

# **How Should the Northern Territory and the Australian Capital Territory Regulate Institutional Conscientious Objection in their Voluntary Assisted Dying Legal Frameworks?**

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# What are Institutional Conscientious Objections (ICOs) to voluntary assisted dying?

- Voluntary assisted dying (VAD) is now lawful in all six Australian states
- The states recognised that healthcare institutions such as hospitals have the right to conscientiously object to VAD
- Conscientious objections are when institutions refuse to participate in VAD due to their personal, moral, ethical, cultural or religious beliefs
- However, the states have taken two different approaches to regulate this right!

## **Policy approach**

- Victoria (VIC)
- Western Australia (WA)
- Tasmania (TAS)

## **Statutory approach**

- South Australia (SA)
- Queensland (QLD)
- New South Wales (NSW)

# What about the Territories?

## Australian Capital Territory (ACT)

- Is the 7<sup>th</sup> Australian jurisdiction to legalise VAD on 5 June 2024
- *The Voluntary Assisted Dying Act 2024* (ACT) will become operational on 3 November 2025
- Sections 99-109 of the Act places legal obligations on certain healthcare institutions to ensure that eligible persons can access VAD onsite

# What about the Territories?

## Northern Territory (NT)

- Is yet to pass VAD legislation
- The NT Government established an Independent Advisory Panel ('The Panel')
- The Panel published its *Report into VAD in the NT* in July 2024
- The Report recommended that residential aged care facilities (RACFs) should allow permanent residents to access VAD onsite<sup>1</sup>
- BUT the Panel did not specify whether this obligation on RACFs should be enforced through statute or policy!

<sup>1</sup> [https://cmc.nt.gov.au/\\_data/assets/pdf\\_file/0018/1420722/vad-report-2024.pdf](https://cmc.nt.gov.au/_data/assets/pdf_file/0018/1420722/vad-report-2024.pdf)

# How is the policy approach problematic?

VIC, TAS and WA released strikingly similar policy documents<sup>2-4</sup> that provide general guidance which is phrased **permissively**



This means healthcare institutions are given considerable flexibility to deviate from the advice



This means the overall advice does little to mitigate the risk of **vague and inconsistent policies** emerging at an organisational level in VIC, TAS and WA.



As a consequence, policies at an organisational level vary significantly in scope and detail from one institution to another

2 <https://meaningfulageing.org.au/wp-content/uploads/2019/05/VAD-Model-of-care-pathways-for-health-services.pdf>

3 <https://www.health.wa.gov.au/~media/Corp/Documents/Health-for/Voluntary-assisted-dying/VAD-Safety-and-Quality-Guidance.pdf>

4 [https://www.health.tas.gov.au/sites/default/files/2022-10/vad\\_-\\_minimum\\_requirements.pdf](https://www.health.tas.gov.au/sites/default/files/2022-10/vad_-_minimum_requirements.pdf)

# How would this problem with the policy approach be compounded in the NT?

The NT has unique **geographical** and **demographical** characteristics!

- Nearly **50%** of Territorians are widely distributed across rural and remote areas<sup>5</sup>
- **Indigenous people** account for **31%** of the NT's total population and speak over 100 different languages<sup>6</sup>
- The NT also has a **36%** higher burden of disease rate compared to the national average<sup>7</sup>

<sup>5</sup> <https://www.aihw.gov.au/reports/rural-remote-australians/rural-and-remote-health>

<sup>6</sup> <https://nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service/aboriginal-languages-in-nt>

<sup>7</sup> <https://www.aihw.gov.au/getmedia/5ef18dc9-414f-4899-bb35-08e239417694/aihw-bod-29.pdf?v=20230605164208&inline=true>

# How would this problem with the policy approach likely be compounded in the NT?

If vague policies are developed at an organisational level in the NT and staff do not provide VAD information in a clear manner



This may leave some Territorians confused and misinformed about their options to access VAD in non-participating institutions.

- Interpreters are also severely underutilised in healthcare settings in the NT<sup>8</sup>
- This suggests the policy approach to regulating ICOs to VAD may have serious implications for Territorians seeking to access the VAD pathway

<sup>8</sup> The Communicate Study Group, 'Improving Communication with Aboriginal Hospital Inpatients: A Quasi-Experimental Interventional Study' (2020) 213(4) *Medical Journal of Australia* 180

# What other impacts of ICOs to VAD have been reported?

Forced transfers out of the institution	Adverse emotional experiences	Practical delays
<p>Some patients were transferred to a family member's home so they could take the VAD substance, which was not their preferred place to die.<sup>9</sup></p>	<p>Some patients experienced anger, frustration and sadness at not being able to die in a non-participating RACF which was their home.<sup>9</sup></p>	<p>Some patients had to wait until a bed was available in the transferring facility before they could receive or take the VAD substance.<sup>9</sup></p>

<sup>9</sup> Ben White et al, 'The Impact on Patients of Objections by Institutions to Assisted Dying: A Qualitative Study of Family Caregivers' Perceptions' (2023) 24(1) *BMC Medical Ethics* 22:1–12

# Another significant finding from White et al's study

If healthcare institutions adopted a blanket prohibition on VAD and were the **ONLY** end-of-life care provider in a particular area in VIC



**Access to VAD became even more challenging!!<sup>9</sup>**

# What does this finding mean for the NT?

**Only 10 National Aboriginal and Torres Strait Islander Flexible Aged Care (NATSIFAC) services** span remote regions of the NT<sup>10</sup>



Thus, if any (or all) of these NATSIFAC services conscientiously object to VAD, this could severely restrict access to VAD for Indigenous People in the NT



**Results in an unfavourable outcome from a patient's perspective**

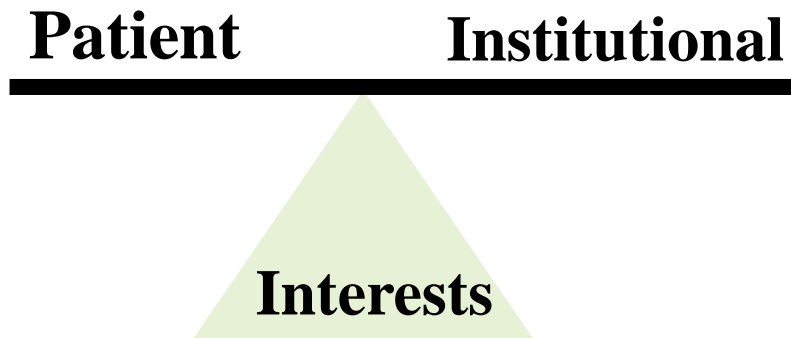


Consequently, Territorians who are unable to transfer to another institution may be forced to opt for palliative care services instead

<sup>10</sup> <https://www.myagedcare.gov.au/support-aboriginal-and-torres-strait-islander-people#remote-care>

# Why did South Australia deviate from the policy approach?

- SA was the first Australian state to regulate ICOs to VAD through statute
- NSW and Queensland have largely adopted SA's statutory approach
- The impetus behind statutorily regulating ICOs to VAD was to recognise there was substantial opposition to VAD by some faith-based private institutions<sup>11</sup>
- Thus, the South Australian Parliament aimed to appropriately balance **two competing interests**



<sup>11</sup> see eg, 'Calvary Health Care's Concerns Regarding the Voluntary Assisted Dying Bill 2020 (SA)', *Calvary Adelaide Hospital* (Web Page, 10 May 2021) [https://www.calvarycare.org.au/wp-content/uploads/2021/05/Calvary\\_Submission\\_SA\\_VAD\\_20210507.pdf](https://www.calvarycare.org.au/wp-content/uploads/2021/05/Calvary_Submission_SA_VAD_20210507.pdf)

# What are South Australia's ICO provisions and obligations under the *Voluntary Assisted Dying Act 2021* (SA)?

## Section 11

**Private hospitals or private facilities** can refuse to provide VAD but must inform patients of this refusal and facilitate a transfer to another facility if requested by the patient

## Sections 17(2), 19(2) and 25

Operators of RACFs must provide **ALL RESIDENTS** with access to information about VAD and must allow them to make first and final requests for VAD.

# What are South Australia's ICO provisions and obligations under the *Voluntary Assisted Dying Act 2021* (SA)?

**Sections 20(2) 21(2), 22(2), 23(2), 24(2)**

Operators of RACFs must permit eligibility assessments, applications for a VAD permit, written declarations for VAD and administration of the VAD substance to occur onsite for **PERMANENT residents**

**Sections 20(3), 21(3), 22(3), 23(3), 24(3)**

Operators of RACFs must transfer **NON-PERMANENT residents** to another facility so they may undergo eligibility assessments, apply for a VAD permit, make a written declaration for VAD and administer the VAD substance.

# Why should the NT adopt SA's statutory approach to regulating ICOs to VAD?

- Allows private hospitals to conscientiously object but this is **NOT** an absolute right
- Safeguards access to ALL distinct stages of the VAD process!
- Imputes greater clarity and consistency, avoiding a piecemeal approach
  - For e.g. the Act clearly stipulates the factors to consider when determining whether a transfer to another facility for a non-permanent resident is reasonable<sup>12</sup>
  - This obligation may need to be modified slightly in the NT given many Indigenous people prefer to die at home on Country<sup>13</sup>

<sup>12</sup> *Voluntary Assisted Dying Act 2021* (SA) s 15.

<sup>13</sup> Pam McGrath, "I Don't Want to be in that Big City; This is My Country Here": Research Findings on Aboriginal Peoples' Preferences to Die at Home' (2007) 15(4) *Australian Journal of Rural Health* 264; Pam McGrath and Emma Phillips, 'Aboriginal Spiritual Perspectives: Research Findings Relevant to End-of-Life Care' (2008) 16(2) *Illness, Crisis and Loss* 153