

# Overview of voluntary assisted dying

**Voluntary assisted dying (VAD) is lawful in all Australian States. The laws in each State are similar but there are key differences.**

## Clarifying the law

This factsheet explains:

- Common features of the laws across States, including eligibility criteria, processes to access VAD, and safeguards
- Obligations of health professionals and institutions in relation to VAD

The information in this factsheet is an overview only. For detailed information about the law on VAD in your State visit *End of Life Law in Australia*. (<https://end-of-life.qut.edu.au/assisteddying>)

## What is voluntary assisted dying?

**Voluntary assisted dying (VAD) is the assistance provided by a health practitioner to a person with a terminal illness, disease or medical condition to end their life.** It includes:

- **self-administration**, where the person takes the VAD medication themselves, and
- **practitioner administration**, where the person is given the medication by a health practitioner.

'Voluntary' means it is the person's voluntary choice. The person must have decision-making capacity to decide to access VAD.

## Is voluntary assisted dying legal in Australia?

**VAD is legal in all Australian States.** It is available in limited circumstances to people who meet the eligibility criteria (discussed on the next page).

VAD is illegal in the **Northern Territory** and the **Australian Capital Territory**. However, in October 2023, draft legislation to legalise VAD was introduced in the Australian Capital Territory parliament.

Learn more about the law on VAD at *End of Life Law in Australia*. (<https://www.end-of-life.qut.edu.au/assisteddying>)

## Providing appropriate pain and symptom relief with the intention of relieving a person's pain and suffering is not VAD.

It is lawful (and good clinical practice) to provide pain relief to manage a person's pain and symptoms at the end of life.

Learn more about the law on providing pain relief in the **End of Life Law Toolkit factsheet *Legal Protection for Administering Pain and Symptom Relief***. (<https://www.eldac.com.au/tabid/4985/Default.aspx>)

## VAD laws in Australian States

The VAD laws in each State are similar, but there are some key differences.

## Eligibility criteria

To access VAD **the person must meet all of the eligibility criteria** in their State. A person is eligible if they:

- **are aged 18 years or over;**
- **are an Australian citizen or permanent resident**, who has been resident in the State for at least 12 months when they first request VAD (these criteria can be met in other ways in Tasmania, Queensland and New South Wales);
- **have decision-making capacity** for VAD;
- **are acting voluntarily and without coercion;**
- have an **enduring request** for VAD (i.e. their request is ongoing); and
- have a **disease, illness or medical condition** that is:
  - **advanced and will cause death.** In all States except Tasmania it must also be **progressive** (i.e. the person experiences active deterioration),
  - **incurable** (Victoria, South Australia and Tasmania only), and **irreversible** (Tasmania only),
  - expected to cause **death within six months, or 12 months for a person with a neurodegenerative disease, illness or medical condition.** In Queensland, however, a person expected to die within 12 months may apply for VAD, and
  - **causing suffering that cannot be relieved in a way that the person finds tolerable.** The person's suffering may be physical or non-physical e.g. psychological, existential.

A person will not be eligible for VAD based on having a disability or mental illness (or in New South Wales, dementia) alone – they must meet all of the criteria above to access VAD.

Learn more about the VAD eligibility criteria in your State at *End of Life Law in Australia*. (<https://end-of-life.qut.edu.au/assisteddying>)

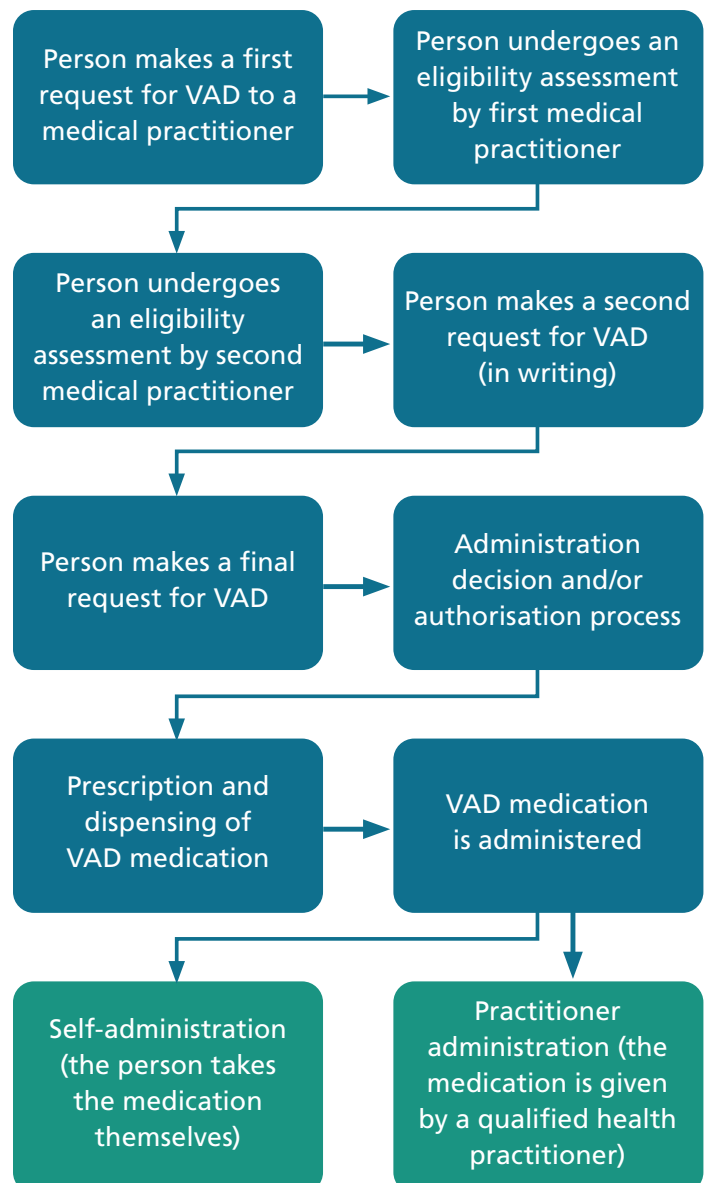
## Accessing VAD

To access VAD, each State **requires a person to undergo a request and assessment process.** It generally involves a person:

- making **at least three requests** for VAD; and
- being **assessed as eligible by at least two independent medical practitioners.**

The person can withdraw their request for VAD at any time.

This diagram shows the basic VAD request and administration process in Victoria, Western Australia, South Australia, Queensland, and New South Wales. Tasmania's process is similar but has additional requirements.



The two doctors who assess VAD eligibility must both have undertaken specialised VAD training in the State where they practise.

The process for requesting VAD is different in each State. Learn more about the process in your State at *End of Life Law in Australia*.

(<https://end-of-life.qut.edu.au/assisteddying>)

### Administration of VAD medication

The **VAD medication can be administered by the person (self-administration), or, in some cases, a health practitioner (practitioner administration)**. The situations in which a practitioner can give the medication, and which health practitioners are permitted to do this differ in each State.

Learn about practitioner administration in your State at *End of Life Law in Australia*.

(<https://end-of-life.qut.edu.au/assisteddying>)

The person may take the VAD medication at a time and place of their choosing. Other people (e.g. family and friends) may be present, if the person wishes. There is no requirement for other people to attend, but a witness must be present for practitioner administration in all States except Tasmania.

### Safeguards

Each State has safeguards to ensure that VAD is only accessed by eligible people. Some of the key safeguards in all States are:

- **Restrictions on when health professionals can initiate a discussion or provide information** to a person about VAD.
- Requirements in some cases for **additional specialist opinions** to be obtained to determine if a person is eligible for VAD. An example is where it is unclear that a person has capacity.
- Strict protocols governing the **prescription, dispensing and disposal of VAD medications**.

- Any **unused or remaining VAD medication must be returned** (e.g. to the dispensing pharmacist).
- **Offences** for anyone who induces another person to request VAD, or take the VAD medication.
- **Oversight** by independent Boards or Commissions in all States. Their roles include monitoring, reporting, and research.

### Legal rights and obligations of health professionals

**Health professionals e.g. medical practitioners, registered nurses, allied health professionals, enrolled nurses and personal care workers have rights and obligations under VAD laws.**

These differ depending on the person's profession, the State they work in, and whether they choose to be involved with VAD. Some key obligations are discussed here.

Learn more in the End of Life Law Toolkit factsheets *Voluntary assisted dying in aged care: Roles and obligations of medical practitioners, registered nurses, allied health professionals and enrolled nurses, and personal care workers*. (<https://www.eldac.com.au/tabid/7586/Default.aspx>)

### Discussing VAD and providing VAD information

There are **restrictions on when VAD can be discussed, and which health professionals can do this**. There are also **restrictions on providing information about VAD**.

#### *Victoria and South Australia*

Medical practitioners, nurses and other registered health practitioners cannot start VAD discussions with a person. All health professionals and personal care workers can provide VAD information if the person requests it.

## **Western Australia, Tasmania, Queensland and New South Wales**

In **Western Australia, Tasmania, Queensland and New South Wales**, a medical practitioner can initiate VAD discussions, but must also provide information about treatment and palliative care options. A nurse practitioner in Western Australia and Queensland can also do this.

In **Tasmania**, all registered health practitioners other than a medical practitioner can initiate VAD discussions but must inform the person that a medical practitioner is the best person to discuss VAD with.

In **New South Wales**, all registered health practitioners other than a medical practitioner, other health professionals and personal care workers can initiate VAD discussions but must inform the person that they have palliative care and treatment options available, and should discuss these with the person's medical practitioner.

In all four States, all registered health practitioners and personal care workers may provide information about VAD if a person or resident requests it.

Learn more about the law on discussing VAD and providing VAD information in your State at *End of Life Law in Australia*. (<https://end-of-life.qut.edu.au/assisteddying>)

### **Participating in VAD**

Health professionals e.g. medical practitioners, nurses and allied health professionals working in aged and home care **can decide whether or not to participate in VAD**. Personal care workers can also choose not to be involved with VAD. However, in some States objecting health professionals, as well as non-participating residential facilities e.g. RACFs, nursing homes still have certain legal obligations.

## **Conscientious objection by health professionals**

### **Health professionals can conscientiously object to participating in VAD.**

Personal care workers can also choose not to be involved with VAD. In all States they may refuse to:

- accept a VAD request;
- participate in VAD assessment processes or administration decisions;
- prescribe, supply or administer a VAD medication; or
- be present during administration of VAD medication.

In Victoria, South Australia, Queensland, and New South Wales, a person with a conscientious objection can also refuse to provide information about VAD.

**In Western Australia, Queensland and New South Wales, a medical practitioner who refuses to accept a first request for VAD because of a conscientious objection must let the person know immediately.** In Western Australia, Tasmania and Queensland, they must also provide contact details of a service which provides VAD assistance.

The obligations of health professionals who conscientiously object to VAD differ in each State. Learn more about the law in your State at *End of Life Law in Australia*. (<https://end-of-life.qut.edu.au/assisteddying>)

### **Participation by RACFs and other institutions**

Generally, institutions such as **residential facilities may decide whether to provide VAD, and what level of support they offer to residents seeking VAD**. The laws differ in each State.

#### **Victoria, Western Australia and Tasmania**

The VAD laws do not discuss institutional participation in VAD. Institutions including residential facilities may decide what level of involvement they have.

## South Australia, Queensland and New South Wales

**Institutions may choose not to participate in VAD.** However, **residential facilities who decide not to participate have certain obligations so that a resident can access VAD if they wish.**

The law on institutional obligations relating to VAD is complex. Learn more in the *End of Life Law Toolkit* factsheets *Voluntary assisted dying in aged care: Residential facilities in Victoria, Western Australia and Tasmania* and *South Australia, Queensland and New South Wales*. (<https://www.eldac.com.au/tabid/7586/Default.aspx>)

### Key points to remember

1. VAD is legal in all Australian States. It is currently illegal in the Australian Capital Territory and the Northern Territory.
2. To be eligible to access VAD, a person must meet a range of criteria including:
  - they are an adult with decision-making capacity;
  - they have a disease, illness or medical condition which will cause death within 6 months (12 months in Queensland and in other States for a neurodegenerative disease); and
  - their condition is advanced, and is causing intolerable suffering. In all States except Tasmania the condition must also be progressive.
3. To access VAD, a person must undergo a request and assessment process that includes making (at least) three separate requests for VAD, and eligibility assessments by (at least) two independent medical practitioners.
4. The VAD medication will be administered either by the person (self-administration) or by a health practitioner (practitioner administration).
5. A range of safeguards apply to the VAD process, including requirements relating to oversight and reporting, and prescription, disposal and safe storage of VAD medication.
6. There are restrictions on when health professionals can discuss VAD or provide VAD information to a person, and which health professionals can do so.
7. Health professionals can conscientiously object to participating in VAD, but in some States they will still have legal obligations to ensure patients and residents can access VAD.
8. Generally institutions e.g. RACFs and hospitals may decide whether to provide VAD, and the support they offer those wanting to access VAD. Institutions in South Australia, Queensland and New South Wales have specific obligations to allow people to access VAD if they wish.

## For more information about VAD laws and policies in Australia visit:

- ELDAC End of Life Law Toolkit factsheets: *Voluntary assisted dying in aged care:*
  - *Roles and obligations of medical practitioners, registered nurses, allied health professionals and enrolled nurses, and personal care workers.* (<https://www.eldac.com.au/tabid/7586/Default.aspx>)
  - *Residential facilities in South Australia, Queensland and New South Wales and Victoria, Western Australia and Tasmania.* (<https://www.eldac.com.au/tabid/7586/Default.aspx>)
  - *Frequently asked questions about voluntary assisted dying.* (<https://www.eldac.com.au/tabid/7410/Default.aspx>)
- *End of Life Law in Australia.* (<https://end-of-life.qut.edu.au/assisteddying>)
- State departments of health. (<https://www.eldac.com.au/tabid/5756/Default.aspx>)
- End of Life Law for Clinicians online Module 11: Voluntary assisted dying. (<https://ellc.edu.au>)