

Submission to the Legal and Constitutional Affairs Committee (NT Parliament)

On the Parliamentary Inquiry into Voluntary Assisted Dying in the Northern Territory

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Introduction

This submission responds to the Legal and Constitutional Affairs Committee¹ (The Committee) Consultation Paper² on Voluntary Assisted Dying in the Northern Territory.

The following provides views on each consultation topic set by The Committee.

The Public Guardian and Trustee

The Northern Territory has the highest rate of guardianship orders per capita in Australia. The Public Guardian and Trustee currently makes personal and lifestyle decisions for approximately 597 individuals, and financial decisions for around 748 people. Approximately 75% of those represented by both the Public Guardian and the Public Trustee identify as Aboriginal.

Operating within a human rights framework, the Public Guardian and Trustee safeguards adults with impaired decision-making capacity by prioritising autonomy, dignity and the least restrictive interventions. It works collaboratively with individuals, families, communities and government agencies to support culturally appropriate decision-making, manage estates, advocate for systemic reforms and ensure compliance with guardianship laws across the Territory.

With offices in Darwin and Alice Springs, the Public Guardian and Trustee supports decision making for people facing complex challenges, including health issues, housing instability, justice involvement and limited access to services. This extensive experience provides valuable insight into the systemic, cultural and legal factors that shape decision-making, forming a strong foundation for understanding how Voluntary Assisted Dying legislation could align with the Northern Territory's existing decision-making framework.

This framework protects adults with impaired capacity while promoting autonomy and supported decision making. Key legislation includes:

1. *Advance Personal Planning Act 2013* – Allows individuals to document future health and personal decisions, including the appointment of future supportive decision-makers.
2. *Guardianship of Adults Act 2016* – Establishes guardianship arrangements, prioritising the least restrictive intervention and presumption of capacity unless evidence indicates otherwise.
3. *Health Care Decision Making Act 2023* – Provides a framework for healthcare decisions, embedding supported decision-making principles and ensuring decisions reflect the person's best interests and values.

Together, these laws provide a strong foundation for considering matters of capacity and decision-making eligibility as it relates to Voluntary Assisted Dying legislation in the Northern Territory.

Voluntary Assisted Dying (VAD) laws will create new rights and decision-making processes at the end of life for Territorians who have capacity to make those decisions. Consistent with all other jurisdictions, the Public Guardian and Trustee proposes that guardians should have no authority to decide a person's involvement in VAD. At the same time, the Public Guardian and Trustee has a strong interest in contributing to the development of legislation and its implementation to ensure robust safeguards are in place, individual autonomy is upheld and effective protections are provided for those most at risk.

¹ Legislative Assembly of the Northern Territory.

² [LCAC-VAD-Inquiry-Consultation-Paper.pdf](#)

Legislating VAD in the Northern Territory

The Public Guardian and Trustee supports, in principle, measures such as VAD that promote personal autonomy and the realisation of individual rights, including the right to make informed choices about end-of-life care. Introducing VAD legislation would also provide Territorians with the same rights available in all other Australian jurisdictions, where VAD is legal.

A guardian, including the Public Guardian, under other jurisdictional legislative instruments, is not able to make decisions regarding a person's participation in VAD. The Public Guardian and Trustee agrees with this position and supports eligibility being limited to individuals who can make their own decisions.

In line with the national approach, eligibility should be limited to individuals who can make their own decisions, with guardians, including the Public Guardian, having no authority to decide on a person's participation in VAD. To ensure clarity and remove any doubt about this limitation, either the Northern Territory's guardianship legislation should be amended or the VAD legislation should include explicit wording, similar to section 250C of Queensland's *Guardianship and Administration Act 2000*, which states that "voluntary assisted dying under the proposed Voluntary Assisted Dying Act is not a matter to which the *Guardianship and Administration Act* applies".³ Similar provisions should also be considered in relation to substitute decision-makers appointed under the *Health Care Decision Making Act 2023* and the *Advance Personal Planning Act 2013*.

Supported decision making in legislation

Legislation should uphold supported decision making, recognising that a person who can decide with appropriate support has capacity, consistent with the United Nations Convention on the Rights of Persons with Disabilities.⁴ This principle should be embedded in capacity assessments (see section 3. Eligibility).

Any new legislation should reflect supported decision making as a legitimate form of legal decision making, exercised where possible, before restricting a person's decision-making rights by way of guardianship orders or ineligibility for programs such as VAD.

Consistent terminology

Maintaining clear and consistent definitions across VAD legislation and the Northern Territory's existing decision-making framework particularly the *Guardianship of Adults Act 2016*, *Advance Personal Planning Act 2013*, and *Health Care Decision Making Act 2023* is critical. When concepts like capacity, consent, or substitute decision making are defined differently in separate laws, the result is confusion for individuals seeking access, unnecessary barriers for practitioners and administrative complexity that undermines confidence in the system. Consistency not only simplifies implementation but also reduces the risk of inconsistent interpretations that may unintentionally deny eligible people access to VAD.

Advance consent

No Australian jurisdiction currently permits advance consent to VAD, maintaining the requirement that individuals retain decision-making capacity throughout the process. The Public Guardian and Trustee agrees that this approach reflects both the complexity of predicting future circumstances and values, as well as ethical concerns about irrevocable advance consent for life-ending treatments.

³ *Guardianship and Administration Act 2000* (Qld) s 250C.

⁴ *Disability Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report*, Recommendation 6.7 Decision-making ability p 242.

While this is the current national position, the ACT's legislation includes a review provision indicating that advance consent will be considered as part of its scheduled 2027 review⁵ and other jurisdictions may also examine this issue in future legislative reviews.

If this is introduced in the Northern Territory, the Public Guardian and Trustee would consider its inclusion reasonable from both a safeguarding and individual dignity perspective. Initial community consultation suggests an openness to exploring this option⁶, however further engagement would be required to determine the most suitable approach bearing safeguards in mind. Preliminary discussion with clinicians are already underway⁷, acknowledging that voluntary assisted dying will inevitably be raised by some patients as part of their planning for end-of-life and/or loss of capacity. "Attempts to exclude voluntary assisted dying are impractical, as patients see end-of-life choices holistically and are unlikely to partition advance care planning from voluntary assisted dying."⁸

1. Delivering VAD in the Northern Territory

Jurisdictions with significant Aboriginal and Torres Strait Islander populations have developed tailored approaches to ensure cultural security in VAD. The Northern Territory's context, where around 30% of the population is Aboriginal or Torres Strait Islander, demands especially nuanced consideration. Cultural considerations must go beyond translated materials or workforce representation to address fundamental cultural differences in decision-making, autonomy and end-of-life practices.

Aboriginal kinship systems and collective decision-making often contrast with VAD's focus on individual autonomy. Major decisions are traditionally made with family, Elders and community input, while VAD laws prioritise individual decision-making free from external influence. This tension requires balancing respect for collective practices with safeguards against coercion. Cultural events also affect timing and family involvement in ways standard frameworks may not accommodate.

Return to country obligations shape preferences around timing and location of death, often prioritising dying on country, which may conflict with central-based specialist services or create access challenges. The legislative framework must allow flexibility while maintaining safety and legal compliance.

Partnerships with Aboriginal Community-Controlled Health Organisations are vital, as they hold local knowledge, community trust and capacity to support culturally safe VAD processes. Their involvement from design through to implementation is essential to embed cultural safety effectively.

These cultural factors need to be considered and accommodated within the legislative consistency requirements, adding complexity to the Northern Territory's VAD framework.

2. Eligibility and capacity

As noted in the Committee's consultation paper, the Public Guardian and Trustee has issued guidance on assessing decision-making capacity for health care decisions in the Northern Territory.⁹ The paper highlights the need to consider how VAD capacity criteria would interact with existing Northern Territory legislation and whether further guidance is required.¹⁰

⁵ *Voluntary Assisted Dying Act 2024 (ACT)*, s 162(2)(b)(iii) Review of Act.

⁶ *Report into Voluntary Assisted Dying in the Northern Territory Final Report 2024* p 26. <[vad-report-2024.pdf](#)>.

⁷ Australian Centre for Health Law Research (QUT) and Advance Care Planning Australia, 2024, [Navigating the topic of Voluntary Assisted Dying in Advance Care Planning Conversations](#).

⁸ Ben P White, Madeleine Archer, Casey M Haining and Lindy Willmott, 'Implications of Voluntary Assisted Dying for Advance Care Planning' (2024) 220(3) *Medical Journal of Australia* 129, 129-133

⁹ PGT Guideline: Determining impaired decision making capacity for a health care decision [pgt - determining decision making capacity for a health care decision guideline.pdf](#)

¹⁰ [LCAC-VAD-Inquiry-Consultation-Paper.pdf](#) p 23.

With regard to VAD, all Australian jurisdictions assess capacity on a case by case, rather than excluding individuals solely on the basis of guardianship status. Victoria, Western Australia, Queensland, South Australia and Tasmania apply clinical, capacity-based assessment models that evaluate a person's decision-making capacity specific to the VAD request.

The definitions in VAD legislation consistently require that a person has the capacity to make their own decision, assessed at each stage of the process. Across jurisdictions, it is recognised that decision-making capacity is decision-specific and time-specific. For example, Victoria's *Voluntary Assisted Dying Act 2017* provides:

“A person may have decision-making capacity to make some decisions and not others; if a person does not have decision-making capacity to make a particular decision, it may be temporary and not permanent; and it should not be assumed that a person does not have decision-making capacity to make a decision on the basis of the person's appearance or because the person makes a decision that is, in the opinion of others, unwise.”¹¹

This approach aligns with the current substitute decision-making legislation in the Northern Territory; *Health Care Decision Making Act 2023*, *Guardianship of Adults Act 2016* and *Advance Personal Plan Act 2013*, which all presume capacity unless evidence demonstrates otherwise. Guardianship does not necessarily equate to incapacity for all decision making, and capacity can vary depending on the nature of the decision. Consistent with other jurisdictions, eligibility should be determined by a person's decision-making capacity, not their legal status under a guardianship order. For example, a person with a guardianship order for financial matters only continues to have capacity to make decisions about their health, including VAD. This principle is particularly important given the disproportionately high rates of guardianship among Aboriginal and Torres Strait Islander peoples.

Building on this foundation, the Northern Territory legislative framework must clearly articulate how guardians can appropriately support decision making by individuals throughout the VAD process. This decision-making support must be distinct from, and not extend to, making the decision itself, ensuring respect for the legal boundaries around decision-making authority.

3. VAD process

The Northern Territory's small, widely dispersed population and high Aboriginal and Torres Strait Islander representation create significant implementation challenges for VAD that demand substantial investment in infrastructure, workforce and cultural supports. Without adequate resourcing, even well-designed legislation may fail to deliver equitable access or maintain safety standards.

Specialist training must combine clinical and cultural competency, recognising the Territory's limited specialist workforce. With few practitioners available, each must be highly skilled in clinical assessment, cultural safety, complex communication and legal compliance. Ongoing professional development, mentoring and peer support are essential to sustain competency and prevent burnout.

Reliable telemedicine infrastructure is critical for assessments and consultations, yet it cannot replace all face-to-face requirements. The legislative framework must balance efficiency gains from telehealth with in-person needs through coordinated transport support and flexible service delivery models. Without adequate telehealth access, rural and remote residents face disproportionate barriers in cost, travel and time away from community.

¹¹ *Voluntary Assisted Dying Act 2017* (Vic) s 4(4).

4. Oversight and review

Cultural safety requires sustained funding for Aboriginal liaison positions, interpreter services and partnerships with Aboriginal Community-Controlled Health Organisations. These roles must be meaningfully embedded, to ensure genuine community responsiveness and trust.

Effective VAD delivery also depends on clear coordination across health services, community organisations and regional centres. In larger jurisdictions, this may occur informally through professional networks; in the Northern Territory's small workforce, formal protocols and dedicated coordination resources are essential to manage complex referral pathways.

Australian jurisdictions elsewhere have safeguards in place for VAD, such as independent counselling, multi-stage capacity assessments and strict witnessing to minimise coercion. In the Northern Territory, these measures must be adapted to the Territory's demographic profile, remote geography and limited workforce ensuring protections remain robust while access is equitable.

Conclusion

The Northern Territory faces the complex task of developing a VAD legislative framework that maintains national consistency while addressing unique demographic, cultural and geographic realities. Success will require moving beyond standard approaches to embed genuine community responsiveness, ensure strong safeguards for vulnerable populations and provide the infrastructure needed for equitable access across the Territory.

Recommendations

1. **Eligibility and capacity** – Limit eligibility to those who can make their own decision, with no authority for guardians to consent. Assess capacity on a case-by-case basis, recognising it is both decision and time-specific, and that supported decision-making should be embedded as a guiding principle – where a person can make a decision with appropriate support, they are to be considered as having capacity. Do not exclude individuals solely on the basis of guardianship status.
2. **Legislative consistency** – Align VAD laws with existing aligned legislation; use consistent terminology for capacity, consent and substitute decision-making to avoid conflicting definitions and barriers to access.
3. **Advance consent** – Acknowledge the current national position that advance consent is not permitted. If the Northern Territory wishes to lead the way in this regard, provisions allowing advance consent could be written into the legislation. If advance consent is not included at this stage, a legislative review provision should be provided to allow for future consideration, consistent with developments in other jurisdictions.
4. **Cultural safety** – Co-design with Aboriginal Community-Controlled Health Organisations; embed and sustain funding for cultural liaison and interpreter roles; allow flexibility for cultural obligations and return-to-country preferences; ensure processes balance respect for collective decision-making traditions with safeguards against coercion.
5. **Implementation and safeguards** – Provide culturally competent clinical training; invest in incentives and infrastructure to support access for remote and regional communities, including reliable telehealth and transport support; adapt safeguards to the Northern Territory's cultural and geographic context; formalise interagency coordination protocols; ensure robust oversight and ongoing monitoring.

The legislation's effectiveness will be measured by its ability to serve all eligible Territorians safely, equitably and respectfully. Achieving this will require sustained investment in cultural partnerships, specialist training and service infrastructure from the outset. With thoughtful design and adequate resourcing, the Northern Territory can establish a VAD legislative framework that respects individual autonomy, upholds rigorous safeguards and honours the Territory's distinctive social context.