

Voluntary Assisted Dying Laws in VIC & WA Explained



Reading time:
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Western Australia is currently considering similar legislation to that already in effect in Victoria. MIPS is aware that there is valid concern among practitioners around potential criminal prosecution under Commonwealth law for electronic discussions around assisted dying under both the current Victorian law and the proposed WA legislation. Currently it is unlawful to provide voluntary assisted dying services by any means other than face-to-face. MIPS is aware of the limitation this creates, especially for rural and remote patients/hospitals. There are currently discussion taking place in Victoria to review this and MIPS is in favour of the the Commonwealth reviewing the Criminal Code to provide relief. MIPS members providing voluntary assisted dying are covered for this healthcare in the same way as other healthcare, however, indemnity does not extend to cover for elements of a criminal investigation.

Principal, Kellie Dell'Oro, and Lawyer, Rosemary Blanden - Meridien Lawyers

The Voluntary Assisted Dying Act 2017 (Vic) (the Act) came into operation on 19 June 2019, making Voluntary Assisted Dying (VAD) legal in Victoria.

Victorian registered medical practitioners will need to be aware of their role in the application of the Act. The normal covers and requirements of MIPS' indemnity insurance apply to VAD. Members must have the relevant qualifications, training and experience if they intend to treat patients participating in VAD.

For medical practitioners who wish to participate formally in the VAD process, registration is the first step, followed by completion of VAD training. Training relates to assessing eligibility and identifying and assessing risk factors for abuse or coercion.

Registered Health Practitioners or institutions, such as hospitals can exercise their right to exclude themselves from the operation of the Act if they have a conscientious objection.

The person must be diagnosed with a disease, illness or medical condition that is incurable, and advanced, progressive and will cause death; and is expected to cause death within six months; and is causing suffering to the person that cannot be relieved in a manner that the person finds tolerable. A person suffering from a neurodegenerative condition, which is expected to cause death within twelve months, is also eligible. Only Australian citizens or permanent residents who have been resident in Victoria for more than 12 months at the time of the request, are eligible to access the scheme.

For the Act to apply the 'person' wanting to access VAD must be assessed as having decision making capacity at every stage of the process. The medical practitioner must assess whether the patient's decision is voluntary and has been made without coercion. If the medical practitioner is not satisfied that the patient's decision is voluntary, they must deem the patient ineligible for VAD.

A medical practitioner who accepts a person's first request to access VAD becomes the Coordinating medical practitioner (CO-MP) with responsibility to determine eligibility for access to VAD.

The CO-MP must refer the person to a 'consulting medical practitioner' (CMP) to complete the initial assessment. Either the CO-MP or each of the CMP, must have practised for at least 5 years after completing specialist or vocational registration and must have relevant expertise and experience in the disease, illness or medical condition expected to cause the death of the person being assessed for access to VAD. In the case of a person with a neurodegenerative disease, the CO-MP must refer the person to a specialist registered medical practitioner with the appropriate skills and training in that particular condition, and the CO-MP must adopt the determination of that specialist.

If the CO-MP is unable to determine the person's decision making capacity in relation to VAD, as required by the eligibility criteria, for example, due to a past or current mental illness, the CO-MP must refer the person to a specialist with the appropriate skills and training for example, such as a psychiatrist in the case of mental illness. Mental illness has the same definition as Mental Health Act 2014 (Vic) section 4, that 'mental illness' is a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory.

All registered health practitioners, while providing health services are prohibited from:-

- initiating discussion with a person that is in substance about VAD, or
- in substance suggesting VAD to that person.

Contravention of section 8(1) is regarded as 'unprofessional conduct' under the Health Practitioner National Law (National Law),

and must be reported to the Australian Health Practitioner Regulation Agency (AHPRA).¹¹ Failure of a registered health practitioner to report a breach, constitutes unprofessional conduct under section 75(2). The Act does not give guidance as to whether an informal discussion about VAD by a person with a registered health practitioner, that is not, for example in the context of a professional relationship 'in the course of providing health or professional care services' would be caught by this prohibition.

Inducing a person to request VAD is an offence, punishable by up to 5 years imprisonment and/or fines of up to \$9,500.¹²

It is an offence for a CO-MP or CMP not to provide the Board with copies of all requisite VAD forms, including those completed for a person who is deemed ineligible.¹³ A CO-MP who administers a voluntary assisted dying substance (VADS) to a person in a manner not authorised by the VAD permit, is liable for life imprisonment.¹⁴ A contact person who does not return unused VADS to the dispensing pharmacy, faces a fine or up to 12 months imprisonment.

An Advance Care Directive (ACD) cannot include a VAD request, and a Medical Treatment Decision Maker cannot make a decision regarding VAD.¹⁵

The death of a person who has administered or self-administered a VADS in accordance with the Act is not a reportable death, however the Coroner has the power to investigate whether the death is reportable. The doctor responsible for the care of the person immediately before the death must notify the Coroner about the VAD related death.¹⁶

An Implementation Taskforce has been appointed to prepare for the 18 month implementation period, and a Voluntary Assisted Dying Review Board (the Board) formed, to monitor the application of the VAD legislation.

Please contact MIPS if you have any further questions.

1. The term "voluntary assisted dying" means the administration of a voluntary assisted dying substance, and includes the relevant steps required for administration. A "voluntary assisted dying substance" (VADS) is a 'poison or controlled substance or a drug of dependence specified in a voluntary assisted dying permit' for the purpose of causing a person's death.
2. Information on VAD accessed at <https://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/end-of-life-care/voluntary-assisted-dying/health-practitioners>
3. Section 7, the Act, and AMA Position Statement on Conscientious Objection-2019 at www.ama.com.au/position-statement/conscientious-objection-2019.
4. Section 9, the Act.
5. Section 22,23,31, the Act.
6. A "vocationally registered general practitioner" means medical practitioner registered in the Vocational Register of General Practitioners.
7. Section 18 (6), the Act.
8. Section 18, 27, the Act.
9. Section 8 (1), the Act.
10. Section 8 (3), the Act.
11. Section 75, 76, the Act, Mandatory reporting.
12. Section 85, the Act.
13. Section 90, the Act.
14. Section 83, the Act.
15. Introduced by the Medical Treatment Planning and Decisions Act 2016 (Vic).
16. Section 67, the Act.

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