



End of Life Law in Australia

A resource to help you understand the law at end of life

Assisted dying

Assisted dying is illegal in all Australian States and Territories except Victoria where Voluntary Assisted Dying (VAD) became lawful on 19 June 2019. VAD will be available only in restricted circumstances to a person who has decision-making capacity and seeks assistance to die.

What is assisted dying?

Assisted dying is the term used in Australia to refer to the assistance provided to a person to end their life.

In Victoria, the assistance will be provided by a medical practitioner either by prescribing the medication to the person for self-administration or, in limited circumstances, through administration by that medical practitioner.

Different terminology is used for assisted dying 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 assisted dying legal in Australia?

Assisted dying is illegal in all Australian States and Territories except Victoria where it is lawful if certain criteria are met.

In those States and Territories where it remains illegal, a person (e.g. a doctor) who assists another person to die may be charged with murder, manslaughter or assisting suicide.

Though there have been many Bills introduced in other Australian State and Territories to legalise these practices, aside from the legalisation of euthanasia in the Northern Territory in 1996-1997, no other attempts have been successful.

Providing appropriate palliative medication with the intention of relieving a person's pain and suffering is not assisted dying.

An overview of VAD in Victoria

The *Voluntary Assisted Dying Act 2017* (Vic) makes VAD legal in Victoria from 19 June 2019. VAD is only available to a person who is 'eligible'.

Eligibility criteria

A person will be 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.

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 legislative requirements in the legislation must then be followed, including making a written declaration.

Administration of VAD medication

Once the requirements of the legislation have been satisfied and an administration permit has been issued to the medical practitioner, the person may access VAD.

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, they may request practitioner administration. In this situation, the medication will be administered by the coordinating medical practitioner (generally intravenously or subcutaneously), in the presence of a witness and anyone else the person receiving VAD chooses to be present.

Safeguards

The Victorian legislation has been described as the most conservative in the world. It contains 68 safeguards for the VAD process including:

- A requirement that the person make at least three separate requests for VAD, to ensure the request is enduring.
- Health practitioners are prohibited from initiating a discussion about VAD. This is designed to ensure that a request by the patient is voluntarily made. Further, a family member or carer cannot request VAD on somebody's behalf.
- Requirements to provide information to the person about diagnosis and prognosis, available treatment options, 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.
- 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. A contact person appointed by the person accessing VAD must return any of the medication 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.

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 who have 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 supplying, prescribing, administering, or being present prior to, during or following administration of a VAD substance.

For more information about VAD visit the *Victorian Department of Health and Human Services*.

<https://www2.health.vic.gov.au/%20hospitals-and-health-services/patient-care/%20end-of-life-care/voluntary-assisted-dying>

Key points to remember

1. Assisted dying is illegal in all Australian States and Territories. However, from 19 June 2019 Voluntary Assisted Dying (VAD) will be lawful in Victoria in restricted circumstances.
2. 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.
3. 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 of the legislation.
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 safety of VAD substances.
6. Doctors and other health practitioners have a right to conscientiously object to participation in VAD.

Contact

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