Lawyers for the People
AUSTRALIAN LAWYERS ALLIANCE

A legal framework for voluntary assisted dying – Consultation paper

Submission to the Queensland Law Reform Commission

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Contents

Who we are ... 4

Introduction ... 5

Voluntary assisted dying ... 5

Reasons for implementing a VAD scheme in Queensland ... 5

What features should a VAD scheme have? ... 8

Activity being regulated ... 8

Eligibility requirements – who can access the scheme ... 9

Minimum age ... 9

Citizenship and residency requirements ... 10

Capacity ... 11

Medical condition ... 12

Proximity to death ... 12

Counselling services ... 13

Process ... 14

Safeguards ... 16

Legal and ethical obligations of medical and/or nursing practitioners ... 18

Conclusion ... 19

Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.[1]

The ALA office is located on the land of the Gadigal of the Eora Nation.

[1] www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into the consultation being conducted by the Queensland Law Reform Commission ('QLRC') concerning a legal framework for voluntary assisted dying ('VAD').

2. This response has been compiled by the Queensland State Committee whose members have substantial expertise in this area.

3. The ALA is strongly in support of the introduction of a VAD scheme and in this submission, we will outline why a VAD scheme should be implemented and what features a VAD scheme should have. In particular, this submission will address the following:

   - Eligibility requirements to access VAD
   - The process for accessing VAD
   - The legal and ethical obligations of treating health practitioners the safeguards and protections that should be put in place before a VAD scheme is introduced
   - How the VAD scheme should be monitored, and
   - Timeframes for implementation of the scheme.

4. Although there a number of models in use overseas, the ALA's submission will focus predominantly on the schemes in place in Victoria and Western Australia and the draft legislation in Appendix A of Report No. 34, *Voluntary assisted dying* ('VAD Report').[2]

Voluntary assisted dying

Reasons for implementing a VAD scheme in Queensland

5. The ALA submits that the current legal framework in Queensland prevents a significant number of persons who are suffering and dying from choosing the manner and timing of their

[2] Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Voluntary assisted dying* (Queensland Parliament, Report No. 34, 56th Parliament, March 2020).

death and that VAD legislation should be introduced to allow eligible persons in Queensland to access VAD in certain limited circumstances regarding their end-of-life decisions.

6. In recent times, Australian healthcare has been strongly influenced by the principle of patient autonomy i.e. a patient's right to direct their own healthcare.[3] This principle is a fundamental part of Australia's common law with healthcare providers obligated to obtain consent from their patients prior to providing treatment.[4] In the context of withdrawing and/or withholding life-sustaining treatment, it is now uncontroversial at law that a competent patient can refuse life-sustaining treatment even if such a refusal will result in the death of that patient.[5] This is because for a competent patient the principle of autonomy takes precedence if it conflicts with the value of human life.[6] Enabling persons to access VAD in certain limited circumstances would be consistent with the principal of patient autonomy.

7. Advances in medicine mean that illness and disease that once resulted in early death are now routinely treated and managed and, in some cases, cured. As a result, Queenslanders are living longer and, in many instances, living with a distressing disability. In most cases pain and suffering can be treated to the satisfaction of the patient through palliative care and other health services and supports. However, pain and suffering in some persons cannot be adequately alleviated and those persons may wish to relieve their suffering by ending their life. The experience of dying is a personal experience and it may be important for persons to decide a number of factors regarding how they die, including:

    a. the time and place of death;

    b. the way in which they die;

    c. the presence of loved ones at the time of death;

    d. the chance to say goodbye to loved ones; and

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[3] Ben White, Fiona McDonald and Lindy Willmott, *Health Law in Australia* (Thomson Reuters, 2nd ed, 2014) 28.

[4] Ibid 129 citing *Secretary, Department of Health and Community Services (NT) v JWB (Marion's case)* (1992) 175 CLR 218.

[5] *AK (Adult Patient) (Medical Treatment: Consent), Re* [2001] FLR 129; *B (adult: refusal of medical treatment), Re* [2002] 2 All ER 449, *C (Adult: Refusal of Medical Treatment), Re* [1994] 1 All ER 819; *PVM, Re* [2000] QGAAT 1.

[6] See *Brightwater Care Group (Inc) v Rossiter* [2009] WASC 229.

e. access to spiritual and emotional support in the lead up to their death.

8. Enabling persons in some circumstances to access VAD would be consistent with the increasing focus on patient-centred care, facilitating patient choice and enabling persons to die in circumstances that they consider to be dignified.

9. If persons do not have access to VAD, some may believe that they have no alternative but to commit suicide. In the *Inquiry into end of life choices – Final Report*[7] it was reported by the Coroners Court of Victoria that around 50 Victorians each year were taking their lives after experiencing an irreversible deterioration in physical health.[8] A number of individual submissions were also provided to that inquiry detailing the drastic measures that had been taken by people with serious and incurable conditions to end their lives.[9]

10. In Queensland, the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee heard from a number of witnesses who related personal accounts of people suffering from terminal and debilitating illnesses who had died by suicide.[10] It was reported to the Committee that for the period 1 January 2016 to 31 December 2017, 168 notifications had been received by the Queensland coroner where the deceased person had died by suicide and had suffered from a terminal or debilitating physical condition.[11]

11. These decisions by persons to die by suicide affect not only the person making the decision but their family members, friends and emergency responders, such as police officers and paramedics. Although it is unknown whether persons would choose to access VAD instead of dying by suicide, it would be preferable that they have the choice to access VAD in those circumstances.

12. Assisted suicide is a criminal offence in all Australian jurisdictions, including in Queensland.[12] However, cases in Australia demonstrate that minimal penalties are often imposed when persons have been found guilty of assisting suicide in circumstances when the other

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[7] Parliament of Victoria, 'Inquiry into end of life choices - Final Report' (2016) *Victorian Government Printer*.

[8] Ibid, 197-8.

[9] Ibid, 198-200.

[10] Above n 2, 4-10.

[11] Ibid, 10-11.

[12] *Criminal Code 1899* (Qld), s311.

competent person has been suffering grievously and requested assistance to end their life.[13] Although community standards and beliefs may support the imposition of light sentences in these circumstances, it would be more appropriate for persons suffering to end their lives through a VAD scheme where those assisting them are not at risk of criminal sanction.

13. There is some evidence to suggest that physician assisted suicide is currently being practised in Australia.[14] If this is correct then it would be more appropriate that it occur within a structured and properly regulated VAD framework to ensure that only eligible persons are accessing the scheme and that medical practitioners are not at risk of criminal sanction in those circumstances.

14. It has been suggested that the prohibition on VAD has no impact on its levels of occurrence. It has been reported that the incidence rates tend to be comparable between jurisdictions with prohibitions and those where it has been legalised.[15] If a strong regulatory framework were implemented, it would enable greater transparency and oversight of VAD and would arguably provide greater protection for vulnerable individuals.

What features should a VAD scheme have?

15. If a VAD scheme is implemented in Queensland, it is imperative that a clear and transparent framework is developed to ensure that the activity being regulated is clear, the eligibility requirements are unambiguous, the process is clear and not too burdensome on persons accessing VAD or on the health profession and that the VAD scheme can be closely monitored, regularly reviewed and reported on.

Activity being regulated

16. It is essential that any VAD scheme clearly identifies what activity is being regulated. The ALA supports a VAD scheme where eligible persons can be prescribed an approved medication

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[13] See, for example, *R v Nicol* [2005] NSWSC 547; *DPP v Karaca* [2007] VSC 190; *DPP v Nestorowycz* [2008] VSC 385; *R v Nielsen* [2012] QSC 29.

[14] See, for example, Magnusson, Roger S, 'Angels of Death: Exploring the Euthanasia Underground (2002) *Melbourne University Press*.

[15] Above n 3, 538 citing L Bartels and M Otlowski, 'A Right to Die? Euthanasia and the Law in Australia' (2010) 17 *Journal of Law and Medicine* 532 at 551; M Otlowski, 'The Effectiveness of Legal Control of Euthanasia: Lessons from Comparative Law' (2002) *Recht der Werkelijkeid* 137.

by an approved medical practitioner to be self-administered by the person or administered by an approved medical or nursing practitioner.

Eligibility requirements – who can access the scheme

17. The ALA consider that eligibility requirements should be met before a person is able to access VAD, as outlined below.

Minimum age

18. VAD should be available to persons 18 years and older. This would be consistent with schemes in place in Victoria[16] and Western Australia[17] and the draft legislation annexed to the VAD report.[18]

19. However, the ALA submits that it could be appropriate to enable children to access VAD provided that they have capacity to make that type of decision and they otherwise meet the eligibility requirements under the VAD scheme. The ALA recognises that there would be a range of views regarding the involvement of children in a VAD scheme and that there may be strong objection to children being included. However, if adults are allowed to access VAD it needs to be carefully considered why children should be prevented from accessing VAD if they otherwise meet the eligibility requirements of the scheme. Denying children access to VAD could subject them to pain and suffering and the ALA considers that children should have the same options as adults for end-of-life care, unless there are strong reasons not to.

20. The ALA only supports children accessing VAD if they have the capacity to make such decisions. The ALA does not support substitute decision-makers, including parents, making those decisions on behalf of children. In Queensland, the test for capacity for children is governed by the common law, which establishes that children may have the capacity to lawfully consent to their own medical treatment when he or she has *'a sufficient understanding and intelligence to enable him or her to understand fully what is proposed'*.[19] A

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[16] *Voluntary Assisted Dying Act 2017* (Vic), s 9(a).

[17] *Voluntary Assisted Dying Act 2019* (WA), s 16(1)(a).

[18] Above n 2, 156.

[19] *Secretary, Department of Health and Community Services (NT) v JWB and SMB (Marion's case)* (1992) 175 CLR 218 at 238-239 per Mason CJ, Dawson, Toohey and Gaudron JJ, 311 per McHugh J.

parent's right to consent to treatment for a child terminates if and when the child has capacity to consent to the particular treatment.

21. If a child has capacity, the Supreme Court of Queensland has power through its *parens patriae* jurisdiction to override a child's decision if they consider it would be in the best interests of the child. The Court's *parens patriae* jurisdiction can be invoked by any person having the care of a child, including a doctor. Therefore, if a person was concerned about a child's participation in a VAD scheme, they could apply to the Supreme Court and the Court could overturn the child's decision to prevent their participation in VAD even if they had the capacity to make such a decision.

22. If eligible children were able to access VAD in Queensland, it would need to be considered whether a declaration should first be sought from the Supreme Court approving the child's decision to access VAD, before it could be permitted. The resources of the Court and the time and cost involved in seeking such a declaration would need to be considered before making this a mandatory requirement.

23. Alternatively, or in addition to seeking a declaration from the Supreme Court, safeguards could be put in place so that VAD would only be made available to children if they otherwise meet the eligibility requirements and their parents consent to their participation in the scheme.

Citizenship and residency requirements

24. To avoid VAD 'tourism', there should be a requirement that persons accessing VAD are either Australian citizens or permanent residents at the time of initiating their request to participate in a VAD scheme. These requirements would be consistent with the VAD schemes in Victoria[20] and Western Australia[21] and the draft legislation annexed to the VAD report.[22]

25. In addition, persons should be ordinarily resident in Queensland and at the time of initiating their request, have been resident in Queensland for at least 12 months. This requirement is

[20] *Voluntary Assisted Dying Act 2017* (Vic), s 9(b)(i), (ii).

[21] *Voluntary Assisted Dying Act 2019* (WA), s 16(1)(b)(i).

[22] Above n 2, 156.

consistent with the VAD schemes in Victoria[23] and Western Australia.[24] While the draft legislation annexed to the VAD report states that the person must ordinarily be resident in Queensland, there is no minimum timeframe before a resident can access the scheme.[25]

26. If the Government intends to prevent interstate travel designed solely for Australian citizens and residents to access the VAD scheme in Queensland, then a minimum timeframe should be included in the VAD scheme with regards to a person's residency.

Capacity

27. A person must have legal capacity to make the decision to end their life through VAD. The ALA does not support a scheme where substitute decision-makers can decide to end the life of another person.

28. The meaning of capacity must be clearly defined and it would be preferable that the definition be consistent with definitions in existing legislation. Under the *Guardianship and Administration Act 2000* (Qld) ('GAA'), 'capacity' in the context of health care is defined as meaning that the person is capable of understanding the nature and effect of decisions about the matter, freely and voluntarily making decisions about the matter and communicating the decisions in some way.

29. However, given the seriousness of a decision to participate in a VAD scheme, it should be considered whether additional requirements should be imposed before a person is deemed to have capacity to make decisions under a VAD scheme. For example, under section 42 of the *Powers of Attorney Act 1998* (Qld) ('PAA'), a person must understand a number of additional matters before they are considered to have capacity to make an advance health directive ('AHD'), including the nature and the likely effects of each direction in the AHD.

30. The draft legislation annexed to the VAD report proposes different wording to that used in the GAA[26] and the ALA is of the view that it would be best if there is as much consistency as possible between the definitions used in various pieces of Queensland legislation. Therefore,

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[23] *Voluntary Assisted Dying Act 2017* (Vic), s 9(b)(iii).

[24] *Voluntary Assisted Dying Act 2019* (WA), s 16(1)(b)(ii).

[25] Above n 2, 156.

[26] Above n 2, 155.

it is only if additional requirements are imposed that the ALA considers that there should be a departure from the meaning of 'capacity' as defined by the GAA.

Medical condition

31. The ALA considers that for an individual to access VAD, they must be experiencing grievous and irremediable suffering related to an advanced and progressive terminal, chronic or neurodegenerative disease, illness or condition that cannot be relieved in a manner tolerable to the person. This definition is largely consistent with Recommendation 4 of the VAD Report.[27]

Proximity to death

32. The ALA is of the view that a VAD scheme should not require that a person's death be likely to occur within a particular timeframe from the date of their request. This is consistent with Recommendation 5 of the VAD report.[28]

33. A number of jurisdictions with VAD schemes require that a person's illness, disease or medical condition will result in their death within a particular timeframe from the date they request access to VAD. For example, in Oregon, a person must have a terminal disease from which they will die within six months.[29] In Victoria, a person must be diagnosed with a disease, illness or medical condition that is expected to cause death within a period not exceeding 6 months.[30] However, if the person suffers from a neurodegenerative condition, that period of time is extended to 12 months.[31] The Western Australian scheme has similar provisions.[32]

34. The ALA submits that the imposition of a condition requiring a person's disease, illness or medical condition to result in their death within a specific period of time is problematic because it can be uncertain when a patient may die, there may be differing views within the medical profession as to when a patient's death is likely to occur and it would prevent persons with incurable chronic diseases, illnesses or medical conditions from accessing VAD when their

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[27] Above n 2, 120.

[28] Above n 2, 120.

[29] *Death with Dignity Act 1994* (Oregon).

[30] *Voluntary Assisted Dying Act 2017* (Vic), s 9(1)(d)(iii).

[31] Ibid, s 9(4).

[32] *Voluntary Assisted Dying Act 2019* (WA), s 16(1)(c)(ii).

disease, illness or medical condition may cause immense pain and suffering without any hope of reprieve.

35. There are a number of examples in the context of decisions to withdraw life-sustaining treatment that illustrate how proximity to death as an eligibility requirement would prevent certain individuals from accessing the scheme. In *Re JS*,[33] a 27 year old man who had been a quadriplegic for 20 years experienced a significant deterioration in his health and required the assistance of full time carers within a hospital setting. Due to the deterioration in his health, he decided that he no longer wished to live and asked for his mechanical ventilation to be withdrawn. Because the decision focussed on JS's capacity and potential criminal liability of his carers, specific comments were not made regarding his life expectancy. However, if he was expected to continue living with adequate supports, he would not be eligible to access a VAD scheme that imposed limits based on proximity to death. It is unclear why persons living with chronic diseases, illnesses or medical conditions should be excluded from a VAD scheme if they otherwise meet the requirements because their death is not likely to occur in the near future. In addition, those persons may decide to end their lives by withdrawing and/or withholding medical treatment. It is arguable that those methods of dying may cause additional pain and suffering to those persons than ending their lives through a VAD scheme.

Counselling services

36. The ALA supports the availability of counselling services for persons wishing to access VAD. However, the ALA does not consider that it should be a mandatory requirement for medical practitioners to offer access to counselling services or to compel a person's participation in counselling before they can access VAD. This is consistent with Recommendation 14 of the VAD Report.[34] One of the reasons for the ALA's position is that it is anticipated that there would be a component of counselling provided during the assessment by the two medical practitioners involved in the VAD process. The requirement to participate in counselling sessions could also prevent persons in rural and remote areas of Queensland from accessing VAD. It could also delay the VAD process and cause additional distress and suffering to the person seeking to access VAD.

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[33] [2014] NSWSC 302.

[34] Above n 2, 137-8.

Process

37. A VAD scheme should clearly set out the process that is required before an eligible person is permitted to self-administer medication or an eligible medical or nurse practitioner is permitted to administer the medication directly to the person. The details of the process proposed by the ALA is outlined below.

38. The person who wants to access VAD must initiate the request to a medical practitioner and the request must be made personally to the medical practitioner.

39. It must be determined by two eligible medical and/or health practitioners that the person meets the eligibility criteria, and each practitioner should provide the following information to the person about:

    a. The person's diagnosis and prognosis;

    b. The treatment options available to the person and the likely outcomes of that treatment;

    c. Palliative care options available to the person and the likely outcomes of that care;

    d. The potential risks of taking a substance likely to be prescribed under the VAD scheme for the purposes of causing the person's death;

    e. That the expected outcome of taking a substance likely to be prescribed under the VAD scheme is death; and

    f. That the person may decide at any time not to continue the request and the assessment process.

40. In Victoria, Western Australia and the draft legislation annexed to the VAD Report, there is a requirement for two medical practitioners to assess a person's eligibility for the VAD scheme.[35] However, it was raised by the Committee in the VAD Report that the Minister should consider including flexibility in any VAD scheme for applicants in rural and remote areas of Queensland where a medical practitioner or second medical practitioner is not

[35] *Voluntary Assisted Dying Act 2017* (Vic) s 6(b); *Voluntary Assisted Dying Act 2019* (WA) s 15(b); Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Voluntary assisted dying* (Queensland Parliament, Report No. 34, 56th Parliament, March 2020) 157.

available, to permit a registered nurse to participate in the scheme.[36] The ALA would support the involvement of suitably qualified nurse practitioners to participate in the scheme if they otherwise meet any training or other requirements if that would enable persons living in rural and remote areas of Queensland to access a VAD scheme.

41. After the person is deemed by two eligible practitioners to meet the eligibility requirements, a written request must be made by the person in the presence of one of the practitioners to confirm that they wish to proceed under the VAD scheme.

42. The practitioner that witnesses the written request must then apply for a permit for the person to self-administer medication or for a permit to administer the medication to the person. Once a permit is approved a person may access the medication from a prescribing body.

43. In Victoria, it is only in circumstances where the person is physically unable to self-administer the approved medication that a medical practitioner is permitted to administer the approved medication to the person.[37] This is to ensure that persons with a physical disability are not excluded from accessing VAD on account of their disability.

44. However, in Western Australia, there are additional circumstances where a medical practitioner can administer the approved medication, including where a patient has concerns about self-administration.[38]

45. In the VAD report, the Committee considered that the practitioner should have scope to determine whether self-administration or administration by the practitioner was the best method for the patient.[39] The ALA would be in support of this level of flexibility for a VAD scheme in Queensland.

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[36] Above n 2, 140.

[37] *Voluntary Assisted Dying Act 2017* (Vic), s 53(1)(b).

[38] *Voluntary Assisted Dying Act 2019* (WA), s

[39] Above n 2, 135.

Safeguards

46. Any VAD scheme must have adequate safeguards to protect vulnerable persons and should include the following:

    a. The establishment of a Board to monitor the VAD scheme, approve permits, review the exercise of any function under the VAD scheme, report to Parliament and promote compliance with the VAD scheme;

    b. Health professionals should be prevented from initiating discussions with a person or make suggestions to a person about participating in a VAD scheme. Conduct of this nature should be considered unprofessional conduct within the meaning and for the purposes of the *Health Practitioner Regulation National Law Act 2009* (Qld);

    c. A person should be required to initiate the request personally to a medical and/or nursing practitioner to give the practitioner an opportunity to explore why the person is making the request and whether there are any third parties placing pressure on the person to initiate the request.

    d. A person should not be eligible to participate in a VAD scheme if they have only been diagnosed with a mental illness as defined in section 10 of the *Mental Health Act 2016* (Qld). This is consistent with the VAD schemes in Victoria and Western Australia and the recommendations in the VAD Report[40];

    e. Eligibility criteria should be introduced for medical and/or nursing practitioners participating in a VAD scheme to ensure that they are appropriately experienced and qualified and have completed a minimum level of training regarding the VAD scheme. This would ensure that only experienced and skilled practitioners with knowledge of the VAD scheme would be able to apply for permits;

    f. Medical and/or nursing practitioners should be required to provide minimum levels of information to a person seeking access to VAD, as detailed above, to ensure that the person understands what all of their treatment options are and the consequences of participating in a VAD scheme;

[40] Above n 2, 132-3.

g. After the person is deemed to meet the eligibility criteria by two medical and/or nursing practitioners, the person must make a written request in the presence of one of the practitioners and another witness. To be an eligible witness, they should be over the age of 18, not be the person's health care provider and not someone who is likely to benefit financially from the person's death;

h. Medical and/or nursing practitioners should be required to obtain permits from the Board before medication can be prescribed and dispensed to a person. The request should be accompanied by the written request of the person and the written assessments of the medical practitioners. The requirement for the Board to issue a permit before medications are dispensed not only provides protections to medical and/or nursing practitioners but ensures that if there are any concerns regarding the application that those issues are investigated further before a permit is issued;

i. Pharmacists should be required to give information to persons when dispensing medication about how the medication is to be stored safely, labelling requirements and what will happen if the medication is administered;

j. Pharmacists must notify the Board when medication is dispensed;

k. Measures should be implemented to ensure that dispensed medications are safely stored, persons who decide not to proceed with VAD return the unused medications to the dispensing pharmacist within a specified timeframe and if some but not all of the dispensed medication is ingested, that the unused medication is returned to the dispensing pharmacist by a nominated person;

l. If a medical practitioner is permitted to administer medication to a person, the medication must be administered in the presence of an eligible witness and the Board must be notified within a reasonable timeframe after the medication is administered;

47. If a person dies as a result of their participation in a VAD scheme, the Registry of Births, Deaths and Marriages and the Coroner should be notified.

48. Eligible applicants should be able to apply to the Queensland Civil and Administrative Tribunal ('QCAT') if they consider a person does not meet eligibility requirements. Alternatively, a person should be able to apply to QCAT if their request to participate in the VAD scheme is denied.

49. Offences should be created for the following situations:

    a. Another person other than an authorised medical or nursing practitioner administers medication to a person obtained under a permit;

    b. A medical or nursing practitioner administers medication knowing that it has not been authorised by the VAD scheme;

    c. A person induces another person to request VAD;

    d. A person induces another person to self-administer medication obtained through VAD;

    e. Medical or nursing practitioners fail to notify the Board of various matters and provide documents as required under the VAD scheme.

Legal and ethical obligations of medical and/or nursing practitioners

50. The ALA submits that medical practitioners and other health practitioners should be allowed to conscientiously object to VAD and should not be forced to participate in assisted dying. The ALA recognises that there is a wide range of personal views and beliefs that will determine whether individuals support the introduction of a VAD scheme in Queensland, including within the health profession. If a VAD framework is introduced, the ALA strongly believes that the personal beliefs and values held by medical practitioners and other health practitioners should not be devalued by their forced participation in assisted dying.

51. Enabling medical practitioners and other health practitioners to conscientiously object to VAD would also provide consistency with other legislative schemes. For example, s8 of the *Termination of Pregnancy Act 2018* (Qld) enables a registered health practitioner to conscientiously object to providing information about termination services or to be involved in performing or assisting in termination of a pregnancy. In the context of VAD, s7 of the *Voluntary Assisted Dying Act 2017* (Vic) allows a registered health practitioner to conscientiously object to VAD and sets out a number of circumstances in which a health practitioner has the right to refuse.

52. Conscientious objection to VAD would also provide consistency with codes of conduct and ethics of the medical profession. For example, the Medical Board of Australia's 'Good Medical Practice: A Code of Conduct for Doctors in Australia' states that good medical practice involves

'Being aware of your right to not provide or directly participate in treatments to which you conscientiously object…'[41]

53. For the above reasons, the ALA reiterates that medical practitioners and other health practitioners should be allowed to conscientiously object to VAD.

54. If a practitioner holds a conscientious objection to VAD, the ALA is of the view that they should be legally required to advise the patient that they hold a conscientious object to VAD and refer a patient to another practitioner. While practitioners should not be forced to participate in VAD, it is important that practitioners continue to respect their patients' rights to make their own decisions and to ensure that their personal views do not adversely affect the care of their patient and prevent their access to VAD.

55. Requiring practitioners to refer a patient to another practitioner in these circumstances would also be consistent with concepts of good medical practice in codes of conduct and medical ethics.[42]

56. It may be onerous for medical practitioners to refer persons to another practitioner that they know does not hold a conscientious objection. This information may not be in the medical practitioner's means of knowledge unless a central database of medical practitioners available to participate in the VAD scheme is accessible. However, medical practitioners with a conscientious objection should be prevented from referring a person to another medical practitioner that they know also has a conscientious objection to VAD.

Conclusion

57. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the consultation being conducted by the QLRCS concerning a legal framework for voluntary assisted dying.

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[41] Medical Board of Australia, 'Good medical practice: A code of conduct for doctors in Australia' (March 2014) *Medical Board of Australia*, [2.4.6-7].

[42] Ibid, [2.4.6].

58. As discussed above, the ALA supports the introduction of a VAD scheme allowing eligible persons to self-administer medication or for an approved medical or nursing practitioner to administer the medication.

59. The activity being regulated must be clear and there are a number of eligibility requirements that should be implemented, including the requirement that a person have capacity to access the scheme. The process to access VAD should be clear and include a number of safeguards to ensure that only eligible persons can access the scheme, to protect vulnerable persons and to protect members of the medical profession that choose to participate in the scheme. A Board should be created to oversee the VAD scheme and offences should be created to deter those from acting outside of the scheme.

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