it relates to vulnerability, including in the context of voluntary assisted dying (‘VAD’). I am the author of several articles in Australian and international journals, which examine different aspects of VAD.¹

¹ Kerstin Braun, ‘Is the Time Right to Enact Autonomy-Only Assisted Dying Laws’ (2024) 31(3) *Journal of Law and Medicine* 601; Kerstin Braun, ‘Looking Back to Look Forward—the History of VAD Laws in Australia and Future Law Reform in the Australian Territories’ (2024) 32(1) *Medical Law Review* 42; Kerstin Braun, ‘Self-Administration or Practitioner Administration? The Scope of Future German Assisted Dying Legislation’, (2023) 31(1) *Medical Law Review* 141; Anthony Gray and Kerstin Braun, ‘Voluntary Assisted Dying, the Conscientious

I am particularly interested in eligibility criteria as well as modes of administration. Therefore, my below submission largely focuses on these areas. I hope that my ideas and comments can be useful for the Legal and Constitutional Affairs Committee in their inquiry into *Voluntary Assisted Dying in the Northern Territory -final report 2024*.

II. CONSULTATION TOPIC 3: ELIGIBILITY CRITERIA

1. Is a 12-month prognosis an appropriate timeframe for eligibility for VAD? Should it be shorter or longer?

No timeframe-until-death access restriction (12 months or otherwise) should be enshrined in NT VAD law.

In VAD laws in Australian States, timeframe-until-death access restrictions vary. The introduced timeframes (six and 12 months depending on the illness and the jurisdiction) are not based on criteria relevant in the Australian context and have been chosen arbitrarily. For example, the six months timeframe enshrined for the first time in the VAD Act in Victoria is based on the *Death with Dignity Act* (Oregon). In Oregon, the six months timeframe is meaningful as it relates to access restrictions regarding funded hospice care. Yet, such restrictions do not exist in Australia.²

The restriction limiting access to assisted dying to persons expected to die within a specific timeframe seeks to ensure that VAD is only available for persons who are very close to death. In practice, this means, however, that persons who meet all eligibility criteria but for dying within the specific timeframe must continue to suffer intolerably until they reach said arbitrary timeframe or take their own life, if they still can. Given that a terminal illness is already required in Australian jurisdictions to access VAD, and is envisioned for the NT, it appears unnecessary to introduce a specific timeframe during which death is expected to occur.

It should be noted that the most recent VAD law in Australia, the *Voluntary Assisted Dying Act 2024* (ACT) does not contain a timeframe-until-death access restriction.

Recommendation 1: No timeframe-until-death access restriction should be enshrined in the Northern Territory VAD legislation.

Objector Who Refuses to Facilitate it and Discrimination Law’ (2022) 29(4) *Journal of Law and Medicine* 1128; Kerstin Braun, ‘When Ill Is Not ill Enough — Timeframe Until Expected Death Restrictions in Australian Voluntary Assisted Dying Laws and Human Rights Compatibility’ (2022) 28(1) *Australian Journal of Human Rights* 21; Kerstin Braun, ‘The Right to Assisted Dying: Constitutional Jurisprudence and Its Impact in Canada, Germany and Austria’ (2021) 15(3) *Vienna Journal on International Constitutional Law* 291; Kerstin Braun, ‘Voluntary Assisted Dying and the Merits of Offence-Specific Prosecutorial Guidelines in Australia’ (2021) 45(2) *Criminal Law Journal* 81.

² Victorian Ministerial Advisory Panel on Voluntary Assisted Dying, Final Report (Victoria, 2017) 72 <https://www2.health.vic.gov.au/about/publications/researchandreports/ministerial-advisory-panel-on-voluntary-assisted-dying-final-report>; see also Kerstin Braun, ‘When Ill Is Not ill Enough — Timeframe Until Expected Death Restrictions in Australian Voluntary Assisted Dying Laws and Human Rights Compatibility’ (2022) 28(1) *Australian Journal of Human Rights* 21, 24.



III. CONSULTATION TOPIC 4: VAD PROCESS

1. Who should be permitted to be a person's coordinating or consulting practitioner? For example, a registered medical practitioner, a nurse practitioner, or someone else? How many years of medical experience should they have?

Nurse practitioners can act as VAD administrators in some Australian States. In addition, in the ACT, where legislation will commence operation later in 2025, nurse practitioners can also act as VAD assessors under certain circumstances.³

The Northern Territory covers a large geographical area. In addition, there are presumably fewer medical practitioners than in other Australian States. Thus, enabling nurse practitioners to act as coordinating and consulting practitioners as well as VAD administrators could ensure equitable access to VAD in the Northern Territory. Nurse practitioners in Canada are already able to act as both assisted dying assessors and providers. According to the Fifth Annual Report on Medical Assistance in Dying in Canada 2023, 94.5% of all MAID practitioners were physicians and 5.5% were nurse practitioners.⁴

In the Australian and New Zealand context, Hewitt et al point out that nurse practitioners 'already manage complete episodes of care, including assessment, diagnosis, and prescribing treatment'. The authors therefore conclude that VAD assessments are within their 'scope of practice'.⁵

Recommendation 2: Nurse practitioners should be permitted to act as VAD assessors and providers in the Northern Territory to ensure equitable access to assisted dying.

2. Should a person have a choice between self-administration and administration by an administering health professional of a VAD substance?

A true choice between administration methods is not available in most Australian States. Yet, persons are given free choice between modes of administration in the most recent Australian VAD laws, the New South Wales law,⁶ and the ACT law.⁷ Similarly, the Northern Territory VAD legislation should contain a free choice between methods of administration.

In the Netherlands and Canada, individuals are allowed to choose between self-administration and practitioner administration in the context of assisted dying.⁸ There, most persons choose practitioner administration.⁹

³ *Voluntary Assisted Dying Act 2024* (ACT) s 89.

⁴ Health Canada, Fifth Annual Report on Medical Assistance in Dying in Canada 2023 (2024) 9 <https://www.canada.ca/en/health-canada/services/publications/health-system-services/annual-report-medical-assistance-dying-2023.html>.

⁵ Jayne Hewitt, Laurie Grealish, and Ann Bonner, 'Voluntary Assisted Dying in Australia and New Zealand: Exploring the Potential for Nurse Practitioners to Assess Eligibility' (2023) 30(1) *Collegian* 198, 204.

⁶ *Voluntary Assisted Dying Act 2022* (NSW) s 57.

⁷ *Voluntary Assisted Dying Act 2024* (ACT) s 42(1).

⁸ See Kerstin Braun, 'Self-Administration or Practitioner Administration? The Scope of Future German Assisted Dying Legislation' (2022) 31(1) *Medical Law Review* 141.

⁹ Health Canada, Fifth Annual Report on Medical Assistance in Dying in Canada 2023 (2024) 17 <https://www.canada.ca/en/health-canada/services/publications/health-system-services/annual-report-medical-assistance-dying-2023.html>; Regional Euthanasia Review Committee, Regional Euthanasia Review Committees



Recommendation 3: There should be free choice between self-administration and practitioner administration in the Northern Territory. No method of administration should be prescribed as the default option. This upholds agency and autonomy in end-of-life decision making.

V. FINAL REMARKS

I hope my submission and recommendations are useful and will inform the work of the Legal and Constitutional Affairs Committee when considering the specific questions set out in the Consultation Paper.

Sincerely

Kerstin Braun

Professor (Law)

