

Voluntary assisted dying

Assisted dying is illegal in all Australian States and Territories except in Victoria where voluntary assisted dying (VAD) is lawful in some circumstances, and in Western Australia, where VAD is expected to commence in mid-2021.

Clarifying the law

This factsheet explains:

- What voluntary assisted dying is
- The law on assisted dying in Australia
- The law on VAD in Victoria and Western Australia, including processes, safeguards and conscientious objection

What is voluntary assisted dying?

Voluntary assisted dying is the term that has evolved in Australia in recent years to refer to **the assistance provided to a person by a health practitioner to end their life**. 'Voluntary' means the practice is the person's voluntary choice, and that he or she is competent (has capacity) to decide to access VAD.

Until recently, 'euthanasia', 'physician-assisted suicide' and 'physician-assisted dying' were generally used in Australia to refer to practices involving assisted dying. Though these terms are still used within the community, the legal, medical and health professions, and governments more often use the term VAD.

Different terminology is used for VAD in different countries. For example, 'Medical Assistance in Dying' is used in Canada, and 'physician-assisted suicide' is used in some parts of the United States. Both Belgium and The Netherlands use the term 'euthanasia'.

Is voluntary assisted dying legal in Australia?

VAD is illegal in all Australian States and Territories except Victoria where it is lawful if certain criteria are met. VAD will commence in Western Australia in mid-2021 as a result of the Western Australian Parliament passing VAD laws in December 2019.

In those States and Territories where VAD remains illegal (including in Western Australia until mid-2021), anyone who assists another person to die may be charged with murder, manslaughter or assisting suicide.

Providing appropriate palliative medication with the intention of relieving a person's pain and suffering is not assisted dying. For further information on palliative medication, refer to the Legal Toolkit factsheet '*Medication for pain and symptom relief for people with a life-limiting illness*'. (<https://www.eldac.com.au/tabid/4985/Default.aspx>)

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

VAD in Victoria

VAD is legal in Victoria under the *Voluntary Assisted Dying Act 2017* (Vic). VAD is only available to a person who is 'eligible'.

Eligibility criteria

A person is eligible for VAD if he or she:

- is **aged 18 or over**;
- is an **Australian citizen or permanent resident, ordinarily resident in Victoria**, and, at the time of making a first request for VAD, has been **resident in Victoria for at least 12 months**;

- has **decision-making capacity**; and
- is diagnosed with a **disease, illness or medical condition** that is:
 - **incurable**;
 - **advanced, progressive and will cause death**;
 - expected to **cause death within six months**; and
 - **causing suffering** to the person that **cannot be relieved** in a manner that the person finds tolerable.

The only exception to this is a person who is diagnosed with a **neurodegenerative disease, illness or condition** e.g. motor neurone disease. In this case, VAD may be accessed if the disease, illness or condition is expected to **cause death within 12 months**.

Disability or mental illness alone do not satisfy the eligibility requirements for accessing VAD.

A person with a disability or mental illness must meet all of the eligibility criteria.

A person is presumed to have capacity to make a VAD decision unless it can be shown otherwise.

Requesting VAD

If a person with decision-making capacity requests assistance to die, they will need to be **assessed by a coordinating medical practitioner to determine if they are eligible**. During this assessment the doctor will also determine if:

- the person understands what VAD involves;
- the person has made the decision to access VAD voluntarily; and
- the request for VAD is enduring.

If the person is eligible, **a second medical practitioner must also carry out an assessment**.

If that practitioner confirms the person is eligible and the person wishes to continue, other requirements in the legislation must then be followed, including the person making a written declaration requesting VAD.

Administration of VAD medication

The person may access VAD once the requirements of the legislation have been satisfied and an administration permit has been issued to the coordinating medical practitioner by the Department of Health and Human Services.

In most cases, the **VAD medication will be self-administered by the person** 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 a medical or other health practitioner, or a witness, to be present.

The person **may change their mind at any time** and choose not to take the medication.

If the **person is physically unable to self-administer or digest the medication, the practitioner may apply for a permit to administer the medication**. If the permit is granted, the medication will be administered by the coordinating medical practitioner, generally intravenously or subcutaneously. This must occur in the presence of a witness. Other people the person receiving VAD chooses may also be present (e.g. family, friends).

Safeguards

The Act contains a range of safeguards including:

- A person must make at least **three separate requests for VAD**.
- **Health practitioners are prohibited from initiating a discussion about VAD**. This is designed to ensure that the person's request is voluntarily made. Further, a family member or carer cannot request VAD on somebody's behalf.
- The person must be **provided with information** about their diagnosis and prognosis, available treatment and palliative care options, and risks associated with taking the lethal medication (i.e. death). The person must also be advised that they may decide at any time not to continue the VAD process.

- **VAD medication cannot be administered without a permit** authorising self-administration or practitioner administration.
- **Protection from criminal liability** for persons (e.g. doctors, nurses, pharmacists) who assist or facilitate a request for or access to VAD, or who are involved in VAD, provided they act in accordance with the legislation.
- Regulations governing the **prescription, dispensing and disposal** of VAD substances.
- The **VAD medication must be stored securely in a locked box** after it has been dispensed by the statewide pharmacy service. A contact person appointed by the person accessing VAD must return any of the medication that is unused or remaining after the person's death.
- **Mandatory reporting requirements** for health practitioners and employers who believe that another practitioner's conduct in relation to VAD breaches the legislation.
- **Offences** (punishable by up to 5 years imprisonment) for anyone who induces another person to request VAD or take the VAD medication.

To provide access to VAD medical practitioners must have the necessary expertise and experience as set out in the legislation, and successfully complete the accredited training.

Conscientious objection

Doctors and other health practitioners with a conscientious objection to VAD have the right to choose not to participate. They are under no obligation to:

- provide information about VAD to a patient; or
- participate in any part of the VAD process including assessing the eligibility of a person; or supplying, prescribing, administering, or being present prior to, during or following administration of a VAD medication.

For more information about VAD in Victoria visit the *Victorian Department of Health and Human* website (<https://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/end-of-life-care/voluntary-assisted-dying>).

Voluntary Assisted Dying navigators can also provide further information about VAD.

VAD in Western Australia

In December 2019 the *Voluntary Assisted Dying Act 2019* (WA) was passed by the Western Australian Parliament. The laws are expected to commence in mid-2021.

Western Australia's VAD laws are similar to Victoria's but there are some key differences, discussed here.

Eligibility criteria

In Western Australia, a person will be eligible for VAD if he or she:

- is **aged 18 or over**;
- is **an Australian citizen or permanent resident**, and at the time of making a first request for VAD was **ordinarily resident in Western Australia for at least 12 months**;
- is diagnosed with **at least one disease, illness or medical condition** that:
 - is **advanced, progressive and will cause death**;
 - **will, on the balance of probabilities, cause death within six months** (or, in the case of a person with a neurodegenerative disease, illness or condition, within 12 months); and
 - is **causing suffering** to the person that **cannot be relieved** in a manner that the person considers tolerable;
- has **decision-making capacity** for VAD;
- is **acting voluntarily and without coercion**; and
- has an **enduring request** for VAD.

A person will be presumed to have capacity to make a VAD decision unless it can be shown otherwise.

As in Victoria, disability or mental illness alone will not satisfy the eligibility requirements. A person will need to meet all of the eligibility criteria to access VAD.

Key features of the laws

Similar to VAD in Victoria, Western Australia's laws will require a person to be **assessed as eligible for VAD by two medical practitioners independently**. The person must also make **at least three separate requests** for VAD (a first request, a written declaration, and a final request).

However, the Western Australian VAD regime will feature some important differences:

Administration of the VAD medication

The person will be **able to decide whether to self-administer the VAD medication, or for it to be given by an 'administering practitioner'** (an eligible medical practitioner or a nurse practitioner). However, a person will only be able to elect practitioner administration if the coordinating practitioner advises that self-administration would be inappropriate e.g. due to the person's ability to self-administer, or the person's concerns about self-administering.

Conscientious objection

Health practitioners will have the **right to conscientiously object to involvement in VAD**, including participating in the request and assessment process; prescribing, supplying or administering the VAD medication; and being present during administration.

Unlike Victoria, a Western Australian health practitioner who has a conscientious objection will need to immediately inform the person that they refuse the request and give the person information about VAD.

Discussing VAD and providing information

Unlike Victoria, the Western Australian laws **will allow a medical practitioner or nurse practitioner to initiate a discussion or suggest VAD to a person**. They must however inform the person, at the same time, about available treatment and palliative care options, and their likely outcomes.

Other health workers (a registered health practitioner, or another person who provides health or professional care services e.g. an aged care worker) will be prohibited from initiating a discussion or suggesting VAD, but will be able to provide information about VAD on a person's request.

Voluntary, without coercion

Like Victoria, the Western Australian laws will require confirmation throughout the VAD process that the **person's decision to access VAD is voluntary and made without coercion**.

However, if a medical practitioner cannot determine if the person is acting voluntarily and without coercion, the legislation requires the practitioner to refer the person to someone who has appropriate skills and training to decide.

For more information on Western Australia's VAD laws visit the *Western Australian Department of Health* (<https://ww2.health.wa.gov.au/voluntaryassisteddying>) or *End of Life Law in Australia* (<https://end-of-life.qut.edu.au/euthanasia>)

Key points to remember

1. Voluntary assisted dying (VAD) is illegal in all Australian States and Territories except Victoria, where it is lawful in restricted circumstances. The Western Australian Parliament has also passed laws to legalise VAD. These are expected to commence in mid-2021.
2. In States and Territories where VAD remains illegal (including in Western Australia until mid-2021), any person who assists another person to die may be charged with murder, manslaughter or assisting suicide.
3. To access VAD in Victoria, a person must be an adult with decision-making capacity, with an incurable, advanced, progressive disease, illness or medical condition which causes intolerable suffering that cannot be relieved. They must also have a life-expectancy of less than 6 months (or 12 months for people with a neurodegenerative disease) and meet other requirements.
4. The person must make three separate requests and undergo eligibility assessments by two independent medical practitioners in order to access VAD.
5. There are strict safeguards that apply to the VAD process, including information requirements, oversight and supervision, mandatory reporting, and requirements regarding prescription, disposal and safe storage of VAD medication.
6. Doctors and other health practitioners have a right to conscientiously object to participation in VAD.
7. Western Australia's VAD laws are very similar to Victoria's, but with some differences in relation to eligibility, administration of the VAD medication, conscientious objection, and prohibitions on discussing VAD.