

# Voluntary assisted dying in aged care: Roles and obligations of medical practitioners

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, medical practitioners may have specific roles, and legal rights and obligations.

## This factsheet explains:

- the roles medical practitioners may have in VAD, and
- medical practitioners' legal rights and obligations relating to VAD.

This factsheet is for medical practitioners working across health settings, including in residential aged care facilities (RACFs), home care, palliative care, primary care, hospitals, and other health services. The focus, however, is on VAD in the context of aged care and home care. VAD laws are discussed as though they have commenced in all 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 for a person to access VAD,
- processes to access VAD,
- administration of VAD medication, and
- VAD safeguards.

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

## 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 e.g. residential aged care, 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 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>)

## What roles do medical practitioners have in VAD?

Medical practitioners play important roles in the VAD process. Their roles and legal obligations depend on whether they choose to participate in VAD. However, in some States, medical practitioners who choose not to be involved in the practice still have legal obligations (discussed further below).

### ***Medical practitioners who are trained to provide VAD***

In each State, medical practitioners who have decided to provide VAD must meet requirements about their type of registration and years of experience. They must also undertake mandatory training provided by their State health department. In **South Australia, Tasmania and Victoria**, medical practitioners must also have expertise in the person's illness or medical condition.

The roles of participating medical practitioners may include:

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| <b>Assessing a person's eligibility for VAD</b>  | This might involve visiting a person receiving home care, or a resident in a residential aged care facility (RACF) to conduct an eligibility assessment.                                       |
| <b>Prescribing VAD medication</b>                | A medical practitioner may prescribe VAD medication to a person who has been assessed as eligible.   |
| <b>Administering VAD medication to a person</b>  | This might involve visiting a person in an RACF or at their home to administer VAD medication.   |
| <b>Complying with VAD reporting requirements</b> | A Board or Commission oversees VAD in each State. Participating medical practitioners must submit forms to the relevant Board or Commission for each step of the process they are involved in. |
| <b>Disposing of VAD medications if necessary</b> | A medical practitioner who administers VAD medication to a person is responsible for returning any unused or remaining medication (e.g. to the dispensing pharmacist).                         |

Medical practitioners can decide which of these roles they want to perform. For example, a medical practitioner might be willing to conduct eligibility assessments, but not administer VAD medication.

### **All medical practitioners**

Medical practitioners can perform some roles associated with VAD even if they have not undertaken mandatory VAD training. These roles may include:

|  |   |
|--|---|
| <b>Providing information to a person about VAD</b>   | For example, a medical practitioner may be asked for information about VAD during a routine consultation with a resident.   |
| <b>Receiving a person's initial request for VAD</b>  | For example, a person receiving home care might make an initial request for VAD to their medical practitioner who has attended their home for routine care.   |
| <b>Assessing whether the person meets specific eligibility criteria for VAD</b>                  | For example, a participating medical practitioner might be unsure if a resident in an RACF who has requested VAD has decision-making capacity. They might request another medical practitioner e.g. a geriatrician consult with the resident to assess the person's decision-making capacity. |
| <b>Being present (if the person chooses) when the person self-administers the VAD medication</b> | For example, a person receiving home care might self-administer the VAD medication. The person might ask their medical practitioner to be present in their home when they do this.  |
| <b>Arranging the person's transfer to another practitioner or institution to access VAD</b>      | This might happen where a RACF has chosen not to participate in VAD. A medical practitioner may support a resident who wishes to access VAD by arranging their transfer from the RACF to a place e.g. a hospital or health service where they can access VAD services.                        |

Medical practitioners may also certify that the person's death has occurred following VAD.

In some States other health care professionals can also provide or participate in VAD. Learn more in the End of Life Law Toolkit factsheets *Voluntary assisted dying in aged care: Roles and legal obligations of:*

- *registered nurses.* (<https://www.eldac.com.au/Portals/12/Documents/Factsheet/Legal/VAD-aged-care-registered-nurses.pdf>)
- *allied health professionals and enrolled nurses.* (<https://www.eldac.com.au/Portals/12/Documents/Factsheet/Legal/VAD-aged-care-allied-health-professionals.pdf>)
- *personal care workers.* (<https://www.eldac.com.au/Portals/12/Documents/Factsheet/Legal/VAD-aged-care-personal-care-workers-and-enrolled-nurses.pdf>)

## Conscientious objection

Some medical practitioners might not want to be involved in VAD due to their personal beliefs or values. In all States medical practitioners have the right to conscientiously object to participating in VAD. The VAD laws allow medical practitioners to refuse to:

- accept a person's request for VAD,
- participate in the VAD assessment processes or administration decisions,
- prescribe, supply, or administer the VAD medication, and
- be present during the administration of the VAD medication.

In all States, medical practitioners who have a conscientious objection to VAD still have legal obligations. For example, objecting medical practitioners have specific obligations if they receive a person's first request for VAD:

- In **Western Australia, Queensland and New South Wales**, a medical practitioner who refuses to accept a VAD first request because of a conscientious objection must let the person know immediately of their objection to the practice. Medical practitioners in **Victoria and South Australia** have up to seven days to let the person know. Medical practitioners in **Tasmania** have up to two days to decide whether to accept or refuse the request. If they refuse the request, they must advise the person within seven days of their refusal.
- In **Queensland and Tasmania**, medical practitioners who receive a first request must refer the person to a medical practitioner or service who may be able to assist with their request. There is no legal requirement to refer in **Victoria, South Australia, New South Wales and Western Australia**, but it is good medical practice for objecting medical practitioners in those States to do so.

In some States objecting medical practitioners also have legal obligations to provide information (discussed further below).

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

### Good medical practice and conscientious objection

Good medical practice requires that a conscientious objection does not impede a person's right to access lawful treatments or negatively impact their dignity and right to choose.

The Medical Board Ahpra's *Good medical practice: a code of conduct for doctors in Australia* (<https://www.medicalboard.gov.au/codes-guidelines-policies/code-of-conduct.aspx>) and the Australian Medical Association's *Position Statement on Conscientious Objection* (<https://www.ama.com.au/position-statement/conscientious-objection-2019>) acknowledge the right of medical practitioners to conscientiously object, but also recognise that as part of good clinical practice medical practitioners should:

- inform their patients and (if relevant) their colleagues of their objection;
- not use their objection (or personal views) to impede individuals accessing medical care and treatments that are legal; and
- refer the patient to someone who may assist them, where required by law.

The Victorian Department of Health (<https://www.health.vic.gov.au/patient-care/health-practitioner-information>) advises that though practitioners have no obligation to refer a person for VAD assistance, practitioners should not inhibit a person's access to treatment, and should inform the person as soon as possible that they will not assist them.

It can also be a criminal offence for medical practitioners to persuade a person to withdraw their request for VAD, or persuade a person to ask for VAD.

## Communicating about VAD

A person who is considering VAD should receive appropriate information about VAD and be supported to discuss this information with a medical practitioner. However, there are restrictions on when medical practitioners can discuss VAD.

### Can medical practitioners initiate discussions about VAD?

There are restrictions on when medical practitioners can initiate discussions with a person about VAD. In some States, doing so is unprofessional conduct. These restrictions are designed to ensure a person is not pressured to request VAD.

The laws on when a medical practitioner can initiate a discussion about VAD differ between States:

- In **Victoria and South Australia**, medical practitioners cannot initiate discussions about VAD with a person.
- In **Western Australia, Tasmania, Queensland, and New South Wales**, medical practitioners can initiate discussions about VAD. However, they can only do this if, at the same time, they discuss the person's available treatment and palliative care options, and their likely outcomes.

An overview of the law in each State is in the table below.

### Can medical practitioners provide information about VAD?

It is lawful for medical practitioners to provide information if a patient or resident requests it. In these circumstances the above restrictions do not apply.

Medical practitioners in **Western Australia, Tasmania, Queensland, and New South Wales** who receive a first request for VAD have additional obligations to provide specific information to the person. In **Tasmania and Queensland** this includes providing information about where the person can seek assistance or support. An overview of the law in each State is in the table below.

A patient or resident's family, friend or carer may ask a medical practitioner for information about VAD. Medical practitioners can provide information about VAD or direct them to other sources of information. However, family members, substitute decision-makers, carers and others cannot request VAD on behalf of the person – VAD must be the person's voluntary decision.

Learn more about what information medical practitioners must provide in each State at *End of Life Law in Australia*. (<https://end-of-life.qut.edu.au/assisteddying>).

## Medical practitioners with a conscientious objection

VAD laws in **Victoria, South Australia and Queensland** specifically allow a medical practitioner to conscientiously object to providing information about VAD. Though the VAD laws in **Western Australia, Tasmania and New South Wales** do not specifically discuss this, objecting medical practitioners in those States also have the right not to provide information.

Despite this, medical practitioners might still be required to provide information in certain situations:

- In **Western Australia and Tasmania**, any medical practitioner who refuses a person's first request for VAD (whether they have a conscientious objection or not), must provide the person with specified information so the person can learn more about or access VAD.
- In **Queensland**, the law allows a medical practitioner to conscientiously object to providing information about VAD to a person. However, a medical practitioner who refuses a person's first request for VAD or refuses to be involved in other aspects of the VAD process must provide contact details of QVAD-Support (the Queensland Voluntary Assisted Dying Support Service) or a medical practitioner who may be able to assist the person.
- In **New South Wales**, objecting medical practitioners are not required to provide information about VAD. Medical practitioners who do not have a conscientious objection but choose not to be involved must provide the person with approved information.

An overview of the law in each State is in the table below.

**Table: Communicating about VAD – Medical practitioners**

| Type of communication                   |  | Vic | WA | Tas | SA | Qld | NSW |
|---|--|-----|----|-----|----|-----|-----|
| <b>Initiating discussions about VAD</b> | Cannot initiate discussions.   | X   |    |     | X  |     |     |
|   | Can initiate discussions but must also tell the person about treatment and palliative care options and their likely outcomes.  |     | X  | X   |    | X   | X   |
| <b>Providing information about VAD</b>  | Can provide information about VAD where the person requests it.  | X   | X  | X   | X  | X   | X   |
|   | When a person makes a first request for VAD, specified information about VAD must be provided by all medical practitioners, even those with a conscientious objection. |     | X  | X   |    | X   |     |

## Additional legal obligations when caring for people in residential facilities

Generally, residential facilities e.g. RACFs and nursing homes can decide whether to participate in VAD, and the type of support they offer to residents wanting to access VAD. Some residential facilities might choose not to provide VAD services or allow VAD processes to occur at the facility. However, in some States, residential facilities that choose not to participate will still have some legal obligations.

States regulate the VAD obligations of residential facilities in different ways. In **South Australia, Queensland and New South Wales**, the VAD laws and State health department policies determine residential facilities' obligations. In **Victoria, Western Australia and Tasmania**, policies alone determine residential facilities' obligations. These laws may impact medical practitioners and other health professionals working in residential facilities, and residents who want to access VAD.

Learn more in the End of Life Law Toolkit factsheets *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>)
- **Victoria, Western Australia and Tasmania.** (<https://www.eldac.com.au/Portals/12/Documents/Factsheet/Legal/VAD-aged-care-Victoria-WA-TAS.pdf>)

## Practical tips for medical practitioners

- **Know your obligations 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>)
- **Find out whether the aged and home care services you work with are participating in VAD and familiarise yourself with their VAD policies.** Some services might have a staff member who manages and oversees all VAD enquiries.
- **Consider what role, if any, you wish to have in providing VAD.** If you have a conscientious objection to VAD, it is good clinical practice to advise the services you work with as early as possible that you do not wish to be involved with VAD.
- **If a person seeks information from you about VAD, consider what obligations you have to that person.** Depending on your State, you may be required to provide certain information to the person or refer them to another practitioner or service, even if you have a conscientious objection.
- **If a person makes a request for VAD to you:**
  - Advise the person as soon as possible that you refuse their request if you have a conscientious objection, to limit any interruption to the person's care.
  - Consider providing the person with information about VAD or where they can seek further support e.g. from a participating medical practitioner or the State's VAD Care Navigation Service (discussed below).
  - If you are willing and able to accept the person's request, the VAD process can start. You will need to undertake the mandatory training in your State to provide VAD.
- **Contact the VAD Care Navigation Service in your State for further support or to clarify your obligations.** These services provide information and support to health professionals, service providers, people considering or accessing VAD, and their families. The contact details for these services are available from your State's health department. (<https://www.eldac.com.au/tabid/5756/Default.aspx>)

## Key points to remember

1. Medical practitioners can choose whether to participate in VAD.
2. Only medical practitioners who have undertaken mandatory training and meet requirements about type of registration, years of experience and expertise (in some States) can provide VAD.
3. Medical practitioners can conscientiously object to participating in VAD. However, in some States they will still have legal obligations. In all States, medical practitioners have ethical obligations when they have a conscientious objection.
4. In all States there are restrictions on medical practitioners initiating discussions about VAD. In some States medical practitioners also have specific legal obligations to provide information about VAD.
5. Generally residential facilities may decide whether to provide VAD, and the support they offer to residents wanting to access VAD. In some States, residential facilities that choose not to participate will still have some legal obligations which impact the medical practitioners who work there.

## 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 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>)