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Expert Report on Voluntary Assisted Dying in Australia for DignitySA's Constitutional Challenge regarding Medical Assistance in Dying

27 February 2025

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Introduction

1. We are members of the Australian Centre for Health Law Research (ACHLR), a specialist research centre within the Queensland University of Technology's Faculty of Business and Law. ACHLR undertakes empirical, theoretical and doctrinal research into complex problems and emerging challenges in the fields of health law, ethics, technology, governance and public policy.

2. We have been conducting research into the law, policy and practice of end-of-life decision-making for 20 years. We have published over 150 publications on end-of-life decision-making and have been part of interdisciplinary teams that have received over $A65 million for our end-of-life research and training programs.

3. Our research on voluntary assisted dying (VAD) includes a body of work on comparative and legal analysis of the various international assisted dying systems.[1] We also developed a Model VAD Bill which, along with our research,

* We gratefully acknowledge the invaluable assistance provided by our colleague Dr Madeleine Archer in preparing this submission. We also thank Tobias Cantoni and Lindsay Baker for their assistance with referencing and formatting.

[1] Katherine Waller et al, 'Voluntary Assisted Dying in Australia: A Comparative and Critical Analysis of State Laws' (2023) 46(4) *University of New South Wales Law Journal* 1; Ben P White et al, 'Comparative and Critical Analysis of Key Eligibility Criteria for Voluntary Assisted Dying Under Five Legal Frameworks' (2021) *University of New South Wales Law Journal* 44(4), 1663 ('Key Eligibility Criteria for Voluntary Assisted Dying'); Ben P White et al, 'Who is Eligible for Voluntary Assisted Dying? Nine Medical Conditions Assessed Against Five Legal Frameworks' (2022) *University of New South Wales Law Journal* 45(1), 401 ('Who is Eligible for Voluntary Assisted Dying?').

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has been influential in law reform for VAD across Australia, including in the Australian Capital Territory.[2]

4. Our current work includes a four-year project 'Optimal Regulation of Voluntary Assisted Dying' which includes research into VAD systems in Australia, Canada and Belgium: https://research.qut.edu.au/voluntary-assisted-dying-regulation/. This project will make recommendations about how best to safely regulate VAD.

5. We were also commissioned by the state governments of Victoria, Western Australia and Queensland to design and deliver the legislatively-mandated training for practitioners wishing to provide VAD. One of us, Lindy Willmott, is a member of the VAD Review Board in Queensland. (We note, however, that we make this Expert Report only in our capacity as academics.)

6. In terms of law reform, we have been consulted and participated in various VAD law reform exercises in Australia and overseas. We also edited the book *International Perspectives on End-of-Life Law Reform: Politics, Persuasion and Persistence* (Cambridge University Press, 2021). This is a collection of ten case studies from six jurisdictions (the United Kingdom, the United States, Canada, Australia, Belgium and the Netherlands) analysing different aspects of end-of-life law reform.

7. More background information is available here:
https://www.qut.edu.au/about/our-people/academic-profiles/bp.white
https://www.qut.edu.au/about/our-people/academic-profiles/l.willmott

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[2] Ben P White and Lindy Willmott 'A Model Voluntary Assisted Dying Bill' (2019) *Griffith Journal of Law and Human Dignity* 7(2), 1 ('A Model Voluntary Assisted Dying Bill'). The ACT Minister for Human Rights Tara Cheyne referred to our research in the introductory speech for the VAD Bill. The Minister referred to research which 'found that removing the prognosis time frame is unlikely to result in more individuals being eligible for voluntary assisted dying. Instead, individuals will likely become eligible earlier in their disease progression, reducing an individual's intolerable suffering as well as the stress and difficulty of having to request voluntary assisted dying very close to death.' ACT, *Parliamentary Debates*, Legislative Assembly, 31 October 2023, 3501 (Tara Cheyne). This reference is to research produced by members of the Australian Centre for Health Law Research, namely: White, 'Key Eligibility Criteria for Voluntary Assisted Dying' (n 1); White, 'Who is Eligible for Voluntary Assisted Dying?' (n 1).

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8. We have been invited by DignitySA via Adams & Adams to provide expert evidence in the Constitutional Challenge initiated by DignitySA regarding the current prohibition of medical assistance in dying in South Africa. Accordingly, we provide below an analysis of the current position of assisted dying in Australia, by addressing the 12 questions asked of us by DignitySA. The responses to these questions form the basis of our Expert Report.

9. We note that this Expert Report represents our views but does not necessarily represent the views of other members of ACHLR. For this reason, we request that any mention of this Expert Report refers to us as authors and not ACHLR, the Faculty of Business and Law or QUT as entities.

10. Thank you for the opportunity to contribute this Expert Report.

Yours sincerely

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Responses to specific questions

1. **What is the position in Australia in relation to assisted dying (or voluntary assisted dying (VAD) as it is referred to in Australia)? Which Australian states have legalised VAD and when did this take place?**

11. Legislation permitting VAD has now been passed in all but one Australian jurisdiction. VAD is legal in all six Australian states: Victoria (legislation passed in 2017 and operational from 19 June 2019), Western Australia (legislation passed in 2019 and operational from 1 July 2021), Tasmania (legislation passed in 2021 and operational from 23 October 2022), South Australia (legislation passed in 2021 and operational from 31 January 2023), Queensland (legislation passed in 2021 and operational from 1 January 2023), and New South Wales (NSW) (legislation passed in 2022 and operational from 28 November 2023).[3] VAD legislation has also been passed in the Australian Capital Territory (ACT) in 2024.[4] This legislation is due to commence operation in November 2025.

12. The only jurisdiction in Australia which has not legalised VAD is the Northern Territory. The Northern Territory established an Expert Advisory Panel in 2023 to provide advice to the Northern Territory Government to 'assist in the consultation and potential development and implementation of a new statutory framework for VAD'.[5] The Expert Advisory Panel engaged in public consultation and published a report.[6] Its report recommended that VAD legislation be passed in the Northern Territory in line with the legislation passed in the other Australian jurisdictions.[7]

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[3] *Voluntary Assisted Dying Act 2017* (Vic) ('*Vic VADA*'); *Voluntary Assisted Dying Act 2019* (WA) ('*WA VADA*'); *End-of-Life Choices (Voluntary Assisted Dying) Act 2021* (Tas) ('*Tas EOLCA*'); *Voluntary Assisted Dying Act 2021* (SA) ('*SA VADA*'); *Voluntary Assisted Dying Act 2021* (Qld) ('*Qld VADA*'); *Voluntary Assisted Dying Act 2022* (NSW) ('*NSW VADA*').
[4] *Voluntary Assisted Dying Act 2024* (ACT) ('*ACT VADA*').
[5] Department of Chief Minister and Cabinet, Northern Territory Government, 'Terms of Reference – Expert Advisory Panel: Voluntary Assisted Dying legislation in the Northern Territory' (2023) <https://cmc.nt.gov.au/__data/assets/pdf_file/0009/1259154/voluntary-assisted-dying-consultation-tor.pdf>.
[6] Voluntary Assisted Dying, *Northern Territory Government Department of the Chief Minister and Cabinet* (Web Page) <https://cmc.nt.gov.au/project-management-office/voluntary-assisted-dying#advisory-panel-terms-of-reference>.
[7] *Report into Voluntary Assisted Dying in the Northern Territory* (Final Report, July 2024) <https://cmc.nt.gov.au/__data/assets/pdf_file/0018/1420722/vad-report-2024.pdf>.

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2. What forms, or methods, of assisted dying are legalised in the permissive Australian states?

13. All Australian jurisdictions which have legalised VAD permit both self-administered and practitioner administered forms. 'Self-administration' is where the person assessed as eligible for VAD administers the VAD substance themselves.[8] 'Practitioner administration' is where a qualified practitioner administers the VAD substance to the person assessed as eligible for VAD, such as via intravenous injection.[9]

14. The laws in the Australian jurisdictions vary with respect to an eligible person's ability to access practitioner administration. Self-administration is the default option for administration in all jurisdictions except NSW and the ACT. In Victoria and South Australia, a person can only access practitioner administration if they are 'physically incapable of the self-administration or digestion' of the VAD substance.[10] In Western Australia, Tasmania, and Queensland, a person may access practitioner administration if self-administration would be inappropriate, considering the person's concerns about self-administration, their ability to self-administer, and/or the method of administration that is suitable for the person.[11]

15. In NSW and the ACT, a person can choose to have self-administration or practitioner administration.[12]

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[8] Katrine Del Villar et al, 'Voluntary Assisted Dying' in Ben P White et al (eds), *Health Law in Australia* (Thomas Reuters Australia, 4th ed, 2023) 561, 588 [13.330].
[9] Del Villar (n 8) 588 [13.340].
[10] *SA VADA* (n 3) s 66(3)(a); *Vic VADA* (n 3) s 48(3)(a).
[11] *Qld VADA* (n 3) s 50(2); *WA VADA* (n 3) s 56(2); *Tas EOLCA* (n 3) s 86(5).
[12] *NSW VADA* (n 3) s 57(1); *ACT VADA* (n 4) s 42(1).

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16. We (with colleagues) have written about these provisions governing administration and their impacts for patients[13] and have discussed early data on the uptake of self and practitioner administration in the Australian jurisdictions.[14]

3. What is meant by the 'Australian model' of VAD and how is it distinctive from other regimes?

17. The 'Australian model' of VAD[15] is very highly regulated when compared to a range of international assisted dying models. It is 'characterised by lengthy legislation containing much prescriptive detail'[16] which 'contains safeguards at every step of the process.'[17] A detailed description and analysis of the VAD legislation in Australia can be found in: Katherine Waller et al, 'Voluntary Assisted Dying in Australia: A Comparative and Critical Analysis of State Laws' (2023) 46(4) *University of New South Wales Law Journal* 1421.[18] We provide a summary of the characteristics of the 'Australian model' of VAD here.

17.1. **There are narrow eligibility criteria for access to VAD.** In all Australian jurisdictions, VAD is available for adult persons who meet specific residency and citizenship requirements. Though there are some differences between jurisdictions, generally a person must be diagnosed with a disease, illness, or medical condition that is advanced, progressive and will cause death, within 6 months or 12 months depending on the jurisdiction and the person's condition. The person must have decision-making capacity for VAD, their request must be made voluntarily and without coercion, and their request must be enduring. We

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[13] Del Villar (n 8) 588 [13.340]; Lindy Willmott and Ben P White, 'Assisted Dying in Australia: A Values-Based Model for Reform' in Petersen and Freckelton (eds), *Tensions and Traumas in Health Law* (Federation Press Australia) 479 ('Assisted Dying in Australia: A Values-Based Model for Reform'); Ben P White et al, 'Does the *Voluntary Assisted Dying Act 2017* (Vic) Reflect its Stated Policy Goals?' (2020) 43(2) *University of New South Wales Law Journal* ('Does the *Vic VADA* Reflect its Stated Policy Goals?').

[14] Del Villar (n 8) 588-589, [13.340]; Ben P White et al, 'Voluntary Assisted Dying in Australia' in Ben P White (ed), *Research Handbook on Voluntary Assisted Dying Law, Regulation and Practice* (Edward Elgar, 2025, forthcoming) 10 ('Voluntary Assisted Dying in Australia').

[15] Waller (n 1) 1423; Del Villar (n 8) 587 [13.250]; White, 'Voluntary Assisted Dying in Australia' (n 14) 3.

[16] Waller (n 1) 1423; White, 'Voluntary Assisted Dying in Australia' (n 14) 3-4.

[17] Del Villar (n 8) 587 [13.25].

[18] We note that this article does not include the ACT's legislation as that was not passed at the time of writing.

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(with colleagues) have written that '[T]he eligibility criteria adopted in Australian VAD laws are narrow and highly constrained, compared to many international models.'[19] The eligibility criteria are discussed in further detail in a subsequent response in this report, and we note that we (with a colleague) have written an article (that is under review and which we will provide once published) which compares the eligibility criteria for access to VAD in 15 jurisdictions, including Australia.[20]

17.2. **The request and assessment process for accessing VAD is highly regulated.** In all jurisdictions a person must make three, clear and unambiguous requests for VAD. A person's eligibility for VAD is assessed by a minimum of two practitioners, who have been deemed eligible to undertake VAD assessments and have undergone specific VAD training. Where assessing practitioners are unable to make a determination about an eligibility requirement in relation to the person, they must refer the person to an appropriately skilled practitioner who will assess the person. The request and assessment process in the Australian pieces of VAD legislation is discussed further in the responses below.

17.3. **Regulatory bodies monitor VAD practice.** In all jurisdictions a VAD oversight body, called a 'Voluntary Assisted Dying Review Board',[21] 'Voluntary Assisted Dying Board'[22] or 'Voluntary Assisted Dying Commission'[23] has been established to monitor and oversee the operation of the legislation. Forms must be submitted to these bodies throughout the VAD process by participating practitioners. In four jurisdictions, a regulatory body must issue a VAD 'permit' or 'substance authorisation' before VAD can be performed.[24] Oversight of VAD in Australia is discussed further below.

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[19] Del Villar (n 8) 573.
[20] Katrine Del Villar, Lindy Willmott and Ben P White, 'Voluntary Assisted Dying – Australia in an International Context' (under review).
[21] *Qld VADA* (n 3) s 116; *SA VADA* (n 3) s 107(1); *Vic VADA* (n 3) s 92.
[22] *NSW VADA* (n 3) s 134; *WA VADA* (n 3) s 116.
[23] *Tas EOLCA* (n 3) s 110(1).
[24] *Vic VADA* (n 3) s 43; *SA VADA* (n 3) s 61; *Tas EOLCA* (n 3) s 66(1); *NSW VADA* (n 3) s 70(1).

17.4. **Conversations about VAD are regulated in the legislation.** A unique feature of Australia's VAD laws is that they describe whether and how the topic of VAD can be raised by certain health professionals with a patient. In two jurisdictions, it is not permitted for a registered medical practitioner to raise VAD, which means the patient must raise the topic first.[25] In the other jurisdictions, the topic of VAD can only be raised by certain health professionals in the context of a broader end of life discussion.[26] The problematic nature of these restrictions on raising the topic of VAD is discussed further below, and a detailed discussion of these provisions can be found in Katherine Waller et al, 'Voluntary Assisted Dying in Australia: A Comparative and Critical Analysis of State Laws' (2023) 46(4) *University of New South Wales Law Journal* 1421.[27]

17.5. **Participating practitioners must be eligible to provide VAD.** Practitioners who participate in a formal role in the VAD process must meet requirements relating to their qualifications, expertise, and training. A further unique feature of Australian VAD legislation is that participating practitioners must have completed mandatory training on VAD in order to be involved. These requirements are discussed further below.

17.6. **VAD medications must be handled safely.** In each jurisdiction, VAD substances must be prescribed, supplied, stored, labelled, and disposed of securely. These requirements apply both when the person is going to self-administer the VAD medication (so have the VAD medication in their home) and when the person is going to have the VAD medication administered to them (administration methods are discussed further, below). In all jurisdictions, when a person is going to self-administer the VAD medication, the laws require that they appoint a 'contact person' who is responsible for returning any unused or remaining VAD medication to an approved VAD medication disposer within a prescribed period.[28]

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[25] *Vic VADA* (n 3) s 8(1); *SA VADA* (n 3) s 12(1).
[26] For a discussion of these requirements see Del Villar (n 8) 583-4 [13.220].
[27] Katherine Waller et al, 'Voluntary Assisted Dying in Australia: A Comparative and Critical Analysis of State Laws' (2023) 46(4) *University of New South Wales Law Journal* 1421, 1435-1437.
[28] *Vic VADA* (n 3) s 39; *WA VADA* (n 3) ss 65, 67; *Tas EOLCA* (n 3) s 92; *SA VADA* (n 3) s 57; *Qld VADA* (n 3) ss 58, 61; *NSW VADA* (n 3) ss 66, 68; *ACT VADA* (n 4) ss 68, 69.

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17.7. **Offences exist for non-compliance.** The law in each jurisdiction contains sanctions (disciplinary and/or criminal) for failure to comply with its requirements. For example, it is an offence in all jurisdictions to dishonestly, or by coercion or using undue influence, induce a person to request VAD.[29]

4. What are the eligibility criteria and procedural safeguards in place, including who may access VAD and in which circumstances?

18. The eligibility criteria to access VAD are similar across all Australian jurisdictions, though there are some differences. A comprehensive description of the eligibility criteria can be found in *Health Law in Australia* (Thomson Reuters Australia, 4th ed, 2024).[30] In this response, we focus on the eligibility criteria to access VAD, though we note that there are also a number of procedural safeguards in place during the eligibility assessment process, which are discussed in subsequent responses.

19. VAD is only available for adult persons (persons of at least 18 years of age).[31] To be eligible, a person must have a disease, illness or medical condition that is advanced, progressive (except in Tasmania), and will cause their death, and is causing intolerable suffering.[32] In all jurisdictions but two, the person's death must be expected to occur within 6 months, or 12 months if their eligible condition is neurodegenerative. In Queensland, the person's death must be expected to occur within 12 months, regardless of the person's eligible condition. The ACT departed from the approach of including a specific timeframe to death, and instead its legislation provides that the person must have a condition that is 'advanced, progressive and expected to cause death.'[33] 'Advanced' is defined in

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[29] *Vic VADA* (n 3) s 85; *WA VADA* (n 3) s 100; *Tas EOLCA* (n 3) s 124(b); *SA VADA* (n 3) s 100; *Qld VADA* (n 3) s 141; *ACT VADA* (n 4) s 40(1). There is no specific offence for this included in the *NSW VADA* (n 3), however, a specific offence entitled 'Inducing another person to request or access voluntary assisted dying' has been included in s 41C of the *Crimes Act 1900* (NSW).
[30] Del Villar (n 8) ch 13.
[31] *Vic VADA* (n 3) s 9(1)(a); *WA VADA* (n 3) s 16(1)(a); *Tas EOLCA* (n 3) s 10(1)(a); *SA VADA* (n 3) s 26(1)(a); *Qld VADA* (n 3) s 10(1)(d); *NSW VADA* (n 3) s 16(1)(a); *ACT VADA* (n 4) s 11(1)(a).
[32] White, 'Voluntary Assisted Dying in Australia' (n 14) ch 12; *Vic VADA* (n 3) s 9(1)(d)(ii), (iv); *WA VADA* (n 3) s 16(1)(c)(i), (iii); *Tas EOLCA* (n 3) ss 6(1)(a)-(b), 10(1)(e); *SA VADA* (n 3) s 26(1)(d)(ii), (iv); *Qld VADA* (n 3) s 10(1)(a)(i), (ii); *NSW VADA* (n 3) s 16(1)(d)(i), (iii); *ACT VADA* (n 4) s 11(1)(b)-(c).
[33] *ACT VADA* (n 4) s 11(1)(b).

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the legislation as including that the person is 'approaching the end of their life.'[34] In Victoria, Tasmania, and South Australia the person's condition must also be incurable.[35] In each jurisdiction, a person will not be eligible for VAD on the basis of having a mental illness or disability alone.[36]

20. A person must have decision-making capacity for VAD, which is defined in the legislation.[37] A person's decision-making capacity is assessed by practitioners multiple times during the VAD process.[38] The NSW law expressly states that a person cannot be eligible for VAD on the basis of having a diagnosis of dementia alone.[39] The situation is functionally the same in the other states: a person with dementia is highly unlikely to be eligible for VAD because they are unlikely to have capacity when their death is expected to occur within 12 months.[40]

21. In most jurisdictions, a person's request for VAD must be made voluntarily (or 'freely' in South Australia) and without coercion (in NSW described as without 'pressure or duress').[41] This is not an explicit eligibility criterion in Victoria, however during eligibility assessments, assessing practitioners must ensure that the person's decision to access VAD is free and voluntary.[42]

22. Residency and citizenship requirements are also included in the eligibility requirements in most Australian jurisdictions. In Victoria, Western Australia, and South Australia, a person must either be an Australian citizen or a permanent resident.[43] The position is more flexible in the remaining jurisdictions: in New South Wales, Queensland and Tasmania, a person must be either an Australian citizen, permanent resident, or have resided in Australia for at least three years

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[34] *ACT VADA* (n 4) ss 11(1)(b), 11(3).
[35] *Vic VADA* (n 3) s 9(1)(d)(i); *Tas EOLCA* (n 3) s 6(2); *SA VADA* (n 3) s 26(1)(d)(i).
[36] *Vic VADA* (n 3) s 9(2)-(3); *WA VADA* (n 3) s 16(2); *Tas EOLCA* (n 3) s 10(2); *SA VADA* (n 3) s 26(2)-(3); *Qld VADA* (n 3) s 13; *NSW VADA* (n 3) s 16(2)(a), (c); *ACT VADA* (n 4) s 11(2)(b).
[37] *Vic VADA* (n 3) s 9(1)(c); *WA VADA* (n 3) s 16(1)(d); *Tas EOLCA* (n 3) s 10(1)(c); *SA VADA* (n 3) s 26(1)(c); *Qld VADA* (n 3) s 10(1)(b); *NSW VADA* (n 3) s 16(1)(e); *ACT VADA* (n 4) s 11(1)(d).
[38] Del Villar (n 8) 576 [13.140].
[39] *NSW VADA* (n 3) s 16(2)(b).
[40] Del Villar (n 8) 576 [13.140]; White, 'Who is Eligible for Voluntary Assisted Dying?' (n 1).
[41] *WA VADA* (n 3) s 16(1)(e); *Tas EOLCA* (n 3) ss 10(1)(d), 13; *SA VADA* (n 3) s 26(1)(e); *Qld VADA* (n 3) s 10(1)(c); *NSW VADA* (n 3) s 16(1)(f)-(g).
[42] *Vic VADA* (n 3) ss 20(1)(c), 29(1)(c).
[43] *SA VADA* (n 3) s 26(1)(b)(i); *Vic VADA* (n 3) s 9(1)(b)(i); *WA VADA* (n 3) s 16(1)(b)(i).

prior to making their first request for VAD.[44] In addition, the Queensland legislation allows an exemption to be granted from this requirement if the person demonstrates that they have a 'substantial connection' to Queensland and there are 'compassionate grounds' for granting the exemption.[45] In the ACT, there is no requirement that a person be an Australian citizen or a permanent resident to access VAD.

23. Australia's VAD laws also require that the person has been ordinarily resident in the state or territory for 12 months prior to making their first request for VAD.[46] In NSW and Queensland a person can apply for an exemption to this requirement if they have a substantial connection to the state and there are compassionate grounds for granting the exemption.[47] In the ACT, a person must have lived in the ACT for at least the previous 12 months or have been granted an exemption from that requirement on the basis of demonstrating a 'substantial connection' to the ACT.[48]

24. Noting that these provisions were designed to prevent 'VAD tourism within Australia' we (with colleagues) have written: 'Some would argue that the requirement of ordinary residence within a State is no longer needed: now that all Australian States have enacted VAD laws, this greatly diminishes demand for VAD tourism across State borders.'[49]

25. A final eligibility criterion included in the legislation in NSW and Western Australia is that the person's request must be 'enduring'.[50] Medical practitioners in Victoria and South Australia must also assess the enduring nature of the person's request during the assessment process, though it is not an express eligibility criterion.[51]

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[44] *NSW VADA* (n 3) s 16(1)(b)(iii); *Tas EOLCA* (n 3) s 11(1)(a)(iii); *Qld VADA* (n 3) s 10(1)(e)(iii).
[45] *Qld VADA* (n 3) ss 10(1)(e)(iv), 12(2). In addition, in Queensland, a New Zealand citizen who is a resident in Australia will satisfy this criterion: *Qld VADA* (n 3) s 10(2)(b).
[46] *NSW VADA* (n 3) s 16(1)(c); *Qld VADA* (n 3) s 10(1)(f); *SA VADA* (n 3) s 26(1)(b)(ii)-(iii); *Tas EOLCA* (n 3) s 11(1)(b); *Vic VADA* (n 3) s 9(1)(b)(ii)-(iii); *WA VADA* (n 3) s 16(1)(b)(ii).
[47] *NSW VADA* (n 3) s 17(1); *Qld VADA* (n 3) ss 10(1)(f)(ii), 12(2).
[48] *ACT VADA* (n 4) ss 11(1)(f), 154(1).
[49] Del Villar (n 8) 580.
[50] *NSW VADA* (n 3) s 16(1)(h); *WA VADA* (n 3) s 16(1)(f).
[51] *SA VADA* (n 3) ss 38(1)(d), 47(1)(d), 64(c)(iv), 65(3)(b), 66(3)(c), 81(1)(c), 82(2)(a)(iii); *Vic VADA* (n 3) ss 20(1)(d), 29(1)(d), 47(3)(b), 48(3)(c), 64(1)(c), 66(1)(d).

In addition, as we have previously explained, in all jurisdictions: 'The structure of the VAD process, requiring multiple requests for VAD over a period of time, and providing a person with several opportunities to withdraw from the process, is designed to ensure that a person's request for VAD is considered and enduring.'[52]

5. Please describe the request and assessment process for a patient seeking to access VAD, and your professional assessment thereof.

26. The request and assessment process for access to VAD in Australia is rigorous and includes numerous safeguards. While this contributes to the safety of Australia's VAD systems (discussed further below), navigating this rigorous assessment process can be a barrier to access to VAD for patients (also discussed further below).[53] Because the challenges associated with the request and assessment process are described in subsequent responses, this response focuses on describing the request and assessment process.

27. The process for accessing VAD in all Australian jurisdictions involves the person making at least three separate requests for VAD and having their eligibility to access VAD independently assessed by two health practitioners. The two practitioners who assess the person's eligibility are generally referred to as the person's 'co-ordinating practitioner'[54] (or 'coordinating medical practitioner'[55] or 'primary medical practitioner'[56]) and their 'consulting practitioner'[57] (or 'consulting medical practitioner').[58] The coordinating practitioner will generally also be the person's 'administering practitioner' who administers the VAD substance if the person receives practitioner administration.

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[52] Del Villar (n 8) 580.
[53] White, 'Voluntary Assisted Dying in Australia' (n 14) ch 12, 11; Marcus Sellars et al, 'Medical Practitioners' Views and Experiences of Being Involved in Assisted Dying in Victoria, Australia: A Qualitative Interview Study Among Participating Doctors' (2022) *Social Science & Medicine (1982)* 292; Jodhi Rutherford, Lindy Willmott and Ben P White, 'What the Doctor Would Prescribe: Physician Experiences of Providing Voluntary Assisted Dying in Australia' 87(4) *Omega: Journal of Death and Dying* 1063.
[54] *NSW VADA* (n 3) s 24; *Qld VADA* (n 3) s 18; *WA VADA* (n 3) s 23; *ACT VADA* (n 4) s 16.
[55] *Vic VADA* (n 3) s 15; *SA VADA* (n 3) s 33.
[56] *Tas EOLCA* (n 3) s 22.
[57] *NSW VADA* (n 3) s 35; *Qld VADA* (n 3) s 29; *WA VADA* (n 3) s 34.
[58] *Vic VADA* (n 3) s 24; *Tas EOLCA* (n 3) s 42; *SA VADA* (n 3) s 42.

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28. Once a person has made a request for VAD they can stop the process at any time.[59] The practitioners with formal roles in the VAD process must submit forms at each step of the process to the relevant VAD oversight body.[60]

29. The first step in the VAD process in all jurisdictions is for the person to make a clear and unambiguous first request for VAD. This request must be made to a medical practitioner (or a health practitioner in the ACT).

30. The first request is followed in all jurisdictions by a first assessment of the person's eligibility by the practitioner who agrees to accept the person's first request. At this stage, the person's coordinating practitioner is generally required to provide the person with specific information about the VAD process and other options to ensure the person's decision is well informed. This includes information relating to the person's diagnosis and prognosis, existing therapeutic and non-therapeutic options, the VAD request and assessment process, the VAD substance, and that the person can stop the VAD process at any time.[61]

31. In all jurisdictions, if the person is assessed as eligible after the first assessment, they are referred by the coordinating practitioner to an independent practitioner for a consulting assessment. If the consulting practitioner accepts the referral, they conduct the second assessment of the person's eligibility.[62]

32. If an assessing practitioner is unable to decide whether the person meets a particular eligibility criterion, the laws generally require them to refer the person to an appropriately qualified health practitioner for a further assessment of that criterion.[63]

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[59] *Vic VADA* (n 3) s 12(1)-(2); *WA VADA* (n 3) s 19(1)-(2); *Tas EOLCA* (n 3) s 16(1)-(2); *SA VADA* (n 3) s 30(1)-(2); *Qld VADA* (n 3) s 15(1)-(2); *NSW VADA* (n 3) s 20(1)-(2); *ACT VADA* (n 4) s 9(1).
[60] See Waller (n 1) 1437; Del Villar (n 8) 587 [13.300].
[61] *NSW VADA* (n 3) s 28; *Qld VADA* (n 3) s 22; *SA VADA* (n 3) s 37; *Vic VADA* (n 3) s 19; *WA VADA* (n 3) s 27.
[62] *NSW VADA* (n 3) s 36; *Qld VADA* (n 3) s 30; *SA VADA* (n 3) s 43; *Tas EOLCA* (n 3) s 37(1); *Vic VADA* (n 3) s 25; *WA VADA* (n 3) s 35; *ACT VADA* (n 4) ss 20, 23.
[63] For a discussion of these provisions see the discussion in Waller (n 1) 17.

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33. If both the person's coordinating practitioner and consulting practitioner assess the person as eligible for VAD, the person can make a written second request for VAD that must be appropriately signed and witnessed.[64] The person can then make a final request for VAD to their coordinating practitioner.[65] In most states, the person's coordinating practitioner must then undertake a 'final review' of all the documentation completed in the assessment process so far, and certify that all necessary requirements have been met.[66]

34. In four jurisdictions, as noted above, a person's eligibility to access VAD is subject to an additional external formal approval.[67] This prospective approval must be sought before the VAD substance can be accessed and takes the form of a VAD 'permit',[68] or 'substance authorisation'[69] depending on the jurisdiction. In Victoria[70] and South Australia,[71] the person's coordinating practitioner must apply for and receive a VAD permit from the relevant Department officials before administration can occur. In Tasmania, the person's coordinating practitioner must apply for and receive a substance authorisation from the Tasmanian VAD Commission.[72] In NSW, the person's coordinating practitioner must apply to the VAD Board for a VAD substance authority before the VAD substance can be prescribed and administered.[73]

35. These provisions are discussed further in Katherine Waller et al, 'Voluntary Assisted Dying in Australia: A Comparative and Critical Analysis of State Laws' (2023) 46(4) *University of New South Wales Law Journal* 1421. In a response

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[64] *NSW VADA* (n 3) s 43; *Qld VADA* (n 3) s 37; *SA VADA* (n 3) s 52; *Tas EOLCA* (n 3) s 53(1); *Vic VADA* (n 3) s 34; *WA VADA* (n 3) s 42; *ACT VADA* (n 4) s 27.
[65] *Vic VADA* (n 3) s 37(1); *WA VADA* (n 3) s 47(1); *SA VADA* (n 3) s 55(1); *Qld VADA* (n 3) s 42(1); *NSW VADA* (n 3) s 48(1); *ACT VADA* (n 4) s 32(1).
[66] *Vic VADA* (n 3) s 41; *WA VADA* (n 3) s 51; *SA VADA* (n 3) s 59; *Qld VADA* (n 3) s 46; *NSW VADA* (n 3) s 52.
[67] Del Villar (n 8) 589 [13.350]; an overview of these are in Waller (n 1) 1443-1445.
[68] *Vic VADA* (n 3) ss 43, 47-8; *SA VADA* (n 3) ss 61, 65-6.
[69] *Tas EOLCA* (n 3) s 66; *NSW VADA* (n 3) ss 70(1), 71, 72, 73(1)(b).
[70] *Vic VADA* (n 3) ss 43, 47-8.
[71] *SA VADA* (n 3) ss 61, 65-6.
[72] *Tas EOLCA* (n 3) s 66.
[73] *NSW VADA* (n 3) ss 59(3)(b), 60(3), 70(1), 71, 72, 73(1)(b).

below, we discuss that although these provisions are designed to promote safety, they have implications for patients' ability to access VAD.[74]

36. There are no pre-authorisation requirements in relation to the administration of the VAD substance in Queensland and Western Australia.[75]

37. In Tasmania, the VAD request and assessment process is slightly different: the person's coordinating practitioner conducts three separate assessments of the person's eligibility in addition to the consulting practitioner's eligibility assessment.[76]

38. In all jurisdictions except the ACT there is a waiting period included between the person's first request for VAD and their final request for VAD. This varies between jurisdictions and is most commonly 9 days.[77] We see merit in the ACT approach of not including a waiting period. This is because the request and assessment process naturally takes some time, and because in the other jurisdictions, this waiting period can be shorted if the person is expected to die within that timeframe.

6. Please describe the method of administration, including the mode of administration, and the authorisations required therefor.

39. The methods of administration permitted under Australian VAD laws were described above in response 2.2, and the authorisations required were discussed above in response 2.5.

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[74] Ben P White et al, 'Prospective Oversight and Approval of Assisted Dying Cases in Victoria, Australia: A Qualitative Study of Doctors' Perspectives' (2024) *BMJ Supportive & Palliative Care* (advance) ('Prospective Oversight and Approval').
[75] Waller (n 1) 1443-4.
[76] See *Tas EOLCA* (n 3) Parts 5-10; Del Villar (n 8) 585-6.
[77] See Del Villar (n 8) 572.

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7. What are the requirements for healthcare professionals to participate in VAD?

40. Australia's VAD legislation includes requirements relating to the qualifications, expertise and training of participating healthcare professionals. A comprehensive summary of these requirements can be found in *Health Law in Australia* (Thomson Reuters Australia, 4th ed, 2024)[78] and Katherine Waller et al, 'Voluntary Assisted Dying in Australia: A Comparative and Critical Analysis of State Laws' (2023) 46(4) *University of New South Wales Law Journal* 1421.[79]

41. In all jurisdictions except the ACT, only medical practitioners who satisfy specific eligibility requirements are permitted to conduct assessments of whether the person satisfies the VAD eligibility criteria. In the ACT, one of the assessing practitioners can be a nurse practitioner. The legislation across Australia varies regarding the required nature of practitioners' registration and experience. For example, in Victoria, South Australia, and Tasmania, only medical specialists or vocationally trained general practitioners can have such a role,[80] and in Victoria one of these practitioners must have held that registration for a minimum of 5 years. Though the requirements are broader in the other jurisdictions, other requirements apply, for instance with respect to minimum years of practice.[81]

42. Nurse practitioners who meet specific eligibility requirements can have the role of 'administering practitioner' in Western Australia, Tasmania, Queensland and New South Wales.[82] In Tasmania and Queensland registered nurses who meet additional requirements can also undertake this role.

43. All practitioners who have a formal role in the process must complete mandatory training on VAD.[83]

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[78] Del Villar (n 8) 582 [13.210].
[79] Waller (n 1) 26-9.
[80] *SA VADA* (n 3) s 27(2); *Tas EOLCA* (n 3) s 9(b); *Vic VADA* (n 3) s 10(2).
[81] *NSW VADA* (n 3) s 18(a)(ii); *Qld VADA* (n 3) s 82(1)(a)(ii); *WA VADA* (n 3) s 17(2)(a)(ii).
[82] *WA VADA* (n 3) s 54(1)(a)(ii); *Tas EOLCA* (n 3) ss 63(1), (2)(b); *Qld VADA* (n 3) s 83(a)(ii)-(iii); *NSW VADA* (n 3) s 55(a)(iv).
[83] *Vic VADA* (n 3) ss 17, 26; *WA VADA* (n 3) ss 25, 36; *Tas EOLCA* (n 3) s 9(d); *SA VADA* (n 3) ss 35, 44; *Qld VADA* (n 3) ss 20, 31; *NSW VADA* (n 3) ss 18(b), 55(b). This is also likely to be a requirement

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8. What is the position in relation to conscientious objection?

44. The right for health practitioners to conscientiously object to participating in VAD is protected in all Australian jurisdictions. The legislation in all jurisdictions expressly provides that registered health practitioners can refuse to participate in the request and assessment process.[84] In most jurisdictions, registered health practitioners' right to refuse to administer a VAD substance,[85] be present at the time of administration,[86] and supply a VAD substance[87] is also expressly protected.[88]

45. In Victoria and South Australia, registered health practitioners can refuse to provide information about VAD.[89] In NSW, a medical practitioner who receives a first request for VAD can refuse to provide the person with information about VAD if they have a conscientious objection to VAD.[90] In all other jurisdictions, medical practitioners have an obligation to provide information to persons in specific circumstances, notwithstanding that they have a conscientious objection to VAD. In Tasmania, a medical practitioner must provide contact details of the VAD Commission and in Queensland, they must provide the details of a medical practitioner who is able to assist or the VAD navigator service.[91] In Western Australia and Tasmania, a medical practitioner must provide a person who requests VAD with an information document about VAD.[92] In the ACT, a health

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in the ACT as this will likely be a 'condition prescribed by regulation' which a practitioner must meet to be an authorised practitioner: *ACT VADA* (n 4) s 93(1)(b).

[84] *ACT VADA* (n 4) s 99(1)(a) – can refuse to act as a coordinating, consulting, or administering practitioner for an individual; *NSW VADA* (n 3) s 9(1)(a); *Qld VADA* (n 3) s 84(1)(b); *SA VADA* (n 3) s 10(b); *Tas EOLCA* (n 3) ss 20(2), 40(2), 64; *Vic VADA* (n 3) s 7(b); *WA VADA* (n 3) s 9(1)(a).

[85] *NSW VADA* (n 3) s 9(1)(b); *Qld VADA* (n 3) s 84(1)(d); *SA VADA* (n 3) s 10(d); *Tas EOLCA* (n 3) s 64; *Vic VADA* (n 3) s 7(d); *WA VADA* (n 3) s 9(1)(b).

[86] *ACT VADA* (n 4) s 99(1)(e); *NSW VADA* (n 3) s 9(1)(c); *Qld VADA* (n 3) s 84(1)(e); *SA VADA* (n 3) s 10(e); *Vic VADA* (n 3) s 7(e); *WA VADA* (n 3) s 9(1)(c).

[87] *ACT VADA* (n 4) s 99(1)(d).

[88] Where it is not expressly protected in legislative provisions it is accepted that a person can conscientiously object to any part of the VAD process provided they adhere to any obligations imposed on the exercise of that right.

[89] *SA VADA* (n 3) s 10(a); *Vic VADA* (n 3) s 7(a).

[90] *NSW VADA* (n 3) s 21(5) but they do have an obligation if they don't have a conscientious objection.

[91] *Tas EOLCA* (n 3) s 18(1); *Qld VADA* (n 3) ss 16(4), 84(2).

[92] *Tas EOLCA* (n 3) ss 8, 18(6); *WA VADA* (n 3) s 20(5)(b).

practitioner who exercises their right to conscientiously object must give the person written contact details for the approved care navigator service.[93]

46. Reflecting on these provisions, we have written (with colleagues):

'There are some minor, but significant, variations between jurisdictions. In attempting to balance the rights of objecting practitioners with the need to support patients, the Queensland, Tasmanian and WA models have departed from the Victorian model by requiring that specific information be provided to patients at the time of a first request. Further, the Queensland and WA laws require that objecting practitioners inform the person immediately of their refusal to accept a first request, in order to avoid delays. These two obligations – to promptly inform patients, and to provide information about VAD or referrals to other services – will assist patients to access VAD, while recognising the right of practitioners not to be involved.'[94]

9. To the extent there is already empirical evidence on this, who are the recipients of VAD in Australia since assisted dying has been legal? Specifically:

(a) Which illnesses do patients seeking assisted dying generally have?

(b) What are the usual demographics, levels of education and/or socioeconomic status of people seeking assisted dying in Australia?

47. As described above, all seven Australian jurisdictions to legalise VAD have established a VAD oversight body whose functions include monitoring the operation of the VAD legislation and producing statistical reports. These oversight bodies produce reports which, as well as including other information, contain information on who is accessing VAD in the jurisdiction, including the illnesses that they have, and demographical information relating to these persons.[95] We note that the information reported is not consistent, so some of

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[93] *ACT VADA* (n 4) s 100(2) based on a refusal to do anything listed in s 99(1).

[94] Waller (n 1) 1455.

[95] 'Voluntary Assisted Dying Review Board', *Victoria State Government Department of Health* (Web Page, 11 September 2024) <https://www.health.vic.gov.au/voluntary-assisted-dying/voluntary-assisted-dying-review-board>; 'Voluntary Assisted Dying Board', *Government of Western Australia Department of Health* (Web Page, 28 January 2025) <https://www.health.wa.gov.au/voluntaryassisteddyingboard>; 'Voluntary Assisted Dying Commission', *Tasmanian Government Department of Health* (Web Page, 17 December 2024) <https://www.health.tas.gov.au/health-topics/voluntary-assisted-dying/voluntary-assisted-dying-services/voluntary-assisted-dying-commission>; 'SA Voluntary Assisted Dying Review Board',

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the data extracted below relates to persons who requested VAD, some relates to those who underwent a first assessment for VAD, and some relates to persons who accessed VAD.

48. The data in these reports are broadly consistent with respect to the illnesses patients seeking to access VAD generally have and the demographical information of these persons, though we note that a detailed analysis of this data has not yet been undertaken. An important trend consistent across jurisdictions is that the most common diagnosis of people who request and access VAD is cancer related.

49. Summarising the data across all Australian jurisdictions (except for the ACT) we have written (with colleagues):

> *'Board reports present demographic data using the cohort who have requested access to VAD (as opposed to those who have died through VAD)… There were more men (55%) than women (45%) with 87% being aged 60 years or over. The majority of people were from major cities (65%)… Of this cohort, the qualifying conditions were cancer (77%), neurological conditions (11%), respiratory conditions (5%), and other (6%). Palliative care was being received by patients in 84% of cases.'*[96]

50. Below we focus on data from three Australian jurisdictions which have permitted VAD for the longest periods: Victoria, Western Australia, and Queensland. This is based on data included in the most recent (at the time of writing) annual report of the relevant VAD oversight body.[97]

Government of South Australia SA Health (Web Page, 12 December 2024) <https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/services/community+and+specialised+services/voluntary+assisted+dying/review+board/sa+voluntary+assisted+dying+review+board>; 'Voluntary Assisted Dying Review Board', *Queensland Government Queensland Health* (Web Page, 9 December 2022) <https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/voluntary-assisted-dying/review-board>; 'NSW Voluntary Assisted Dying Board', *NSW Government NSW Health* (Web Page, 29 November 2024) <https://www.health.nsw.gov.au/voluntary-assisted-dying/Pages/board.aspx>.

[96] White, 'Voluntary Assisted Dying in Australia' (n 14) 10. (This is based on published data as at May 2024.)

[97] These are the annual reports and data on which the following information is based: Voluntary Assisted Dying Review Board, 'Annual Report July 2023 to June 2024' (Report, Victoria State Government, September 2024) <https://www.health.vic.gov.au/voluntary-assisted-dying/voluntary-assisted-dying-review-board> ('Vic VAD Report') and the data provided in that report from the commencement of the Act (19 June 2019) to 30 June 2024; Voluntary Assisted Dying Board Western Australia, 'Annual Report 2023-24' (Report, Government of Western Australia, 30 October 2024) <https://www.health.wa.gov.au/Reports-and-publications/Voluntary-Assisted-Dying-Board-Annual-

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51. In Victoria, most people who apply for access to VAD have cancer (77%), followed by a neurological condition (9%), a respiratory condition (4%), or an 'other' condition (5%).[98] More males (54%) than females (46%) and persons whose sex is self-described (0%) applied for access to VAD. Persons were mostly aged 70-79 years (33%) or 80-89 years (24%) or 60-69 years (23%).[99] Far fewer applicants live in regional Victoria (36%) compared with those who live in the more metropolitan 'Greater Melbourne' (64%).[100] The highest level of education completed by most VAD applicants was post-secondary education (36%), though a similar number of applicants did not complete secondary education (24%) or completed secondary education (20%).[101]

52. In Western Australia, most people who have been assessed as eligible for VAD have had a cancer related diagnosis (71%), followed by a neurological condition (12.4%), an 'other' diagnosis (8.4%) or a respiratory-related diagnosis (8.1%).[102] Persons who are assessed as eligible for VAD are most commonly aged 70-79 years (33.7%), 80-89 years (25.7%), or 60-69 years (21.8%). Most patients live in a metropolitan area (76%). More men (58%) than women (42%) have been assessed as eligible.[103] The highest level of education most patients assessed as eligible for VAD have attained is high school (42.2%).[104]

53. In Queensland, cancer is also the most common diagnosis recorded for people who were assessed as eligible to access VAD (75.5%), followed by a neurological disorder (9.4%), a disease of the respiratory system (7.2%), and an

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Report> ('WA VAD Report') reflecting the data for the years 2021-2024; Voluntary Assisted Dying Review Board, 'Annual Report 2023-2024' (Report, Queensland Government, 26 August 2024) <https://www.health.qld.gov.au/research-reports/reports/departmental/voluntary-assisted-dying-review-board-annual-report> ('Qld VAD Report: 2023-24') reflecting data for 1 July 2023 to 30 June 2024. In Queensland, we note that there is a prior report covering the six-month period 1 January 2023 to 30 June 2023 though that data is not reported here. There are also two quarterly reports which have been published since the most recent annual report was published though that data is also not reported here.

[98] In this report 5% of conditions were 'not yet assigned': Vic VAD Report (n 97) 21.

[99] Vic VAD Report (n 97) 18.

[100] Vic VAD Report (n 97) 19.

[101] 20% of applicants did not report the highest level of education completed: Ibid.

[102] WA VAD Report (n 97) 25.

[103] WA VAD Report (n 97) 24.

[104] WA VAD Report (n 97) 25.

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'other' diagnosis (8%).[105] Mostly, persons who underwent a first assessment for VAD were aged 70-79 (32.6%), 60-69 (24.8%) or 80-89 (24.5%) and were male (57.5%) rather than female (42.5%).[106] Most patients who underwent a first assessment lived in a major city (47.2%)[107] and the highest level of education that they had attained was a high school qualification (36.7%).[108]

54. Usefully, some of the VAD oversight bodies have reported the proportion of total deaths in the jurisdiction that VAD accounts for. VAD deaths account for a very small proportion of all deaths in each jurisdiction. In Tasmania VAD accounts for 1.2% of all deaths in the state, in WA VAD accounts for 1.6% of total deaths, in Victoria VAD accounts for 0.84% of all deaths, and in Queensland VAD accounts for approximately 2% of all deaths in the state.[109]

10. What has been Australia's experience, if any, in relation to instance of misuse or abuse of the permissive regime since the legalisation of assisted dying?

55. In six jurisdictions, the VAD oversight body has released information regarding the functioning of the legislation which contains statistical and other information, however they do not report this information consistently. This response is based on the data reported in these reports from Victoria, Western Australia, Tasmania, South Australia, Queensland, and NSW. We note that because the ACT's VAD legislation is not yet operational there is no data relating to the functioning of their Act.

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[105] Qld VAD Report: 2023-24 (n 97) 13. In the previous report from January to June 2023, the diagnosis 'disease of the respiratory system' (8.7%) was more commonly recorded than 'neurological disorder' (8.3%): Voluntary Assisted Dying Review Board, 'Annual Report 2022-2023' (Report, Queensland Government, 25 September 2023) 19 <https://www.health.qld.gov.au/research-reports/reports/departmental/voluntary-assisted-dying-review-board-annual-report> ('Qld VAD Report: 2022-23').
[106] Qld VAD Report: 2023-24 (n 97) 11.
[107] This number of people (736) reflects 65.2% of the total Queensland population: Qld VAD Report: 2023-24 (n 97) 15.
[108] Qld VAD Report: 2023-24 (n 97) 12.
[109] Voluntary Assisted Dying Commission, 'Annual Report 2023-24' (Report, Tasmanian Government, 23 September 2024) 29 <https://www.health.tas.gov.au/health-topics/voluntary-assisted-dying/voluntary-assisted-dying-services/voluntary-assisted-dying-commission#reports-and-updates> ('Tas VAD Report'); WA VAD Report (n 97) 6; Vic VAD Report (n 97) 5; Qld VAD Report: 2023-24 (n 97) 10.

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56. Victoria has released eight reports to date. Seven of these contain information on the number of cases deemed by the Review Board to be non-compliant with the legislation. A five-year review of the Victorian VAD system was also published in 2025. This review reports that:

> *'Overall, VAD is operating as intended, providing a safe and compassionate end of life choice to eligible Victorians. Access to VAD is safe, efficiency and timeliness of processes are improving, performance monitoring and oversight mechanisms are working adequately, and most supports are effective...'*[110]

57. Western Australia has released three annual reports, Queensland has released two annual reports, and New South Wales has released one annual report. The reports in these three jurisdictions do not include information specifically about non-compliance with the legal framework, however they report the number of referrals made by the Board to an external agency such as the police, the Australian medical regulator (Ahpra) or the Coroner.

58. South Australia has released two reports, both of which include the number of referrals made to external agencies, and one of which includes the number of episodes deemed non-compliant by the Review Board. Tasmania has released three reports, which do not explicitly report the number of cases deemed to be non-compliant with the law.

59. A table is provided in Appendix A which gives an overview of the number of cases of non-compliance and the nature of non-compliance as officially reported. Under the Australian model of VAD, for each person who receives VAD (and those who start but do not complete the VAD process) there will be multiple forms submitted to the VAD oversight body. This means that non-compliance could relate to one or more forms that need to be completed. Importantly, the information in Appendix A reveals that the instances of non-compliance do not relate to findings about assessment of eligibility criteria for access to VAD.

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[110] Victoria State Government, Department of Health, 'Review of the Operation of Victoria's *Voluntary Assisted Dying Act 2017*' (Report, October 2024) 6 <https://www.health.vic.gov.au/voluntary-assisted-dying/five-year-review>.

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60. In Victoria, there have been 24 cases of non-compliance reported, all of which were procedural errors which did not relate to the clinical appropriateness of each case (the errors did not result in an ineligible person accessing VAD). Of significance is that 10 of those 24 cases were not clinical and related to a 'contact person' (usually a family member of a patient whose role is to return any unused or remaining VAD substance following the patient self-administering the substance). These instances were where a contact person failed to return the substance within the prescribed period after the person's death, and do not relate to the VAD request, assessment and administration process itself.

61. Two Victorian cases related to an error in relation to the formal requirements for documentation, for example, in relation to witnessing of documents. In one of these, a Victorian general practitioner was found to have engaged in professional misconduct and fined $12,000 by the Victorian Civil and Administrative Tribunal. The non-compliance involved a failure to comply with the strict witnessing requirements regarding the patient's signature on a form relating to the VAD process.[111] There was no suggestion that the patient had not, in fact, requested VAD and signed the form. In six cases, the error related to the late submission of a form to the VAD Review Board.

62. In Western Australia, the reported referrals to external agencies all related to non-compliance with a procedural requirement. Referrals were made to the Chief Executive Officer of the Department of Health in relation to the 'timeliness of an authorised disposal of a [VAD] substance', the 'timeliness of forms submitted to the Board', and the 'operation of [VAD] within the WA health system'.

63. In Tasmania, no information relevant to abuse of the system has been reported.

64. In South Australia, 23 episodes of non-compliance were reported by the Review Board in the reporting year 2023-2024 (out of 307 episodes that the Board reviewed). These episodes 'all related to administrative and technical issues that

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[111] *Medical Board of Australia v Carr (Review and Regulation)* [2023] VCAT 945 <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2023/945.html>.

did not affect the clinical care of the patient or the voluntary assisted dying pathway for the patient.'[112] These administrative issues related to the late submission of forms to the Review Board and the re-issuing of a permit in relation to VAD substances which have expired. The Review Board reported making one referral to the Australian medical regulator which was not taken further by that body.

65. In Queensland, no information in relation to non-compliance has been reported, and the reports indicate that no referrals were made to external agencies. Two annual reports refer to a matter which was referred to the coroner independently of the VAD Review Board.[113] That coronial decision has since been published.[114] This case involved a person taking the VAD substance intended for their spouse after the spouse had died. The spouse was approved and found eligible for VAD, but died in hospital following practitioner administration. At the time of the incident, the VAD substance, which had been dispensed for self-administration had not yet been returned to the pharmacy, within the timeframe required by the legislation. The Queensland coroner considered this case and recommended that self-administration should be supervised by a health practitioner.[115] This is an isolated and unusual case in which the VAD substance was taken unlawfully, and the Coroner made no findings that those working within the VAD system had breached the VAD law or any protocol.

66. In New South Wales, no information relating to non-compliance has been reported, though one referral was made to an external agency. Information relating to this referral was not provided.[116]

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[112] Voluntary Assisted Dying Review Board, 'Annual Report 2023-24' (Report, Government of South Australia, 11 October 2024) 25 <https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/services/community+and+specialised+services/voluntary+assisted+dying/reporting/voluntary+assisted+dying+reporting> ('SA VAD Report').
[113] Qld VAD Report: 2022-23 (n 105) 26; Qld VAD Report: 2023-24 (n 97) 23.
[114] *Inquest into death of ABC (a pseudonym)* (CCMS 2023/2350) [2024] QldCorC 24. <https://www.coronerscourt.qld.gov.au/__data/assets/pdf_file/0003/808545/reasons-for-decision-inquest-into-the-death-of-abc-a-pseudonym.pdf>.
[115] Ibid.
[116] NSW Voluntary Assisted Dying Board, 'Annual Report 2023-24' (Report, NSW Government, 8 November 2024) 23 <https://www.health.nsw.gov.au/voluntary-assisted-dying/Pages/board.aspx> ('NSW VAD Report').

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67. It is important to stress that none of the cases of non-compliance related to findings that ineligible individuals had been assessed as eligible and then accessed VAD. VAD Boards in each State frequently comment on the safe operation of their respective systems. A recent report of the Victorian VAD Review Board commented that: 'The most significant matter to report is that voluntary assisted dying in Victoria continues to operate safely and lawfully. The numerous safeguards in the Act and the integrity of those involved have ensured that those risks that were raised in debates about the Act have been safely avoided.'[117]

11. What is your expert assessment of assisted dying in Australia so far? In this regard, please set out any noteworthy successes, failures and/or lessons learnt from VAD in Australia, including identifying areas of concern or for improvement.

68. In this response, we highlight two learnings from our research. These are first, that Australia's VAD systems are operating safely, and second, that there have been some challenges to accessing VAD experienced in practice.

Australian VAD systems are operating safely

69. As demonstrated in the previous response, data shows that VAD laws in the Australian jurisdictions are operating safely. VAD has been operating the longest in Victoria and Western Australia. As described above, in these states several reports have been released which outline the extent to which VAD laws are complied with. Though they commenced operation more recently, reports have also been released providing data on compliance in the other operating jurisdictions, namely, Tasmania, South Australia, Queensland, and NSW. In all jurisdictions, the cases of non-compliance that have been described by the VAD oversight bodies relate to procedural errors and there have been no reports of an ineligible person being assessed as eligible and then accessing VAD.

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[117] Voluntary Assisted Dying Review Board, 'Report of Operations July 2021 to June 2022' (Report of Operations, Safer Care Victoria, June 2022) 1 <https://www.safercare.vic.gov.au/reports-and-publications/voluntary-assisted-dying-report-of-operations-july-2021-to-june-2022> ('Report of Operations 2021-22').

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Barriers to accessing VAD

70. Our research has focused on how Australia's VAD systems can be improved and the challenges experienced with the systems. The challenges identified include barriers to accessing VAD for patients and challenges experienced by participating health professionals.

71. Research with Victorian family caregivers and Victorian health professionals highlight difficulties that patients experience accessing VAD, many of which can be attributed to the heavily safeguarded nature of the system.[118] This has been recognised by the Victorian VAD Review Board in its most recent report: 'While the voluntary assisted dying scheme has operated safely and in accordance with the law, the Board considers that timely and compassionate access to the scheme could be improved.'[119]

72. Significant barriers that research has highlighted as making accessing VAD challenging are listed below.

72.1. Difficulties finding willing doctors to assist with access (especially when VAD first becomes legal).[120]

72.2. Delays associated with the process of applying for and accessing VAD. Medical practitioners can be frustrated when they have to wait for a permit to access VAD and when forms submitted to the relevant oversight body are rejected as this causes delays for patients, who have already been assessed as experiencing intolerable suffering.[121] Medical practitioners can experience the number and

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[118] Ben P White et al, 'Access to Voluntary Assisted Dying in Victoria: A Qualitative Study of Family Caregivers' Perceptions of Barriers and Facilitators' (2023) 219(5) *Medical Journal of Australia* 211 ('Access to Voluntary Assisted Dying in Victoria').
[119] Voluntary Assisted Dying Review Board, 'Annual Report July 2022 to June 2023' (Annual Report, Safer Care Victoria, June 2023) 1 <https://www.safercare.vic.gov.au/reports-and-publications/voluntary-assisted-dying-review-board-annual-report-july-2022-to-june-2023> ('Vic Annual Report 2022-23').
[120] White, 'Access to Voluntary Assisted Dying in Victoria' (n 118).
[121] Lindy Willmott et al, 'Participating Doctors' Perspectives on the Regulation of Voluntary Assisted Dying in Victoria: A Qualitative Study' (2021) 215(3) *Medical Journal of Australia* 125, 127.

nature of these and other safeguards as frustrating and overly conservative, reflecting an 'excess of caution.'[122]

72.3. Institutions with objections to providing all or some parts of VAD. Research highlights the impact that institutional objection can have on patients wishing to access VAD, which include delays, distress, and being forced to choose between accessing VAD and remaining in an institution which may be their home.[123] Some patients in Victoria have been prevented from accessing doctors and eligibility assessments for VAD or receiving and storing the VAD medication onsite. Recent research shows that the extent of the impact of institutional objection on patients' ability to access VAD was significant and multifaceted.[124]

72.4. The Victorian VAD law prohibition on raising VAD with patients. Some participants in an interview study identified that this provision caused discussions with their health practitioner to be awkward and difficult, and identified the stifling impact that this provision would have for certain types of patients, for example, those from culturally and linguistically diverse backgrounds.[125] Some medical practitioners have reported feeling 'deceitful' or 'intellectually dishonest' adhering to this provision, and are concerned that it may be preventing patients from making an informed choice about their treatment options, particularly those from non-English speaking backgrounds or individuals with poor health literacy.[126]

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[122] Sellars (n 53); Willmott (n 121).
[123] Ben P White et al, 'The Impact on Patients of Objections by Institutions to Assisted Dying: A Qualitative Study of Family Caregivers' Perceptions' (2023) 24(1) *BMC Medical Ethics* 22.
[124] Ibid.
[125] White, 'Access to Voluntary Assisted Dying in Victoria' (n 118); Ben P White, Ruthie Jeanneret and Lindy Willmott, 'Barriers to Connecting with the Voluntary Assisted Dying System in Victoria, Australia: A Qualitative Mixed Method Study' (2023) *Health Expectations* 2695.
[126] Willmott (n 121) 27.

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12. To the extent that you are of the view that there is anything further which falls within your expertise that in your view ought to be addressed in your expert report, please do so.

Ensuring safety and access

73. Evidence shows that Australia's operating VAD systems are functioning safely. All Australian states and now the ACT (where legislation has been passed but not yet commenced operation) have strict eligibility criteria for access to VAD, the request and assessment process is tightly prescribed, and dedicated oversight bodies monitor the systems. Our research and the reports published by these oversight bodies (as summarised in previous responses) show that the VAD systems are working safely.

74. While it is important that VAD systems are safe, and that any form of VAD regulation must consider the safety of these systems, it is also important to consider the accessibility of VAD systems. In Australia, as discussed in previous sections, doctors, patients and families have reported barriers to accessing VAD. Evidence suggests that some patients who are eligible are not able to access this choice because of the system's complexity and design.

Avoid incoherent law by ad hoc addition of safeguards

75. A further observation about the VAD law-making process, based on what we have seen in the seven Australian law reform processes, is the need to avoid the ad hoc addition of safeguards which are awkwardly tacked on to already sound law. This leads to the VAD law being incoherent or inconsistent in important ways.

76. An example of this in Australia is eligibility for VAD depending on a variable time period – 6 or 12 months until expected death – depending on the nature of a patient's illness (the longer period is only available for neurodegenerative conditions in most states). This differential time period arose as a result of a last-minute political compromise when the Victorian Bill was being debated in Parliament. The Bill recommended by the Ministerial Advisory Panel on

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Voluntary Assisted Dying proposed a 12-month timeframe until death.[127] Despite the lack of rationale for differential timeframes, this model was uncritically adopted and replicated in all Australian jurisdictions except Queensland and the ACT.

77. Our research has shown that the Victorian VAD law fails to meet its own stated policy goals in important respects, in part because of these later ad hoc additions during the law-making process.[128]

78. For this reason, we argue that any proposed changes to a VAD Bill must be carefully scrutinised in light of the Bill as a whole:

> *'When thinking about the politics of reform, it can be tempting to only consider each safeguard or process individually. Each may have merit and advance a particular policy goal. It may also be difficult politically to argue that a specific safeguard is not needed, particularly if it appears to achieve at least some useful purpose. However, when the safeguards are aggregated, the VAD system as a whole can become very complex and unwieldly, and slowly take the legislation away from its policy goals. This 'policy drift by a thousand cuts' – the incremental loss of policy focus through accumulation of individual safeguards without reference to the whole – is a key issue for other states to consider when evaluating their proposed VAD reforms. It is suggested that each part of the law be evaluated both on its own, and also for its impact on the functioning of the overall system. This is needed to enable VAD laws to meet their policy goals, in particular, the two key goals at the core of the design of the VAD Act: safeguarding the vulnerable while respecting the autonomy of eligible persons who wish to access to VAD.'*[129]

79. We (with colleagues) have also written on this point in 'Comparative and Critical Analysis of Key Eligibility Criteria for Voluntary Assisted Dying Under Five Legal Frameworks':

> *'Taking a holistic view is also an important consideration more generally when designing VAD regulation. While it may be politically attractive to add numerous*

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[127] Ministerial Advisory Panel on Voluntary Assisted Dying, 'Final Report' (Report, Victoria State Government, July 2017) 22 <https://www.health.vic.gov.au/publications/ministerial-advisory-panel-on-voluntary-assisted-dying-final-report>.
[128] White, 'Does the *Vic VADA* Reflect its Stated Policy Goals?' (n 13).
[129] Ibid 451.

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safeguards to VAD legislation, including in the eligibility criteria, there is a risk of what we have called elsewhere 'policy drift by a thousand cuts' if the cumulative effect of these individual safeguards is not properly considered. For example, it is possible that a series of provisions designed to make VAD legislation safe, when aggregated, can in fact make access to VAD cumbersome or even unworkable.'[130]

Need for evidence-based law-making

80. Assisted dying debates often include unreliable evidence. Unlike meta-analyses, systematic reviews, and population-level studies, which are reliable forms of evidence about VAD practice, anecdotes in media reports about specific VAD cases and institutional position statements based on values are unreliable forms of evidence when it comes to investigating and evaluating VAD practice. We advocate for evidence-based consideration of the need for law reform.[131]

81. The use of unreliable evidence in VAD debates was observed in New Zealand, prior to the 2020 referendum which ultimately saw the *End of Life Choice Act 2019* (NZ) pass into law. For instance, we evaluated an article, purporting to be reliable evidence that should inform the VAD debate, which was shown to be flawed. Our evaluation concluded that despite the claims of that article, it should not be relied upon to inform the VAD debate.[132] Another article considered the need to engage with evidence about single cases from other VAD jurisdictions in a rational way, and to avoid relying on this evidence to make claims about how those systems are functioning.[133]

82. We also edited a book on law reform in the end-of-life field internationally which brings together case studies from a range of countries and identifies a number

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[130] White, 'Key Eligibility Criteria for Voluntary Assisted Dying' (n 1) 1699.
[131] Ben P White and Lindy Willmott, 'Evidence-Based Law Making on Voluntary Assisted Dying' (2020) 44(4) *Australian Health Review* 544; Jocelyn Downie, 'Reliability of Evidence', *End-of-Life Law & Policy in Canada, Health Law Institute, Dalhousie University* (Web Page) <http://eol.law.dal.ca/?page_id=966>.
[132] Ben P White et al, 'Assisted Dying and Evidence-Based Law-Making: A Critical Analysis of an Article's Role in New Zealand's Referendum' (2020) 133 *New Zealand Medical Journal* 83.
[133] Neera Bhatia, Ben P White and Luc Deliens, 'How Should Australia Respond to Media-Publicised Developments on Euthanasia in Belgium?' (2016) 23(4) *Journal of Law and Medicine* 835.

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of useful lessons for other law reform efforts.[134] It notes that end-of-life law reform can occur through a number of different mechanisms, including legislative or judicial change, and there are strengths and weaknesses of each of these approaches in generating effective change. The book also identifies that end-of-life law reform is more likely to be successful following a process in which reliable evidence is engaged with, and there are opportunities for consultation. In particular, engaging with experts and stakeholders across a range of fields is important for improving substantive decision-making about VAD and affording credibility to the law reform process and its subsequent outputs, including in judicial cases.

Concrete testing of eligibility criteria

83. We recommend the concrete testing of eligibility criteria to understand properly the boundaries of a proposed VAD law. In two papers, we undertook (with colleagues) an analysis of five assisted dying laws (three Australian models, Oregon and Canada) across nine different medical conditions to determine which models might permit access to VAD and for whom.[135]

84. One key finding was that the medical conditions that grant access to VAD under the Australian models like Victoria and Western Australia, and Oregon, which include a time until death are likely to be the same when compared to a comparable legislative framework without a timeframe.[136] In those two papers, we make a range of recommendations about law and regulation that we consider are important for parliaments and law-makers considering VAD laws.[137]

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[134] Ben P White et al, 'International Perspectives on Reforming End-of-Life Law' in Ben P White and Lindy Willmott (eds), *International Perspectives on End-of-Life Law Reform: Politics, Persuasion and Persistence* (Cambridge University Press, 2021) 250.
[135] White, 'Key Eligibility Criteria for Voluntary Assisted Dying' (n 1); White, 'Who is Eligible for Voluntary Assisted Dying?' (n 1) 401.
[136] As part of our VAD research, we have developed a 'Model' VAD Bill which has been published in a legal journal: White and Willmott, 'A Model Voluntary Assisted Dying Bill' (n 2). This Bill was developed after articulating the relevant principles that should guide law reform in this area: Willmott and White, 'Assisted Dying in Australia: A Values-Based Model for Reform' (n 13). Our Model VAD Bill does not include a timeframe until death.
[137] White, 'Key Eligibility Criteria for Voluntary Assisted Dying' (n 1); White, 'Who is Eligible for Voluntary Assisted Dying?' (n 1).

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Implementation should be considered early

85. We believe that it is important to ensure that the system which is established to facilitate access to VAD works as simply as possible for patients, families and health practitioners. Early research from Victoria suggests that system issues and an initial overly bureaucratic approach can cause delays and impede access for eligible individuals who seek VAD. System design should ensure, again to the extent that is possible, that complexity is 'inward facing'[138] and the experience of health practitioners, persons seeking access to VAD and their families is as simple as is possible. As such, if VAD legislation is passed, consideration should be given to designing a framework that is facilitative of the legislation.[139]

86. Our research shows the benefit of a planned implementation process prior to the law coming into force. It also demonstrates the important role that VAD care navigator services have in the effective operation of VAD systems.[140] Our research shows that VAD care navigator services, which have been[141] (or are being)[142] established in each Australian jurisdiction have played a critical role assisting patients, their caregivers, health professionals, and others to navigate the VAD system, and to provide information about VAD.[143] Based on interviews with people who had applied for VAD in Victoria or their family caregivers, we (with colleagues) have written:

> *'[P]articipants identified the Statewide care navigators as the most significant facilitators of access [to VAD], "the jewel in the crown". This was particularly the case at the beginning of the process, when people and their families often struggled to locate doctors for assistance and to understand the initial procedural steps. Also important*

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[138] Ben P White, Lindy Willmott and Eliana Close, 'Victoria's Voluntary Assisted Dying Law: Clinical Implementation as the Next Challenge' (2019) 210(5) *Medical Journal of Australia* 207.
[139] Willmott (n 121); White et al, 'Prospective Oversight and Approval' (n 74).
[140] White, 'Access to Voluntary Assisted Dying in Victoria' (n 118).
[141] Information about the care navigation services established in each Australian state can be accessed here: https://www.eldac.com.au/Our-Toolkits/End-of-Life-Law/Voluntary-Assisted-Dying/Resources.
[142] ACT Government, 'Taskforce to Prepare ACT for Voluntary Assisted Dying' (Media Release, 8 February 2024) <https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/barr/2024/taskforce-to-prepare-act-for-voluntary-assisted-dying>.
[143] White, 'Access to Voluntary Assisted Dying in Victoria' (n 118); Lindy Willmott, Ben P White and Casey Haining, 'Review of the *Voluntary Assisted Dying Act 2019* (WA): Research Report' (Research Report, Australian Centre for Health Law Research, 2024) 29.

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were local voluntary assisted dying care navigators; for example, dedicated staff appointed by a hospital or health care service."[144]

[144] White, 'Access to Voluntary Assisted Dying in Victoria' (n 118) 4.

Appendix A

Jurisdiction	Report Title	Cases of non-compliance reported	Nature of non-compliance
Victoria	Report of operations 2018-19 (19 June to 30 June 2019)	-	-
	Report of operations June to December 2019 (19 June to 31 December 2019)	0 (100% of cases compliant)[145] 0 referrals	-
	Report of operations January to June 2020 (1 January 2020 to 30 June 2020)	1 case was non-compliant (99% of cases compliant)[146] 1 referral to the Australian Health Practitioner Regulation Agency (Ahpra)	The case related to a procedural error made by a medical practitioner. The patient was eligible for a VAD permit, and the matter referred to Ahpra.
	Report of operations July to December 2020 (1 July to 31 December 2020)	6 (95% of cases compliant)[147] 0 referrals	Two of these cases related to procedural errors made by the contact person (failure to return unused VAD medication within the prescribe timeframe following the patient's death). The report indicated that there was no concern for public safety as a result of these omissions. Four cases related to procedural errors made by a medical practitioner (the practitioner was working under

[145] Voluntary Assisted Dying Review Board, 'Report of Operations June to December 2019' (Report of Operations, Safer Care Victoria, February 2020) 9 <https://www.safercare.vic.gov.au/reports-and-publications/voluntary-assisted-dying-review-board-annual-reports-2018-to-2023#goto-2019to-2020>. To give an indication, 136 patients underwent a first assessment for VAD in this reporting period, which is the first step in the VAD request and assessment process which is reported to and recorded by the VAD oversight body: Ibid 3. Following a first assessment, patients may be assessed as eligible or ineligible, and continue with, or cease the VAD request and assessment process.
[146] Voluntary Assisted Dying Review Board, 'Report of Operations January-June 2020' (Report of Operations, Safer Care Victoria, August 2020) 15 <https://www.safercare.vic.gov.au/reports-and-publications/voluntary-assisted-dying-review-board-annual-reports-2018-to-2023#goto-2020to-2021>. 211 patients underwent a first assessment for VAD in this reporting period: Ibid 8.
[147] Voluntary Assisted Dying Review Board, 'Report of Operations July-December 2020' (Report of Operations, Safer Care Victoria, February 2021) 3 <https://www.safercare.vic.gov.au/reports-and-publications/voluntary-assisted-dying-review-board-annual-reports-2018-to-2023#goto-2020to-2021>. 233 patients underwent a first assessment for VAD in this reporting period: Ibid 5.

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			an erroneous interpretation of the Act which was repeated three times). The report indicated that all cases were clinically appropriate and all other legal requirements were met.
	Report of operations January to June 2021 (1 January to 30 June 2021)	1 (99% of cases compliant)[148] 0 referrals	This case involved a procedural error made by a medical practitioner (the coordinating practitioner believed the consulting medical practitioner met the eligibility requirements for acting as the consulting practitioner). The report states that the patient was eligible to access VAD.
	Report of operations July 2021 to June 2022 (1 July 2021 to 30 June 2022)	4 cases were non-compliant (% of cases compliant not reported)[149] 0 referrals to agencies	These 'assessments were clinically appropriate and [the Board] is confident the Act continues to operate in a safe manner.'[150] Three cases related to a delay in the return of the VAD substance by the contact person. No further action was taken with respect to these cases. The Board noted 'a focus on the provision of appropriate information and support for contact people is paramount.'[151] One case related to a person both signing and witnessing a document. No further action was taken and the 'case was considered clinically appropriate.'[152]
	Annual report July 2022 to June 2023	2 cases were non-compliant[153] 0 referrals to agencies	Both related to a delay in the return of the VAD substance by the contact person. The report states that no

[148] Voluntary Assisted Dying Review Board, 'Report of Operations January-June 2021' (Report of Operations, Safer Care Victoria, August 2021) 21 <https://www.safercare.vic.gov.au/reports-and-publications/voluntary-assisted-dying-review-board-annual-reports-2018-to-2023#goto-2021to-2022>. 255 patients underwent a first assessment for VAD in this reporting period: Ibid 3.
[149] Report of Operations 2021-22 (n 117) 25. 581 patients underwent a first assessment for VAD in this reporting period: Ibid 4.
[150] Ibid 1.
[151] Ibid 25.
[152] Ibid.
[153] Vic Annual Report 2022-23 (n 119) 27. 610 patients underwent a first assessment for VAD in this reporting period: Ibid 4.

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	(1 July 2022 to 30 June 2023)		further action was taken in relation to these cases.[154]
	Voluntary Assisted Dying Review Board Annual Report July 2023 to June 2024 (1 July 2023 to 30 June 2024)	10 cases were non-compliant[155] 0 referrals to agencies	Three cases related to a delay in the return of the VAD substance by the contact person. One case related to an error witnessing a form. Six cases related to the late submission of forms. The report states that '[n]one of these late submissions of forms gave rise to an issue regarding the applicant's eligibility or risk to the applicant or any other person.'[156]
Western Australia	Annual Report 2021-22 (1 July 2021 to 30 June 2022)	- (% of cases N/A)[157] One referral was made to the Chief Executive Officer of the Department of Health relating to the 'timeliness of an authorised disposal of a [VAD] substance'.[158]	-
	Annual Report 2022-23 (1 July 2022 to 30 June 2023)	- (% of cases N/A)[159] 168 referrals were made to the Chief Executive Officer of the Department of Health in this period. Three referrals related	

[154] Ibid 27.
[155] Vic VAD Report (n 97) 30. 730 patients underwent a first assessment for VAD in this reporting period: Ibid 8.
[156] Ibid 30.
[157] 375 patients completed a first assessment for VAD in this reporting period, which in Western Australia, is the second step in the VAD request and assessment process which is reported to and recorded by the VAD oversight body: Voluntary Assisted Dying Board Western Australia, 'Annual Report 2021-22' (Report, Government of Western Australia, 16 November 2022) 5 <https://www.health.wa.gov.au/Reports-and-publications/Voluntary-Assisted-Dying-Board-Annual-Report>. 533 people made a First Request for access to VAD in WA in this reporting period, which is the first recorded and reported step in the VAD process in WA: Ibid 5.
[158] Ibid 35. The report also details its case review process whereby it reviews 20% of closed episodes each month, resulting in the provision of educative feedback for providers and updates to the VAD oversight body's processes: Ibid 35.
[159] 474 patients completed a first assessment for VAD in this reporting period: Voluntary Assisted Dying Board Western Australia, 'Annual Report 2022-23' (Report, Government of Western Australia, 8 November 2023) 6 <https://www.health.wa.gov.au/Reports-and-publications/Voluntary-Assisted-Dying-Board-Annual-Report>. 757 patients made a first request for VAD in this period: Ibid 6.

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		to the timeliness of an authorised disposal of a VAD substance. 1 referral related to 'informing the person making a First Request and the Board of the outcome of a First Request'. 164 cases related to the timeliness of forms submitted to the Board.[160]	
	Annual Report 2023-24 (1 July 2023 to 30 June 2024)	- (% of cases N/A)[161] 236 referrals were made to the Director General of WA Health (as Chief Executive Officer). One case related to the timeliness of an authorised disposal of a VAD substance. One case related to the 'operation of [VAD] within the WA health system' though further information on this referral was not provided. 234 cases related to the timeliness of forms submitted to the Board.[162]	
Tasmania	Voluntary Assisted Dying in Tasmania Report on the *End-of-Life Choices (Voluntary Assisted dying) Act 2021*'s operation in its first six months (23 October 2022 to 23 April 2023)	- (% of cases N/A)[163] No notifications of suspected contraventions of the Act were received.[164]	-

[160] Ibid 50.
[161] WA VAD Report (n 97) 50. In this period 593 patients underwent a First Assessment for VAD and 970 patients made a First Request for VAD: Ibid 6.
[162] Ibid 50.
[163] 47 patients made a first request for VAD in Tasmania in this reporting period, which is the first reported and recorded step in the VAD request and assessment process in Tasmania: Tasmanian Government, 'Report on the *End-of-Life Choices (Voluntary Assisted Dying) Act 2021*'s Operation in its First Six Months' (Report, Tasmanian Government, 26 July 2023) 12 <https://www.health.tas.gov.au/health-topics/voluntary-assisted-dying/voluntary-assisted-dying-services/voluntary-assisted-dying-commission#reports-and-updates>.
[164] Ibid 18.

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	Voluntary Assisted Dying in Tasmania: Voluntary Assisted Dying Commission Annual Report 2022-23 (23 October 2022 to 30 June 2023)	- (% of cases N/A)[165] No notifications of suspected contraventions of the Act were received.[166]	
	Voluntary Assisted Dying Commission Annual Report 2023-24 (1 July 2023 to 30 June 2024)	- (% of cases N/A)[167] No notifications of suspected contraventions of the Act were received.[168]	
South Australia	SA Health Voluntary Assisted Dying Review Board Annual Report 2022-23 (31 January 2023 to 30 June 2023)	- (% of cases N/A)[169] 0 referrals made to agencies[170]	-
	Voluntary Assisted Dying Review Board Annual Report 2023-24 (1 July 2023 to 30 June 2024)	23 episodes of non-compliance (out of 307 episodes that were reviewed by the Board)[171] 1 referral was made to the Australian Health Practitioner Regulation Agency (Ahpra).	These episodes of non-compliance 'all related to administrative and technical issues that did not affect the clinical care of the patient or the voluntary assisted dying pathway for the patient.'[173]

[165] 72 First Requests were received by a medical practitioner in this period, made by 70 patients: Voluntary Assisted Dying Commission, 'Annual Report 2022-23' (Report, Tasmanian Government, 1 November 2023) 11 <https://www.health.tas.gov.au/health-topics/voluntary-assisted-dying/voluntary-assisted-dying-services/voluntary-assisted-dying-commission#reports-and-updates>.
[166] Ibid 24.
[167] 129 First Requests were received by a medical practitioner in this period, made by 127 patients: Tas VAD Report (n 109) 19.
[168] Ibid 36.
[169] 116 people made a valid first request for VAD in this reporting period: Voluntary Assisted Dying Review Board, 'Annual Report 2022-23' (Report, Government of South Australia, 13 October 2023) 13 <https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/services/community+and+specialised+services/voluntary+assisted+dying/reporting/voluntary+assisted+dying+reporting>. This is the first step in the VAD process in South Australia.
[170] Ibid 37.
[171] The Review Board states that it 'undertook a detailed review of 307 voluntary assisted dying episodes for compliance with the Act.' Of these, 23 were deemed to be non-compliant: SA VAD Report (n 112) 25. For reference, in this reporting period, 404 First Requests were made and 250 VAD permits were issued: Ibid 9.
[173] Ibid.

		This matter was not investigated further and no further action was taken.[172]	The report implies that at least some of these episodes were owing to late submission of forms to the Voluntary Assisted Dying Clinical Portal. It notes that these instances of late submission 'did not result in any issues regarding a person's eligibility or any risks to the applicant or any other person.'[174] The report also implies that at least some episodes of non-compliance related to the situation in which a VAD substance has reached its date of expiry and a new VAD substance must be supplied. The report identifies that these are instances of 'technical or administrative non-compliance'.[175]
Queensland	Annual Report 2022-2023 (1 January 2023 to 30 June 2023)	- (% of cases N/A)[176] 0 referrals to agencies (1 referral was made to the coroner, not by the VAD Review Board)[177]	-
	Queensland Voluntary Assisted Dying Review Board Annual Report 2023-2024 (1 July 2023 to 30 June 2024)	- (% of cases N/A)[178] 0 referrals to agencies[179]	
	Voluntary assisted dying in	- (% of cases N/A)[180]	

[172] Ibid 25.
[174] Ibid.
[175] Ibid.
[176] To give an indication, 591 people underwent a first assessment for VAD in Queensland in this reporting period, which is the first reported and recorded step in the VAD request and assessment process: Qld VAD Report: 2022-23 (n 105) 10.
[177] Ibid 26.
[178] 1560 people underwent a first assessment for VAD in Queensland in this reporting period: Qld VAD Report: 2023-24 (n 97) 10.
[179] Ibid 23.
[180] 489 people had a first assessment for VAD completed in Queensland in this reporting period: Voluntary Assisted Dying Review Board, 'Voluntary assisted dying in Queensland: 1 July to 30

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	Queensland: 1 July to 30 September 2024 – Quarterly Report		
	Voluntary assisted dying in Queensland: 1 October to 31 December 2024 – Quarterly Report	- (% of cases N/A)[181]	
New South Wales	NSW Voluntary Assisted Dying Review Board Annual Report 2023-24 (28 November 2023 to 30 June 2024)	- (% of cases N/A)[182] 1 referral was made under s 136(1)(f) of the Act[183]	

September 2024 – Quarterly Report' (Report, Queensland Government) 1 <https://www.health.qld.gov.au/__data/assets/pdf_file/0028/1376146/vad-quarterly-report-july-sept-2024.pdf>.

[181] 498 people had a first assessment for VAD completed in Queensland in this reporting period: Voluntary Assisted Dying Review Board, 'Voluntary assisted dying in Queensland: 1 October to 31 December 2024 – Quarterly Report' (Report, Queensland Government) 1 <https://www.health.qld.gov.au/__data/assets/pdf_file/0030/1405884/vad-quarterly-report-oct-dec-2024.pdf>.

[182] For reference, 1141 people made a First Request for VAD in NSW in this reporting period: NSW VAD Report (n 116) 6.

[183] Ibid 23. This subsection allows the Board to refer to other agencies such as the coroner or Aphra. No further information was provided in the Report as to the nature of this referral.

Researcher CVs (February 2025)

Professor Ben White

Positions

- ARC Future Fellow, Faculty of Business & Law, School of Law
- Professor of End-of-Life Law and Regulation, Faculty of Business & Law, School of Law

Ben White is Professor of End-of-Life Law and Regulation and an Australian Research Council Future Fellow (Professorial level, 2020-2025) in the Australian Centre for Health Law Research at the Faculty of Business & Law, Queensland University of Technology. His area of research is end-of-life decision-making with a particular focus on voluntary assisted dying.

Ben graduated with first class Honours and a University Medal in Law from the Queensland University of Technology. He was awarded a Rhodes Scholarship to complete a DPhil at Oxford University, where his doctoral thesis investigated the role that consultation plays in the law reform process. Before joining the Law School, he worked as an Associate at the Supreme Court of Queensland and at Legal Aid Queensland. Between 2005 and 2007, Ben was appointed as the full-time Commissioner of the Queensland Law Reform Commission where he had carriage of the Guardianship Review on behalf of the Commission. He also served as a part-time Commissioner between 2007 and 2010.

Ben was a foundation Director of the Australian Centre for Health Law Research for six years (2013-2018). He leads the End-of-Life Research Program within the Centre. He has published over 200 journal articles and book chapters in the area of health law, with a particular focus on end-of-life decision-making. His work is interdisciplinary with publications in law, medicine, bioethics, social science and psychology journals as well as those that have an interdisciplinary focus. He is an editor of the leading text *Health Law in Australia* (2024, 4th ed, Thomson) and the monograph *International Perspectives on End-of-Life Law Reform: Politics, Persuasion and Persistence* (2021, Cambridge University Press). He is also the editor of a forthcoming collection which aims to chart the field of voluntary assisted dying internationally: *Research Handbook on Voluntary Assisted Dying Law, Regulation and Practice* (2025, Edward Elgar).

Ben has been part of interdisciplinary teams that have been awarded over $65 million in the field of end-of-life decision-making, including from the Australian Research Council, the National Health and Medical Research Council and Commonwealth and State governments. His six Australian Research Council grants have examined different aspects of law, policy and practice at the end of life. Key topics investigated include: What role does law play in medical decision-making? Why is medical treatment that is futile/non-beneficial provided to patients at the end of life? How many people make a will or engage in advance care planning and why? What does the community know about the law of end-of-life decision-making? Do patients and families know their rights and responsibilities when making end-of-life decisions? How do voluntary assisted dying systems operate in practice?

Ben is currently undertaking an Australian Research Council Future Fellowship (2020-2025) that aims to develop a new and holistic approach to regulating voluntary assisted dying. This project will enhance end-of-life care in Australia through better regulation and will draw on Canadian and Belgian case studies. He is also a chief investigator on a three-year study funded by the Australian Research Council examining how five voluntary assisted dying systems in Australia are operating in practice.

Ben has also developed funded training and research programs about end-of-life law. These programs include the legislatively-mandated training that health professionals must complete before being involved in voluntary assisted dying in Victoria, Western Australia and Queensland (funded by these State Governments). Another is a national program funded by the Commonwealth Department of Health to enhance health professionals' knowledge of law at the end of life called End of Life Law for Clinicians. He also contributes to the Commonwealth Government-funded End of Life Directions for Aged Care project.

Ben's research has had significant impact leading to changes in law, policy and practice. His work has been adopted by parliaments, courts and tribunals, and law reform commissions and has also influenced state and national end-of-life policy and prompted changes to clinical education in universities, hospitals and health departments. His research has also contributed to voluntary assisted dying law reform across Australia, and particularly in Queensland. His legal research is publicly available through the End of Life Law in Australia website (co-authored with Lindy Willmott and Penny Neller). This site aims to provide accessible information about law at the end of life for patients, families, health and legal practitioners, the media, policymakers and the broader community.

Professor Lindy Willmott

Position: Professor, Faculty of Business & Law, School of Law

Lindy Willmott is a Professor of Law in the Australian Centre for Health Law Research at the Faculty of Business and Law, Queensland University of Technology. Professor Willmott is an international expert in end-of-life law, with particular expertise in voluntary assisted dying (VAD).

Professor Willmott graduated with a Bachelor of Commerce and first class honours in Law from the University of Queensland, before obtaining a Master of Laws from Cambridge. She completed her PhD at QUT investigating advance directives and the refusal of life-sustaining treatment. Professor Willmott joined the QUT Law Faculty in 1986 and, in 2013, established the Australian Centre for Health Law research along with colleague Professor Ben White. She was a foundation director of the Centre for six years (2013-2018).

Professor Willmott has been part of interdisciplinary teams undertaking research into health law, particularly end-of-life decision-making, that have been awarded over $60 million in research funding. She is currently a chief investigator on a three-year study funded by the Australian Research Council examining how five voluntary assisted dying systems in Australia are operating in practice. She has published extensively, primarily in the field of health law, with more than 230 publications spanning the disciplines of law, medicine, bioethics, social science and psychology (including 12 books, 44 book chapters, and more than 140 refereed journal articles). She is an editor of two leading health law texts: Health Law in Australia (2024, 4th ed, Thomson) and International Perspectives on End-of-Life Law Reform: Politics, Persuasion and Persistence (2021, Cambridge University Press).

Professor Willmott's research has been integral to VAD law reform, policy and practice across Australia, particularly in Queensland, and has highlighted the importance of evidence-based law reform. Her empirical research evaluating the operation of VAD in earlier Australian states (such as Victoria) has been highly influential in informing innovations to VAD regulatory systems across Australian states. Professor Willmott's work has been adopted by parliaments, courts and tribunals, law reform commissions, universities, hospitals, and health departments across Australia.

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Professor Willmott is committed to translating her research to develop evidence-based training, education, and resources for undergraduate and postgraduate students, clinical audiences, and the wider community. She has been engaged by the Victorian, Western Australian, and Queensland state governments to design mandatory VAD training programs (funded by these State Governments) for doctors, nurse practitioners, and registered nurses participating in providing VAD, as well as a healthcare worker education module for all healthcare workers interested in learning more about VAD in Queensland. She has also co-established clinical training and resources for clinicians in the wider end-of-life care context, including End of Life Law for Clinicians, which has been demonstrated to have improved clinician confidence in their understanding of end-of-life law. She also contributes to the Commonwealth Government-funded End of Life Directions for Aged Care project and co-authors the End of Life Law in Australia website which aims to provide accessible information to patients, families, health practitioners, lawyers, the media, policymakers, and the broader community. As part of her commitment to the translation and dissemination of research, Professor Willmott has recently co-authored several research briefings and a consumer brochure highlighting key findings of VAD research.

Professor Willmott has held several positions in the wider community. Professor Willmott sat on the Queensland Civil and Administrative Tribunal for 6 years and has been a member of the Queensland Law Reform Commission in both a full-time and part-time capacity. She was also a board member of Palliative Care Australia for 7 years (2013-2020). Most recently, she was appointed to the Queensland Voluntary Assisted Dying Review Board, the peak oversight body for VAD in Queensland.

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