



# issues backgrounder

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NSW Parliamentary Research Service

## Voluntary Assisted Dying Bill 2021 (NSW): a comparison with legislation in other States

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### 1 INTRODUCTION

The [Voluntary Assisted Dying Bill 2021](#) (“the VAD Bill”) was introduced by the Independent MP Alex Greenwich on 14 October 2021. The VAD Bill was co-sponsored by a total of 28 Members of Parliament from various political parties, including from the Liberal, Nationals, Labor and Greens parties as well as others from the crossbench. It has the [highest number](#) of co-sponsors to any Bill in an Australian parliament. It also followed a [petition](#) with more than 100,000 signatures expressing support for such legislation. The NSW Liberal and Labor Members of Parliament will be permitted a conscience vote on the Bill.

On 19 October 2021, the VAD Bill was referred to the [Legislative Council Standing Committee on Law and Justice](#) for inquiry and report. The Committee is to report by the first sitting day in 2022.

This is not the first time a Bill to legalise voluntary assisted dying (VAD) has been introduced in NSW.<sup>1</sup> Most recently, a [Voluntary Assisted Dying Bill 2017](#) was introduced in the NSW Legislative Council by the Nationals MP Trevor Khan in September 2017. It was [defeated](#) by one vote, with the major parties allowing a conscience vote. For further information on this Bill see: L Roth, [The Voluntary Assisted Dying Bill 2017 \(NSW\): a comparison with the Victorian Bill](#), Issues backgrounder 6/2017.

This issues backgrounder is limited to a consideration of the VAD Bill, especially its provisions concerning eligibility criteria, the process involved, safeguards, and allowance for conscientious objection. It includes a comparison with VAD legislation

in other States, as well as data from the first two years of operation of the VAD scheme in Victoria. See L Roth and M Dobson, [Euthanasia and assisted suicide](#), Issues backgrounder 3/2017 for discussion of the issues associated with voluntary assisted dying, previous attempts to legislate in this area, and legislation in other countries.

### Terminology

‘Voluntary assisted dying’, ‘euthanasia’, as well as ‘assisted suicide’ describe overlapping but different concepts. The Queensland Law Reform Commission in its May 2021 report, [A legal framework for voluntary assisted dying](#), drew out the distinctions, defining ‘voluntary assisted dying’ as ([para 1.32](#)):

...an end of life choice... it refers to the administration of a prescribed substance, either by self-administration or by a registered and suitably qualified health practitioner, with the purpose of bringing about the person’s death. It is based on the person’s voluntary request, and follows a process of requests and assessments.

It is similar to ‘euthanasia’ which is ([para 1.44](#)):

...the intentional taking of a person’s life by another person to end intolerable suffering. Euthanasia covers various practices including:

- passive euthanasia where medical treatment is withheld or withdrawn; and
- active euthanasia where medical intervention takes place.

However, the Queensland Law Reform Commission noted that as the term euthanasia has been used historically to include involuntary euthanasia and is more general in scope, the terminology has changed in recent years ([para 1.45](#)). ‘Voluntary assisted dying’ is thus viewed as providing a more accurate description of the circumstances.

On the other hand, ‘assisted suicide’ occurs where “a person causes their own death after being given the means or knowledge to do so by another person” ([para 1.46](#)). It is a crime,<sup>2</sup> does not require medical assistance, nor is it restricted to situations in which a person is intolerably suffering from a terminal disease or medical condition that will shortly cause their death.

## 2 BACKGROUND TO THE VAD BILL

NSW is the only State in Australia to have not passed VAD legislation (see section four of this paper for an overview of the relevant laws in other States). The development of the NSW VAD Bill has been informed by the VAD legislative models in the other Australian States. In March 2021, Alex Greenwich MP [flagged](#) the development of a draft bill on VAD for NSW, noting that it would be largely based on the Western Australian model.

A draft consultation version of the Bill was made available in July 2021. According to Mr Greenwich MP, the VAD Bill is [supported](#) by the Australian Paramedics Association, the Police Association, the Health Services Union and the NSW Nurses and Midwives’ Association.

The Bill intends to:

...create a safe framework for people who are in the final stages of a terminal illness and who are experiencing cruel suffering that cannot be relieved by treatment or palliative care to be provided with the choice to die peacefully, with dignity and surrounded by loved ones (A Greenwich MP, [Second reading speech](#), Voluntary Assisted Dying Bill 2021, *Hansard (Legislative Assembly)*, 14 October 2021).

### 3 OVERVIEW OF VAD BILL

The Bill defines VAD as “the administration of a voluntary assisted dying substance and includes steps reasonably related to that administration” ([schedule 1](#)). The [objects](#) of the Bill are to:

- (a) enable eligible persons with a terminal illness to access voluntary assisted dying;
- (b) establish a procedure for, and regulate access to, voluntary assisted dying; and
- (c) establish the Voluntary Assisted Dying Board and provide for the appointment of members and functions of the Board.

A person who dies as the result of the administration of a prescribed substance in accordance with the Act does not die by suicide ([clause 12](#)).

The Bill is to commence 18 months after the date of assent ([clause 2](#)).

#### Underlying principles

A number of principles are to underpin the powers and functions in the Bill, including ([clause 4](#)):

- every human life has equal value;
- a person’s autonomy, including autonomy in relation to end of life choices, should be respected;
- a person has the right to be supported in making informed decisions about the person’s medical treatment and should be given, in a way the person understands, information about medical treatment options, including comfort and palliative care and treatment;
- a person approaching the end of life should be provided with high quality care and treatment, including palliative care and treatment, to minimise the person’s suffering and maximise the person’s quality of life;
- a therapeutic relationship between a person and the person’s health practitioner should, wherever possible, be supported and maintained;
- a person should be encouraged to openly discuss death and dying, and the person’s preferences and values regarding the person’s care, treatment and end of life should be encouraged and promoted;
- a person should be supported in conversations with the person’s health practitioners, family, carers and community about care and treatment preferences;
- a person is entitled to genuine choices about the person’s care, treatment and end of life, irrespective of where the person lives in New South Wales and having regard to the person’s culture and language;

- a person who is a regional resident is entitled to the same level of access to voluntary assisted dying as a person who lives in a metropolitan region;
- there is a need to protect persons who may be subject to pressure or duress;
- all persons, including health practitioners, have the right to be shown respect for their culture, religion, beliefs, values and personal characteristics.

### Eligibility criteria

[Clause 16](#) of the Bill sets out the eligibility criteria that must be met before a person can access VAD. A person must:

- be 18 years old or over;
- be an Australian citizen, permanent resident, or a resident for at least three years. They must have been ordinarily resident in NSW for 12 months before making a request;
- be diagnosed with at least one disease, illness or medical condition that is advanced, progressive and will cause death, most likely within six months (or 12 months in the case of a neurodegenerative disease, illness or condition), that is causing suffering that cannot be relieved in a way considered by the person to be tolerable;
- have decision-making capacity in relation to VAD;
- be acting voluntarily and without pressure or duress; and
- the request must be enduring.

[Part 6](#) of the Act provides that the Supreme Court may review certain administrative decisions, including a decision that a person does not have decision-making capacity, is not acting voluntarily, or is acting because of pressure or duress ([clause 109](#)).

### The process

[Part 3](#) of the Bill sets out the process for accessing VAD. The steps include: a first request; first assessment; consulting assessment; a written declaration by the patient; final request and final review.

A person's eligibility is assessed by two medical practitioners: the coordinating practitioner (clauses 25 to 31) and the consulting practitioner (clauses 36 to 42). Should a medical practitioner be unable to decide whether the disease, illness or medical condition meets the requirements, or whether the person has decision-making capacity, or whether the person is acting voluntarily and not under pressure or duress, they must refer the person to someone with the appropriate skills and training to make a decision, such as a psychiatrist (clauses [26](#), [27](#), [37](#) and [38](#)).

Medical practitioners must meet certain eligibility requirements before they may act as a coordinating or consulting practitioner. They must either hold specialist registration, or general registration and have practised for a minimum of ten years, in addition to having completed specific training ([clause 18](#)).

There are timeframes that apply to each of the steps in the process. A patient generally cannot make a final request for VAD until at least five days after the first request was made ([clause 49](#)). However, there are some exceptions, including if the patient is likely to die or lose decision-making capacity before the end of the designated period.

The patient may decide between self-administration and practitioner administration ([clause 57](#)). There must be a witness in the case of practitioner administration ([clause 60\(6\)](#)).

Following the final review and the patient's decision regarding administration, the coordinating practitioner is to request an authorisation to prescribe a substance from the VAD Board ([clause 70](#)).

[Part 4 Division 5](#) sets out the various provisions concerning the prescribing, supplying and disposing of a VAD substance.

A summary of the proposed process for NSW is available [here](#).

## Safeguards

The VAD Bill 2021 includes a number of safeguards, many of which are characteristic of other VAD schemes in Australia.

Health care workers are prohibited from initiating a discussion about or suggesting VAD, unless (a) they are a medical practitioner and provide information about treatment options and outcomes to the person at the same time; or (b) they inform the person that palliative care and treatment options are available and should be discussed with the person's medical practitioner ([clause 10](#)).

There are multiple steps to accessing VAD, spanning a minimum of five days. A person can only access VAD if the person: has made a first request; been assessed as eligible by both the coordinating and consulting practitioners; made a written declaration; made a final request; the person's coordinating practitioner has made the requisite certification in a final review form; has made an administration decision; appointed a contact person if the person has made a self-administration decision; and a VAD substance authority has been issued by the Board ([clause 15](#)).

Eligibility criteria include the requirements that the person has decision-making capacity and is acting voluntarily and not from pressure or duress ([clause 16](#)).

The person who has been assessed as meeting eligibility criteria for VAD must be given information about: their diagnosis and prognosis; palliative care and treatment options; and the risks associated with taking a VAD substance ([clause 28](#)).

The person may change their mind about VAD at any time ([clauses 20](#) and [54](#)).

Medical practitioners must have completed approved training and meet other criteria in relation to their experience ([clause 18](#)).

Contravention of the draft Bill by health practitioners may constitute unsatisfactory professional conduct or professional misconduct ([clause 11](#)).

[Part 7](#) sets out various offences including, amongst other things: the unauthorised administration of prescribed substance (maximum penalty of life imprisonment); inducing another person to request or access VAD (maximum penalty of 7 years); and inducing self-administration of prescribed substance (maximum penalty of life imprisonment).

There is protection from liability for persons assisting a person in good faith to access VAD ([Part 9](#)).

The establishment of a Voluntary Assisted Dying Board under [Part 10](#) which is to monitor the operation of the Act.

### **Conscientious objection and/or decision to not provide VAD services**

The Bill provides for health practitioners with a conscientious objection to VAD, as well as ensuring that health care establishments and residential facilities have the ability to not provide services relating to VAD.

Health practitioners with a conscientious objection to VAD have the right to refuse to: participate in the request and assessment process; prescribe, supply or administer a VAD substance; or be present at the time of the administration of the VAD substance ([clause 9](#)).

If a first request is made to a medical practitioner with a conscientious objection, they must immediately inform the patient of their refusal and provide them with information specified by the Health Secretary for this purpose ([clause 21](#)).

Medical practitioners may also refuse to participate if they are unwilling or unable to perform the duties of a coordinating or consulting practitioner.

Health care establishments or residential facilities may decide to not provide services relating to VAD at the establishment or facility ([clause 89](#)). They may refuse to: participate in the request and assessment process; participate in an administration decision; prescribe, supply, store or administer a VAD substance; or be present at the time of the administration of the VAD substance. However, they must not hinder access to information about VAD ([clauses 90 and 99](#)). Residential facilities also have some responsibilities to nonetheless permit access to the facilities by others for VAD purposes ([Part 5 Division 2](#)).

Alex Greenwich MP, in the [second reading speech](#) for the VAD Bill, highlighted the differing responsibilities of residential facilities and hospitals that do not provide VAD services:

Residential facilities will have greater responsibilities towards residents because they are people's homes and nobody should be denied a legal medical option in their home because of the views held by management, especially given choice in residential care is often limited. Residential facilities that do not provide voluntary assisted dying services will be required to let doctors and other participants attend the premises to provide voluntary assisted dying services. Those in residential facilities seeking voluntary assisted dying will be told to inform their residential facility.... Hospitals that are referred to as "health care establishments" in the bill, will only be required to help transfer patients to and from the hospital to access voluntary assisted dying services elsewhere. There is no obligation on a hospital to allow external doctors on site.

## 4 HOW DOES THE NSW VAD BILL COMPARE TO VAD LEGISLATION IN OTHER STATES?

The Northern Territory was the first jurisdiction in the world to legalise voluntary assisted dying following passage of the *Rights of Terminally Ill Act 1995* (South Australia, Joint Committee on End of Life Choices, [Report](#), 2020, p 8). It was subsequently overturned by the Commonwealth Government. The [Euthanasia Laws Act 1997](#) (Cth) specifies that territory parliaments do not have the power to make laws permitting “the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her life”.

All States, other than NSW, have legalised voluntary assisted dying. Victoria was the first State to pass such legislation with the enactment of the [Voluntary Assisted Dying Act 2017 \(Vic\)](#). Similar legislation subsequently passed in Western Australia in 2019.<sup>3</sup> South Australia, Tasmania and Queensland all passed VAD legislation in 2021.<sup>4</sup>

There are many similarities in the eligibility criteria for accessing VAD in each of the States, including its restriction to adults who are suffering intolerably from a disease, illness, injury or condition that will cause their death within six to 12 months. They must have decision-making capacity and be acting voluntarily and without coercion.

All States require assessment by at least two medical practitioners who have completed special training, and all allow self-administration or practitioner administration (or “not private self-administration” in the case of Tasmania). However, some, such as Queensland and Western Australia, preference self-administration, with practitioner administration only available if self-administration is inappropriate in the circumstances.

All States include various safeguards. One of the main differences between the States is whether health practitioners may initiate a conversation about VAD. Some States prohibit this. The NSW Bill is similar to the Queensland and Western Australian legislation in providing an exception for medical practitioners to initiate a VAD discussion if they provide information about treatment options and outcomes at the same time. However, the NSW VAD Bill provides an additional exception for health care workers if they simultaneously inform the person that palliative care and treatment options are available and should be discussed with a medical practitioner. This [addition](#) to the NSW VAD Bill reportedly followed consultation with the Australian Paramedics Association, due to the frequency with which paramedics come into contact with people in significant distress because of their terminal illness.

According to [Willmott and White](#), one of the key differences in the proposed model for the VAD scheme in NSW compared to that of other States (other than Tasmania) is that the period between the person’s first and final request is five days as opposed to nine.

The following table compares voluntary assisted dying laws in each of the Australian States. The information in the table is compiled directly from the Australian Centre for Health Law Research’s (Queensland University of Technology) analysis of the relevant State legislation which may be found under the heading ‘Voluntary assisted

dying in Australia’ on their website [End of Life Law in Australia – Voluntary assisted dying and euthanasia](#).

**Table 1: VAD laws in the Australian States**

	QLD	SA	TAS	VIC	WA
<b>Legislation</b>	<a href="#">Voluntary Assisted Dying Act 2021</a>	<a href="#">Voluntary Assisted Dying Act 2021</a>	<a href="#">End-of-Life Choices (Voluntary Assisted Dying) Act 2021</a>	<a href="#">Voluntary Assisted Dying Act 2017</a>	<a href="#">Voluntary Assisted Dying Act 2019</a>
<b>Commences</b>	1 January 2023	On a date to be proclaimed, likely to be late 2022/early 2023	On a date to be proclaimed or on 23 October 2022.	19 June 2019	1 July 2021
<b>Definition</b>	VAD is the administration of a voluntary assisted dying substance and includes steps reasonably related to that administration.	VAD is the administration of a voluntary assisted dying substance and includes steps reasonably related to such administration.	VAD is the administration to a person, or the self-administration by a person, of a VAD substance.	VAD is the administration of a voluntary assisted dying substance and includes steps reasonably related to such administration.	VAD is the administration of a voluntary assisted dying substance, and includes steps reasonably related to such administration.
<b>Eligibility criteria</b>	<p>aged 18 or over;</p> <p>has a disease, illness, or medical condition that is: advanced, progressive, and will cause death, most likely within 12 months;</p> <p>is suffering intolerably because of the disease, illness, or medical condition;</p> <p>is acting voluntarily and without coercion;</p> <p>is an Australian citizen, permanent resident of Australia, or has been ordinarily resident in Queensland for at least 12 months prior to the first request</p>	<p>aged 18 or over;</p> <p>is an Australian citizen or permanent resident of Australia, and ordinarily resident in South Australia for 12 months before making a first request;</p> <p>has decision-making capacity in relation to VAD;</p> <p>has a disease, illness, or medical condition that is: incurable, advanced, progressive, and will cause death within 6 months (or 12 months in the case of a neurodegenerative disease, illness or condition);</p> <p>is suffering intolerably because of the disease, illness, or medical condition; and</p>	<p>aged 18 or over;</p> <p>is an Australian citizen, permanent resident of Australia, or has been resident in Australia for at least 3 continuous years prior to making a first request, and has been ordinarily resident in Tasmania for 12 months prior to the first request;</p> <p>has decision-making capacity;</p> <p>is acting voluntarily;</p> <p>is suffering intolerably in relation to a disease, illness, injury, or medical condition that: is advanced, incurable and irreversible; is expected to cause their death within 6 months (or 12 months in the case of a person with a</p>	<p>aged 18 or over;</p> <p>is an Australian citizen or permanent resident, ordinarily resident in Victoria, and, at the time of making a first request for VAD, has been resident in Victoria for at least 12 months;</p> <p>has decision-making capacity;</p> <p>is diagnosed with a disease, illness or medical condition that is: incurable; advanced, progressive and will cause death within six months (or 12 months in the case of a person with a neurodegenerative disease, illness or condition);</p> <p>it is causing suffering to the person that cannot be relieved in a manner that the person considers tolerable;</p> <p>has decision-making capacity for VAD;</p>	<p>aged 18 or over;</p> <p>is an Australian citizen or permanent resident, and at the time of making a first request for VAD ordinarily resident in Western Australia for at least 12 months;</p> <p>is diagnosed with at least one disease, illness or medical condition that: is advanced, progressive and will cause death, probably within 6 months (or 12 months, in the case of a neurodegenerative disease, illness or condition);</p> <p>it is causing suffering to the person that cannot be relieved in a manner that the person considers tolerable;</p> <p>has decision-making capacity for VAD;</p>

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	QLD	SA	TAS	VIC	WA
<b>Eligibility criteria (cont.)</b>	<p>(or granted an exemption);</p> <p>has decision-making capacity in relation to VAD</p> <p>A person will be presumed to have capacity to make a VAD decision unless it can be shown otherwise.</p> <p>A person who is suffering from a disability or mental illness alone will not be eligible for VAD, but must meet all the eligibility criteria.</p> <p>A person may apply to the Queensland Civil and Administrative Tribunal for review of certain decision.</p>	<p>is acting freely and without coercion.</p> <p>A person is presumed to have capacity to make a VAD decision unless it can be shown otherwise.</p> <p>A person suffering from a disability or mental illness alone will not be eligible for VAD, but must meet all the eligibility criteria.</p> <p>A person may apply to the South Australian Civil and Administrative Tribunal for review of certain decisions.</p>	<p>neurodegenerative disease, illness or condition).</p> <p>A person will be presumed to have capacity to make a VAD decision unless it can be shown otherwise.</p> <p>A person who is suffering from a disability or mental illness alone will not be eligible for VAD but must meet all the eligibility criteria.</p> <p>Some decisions may be reviewed by the Voluntary Assisted Dying Commission.</p>	<p>person finds tolerable.</p> <p>Disability or mental illness alone do not satisfy the eligibility requirements for accessing VAD, but must meet all the eligibility criteria.</p> <p>A person is presumed to have capacity to make a VAD decision unless it can be shown otherwise.</p> <p>Some decisions may be reviewed by the Victorian Civil and Administrative Tribunal.</p>	<p>is acting voluntarily and without coercion;</p> <p>has an enduring request for VAD.</p> <p>Disability or mental illness alone will not satisfy the eligibility requirements for accessing VAD, but must meet all the eligibility criteria.</p> <p>A person will be presumed to have capacity to make a VAD decision unless it can be shown otherwise.</p> <p>Some decisions may be reviewed by the State Administrative Tribunal.</p>
<b>Process involved</b>	<p>Two medical practitioners assess whether a person is eligible for VAD. Both must have completed mandatory training and meet other eligibility requirements.</p> <p>Timeframes apply to each of the steps in the process.</p> <p>A person can access VAD once the request and assessment process is completed, and the coordinating practitioner completes a final review form.</p> <p>There are two types of administration: self-administration and practitioner administration. A person can only</p>	<p>Two medical practitioners assess whether a person is eligible for VAD. Both must have completed mandatory training and meet other eligibility requirements.</p> <p>Timeframes apply to each of the steps in the process.</p> <p>There are two types of administration: self-administration, and practitioner administration. After a permit has been issued, the person may self-administer the VAD substance, at a time or place or their choosing. There is no requirement for a medical or other health practitioner, or a witness, to be</p>	<p>Two medical practitioners assess whether a person is eligible for VAD. Both must have completed mandatory training and meet other eligibility requirements.</p> <p>There are timeframes that apply to each of the steps in the process.</p> <p>A person will be able to access VAD once: the request and assessment process is completed; an administering health practitioner has been appointed; a VAD substance authorisation has been obtained from the Commission; and the VAD substance has been prescribed.</p>	<p>A person's eligibility to access VAD must be independently assessed by at least two medical practitioners who have completed mandatory training, and meet other eligibility requirements.</p> <p>There are timeframes that apply to each of the steps in the process.</p> <p>There are two types of administration: self-administration, and practitioner administration.</p> <p>In most cases, the VAD medication will be self-administered by the person at a time and place of their choosing. Other people may be present if the</p>	<p>A person's eligibility to access VAD must be independently assessed by at least two medical practitioners who have completed mandatory training and meet other eligibility requirements.</p> <p>There are timeframes that apply to each of the steps in the process.</p> <p>A person can access VAD once the request and assessment process is complete, the coordinating practitioner has completed a final review form.</p> <p>There are two types of administration: self-administration</p>

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	QLD	SA	TAS	VIC	WA
<b>Process involved (cont.)</b>	<p>choose practitioner administration if self-administration is inappropriate.</p> <p>The administering practitioner may be either the coordinating practitioner, or another medical practitioner, nurse practitioner, or registered nurse to whom the role has been transferred. They must satisfy eligibility requirements and have completed the mandatory training.</p> <p>The VAD substance can be self-administered by the person at a time and place of their choosing. Other people (e.g. family and friends) may be present if the person wishes, but cannot assist. The person may change their mind at any time.</p> <p>There is no requirement for a health practitioner or witness to be present for self-administration.</p> <p>An eligible witness must be present when the VAD substance is administered by a practitioner.</p>	<p>present Other people may be present if the person wishes, but cannot assist.</p> <p>An application may be made for a practitioner administration permit if a person is physically incapable of self-administering or digesting the medication.</p> <p>A witness must be present when the VAD substance is administered by a practitioner.</p>	<p>For a person to be supplied a VAD substance, the administering health practitioner must check again that the person has decision-making capacity and is acting voluntarily. This must occur within 48 hours of the person giving final permission. The person can then give final permission for VAD in an approved form, which includes information about how the substance will be administered.</p> <p>There are two types of administration: private-self administration, and administration that is not private self-administration.</p> <p>The person may self-administer the VAD substance at a time and place of their choosing. Other people may be present.</p> <p>If private self-administration is not appropriate due to the person's ability to self-administer, their concerns about doing this, or the method of administration, an administering health practitioner administration certificate can be issued.</p> <p>A <a href="#">flow chart</a> of the process is available from Tasmania Health.</p>	<p>person wishes but cannot assist.</p> <p>If the person is physically incapable of self-administering or digesting the medication the coordinating medical practitioner may apply for a practitioner administration permit authorising them to administer the medication to the person. It must take place in the presence of a witness.</p> <p>Anyone the person chooses may also be present during practitioner administration.</p> <p>A <a href="#">summary</a> of the process involved is available from Victorian Health – Quick reference guide for health practitioners.</p>	<p>and practitioner administration.</p> <p>A person can only elect practitioner administration if the coordinating practitioner advises that self-administration would be inappropriate due to the person's ability to self-administer; the person's concerns about self-administering; or the method for administering the medication that is suitable to the person.</p> <p>The VAD medication is able to be self-administered by the person at a time and place of their choosing. Other people may be present but cannot assist. A health practitioner or a witness is not be required to be present for self-administration.</p> <p>Practitioner administration is required to take place in the presence of a witness.</p> <p>A <a href="#">summary</a> of the process involved is available from Western Australian Health.</p>
<b>Safeguards</b>	Health care workers prohibited from	Registered health practitioners are prohibited from	There are limits on when medical practitioners and	Health practitioners are prohibited from	Health care workers are prohibited from

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	QLD	SA	TAS	VIC	WA
<b>Safeguards (cont.)</b>	<p>initiating a VAD discussion, other than medical practitioners and nurse practitioners (if certain information is provided at the same time).</p> <p>A family member or carer cannot request VAD on somebody's behalf.</p> <p>The person will need to make at least three separate requests for VAD.</p> <p>The person's decision to access VAD must be made voluntarily and without coercion.</p> <p>There is a waiting period of 9 days from the first request before a person can make a final request.</p> <p>The person must be provided with information about their diagnosis and prognosis, available treatment and palliative care options.</p> <p>The person is able to change their mind about VAD at any time.</p> <p>Medical practitioners, nurse practitioners, and registered nurses participating in providing VAD must undergo mandatory approved training and meet certain eligibility criteria.</p> <p>Offences (punishable by fines or imprisonment of</p>	<p>initiating a discussion about VAD.</p> <p>A family member or carer cannot request VAD on somebody's behalf.</p> <p>The person will need to make at least three separate requests for VAD.</p> <p>The person's decision to access VAD must be made voluntarily, freely and without coercion.</p> <p>The person must be provided with information about their diagnosis and prognosis, available treatment and palliative care options.</p> <p>The person is able to change their mind about VAD at any time.</p> <p>A permit must be issued by the Chief Executive before any person is able to access VAD.</p> <p>Medical practitioners participating in providing VAD must undergo mandatory approved training and meet certain eligibility criteria.</p> <p>Offences (punishable by fines or imprisonment of up to 5 years) for anyone who induces a person to access VAD.</p> <p>Protections from liability for persons assisting another person,</p>	<p>other registered health practitioners can initiate a discussion about VAD.</p> <p>A family member or carer will not be able to request VAD on a person's behalf.</p> <p>The person requesting VAD must be provided with information about their diagnosis and prognosis, available treatment and palliative care options.</p> <p>The person must make at least three separate requests for VAD. The person also needs to give final permission before a VAD substance can be administered.</p> <p>The person's decision to access VAD must be voluntary and made without coercion.</p> <p>A VAD substance authorisation must be issued by the Commission before any person is able to access VAD.</p> <p>The person is able to change their mind about VAD at any time.</p> <p>Medical practitioners, nurse practitioners and registered nurses participating in VAD must complete mandatory training and meet certain eligibility criteria.</p>	<p>initiating a discussion about VAD.</p> <p>A family member or carer cannot request VAD on somebody's behalf.</p> <p>A person must make at least three separate requests for VAD.</p> <p>The person must be provided with information about their diagnosis and prognosis, available treatment and palliative care options, and risks associated with taking the lethal medication (i.e. death).</p> <p>The person must also be advised that they may decide at any time not to continue the VAD process.</p> <p>VAD medication cannot be administered without a permit authorising self-administration or practitioner administration.</p> <p>Regulations govern the prescription, dispensing and disposal of VAD medications.</p> <p>Mandatory reporting requirements for health practitioners and employers where they believe another practitioner's conduct breaches the Act.</p> <p>Offences (punishable by up to 5 years imprisonment) for</p>	<p>initiating a discussion about or suggesting VAD, unless they are a medical practitioner or nurse practitioner and provide information about treatment options and outcomes to the person at the same time.</p> <p>A family member or carer cannot request VAD on somebody's behalf.</p> <p>The person requesting VAD must be given information about their diagnosis and prognosis, available treatment and palliative care options, and risks associated with taking the VAD medication (i.e. death).</p> <p>The person must make at least three separate requests for VAD.</p> <p>The person's decision to access VAD must be voluntary and made without coercion (confirmed at each stage).</p> <p>Health practitioners must receive training about identifying and assessing risk factors for abuse or coercion.</p> <p>The person can change their mind about VAD at any time.</p> <p>Regulations govern the prescription, dispensing and disposal of VAD medications.</p>

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	QLD	SA	TAS	VIC	WA
	<p>up to 7 years) for anyone who induces a person to access VAD.</p> <p>Protections from liability for persons assisting another person, in good faith, to access VAD.</p> <p>The VAD Review Board will monitor, report, research, and review eligible decisions.</p>	<p>in good faith, to access VAD.</p> <p>The VAD Review Board will be responsible for monitoring, reporting, research, and reviews of eligible decisions.</p>	<p>Offences (punishable by fines or imprisonment of up to 5 years) for anyone who induces a person to access VAD.</p> <p>Protections from liability for persons assisting a person, in good faith, to access VAD.</p> <p>The Voluntary Assisted Dying Commission will be responsible for monitoring, reporting, research, reviews of eligible decisions, and issuing the VAD substance authorisation.</p>	<p>anyone who induces another person to request VAD or take the VAD medication.</p> <p>To provide VAD medical practitioners must have the necessary expertise and experience as set out in the legislation, and successfully complete the accredited training.</p> <p>The Voluntary Assisted Dying Review Board is responsible for monitoring, reporting, compliance, safety and research functions.</p>	<p>Protection from criminal liability for persons who, in good faith, assist a person to access VAD, or are present when VAD medication is administered.</p> <p>Protection from criminal and civil liability for health practitioners acting within the Act.</p> <p>Offences (punishable by up to 7 years imprisonment) for anyone who induces another person to request or access VAD.</p> <p>The Voluntary Assisted Dying Review Board is responsible for monitoring, reporting, and research.</p>
<b>Compulsory participation?</b>	<p>Registered health practitioners with a conscientious objection to VAD will have the right not to participate in VAD. They can refuse to: provide information about VAD; participate in the request and assessment process; participate in an administration decision; supply, prescribe or administer a VAD substance; or be present at the time of administering a VAD substance.</p> <p>If a person makes a first request for VAD to a medical practitioner with a conscientious objection, the practitioner must immediately inform the person that they refuse the request.</p>	<p>Health practitioners with a conscientious objection to VAD will have the right not to participate in VAD. They can choose not to: provide information about VAD; participate in the request and assessment process; supply, prescribe or administer a VAD substance; be present at the time of administering a VAD substance; and dispense a prescription for a VAD substance.</p> <p>Health services and residential facilities have the right to refuse to participate in VAD, but will still have some obligations.</p> <p>Generally, health who refuse to</p>	<p>Health practitioners with a conscientious objection to VAD will have the right not to participate in VAD. However, if a person makes a first request to access VAD, the medical practitioner must provide the person with the contact details of the VAD Commission, even if they have a conscientious objection.</p> <p>If a medical practitioner refuses a person's first request, they must, as soon as is reasonably practicable (and within 7 days) advise the person that they refuse the first request; note the person's request (and the refusal to accept</p>	<p>Health practitioners with a conscientious objection to VAD have the right to choose not to participate in VAD. They are under no obligation to: provide information about VAD to a person; or participate in any part of the VAD process, including assessing the eligibility of a person; or supplying, prescribing, administering, or being present prior to, during or following administration of a VAD medication.</p>	<p>Health practitioners with a conscientious objection to VAD have the right to choose not to participate in VAD. There is no obligation to: participate in the request and assessment process, prescribe, supply or administer VAD medication, or be present at the time VAD medication is administered.</p> <p>If a person makes a first request for VAD to a medical practitioner with a conscientious objection, the practitioner must immediately inform the person that they refuse the request.</p> <p>All medical practitioners (even if they</p>

## Voluntary Assisted Dying Bill 2021 (NSW): a comparison with legislation in other States

	QLD	SA	TAS	VIC	WA
<b>Compulsory participation? (cont.)</b>	<p>All medical practitioners have to provide certain information to a person who makes a first request for VAD, including the details of a VAD Care Navigator Service.</p> <p>Speech pathologists who have a conscientious objection also have specific obligations, including not to impede the person's access to speech pathology services in relation to VAD.</p> <p>Facilities providing health services, residential aged care services or personal care services have the right to refuse to participate in VAD, but will still have some obligations.</p>	<p>participate in VAD must ensure that patients are advised of the service's refusal to permit VAD; have arrangements in place to transfer the person to other facilities so they can access VAD; and take reasonable steps to facilitate such a transfer.</p> <p>Residential facilities must allow all residents to access information about VAD and make requests for VAD.</p>	<p>it) on the person's medical records; and notify the VAD Commission that they have refused the request.</p>		<p>object to VAD, or are not eligible to provide VAD) have to provide approved information to a person who makes a first request for VAD.</p>
<b>Can a health practitioner initiate discussion of VAD?</b>	<p>Medical practitioners and nurse practitioners may initiate a discussion with a person about VAD if, at the same time, they inform the person about the treatment options and palliative care options available, and the likely outcomes of treatment.</p> <p>Health care workers are prohibited from initiating a discussion or suggesting VAD, but can provide information about VAD on a person's request.</p>	<p>It is unlawful for a registered health practitioner to initiate a discussion about VAD with a person, or suggest VAD to them. However, they may provide information about VAD if a person requests it.</p>	<p>A medical practitioner may initiate a conversation about VAD if, at the same time, the medical practitioner also informs the person about the treatment and palliative care options available and the likely outcomes.</p> <p>Other registered health practitioners can initiate conversations about VAD if they inform the person during the conversation that a medical practitioner would be the most appropriate</p>	<p>A registered health practitioner is prohibited from initiating a discussion about VAD or suggesting VAD to a person, but can provide information about VAD at a person's request.</p>	<p>A medical practitioner or nurse practitioner is able to initiate a discussion or suggest VAD to a person so long as they also inform the person, at the same time, about available treatment and palliative care options, and their likely outcomes.</p> <p>Health care workers are prohibited from initiating a discussion or suggesting VAD but can provide information about VAD on a person's request.</p>

QLD	SA	TAS	VIC	WA
		person with whom to discuss VAD and the person's care and treatment options.  If a person requests information about VAD, nothing prevents another person from providing information about the VAD process.		

Source: Australian Centre for Health Law Research, Queensland University of Technology, [End of Life Law in Australia – Voluntary assisted dying and euthanasia](#)

## 5 OPERATION OF THE VICTORIAN VAD SCHEME

Victoria and Western Australia are the only States in which the VAD schemes have commenced (19 June 2019 and 1 July 2021 respectively) with the other States to first complete an implementation period of approximately 18 months. As a result, Victoria is the only jurisdiction with relevant data on the operation of a VAD scheme.

Between June 2019 and 30 June 2021, 331 people died from taking prescribed VAD medication in Victoria as seen in table 2.

**Table 2: Victorian VAD scheme, Confirmed deaths\* where medication was administered (19 June 2019 to 30 June 2021)**

	19 June to 31 December 2019	1 January to 30 June 2020	1 July to 31 December 2020	1 January to 30 June 2021	Total to date*
<b>Medication was self-administered</b>	37	67	80	92	282
<b>Medication was administered by a practitioner</b>	9	11	20	9	49

\*While the Board receives notifications of applicants' deaths from Births, Deaths and Marriages, there are a number of cases where this does not happen – specifically, if the medical practitioner certifying the death does not identify that the applicant was a voluntary assisted dying permit holder on the Medical Certificate Cause of Death. In these cases, confirmation of the manner of death is obtained from contact people or coordinating medical practitioners when following up any unused medication (if medication was dispensed). If a medical practitioner certifying the death does not identify the applicant as a permit holder, notification of death is received once the death is registered. Any apparent differences between this report and the previous report are due to receiving new notifications of registered deaths.

Source: Voluntary Assisted Dying Review Board, [Voluntary Assisted Dying report of operations \(January to June 2020\)](#), p 3) and Voluntary Assisted Dying Review Board, Voluntary Assisted Dying report of operations (January to June 2021), [p 3](#).

Table 3 was compiled by the Victorian Voluntary Assisted Dying Review Board, and provides demographic information of the 900 registered applicants for the Victorian VAD scheme. It shows that males make up slightly more than half of registered

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applicants (54%). The median age of applicants is 73, with ages ranging from 18 to 101. 86% of applicants live in a private household.

**Table 3: Characteristics of individuals registered in the portal (19 June 2019 to 30 June 2021)**

Characteristics	Total (n=900)	%
<b>Sex</b>		
Male	482	53.6%
Female	417	46.3%
Self-described	1	0.1%
<b>Age</b>		
18–54	68	7.6%
55–64	166	18.4%
65–74	278	30.9%
75–84	256	28.4%
85+	132	14.7%
Median years (range)	73	(18-101)
<b>Background</b>		
<b>Country of birth</b>		
Australia	624	69.3%
Other	250	27.8%
Not provided	26	2.9%
<b>Aboriginal or Torres Strait Islander</b>		
Yes	3	0.3%
No	878	97.6%
Unknown	19	2.1%
<b>Language spoken at home</b>		
English	851	94.6%
Other	33	3.7%
Unknown	16	1.8%
<b>Interpreter required</b>		
Yes	19	2.1%
No	879	97.7%
Unknown	2	0.2%
<b>Education level</b>		
Primary education or lower	42	4.7%
Junior secondary education	214	23.8%
Senior secondary education	217	24.1%
Certificate level	48	5.3%
Graduate diploma and graduate certificate level	23	2.6%
Advanced diploma and diploma level	60	6.7%
Bachelor degree level	138	15.3%
Post graduate level	57	6.3%
Other education	13	1.4%
Unknown	88	9.8%
<b>Residence</b>		
Metropolitan	577	64.1%
Regional/rural	323	35.9%
<b>Living situation</b>		
Private household	775	86.1%
Long term care or assisted living facility	87	9.7%
Health service	33	3.7%
Unknown	5	0.6%

\* Duplicate data have been removed.

# Figures have been rounded to one decimal place and due to rounding the total figure exceeds 100 per cent.

Source: Voluntary Assisted Dying Review Board, [Voluntary Assisted Dying report of operations \(January to June 2021\)](#), Table 4, p 9.

Table 4 details the underlying illness of the 488 people who have been issued with a VAD permit and have died (this includes those who died without the administration of

voluntary dying medication). 83% had a malignancy. 8% of the total number of applicants had a neurodegenerative disease.

**Table 4: Number of applicants issued a VAD permit and have died, by major diagnosis (19 June 2019 to 30 June 2021)**

Underlying illness	Total (n=488)	%
<b>Malignancy</b>		
Primary lung malignancy	80	19.8%
Primary breast malignancy	39	9.6%
Primary colorectal malignancy	41	10.1%
Primary pancreatic malignancy	41	10.1%
Other gastrointestinal tract malignancy	54	13.3%
Other malignancy	150	37.0%
<b>Non-malignancy</b>		
Neurodegenerative disease	37	44.6%
Respiratory failure	18	21.7%
Other	28	33.7%

# Figures have been rounded to one decimal place and due to rounding the total figure for malignancy is less than 100 per cent.

Source: Voluntary Assisted Dying Review Board, [Voluntary Assisted Dying report of operations \(January to June 2021\)](#), Table 5, p 14.

[Komesaroff et al](#) identified some logistical issues with the VAD scheme in Victoria after its first year of operation, notably delays due to a shortage of specialist doctors who were willing to participate and had completed the necessary training. They also recognised that the COVID-19 pandemic had impacted its operation.

[White and Willmott](#) have argued that the complexity of the Victorian VAD scheme has hindered patient access because:

- doctors are not allowed to raise the topic of VAD with patients;
- a government permit to access VAD must be obtained; and
- the administrative process is complex.

For information providing the perspective of 32 doctors who participated in the VAD scheme in Victoria during its first year see: L Willmot et al, [Participating doctors' perspectives on the regulation of voluntary assisted dying in Victoria: a qualitative study](#), *Medical Journal of Australia*, 215(3) August 2021, p 125ff.

## 6 FURTHER READING

This reading list focuses on publications in Australia from the last five years.

### NSW Parliamentary Research Service papers

L Roth and M Dobson, [Euthanasia and assisted suicide](#), Issues backgrounder 3/2017.

L Roth, [The Voluntary Assisted Dying Bill 2017 \(NSW\): a comparison with the Victorian Bill](#), Issues backgrounder 6/2017.

### Major reports

Queensland Law Reform Commission, [A legal framework for voluntary assisted dying](#), Report No 79, May 2021.

South Australia, [Joint Committee on End of Life Choices](#), Report, 2020.

Western Australian Department of Health, [Ministerial expert panel on voluntary assisted dying](#), Final report, 2019.

ACT, [Select Committee on End of Life Choices in the ACT](#), Report, March 2019.

Queensland Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, [Inquiry into aged care, end-of-life and palliative care and voluntary assisted dying](#), Issues paper, February 2019.

Western Australia, [Joint Select Committee on End of Life Choices](#), Report, August 2018.

Victoria, [Voluntary Assisted Dying Ministerial Advisory Panel](#), Final Report, July 2017.

Victoria, Legislative Council Legal and Social Issues Committee, [Inquiry into end of life choices](#), Report, June 2016.

Australian Human Rights Commission, [Euthanasia, human rights and the law](#), Issues paper, May 2016.

### Journal articles

E Close et al, [Voluntary assisted dying and telehealth: Commonwealth carriage service laws are putting clinicians at risk](#), *Medical Journal of Australia*, 2021.

C McLaren and G Mewett, [Update on voluntary assisted dying in Australia](#), *Medical Journal of Australia*, 215(3) August 2021,

R McDougall, [Junior doctors and conscientious objection to voluntary assisted dying: ethical complexity in practice](#), *Journal of Medical Ethics*, 14 June 2021.

M Somerville, [Questioning the wisdom of legalising euthanasia](#), *Eureka Street*, 3 June 2021.

B White et al, [Legislative options to address institutional objections to voluntary assisted dying in Australia](#), *UNSW Law Journal Forum*, No 3, 2021.

B White et al, [Does the 'Voluntary Assisted Dying Act' 2017 \(VIC\) reflect its stated policy goals?](#), *University of New South Wales Law Journal*, 43(2) June 2020, p 417ff.

[Not a simple matter of life or death](#) – A collection of articles on voluntary assisted dying, *QLS Proctor*, 39(9) October 2019, pp 18-27.

M Somerville, [The media's failure to report on religious voices in the public square: The euthanasia debate as a test case](#), *The University of Notre Dame Australia Law Review*, 20(2) 2018.

C Johnston and J Cameron, [Discussing voluntary assisted dying](#), *Journal of Law and Medicine*, 26(2) December 2018, p 454ff.

J Rutherford, [The role of the medical profession in Victorian assisted dying reform](#), *Journal of Law and Medicine*, 26(1) October 2018, p 246ff.

I Ball et al, [Voluntary euthanasia – implications for organ donation](#), *The New England Journal of Medicine*, 379(10) September 2018, p 909ff.

J Downie, [Permitting voluntary euthanasia and assisted suicide: law reform pathways for common law jurisdictions](#), *QUT Law Review*, 16(1) 2016, p 84ff.

L Wilmott et al, [\(Failed\) voluntary euthanasia law reform in Australia: two decades of trends, models and politics](#), *University of New South Wales Law Journal*, 39(1) 2016, p 1ff.

### **Other academic articles**

B White and L Willmott, [Voluntary assisted dying could soon be legal in Queensland. Here's how its bill differs from other states](#), *The Conversation*, 19 May 2021.

P Komesaroff et al, [One year of voluntary assisted dying in Victoria: 400 have registered, despite obstacles](#), *The Conversation*, 30 June 2020.

C Hempton and M Trabsky, [Without more detail, it's premature to say voluntary assisted dying laws in Victoria are 'working well'](#), *The Conversation*, 21 February 2020.

C Abou-Nemeh, [As NZ votes on euthanasia bill, here is a historical perspective on a 'good death'](#) *The Conversation*, 12 November 2019.

B White et al, [WA's take on assisted dying has many similarities with the Victorian law – and some important differences](#), *The Conversation*, 9 August 2019.

C Cartwright and C Douglas, [FactCheck Q&A: do 80% of Australians and up to 70% of Catholics and Anglicans support euthanasia laws?](#), *The Conversation*, 1 May 2017 (updated 28 February 2019).

### **Media articles**

A Smith, [From assisted dying to unassisted high-wire act: Perrottet risks losing vital independents' support](#), *Sydney Morning Herald*, 21 October 2021.

A Smith, ['What has happened behind the scenes?': Assisted dying vote delayed until 2022](#), *Sydney Morning Herald*, 19 October 2021.

C Fitzsimmons, ["I sure as hell want it": Bob Carr changes mind, supports assisted dying laws](#), *Sydney Morning Herald*, 17 October 2021.

C Fitzsimmons, [Voluntary assisted dying debate centres on what makes a good death](#), *Sydney Morning Herald*, 17 October 2021.

M Knox, [What we need from leaders making a life and death decision in NSW](#), *Sydney Morning Herald*, 16 October 2021.

A Smith and L Cormack, [Labor elder John Watkins urges MPs to oppose assisted dying bill](#), *Sydney Morning Herald*, 14 October 2021.

G Pattullo, [As a doctor and husband of a woman who chose the timing of her death, I offer some facts on assisted dying](#), *Sydney Morning Herald*, 14 October 2021.

M Baird, [Why I hope NSW does not embrace voluntary assisted dying](#), *Sydney Morning Herald*, 13 October 2021.

L Cormack and T Rabe, [Voluntary assisted dying bill draws multiparty support across NSW Parliament](#), *Sydney Morning Herald*, 12 October 2021.

J Watkins, [Average citizens might not 'volunteer' for death if they could afford what the rich can: staying alive with dignity](#), *Sydney Morning Herald*, 12 October 2021.

[Voluntary assisted dying bill to be introduced to NSW parliament this week](#), *SBS News*, 11 October 2021.

A Smith, [Terminally ill turn to 'tragic and horrific' methods to end their lives](#), *Sydney Morning Herald*, 11 October 2021.

K Nguyen, [NSW stands alone on voluntary euthanasia after historic bill passed in Queensland](#), *ABC News*, 18 September 2021.

M Koziol, [AMA ethics chair offers broad support for NSW assisted dying bill](#), *Sydney Morning Herald*, 5 September 2021.

A Smith, [Greenwich releases assisted dying bill with support from MPs, unions](#), *Sydney Morning Herald*, 19 July 2021.

L Lynch, [Doctors support church's voluntary assisted dying fight](#), *The Australian*, 13 July 2021.

A Smith, [Alex Greenwich to push ahead with assisted dying bill for NSW amid pandemic](#), *Sydney Morning Herald*, 7 July 2021.

A Dow and M Cunningham, [Victoria's first year of euthanasia sees lives end in peace and devastation](#), *Sydney Morning Herald*, 18 June 2020.

[WA legalises voluntary assisted dying](#), *Australian Financial Review*, 11 December 2019.

R Shine, [Voluntary euthanasia legislation leaves WA's religious communities debating doctrine and death](#), *ABC News*, 10 August 2019.

**Author:** Talina Drabsch

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For further information please contact the Research Service on 9230 2768.

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This Issues Backgrounder provides links to parliamentary material, journal articles, media articles and interest group web sites to provide Members with detailed information relating to matters under consideration by the NSW Parliament. Although every attempt is made to ensure that the information provided is correct at the time of publication, no guarantee can be made as to its ongoing relevancy or accuracy. This Issues Backgrounder should not be considered a comprehensive guide to this particular subject and is only a representative sample of the information available. This Issues Backgrounder does not constitute a professional legal opinion.

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- <sup>1</sup> See, for example: the [Voluntary Assisted Dying Bill 2017](#); [Rights of the Terminally Ill Bill \(2013\)](#); [Rights of the Terminally Ill Bill 2010](#); [Voluntary Euthanasia Trial \(Referendum\) Bill 2003](#); [Rights of the Terminally Ill Bill 2003](#); [Voluntary Euthanasia Trial \(Referendum\) Bill 2002](#); and [Rights of the Terminally Ill Bill 2001](#).
  - <sup>2</sup> It is a crime under [section 31C](#) of the *Crimes Act 1900* (NSW) to aid or abet the suicide or attempted suicide of another person.
  - <sup>3</sup> [Voluntary Assisted Dying Act 2019](#) (WA)
  - <sup>4</sup> [Voluntary Assisted Dying Act 2021](#) (Qld), [Voluntary Assisted Dying Act 2021](#) (SA) and [End-of-Life Choices \(Voluntary Assisted Dying\) Act 2021](#) (Tas).