

Legal Protection for Administering Pain and Symptom Relief

Providing medication for pain and symptom relief is important to ease suffering and improve the quality of life of a person with a life-limiting illness. However, uncertainty can arise for those giving pain relief medication about whether it is lawful, particularly when a person is close to death. This factsheet explains how the law can protect health professionals who provide appropriate pain and symptom relief.

Clarifying the law

This factsheet explains:

- Why providing appropriate pain and symptom relief is lawful
- What legal protection is available if a person dies after receiving pain and symptom relief medication
- That giving appropriate pain and symptom relief is not voluntary assisted dying
- That pain and symptom relief can be given where a person refuses food and water

About medication for pain and symptom management

Providing medication for pain and symptom management (e.g. morphine, fentanyl, hydromorphone, midazolam and haloperidol) is a key part of good palliative care for a person with a life-limiting illness. It may be given in hospital, in residential aged care or at home.

There are varying clinical views about whether or not some medication used in providing palliative care may hasten death. However, the law recognises that **medication used for pain and symptom relief is lawful in Australia** if the intention of the person giving the medication is to relieve the person's pain and symptoms and not to cause their death.

Legal protection when a person dies

In some cases it is possible for medication to have the 'double effect' of relieving pain and symptoms as well as hastening a person's death.

In those situations the **doctrine of double effect** ('double effect') can provide legal protection to the person who administered the medication so they are not legally liable for the death.

What is double effect?

Double effect recognises that **giving medication to relieve a person's pain and symptoms is lawful so long as the health professional's intention is to relieve the person's pain and not hasten death.**

The medication **should be given in accordance with good medical practice** e.g. it should be appropriately titrated, and health professionals should apply reasonable care and skill to ensure that the right medication and dose is given.

Double effect is part of Australian law.

In **Queensland, Western Australia, South Australia** and the **Australian Capital Territory** there is also legislation which recognises double effect.

Learn more about the law in your **State or Territory** at *End of Life Law in Australia*. (<https://end-of-life.qut.edu.au/palliative-care>)

Where will double effect apply?

Double effect can apply when the person's death occurs in a hospital, residential aged care facility or other health service. It can also apply when the person dies at home.

Who is protected?

Doctors providing pain relief are protected by double effect. Other health professionals and care givers, including **nurses, aged care workers, paid or unpaid carers, and family members** are likely to be protected by double effect so long as administering the medication is authorised (usually this authorisation is given by a doctor) and death was not intended. It is also good practice (and a requirement of the law in South Australia) for **consent to be sought from the person or, if they cannot consent, their substitute decision-maker**, before providing the medication.

Does the person need to be close to death?

Double effect is likely to apply only when the person is near death. In **South Australia**, the legal protection will apply only if the person is in the terminal phase of a terminal illness.

Appropriate pain and symptom relief is not voluntary assisted dying

A common misconception about medication for pain and symptom management is that it is the same as voluntary assisted dying if it causes the person's death e.g. *'If I give my patient medication for pain relief and she dies I will have assisted her to die'*. Sometimes these concerns have resulted in people not getting enough pain and symptom relief, which can cause suffering and distress for the person as well as their family.

Appropriate medication which is intended to relieve pain and symptoms is not voluntary assisted dying. The law views this as appropriate palliative care and, if the medication

also has the effect of hastening the person's death, protects those providing the medication through double effect.

Learn more in the End of Life Law Toolkit's factsheet *Overview of Voluntary Assisted Dying*. (<https://www.eldac.com.au/Toolkits/End-of-Life-Law/Voluntary-Assisted-Dying/Overview>)

Pain relief for a person who refuses food and water

Sometimes, a person who is close to death may refuse food and water. This is legal if the person has capacity to make this decision. **Everyone has the legal right to refuse food and water**, even if this results in their death.

When a **person decides to stop eating and drinking, medication can be given** to reduce any pain or symptoms they experience from this.

Learn more about capacity and refusal of treatment in the End of Life Law Toolkit factsheets *Overview: Capacity and Consent to Medical Treatment* (<https://www.eldac.com.au/Toolkits/End-of-Life-Law/Capacity-and-Consent-to-Medical-Treatment/Overview>) and *Withholding and Withdrawing Life-Sustaining Medical Treatment*. (<https://www.eldac.com.au/Toolkits/End-of-Life-Law/Withholding-and-Withdrawing-Life-Sustaining-Medical-Treatment/Factsheet>)

Key points to remember

1. Giving appropriate medication for pain and symptom relief is lawful in Australia.
2. The doctrine of double effect provides legal protection to health professionals and others if a person dies after receiving medication for pain and symptom management.
3. Double effect is likely to apply only when:
 - the health professional's primary intention is to relieve pain and symptoms, not hasten death;
 - medication is authorised to be administered e.g. by a doctor; and
 - the person is near death.
4. Medication given with the intention of relieving pain and symptoms is not voluntary assisted dying.
5. A person with decision-making capacity has the right to refuse food and drink, even if it results in death. Medication to relieve the person's pain and symptoms can be given in these situations.

If you have concerns about providing medication for pain and symptom management, ask questions!

Support is available.

- If you work in aged care, discuss your concerns with your manager or Director of Nursing.
- If you are a GP, you can seek advice from your medical insurer.

People from diverse social and cultural backgrounds may communicate pain in different ways (including non-verbally). People may also have different views about pain management and using medication such as opioids. It is important to properly inform the person you care for about pain management options and make sure they understand the options.

Learn more about delivering palliative care to:

- **Aboriginal and Torres Strait Islander people** from the *Gwandalan e-Learning Modules* (<https://gwandalanpalliativecare.com.au/elearning-modules/>) and the Indigenous Program of Experience in the Palliative Approach. (https://pepaeducation.com/wp-content/uploads/2020/12/PEPA_CulturalConsiderationsFlipbook_Web.pdf).
- **People from culturally and linguistically diverse backgrounds** in *PCC4U's Topic 4: Culture-centred care of people with life-limiting illnesses*. (<http://www.pcc4u.org/learning-modules/focus-topics/topic-4-culture-centred-care/>)

Mythbusters: Legal Protection for Administering Pain and Symptom Relief

Myth 1: A health professional performs voluntary assisted dying if they provide pain relief medication that hastens a person's death

No. Giving medication for pain and symptom management in accordance with good medical practice is legal so long as the health professional's intention is to reduce or relieve a person's pain and symptoms, and not to hasten death. This is the case even if the health professional knows death may be hastened by providing the medication. Health professionals are legally protected by the doctrine of double effect.

Myth 2: A health professional or other person assists dying by allowing someone to refuse food or drink

No. If a person has capacity to refuse food or drink, then respecting their refusal and not force-feeding the person is not assisting them to die.

Myth 3: The doctrine of double effect will only protect a doctor

No. A doctor, nurse, carer or family member can give pain relief medication and be legally protected by the doctrine of double effect. However, giving the medication must be authorised, generally by a doctor. The person must also be near death.

The legislation in Queensland and South Australia requires that if the person giving the pain relief is not a doctor, it is given under a doctor's orders or supervision.