

Medication for pain and symptom relief for people with a life-limiting illness

Medication for pain and symptom relief (palliative medication) is important to ease suffering and improve the quality of life of a patient with a life-limiting illness. However, uncertainty can arise for those giving palliative medication about whether it is lawful, particularly where a patient is close to death. This factsheet explains key legal principles about providing palliative medication.

Clarifying the law

This factsheet explains:

- Why appropriate palliative medication is lawful
- What legal protection is available where a patient dies following palliative medication
- That giving appropriate palliative medication is not euthanasia
- That palliative medication can be given to relieve suffering caused by a patient refusing food and water

About palliative medication

Palliative medication is a key part of good palliative care. It helps manage the pain and symptoms of a person with a life-limiting illness. Palliative medication can be given in hospital, residential aged care or at home. Medication used includes morphine and sedatives.

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

Legal protection when a patient dies

In some cases it is possible for palliative medication to have the 'double effect' of relieving pain and suffering 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 gave the medication so they are not criminally liable for the death.

What is double effect?

Double effect recognises that giving medication to a patient is lawful, even if it may hasten death, so long as the intention is to relieve pain and not hasten death.

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.

Find out 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>)

In what setting 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?

The person giving the medication does not need to be a doctor for double effect to apply. Other health professionals and care givers, including nurses, aged care workers, paid or unpaid carers, or family members may also be protected by double effect so long as there **is medical authorisation and supervision of the medication plan** by a doctor, and death was not intended.

Does the patient need to be close to death?

Double effect is likely to apply only when the patient is near death. In **South Australia**, the legislation applies only where the patient is in the terminal phase of a terminal illness.

Appropriate medication is not euthanasia

A common misconception about palliative medication is that it is the same as euthanasia if it causes the person's death. *'If I give my patient medication and she dies I will have euthanased her'*. Sometimes these concerns have resulted in people not getting enough pain and symptom relief.

Appropriate palliative medication which is intended to relieve pain and suffering is not euthanasia. The law views this as appropriate palliative care and, if the palliative medication also has the effect of hastening the patient's death, protects those providing the medication through double effect.

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, palliative medication can be given** to reduce any pain or suffering they experience from this.

Key points to remember

1. Giving appropriate palliative medication for pain and symptom relief is lawful in Australia.
2. The doctrine of double effect provides legal protection if a person dies after receiving palliative medication. It applies if the person who gave the medication intended to relieve pain and not hasten death.
3. Double effect will only apply if the medication is administered by a doctor, or by someone else (for example a nurse, aged care worker, carer, family member) under the doctor's supervision; and the person was already close to death.
4. Palliative medication given with the intention of relieving pain and symptoms is not euthanasia.
5. People with capacity have 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 palliative medication, ask questions!

Support is available.

- If you work in aged care, discuss your concerns with your manager or the practice nurse.
- 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 people and Torres Strait Islander people at the **Caresearch Aboriginal and Torres Strait Islander Care Hub**. (<https://www.caresearch.com.au/Caresearch/tabid/4146/Default.aspx>)
- People from different social and cultural backgrounds at **PCC4U Culture-Centred Care** (<http://www.pcc4u.org/learning-modules/focus-topics/topic-4-culture-centred-care/>)

Myth-busters: Providing palliative medication

Myth 1: A health professional performs euthanasia or assists dying if he or she provides palliative medication that hastens a person's death

No. *Giving palliative medication in accordance with good medical practice is legal so long as the health professional's intention is to reduce or relieve a patient's pain and suffering, 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 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 patient 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. *In most Australian states and territories a doctor, nurse, carer or family member can give medication and be protected by the doctrine of double effect. Generally though, giving the medication must be ordered or supervised by a doctor. The law in South Australia is slightly different. The medication must be given by the medical practitioner responsible for the person's treatment, or a person supervised by that medical practitioner such as a nurse or carer.*