

Voluntary assisted dying in aged care: Residential facilities in South Australia, Queensland and New South Wales

Voluntary assisted dying (VAD) is legal in all Australian States. The Australian Capital Territory and the Northern Territory do not currently have VAD laws.

Under the States' VAD laws, residential facilities in **South Australia, Queensland and New South Wales** have legal obligations.

This factsheet explains:

- **residential facilities' legal obligations in relation to VAD, and**
- **practical tips to help residential facilities comply with their VAD obligations.**

This factsheet is for managers, directors, executives, and other operations staff at residential facilities in South Australia, Queensland and New South Wales.

VAD laws in **Victoria, Western Australia and Tasmania** do not discuss residential facilities' participation in VAD. Information for residential facilities in those States is discussed in the *End of Life Law Toolkit factsheet Voluntary assisted dying in aged care: Residential facilities in Victoria, Western Australia and Tasmania*. (<https://www.eldac.com.au/Portals/12/Documents/Factsheet/Legal/VAD-aged-care-Victoria-WA-TAS.pdf>)

Residential facilities include:

- **residential aged care facilities (RACFs),**
- **nursing homes, hostels or other facilities providing accommodation, nursing or personal care, and**
- **retirement villages (South Australia only).**

Non-residential facilities such as public and private hospitals and hospices also have specific legal obligations in relation to VAD. These are not discussed in this factsheet. To learn more about VAD and health services visit *End of Life Law in Australia*. (<https://end-of-life.qut.edu.au/assisteddying>)

VAD laws are discussed as though they have commenced in all three States.

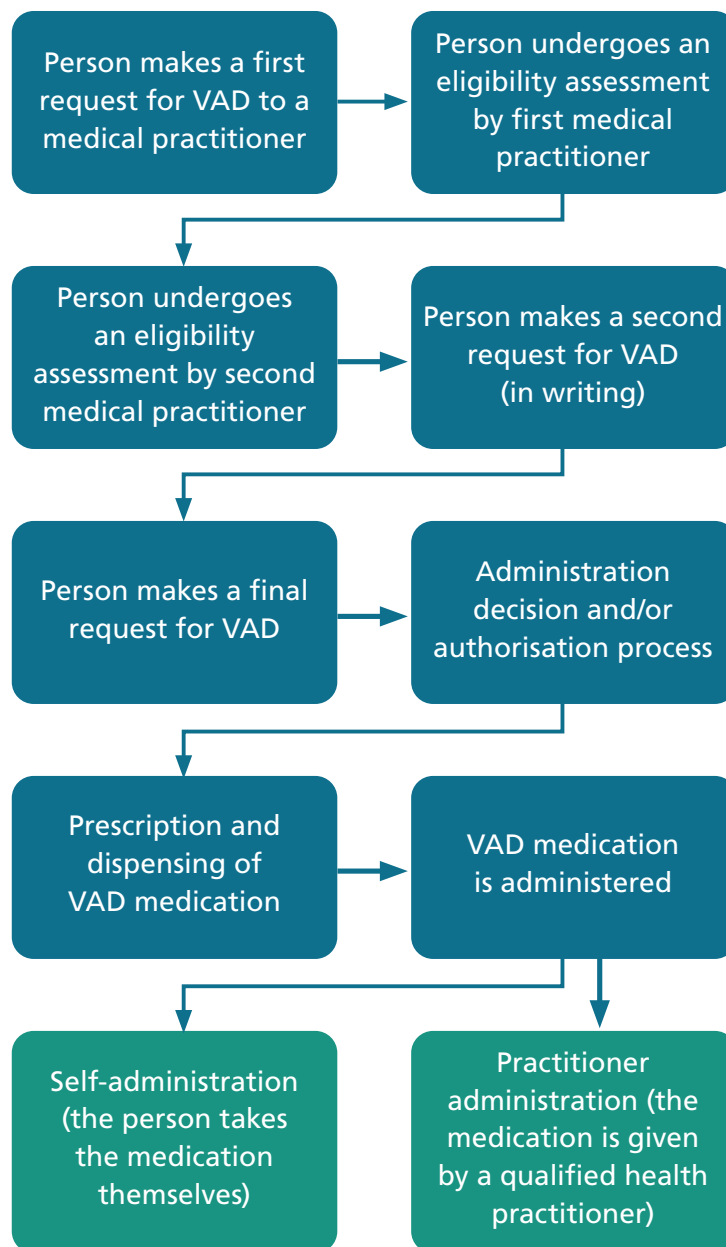
Important information about VAD laws

VAD laws in each State are similar, but there are key differences. As a starting point, read the End of Life Law Toolkit factsheet *Overview of Voluntary Assisted Dying* (<https://www.eldac.com.au/tabid/5757/Default.aspx>) to understand the eligibility criteria a person must meet to access VAD, administration of VAD medication and VAD safeguards.

That factsheet also discusses the **request and assessment process before a person may take or be given the VAD medication**. It generally involves a person making at least three requests for VAD (a first request, a second request (in writing) and a final request) and being assessed as eligible by at least two independent medical practitioners.

The process in **South Australia, Queensland and New South Wales** is illustrated in the diagram below. You may wish to refer to this as you read this factsheet.

VAD request and administration process



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Learn more about VAD laws and processes in each State at *End of Life Law in Australia*.
(<https://end-of-life.qut.edu.au/assisteddying>)

Staff working in residential facilities and home care also have specific roles, and legal rights and obligations in relation to VAD. The following **End of Life Law Toolkit factsheets** provide essential VAD information and support for facility staff – *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>)

How does VAD fit into aged care, palliative care and other end of life care?

VAD is an end of life option that a person receiving aged care services in residential facilities or home care may choose provided they meet the eligibility criteria set out in their State's VAD legislation.

Many people who choose to access VAD also receive palliative care. A person accessing VAD will continue to receive palliative care and medical treatment, and access end of life care services e.g. specialist palliative care, social work, and/or spiritual care up until their death.

VAD is distinct from palliative care. If a person's death unintentionally results from providing medication e.g. morphine, this is not VAD. This is because the health professional's intention was to relieve the person's pain and symptoms, not hasten death. It is always **good clinical practice for health professionals 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 and symptom 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>)

Do residential facilities have to participate in VAD?

Residential facilities **can decide whether to provide VAD services and what support they offer to residents who are seeking VAD**. However, residential facilities that choose not to provide VAD services still have legal obligations to enable a resident to access VAD if they wish. These are discussed further below.

Residential facilities that choose not to provide VAD services should inform all residents and families of this. They must also inform the public that they do not provide VAD and publish this information e.g. on the facility's website, to enable prospective residents to make an informed choice about whether to live there. If a resident requests VAD the facility should advise the person as soon as possible that they do not provide VAD.

Supporting residents' dignity and choice

Accessing VAD is a **person's voluntary choice**. Though residential facilities are not required to provide VAD, **a facility's values and beliefs should not impede a person's right to access lawful treatments, or negatively impact a resident's dignity and right to choose**. This is an important part of delivering optimal person-centred care, respecting residents' dignity and supporting residents to exercise their end of life choices (as required by the Aged Care Quality Standards (<https://www.agedcarequality.gov.au/providers/standards>)).

Residential facility staff who conscientiously object to VAD also have ethical obligations. As part of good clinical practice, staff should:

- not use their objection (or personal views) to prevent residents accessing lawful medical care and treatments; and
- consider referring the resident to someone who may assist them, or ensure the person has alternative care options.

It can be a criminal offence for health professionals and personal care workers to persuade a person to withdraw their request for VAD or persuade a person to ask for VAD.

Ethical obligations of staff are discussed further 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>)

What legal obligations do residential facilities have in relation to VAD?

Residential facilities have important legal obligations in relation to VAD. All residential facilities must allow a resident to:

- **receive information about VAD when they request it**. This includes allowing a medical practitioner to visit the facility to provide information about VAD.
- **make a first or final request for VAD at the residential facility**. This is part of the process a person must undertake to access VAD.

These obligations are detailed in Table 1.

Table 1: Residential facilities - VAD obligations to all residents

Legal obligation	All residents: Residential facilities in South Australia, Queensland and New South Wales
Access to information	Not hinder the resident's access to information AND Allow a registered health practitioner and other persons (e.g. a care navigator from the State's VAD Care Navigation Service) reasonable access to the facility to provide information to the resident.
First and final requests	Allow a medical practitioner access to the facility so the resident can make a first request or final request OR If the medical practitioner cannot attend the facility, transfer the resident to another place to make a first request or final request.

Accessing VAD services

Residential facilities also have **obligations to support residents to access VAD services** i.e. undertake eligibility assessments, make a formal written VAD request and take or be given the VAD medication (administration). These obligations differ depending on whether a person is a permanent or non-permanent resident, and by State. Residential facilities have greater obligations towards permanent residents because a residential facility is their home.

Generally, residential facilities must:

- **for permanent residents, allow health practitioners to enter the facility to undertake eligibility assessments and administer VAD medication**, and
- **transfer non-permanent residents to and from another place where they can receive VAD services**. However, if transferring the resident would be unreasonable e.g. it would cause the person additional discomfort or worsen their condition, the facility must allow a health practitioner to provide VAD services at the facility (including administration of VAD medication).

The tables below detail the obligations residential facilities have to permanent and non-permanent residents in each State.

Table 2: VAD obligations to permanent and non-permanent residents - Second request

Second request for VAD	South Australia and New South Wales	Queensland
Allow a medical practitioner, witnesses (and in South Australia and New South Wales, an interpreter or speech pathologist, if required) to access the facility so the resident can make the request OR If the medical practitioner cannot attend the facility, transfer the resident to another place to make the request.	Permanent residents only	All residents
Transfer the resident to another place to make the request OR If transfer is not reasonable, allow a medical practitioner and witnesses (and an interpreter/speech pathologist if required) access to the facility so the resident can make the request.	Non-permanent residents	N/A

Table 3: VAD obligations to permanent and non-permanent residents – Assessments, decisions and administration

	South Australia and New South Wales and Queensland	
	Permanent residents	Non-permanent residents
Eligibility assessments, *administration decision	Allow a medical practitioner access to the facility for consultation OR If the medical practitioner is unavailable, transfer the resident to another place for consultation.	Transfer the resident to and from a place for consultation with a medical practitioner OR If transfer is not reasonable, allow a medical practitioner access to the facility for consultation.
Administration of VAD medication	Allow the VAD medication to come into the facility AND Allow access to the facility by a health practitioner and a witness participating in the administration of VAD medication. In South Australia and New South Wales, a facility must also allow other people to access the facility for administration e.g. a nurse, an interpreter or speech pathologist, if required.	Transfer the resident to a place for administration of VAD medication OR If transfer is not reasonable, allow a health practitioner and a witness access to the facility for administration. In South Australia and New South Wales, a facility must also allow other people to access the facility for administration e.g. a nurse, an interpreter or speech pathologist, if required.

*Administration decision: A decision about whether the VAD medication should be taken by the person (self-administration) or given by a health practitioner (practitioner administration).

Roles, rights and obligations of health professionals working in residential facilities

In each State, **medical practitioners, nurse practitioners, registered nurses, allied health professionals, enrolled nurses, and personal care workers have specific roles and legal rights and obligations in relation to VAD.**

Residential facilities should be familiar with the roles, rights and obligations of staff working for them. These are discussed 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>).

Some important considerations for residential facilities are the legal rights and obligations of staff relating to conscientious objection, initiating VAD discussions and providing VAD information.

Conscientious objection

Some staff working at residential facilities may not want to be involved in VAD due to their personal beliefs and values. Medical practitioners, nurse practitioners, registered nurses, allied health professionals, and enrolled nurses have the **right to conscientiously object to participating in VAD**. Personal care workers can also choose not to be involved with VAD. However, in some States, objecting health professionals may still have certain legal obligations. All health professionals also have ethical obligations if they have a conscientious objection.

Residential facilities should consider how to manage conscientious objections by staff to avoid any disruption to residents' care.

Discussing VAD and providing information

There are restrictions on when staff can **initiate discussions about VAD with a person**. Only some health professionals are permitted to do this. In some States they must also provide other information prescribed by State health departments (in addition to general information about VAD) to a person when they have discussions. These laws are different in each State.

Health professionals and personal care workers in all States can **provide information about VAD to a resident**, or to a resident's family, friend, carer, or substitute decision-maker, if requested.

Guidance for residential facilities: State health departments

The departments of health in South Australia, Queensland and New South Wales have developed policies and guidelines about VAD for residential facilities.

Queensland

- *Private entity guidance – Voluntary assisted dying, July 2022*
(https://www.health.qld.gov.au/_data/assets/pdf_file/0034/1166569/private-entity-guidance.pdf)
- *Queensland Voluntary Assisted Dying Handbook, July 2022*
(https://www.health.qld.gov.au/_data/assets/pdf_file/0027/1166184/qvad-handbook.pdf)

South Australia

- Voluntary Assisted Dying in South Australia
(<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/services/primary+and+specialised+services/voluntary+assisted+dying/voluntary+assisted+dying+in+south+australia>)

New South Wales

- *NSW Voluntary Assisted Dying Private Entity Guidance, October 2023*
(<https://www.health.nsw.gov.au/voluntary-assisted-dying/Publications/private-entity-guidance.pdf>)

Practical tips for residential facilities

- **Know the obligations of residential facilities under your State's VAD laws and health department policies.**
 - Learn about your State's VAD laws at *End of Life Law in Australia*. (<https://end-of-life.qut.edu.au/assisteddying>)
 - Access your State health department's VAD policies from the End of Life Law Toolkit Voluntary Assisted Dying Resources. (<https://www.eldac.com.au/tabid/5756/Default.aspx>)
- **Decide what role, if any, the residential facility will have in providing VAD.** If the facility will not provide VAD, the public must be informed. This information must be published e.g. on the residential facility's website or in brochures.
- **Develop an organisational position statement** so that all staff, residents, families, and carers understand the facility's position or policy on providing VAD.
- **Develop policies, procedures and processes to manage VAD, and to meet the residential facility's legal obligations.** Facilities should develop policies whether they provide VAD or not.

Policies, procedures and processes might address:

- managing requests for information about and access to VAD
- providing VAD services
- how VAD is integrated into existing services and systems e.g. safety and quality frameworks; clinical deterioration, limitations of treatment and goals of care; and medical treatment decision-making e.g. assessment of decision-making capacity
- referral pathways for residents to access external support and providers
- support for people who are ineligible for VAD
- access to a facility by external practitioners or VAD services
- the physical environment, including place of care
- managing and disposing of VAD medication used within a facility
- conscientious objection
- support for families of residents accessing VAD, including bereavement support.

Residential facilities should ensure policies and procedures comply with State laws and policies relating to:

- health professionals and personal care workers initiating VAD discussions, providing information, receiving first requests for VAD, and conscientiously objecting
- interpreter requirements
- facilities' obligations to provide access to VAD, including obligations to permanent and non-permanent residents.

Source: Queensland Health, *Private entity guidance – Voluntary assisted dying, July 2022* (pgs. 29 – 31).

- **Provide education and training to staff on VAD and the facility's VAD policies.** Staff members should be aware of:
 - the facility's position on VAD, and its policies and processes relating to VAD e.g. providing information, responding to requests, making referrals, and documenting VAD discussions
 - their roles and legal rights and obligations in relation to VAD
 - supports available for staff e.g. support programs, clinical supervision, peer support networks, self-care assessments, and debriefing sessions.

Visiting health professionals should also be informed of the facility's VAD policies, if appropriate.

- **Develop a system to manage requests for information about VAD from staff, residents and families.** For example, there could be one contact person to manage all VAD-related enquiries. Information resources could be developed or provided to people who request information. Each State's health department also has useful resources about VAD that can be given to residents and families.
- **Contact the State's VAD Care Navigation Service for further support or to clarify residential facilities' obligations.** These services provide information and support to residential facilities, health professionals, service providers, people considering or accessing VAD, and their families. The contact details for these services are available from each State health department (<https://www.eldac.com.au/tabid/5756/Default.aspx>).

Key points to remember

1. Residential facilities in South Australia, Queensland and New South Wales can choose whether to participate in VAD. Non-participating facilities still have certain legal obligations to provide access to VAD for residents.
2. All residential facilities must allow residents to receive information about VAD when they request it, and to make a first or final request for VAD at the facility.
3. Residential facilities must also support a resident to access VAD. These obligations differ depending on whether the resident is a permanent or non-permanent resident, and the State.
4. Health professionals and personal care workers have specific roles and legal rights and obligations relating to VAD that residential facilities should be familiar with.
5. All residential facilities should develop a position statement, policies and guidelines on VAD, to support and guide residents and staff at the facility.

For more information and guidance about VAD visit:

- ELDAC End of Life Law Toolkit factsheets:
 - *Overview of Voluntary Assisted Dying.* (<https://www.eldac.com.au/tabid/5757/Default.aspx>)
 - *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 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>)