

**Legal and Constitutional Affairs Committee
of the
Legislative Assembly of the Northern
Territory**

**Consultation on
Voluntary Assisted Dying in the Northern
Territory**

**Submission
from
Voluntary Assisted Dying South Australia**



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Introduction

Over 310 million people around the world, including one in five adults in the USA, and by the end of this year, all Australian adults except those resident in the Northern Territory, will be legally able to make a request for voluntary assisted dying (VAD). Providing they meet the strict criteria applied in each jurisdiction, eligible adults are able to end their suffering either through self administration or physician administration of the VAD substance. The Northern Territory was the first jurisdiction in the world to pass a VAD law; it is now the only jurisdiction in Australia where adults are denied this compassionate end of life choice.

Attachment 1 summaries the key features of four different approaches used around the world to manage and safeguard VAD: the Netherlands, USA, Canada and Australia-New Zealand. The Netherlands is viewed as the most liberal, with Australia viewed as the most restrictive.

This submission from Voluntary Assisted Dying South Australia (VADSA) will firstly address Terms of Reference 3, 4 and 5 of the Legal and Constitutional Affairs Committee Inquiry and the four Key Questions highlighted in the Consultation Paper.

Terms of Reference

VADSA will address Terms of Reference 3, 4 and 5.

1. TOR 3: VAD Models and Safeguards relevant to the Northern Territory

Since the passage of the Voluntary Assisted Dying Act (2017) in Victoria, similar legislation has been passed in every Australian state and the ACT. VAD has commenced in all states and will commence in the ACT in November 2025. These seven pieces of legislation are remarkably consistent and together can be described as “the Australian model” for VAD legislation. The New Zealand VAD system is similar but does not require doctors to complete specific VAD training.

In the passage of the Victorian VAD Act it was stated that the legislation contained 68 safeguards. The other five states and the ACT have added additional safeguards.

Attachment 2 provides a summary of the key features of all seven VAD Acts in Australia.

Key Learnings from Australian VAD legislation

Two key differences between the Australian legislation and VAD legislation in Europe and North America are the requirements for doctors who provide VAD services to be VAD trained and for institutions to be able to conscientiously object to participation in VAD. The prohibition in SA and Victoria on doctors initiating discussion about VAD as an end of life choice is a further divergence from other jurisdictions. Prognosis and residency requirements create additional differences in the Australian context.

VADSA takes the view that ICO provides a significant safeguard for health professionals, people requesting VAD, their family, friends and the community; other provisions listed above and presented as safeguards are in practice barriers to access and do not constitute safeguards to protect vulnerable people or the community.

VAD Training

A major disadvantage of the requirement for doctors (and in some states nurse practitioners) to be VAD trained is that it limits access to VAD compared with those overseas jurisdictions where doctors and nurse practitioners are not required to complete additional VAD specific training. In South Australia, for example, at March 31, 2025, after 26 months of implementation, there were 82 VAD trained doctors. There are over 8000 registered medical practitioners in SA. This means that only 1% of doctors in SA are available to assess eligibility for VAD. A person requesting VAD is unlikely to know a VAD trained doctor; their treating doctor is unlikely to be VAD trained. Our experience in SA is that the requirement for doctors (and nurse practitioners in some jurisdictions) to have specific VAD training creates a barrier to access to VAD without providing a safeguard or protection for vulnerable people. Doctors rely on their clinical training and experience to assess VAD eligibility, not their VAD training.

Institutional Conscientious Objection (ICO)

ICO was first included in Australian VAD legislation in the South Australian VAD Act in 2021, the fourth state in Australia to pass VAD legislation. Since then, Queensland, New South Wales and the ACT have included similar ICO provisions. The Queensland ICO provisions are preferred as they are clearer and more comprehensive. VADSA views the ICO provisions as particularly helpful for people requesting VAD, for doctors and for the community because private hospitals are required to develop and have available their policy on VAD. In Victoria, WA and Tasmania, where there are no ICO provisions, private hospitals are not required to provide any information to patients, doctors or the community about their policy in relation to VAD, or to even have a policy. ICO provisions would be particularly important in a Northern Territory VAD Act given the vast distances and fewer number of private hospitals. Such public information would enable health professionals and people requesting VAD to more efficiently plan and manage a request for assisted dying. Our experience in South Australia is that Institutional Conscientious Objection (ICO) provides additional safeguards for both health professionals and the person requesting VAD.

Recognised Barriers to VAD

There are several other provisions in the Victorian and South Australian VAD Acts which VADSA views as barriers to the efficient administration of VAD. These provisions do not safeguard VAD from abuse or protect vulnerable people; they create barriers for a person who otherwise meets the eligibility criteria from accessing a legal end of life choice to end their suffering. These provisions are particularly relevant in the NT context of distance, diverse ethnic backgrounds, population density and access to health services. These barriers were highlighted in the recent review of the Victorian VAD Act and in the 9th Quarterly report of the VAD Review Board in South Australia. The barriers and recommended amendments are:

- Removal of the 'gag clause' that prohibits doctors from raising the possibility and availability of VAD with patients
- Extension of the current six month prognosis criteria to 12 months for all conditions
- Changes to residency criteria including the ability to grant an exemption to the residency criteria on compassionate grounds, and extension of the permanent residence requirements

- Addition of the requirement for a review of the operation of the Act every 5 years to enable the legislation to continue to evolve in response to community expectations.

The prohibition on doctors mentioning VAD in an end of life care plan in Victoria and SA until their patient initiates the discussion, means that access to, and awareness of, VAD remains a significant barrier to both awareness and access. Once someone is aware of VAD, the VAD Care Navigator service established in each state and the ACT is an essential service which provides information about the VAD pathway and access to a VAD trained doctor.

Prognosis

As a minimum, VADSA supports the four amendments listed above. However VADSA is aware that the inclusion in the eligibility criteria of a prognosis with a fixed time period of six or 12 months does not provide a safeguard or protection for vulnerable people, but an impediment for people diagnosed with a terminal illness from ending their suffering by accessing VAD. Our research has shown that prognosis is an unreliable safeguard, given that it is only reasonably reliable in forecasting that a person has a few weeks or a few years to live.¹ Anything in between a few weeks and a few years is recognised as unreliable. (See Section 3. TOR 5, pp 6-7, for further information on the preferred VAD model in relation to prognosis.)

2. TOR 4: Challenges for VAD in the NT

VAD training

The requirement for doctors to be specifically VAD trained in the state and ACT legislation is unique to Australia. In other jurisdictions, including New Zealand, doctors do not require special VAD training. Their medical training and experience is considered sufficient to manage a request for VAD from a patient. The VAD training focuses on the legal requirements for VAD, completion of forms, and using the portal for submission of forms.

The impact of the requirement for doctors who provide VAD services to have specific training is that there are few doctors available to provide VAD services. In South Australia, given that only 1% of doctors are VAD trained, it is unlikely that a person's usual GP, or the specialist who diagnosed their terminal illness, would be VAD trained. So the doctor who completes the VAD assessment will likely be meeting the person for the first time. While VAD trained doctors are universally thoughtful and compassionate, they do not usually have time to develop a long relationship with the person.

Given the size, low population density and low number of doctors in the NT, access to a doctor is already a challenge. If a doctor requires VAD training as well, it will be even more difficult for a person to access VAD unless they live in Darwin or Alice Springs.

A major benefit of VAD training is for administrators of VAD in state health agencies: there are fewer errors in the forms and less time is needed to correct errors or check the

¹ Accuracy of clinical predictions of prognosis at the end of life: evidence from routinely collected data in urgent care records, Orlovic et al, BMC Palliative Care 22, Article number: 51 (2023) [https://bmcpalliatcare.biomedcentral.com/articles/10.1186/s12904-023-01155-y#:~:text=Overall%2C%20clinicians%20"overestimated"%20prognosis,\)%20in%2015%25%20of%20cases.](https://bmcpalliatcare.biomedcentral.com/articles/10.1186/s12904-023-01155-y#:~:text=Overall%2C%20clinicians%20)

information provided. Doctors rely on their medical training, skills and experience, for the assessment of eligibility, including capacity, not their VAD training.

Clinical forums, guidance on form filling and clear VAD guidelines can all be provided online.

No other jurisdiction in the world requires a participating doctor or nurse practitioner to complete VAD training.

Given the unique distance and population characteristics of the Northern Territory, consideration should be given to removing the requirement for doctors to have specific VAD training as a prerequisite for providing VAD services.

Nurse Practitioners

WA and Queensland allow nurse practitioners to provide some VAD services. Given the similar vast distances and smaller population of the Northern Territory, similar provisions would be logical in the NT.

3. TOR 5: Drafting Instructions

The evidence from annual and quarterly reporting by VAD Review Boards (or equivalent) confirms that VAD is being implemented and administered according to the legislation in each state. The Australian model for VAD legislation (see Attachment 2) reveals some differences over time as new evidence emerges from implementation in each state.

ACT VAD Act as preferred model

The most recent VAD legislation in the ACT, passed in June 2024, has the benefit of experience from all the states. The key difference with the ACT legislation is the removal of prognosis as a criteria for eligibility. VADSA supports removal of prognosis.

Canada does not include prognosis in its criteria. Unlike Australia, the Canadian legislation is national, with provincial responsibility for administration of VAD, similar to other health services. This has created some differences in implementation from province to province. The Canadian Medical Assistance in Dying (MAiD) law followed a Supreme Court ruling giving the national parliament 12 months to pass legislation, or the Supreme Court would authorise VAD. There was no long debate or multiple Bills tabled and debated. A plan for VAD was developed, legislation drafted and a short timeframe for debate enabled a more evidence based approach to VAD to be legislated. In that context, prognosis, which was part of state VAD legislation in their neighbour the USA, was understood to be of no medical value in assessing eligibility.

Prognosis emerged in Oregon with the first VAD legislation to be agreed by any USA state. The 1994 Oregon legislation was the result of a citizen referendum at an election, not a debate in Parliament. The six month prognosis was inserted based on when hospice care was funded: it was a budget measure to limit hospice funding. A person required a six month prognosis to be eligible for hospice care. The six month prognosis clause was included in the Oregon Death with Dignity Bill. In order to achieve support for VAD legislation in Victoria, data and evidence from two decades of well monitored experience in Oregon was used to show Members of Parliament in Victoria that VAD could be managed

and implemented safely, and that a similar model would be similarly safe and well managed in Victoria.

Neither the Victorian Parliamentary Committee nor the Ministerial Advisory Panel on VAD in Victoria recommended that a six month prognosis be included in VAD legislation.

The Parliamentary Committee recommended that a person must be ‘at the end of life (final weeks or months of life)’. The Parliamentary Committee did not prescribe a set timeline and supports an approach that allows doctors to determine whether a patient is at the end of their life according to the nature of their condition and the likely trajectory. It was the opinion of the Parliamentary Committee that this is preferable to setting an arbitrary timeline. Some jurisdictions that have legislated for voluntary assisted dying have imposed a more precise requirement – for example, that the person has a prognosis of no more than six months to live.

Making an accurate prognosis can be difficult, and the progression of some diseases is more difficult to predict than others. While it is difficult to identify an exact life expectancy, diagnosing a terminal illness and estimating life expectancy are part of standard medical practice. Some jurisdictions recognise this by including a more general requirement. For example, in Canada, among other things, death must be ‘reasonably foreseeable’ and a person must be suffering from a ‘grievous and irremediable condition’.

Imposing a prescribed time limit may clearly set out the expectations of an acceptable timeline for accessing voluntary assisted dying; however, it may also place unrealistic expectations on medical practitioners that they are able to precisely predict when a person is going to die.²

The WA Ministerial Advisory Panel similarly advised against the inclusion of a time limited prognosis.

Prognosis is an unreliable safeguard. It is reasonably accurate at forecasting a few weeks or a few years to live, but inaccurate anywhere in between.

The remaining criteria provide sufficient safeguards to protect the vulnerable and safely assess requests for VAD. The ACT criteria are

- be 18 or older
- have lived in the ACT for the last 12 months
- have an advanced and progressive medical condition that will cause death and is causing intolerable suffering
- be able to make and communicate decisions throughout the process.

If the person has not lived in the ACT for the past 12 months but has a connection to the ACT they will be able to apply for an exemption. The terms “advanced” and “progressive” are given meaning in the Explanatory Memorandum tabled by Minister Cheyne on June 4, 2024. (Attachment 3)

² Ministerial Advisory Panel, 2017 VAD Bill Discussion Paper, p6

As a model for future VAD legislation, VADSA supports the ACT model.

If the South Australian VAD Act was used as a drafting model we would urge

- removal of the gag clause
- removal of the six and 12 month prognosis
- removal of local residency requirements (as every state and territory would then have VAD)
- provision for appeal on citizenship requirements
- provision for nurse practitioners to provide all VAD services
- provision for a regular review every five years.

VAD Training

In addition, consideration should be given to removal of the requirement for doctors and nurse practitioners to complete specific VAD training. This is particularly relevant for the Northern Territory given the low population density and difficulty in accessing a doctor. The requirement to complete VAD training before being eligible to make a VAD assessment or coordinate a person's VAD request process reduces access to VAD by people who meet the VAD eligibility criteria due to the scarcity of VAD trained doctors.

Key Questions

1 Do you support making VAD legal in the NT?

VADSA supports the Northern Territory passing legislation to allow people who meet the eligibility criteria the same access to a compassionate end of life choice of voluntary assisted dying as all other residents of Australia in Victoria, Western Australia, Tasmania, South Australia, Queensland, New South Wales and, from November this year, the Australian Capital Territory.

2 What eligibility criteria should a person need to meet before they can access VAD?

VADSA proposes that the Northern Territory adopt similar criteria to those applied in the ACT, namely

- be 18 or older
- have lived in the ACT for the last 12 months
- have an advanced and progressive medical condition that will cause death and is causing you intolerable suffering
- be able to make and communicate decisions throughout the process.

The key difference between the ACT and state legislation is that the eligibility criteria do not include a specific time frame for the end of life, such as six or 12 months.

The time specific prognosis is not evidence based, as indicated in the Victorian and WA Ministerial Advisory Panel reports (see Section 3: TOR 5 above, pp 6-7). The six or 12 month prognosis is a barrier to doctors being able to use their skills and experience to efficiently assess the request from a terminally ill person for medical assistance to end their suffering.

3 How could the NT make sure that an eligible person can access VAD in a safe and effective way, including people living in remote areas, and Aboriginal and Torres Strait Islander people?

WA, Queensland and South Australia have all developed safe and effective systems and protocols for administering VAD in remote regions and in indigenous populations. The VAD Review Board in SA has an indigenous person on the Board. All states have collaborated on the development of protocols, policies and procedures for managing their state wide VAD service. Health agencies responsible for administering VAD and VAD Review Boards regularly communicate with each other on management, administration and policy in relation to VAD. These networks and systems would be available to administrators in the Northern Territory.

The establishment of state wide VAD Care Navigator Services in each state has provided assurance to health professionals, people requesting VAD and their family, friends and the community that VAD is a safe and well managed service which both protects the vulnerable and allows a compassionate end of life choice for people who are terminally ill.

4 How could the NT monitor the process to ensure VAD is delivered safely and effectively?

VAD Review Boards or equivalent in each state have established rigorous management, research, data collection, review, monitoring and evaluation systems which could be adapted for use in the Northern Territory.

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VADSA President



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VADSA Vice President



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Attachment 1 Global VAD Comparison

Global VAD Legislation: Comparative models from Netherlands, USA, Canada, Australia and New Zealand

Similarities:

1. Person has an illness or disease which is incurable or will cause death
2. Assessment by two doctors or healthcare providers
3. Meet residency requirements making the person eligible for publicly funded health care
4. Request by person only – no relative or friend

Major differences:

1. Administration of VAD substance: does legislation allow only self administration or both self and practitioner administration
2. Prognosis: does legislation require that the person is expected to die within a specified period – six or 12 months
3. Advance requests: can a person request VAD (while they retain capacity) in case they later lose decision making capacity
4. Disability and mental illness: some jurisdictions include disability or mental illness as an eligibility criteria for VAD (most do not)
5. Participating doctor or nurse practitioner must be VAD trained in Australia

VAD Provision	Netherlands	USA	Canada	Australia, New Zealand
Commencement	2002	1997-2025	2016	2019-2025
		11 states and DC		6 states and the ACT
Eligibility Criteria				
Medical	<ul style="list-style-type: none"> • Doctor to follow all six due care criteria – ensure person is informed of possible treatments, request is considered and suffering is unbearable 	<ul style="list-style-type: none"> • Diagnosed with a terminal illness which will cause death within six months 	<ul style="list-style-type: none"> • Diagnosed with a serious and incurable illness, disease or disability • be in an advanced state of irreversible decline in capability • Track 1: death is reasonably foreseeable • Track 2: death is not reasonably foreseeable 	<ul style="list-style-type: none"> • Diagnosed with a disease, illness or medical condition that is advanced, progressive and will cause death • Some states include ‘incurable’

VAD Provision	Netherlands	USA	Canada	Australia, New Zealand
Suffering	<ul style="list-style-type: none"> • Doctor to be satisfied that person's suffering is 'unbearable with no prospect of improvement' 	<ul style="list-style-type: none"> • Silent 	<ul style="list-style-type: none"> • have 'enduring and intolerable physical or psychological suffering that cannot be alleviated under conditions the person considers acceptable' • Additional safeguards for Track 2 	<ul style="list-style-type: none"> • person is suffering intolerably which 'cannot be relieved in a manner acceptable to the person'
Decision Making Capacity	<ul style="list-style-type: none"> • Must have decision making capacity • advance care directive possible if all due care criteria apply 	<ul style="list-style-type: none"> • Must have decision making capacity at every stage 	<ul style="list-style-type: none"> • 'waiver of final consent' allows Track 1 person assessed as eligible for VAD (while still having capacity) to set a date for administration if they lose capacity 	<ul style="list-style-type: none"> • Must have decision making capacity at every stage
Prognosis	<ul style="list-style-type: none"> • No 	<ul style="list-style-type: none"> • 6 months 	<ul style="list-style-type: none"> • No 	<ul style="list-style-type: none"> • 6 or 12 months • ACT has no prognosis
Mental illness	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • No 	<ul style="list-style-type: none"> • No 	<ul style="list-style-type: none"> • No
Disability	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • No 	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • No
Adult or child	<ul style="list-style-type: none"> • Over 18 • Child 12-17 (with parental involvement) 	<ul style="list-style-type: none"> • Over 18 • No-one under 18 	<ul style="list-style-type: none"> • Over 18 • No-one under 18 	<ul style="list-style-type: none"> • Over 18 • No-one under 18
Residency	<ul style="list-style-type: none"> • Not legislated, however doctors do not accept foreign patients for VAD 	<ul style="list-style-type: none"> • 12 months in most states (Oregon removed state residency requirement in 2023) 	<ul style="list-style-type: none"> • Citizen or permanent resident (citizenship takes 3 years; permanent residency has narrow criteria) 	<ul style="list-style-type: none"> • Citizen or permanent resident • 12 months resident in the state
Self administration or physician administration	<ul style="list-style-type: none"> • Both • 99% physician administration 	<ul style="list-style-type: none"> • Self administration only 	<ul style="list-style-type: none"> • Both • 99% physician administration 	<ul style="list-style-type: none"> • Both • majority self administration
Assessment process	<ul style="list-style-type: none"> • Assessed by two doctors (in separate consultations) 	<ul style="list-style-type: none"> • Assessed by two doctors (in separate consultations) • Two formal oral requests 	<ul style="list-style-type: none"> • A written request, signed by an independent witness 	<ul style="list-style-type: none"> • Assessed by two VAD trained doctors (in separate consultations)

VAD Provision	Netherlands	USA	Canada	Australia, New Zealand
	<ul style="list-style-type: none"> No mandated VAD training for doctors 	<ul style="list-style-type: none"> One written request, witnessed by two witnesses No mandated VAD training for doctors 	<ul style="list-style-type: none"> Assessed by two doctors or nurse practitioners (in separate consultations) No mandated VAD training for doctors – national training guidelines published Sept 2023 	<ul style="list-style-type: none"> Two formal oral requests, One written request, witnessed by two witnesses Note: NZ does not require specific VAD training of doctor
Doctor or nurse assessment and administration	<ul style="list-style-type: none"> Doctors only 	<ul style="list-style-type: none"> Doctors only 	<ul style="list-style-type: none"> Doctors and nurse practitioners Some provinces do not allow nurse practitioners to assess or administer 	<ul style="list-style-type: none"> Majority doctors, some states allow nurses
Approval process	<ul style="list-style-type: none"> Doctor reports VAD death to municipal coroner Reviewed by VAD Board after death 	<ul style="list-style-type: none"> No 	<ul style="list-style-type: none"> No, Some provinces review after death (these reviews cover 91% of VAD deaths) 	<ul style="list-style-type: none"> After assessment by doctors, paperwork submitted to administrator Formal approval from administrator required before prescription written Review by VAD Board after death
Conscientious objection	<ul style="list-style-type: none"> Doctors, nurses and health care providers can conscientiously object 	<ul style="list-style-type: none"> Doctors, nurses and health care providers can conscientiously object 	<ul style="list-style-type: none"> Doctors, nurses and health care providers can conscientiously object 	<ul style="list-style-type: none"> Doctors, nurses and health care providers can conscientiously object Health institutions can conscientiously object (in some states)
Compulsory waiting period	<ul style="list-style-type: none"> No 	<ul style="list-style-type: none"> Yes 15 days in Oregon 	<ul style="list-style-type: none"> No for Track 1 Min 90 day assessment period for Track 2 (unless at risk of losing capacity) 	<ul style="list-style-type: none"> Yes between 5 and 9 days from first request to administration
VAD pathway support system	<ul style="list-style-type: none"> NGO support 	<ul style="list-style-type: none"> NGO support 	<ul style="list-style-type: none"> Provincial care coordination services 	<ul style="list-style-type: none"> VAD Care Navigators employed by state health agency

VAD Provision	Netherlands	USA	Canada	Australia, New Zealand
			<ul style="list-style-type: none"> • NGO support 	
Patient or doctor control	<ul style="list-style-type: none"> • Doctor determines suffering status 	<ul style="list-style-type: none"> • Patient control 	<ul style="list-style-type: none"> • Doctor or nurse practitioner needs to be satisfied suffering is intolerable 	<ul style="list-style-type: none"> • Patient control
VAD is not suicide clause	<ul style="list-style-type: none"> • No 	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • Yes
Death Certificate	<ul style="list-style-type: none"> • Reported as a non natural death 	<ul style="list-style-type: none"> • Underlying illness 	<ul style="list-style-type: none"> • Underlying illness 	<ul style="list-style-type: none"> • Underlying illness
VAD allowed in Advance Request	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • No 	<ul style="list-style-type: none"> • Quebec allows VAD in an Advance Request made while person has capacity and when diagnosed with capacity ending condition eg dementia 	<ul style="list-style-type: none"> • No
Process for achieving legislation	<ul style="list-style-type: none"> • Medical support • Government Inquiry • Legislation 	<ul style="list-style-type: none"> • Different process in different states – referendum, legislation, court order 	<ul style="list-style-type: none"> • Court order followed by national legislation • Quebec legislated VAD prior to Supreme Court decision 	<ul style="list-style-type: none"> • Parliamentary Inquiry • Legislation
National or state/province legislation	<ul style="list-style-type: none"> • national 	<ul style="list-style-type: none"> • state 	<ul style="list-style-type: none"> • national legislation (aside from Quebec) with provincial administration 	<ul style="list-style-type: none"> • state • national in NZ
Public reports	<ul style="list-style-type: none"> • annual 	<ul style="list-style-type: none"> • annual eg Oregon 	<ul style="list-style-type: none"> • annual nationally • some provinces report more frequently 	<ul style="list-style-type: none"> • Annual by each state and Territory (7 reports) • some report quarterly eg SA

Attachment 2 VAD legislation in Australia, comparison by jurisdiction

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1. Name of Act, date passed, date commenced, date for review
 2. VAD residency eligibility criteria
 3. VAD medical eligibility criteria
 4. Process to access VAD
 5. Doctor requirements
 6. Witness to written declaration
 7. Substance administration choice
 8. Contact person
 9. VAD Permit
 10. Initial discussion of VAD with patient
 11. Conscientious Objection:
 - a. individuals
 - b. institutions: Aged Care facility where *person is a permanent resident*; Aged Care facility where *person is not a permanent resident*; health establishment such as a private hospital
 12. Review of decisions
 13. VAD Review Board
 14. General: VAD is not suicide clause, Principle re regional access, Care Navigator Service, time limits on submission of forms, Death Certificate, pharmacy, delay between Assent and commencement

Note:

1. Victoria's Voluntary Assisted Dying Act (2017) used as base (note: Northern Territory does not have VAD legislation)
2. Comparison highlights provisions where there are significant differences between states or where most public discussion is generated
3. A ✓ means the details in left hand column apply; main variations highlighted for each state
4. Offences: not following any of the requirements listed below constitutes an offence; penalties range from fines, to deregistration, to prison terms

Provision	Victoria	Western Australia	Tasmania	South Australia	Queensland	New South Wales	ACT
1. Name of Act	Voluntary Assisted Dying Act (2017)	Voluntary Assisted Dying Act (2019)	End of Life Choices (Voluntary Assisted Dying) Act (2021)	Voluntary Assisted Dying Act (2021)	Voluntary Assisted Dying Act (2021)	Voluntary Assisted Dying Act (2022)	Voluntary Assisted Dying Act (2024)
Date passed by Parliament	November 29, 2017	December 19, 2019	March 4, 2021	June 21, 2021	September 16, 2021	May 19, 2022	June 5, 2024
Date commenced	June 19, 2019	July 1, 2021	October 23, 2022	January 31, 2023	January 1, 2023	November 28, 2023	November 3, 2025

Provision	Victoria	Western Australia	Tasmania	South Australia	Queensland	New South Wales	ACT
Review of Act	First review 4 years after commencement	First review 2 years after commencement, then every 5 years	First review 3 years after commencement then every 5 years	First review 4 years after commencement	First review 3 years after commencement	First review 2 years after commencement then every 5 years	First review 3 years after commencement, then every 5 years
2.VAD residency eligibility criteria							
<ul style="list-style-type: none"> 18 years or over 	✓	✓	✓	✓	✓	✓	✓
<ul style="list-style-type: none"> Australian citizen or permanent resident 	✓	✓	<ul style="list-style-type: none"> Or resident in Australia for three years 	✓	<ul style="list-style-type: none"> Or resident in Australia for three years Or NZ citizen with special category visa 	<ul style="list-style-type: none"> Or resident in Australia for three years 	Silent
<ul style="list-style-type: none"> Resident in state for 12 months 	✓	✓	✓	✓	<ul style="list-style-type: none"> Or granted an exemption eg near border resident, person receives medical care in Qld 	<ul style="list-style-type: none"> Or granted an exemption eg former near border or NSW resident or on compassionate grounds 	<ul style="list-style-type: none"> Or granted an exemption due to close association with ACT
3.VAD medical eligibility criteria							
Diagnosed with a disease, illness or medical condition that is advanced, progressive and will cause death	✓	✓	<ul style="list-style-type: none"> Plus injury Advanced and irreversible 	✓	✓	✓	<ul style="list-style-type: none"> Combination of conditions; 'expected' to cause death
Illness is incurable	✓	Silent	✓	✓	Silent	Silent	Silent

Provision	Victoria	Western Australia	Tasmania	South Australia	Queensland	New South Wales	ACT
Causing suffering which cannot be relieved in a manner tolerable to the person	✓	✓	✓	✓	✓	✓	✓ Plus anticipation of suffering
Death is expected within six months or 12 months for a neurodegenerative condition	✓	✓	✓ Time prognosis exemption possible through VAD Commission	✓	12 months for all	✓	Silent
Must have decision making capacity at every stage	✓	✓	✓	✓	✓	✓	✓
Decision making capacity presumed unless proven otherwise	✓	✓	✓	✓	✓	✓	✓
Person is acting voluntarily and without coercion	✓	✓	✓	✓	✓	✓	✓
Mental illness not a criteria	✓	✓	✓	✓	✓	✓ Dementia not a criteria for VAD (S16(2)(b))	✓
Disability not a criteria	✓	✓	✓	✓	✓	✓	✓ See S11(2)
4.Process to access VAD							
First Request (orally) to Coordinating Medical Practitioner (CMP)	✓	✓	✓ Three requests to Primary Medical Practitioner (PMP)	✓	✓	✓	✓ • Or in writing • CMP may be a nurse practitioner

Provision	Victoria	Western Australia	Tasmania	South Australia	Queensland	New South Wales	ACT
Assessed as eligible by VAD trained CMP and Consulting Medical Practitioner in two separate consultations	✓	✓ First assessment report notes if person has a disability	✓ Two assessments by PMP before consulting assessment; additional assessment after consulting assessment	✓	✓	✓ First assessment report notes if person has a disability	✓ <ul style="list-style-type: none"> • Nurse practitioner may do one assessment • Either CMP or consulting practitioner must be a doctor
Referral to other health practitioner if additional advice required to assess eligibility	✓ Must refer and accept advice re a neurological condition	✓	✓	✓ Must refer and accept advice re a neurological condition	✓	✓	✓
If either assessment negative, can seek new assessment	✓	✓ Only for consulting assessment	✓ Limit of two consulting assessments	✓	✓	✓	✓ Only for consulting assessment
Information must be provided about palliative care, other treatment options and likely outcomes	✓	✓	✓	✓	✓	✓	✓
Second request, in writing, witnessed by Coordinating Medical Practitioner and two witnesses	✓	✓ Coordinating Medical Practitioner not required to be present	✓ Coordinating Medical Practitioner (PMP) not required to be present	✓	✓ Coordinating Medical Practitioner not required to be present	✓ Coordinating Medical Practitioner not required to be present	✓ Coordinating Medical Practitioner not required to be present

Provision	Victoria	Western Australia	Tasmania	South Australia	Queensland	New South Wales	ACT
Person has choice of self or practitioner administration	✓ Practitioner administration if self administration not possible	✓	✓	✓ Practitioner administration if self administration not possible	✓	✓	✓
Contact person appointed for self administration	✓	✓	✓	✓	✓	✓	✓ <ul style="list-style-type: none"> • May be Coordinating or Consulting MP • Increased role for CP compared with state legislation
Confirmation of eligibility by Health Sec or VAD Commission	✓	✓	✓	✓	✓	✓	✓
Third or Final request to CMP/PMP	✓	✓	✓	✓	✓	✓	✓
Final Review form submitted by Coordinating Medical Practitioner	✓	✓	✓	✓	✓	✓	✓
VAD Permit issued	✓	Not required	✓ VAD Substance Authorisation	✓	Not required	✓ VAD Substance Authority	Not required
Minimum period between first and final request	9 days	9 days	6 days (48 hours between first, second and final requests)	9 days	9 days	5 days	Silent
5.Doctor requirements							

Provision	Victoria	Western Australia	Tasmania	South Australia	Queensland	New South Wales	ACT
Doctor must be VAD trained	✓	✓	✓	✓	✓	✓	✓ Nurse practitioner may undertake one VAD assessment
Doctor cannot be a family member	✓	✓	✓	✓	✓	✓	✓
Doctor cannot be a beneficiary	✓	✓	✓	✓	✓	✓	✓
Specialist qualifications or specified years with general qualification	✓ One doctor must have 'relevant experience' in eligible condition; interpreted in Victoria to mean one doctor must be a 'specialist' in the eligible condition	✓	✓ Both doctors to have 'relevant experience' in eligible condition	✓ One doctor to have 'relevant experience' in eligible condition	✓	✓	✓
Years of practice	5	1 yr for specialist; 10 years for GP	5	5	5 1 yr for specialist	10 for general registration	1 year post specialist qualification
CMP must submit forms at multiple milestone points during VAD request process	✓	✓	✓	✓	✓	✓	✓
If Doctor unable or unwilling to assess VAD, must provide details of alternate VAD provider or	Silent	✓	✓	Silent	✓	✓	✓

Provision	Victoria	Western Australia	Tasmania	South Australia	Queensland	New South Wales	ACT
service eg Care Navigators							
6. Witnesses to written declaration							
<ul style="list-style-type: none"> Two witnesses Independent Cannot be employed by institution in which person resides Cannot be a beneficiary 	✓	✓	<ul style="list-style-type: none"> One witness can be a beneficiary or residential care provider (or employee) or resident in same facility (but not if they are the only witness) Requires only one witness if witness is a Commissioner for Declarations 	✓	✓	<ul style="list-style-type: none"> No relatives or employees of assessing doctors Silent re employees of residential facility 	✓
<ul style="list-style-type: none"> One witness can be a family member 	✓	No family members	<ul style="list-style-type: none"> (Not if there is only one witness) 	✓	Both witnesses may be family members	No family members	Silent
<ul style="list-style-type: none"> Witness to certify that person signed voluntarily, appeared to have decision making capacity, and understood effect of declaration 	✓	Witness certifies only that person signed voluntarily	No certification – witness to the signing only	✓	Witness certifies only that person signed voluntarily	Witness certifies only that person signed voluntarily	Witness certifies only that person signed voluntarily
<ul style="list-style-type: none"> Signed in presence of 	✓	Silent (Ie, not required)	Silent (Ie, not required)	✓	Silent (Ie, not required)	Silent (Ie, not required)	Silent

Provision	Victoria	Western Australia	Tasmania	South Australia	Queensland	New South Wales	ACT
Coordinating Medical Practitioner							(ie, not required)
7.Substance Administration							
Self administration	✓	✓	✓	✓	✓	✓	✓
Choice of practitioner administration	✓ Only if unable to self administer	✓ Only if self administration is 'inappropriate'	✓	✓ Only if unable to self administer	✓	✓	✓
Practitioner administration must be witnessed	✓	✓ Witness not to be family member of person or employee of administering practitioner	Not required	✓	✓	✓	✓
Nurse practitioner administration permitted	No	✓	Registered nurse with 5 years' experience	No	✓ Plus nurse with 5 years' experience	✓	✓ Or nurse
8.Contact Person							
<ul style="list-style-type: none"> Contact person appointed for self administration at time of final request Responsible for management and return of unused drugs 	✓	✓ Can be either assessing practitioner	✓	✓	✓	✓ Can be coordinating medical practitioner	✓ <ul style="list-style-type: none"> Can be CMP Contact Person can receive and prepare VAD substance Must provide reports to VAD Board
9.VAD Permit							
<ul style="list-style-type: none"> Coordinating Practitioner 	✓	Not required	✓	✓	Not required	✓	Not required

Provision	Victoria	Western Australia	Tasmania	South Australia	Queensland	New South Wales	ACT
<p>applies for VAD Permit</p> <ul style="list-style-type: none"> VAD Permit issued after Health Sec checks all processes completed Doctor must receive VAD Permit before writing prescription 			<ul style="list-style-type: none"> Called a VAD Substance Authorisation Complex requirements for administration Prescription can be written prior to receipt of VAD Substance Authority 			Called a VAD substance authority Issued by Board	
10.Initial discussion of VAD with patient							
Doctor may initiate discussion about VAD in context of other end of life treatment options	No – specifically forbidden	✓ and nurse practitioner	✓	No – specifically forbidden	✓ and nurse practitioner	✓	✓
Healthcare worker may initiate VAD discussion providing information about palliative care and other treatment options is also provided	Silent	No – specifically forbidden	✓ And person advised to discuss VAD with doctor	Silent	No – specifically forbidden	✓ As well as advise the person to talk to their doctor about treatment options	✓ Includes nurse, social worker, counsellor and others prescribed by regulation
11.Conscientious Objection							
a. Individuals							
<ul style="list-style-type: none"> Doctors can conscientiously object to participation in all 	✓	✓	✓	✓	✓	✓	✓

Provision	Victoria	Western Australia	Tasmania	South Australia	Queensland	New South Wales	ACT
aspects of VAD process							
<ul style="list-style-type: none"> • Doctor must inform patient of their CO (to reduce delay in the request process) 	No	✓	No	No	✓	✓	No
<ul style="list-style-type: none"> • Doctor who conscientiously objects must provide patient with alternate source of VAD information 	Not required to provide information about VAD	✓	✓	Not required to provide information about VAD	✓	Not required to provide information about VAD	✓
<ul style="list-style-type: none"> • Nurse practitioner may conscientiously object 	Not applicable	✓	Nurse	Not applicable	✓	✓	✓
<ul style="list-style-type: none"> • CO for other health professionals 	Silent	Silent	Pharmacists	Silent	Speech pathologist	Silent	Silent
b. Institutions							
Aged Care facility where <i>person is a permanent resident</i>							
<ul style="list-style-type: none"> • Facility may conscientiously object to providing VAD services by their own staff 	Silent	Silent	Silent	✓	✓	✓	✓
<ul style="list-style-type: none"> • Facility must allow and facilitate access by person's own medical team 	Silent	Silent	Silent	✓	✓	✓	✓

Provision	Victoria	Western Australia	Tasmania	South Australia	Queensland	New South Wales	ACT
to carry out all aspects of VAD							
<ul style="list-style-type: none"> If chosen medical team unavailable, facility must facilitate transfer to receive VAD services 	Silent	Silent	Silent	✓	✓	✓	<ul style="list-style-type: none"> ✓ If transfer would cause harm, must allow VAD services onsite
Aged care facility where person is not a permanent resident							
<ul style="list-style-type: none"> Facility may conscientiously object to providing any aspect of VAD 	Silent	Silent	Silent	✓	✓	✓	✓
<ul style="list-style-type: none"> Must provide public information to patients that VAD services not provided 	Silent	Silent	Silent	✓	✓	✓	✓
<ul style="list-style-type: none"> First and final requests: facility must allow doctor to attend onsite or arrange transfer to location where VAD permitted 	Silent	Silent	Silent	✓	✓	✓	✓
<ul style="list-style-type: none"> First and consulting assessments, written request, application for VAD Permit and administration of VAD substance: 	Silent	Silent	Silent	✓	✓	✓	✓

Provision	Victoria	Western Australia	Tasmania	South Australia	Queensland	New South Wales	ACT
facility must arrange transfer to a facility where VAD permitted							
<p>However</p> <ul style="list-style-type: none"> • If transfer would cause serious harm, suffering, delay or financial loss, facility must allow reasonable access to VAD services on site • ‘Reasonable’ clearly defined • Example: if transfer would likely cause loss of decision making capacity 	Silent	Silent	Silent	✓	✓	✓	✓
Health establishment eg private hospital							
<ul style="list-style-type: none"> • Operator may refuse to permit any aspect of VAD 	Silent	Silent	Silent	✓	✓	✓	No
<ul style="list-style-type: none"> • If patient wishes to access VAD, establishment must facilitate transfer to location where VAD services are available 	Silent	Silent	Silent	✓	<p>✓</p> <p>If transfer would cause harm, must allow all VAD services onsite</p>	<p>✓</p> <p>If transfer would cause harm, facility must allow all VAD services onsite</p>	<p>✓</p> <p>If transfer would cause harm, facility must allow all VAD services onsite</p>
12.Review of decisions							

Provision	Victoria	Western Australia	Tasmania	South Australia	Queensland	New South Wales	ACT
Review Body (can review a broad range of decisions)	Victorian Civil and Administrative Tribunal	State Administrative Tribunal	VAD Commission then Supreme Court	SA Civil and Administrative Tribunal	Queensland Civil and Administrative Tribunal	Supreme Court	ACT Civil and Administrative Tribunal
Residency requirement can be reviewed and annulled	✓ Limited to accuracy	✓ Limited to accuracy	✓ Limited to accuracy	✓ Limited to accuracy	✓	✓	✓ + capacity and whether request is voluntary
Review can include request for exemption from the 6 or 12 month prognosis	No	No	✓	No	No	No	Not relevant – no 6 to 12 month prognosis required
Review request by patient or person with an interest in patient	✓	✓	✓	✓	✓	✓	✓
13.VAD Review Board							
Established	✓	✓ VAD Board	✓ VAD Commission	✓	✓	✓ VAD Board	✓ VAD Oversight Board
Number of Members	Silent Appointed by Minister	5 members Appointed by Minister	<ul style="list-style-type: none"> 5 members Appointed jointly by Health Minister and AG 	Silent Appointed by Minister	<ul style="list-style-type: none"> Between 5 and 9 members Specifies areas of expertise of Board members 	<ul style="list-style-type: none"> 5 members, 2 with medical experience Appointed jointly by Health Min and AG 	<ul style="list-style-type: none"> 4-7 members Chair and members appointed by Minister
Powers of Board <ul style="list-style-type: none"> Monitor and review Provide reports to Minister and Parliament Carry out research 	✓	✓ <ul style="list-style-type: none"> Annual Report to include data 	✓ <p>Many processing roles and functions - allocated to Sec</p>	✓	✓	✓ <p>Many processing roles and functions – same roles</p>	✓ <p>Report anomalies to appropriate</p>

Provision	Victoria	Western Australia	Tasmania	South Australia	Queensland	New South Wales	ACT
<ul style="list-style-type: none"> Encourage continuous improvement in quality and safety Consult and engage with community 		<ul style="list-style-type: none"> on regional access No specific ref to consulting and engaging with community 	of Health in other jurisdictions eg provide name of VAD trained doctor to person			allocated to Sec of Health in other jurisdictions	authority eg police, coroner
14.General							
VAD is not suicide clause	Silent	✓	✓	✓	✓	✓	✓
Principles Include clause requiring equality of access for people in regional areas	Silent	✓	✓	Silent	✓	✓	Silent
Clause noting Care Navigator Service to be established	Silent	Silent	VAD Commission to provide assistance	Silent	✓	✓	✓
Time limit for decisions and submission of forms after decision	✓ 7 days	✓ 2 days 7 days re Review Tribunal	✓ 2 to 7 days	✓ 7 days	✓ 2 days	✓ 2 and 5 days	✓ 4 days
Death Certificate	<ul style="list-style-type: none"> Death certificate states cause of death the underlying condition Notify Registrar and Coroner re VAD use and 	<ul style="list-style-type: none"> Death certificate states cause of death the underlying condition 	<ul style="list-style-type: none"> Doctor (or nurse) to notify Commission of person's death No requirement to notify Coroner 	<ul style="list-style-type: none"> Death certificate states cause of death the underlying condition Notify Registrar and Coroner re VAD use and 	<ul style="list-style-type: none"> Death certificate states cause of death the underlying condition 	<ul style="list-style-type: none"> Death certificate to state use of VAD and illness or medical condition making person eligible for VAD 	<ul style="list-style-type: none"> Death certificate states cause of death the underlying condition(s) Advise Registrar General that VAD

Provision	Victoria	Western Australia	Tasmania	South Australia	Queensland	New South Wales	ACT
	underlying condition			underlying condition			substance used
Pharmacy – centralised government pharmacy, detailed provisions for timing of prescription, drug supply, drug storage, disposal of unused drug	✓	✓	✓	✓	✓	✓	✓
15-19 month delay between Assent and commencement	✓	✓	✓	✓	✓	✓	✓

ACT VOLUNTARY ASSISTED DYING BILL 2023

SUPPLEMENTARY EXPLANATORY STATEMENT

https://www.legislation.act.gov.au/b/db_68609/

June 4, 2024

Below is the quote from Hansard explaining how ‘advanced’ is to be interpreted. The Explanatory Statement has the purpose of explaining how the words in the Bill are to be interpreted. These amendments were tabled by Minister Tara Cheyne on June 4.

Re: Advanced

Like other Australian jurisdictions, VAD will only be an option for a person with at least one condition that is ‘advanced, progressive, and expected to cause the person’s death’. It is intended that an ‘advanced’ condition refers to a period of serious illness when functioning and quality of life decline, and treatments (other than for the primary purpose of pain relief) have lost any beneficial impact. It is not the intent that the definition of ‘advanced’ be limited to the final days, weeks or months of life. A person may be considered to be eligible for VAD, even if it is uncertain whether their relevant conditions will cause death within the next 12 months.

Under new clause 11 (2A) an individual’s relevant conditions are advanced if:

1. (a) the individual’s functioning and quality of life— (i) have declined or are declining; and
2. (b) any treatments that are reasonably available and acceptable to the individual have lost any beneficial impact; and
3. (c) the individual is approaching the end of their life.

The meaning of approaching the end of life is clarified further in proposed new clause 11 (3A).

Clause 4 Proposed new clause 11 (3A) and (3B)

This clause introduces clause 11 (3A) which defines the meaning of ‘treatment’ in relation to clause 11 (2A) (b) which provides that ‘any treatments that are reasonably available and acceptable to the individual have lost any beneficial impact’.

It is important that treatments people are receiving for their condition which are for the purposes of relieving symptoms or pain or distress do not make them ineligible for VAD. New clause 11 (2A) (b) provides that an individual’s relevant conditions are advanced if any treatments that are reasonably available and acceptable to the individual have lost any beneficial impact.

It is not the intention that a ‘treatment’ primarily for the purpose of relieving a symptom of the condition or any pain or distress caused by the condition is included in this definition.

For example, the pain caused by advanced cancer can be treated by palliative radiotherapy or chemotherapy to help manage symptoms. These treatments aim primarily to improve quality of life and alleviate suffering, rather than to have any effect in curing the disease. Accordingly, receiving such treatment does not make the person ineligible for VAD.

This clause introduces clause 11 (3B) to provide further clarification on the meaning of ‘approaching the end of life’ within the context of ‘advanced’ in relation to eligibility to access VAD. Clause 11(3B) is not intended to limit the circumstances where an individual can be taken to be “approaching end of life” and is not intended to introduce a fixed timeframe to death to determine an individual’s eligibility for VAD. There may be instances where an individual’s timeframe to death is unclear, unpredictable or where the person’s prognosis has a range of possible outcomes. A person may be considered to be approaching the end of life, even if it is uncertain whether their relevant conditions will cause death within the next 12 months. Clause (3B) is not intended to exclude an individual who might be expected to live for more than 12 months where the individual has been assessed as approaching the end of their life in all of the circumstances, and in light of their particular conditions(s), by their assessing health practitioners.

Clinical trajectories of advanced life limiting illnesses, such as cancer and neurodegenerative diseases, can be unpredictable. In some circumstances, individuals may have an expected prognosis of 12 months or more, however, the prognosis may change very quickly due to complications and uncertainties common in advanced illness.

The intent of the Government’s approach is to avoid the many challenges for practitioners, individuals and their families, friends and carers that arise from the strict 6 to 12-month timeframe to death requirement imposed in other Australian jurisdictions. At the same time, the proposed framework seeks to ensure that VAD remains an end-of-life choice to end intolerable suffering for an individual whose terminal, progressive condition is advanced and is expected to cause their death.

Importantly, a person must meet all eligibility criteria to access VAD, including suffering intolerably in relation to the relevant condition/s and have decision-making capacity in relation to VAD.

Clause 5 Clause 11 (4), definition of advanced

This clause omits the definition of ‘advanced’ as this been relocated to new clause 11 (2A).

Clause 6 Clause 11 (4), definition of disability

This clause changes the definition of disability to the definition of disability used in the *Disability Services Act 1991* (ACT).