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Voluntary assisted dying—Australia in an international context

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ABSTRACT

Since 2017, highly prescriptive voluntary assisted dying (VAD) laws have been adopted in all Australian states and one self-governing territory. The unique features of the Australian model and salient differences between Australian states and territories are poorly understood internationally. In this article, we provide an overview of the distinctive features of the Australian model of VAD and engage in a detailed comparison with legislation regulating assisted dying or euthanasia in other jurisdictions. We focus on variations in the eligibility criteria for accessing VAD, the request and assessment process, and the permitted method/s of administration. We also consider different international regimes permitting conscientious objection and regulating institutional objection to participating in VAD. Several distinctive features of the Australian model—such as a differential timeframe to death for different medical conditions, express residency requirements, the prohibition on health practitioners initiating conversations about VAD, and legal restrictions on the availability of practitioner administration—have already served as models for other countries in enacting VAD laws. As other countries consider legalizing the practice, there is much to learn from the Australian model.

KEYWORDS: eligibility; euthanasia; international comparison; legislation; MAiD; voluntary assisted dying

I. INTRODUCTION

There has been a seismic shift in the regulation of assisted dying around the world over the past decade.[1] Assisted dying in at least some form is now legal in 15 countries[2] worldwide. Laws have been enacted but not yet commenced in Portugal, the Isle of Man,

[1] For previous comparative reviews, see N Steck and others, 'Euthanasia and Assisted Suicide in Selected European Countries and US States: Systematic Literature Review' (2013) 51 Medical Care 938; O Dyer, C White and A García Rada, 'Assisted Dying: Law and Practice Around the World' (2015) 351 British Medical Journal h4481; S Mroz and others, 'Assisted Dying around the World: A Status Quaestionis' (2021) 10 Annals of Palliative Medicine 3540, 3541 ('Mroz').

[2] Netherlands, Belgium, Luxembourg, Switzerland, Spain, Germany, Austria, Canada, Colombia, New Zealand, Ecuador, 11 out of 50 jurisdictions in the USA, and 7 out of 8 jurisdictions in Australia. Assisted dying is also legal in very limited circumstances in Italy and Peru, pursuant to court decisions: see n 19 and 20.

and Cuba,[3] and draft laws have been introduced in jurisdictions including Scotland,[4] Ireland,[5] England and Wales,[6] and South Korea.[7] Since 2017, Australia has seen a similar wave of legislative change. After 24 years of unsuccessful attempts at law reform,[8] all six states and one territory have legalized 'voluntary assisted dying' (VAD).[9] Australia's other self-governing territory, the Northern Territory, is also considering reform.[10]

Although there are differences between the seven Australian VAD laws, there are sufficient similarities to comprise a unique 'Australian model' of VAD.[11] This article provides an overview of this distinctive Australian model and situates it in the context of VAD laws worldwide. A comparative law method, drawing explicit comparisons between legal systems,[12] is adopted not to urge harmonization of assisted dying laws,[13] but to explore the variety of approaches taken internationally, and offer aspects of the Australian approach as an additional option for those jurisdictions currently considering reform. The article focuses on those jurisdictions where VAD is regulated by legislation[14] or administrative regulations,[15] including Portugal, although the law there has not yet commenced operation. Switzerland,[16] Cuba,[17] Germany,[18] Italy,[19] and Peru[20] are not considered in detail, as VAD is not regulated by legislation in those countries. A comparative evaluation of VAD in practice is beyond the scope of this article.

[3] Law no 22/2023, *Diário da República* no 101/2023, Série I de 2023-05-25, páginas 10–20 [Law no 22/2023] ('*Portugal Law*'); *Assisted Dying Act 2025* (Isle of Man) and Ley No 41, *Ley de la Salud Pública* of December 2023, arts 4.1, 159 ('*Cuba Public Health Law*').

[4] Assisted Dying for Terminally Ill Adults (Scotland) Bill 2024 (introduced March 2024).

[5] Voluntary Assisted Dying Bill 2024 (Ireland) (introduced 25 June 2024).

[6] Terminally Ill Adults (End of Life) Bill 2024 (England and Wales) (introduced October 2024).

[7] A bill for an Act on Assisted Dying with Dignity was introduced by Rep. Ahn Kyu-baek of the Democratic Party of Korea in September 2024.

[8] Beginning in 1993: *Voluntary and Natural Death Bill 1993* (ACT). Euthanasia was briefly legal in the Northern Territory under the *Rights of the Terminally Ill Act 1995* (NT), until that legislation was overturned by the *Euthanasia Laws Act 1997* (Cth). Aside from this, no bills passed until the *Voluntary Assisted Dying Act 2017* (Vic) ('*Vic Act*'). See Lindy Willmott and others, '(Failed) Voluntary Euthanasia Law Reform in Australia: Two Decades of Trends, Models and Politics' (2016) 39 UNSW Law Journal 1.

[9] *Vic Act* ibid; *Voluntary Assisted Dying Act 2019* (WA) ('*WA Act*'); *End-of-Life Choices (Voluntary Assisted Dying) Act 2021* (Tas) ('*TAS Act*'); *Voluntary Assisted Dying Act 2021* (SA) ('*SA Act*'); *Voluntary Assisted Dying Act 2021* (Qld) ('*QLD Act*'); *Voluntary Assisted Dying Act 2022* (NSW) ('*NSW Act*'); *Voluntary Assisted Dying Act 2024* (ACT) ('*ACT Act*').

[10] A recent report recommended the Northern Territory legalise VAD: Voluntary Assisted Dying Independent Expert Advisory Panel, Report into Voluntary Assisted Dying in the Northern Territory, June 2024 <https://cmc.nt.gov.au/__data/assets/pdf_file/0018/1420722/vad-report-2024.pdf> accessed 11 July 2025.

[11] K Waller and others, 'Voluntary Assisted Dying in Australia: A Comparative and Critical Analysis of State Laws' (2023) 46 UNSW Law Journal 1421, 1423 ('Waller').

[12] We use this term in Reitz' sense: JC Reitz, 'How to Do Comparative Law' (1998) 46 American Journal of Comparative Law 617, 618.

[13] A primary goal of comparative lawyers: See Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (Tony Weir tr, 3rd edn, OUP 1998) 15–18, 58–62.

[14] Netherlands, Belgium, Luxembourg, Canada, Spain, Portugal, New Zealand, Austria, states of the USA, and Australia.

[15] Colombia and Ecuador.

[16] In Switzerland, VAD is an exception to the criminal law: *Schweizerisches Strafgesetzbuch* 21 December 1937, SR 311, art 115. See O Guillod and A Schmidt, 'Assisted Suicide under Swiss Law' (2005) 12(1) European Journal of Health Law 25, 29.

[17] In Cuba, specific legislation is yet to be enacted to give effect to the right contained in the *Cuba Public Health Law* art 159.

[18] In Germany, the Constitutional Court endorsed an unqualified right to access VAD, irrespective of a person's medical condition: Bundesverfassungsgericht, Urteil des Zweiten Senates, 2 BvR 2347/15 (26 February 2020).

[19] In Italy, only persons dependent on life-sustaining treatment may access VAD: Corte Costituzionale, *Ordinanza No 207/2018* (24 Octobre 2018); Corte Costituzionale, *Ordinanza No 242/2019* (25 Septembre 2019). See E Turillazzi and others, 'Physician–Patient Relationship, Assisted Suicide and the Italian Constitutional Court' (2021) 18 Journal of Bioethical Inquiry 671.

[20] In Peru, one person has been granted access to euthanasia, but this decision does not establish a constitutional right for other individuals: Corte Suprema de Justicia de la República, *Ombudsman's Office v Ministry of Health; Ex parte Ana Estrada Ugarte*, Consulta Expediente No 14442-2021, Sentencia del 22 de julio de 2022. See K Del Villar, 'Recent Developments: Assisted Dying in Peru, Cuba and Ecuador' in BP White (ed), *Law and Assisted Dying Research Handbook* (Edward Elgar, 2025) (forthcoming).

Section II provides an overview of the Australian model of VAD. The article then engages in a detailed comparison between features of the Australian model and other VAD laws internationally, considering eligibility criteria (Section III), assessment process (Section IV), method of administration (Section V), and conscientious objection (Section VI), before offering concluding observations (Section VII). Various expressions are used for the practice of VAD,[21] including 'euthanasia' in the Netherlands,[22] Belgium,[23] Luxembourg,[24] Colombia,[25] Spain,[26] and Ecuador[27]; 'medical assistance in dying' (MAiD) in Canada[28] and the US states[29]; 'medically assisted dying' in Portugal[30]; 'assisted dying' in New Zealand[31]; and the unique and untranslatable term *Sterbeverfügung* ('Death Decree' or 'Death Directive') in Austria.[32] Because this article aims to situate the Australian model in a global context, we refer to all these practices using the Australian terminology 'voluntary assisted dying' (VAD).[33]

II. OVERVIEW OF VAD IN AUSTRALIA

In just 5 years from 2017 to 2022, all six Australian States passed legislation permitting VAD in certain circumstances. The Australian Capital Territory followed in 2024. Table 1 sets out when these laws commenced.

The 'Australian model' of VAD allows persons with a terminal illness who are at the end of life to receive medical assistance to die. Access to VAD is restricted to adults who have decision-making capacity, have a medical condition that is advanced, progressive, and expected to cause death, usually within a 6- to 12-month timeframe, and are experiencing suffering. In addition, they must be an Australian citizen or resident (except in the ACT) and have lived in the relevant jurisdiction for at least 12 months, although some jurisdictions allow exemptions to these requirements.[34]

The laws in all seven Australian jurisdictions contain a highly prescriptive request and assessment process. A person must make three requests for VAD (one must be in writing and witnessed) and undergo formal eligibility assessments by two independent medical practitioners.[35] There is mandatory contemporaneous reporting at every step of the process.

[21] See J Downie and others, 'Assistance in Dying: A Comparative Look at Legal Definitions' (2022) 46 Death Studies 1547.

[22] *Wet Toetsing Levensbeëindiging op Verzoek en Hulp Bij Zelfdoding* (Netherlands) 2001 ('*Netherlands Act*').

[23] *Loi Relative à L'Euthanasie* (Belgium) 28 May 2002 ('*Belgium Act*').

[24] *Loi du 16 mars 2009 sur l'euthanasie et l'assistance au suicide* (Luxembourg) 16 March 2009 ('*Luxembourg Act*').

[25] Resolution on the Right to Die with Dignity through Euthanasia: Ministerio de Salud y Protección Social, *Resolución 971 of 2021* arts 1, 24 ('*Colombia Resolution*').

[26] *Ley Orgánica 3/2021, de 24 de Marzo, de Regulación de la Euthanasia* (Spain) ('*Spain Act*').

[27] Ministerio de Salud Pública, *Reglamento para la Aplicación de la Eutanasia Activa Voluntaria y Avoluntaria en Ecuador* (12 April 2024) No 00059-2024 ('*Ecuador Regulations*').

[28] *Canadian Criminal Code*, RSC 1985, c C-46, ss 241.1–241.4 ('*Canada Act*').

[29] See TM Pope, 'Medical Aid in Dying: Key Variations Among U.S. State Laws' (2020) 14 Journal of Health and Life Sciences Law 25 ('Pope'); S Blouin, SM Gerson and S Cavalli, Assistance in Dying Across Borders: How the Transnational Circulations of Persons, Terms and Themes Influence the Construction of a Public Problem' (2022) 46(7) Death Studies 1557, 1562–3.

[30] *Portugal Law* (n 3).

[31] See *End of Life Choice Act 2019* (NZ) ('*NZ Act*') s 4, Pt 2.

[32] *Gesamte Rechtsvorschrift für Sterbeverfügungsgesetz* (Austria) BGBl I, 242/2021, ss 1, 6(3) ('*Austria Act*').

[33] *Vic Act* (n 8); *WA Act* (n 9); *SA Act* (n 9); *QLD Act* (n 9); *NSW Act* (n 9); *ACT Act* (n 9). A 'Voluntary Assisted Dying Bill 2024' was also introduced in the Irish Oireachtas (Parliament) on 25 June 2024.

[34] Discussed in Section III.

[35] In the ACT, one of these practitioners may be a nurse practitioner: *ACT Act* (n 9) s 89(1).

Table 1. Australian VAD laws.

State or territory	Legislation	Date Law Passed	Date Law Commenced
Victoria	*Voluntary Assisted Dying Act 2017* (Vic)	19 November 2017	19 June 2019
Western Australia	*Voluntary Assisted Dying Act 2019* (WA)	10 December 2019	1 July 2021
Tasmania	*End of Life Choices (Voluntary Assisted Dying Act) 2021* (Tas)	23 March 2021	23 October 2022
South Australia	*Voluntary Assisted Dying Act 2021* (SA)	24 June 2021	31 January 2023
Queensland	*Voluntary Assisted Dying Act 2021* (Qld)	16 September 2021	1 January 2023
New South Wales	*Voluntary Assisted Dying Act 2022* (NSW)	19 May 2022	28 November 2023
Australian Capital Territory	*Voluntary Assisted Dying Act 2024* (ACT)	5 June 2024	3 November 2025

In five states, self-administration of VAD is preferred, but practitioner administration is allowed if particular legislative criteria are satisfied.[36] In four states, the person chooses the method of administration in accordance with the statutory criteria and in consultation with their doctor.[37] Four states require pre-authorization from a government body before the VAD substance is prescribed and administered.[38]

The Australian model of VAD was informed by international experience, with parliamentary committees travelling internationally[39] and considering international models as part of their research.[40] Some components of Australian VAD laws reflect laws operating in other jurisdictions, particularly Oregon. But there are also unique eligibility requirements, distinctive process features, and other unique aspects of the Australian model of VAD, which we outline in the sections below.

III. ELIGIBILITY CRITERIA

The Australian eligibility criteria for VAD reflect a preference for the approach taken in Oregon and other US states, rather than the broader approach of Canada, Belgium, and the Netherlands.[41] In all seven Australian jurisdictions, VAD is only an option for a person with

[36] Discussed in Section V.

[37] *WA Act* (n 9) s 56(1); *QLD Act* (n 9) s 50(1); *NSW Act* (n 9) s 57(1); *TAS Act* (n 9) ss 83 and 86.

[38] Discussed in Section V.B.

[39] The Victorian parliamentary committee travelled to the Netherlands, Switzerland, Canada and Oregon: Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into End of Life Choices* (Final Report, 9 June 2016), 7 ('*Victorian Parliamentary Inquiry*').

[40] Victorian Government, *Ministerial Advisory Panel on Voluntary Assisted Dying* (Final Report, 21 July 2017) 8 ('*Victorian Panel Report*') 37–38, 216–28; Joint Select Committee on End of Life Choices, Parliament of Western Australia, *My Life, My Choice* (Report No 1, 23 August 2018) 8; Ministerial Expert Panel on Voluntary Assisted Dying, Department of Health (WA), *Final Report* (Report, 27 June 2019) ('*WA Panel Report*') 2, 126; Queensland Law Reform Commission, *A Legal Framework for Voluntary Assisted Dying* (Report No 79, May 2021) 14–15, 692–97 ('*QLRC Report*').

[41] See *Victorian Panel Report* ibid 53, 55, 56, 63, 69.

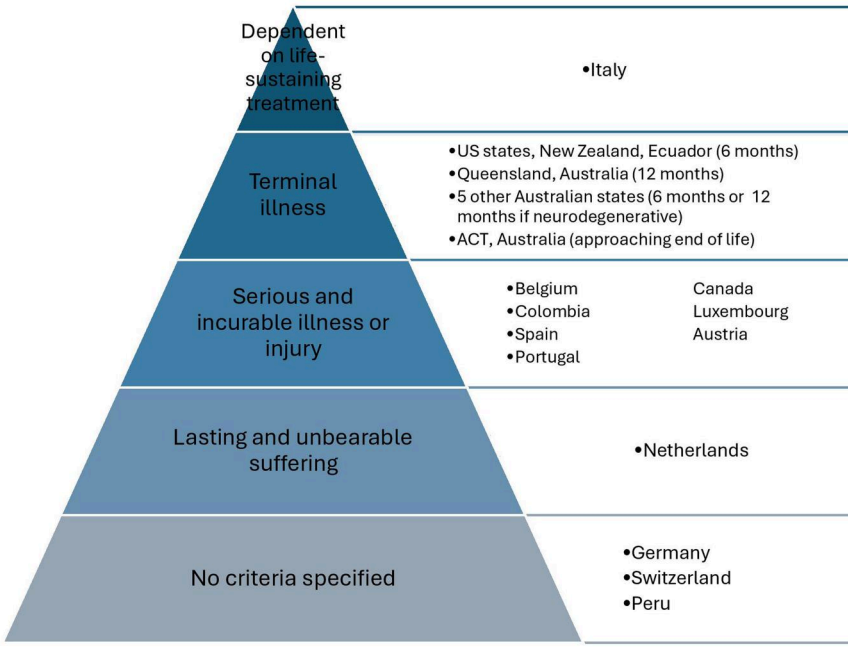

Figure 1. Disease or medical condition eligibility requirement (by jurisdiction)

a terminal illness, who is an adult, has decision-making capacity, and freely and voluntarily requests access to VAD. Each Australian state also has two separate residence requirements in its eligibility criteria.[42] We set out these criteria in turn.

A. Medical condition

Globally, there is a range of approaches to eligibility (Fig. 1). VAD was first legislated for in Oregon, USA, which confined access to people who are terminally ill and expected to die within 6 months.[43] This narrow approach has since been replicated by all US states with VAD laws.[44]

In contrast, in most European jurisdictions and Canada, a person does not need to be imminently dying. In the Netherlands, a person may be eligible if they are experiencing 'lasting and unbearable suffering' for which they believe there is no reasonable solution.[45] In Belgium and Luxembourg, unbearable physical or mental suffering must be caused by a 'medically hopeless condition' which results from a serious and incurable illness, injury, or disability.[46] The Belgian model has broadly been adopted in Canada, Austria, Spain,

[42] *Vic Act* (n 8) s 9(1); *WA Act* (n 9) s 16(1); *SA Act* (n 9) s 26(1); *TAS Act* (n 9) ss 7, 11; *QLD Act* (n 9) s 10(1); *NSW Act* (n 9) s 16(1); *ACT Act* (n 9) s 11(1). For more detailed comparison of the eligibility criteria, see Waller (n 11), 1425–26.

[43] *Death with Dignity Act*, Or Rev Stat ss 127.800–127.897 (1994) (Oregon) ('*Oregon Act*') s 127.805.2.01. See also H Hendin and K Foley, 'Physician-Assisted Suicide in Oregon: A Medical Perspective' (2008) 106(8) Michigan Law Review 1613, 1615.

[44] Pope (n 29) 32.

[45] *Netherlands Act* (n 22) art 2(1)(b) and (d).

[46] *Belgium Act* (n 23) art 3(1); *Luxembourg Act* (n 24) art 2.1(3).

Portugal, and Colombia.[47] Figure 1 represents the breadth of scope of the medical condition eligibility criterion across countries permitting VAD. It includes the approach taken by courts in Switzerland, Germany, Italy, and Peru to illustrate the diversity of approaches.[48]

The Australian model of VAD reflects a unique fusion of the American and Canadian/European criteria. Restricting access to VAD to a person who is terminally ill reflects the US model.[49] However, the Australian requirement that the person's medical condition be 'advanced and progressive'[50] is not found in the US model, but resembles the Canadian requirement that a person be 'in an advanced state of irreversible decline'.[51] The additional requirement that the person's condition is causing them 'intolerable suffering', which cannot be relieved by other means,[52] is found in VAD regimes around the world, with the notable exceptions of the American states and Spain.

All six Australian states adopted the Oregonian approach that a person must be expected to die within a specified timeframe to be eligible for VAD. In ACT, the person must be 'approaching the end of their life', although no timeframe is specified.[53] Uniquely, most Australian states have adopted differential timeframes until death, depending on whether the person's condition is neurodegenerative or not. This bifurcation is the product of political compromise in Victoria, the first Australian state to legalize VAD. The draft law recommended a 12-month timeframe to death,[54] which was reduced to six months during parliamentary debate, and the original 12 months was retained only for people with neurodegenerative conditions.[55] This differential timeframe until death was subsequently adopted in four other Australian states.[56] Queensland has adopted a uniform 12-month timeframe for all medical conditions,[57] and no timeframe to death is specified in the ACT.[58]

Subsequent countries to incorporate a timeframe until death have not adopted the Australian differential approach. This is understandable, given that this distinction resulted from political compromise and has been criticized as illogical.[59] New Zealand, which based its VAD law to a considerable extent on the Australian model, has adopted a simple 6-month timeframe to death,[60] as did Ecuador in relation to serious and incurable illnesses.[61] However, surprisingly, the differential 6/12 month timeframe has been recommended for VAD legislation in both Ireland[62] and Jersey.[63]

[47] *Austria Act* (n 32) s 6(3); *Spain Act* (n 26) art 5(1)(d); *Canada Act* (n 28) s 241.2(2); *Colombia Resolution* (n 25) art 7; *Portugal Law* (n 3) art 3(1).

[48] For discussion of the situation in these countries, see (n 16–19).

[49] *Victorian Parliamentary Inquiry* (n 39), 217–18, 228. See also B White and others, 'Comparative and Critical Analysis of Key Eligibility Criteria for Voluntary Assisted Dying Under Five Legal Frameworks' (2021) 44 UNSW Law Journal 1663, 1666.

[50] *Vic Act* (n 8) s 9(d)(ii); *WA Act* (n 9) s 16(c)(i); *SA Act* (n 9) s 26(d)(ii); *QLD Act* (n 9) s 10(1)(a)(i); *NSW Act* (n 9) s 16(1)(d)(i); *ACT Act* (n 9) s 11(1)(b). The Tasmanian law requires the condition to be advanced, but not progressive: *TAS Act* (n 9) s 6(1)(a).

[51] *Canada Act* (n 28) s 241.2(2)(b).

[52] *Vic Act* (n 8) s 9(1)(d)(iv); *WA Act* (n 9) s 16(1)(c)(iii); *SA Act* (n 9) s 26(1)(d)(iv); *NSW Act* (n 9) s 16(1)(d)(iii); *QLD Act* (n 9) s 10(1)(a)(iii); *TAS Act* (n 9) s 10(1)(e); *ACT Act* (n 9) s 11(1)(c).

[53] *ACT Act* (n 9) s 11(3)(c).

[54] *Victorian Panel Report* (n 40) 70–74.

[55] Victoria, *Parliamentary Debates*, Legislative Council, 16 November 2017, 6098 (Gavin Jennings); Victoria, *Parliamentary Debates*, Legislative Council, 21 November 2017, 6216 (Gavin Jennings).

[56] *WA Act* (n 9) s 16(1)(c)(ii); *SA Act* (n 9) s 26(1)(d)(iii) and (4); *TAS Act* (n 9) s 6(1)(c), 7; *NSW Act* (n 9) s 16(1)(d)(ii).

[57] *QLD Act* (n 9) s 10(1)(a)(ii).

[58] *ACT Act* (n 9) s 11(1)(b) and 11(3)(c).

[59] See B White and others, 'Does the *Voluntary Assisted Dying Act 2017* (Vic) Reflect Its Stated Policy Goals?' (2020) 43 UNSW Law Journal 417, 433.

[60] *NZ Act* (n 31) s 5(1)(c).

[61] *Ecuador Regulations* (n 27) art 3. Euthanasia is also permitted for persons with a 'serious and irreversible bodily injury', which is defined as one with a fatal prognosis 'within a short period of time': ibid.

[62] Houses of the Oireachtas Joint Committee on Assisted Dying *Final Report* (March 2024), Recommendation 27.

[63] States of Jersey, Council of Ministers, *Assisted Dying: Report and Proposition* (P18/2024), [34], [37]–[38].

B. Age

Like many other jurisdictions, all Australian jurisdictions limit access to VAD to adults (18 years and over).[64] Internationally, only the Netherlands, Belgium, and Colombia permit access to VAD by children or adolescents, although Canada is also considering allowing mature minors to access VAD.[65]

C. Capacity and advance directives

The Australian model of VAD also emphasizes voluntary contemporaneous decision-making. A person must have decision-making capacity when first requesting access to VAD, and at all points where a decision is required, including making a final decision to access VAD.[66] In all jurisdictions except Victoria, a separate criterion is that the decision is the person's free and voluntary choice.[67]

Consistent with the focus on a person's voluntary and capacitous decision, in Australia, like several other countries,[68] a person cannot request VAD in an advance directive. In contrast, in Spain, the Netherlands, Colombia, and Ecuador, VAD may be requested through an advance directive.[69] In Belgium and Luxembourg, VAD can be provided through an advance directive only when the person is unconscious and their condition is irreversible.[70] Finally, in Canada, a 'final consent waiver' can be signed by a person who is eligible for MAiD, whose natural death is reasonably foreseeable, and who has set a date for administration of MAiD, but risks losing capacity before that date.[71] Whether advance directives for MAiD should be permitted in broader circumstances is being actively debated in Canada.[72]

D. Residence requirements

Another feature of Australia's VAD laws is its residence requirements. Like the USA, Australia is a federation, and VAD is regulated at a state and territory level, resulting in a patchwork of separate, although similar, laws. Unlike the US states, however, Australian states have adopted extremely restrictive residence requirements, generally requiring a connection at both a national and state level. All Australian states incorporate two residency eligibility criteria for VAD (with provision for exemptions in Queensland, NSW, and the ACT):[73]

1) A person must be either an Australian citizen or a permanent resident[74] (or, in some states resident in Australia for at least 3 years[75]), and

[64] *NSW Act* (n 9) s 16(1)(a); *QLD Act* (n 9) s 10(1)(d); *SA Act* (n 9) s 26(1)(a); *TAS Act* (n 9) s 7(a); *Vic Act* (n 8) s 9(1)(a); *WA Act* (n 9) s 16(1)(a); *ACT Act* (n 9) s 11(1)(a).

[65] Parliament of Canada, Special Joint Committee on Physician Assisted Dying. *Medical Assistance in Dying in Canada: Choices for Canadians* (Ottawa, February 2023) 54–65 ('*Canadian Parliament MAiD Review 2023*').

[66] *NSW Act* (n 9) s 16(1)(e); *QLD Act* (n 9) s 10(1)(b); *SA Act* (n 9) s 26(1)(c); *TAS Act* (n 9) s 10(1)(c); *Vic Act* (n 8) s 9(1)(c); *WA Act* (n 9) s 16(1)(d); *ACT Act* (n 9) s 11(1)(d).

[67] *NSW Act* (n 9) s 16(1)(f); *QLD Act* (n 9) s 10(1)(c); *SA Act* (n 9) s 26(1)(e); *TAS Act* (n 9) s 10(1)(d); *WA Act* (n 9) s 16(1)(e); *ACT Act* (n 9) s 11(1)(e).

[68] In NZ, this is expressly stipulated in *NZ Act* (n 31) s 33(1).

[69] *Spain Act* (n 26) arts 5(2) and 6(4); *Netherlands Act* (n 22) art 2(2); *Colombia Resolution* (n 25), arts 6 and 10; *Ecuador Regulations* (n 27) arts 3 and 5.

[70] *Belgium Act* (n 23) art 4(1) and (2); *Luxembourg Act* (n 24) art 4(1).

[71] *Canada Act* (n 28) s 241.2(3.2). MAiD can also be provided by an advance directive when self-administration has failed, but the person does not have capacity to request practitioner administration: s 241.2(3.5). But this is rarely used.

[72] *Canadian Parliament MAiD Review 2023* (n 65) 66–73.

[73] See *QLD Act* (n 9) ss 10(1)(f)(ii) and 12(2); *NSW Act* (n 9) s 17(1) and (2); *ACT Act* (n 9) s 11(1)(f)(ii).

[74] *Vic Act* (n 8) s 9(1)(b)(i); *WA Act* (n 9) s 16(1)(b)(i); *SA Act* (n 9) s 26(1)(b)(i).

[75] *TAS Act* (n 9) s 11(1)(a)(iii); *NSW Act* (n 9) s 16(1)(b)(iii); *QLD Act* (n 9) s 10(1)(e)(iii). Queensland's law also includes a New Zealand citizen resident in Australia *QLD Act* (n 9) s 10(2)(b). See Waller (n 11) 1427–28. The ACT does not include the Australian citizenship or residence requirement.

2) A person must be a resident in the state for 12 months before applying to access VAD.[76]

These criteria are designed to prevent people travelling from other countries or other Australian states or territories from accessing VAD.[77] Unfortunately, the stringency of these requirements means that some individuals who have not formally applied for citizenship or permanent residency will be ineligible for VAD despite having resided in Australia for decades.[78] Others will be ineligible (unless an exemption is granted) if they move states and are diagnosed with a terminal condition before residing in the new state for 12 months.[79]

In contrast, residence has not been a focus of VAD eligibility criteria under most international frameworks. Those European countries where VAD is long established—Belgium, Netherlands, Luxembourg, and Switzerland—do not require a person to be a citizen or resident. Switzerland openly offers VAD services to non-Swiss residents, and increasing numbers of foreign residents are accessing VAD in Belgium.[80]

Other countries require a person to reside in the jurisdiction, but not achieve any particular immigration status, to access VAD. Colombian law also applies to 'Colombian citizens and foreigners domiciled in the country'.[81] In Canada, a person must be a resident or a temporary resident to access MAiD.[82] In the USA, a person must be a resident of the relevant state or district,[83] but there is no minimum residency period, so a person may move to a state where VAD is legal to access the procedure.[84] Some US states, such as Vermont and Oregon, have repealed their residency requirement.[85]

The Australian focus on citizenship and long-term residence as a criterion of eligibility has proven influential in countries that legalized VAD more recently. New Zealand and Ecuador are the most restrictive—a person must be either a citizen or a permanent resident to access VAD.[86] In Spain, a person must have Spanish nationality, legal residence in Spain, or a certificate of registration in Spanish territory greater than 12 months.[87] In Austria, a

[76] *Vic Act* (n 8) s 9(1)(b)(ii) and (iii); *WA Act* (n 9) s 16(1)(b)(ii); *SA Act* (n 9) s 26(1)(b)(ii) and (iii); *QLD Act* (n 9) s 10(1)(c)(f); *TAS Act* (n 9) s 11(1)(b); *NSW Act* (n 9) s 16(1)(c); *ACT Act* (n 9) s 11(1)(f)(i).

[77] *Victorian Panel Report* (n 40) 56; *Victorian Parliamentary Report* (n 39), 221; *WA Panel Report* (n 40), 20; *QLRC Report* (n 40), [7.435].

[78] The extent of this problem is discussed in K Del Villar, L Willmott and B White, 'The Exclusion of Long-Term Australian Residents from Access to Voluntary Assisted Dying: A Critique of the 'Permanent Resident' Eligibility Criterion' (2023) 49 Monash University Law Review 1; L Willmott and others, '"Participating Doctors" Perspectives on the Regulation of Voluntary Assisted Dying in Victoria: A Qualitative Study' (2021) 215 Medical Journal of Australia 125, 127.

[79] This has already occurred in several cases. See K Del Villar, R Jeanneret and BP White 'When Safeguards Become Stumbling Blocks: A Call to Remove the State Residence Requirement for Voluntary Assisted Dying in Australia' (2025) 48 UNSW Law Journal (forthcoming); A Ricciardo, Voluntary Assisted Dying and State Residence Requirements: A Western Australian Perspective' (2024) 51 UWA Law Review 146.

[80] See K Del Villar and A Simpson, 'Voluntary Assisted Dying for (Some) Residents Only: Have States Infringed Section 117 of the *Constitution*?' (2022) 45 Melbourne University Law Review 996, 1007; F Béguin, 'Belgium's Reluctant Embrace of French Euthanasia Seekers' (*WorldCrunch*, 19 March 2020) <https://worldcrunch.com/culture-society/belgium39s-reluctant-embrace-of-french-euthanasia-seekers> accessed 1 May 2025.

[81] *Colombia Resolution* (n 25) art 2.4.

[82] *Canada Act* (n 28) s 241.2(1)(a).

[83] *Death with Dignity Act*, Wash Rev Code ss 70.245.010–70.245.903 (2008) (Washington) ('*Washington Act*'); ss 70.245.040(1)(b) and 70.245.130; *End of Life Option Act*, Cal Health and Safety Code ss 443–443.22 (West 2015) (California) ('*California Act*') s 443.2(3); *Death with Dignity Act* of 2016, DC Code ss 7-661.01–7-661.16 (2017) (DC) ('*DC Act*') s 7–661; *Colorado End-of-Life Options Act*, Colo Rev Stat ss 25–48-101–25–48-123 (2017) (Colorado) ('*Colorado Act*') s 25–48-103(1); *Our Care, Our Choice Act*, Haw Rev Stat ss 327L-1–327L-25 (2018) (Hawaii) ('*Hawaii Act*') ss 327L-2 and 327L-13; *Medical Aid in Dying for the Terminally Ill Act*, NJ Stat Ann s 26:16-1–26:16-20 (West 2021) (New Jersey) ('*NJ Act*') s 26:17-4(a); *Maine Death with Dignity Act*, 22 Me Rev Stat Ann s 2140 (2019) (Maine) ('*Maine Act*') s 2140.4; *Elizabeth Whitefield End-of-Life Options Act*, NM Stat section 3 (2021) (New Mexico) ('*NM Act*') s 24-7C-2(A).

[84] See Del Villar and Simpson (n 80) 1035; Pope (n 29) 37–38.

[85] See TM Pope, 'Medical Aid in Dying Laws: More Accessible in More States' (2024) 332 Journal of the American Medical Association 1139.

[86] *NZ Act* (n 31) s 5(1)(b); *Ecuador Regulations* (n 27) art 4(a) and (b).

[87] *Spain Act* (n 26) art 5(1)(a).

person must have 'habitual residence in Austria' or be an Austrian citizen,[88] and in Portugal, a person must be a national or citizen legally residing in Portugal.[89] It is not yet clear whether, as with US states, a person can take up residence in Austria or Portugal to access VAD, or the 'habitual residence' or 'legal residence' criterion will be more strictly interpreted.

It is worth emphasizing that no international jurisdiction has adopted the 12-month minimum state residence requirement imposed in all of the Australian jurisdictions. This means that a citizen or permanent resident of those countries who is living abroad when diagnosed with a serious and incurable condition may return home to access VAD. This is not generally possible in Australia, due to the 12-month State/territory residence requirement.

IV. PROCESS FEATURES

The VAD request and assessment process is broadly similar across Australia, requiring at least three separate requests and two independent eligibility assessments. Although VAD laws in other countries also generally require independent confirmation of eligibility by medical practitioners,[90] the level of prescription in the Australian VAD request and assessment process is unparalleled.[91] Salient differences between the Australian model and international VAD laws are outlined below.

A. Two independent eligibility assessments

In each Australian state, a person must be assessed by two independent medical practitioners (coordinating and consulting practitioners) as meeting the eligibility criteria for VAD.[92] In the ACT, one of the assessors can be a nurse practitioner.[93] In most states, the person undergoes one formal eligibility assessment by each practitioner. In Tasmania, the process is significantly more complex—a person undergoes three formal eligibility assessments by the primary medical practitioner,[94] each at least 48 h apart, and a fourth eligibility assessment by a second medical practitioner.[95] Tasmanian data suggests that the average time between first and final requests is comparable with other Australian states, despite these additional assessments.[96]

The requirement for two (or more) independent medical assessments of a person's eligibility for VAD is common to most countries that permit VAD,[97] although in Canada, nurse practitioners can also assess eligibility. This requirement reflects the significance of a person's decision to end their life and the need to ensure compliance with legislative eligibility criteria. Spain is the only country that, like Tasmania, requires repeat eligibility assessments

[88] *Austria Act* (n 32) s 1(2).

[89] *Portugal Law* (n 3) art 3(2).

[90] See Mroz (n 1) 3546–3547 (Table 2).

[91] ibid.

[92] *Vic Act* (n 8) Part 3; *WA Act* (n 9) pt 3; *SA Act* (n 9) pt 4; *QLD Act* (n 9) pt 3; *TAS Act* (n 9) pts 3–10; *NSW Act* (n 9) pt 3; *ACT Act* (n 9) pt 3. See generally, Waller (n 11) 1437–39.

[93] *ACT Act* (n 9) ss 89(1)(a) and 97(3).

[94] *TAS Act* (n 9) ss 26, 33, and 55.

[95] *TAS Act* (n 9) s 47.

[96] The average time from first request to final request in Tasmania was 18 days, and 14 days in Victoria: Tasmanian Government, Department of Health, *Voluntary Assisted Dying Commission Annual Report 2023-24* (23 September 2024), 11; Victorian Government, Department of Health, *Voluntary Assisted Dying Review Board Annual Report July 2023 to June 2024*, 17 ('*VADRB Report Victoria*').

[97] *Netherlands Act* (n 22) art 2(1)(e); *Belgium Act* (n 23) art 3(2)(3), *Luxembourg Act* (n 24) art 2(2)(3). In US states, see eg *Oregon Act* (n 43) ss 127.815 and 127.820. See generally, Pope (n 29) 38; *Canada Act* (n 28) ss 241.2(3)(e) and (3.1)(e); *Spain Act* (n 26) art 8; *Austria Act* (n 32) s 7(1); *Portugal Law* (n 3) arts 5 and 6.

by the primary medical practitioner (in that country, at least 15 days apart) before the patient is independently assessed by a consulting physician.[98]

Colombia and Ecuador are exceptions. In both countries, the process involves only a single assessment of a person's medical condition by a medical practitioner.[99] In Ecuador, additional reports by a clinical psychologist; a psychiatrist; and a socioeconomic report by a social worker are also compulsory.[100] A second eligibility evaluation is conducted by an interdisciplinary committee established within the healthcare institution.[101]

B. Mandatory additional eligibility assessments

In addition to the two independent eligibility assessments required in most jurisdictions, some VAD laws also require a separate third opinion in relation to a particular criterion of eligibility, as summarized in Table 2.

1. Decision-making capacity

Most common is a requirement for an independent opinion on *decision-making capacity*. In Hawaii, a third assessment by a psychiatrist, psychologist, or social worker is mandatory in every case to confirm capacity.[102] In Belgium, a child psychiatrist or psychologist must conduct a separate evaluation of 'capacity of discernment' for *child* patients (other than emancipated minors).[103]

In the US states, Australian jurisdictions, New Zealand, and Portugal, an independent opinion from a psychiatrist is only required where the assessing medical practitioner has doubts about a person's decision-making capacity,[104] or less commonly, the voluntariness of the request.[105] Evidence shows this option is rarely exercised in practice.[106] In Austria, a third assessment to confirm capacity is mandatory if a person has a diagnosed mental illness that could result in a wish to end their life.[107]

2. Decision-making capacity and wider considerations

In Portugal, like Hawaii, a third opinion from a psychologist is required in every case, but the opinion is broader in scope. The psychologist must confirm both *full understanding* of

[98] *Spain Act* (n 26) art 8.

[99] *Colombia* (n 25) arts 8 and 9; *Ecuador Regulations* (n 27) arts 4(d) and 5(f).

[100] *Ecuador Regulations* (n 27) arts 4(e), (f), and (g).

[101] In Colombia, this committee consists of a doctor who specialises in the patient's condition, a lawyer, and a psychiatrist or psychologist: *Colombia Resolution* (n 25) arts 13 and 25. In Ecuador, this committee comprises nine members: three medical specialists, a clinical psychologist, a psychiatrist, a lawyer, a bioethicist, a social worker, and a civil society representative: *Ecuador Regulations* (n 27) art 13.

[102] *Hawaii Act* (n 83) ss 327L-4(a)(5) and -6.

[103] *Belgium Act* (n 23) art 3(2)(7). The term '*capacité de discernement*' is not defined in the Belgium Act and has no previous counterpart in Belgian law. The Belgian Constitutional Court indicated that the term refers to the child's 'ability to express their wishes', and specifically the ability of the minor 'to understand the real implications of [his] euthanasia request and its consequences': Constitutional Court of Belgium, *Judgment No 153/2015* (29 October 2015), [para B. 24.4].

[104] *California Act* (n 83) ss 443.5(a)(1) and 6(d); *Colorado Act* (n 83) ss 25–48-106(f) and -107(d); *DC Act* (n 83) ss 7–661.03(a)(4) and .04; *Hawaii Act* (n 83) section 327L-1; *Maine Act* (n 83) ss 2140(6)(f) and (8); *NJ Act* (n 8329) ss 26:16-6 and 16-8; *Oregon Act* (n 43) ss 127.815, 127.820, and 127.825; *Patient Choice and Control at End of Life Act*, Vt Stat Ann ss 5281–93 (2013) (Vermont) ('*Vermont Act*') s 5283(a)(8); *Washington Act* (n 83) ss 70.245.040(1)(e) and .060; *Portugal Law* (n 3) art 7(1); *NZ Act* (n 31) s 15; *Vic Act* (n 8) ss 18(1) and 27(1); *WA Act* (n 9) ss 26(1)–(2) and 37(1)–(2); *SA Act* (n 9) s 36(1) and 45(1); *QLD Act* (n 9) ss 21(1)–(2) and 32(1)–(2); *TAS Act* (n 9) s 12(4); *NSW Act* (n 9) ss 27(1)(a) and 38(1)(a); *ACT Act* (n 9) ss 17(1) and 24(1).

[105] *NSW Act* (n 9) ss 27(1)(b)–(c) and 38(1)(b)–(c); *QLD Act* (n 9) ss 21(3) and 32(3); *WA Act* (n 9) ss 26(3) and 37(3).

[106] For eg, in the 5 years VAD has been operational in Victoria, only 34 patients (1 per cent) were referred for an additional assessment to determine if they had capacity: *VADRB Report Victoria* (n 96), 23. About 2.7 per cent of patients in Oregon are referred for psychiatric evaluation of capacity, although this number is declining: only 0.8 per cent of patients were referred in 2023: Oregon Health Authority, *Oregon Death with Dignity Act: 2023 Data Summary* (March 2024), 13.

[107] *Austria Act* (n 3232) s 7(4).

Table 2. When is an additional eligibility assessment required?

Eligibility criterion	Jurisdiction	Situation	Assessing practitioner
Decision-making capacity	Hawaii	All persons	Psychiatrist Psychologist or Social worker
	Australian jurisdictions New Zealand Portugal	Doubts as to whether a person has decision-making capacity	A person with appropriate skills and training
	Austria	A person has a diagnosed mental illness that could cause them to wish to end their life	Psychiatrist Specialist in psychotherapeutic medicine or Clinical psychologist
	Oregon	A person might be suffering from a psychiatric or psychological disorder or depression, causing impaired judgment	Counsellor
	Belgium	A child (other than an emancipated minor)	Child psychiatrist or Psychologist
Decision-making capacity and voluntariness	Portugal	All persons (unless they refuse)[a]	Psychologist
	Ecuador	All persons	Psychologist AND Psychiatrist
Prognosis	Victoria South Australia	A person with a neurodegenerative condition who is expected to die within 6–12 months	Specialist in the person's medical condition
Suffering and enduring wish to die	Canada	A person whose death is not reasonably foreseeable	Practitioner with expertise in the patient's condition[b]
	Belgium	A person whose death is not expected in the near future	Psychiatrist or Specialist in the patient's disorder.
Socioeconomic report	Ecuador	All persons	Social worker

[a] *Portugal Law* (n 3) Article 4(9).
[b] If one of the first two assessors has expertise in the person's condition, this third assessment is not required: *Canada Act* (n 28) section 241.2(3.1)(e.1).

the person's decision to seek VAD and the *voluntariness* of the person's decision, ensuring there is no undue influence from family or health professionals.[108]

Likewise, in Ecuador, a broader assessment is mandated. Three separate reports are required in addition to the assessment of a medical practitioner that they meet the eligibility criteria: a detailed clinical psychological assessment of the person's ability to make free and voluntary decisions; a detailed psychiatric report confirming the absence of a psychiatric

[108] *Portugal Law* (n 3) art 4(8). The person may refuse the psychological consultation: ibid art 4(9).

disorder that may undermine the ability to make free and voluntary decisions; and a socio-economic report from a social worker.[109]

3. Disease or injury

In two Australian states (Victoria and South Australia), a third consultation is mandatory to confirm that the person meets the *disease or injury criterion* in one specific situation. If the person has a neurodegenerative condition and is expected to die within 6–12 months (a longer timeframe than is allowed for other diseases or medical conditions),[110] an additional medical specialist in the person's condition must confirm the person's *prognosis*. All jurisdictions except Tasmania require a third consultation where the medical practitioner has doubts about the disease or injury criterion.[111]

4. Death is not foreseeable

In both Belgium and Canada, a third eligibility assessment is mandatory in cases where the patient's *death is not expected in the near future*. In Canada, where death is not reasonably foreseeable, a specialist in the person's condition must conduct a third assessment, unless one of the first two assessors has expertise in the person's condition.[112] In Belgium, a psychiatrist or a specialist in the patient's disorder must examine the patient and certify that the person's suffering is constant, unbearable, and cannot be alleviated, and that the person's request is voluntary and enduring.[113] The purpose of these assessments is to ensure that a person who is not imminently dying has had the opportunity to consider other options for the care and treatment of their condition.

C. Three separate requests

In each Australian jurisdiction, a person seeking access to VAD must make three separate requests. The first and final requests may be made orally, but the second request must be in writing and witnessed by two independent witnesses.[114] The relevant health practitioner must report to government authorities at each stage of the request and assessment process.[115] The multiple request requirements closely mirror those in the US states and districts, all of which require two oral requests and one written request.[116] In Spain, a person seeking access to VAD must make two written applications, signed in the presence of a medical practitioner.[117]

The legislative requirement for separate requests finds no counterpart in the laws in most other countries. In Belgium and Luxembourg, although a medical practitioner meets with the person several times to confirm the person is eligible and their request is enduring, these are not formal separate requests, and no forms are required to be completed after each consultation.

[109] *Ecuador Regulations* (n 27) art 4.

[110] *Vic Act* (n 8) s 18(4); *SA Act* (n 9) s 36(4).

[111] *Vic Act* (n 8) ss 18(2) and 27(2); *WA Act* (n 9) ss 26(1)–(2) and 37(1)–(2); *SA Act* (n 9) ss 36(2) and 45(2); *QLD Act* (n 9) ss 21(1)–(2) and 32(1)–(2); *NSW Act* (n 9) ss 26 and 37; *ACT Act* (n 9) ss 17(1) and 24(1).

[112] *Canada Act* (n 28) s 241.2(3.1)(e.1).

[113] *Belgium Act* (n 23) art 3(3)(1).

[114] *Vic Act* (n 8) s 34; *WA Act* (n 9) s 42; *SA Act* (n 9) s 52; *QLD Act* (n 9) s 37; *TAS Act* (n 9) s 53(1); *NSW Act* (n 9) s 43; *ACT Act* (n 9) ss 17(1) and 24(1).

[115] See Waller (n 11) 1437.

[116] *California Act* (n 83) s 443.3(a)-(b); *Colorado Act* (n 83) s 25–48-104; *DC Act* (n 83) s 7–661.02; *Hawaii Act* (n 83) ss 327L-2 and -9; *Maine Act* (n 83) ss 2140(4)–(5) and 11, (24); *NJ Act* (n 83) ss 26:16-4 and -10 (2020); *Oregon Act* (n 43) ss 127.810 and 127.840; *Vermont Act* (n 104) s 5283(a); *Washington Act* (n 83) ss 70.245.030 and .090. See also Pope (n 29) 40.

[117] *Spain Act* (n 26) art 5(1)(c).

Most other jurisdictions require a single written request before a person may access VAD.[118] In the Netherlands and Colombia, the request can be oral or in writing.[119] New Zealand[120] and Portugal[121] require the person to verify that their request is ongoing after each step in the assessment process. In Colombia, the person must reiterate their request for VAD only once, after the interdisciplinary committee evaluates their eligibility.[122]

D. Minimum time periods between the first and final request

Minimum timeframes apply for the VAD process in all Australian states to ensure the person's request to die is enduring. In most states, 9 days must elapse between the first and final request for VAD,[123] although this is 5 days in New South Wales,[124] and no timeframe is specified in ACT. These timeframes are shorter than the 2-week or 15-day timeframe required in many other jurisdictions,[125] or 2-month timeframe required under Portuguese law.[126] Several countries and the ACT in Australia impose no minimum timeframe. Table 3 summarizes these requirements.

Although waiting periods serve a legitimate purpose in ensuring a person's request to die is enduring, it is not uncommon for a person to die or lose capacity during this period. In recognition of these difficulties, some US states have recently amended their laws to shorten the waiting period to 7 days,[127] 5 days,[128] or just 2 days.[129] Similarly, Canada has repealed its previous 10-day waiting period for persons whose natural death is reasonably foreseeable.[130]

Australian VAD laws provide that the waiting period can be waived in limited circumstances: namely, if the person is *expected to die* before the minimum time period has elapsed[131]; and in four states, if the person is *expected to lose decision-making capacity* within that time.[132] In Spain, the waiting period may also be waived where a person may lose decision-making capacity.[133] Some US states—Oregon and Hawaii—recently amended their VAD laws to allow a waiver if the person is not expected to survive the waiting period.[134] In contrast, most US states and countries like Austria and Portugal do not allow the minimum period to be waived.[135]

[118] *Belgium Act* (n 23) art 3(4); *Luxembourg Act* (n 24) art 2(1)(4); *Austria Act* (n 32) s 8; *Portugal Law* (n 3) art 4(1); *Canada Act* (n 28) s 241.2(3)(b); *Ecuador Regulations* (n 27) art 4(c) and Appendix 1.

[119] *Colombia Resolution* (n 25) art 6.

[120] *NZ Act* (n 31) ss 11, 12, and 17(2).

[121] *Portugal Law* (n 3) arts 5(1), 6(4), 7(5), 8(4), and 10(2).

[122] *Colombia Resolution* (n 25) art 14.

[123] *Vic Act* (n 8) s 38(1)(a); *SA Act* (n 9) s 56(1)(a); *WA Act* (n 9) s 48(1)–(2); *QLD Act* (n 9) s 43(1) and (3). In Tasmania, the person must wait at least 48 hours between their first and second request, and between their second and final request: *TAS Act* (n 9) ss 30(2) and 53(2).

[124] *NSW Act* (n 9) s 49(1) and sch 1 (definition of 'designated period').

[125] See *Austria Act* (n 32) s 8(1); *Spain Act* (n 26) art 5(1)(c). In most US states, it is 15 days: *Colorado Act* (n 83) s 25–48-104(1); *DC Act* (n 8383) s 7–661.02(a)(1); *Maine Act* (n 83) s 2140(11)–(13); *NJ Act* (n 83) ss 26:16-10; *Oregon Act* (n 43) ss 127.840 and .850; *Vermont Act* (n 104) s 5283(a)(2).

[126] *Portugal Law* (n 3) art 4(5).

[127] *Washington Act* (n 83) ss 70.245.090 and .110(1).

[128] *Hawaii Act* (n 83) ss 327L-2, -9, and -11.

[129] *California Act* (n 83) s 443.3(a).

[130] This was previously contained in Canadian *Criminal Code*, RSC 1985, c C-46, ss 241.2(3)(g) but was repealed by Bill C-7, *An Act to Amend the Criminal Code (Medical Assistance in Dying)*, 1st Sess, 43rd Parl, 2020.

[131] *NSW Act* (n 9) s 49(2); *QLD Act* (n 9) s 43(2); *SA Act* (n 9) s 56(2); *TAS Act* (n 9) s 53(2); *Vic Act* (n 8) s 38(2); *WA Act* (n 9) s 48(3).

[132] *WA Act* (n 9) s 48(3); *QLD Act* (n 9) s 43(2); *TAS Act* (n 9) s 53(2); *NSW Act* (n 9) s 49(2)(a). In NSW, the coordinating and consulting practitioners must agree that the person is likely to die or lose capacity before the 5-day period has elapsed: *NSW Act* (n 9) s 49(2)(b).

[133] *Spain Act* (n 26) art 5(1)(c).

[134] *Oregon Act* (n 43) s 127.840(2); *Hawaii Act* (n 83) s 327L-11.

[135] Pope suggests that other US states may also introduce this flexibility: Pope (n 29) 41.

Table 3. Minimum time periods to access VAD.

Minimum time period	Jurisdiction	Waiver possible
No minimum time period	ACT, Australia	N/A
	Colombia	
	New Zealand	
	Netherlands	
	Luxembourg	
	Ecuador	
2 days	California, USA	No
5 days	NSW, Australia	Yes
	Hawaii, USA	Yes
7 days	Washington, USA	No
9 days	Queensland, Australia	Yes
	South Australia, Australia	
	Victoria, Australia	
	Western Australia	
15 days	Oregon, USA	Yes—Oregon
	Spain	Yes—Spain
	Colorado, USA	No—others
	District of Columbia, USA	
	Maine, USA	
	New Jersey, USA	
	New Mexico, USA	
	Vermont, USA	
2 months	Portugal	No

Canada, Belgium, and Austria have adopted a two-track process. A person with a terminal illness is able to access VAD within 2 weeks in Austria, or without a waiting period in Canada or Belgium. If the person's death is not anticipated in the near future, they must wait at least 1 month in Belgium,[136] 90 days in Canada,[137] or 12 weeks in Austria[138] before accessing VAD. Table 4 summarizes these requirements. These different time periods are not needed in the Australian states, US states, and New Zealand, where VAD is only an option for people with terminal illness. However, the additional waiting time may serve as a procedural safeguard in countries such as Colombia, Spain, and the Netherlands for people whose condition is not terminal.

E. Mandatory qualifications for participating practitioners

Many VAD models also impose legislative requirements for medical practitioners to have particular expertise or experience to assess a person's eligibility for VAD. Tasmania requires both assessing medical practitioners to have 'relevant experience in treating or managing' the patient's condition.[139] Victoria and South Australia require one of the assessing practitioners to have expertise and experience in the person's medical condition.[140] Spain, Portugal, Belgium, Luxembourg, and the US states also require the consulting medical practitioner to either be a medical specialist in the patient's condition,[141] or to have knowledge or expertise

[136] *Belgium Act* (n 23) art 3(3)(2).
[137] *Canada Act* (n 28) s 241.2(3.1)(i).
[138] *Austria Act* (n 32) s 8(1).
[139] *TAS Act* (n 9) s 9(c).
[140] *Vic Act* (n 8) s 10(3); *SA Act* (n 9) s 27(3).
[141] *Portugal Law* (n 3) art 6(1).

Table 4. Minimum time periods to access VAD in countries with a two-track system.

Country	**Canada**		**Austria**		**Belgium**	
Tracks to VAD	Natural death is reasonably foreseeable	Natural death is not reasonably foreseeable	Death is expected within 6 months	Death is not expected within 6 months	Death is expected in the near future	Death is not expected in the near future
Time period	No time period	90 days	2 weeks	12 weeks	No time period	1 month

in that condition.[142] In Austria, one of the two medical practitioners must be qualified in palliative medicine, not the patient's medical condition.[143]

Other Australian jurisdictions, and countries such as the Netherlands, Ecuador, and Colombia, have not adopted this approach. The legal guidelines in Colombia expressly prescribe the contrary position: 'All doctors are competent to receive a request for euthanasia, this act of care is not limited, nor is it exclusive to the treating doctors or to the speciality of the diagnosis that motivates the end-of-life condition.'[144] Canada has taken an intermediate position. Where the person's natural death is reasonably foreseeable, any two medical practitioners or Nurse Practitioners[145] may assess the person's eligibility. However, when a person's death is not reasonably foreseeable, the opinion of a person with expertise in the patient's condition is required.[146] In the ACT in Australia, one eligibility assessment may be conducted by a Nurse Practitioner.[147]

In addition to expertise requirements in some states, each Australian state stipulates minimum formal qualifications and years of post-qualification experience that medical practitioners must achieve.[148] The only other country to stipulate any formal qualifications is New Zealand.[149]

F. Mandatory training for participating practitioners

Another uniquely Australian innovation is that all jurisdictions require participating practitioners to complete mandatory training content of the legislation and the VAD process prior to conducting eligibility assessments, prescribing a substance, or administering VAD to a person.[150] The training requires a significant time investment from practitioners, generally taking 6 h to complete,[151] but provides medical practitioners with legal confidence.[152]

Although the Netherlands and Belgium have established training programs for doctors who act as independent second consultants in VAD requests,[153] and other countries provide voluntary training through professional development,[154] the Australian laws are the first (and to our knowledge, only) laws to mandate compulsory training for participating practitioners prior to participating in VAD.

[142] *Spain Act* (n 26) art 3(e); *Luxembourg Act* (n 24) art 2(2)(3); *Belgium Act* (n 23) art 3(2)(3); *Oregon Act* (n 43) 127.800.1.01(4); *Maine Act* (n 83) s 2140.2(D); *Washington Act* (n 83) s 70.245.010(4); *DC Act* (n 83) s 7–661.01(3); *NJ Act* (n 83) s 26:16-3 (definition of 'consulting physician'); *California Act* (n 83) s 443.1(f); *Colorado Act* (n 83) s 25–48-102 (3); *Hawaii Act* (n 83) s 327L–1 (definition of 'consulting provider'); *NM Act* (n 83) s 24-7C-3(G)(2).

[143] *Austria Act* (n 32) s 7(1).

[144] *Colombia Resolution* (n 25) art 8.

[145] *Canada Act* (n 28) s 241.2(3).

[146] *Canada Act* (n 28) s 241.2(3.1)(e.1).

[147] *ACT Act* (n 9) ss 89(1)(a) and 97(3).

[148] Some states stipulate additional suitability requirements for practitioners, such as minimum hours of clinical practice or providing professional referees. See Waller (n 11).

[149] *NZ Act* (n 31) s 4, definition of 'independent medical practitioner'.

[150] *TAS Act* (n 9) s 9(d); *NSW Act* (n 9) ss 18(b) and 21(3); *WA Act* (n 9) ss 25 and 36; *SA Act* (n 9) ss 35 and 44; *Vic Act* (n 8) ss 17 and 26; *QLD Act* (n 9) ss 20 and 31.

[151] See Victorian Government, Department of Health, *Voluntary Assisted Dying Guidance for Health Practitioners* (2019) 5; Tasmanian Government, Department of Health, *Report on the End-of-Life Choices (Voluntary Assisted Dying) Act 2021's Operation in its First Six Months* (July 2023), 9.

[152] Lindy Willmott and others, 'A Cross-sectional Study of the First Two Years of Mandatory Training for Doctors Participating in Voluntary Assisted Dying' (2024) 22 Palliative and Supportive Care 676.

[153] Y Van Wesemael and others, 'Establishing Specialized Health Services for Professional Consultation in Euthanasia: Experiences in the Netherlands and Belgium' (2009) 9 BMC Health Services Research 220; J Cohen and others, 'Nationwide Survey to Evaluate the Decision-making Process in Euthanasia Requests in Belgium: Do Specifically Trained 2nd Physicians Improve Quality of Consultation?' (2014) 14 BMC Health Services Research 307.

[154] GK Shapiro and others, 'Development of a Canadian Medical Assistance in Dying Curriculum for Healthcare Providers' (2024) Journal of Medical Education and Curricular Development 11.

G. Prohibition on initiating conversations about VAD

A controversial aspect of Australian VAD laws is the legal restriction on who can raise the topic of VAD. In Victoria and South Australia, medical practitioners are prohibited from initiating discussions about VAD with patients.[155] The purpose of including this prohibition was not to impede open discussions of end-of-life options, but to protect persons from suggestions or coercion by medical practitioners.[156] In the other Australian jurisdictions, medical practitioners may initiate conversations about VAD (as may nurse practitioners in Queensland, Western Australia, and the ACT), but only if they simultaneously inform the patient about available treatment and palliative care options.[157]

This prohibition also extends to other health practitioners. In four states, health practitioners other than medical practitioners are prohibited from initiating VAD discussions.[158] In Tasmania, New South Wales, and the ACT, they may initiate discussions about VAD, provided they recommend that the patient discusses their options with a medical practitioner.[159] The prohibition on initiating conversations about VAD has been much criticized within Australia, raising concerns about the ability of medical practitioners to discuss all a patient's options at the end of life.[160]

This unique Australian requirement has been replicated in New Zealand's VAD legislation.[161] Other countries' VAD laws do not contain this limitation. For example, in Austria, the law expressly permits medical practitioners to inform a person that they could draft a death directive to access VAD.[162] Further, in Colombia, the treating physician or interdisciplinary team has a positive duty to inform patients of options for palliative care or euthanasia.[163] Several countries do, however, contain requirements to discuss a person's other options, such as therapeutic treatment, palliative care, or comfort care.[164]

V. METHOD OF ADMINISTRATION

At the final stage of the VAD process, a person may either ingest or administer the VAD medication to themselves ('self-administration') or a health practitioner may administer the medication ('practitioner administration'). Internationally, VAD laws differ as to whether they allow both or only one method of administration (Section V.A), whether they require pre-authorization by an official body (Section V.B), and whether a practitioner must remain present throughout the VAD process (Section V.C).

[155] *SA Act* (n 9) s 12(1); *Vic Act* (n 8) s 8(1).

[156] Explanatory Memorandum, Voluntary Assisted Dying Bill 2017 (Vic) 2-3 cl 8.

[157] *QLD Act* (n 9) ss 7(1)-(2); *WA Act* (n 9) ss 10(2)-(3); *NSW Act* (n 9) s 10(2); *TAS Act* (n 9) s 17(2); *ACT Act* (n 9) s 155(1).

[158] *WA Act* (n 9) s 10(2); *QLD Act* (n 9) s 7(1); *SA Act* (n 9) s 12(1); *Vic Act* (n 8) s 8(1).

[159] *TAS Act* (n 9) s 17(3); *NSW Act* (n 9) s 10(3); *ACT Act* (n 9) s 155(2).

[160] *WA Panel Report* (n 40), 30–1, Rec 6. See also C Johnston and J Cameron, 'Discussing Voluntary Assisted Dying' (2018) 26 Journal of Law and Medicine 454; L Willmott and others, 'Restricting Conversations About Voluntary Assisted Dying: Implications for Clinical Practice' (2020) 10(1) BMJ Supportive and Palliative Care 105.

[161] *NZ Act* (n 31) s 10(1).

[162] *Austria Act* (n 32) s 12(2).

[163] *Resolución 229 de 2020 de la carta de derechos y deberes de la persona afiliada y del paciente en el Sistema General de Seguridad Social en Salud y de la carta de desempeño de las Entidades Promotoras de Salud (EPS) de los Regímenes, Contributivo y Subsidiado* (Colombia), art 4.2.2.5.

[164] See eg, *Belgium Act* (n 23) art 3(2)(1); *Luxembourg Act* (n 24) art 2(2)(1); *Austria Act* (n 32) s 7(2)(1); *Spain Act* (n 26) art 5(1)(b); *Portugal Law* (n 3) art 19(a); *Oregon Act* (n 43) s 127.815.3.01(1)(c)(E); *Ecuador Regulations* (n 27) art 4 (d)(3).

A. Choice of method of administration

In those US states where VAD is lawful, only *self-administration* is authorized.[165] This may reflect a policy determination that VAD is more likely to be truly voluntary if the person takes the medication themselves. In Germany and Austria, the restriction of VAD to self-administration is a by-product of VAD becoming lawful as an exception to criminal offence provisions relating to assisting a suicide.[166] In these jurisdictions, a person who is unable to administer to themselves will be ineligible to access VAD. This has been criticized because it discriminates against persons who, by reason of their disability or illness, are physically unable to self-administer VAD.[167]

By contrast, in Belgium and Ecuador, the law authorizes only *practitioner-administered* euthanasia,[168] although in Belgium this has been interpreted as also allowing self-administration.[169]

Other countries, including the Netherlands, Luxembourg, Canada, New Zealand, and Colombia, allow a *choice* between self-administration and practitioner administration of VAD.[170] Where this is allowed, VAD overwhelmingly occurs by practitioner administration.[171] In Australia, both New South Wales and the ACT permit individuals free choice between self and practitioner administration.[172]

The other five Australian states have adopted a unique *hybrid model*. Although both self-administration and practitioner administration of VAD are permitted, self-administration is the default mode, and practitioner administration is permitted only in the circumstances defined in the VAD legislation.

In Victoria and South Australia, self-administration is the default.[173] Practitioner administration is permitted only if the person is '*physically incapable* of self-administration or digestion' of the VAD substance.[174] Statistics from Victoria demonstrate that in the first 5 years, 84 per cent of VAD deaths resulted from self-administration, and only 16 per cent were practitioner-administered.[175] This position has since been adopted in Portugal.[176]

Queensland, Tasmania, and Western Australia have taken a more flexible approach. In those states, practitioner administration is authorized if *self-administration is* '*inappropriate*',[177] which may occur in one of three circumstances:

[165] *California Act* (n 83) ss 443.1(b), (p), 443.2(a), and 443.11(a), (c); *Colorado Act* (n 83) ss 25–48-102(7), (8), 25-48-103(1), and 25-48-112; *DC Act* (n 83) ss 7–661.01(5) and 7-661.02(a), (c); *Hawaii Act* (n 83) ss 327L–1 (definitions of 'prescription' and 'self-administer'), 327L–2, and 327L–23; *Maine Act* (n 83) ss 2140.2(L), 2140.4, and 2140.24; *NJ Act* (n 83) ss 26:16-3 (definition of 'self-administer'), 26:16-4, and 26:16-20; *Oregon Act* (n 43) ss 127.805.2.01 and 127.897.6.01; *Vermont Act* (n 104) s 5283(a)(1); *Washington Act* (n 8383) ss 70.245.010(12), 70.245.020(1), and 70.245.220.

[166] See K Braun, 'The Right to Assisted Dying: Constitutional Jurisprudence and Its Impact in Canada, Germany and Austria' (2021) 15 ICL Journal 291. In Switzerland, only assisted suicide is lawful.

[167] Braun ibid 310–315.

[168] *Belgium Act* (n 23) art 2; *Ecuador Regulations* (n 27) art 1.

[169] M Archer, K Chambaere and L Deliens, 'Euthanasia in Belgium and Luxembourg' in B White (ed), *Law and Assisted Dying Research Handbook* (Edward Elgar 2025).

[170] *Canada Act* (n 28) s 241.1 (definition of 'medical assistance in dying'); *Luxembourg Act* (n 24) art 1; *Netherlands Act* (n 22) art 1(b); *NZ Act* (n 31) s 19(2)(a)–(b). Although the regulations in Colombia refer only to euthanasia, assisted dying by self-administration was also decriminalized in 2022: Corte Constitucional, Sentencia C-164/22 (11 May 2022).

[171] 97.5 per cent of VAD deaths in the Netherlands, 99.5 per cent in Belgium, 99.9 per cent in Canada, and 92 per cent in New Zealand are practitioner administered: Netherlands Regional Euthanasia Review Committees, *Annual Report 2022* (27 March 2023); Federal Control and Evaluation Commission Belgium, *Euthanasia—Figures for 2022* (17 February 2023); Health Canada, *Fourth Annual Report on Medical Assistance in Dying in Canada 2022* (October 2023), 21; New Zealand Ministry of Health, *Registrar (assisted dying) Annual Report to the Minister of Health* (June 2024), 10.

[172] *NSW Act* (n 9) s 57(1); *ACT Act* (n 9) s 42(1).

[173] *Vic Act* (n 8) ss 45 and 47; *SA Act* (n 9) ss 63 and 65.

[174] *Vic Act* (n 8) s 48(3)(a); *SA Act* (n 9) s 66(3)(a).

[175] *VADRB Report Victoria* (n 96), 9.

[176] *Portugal Law* (n 3) art 9(2).

[177] *QLD Act* (n 9) s 50(2); *WA Act* (n 9) s 56(2); *TAS Act* (n 9) s 86(5).

a) the person is physically unable to handle, ingest, or digest the VAD substance;
b) the person has concerns about self-administering; or
c) the coordinating practitioner considers self-administration is not 'suitable' for the person.

This gives the person and their medical practitioner significantly more choice concerning the method of administration. Data from Western Australia reveal that in 2023–2024, 88 per cent of people chose practitioner administration.[178] Table 5 compares the method of administration permitted in various jurisdictions.

B. External pre-authorization

In the Netherlands, Belgium, Luxembourg, and the US states, VAD is authorized by the two medical practitioners who assess a person to meet the eligibility criteria. Cases are reported to a regulatory body,[179] and retrospectively reviewed to verify that VAD was performed in accordance with the legislative requirements. Three Australian jurisdictions have adopted retrospective review: Queensland, Western Australia, and the ACT.[180]

In contrast, in four Australian states, practitioners require prior authorization from a governmental authority before prescribing or administering a VAD substance.[181] Documentation is reviewed to confirm compliance with the law, before the administration of VAD is authorized.

Pre-authorization has since become a popular feature of modern VAD laws, having been recently adopted in New Zealand,[182] Spain,[183] Portugal,[184] and Ecuador.[185] It has also been a feature of the Colombian VAD regime since administrative regulations were first issued in 2015.[186]

C. Practitioner supervision of VAD

Self-evidently, where VAD is administered by a medical practitioner or nurse, the procedure is medically supervised. However, as mentioned above, in all Australian jurisdictions except New South Wales and the ACT, there is a legislative preference for self-administration as a default. In Australia, self-administration may occur without a medical or other health practitioner being present—the person is dispensed the VAD substance, and stores it securely at their residence until it is required.[187] Tasmania's legislation is unique among Australian

[178] Voluntary Assisted Dying Board Western Australia, *Annual Report 2023-24* (WA government, 8 November 2023) 28.

[179] The Regional Review Committee for Termination of Life on Request and Assisted Suicide: *Netherlands Act* (n 22) art 3 (1), 8; the Federal Control and Evaluation Commission: *Belgium Act* (n 23) arts 6 and 8; the National Commission for Control and Evaluation: *Luxembourg Act* (n 24) arts 6 and 8; or the Department of Human Services: *Oregon Act* (n 43) s 127.865.3.11.

[180] *QLD Act* (n 9) s 117(1)(a) and (b); *WA Act* (n 9) s 118(a); *ACT Act* (n 9) s 119(1)(a).

[181] In South Australia and Victoria, by the Secretary of the Department of Health: *SA Act* (n 9) s 61; *Vic Act* (n 8) s 43. In NSW, by the VAD Board, and in Tasmania, the VAD Commission: *NSW Act* (n 9) ss 70–73; *TAS Act* (n 9) s 66.

[182] In New Zealand, by the Registrar (assisted dying), a public servant in the Ministry of Health: *NZ Act* (n 31) ss 19 (3)-(5).

[183] In Spain, by a two-person subcommittee of the Guarantee and Evaluation Committee (consisting of a medical professional and a lawyer): *Spain Act* (n 26) art 10.

[184] In Portugal, by the Commission for Verification and Evaluation of Medically Assisted Death Clinical Procedures: *Portugal Law* (n 3) arts 8 and 26.

[185] In Ecuador, by a 9-member Interdisciplinary Euthanasia Committee formed within a hospital or institution: *Ecuador Regulations* (n 27) arts 10 and 13.

[186] In Colombia, by a Scientific-Interdisciplinary Committee for the Right to Die with Dignity established within a hospital or healthcare institution: *Colombia Resolution* (n 25) arts 14 and 24.

[187] There have been calls for self-administration to be supervised by a health practitioner, after a coronial inquiry into the death of a Queensland resident who ingested VAD medication prescribed for their spouse: *Inquest into the death of ABC (a pseudonym)* (unreported, Coroner D O'Connell, 11 September 2024). See E Close, K Del Villar and BP White, 'Should Self-administered Voluntary Assisted Dying be Supervised? A Queensland Case' (2025) 222 Medical Journal of Australia 390.

Table 5. Method of administration.

Method	Jurisdiction
Self-administration only	Austria
	Germany
	US states
Self-administration is default	Victoria, Australia
Practitioner administration where physically impossible to self-administer	South Australia
	Portugal
Self-Administration	Queensland, Australia
Practitioner administration where self-administration is not 'suitable'	Western Australia
	Tasmania, Australia
Practitioner administration only	Quebec
	Ecuador
Choice of method not limited	Netherlands
	Belgium (based on interpretation of law)
	Luxembourg
	Canada
	Spain
	New Zealand
	Colombia (since 2022)
	New South Wales, Australia
	ACT, Australia

states, as it expressly provides for three alternative methods: supervised self-administration, assisted self-administration with a health practitioner present,[188] or private self-administration.[189]

In the USA and Austria, like in most Australian states, self-administration is unsupervised: the medication is dispensed directly to the person or their agent, and stored privately until the person chooses to ingest it.[190] In contrast, the responsible medical practitioner must be present at the time of self-administration in New Zealand,[191] Spain,[192] and Portugal.[193]

VI. INDIVIDUAL AND INSTITUTIONAL OBJECTION

A final noteworthy aspect of the Australian model of VAD concerns objections to being involved with VAD. Although Australia's provisions for individual conscientious objection are broadly consistent with international rights, four jurisdictions have enacted unique legislative provisions expressly restricting the freedom of institutions not to participate in the VAD process.

A. Individual conscientious objection

Australian VAD laws specifically protect the right of individual health practitioners to conscientiously object to participating in VAD, including not conducting eligibility assessments, prescribing, or administering a VAD substance.[194] Express protection for conscientious

[188] *TAS Act* (n 9) s 82(3)(c).
[189] *TAS Act* (n 9) s 83 and 84.
[190] *Austria Act* (n 32) s 11.
[191] *NZ Act* (n 31) s 20.
[192] In Spain, the responsible doctor must be present or close by to provide supervision until the moment of death: *Spain Act* (n 26) art 11(2) and (3).
[193] In Portugal, a second health practitioner must also be present: *Portugal Law* (n 3) art 10(1).
[194] *NSW Act* (n 9) s 9; *QLD Act* (n 9) s 84; *SA Act* (n 9) s 10; *Vic Act* (n 8) s 7; *WA Act* (n 9) s 9; *TAS Act* (n 9) ss 20(2), 40(2), 64, and 71(3); *ACT Act* (n 9) s 99.

objectors is common to VAD laws in many other jurisdictions worldwide.[195] Some jurisdictions (such as Western Australia) limit the right to conscientious objection by including an obligation to provide *official information* to a person who requests VAD. Others, including Queensland, Tasmania, the ACT, and New Zealand, legislatively require conscientiously objecting health practitioners to *refer* a person to a government service or a medical practitioner, which can assist with their VAD request.[196]

Other jurisdictions, such as Belgium and several US states, impose an obligation on non-participating practitioners to *transfer* the person's *medical records* to a participating provider.[197]

Some countries—namely, Portugal, Spain, Colombia, and Ecuador—impose a duty to notify a conscientious objection in writing in advance, either to the person's employer,[198] professional body,[199] or public health administration.[200] This enables the relevant administrative bodies to create a register of conscientious objectors and ensure they have sufficient participating staff to fulfil their obligations to provide VAD to persons.[201]

B. Institutional objection

VAD legislation in four Australian jurisdictions (South Australia, Queensland, NSW, and the ACT) contains detailed provisions regulating the participation of institutions such as hospitals, hospices, and residential aged care facilities in the VAD process.[202] The provisions are complex and technical, and vary between jurisdictions, but in general, they require institutions to allow some aspects of the VAD process (such as consultations and eligibility assessments) to occur on the premises. Objecting institutions may have an obligation to transfer the person to a place where VAD administration can occur, or might be obliged to allow this to occur on the premises where the institution is the person's home, or transfer is not possible in the circumstances. These provisions limit the ability of institutions to object to aspects of the VAD process occurring on their premises.[203]

These Australian provisions are unique in the international context for denying objecting institutions the ability to prohibit aspects of the VAD process occurring on their premises in some circumstances. Legislation in some other jurisdictions, such as Austria[204] and every US state,[205] gives institutions an explicit right not to permit VAD to occur on their premises. In fact, health care facilities in every US state may prohibit their employees and staff from participating in VAD while on the premises or while acting in the course of their

[195] See eg, *Belgium Act* (n 23) art 14; *Oregon Act* (n 43) s 127.885(1) 4.01(4); *NZ Act* (n 31) s 8; *Luxembourg Act* (n 24) art 15; *Austria Act* (n 32) s 2(1); *Portugal Law* (n 3) art 21(1).

[196] *QLD Act* (n 9) ss 16(4) and 84(2); *TAS Act* (n 9) s 18(1); *WA Act* (n 9) s 20(5)(b); *ACT Act* (n 9) s 100(2); *NZ Act* (n 31) s 9(2)(b).

[197] See eg, *Belgium Act* (n 23) art 14; *Luxembourg Act* (n 24) art 15; *California Act* (n 83) s 443.14(e)(3); *Colorado Act* (n 83) ss 25–48-113(2) and -117; *DC Act* (n 83) s 7–661.10(b); *Hawaii Act* (n 83) s 327L-19(a)(4); *Maine Act* (n 83) s 2140 (21); *NJ Act* (n 83) s 26:16-17(c); *Oregon Act* (n 43) s 127.885(4); *Washington Act* (n 8383) s 70.245.190(1)(d).

[198] *Portugal Law* (n 3) art 21(3); *Colombia Resolution* (n 25) art 16; De Vries and others, 'Medically Assisted Dying in Colombia' in BP White (ed), *Law and Assisted Dying Research Handbook* (Edward Elgar 2025).

[199] *Portugal Law* (n 3) art 21(3).

[200] *Spain Act* (n 26) art 16; *Ecuador Regulations* (n 27) art 16.

[201] See eg, *Spain Act* (n 26) art 16(2).

[202] *SA Act* (n 9) pt 2 (ss 15–25); *QLD Act* (n 9) pt 6 Div 2 (ss 86–98); *NSW Act* (n 9) pt 5 (ss 88–107); *ACT Act* (n 9) pt 7 (ss 101–109).

[203] For more detail, see Waller (n 11), 1455–1462.

[204] *Austria Act* (n 32) s 2.

[205] *California Act* (n 83) s 443.14(e); *Colorado Act* (n 83) s 25–48-117; *DC Act* (n 83) s 7–661.10(a); *Hawaii Act* (n 83) s 327L-19(a)(2); *Maine Act* (n 83) s 2140(21); *Oregon Act* (n 43) s 127.885(2), (4); *Vermont Act* (n 104) s 5285; *Washington Act* (n 8383) s 70.245.190(1)(b), (d).

employment,[206] and staff can be legally sanctioned for participating in VAD on the premises of an objecting institution.[207]

In some countries, access to VAD is guaranteed under the National Health System.[208] The laws in Colombia and Ecuador expressly provide that institutions cannot hold a conscientious objection to VAD.[209] In Colombia, relevant institutions are legally obliged to ensure there are non-objecting physicians within the institution to perform the procedure, or allow access to external participating physicians.[210]

VII. CONCLUDING OBSERVATIONS

The Australian model, accounting for minor variations across the seven VAD laws, contains a number of significant innovations and distinctive features not present in other jurisdictions. The eligibility criteria in Australia represent a unique fusion between the US focus on terminal illness and specifying a timeframe until death, and the broader Canadian or European emphasis on 'suffering' (which is absent from the US laws). Whether suffering should be a superadded requirement for persons whose death is already imminent, or whether this fusion of different models unnecessarily complicates eligibility assessment, is a question for future exploration.

A second unique feature is the much-criticized bifurcated 6- or 12-month timeframe until death (depending on the nature of the person's condition), which may soon be adopted by Ireland or Jersey. A third, highly problematic, feature is the dual residence requirements. Although many other countries require a person to be a citizen or resident of that country to access VAD, no other country requires citizens or permanent residents to also have been physically present within the jurisdiction for 12 months prior to requesting VAD.

Australian VAD laws also contain a very prescriptive request and assessment process, unparalleled in its detail and formality.[211] In particular, the legislative requirement for three separate requests for VAD, for practitioners to report to the government at every stage of the assessment process, the minimum qualifications for participating practitioners, and the limitations on raising the topic of VAD with patients are restrictions without precedent in other countries.[212] Perhaps this legislative complexity is the origin of another uniquely Australian requirement: that all practitioners complete mandatory training before participating in VAD.

Another distinctive feature of the Australian model of VAD concerns the method of administration. Most international jurisdictions either permit one method only or permit the patient to choose between methods. The Australian model, uniquely, permits both self and practitioner administration, but restricts when practitioner administration is available.

Finally, the legislative provisions limiting the ability of hospitals and residential aged care facilities not to participate in VAD have not been replicated elsewhere. Internationally, there is a divergence of views between countries that consider institutional objection should not be permitted, and those that would allow it.

[206] *California Act* (n 83) ss 443.15–.16; *Colorado Act* (n 83) s 25–48-118; *DC Act* (n 83) section 7-661.10(c)-(e); *Hawaii Act* (n 83) section 327L-19(b)–(e); *Maine Act* (n 83) section 2140(21); *Oregon Act* (n 43) s 127.885(5); *Vermont Act* (n 104) section 5286; *Washington Act* (n 83) s 70.245.190(2). See Pope (n 29), 50.

[207] See eg, *Oregon Act* (n 43) s 127.885(5)(b).

[208] *Spain Act* (n 26) art 13; *Ecuador Regulations* (n 27) art 2.

[209] *Colombia Resolution* (n 25) art 16; *Ecuador Regulations* (n 27) art 16.

[210] *Colombia Resolution* (n 25) art 31.5.

[211] See Mroz (n 1) 3547.

[212] Although subsequently adopted in New Zealand: *NZ Act* (n 31) pt 2.

Some features of the Australian model of VAD have already served as a prototype for VAD laws in other jurisdictions. For example, New Zealand's VAD law incorporates the Australian prohibition on health practitioners initiating conversations about VAD.[213] Portugal, like Victoria, permits practitioner administration only where self-administration is not physically possible.[214] Several countries that have legalized VAD more recently have included express citizenship or residency requirements (although not identical to Victoria's).[215] Pre-authorization of VAD, which was unusual worldwide before Victoria enacted its VAD legislation, has been adopted in several more recent VAD laws, in countries as diverse as New Zealand, Spain, Portugal, and Ecuador.[216] Finally, Spain, Portugal, and New Zealand have adopted a more detailed request and assessment process than is prescribed in earlier VAD laws, albeit not to the level seen in Australia.[217]

As mentioned, the Australian model of VAD is conservative and highly regulated. This high level of regulation renders it safe,[218] but also makes it a relatively difficult process for a terminally ill person to navigate.[219] Whether or not the Australian model is attractive to countries considering reform may depend on their political context and preferred policy choices. It is customary for new jurisdictions considering legalizing VAD to examine international approaches and the distinctive Australian model, or some features from it, may be of value in these deliberations.

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213 *NZ Act* (n 31) s 10.
214 *Portugal Law* (n 3), art 9(2).
215 Spain, Portugal, Austria, New Zealand, and Ecuador: see Section III.D.
216 See Section V.B.
217 *Spain Act* (n 26) chs II and III; *Portugal Law* (n 3), ch II; *NZ Act* (n 31) pt 2.
218 See Close, Del Villar and White (n 187) for a contrary example.
219 White (n 59) 442.

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