

# Voluntary Assisted Dying: Answers to Critical Questions

Reading time:

Owen Bradfield

Date created: 03/07/2023

Tags: [Article](#) | [Medico-Legal](#) | [Medical Practitioner](#) | [Risk Education](#) | [Practice Risk Management](#) | [Medico-Legal FAQs](#)  
[Medical](#)  
[Student](#)



In a recent [webinar](#), MIPS Chief Medical Officer, Dr Owen Bradfield addressed the most asked questions by our members regarding voluntary assisted dying (VAD).

While our panel of experts including Prof Ben White from the Australian Centre for Health Law Research, Melanie van Diemen, a care navigator at Peter MacCallum Cancer Centre, and Dr Andrew Bendrups from Royal Melbourne Hospital provided valuable insights during the webinar, there were additional member questions that could not be covered due to time limitations.

As a result, we have compiled answers to address the outstanding questions in three main categories: legal, clinical and employment.

## Legal

### Is Voluntary Assisted Dying (VAD) available for people with mental illness?

People with mental illness have the same rights as others in the community to access to VAD. However, having a mental illness alone does not make a person eligible to access VAD. Therefore, people with a mental illness must also have an advanced disease or terminal condition likely to cause death within six months (or 12 months for neuro-degenerative diseases in Victoria). It is also a requirement that an individual must be capable of consenting to VAD. It is therefore important to ensure that an individual living with mental illness who wants to access VAD is capable of consenting to VAD. The capacity of everyone wishing to access VAD must be carefully assessed.

### Can I raise VAD as part of a general advance care planning discussion?

This depends on the state in which your patient resides. Health practitioners may not raise VAD in Victoria and SA, even if it is part of advance care planning. However, in other states, medical practitioners can raise VAD as part of a discussion about other

palliative care or end-of-life options. If it is not raised as part of a wider discussion about other care options, then it may amount to a breach of the legislation across all the states. It is permitted an Advance Care Directive cannot contain instructions for illegal activities, such as euthanasia, assisted suicide or assisted dying.

## Can I conscientiously object to participating in VAD?

A conscientious objection is when a person declines to participate in a lawful process or procedure due to their personal beliefs, values, or moral concerns. In Victoria, SA and NSW, you are not under an obligation to be involved in any aspect of VAD if you conscientiously object. However, in Qld, WA and Tasmania, you must provide basic information or refer a patient to another practitioner, even if you conscientiously object.

As a general rule, an employee must follow any reasonable or lawful instruction given to them by their employer. However, the law allows for people to be conscientious objectors and while it is a lawful direction if you are a conscientious objector, then you can argue it wasn't a reasonable direction and you don't have to comply with it.

## Can a guardian, family member or medical treatment decision-maker consent to VAD on behalf of an individual?

While guardians, family members and carers can support patients, only the patient can consent to VAD and there is no scope for a substitute decision-maker to decide. This is an important part of making sure the person's decision is voluntary and not made on behalf of a carer, family, friend or other support person.

## Can I assess or advise a patient about VAD using telehealth?

MIPS strongly recommends that members do NOT use telehealth to assess a patient's eligibility for VAD or to discuss VAD with patients. This is because Commonwealth laws still make it an offence to assist suicide through the use of a carriage device. An excellent summary of these issues can be found [here](#).

# Clinical

## Do all patients have to receive a psychological or psychiatric evaluation prior to being able to access VAD?

No, but patients must be assessed by at least two medical practitioners to determine eligibility. The patient seeking VAD must be given information such as prognosis, treatment options, palliative care. If both practitioners assess the patient as being eligible, then the patient is able to make a written request called a Written Declaration. The third and final request is the administration - whether they want to self-administer or practitioner-administer. One of these medical practitioners may request a patient be assessed by a psychologist or psychiatrist to determine the patient's capacity or to ensure that the patient's judgment is not being clouded by a mental health condition, such as depression.

## What counselling or support is available to doctors who choose to be involved?

The Voluntary Assisted Dying Care Navigator Service is available in each jurisdiction where VAD is currently lawful. Part of their important role is also a contact point for health practitioners seeking information about or assistance with VAD. Navigators can work closely with medical practitioners and healthcare teams to support the needs of the person.

The service may provide:

- general information about VAD
- individualised support and information, either in a face-to-face consultation or by post
- assistance in connecting people with appropriate medical practitioners and health services
- information about or access to VAD support packages
- holistic advice and follow-up on appropriate end-of-life care services
- education to health services and health practitioners.

## How do we complete a death certificate if a patient dies after taking a VAD substance?

If a patient dies as a result of taking a VAD substance, the cause of death to be recorded on their death certificate should be the disease, illness or medical condition that was the basis for the person accessing VAD. In most jurisdictions, there is the option of ticking a box to confirm that the patient died following use of a VAD substance. That information will not be publicly available.

## How do I become a VAD practitioner?

VAD practitioners need to have minimum qualifications and experience. Each state law also requires practitioners to do mandatory training before they can accept a request from a patient to assess their eligibility for VAD.

Visit your state's health department website to find out more:

NSW	<a href="#">Voluntary assisted dying health practitioner information in New South Wales</a>
QLD	<a href="#">Voluntary assisted dying information for medical practitioners and healthcare workers Queensland</a>
SA	<a href="#">Voluntary assisted dying health practitioner information South Australia</a>
TAS	<a href="#">Voluntary assisted dying resources for health professionals Tasmania</a>
VIC	<a href="#">Voluntary assisted dying health practitioner information Victoria</a>
WA	<a href="#">Voluntary assisted dying resources for health professionals Western Australia</a>

## What should I do if I believe that a patient's family is coercing them into accessing VAD?

It is an offense across all states to coerce or induce a person to access VAD. A patient's family cannot make decisions on behalf of the patient.

A decision to access (or refuse access to) VAD must be voluntary, and therefore free of coercion. If coercion is identified, it is important to discuss this with the patient and, to the extent possible, ascertain their thoughts and views of the patient without their family present if the patient allows this.

## What happens if my patient cognitively declines after being approved for VAD?

A patient must be capable at all stages of the VAD process, including at the end of the process when a patient requests a VAD prescription. If a patient loses capacity at any time before a prescription for self-administration has been completed, then the patient is no longer eligible to access VAD.

## Do we need family consent?

No, the decision to access VAD must be the patient's decision. If you are assessing a patient's eligibility for VAD, you must also ensure that their decision to access VAD is free from coercion, including coercion from family and carers. However, patients may request that their family or carers be involved in their decision-making.

## Employment

### Can my faith-based employer/health service prevent me from discussing VAD with a patient on religious grounds?

As stated above, in Victoria, SA and NSW, you are not under an obligation to be involved in any aspect of VAD if you conscientiously object. However, in Qld, WA and Tasmania, you must provide basic information or refer a patient to another practitioner, even if you conscientiously object.

The hospital cannot direct you to breach any legislative requirements. A faith-based hospital may lawfully decide not to support VAD and may make public statements that make this clear. However, their staff must abide by the legislative requirements in each jurisdiction. Therefore, in Qld, WA and Tasmania, staff must still provide basic information or refer a patient to another practitioner, even if the hospital does not support VAD.

If the doctor goes beyond the provision of information, such as by assessing patients at the hospital, then the hospital may be able to take steps to prevent you from doing that.

## Additional Resources

- MIPS on-demand webinar: [Voluntary assisted dying](#)
- <https://support.mips.com.au/home/case-study-supporting-patients-through-voluntary-assisted-dying>
- <https://support.mips.com.au/home/voluntary-assisted-dying-post-webinar-activity>

- VAD Care Navigator Service - (03) 8559 5823 or [vadcarenavigator@petermac.org](mailto:vadcarenavigator@petermac.org)
- Gippsland: [vadsupport@lrh.com.au](mailto:vadsupport@lrh.com.au)
- Grampians: [voluntaryassisteddying@bhs.org.au](mailto:voluntaryassisteddying@bhs.org.au)
- Hume: [VADCareNavigator@nhw.org.au](mailto:VADCareNavigator@nhw.org.au)
- Loddon Mallee: [vad@bendigohealth.org.au](mailto:vad@bendigohealth.org.au)
- Barwon: [VADEnquiries@barwonhealth.org.au](mailto:VADEnquiries@barwonhealth.org.au)
- QUT End of Life Law in Australia - <https://end-of-life.qut.edu.au/assisteddying>
- Victorian VAD training - <https://vicvadlearninghub.com/>

## More information

If a member has concerns about their involvement in VAD and require medico-legal assistance, contact us on 1800 061 113.

---