

Voluntary assisted dying in aged care: Residential facilities in Victoria, Western Australia and Tasmania

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

Unlike other States, VAD laws in **Victoria, Western Australia and Tasmania** do not discuss or regulate residential facilities' participation in VAD. Instead, guidance is provided by policies issued by each State's health department.

In addition, VAD laws in all States place legal obligations on health professionals and personal care workers working at residential facilities. It is important that facilities are familiar with the VAD obligations of their staff.

VAD laws in **South Australia, Queensland and New South Wales** impose specific obligations on residential facilities. These are discussed in the End of Life Law Toolkit factsheet *Voluntary assisted dying in aged care: Residential facilities in South Australia, Queensland and New South Wales*. (<https://www.eldac.com.au/Portals/12/Documents/Factsheet/Legal/VAD-aged-care-RACFs-SA-QLD-NSW.pdf>)

This factsheet provides essential information about VAD for managers, directors, executives, and other operations staff at residential facilities in Victoria, Western Australia and Tasmania. It also includes practical tips to help facilities manage VAD.

Residential facilities include:

- residential aged care facilities (RACFs), and
- nursing homes, hostels or other facilities providing accommodation, nursing or personal care.

Important information about VAD laws

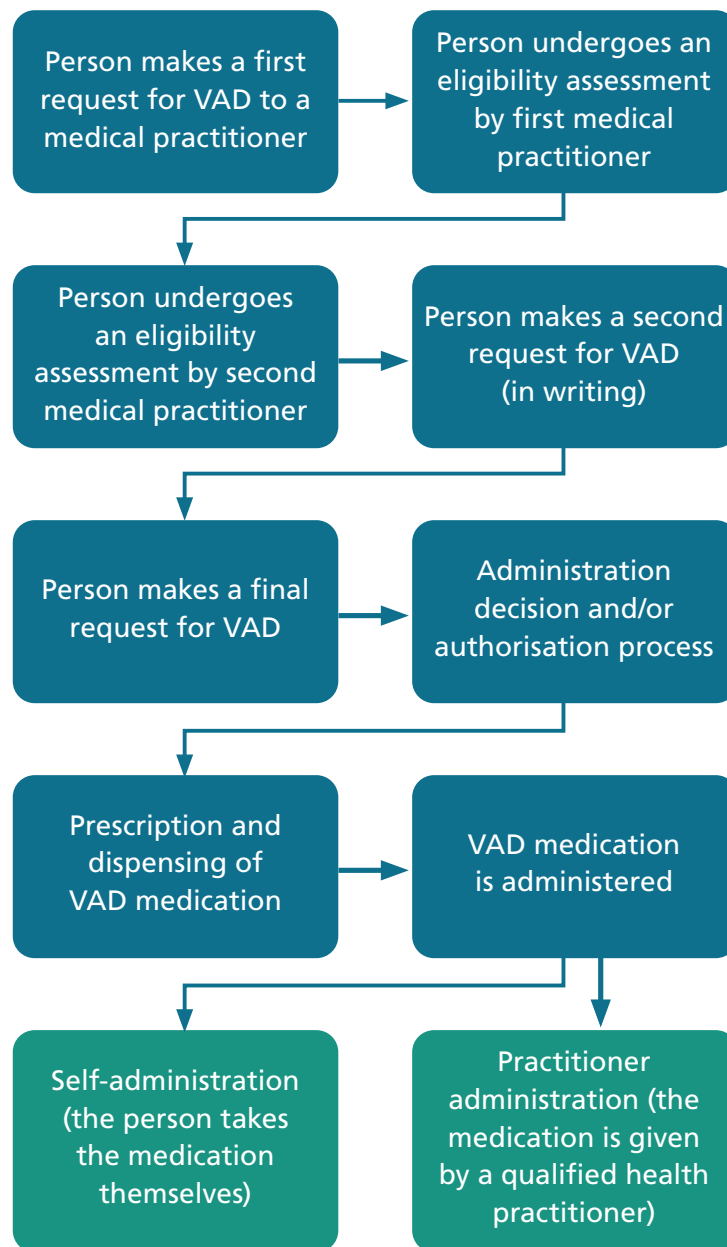
VAD laws in each State are similar, but there are key differences. As a starting point, read the End of Life Law Toolkit factsheet *Overview of Voluntary Assisted Dying* (<https://www.eldac.com.au/tabid/5757/Default.aspx>) to understand:

- the eligibility criteria a person must meet to access VAD
- administration of VAD medication
- 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 **Victoria and Western Australia** 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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The process in **Tasmania** is similar but has additional requirements.

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 if 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**. They have no obligation to provide VAD services or support.

Even if a residential facility does not provide VAD **all facility staff i.e. health professionals and personal care workers must comply with legal obligations set out in their State's VAD laws** (these are discussed below).

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>)

Residential facilities that choose not to provide VAD services should inform all residents and families of this. This information should also be published 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.

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 information prescribed by their State's health department (in addition to general information about VAD) to residents 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.

How can residential facilities plan for and manage VAD?

State health department policies in **Victoria, Western Australia and Tasmania** provide useful guidance to residential facilities about managing VAD. The health departments in each State **encourage residential facilities to comply with these policies, which are consistent with good clinical practice**. Access these policies to support your facility's planning.

State health department policies for residential facilities

Victoria

The Victorian Department of Health advises residential facilities to implement one of three care pathways that aligns with their position on VAD and capacity to provide VAD. For more information visit:

- Voluntary assisted dying - Guidance for aged care providers
- Health service policy guidance for voluntary assisted dying
- Voluntary assisted dying - Health service participation
- Preparing for voluntary assisted dying
- Voluntary assisted dying - Model of care pathways for health services
- Voluntary assisted dying - Safety and quality guidance for health services

Available from: <https://www.health.vic.gov.au/patient-care/health-services-information>

Western Australia

The Western Australian Department of Health advises residential facilities to develop a position statement, policies and procedures to manage VAD, even if they are not providing VAD services. Western Australian health system entities are required to comply with the following policies, but organisations outside of WA Health may also use them.

- Voluntary Assisted Dying Safety and Quality Guidance for WA Health Services. (<https://ww2.health.wa.gov.au/~media/Corp/Documents/Health-for/Voluntary-assisted-dying/VAD-Safety-and-Quality-Guidance.pdf>)
- Western Australian Department of Health Managing Voluntary Assisted Dying Policy. (<https://ww2.health.wa.gov.au/~media/Corp/Policy-Frameworks/Clinical-Governance-Safety-and-Quality/Managing-Voluntary-Assisted-Dying-Policy/managing-voluntary-assisted-dying-policy.pdf>)
- Western Australian Voluntary Assisted Dying Guidelines. (<https://ww2.health.wa.gov.au/~media/Corp/Documents/Health-for/Voluntary-assisted-dying/VAD-guidelines.pdf>)

Tasmania

The Department of Health (Tasmania) has developed the following policy to guide residential facilities' planning for VAD.

- Voluntary Assisted Dying in Tasmania: Planning for Voluntary Assisted Dying a. Health Service Establishments b. Residential Aged Care Facilities. (<https://www.health.tas.gov.au/publications/minimum-requirements-health-service-establishments-facts-sheet>)

These policies recommend key actions for residential services to manage VAD, including:

1. **Develop a clear organisational position statement** so that all existing and new staff, residents, families, and carers understand the facility's position on providing VAD.
2. **Develop policies, procedures and processes to manage VAD.** Residential 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 within the 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).

3. **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.

4. **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.

State VAD Care Navigation Services

In each State, these services can 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 Victoria, Western Australia and Tasmania can choose whether to participate in VAD.
2. Health professionals and personal care workers in residential facilities have specific roles and legal rights and obligations relating to VAD that residential facilities should be familiar with.
3. All residential facilities should develop a position statement, policies and guidelines on VAD, to support and guide residents and facility staff.

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 South Australia, Queensland and New South Wales.*
(<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>)