

**Submission
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INQUIRY INTO PROVISIONS OF THE VOLUNTARY ASSISTED DYING BILL 2021

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Secretary

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The Hon Wes Fang MLC
Committee Chair
Standing Committee on Law and Justice
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Dear Chair

The Victorian Department of Health welcomes the opportunity to provide information to the Standing Committee on Law and Justice (the Standing Committee) inquiry of the New South Wales *Voluntary Assisted Dying Bill 2021* (the Bill). I hope that the committee finds our contribution helpful during its deliberations.

The Victorian Government recognises the rights of people to make informed end-of-life choices. As the New South Wales Parliament and broader community continue to consider the Bill and discuss the voluntary assisted dying laws, the Victorian Department of Health offers the following reflections on the importance of such a scheme to Victorians, and lessons learned since the legislation was first enacted.

The Bill reflects the principles of Victoria's *Voluntary Assisted Dying Act 2017* (the Act). Differences between Victoria's Act and the Bill are to be expected and welcomed. As Australian states progressively consider and pass voluntary assisted dying legislation the laws in each jurisdiction are increasingly informed by others' experiences and so evolve over the passage of time.

As the committee will be aware, voluntary assisted dying has been available to eligible Victorians since 19 June 2019. It gives a small number of Victorians who meet strict eligibility criteria an additional choice about the manner and timing of their death. As the first state to commence voluntary assisted dying in Australia it is recognised that our legislative framework is conservative compared to other international voluntary assisted dying legislation and programs.

At its core, voluntary assisted dying is about choice. Victoria's legislation sought to strike a balance between the need for community safety and people's desire to have this additional choice at the end of their life. While it has been two and a half years since the legislation was enacted in Victoria community awareness and understanding of voluntary assisted dying is still growing. We have seen a slow but steady increase in numbers of people requesting and accessing voluntary assisted dying. The Act provides clarity about the obligations and protections for health practitioners that choose to participate and there continues to be growth in the number of medical practitioners registered for the mandatory training program and medical practitioners involved in one or more voluntary assisted

dying cases¹. Having a sufficient number of trained medical practitioners across the state is important to ensuring that Victorians have equitable access to voluntary assisted dying irrespective of where they live. In our first year fewer rural medical practitioners joined the program that we would have liked.

Integral to Victoria's successful program are the Voluntary Assisted Dying Statewide Support Services. The Statewide Pharmacy Service and Statewide Care Navigator Service have both contributed to ensuring people who want information about, or access to voluntary assisted dying are informed, prepared and supported through all aspects of the process. The Statewide Support Services are centralised and supported by a small core group of expert clinicians who provide a greater level of consistency and responsiveness for patients, their families and medical practitioners.

Like Victoria's legislation, the Bill provides strict eligibility criteria, including those pertaining to being a resident of the state for a period of at least twelve months. Further, and different to the Victorian legislation, the Bill has provision for the Board to grant residency criteria exemptions if satisfied the person has a substantial connection to New South Wales, and there are compassionate grounds for granting the exemption. As an example outlined in the Bill, this may be of benefit to those who live in Victoria, close to the New South Wales border, that may work or receive medical treatment in New South Wales. This difference will provide some flexibility and avoid angst for those applicants and their families seeking to maintain established care provider relationships.

The Bill differs from Victoria and other states with the minimum time between a person's first and final request being five days. Whilst Victoria's legislation is a minimum of nine days, with opportunity to fast track in situations where the person may not survive the required timeframe, our experience shows it may sometimes take longer than the minimum nine days, and this can sometimes not meet the person's expectations regarding accessing voluntary assisted dying. A shorter time interval proposed in the Bill will be welcomed by a small number of applicants.

Another difference between Victoria's Act and the Bill relates to whether discussions regarding voluntary assisted dying can be initiated by a health practitioner. Victoria's legislation prohibits registered health practitioners, including medical practitioners, from initiating discussions with their patients regarding voluntary assisted dying. The Committee may be aware that this has been a reported frustration of Victorian medical practitioners who consider that such provisions may impede access for some people. It was intended that this requirement in our Act would provide public reassurance about such a new approach to end-of-life care. More than two years on it is useful to consider whether such reassurance would be required of new legislation.

Victoria's legislation stipulates the responsibility of the Secretary, Department of Health or their delegate, to determine the outcome of voluntary assisted dying permit applications. This is independent and separate to the role and functions of Victoria's Voluntary Assisted Dying Review Board (Review Board). The Review Board retrospectively analyses all voluntary assisted dying applications and seeks feedback from contact persons and medical practitioners involved in every voluntary assisted dying permit issued. Contact person feedback provides an avenue for the patient voice and their experience to be heard.

¹ Voluntary Assisted Dying Review Board, [Voluntary Assisted Dying report of operations](#) (January to June 2021).

The Review Board's role in this has been vital in monitoring compliance with the legislation, learning from experience and driving continuous improvement of all aspects of voluntary assisted dying. Safeguards within Victoria's legislation are working, as the Review Board has found and reported in the Voluntary Assisted Dying Report of Operations, everyone granted a permit was eligible under the Act. Copies of the Review's Boards previous reports of operations can be found at <https://www.bettersaferecare.vic.gov.au/about-us/vadrb>.

Our Review Board is supported by Safer Care Victoria, an administrative office of the Department of Health and Victoria's peak authority for quality and safety improvement in healthcare.

Similar to the Bill, the contact person's role in Victoria is to return any unused or remaining voluntary assisted dying substance to the dispensing pharmacy within a specified timeframe and that the Review Board may contact them for information. The Bill includes additional contact person responsibilities regarding the voluntary assisted dying substance and notifying the person's coordinating medical practitioner of the person's death within a specified timeframe. Victoria's experience has been that the contact person may be experiencing grief and distress in the days and weeks following death. In this regard, careful consideration needs to be given the responsibilities expected of a contact person and the timeframe in which these responsibilities are expected to be discharged following a person's death.

Our Act requires at least one of the two medical practitioners involved in an application to have expertise in the applicant's condition. The Act did not require that that self-declared expertise be assessed. During the implementation of the program it became apparent that it was theoretically possible that, during the review of an application after the death of applicant, the VAD Review Board could find that neither medical practitioner had the required expertise. This could render the death unlawful. Accordingly, Safer Care Victoria implemented an additional process step whereby the Chief Medical Officer, or medical delegate, assessed and confirmed practitioner expertise. In a small number of cases this has led to changes in practitioners involved or to the provision of further information.

Thank you again for the opportunity to share some of Victoria's insights regarding voluntary assisted dying legislation. I hope that this information will be of assistance to the committee in their inquiry and report on the Bill.

Yours sincerely

Professor Euan M Wallace AM
Secretary

22/11/2021