

QCAT Practice Direction No. 12 of 2022

APPLICATIONS FOR REVIEW OF DECISIONS MADE ABOUT VOLUNTARY ASSISTED DYING

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DATE THIS PRACTICE DIRECTION COMES INTO EFFECT

1. This Practice Direction is effective from 1 January 2023.

INTRODUCTION TO VAD MATTERS

2. This Practice Direction is issued pursuant to section 226 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (**QCAT Act**). It applies to matters heard in QCAT's Voluntary Assisted Dying review jurisdiction under the *Voluntary Assisted Dying Act 2021* (Qld) (**VAD Act**).
3. Under the VAD Act an eligible person can apply to QCAT for a review of a reviewable decision.
4. This Practice Direction:
 - a. informs the parties about the VAD application process; and
 - b. directs the parties about some of the things they must do.

DEFINITIONS

5. "VAD" means voluntary assisted dying which is an end-of-life choice that gives eligible people who are suffering and dying the option of asking for medical assistance to end their lives. There are strict eligibility criteria for accessing voluntary assisted dying.
6. "VAD Board" means the Voluntary Assisted Dying Review Board appointed by the Queensland Government to oversee, monitor and report on the operation of voluntary assisted dying in Queensland.
7. "VAD process" means the process for requesting and assessing a person's eligibility to access voluntary assisted dying and the process for prescribing, supplying or administering a VAD substance to end the person's life. The assessment process occurs over three phases, involving three separate requests and assessments of eligibility by medical practitioners (first assessment, consulting assessment and final review). The person requesting access to voluntary assisted dying can stop the process at any time.

WHAT DECISIONS ARE REVIEWABLE?

8. The following are reviewable decisions:
 - a. **For a first request - a decision of a coordinating practitioner in a first assessment of a person requesting access to voluntary assisted dying, whether or not the person:**
 - i. has been ordinarily resident in Australia for at least 3 years immediately before the person made the person's first request; or
 - ii. has been ordinarily resident in Queensland for at least 12 months immediately before the person made the person's first request; or
 - iii. has decision-making capacity in relation to voluntary assisted dying; or
 - iv. is acting voluntarily and without coercion.

OR

- b. **For a second request - a decision of a consulting practitioner in a consulting assessment of a person requesting access to voluntary assisted dying, whether or not the person:**
- i. has been ordinarily resident in Australia for at least 3 years immediately before the person made the person's first request; or
 - ii. has been ordinarily resident in Queensland for at least 12 months immediately before the person made the person's first request; or
 - iii. has decision-making capacity in relation to voluntary assisted dying; or
 - iv. is acting voluntarily and without coercion.

OR

- c. **For a final request - a decision of a coordinating practitioner, in a final review of a person requesting access to voluntary assisted dying, whether or not the person:**
- i. has decision-making capacity in relation to voluntary assisted dying; or
 - ii. is acting voluntarily and without coercion.

WHO CAN APPLY TO REVIEW A VAD DECISION?

9. An "eligible person" who may apply to QCAT for a review of a reviewable decision is:
- a. a person who is the subject of the decision; or
 - b. an agent of a person who is the subject of a decision; or
 - c. any other person who has a sufficient and genuine interest in the rights and interests of a person who is the subject of the decision.

HOW DOES A PERSON WHO WANTS TO SEEK A REVIEW OF A REVIEWABLE DECISION BEFORE QCAT MAKE AN APPLICATION TO START THE PROCESS?

10. To seek a review of a reviewable decision, an eligible person must file a Form 66 – "Application to review a voluntary assisted dying decision" (Form 66 or application) with QCAT.
11. The Form 66 must be filed within 5 business days after the "relevant day" for the reviewable decision, being:
- a. if the applicant is the person who is the subject of the decision – the day the applicant received the reviewable decision or became aware of the reviewable decision, whichever is the latter; or
 - b. if the applicant is the agent of the person or a person who has a sufficient and genuine interest in the rights and interests of the person who is the subject of the decision – the day the eligible person making the application becomes aware of the reviewable decision.

12. Once QCAT receives a Form 66, the Principal Registrar must decide within two (2) business days of receiving the application if the application is accepted.

WHAT HAPPENS IN THE VAD PROCESS ONCE THE APPLICATION FOR REVIEW IS MADE?

13. Once an application for a review is made to QCAT no further step in the VAD process may be taken until the application for review is finalised.¹
14. Once an application is accepted by the Principal Registrar, QCAT will provide a copy of the application to review to:
 - a. each party to the proceeding, for example the coordinating practitioner for the person or the person who is the subject of the decision (if they are not the applicant)²;
 - b. the consulting practitioner, if there is one, and whether or not the consulting practitioner is a party to the proceeding; and
 - c. any other person QCAT directs is to receive a copy of the application.³
15. QCAT will notify the VAD Board that an application has been made, disclosing the name of the person who is the subject of the decision, within two (2) business days of QCAT accepting the application.
16. Once served with an application, the respondent (and other relevant practitioner if applicable) must provide QCAT with a copy of the decision under review (first assessment, consulting assessment and/or final review) and any documents in their possession or under their control within two (2) business days of being served with a notice.⁴

SCHEDULING OF HEARINGS

17. A directions hearing may be held in VAD matters at an early stage of the process. During a directions hearing, the QCAT decision maker will seek to ensure that all parties are informed of their obligations and responsibilities in progressing the matter to finalisation.

NOTICE OF TRIBUNAL HEARING

18. Directions which include a date for hearing will serve as notice of the QCAT hearing.⁵
19. The parties must ensure they read all directions that are made in the matter and ensure they record the hearing date in their own records, and appear at that hearing date at the time specified.

¹ Section 104 of the VAD Act.

² Section 107 of the VAD Act.

³ Section 108 of the VAD Act requires the Principal Registrar to provide a copy of the application within 2 business days.

⁴ Section 109(3) of the VAD Act.

⁵ Section 92 of the QCAT Act requires the Principal Registrar must give written notice of the hearing. The written directions issued will serve as this written notice.

WHAT ARE THE POWERS OF QCAT IN DECIDING A VAD MATTER?

20. The role of the QCAT decision-maker/s is to make the correct and preferable decision, following a fresh hearing on the merits.⁶
21. Upon hearing a VAD matter, QCAT may decide:⁷
 - a. if the review is about a person's *Australian residency*:
 - i. that at the time of making the first request, the person had been ordinarily resident in Australia for at least 3 years immediately before that time; or
 - ii. that at the time of making the first request, the person had not been ordinarily resident in Australia for at least 3 years immediately before that time; or
 - b. if the review is about a person's *Queensland residency*:
 - i. that at the time of making the first request, the person had been ordinarily resident in Queensland for at least 12 months immediately before that time; or
 - ii. that at the time of making the first request, the person had not been ordinarily resident in Queensland for at least 12 months immediately before that time; or
 - c. if the review is about the person's *decision-making capacity*:
 - i. that the person does have decision-making capacity in relation to voluntary assisted dying; or
 - ii. that the person does not have decision-making capacity in relation to voluntary assisted dying; or
 - d. if the review is about whether the person is *acting voluntarily and without coercion*:
 - i. that the person is acting voluntarily and without coercion; or
 - ii. that the person is not acting voluntarily and without coercion.⁸

PROCESS AT A VAD HEARING

22. This Practice Direction overrides Practice Direction No. 3 of 2013 (administrative review proceedings) to the extent of any inconsistency and to the extent necessary, at the presiding member's discretion.
23. The hearing of a VAD application must be held in private.⁹
24. At the QCAT hearing all parties will be given an opportunity to make oral submissions after all evidence has been given by the parties. Generally, the

⁶ Section 20 of the QCAT Act.

⁷ Section 105 VAD Act.

⁸ Sections 24(1) and (2) of the QCAT Act do not apply to an application for review of a VAD decision: s101 VAD Act. Sections 24(1) and (2) set out general powers of QCAT Act in hearing a review. These general provisions are supplanted by the specific provisions in the VAD Act as set out above.

⁹ Section 112 of the VAD Act.

applicant will be given the opportunity to be the first party to make oral submissions, but this is subject to the discretion of the Tribunal.

LEGAL REPRESENTATION

25. With limited exceptions, the parties must obtain leave if they wish to be legally represented.¹⁰
26. A party seeking leave to be represented should, where possible, complete and file an application for leave, and provide a copy to all other parties, and the consulting practitioner, whether or not the consulting practitioner is a party. The form to make an application to be legally represented is [Form 56 – “Application for leave to be represented”](https://www.qcat.qld.gov.au/data/assets/pdf_file/0017/101339/form-56-app-for-leave-to-be-represented.pdf) which can be found at https://www.qcat.qld.gov.au/data/assets/pdf_file/0017/101339/form-56-app-for-leave-to-be-represented.pdf.
27. Issues relating to leave for legal representation will be canvassed at a directions hearing, and the parties can generally expect a decision on leave for legal representation to be made at the directions hearing.
28. The Tribunal retains a discretion to waive the requirement for a formal application for leave to be filed and given to the other parties in any given case.

USE OF INTERPRETERS IN VAD HEARINGS

29. An interpreter for a person requesting access to VAD must be accredited by a body approved by the Chief Executive¹¹ (or have been granted an exemption from being so approved) and must not:
 - a. be a family member of the person; or
 - b. know or believe that they are a beneficiary under a will of the person or that they may otherwise benefit financially or in any other material way from the death of the person other than by receiving reasonable fees for the provision of services as an interpreter; or
 - c. be an owner of, or be responsible for the management of, any health facility at which the person is being treated or resides; or
 - d. be a person who is directly involved in providing a health service or personal care service to the person.¹²
30. An interpreter must sign the “VAD Interpreter/Speech Pathologist Form” confirming that they meet the requirements to be an interpreter for the person in accordance with section 157 of the VAD Act. A copy of the VAD Interpreter/Speech Pathologist Form will be provided to the interpreter, if applicable.

WITHDRAWAL OF AN APPLICATION

31. An application is taken to be withdrawn if:

¹⁰ Section 43 of the QCAT Act.

¹¹ That is, the Chief Executive of the Department of Health.

¹² Section 157 of the VAD Act.

- a. the applicant withdraws their application before the matter is heard and decided by QCAT¹³; or
- b. the person who is the subject of the decision dies.¹⁴

AVENUES OF APPEAL FROM A DECISION OF QCAT

32. A party to a proceeding can appeal a QCAT decision to either the Queensland Civil and Administrative Tribunal Appeals Tribunal or the Court of Appeal (Supreme Court) within 28 days after the “relevant day”.¹⁵
33. “Relevant day” for an appeal means:¹⁶
 - a. if a person makes an application under part 7, division 5, 6 or 7 of the QCAT Act about the decision being appealed against within 28 days after the person is given written reasons for the decision—the day that application is finally dealt with under that division; or
 - b. if written reasons have not been given for the decision being appealed against and reasons have not been requested under section 122 of the QCAT Act or are not required to be given—the day the person received notice of the decision; or
 - c. the day the person is given written reasons for the decision being appealed against.
34. The avenue of appeal depends on the constitution of the tribunal in the proceeding at first instance. QCAT members may be judicial officers (such as the President or Deputy President of the Tribunal, or a judge of the Supreme Court or District Court) or non-judicial officers. A party may appeal a QCAT decision:
 - a. to the Queensland Civil and Administrative Tribunal Appeals Tribunal if a judicial member did not constitute the tribunal in the proceeding.¹⁷
 - b. to the Court of Appeal (Supreme Court), if a judicial member constituted the tribunal in the proceeding.¹⁸
35. A party appealing a QCAT decision, must file a [Form 39 – “Application for leave to appeal or appeal”](#) which can be found at <https://www.qcat.qld.gov.au/qcat-decisions/appealing-a-decision>.
36. A party appealing the QCAT decision must give a copy of the appeal application and supporting material to each other party to the proceeding within seven (7) days¹⁹ of the applicant receiving the sealed appeal application or as otherwise directed by QCAT.²⁰

¹³ Section 46 of the QCAT Act.

¹⁴ Section 113 of the VAD Act.

¹⁵ Section 143(4)(b) and section 151(2)(b) of the QCAT Act.

¹⁶ Section 151 of the QCAT Act.

¹⁷ Section 142 of the QCAT Act.

¹⁸ Section 149 of the QCAT Act.

¹⁹ Rule 19 of the *Queensland Civil and Administrative Tribunal Rules 2009* (Qld).

²⁰ Rule 39 of the *Queensland Civil and Administrative Tribunal Rules 2009* (Qld).

WHERE TO FIND PUBLISHED DECISIONS IN VAD MATTERS

37. Published decisions in VAD matters can be found (in a de-identified format) online on the [Supreme Court Library](#) website.

HOW TO FILE AND SERVE MATERIAL

38. QCAT's preferred method of filing and service of material is via email to VAD@justice.qld.gov.au. If a party does not have an email address, service must be given by the next most efficient and timely means; for example, by post or personal service.



*Hon Justice Kerri Mellifont
President*

21 December 2022