

‘The alterations highlighted in this chapter clarify the relevant timeframes under the Tasmanian legislation.’

Chapter 13

Voluntary Assisted Dying

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KEY POINTS

- ‘Voluntary assisted dying’ (VAD) is the term adopted in Australia to refer to both physician-assisted dying and voluntary euthanasia. It emphasises that the decision must be a person’s voluntary choice, and that the person is imminently dying, and seeks assistance to control the timing and manner of their death.
- Since 2017, all six Australian States have passed laws permitting VAD in narrowly defined circumstances.
- To be eligible for VAD in Australia, a person must be an adult with decision-making capacity, and must make a free and voluntary decision to request access to VAD. The person must be

assessed to be suffering intolerably from an advanced and progressive medical condition which is expected to cause the person's death within a defined timeframe (six or 12 months). The person also needs to meet Australian and State residency requirements.

- The VAD process is heavily regulated, and consists of at least three separate requests and at least two eligibility assessments conducted by independent medical practitioners. In four States, governmental pre-authorisation is required before a person is permitted to access VAD.
- Except in New South Wales, self-administration of the lethal substance is the preferred method of VAD under these laws, although practitioner administration is also permitted in some circumstances.
- The right of individual health practitioners not to participate in VAD is specifically protected in all States. The ability of institutions (such as hospitals and residential aged care facilities) not to participate in VAD is regulated by legislation in three States (Queensland, South Australia and New South Wales), but by policy only in the other three States. This has proven to be a significant barrier to accessing VAD in those jurisdictions.

INTRODUCTION

[13.10] Since 2017, all Australian States have legislated to permit 'voluntary assisted dying (VAD)'.¹ This terminology is unique worldwide, and was deliberately chosen to emphasise that this is a *voluntary* decision initiated by a person who is suffering,² and that the person has a terminal illness, so is already *dying*. Accordingly, in Australia, VAD is a choice about the timing and manner of a death that is already imminent, rather than a choice to die.

As practised in Australia, VAD encompasses both acts of active voluntary euthanasia (where a medical practitioner, or in some States, nurse, administers lethal drugs to a person: practitioner administration) and physician-assisted dying (where a medical practitioner prescribes a lethal substance which the person ingests themselves: self-administration). 'Medical assistance in dying' (MAiD) is the legislative term used in Canada, which also encompasses both voluntary euthanasia and physician-assisted dying. The next section unpacks some of the terminology used in this area.

Terminology

[13.20] Euthanasia, from the Greek for 'a good death', is an umbrella term referring to an intentional act to end another person's life. Traditionally, distinctions have been made between *voluntary euthanasia* – where the life-ending act occurs at the person's explicit request – and non-voluntary or involuntary euthanasia. *Non-voluntary euthanasia* refers to acts (usually administration of medication) designed to end the

1. *Voluntary Assisted Dying Act 2022* (NSW) ('NSW VAD Act'); *Voluntary Assisted Dying Act 2021* (Qld) ('Queensland VAD Act'); *Voluntary Assisted Dying Act 2021* (SA) ('SA VAD Act'); *End-of-Life Choices (Voluntary Assisted Dying) Act 2021* (Tas) ('Tasmanian EOLC Act'); *Voluntary Assisted Dying Act 2017* (Vic) ('Victorian VAD Act'); *Voluntary Assisted Dying Act 2019* (WA) ('WA VAD Act').

2. Victorian Government, *Ministerial Advisory Panel on Voluntary Assisted Dying* (Final Report, July 2017) 8 ('Victorian Panel Report').

Table 13.1 Overview of Australian VAD laws

State	Legislation	Patient requests	Eligibility assessments	Minimum waiting period between first and final request	Pre-authorisation required	Oversight body
NSW	<i>Voluntary Assisted Dying Act 2022</i> (NSW)	Three requests	Two assessments by two independent medical practitioners	Five days	Yes, by Voluntary Assisted Dying Board	Voluntary Assisted Dying Board
Qld	<i>Voluntary Assisted Dying Act 2021</i> (Qld)	Three requests	Two assessments by two independent medical practitioners	Nine days	No	Voluntary Assisted Dying Review Board
SA	<i>Voluntary Assisted Dying Act 2021</i> (SA)	Three requests	Two assessments by two independent medical practitioners	Nine days	Yes, by Secretary, Department of Health	Voluntary Assisted Dying Review Board
Tas	<i>End-Of-Life Choices Act 2021</i> (Tas)	Three requests	Four assessments by two independent medical practitioners	48 hours between first and second, and between second and final requests	Yes, by Voluntary Assisted Dying Commission	Voluntary Assisted Dying Commission
Vic	<i>Voluntary Assisted Dying Act 2017</i> (Vic)	Three requests	Two assessments by two independent medical practitioners	Nine days	Yes, by Secretary, Department of Health	Voluntary Assisted Dying Review Board
WA	<i>Voluntary Assisted Dying Act 2019</i> (WA)	Three requests	Two assessments by two independent medical practitioners	Nine days	No	Voluntary Assisted Dying Board

eligible witnesses.¹³⁶ The process in Tasmania has additional steps and requires three eligibility assessments by the coordinating practitioner, in addition to the consulting assessment (refer to Figure 13.1).

If the person wishes to continue with the VAD process, they make a final request for VAD to their coordinating practitioner. To ensure that the request is enduring, there is a waiting period between the first and final request. The minimum waiting period between first and final request is nine days in most States,¹³⁷ except for New South Wales where it is five days,¹³⁸ and Tasmania where the waiting period is 48 hours between first and second requests and between second and final requests.¹³⁹ In Victoria, the VAD process can take much longer than nine days in practice. In the first three years of operation, the median timeframe between first and final request was 16 days; however, there were reports of much longer time periods between these requests, particularly in the system's early days.¹⁴⁰ The waiting period can be shortened if the person is expected to die, or in some States, lose decision-making capacity, before the end of the waiting period.¹⁴¹ This occurred in 17 per cent of cases in Western Australia in the first year.¹⁴²

Following the person's final request, in all States except Tasmania, the coordinating practitioner is required to conduct a 'final review' of the person's case to ensure that all the legal requirements have been complied with.¹⁴³

Referrals

[13.240] In all States, if either the coordinating or consulting practitioner is unable to determine whether the person has an eligible condition, has decision-making capacity or is acting voluntarily, they must refer them to a suitably qualified professional for a determination.¹⁴⁴ The assessing practitioner may choose whether

136. *NSW VAD Act* (n 1) s 43; *Queensland VAD Act* (n 1) s 37; *SA VAD Act* (n 1) s 52; *Tasmanian EOLC Act* (n 1) s 53(1); *Victorian VAD Act* (n 1) s 34; *WA VAD Act* (n 1) s 42.

137. *Queensland VAD Act* (n 1) s 42(1); *SA VAD Act* (n 1) s 55(1); *Victorian VAD Act* (n 1) s 37(1); *WA VAD Act* (n 1) s 47(1).

138. *NSW VAD Act* (n 1) s 48(1).

139. *Tasmanian EOLC Act* (n 1) ss 30(2), 53(2).

140. *VADRB Victoria, Report 2021-2022* (n 61) 13. Early research documents that some of these delays are the result of an overly complex request and administration process and can have serious 'consequences for eligible terminally ill patients who had been assessed as having intolerable suffering': see Willmott et al (n 96) 125-127. See also *DPP v Stratton* (n 13).

141. *NSW VAD Act* (n 1) s 49(2); *Queensland VAD Act* (n 1) s 43(2); *SA VAD Act* (n 1) s 56(2); *Tasmanian EOLC Act* (n 1) s 53(2); *Victorian VAD Act* (n 1) s 38(2); *WA VAD Act* (n 1) s 48(3).

142. *VADB WA, Annual Report 2021-22* (n 61). Data on waiver of the nine-day waiting period is not available from Victoria.

143. *NSW VAD Act* (n 1) s 52; *Queensland VAD Act* (n 1) s 46; *SA VAD Act* (n 1) s 59; *Victorian VAD Act* (n 1) s 41; *WA VAD Act* (n 1) s 51.

144. *NSW VAD Act* (n 1) ss 26, 27, 37, 38; *Queensland VAD Act* (n 1) ss 21, 32; *SA VAD Act* (n 1) ss 36, 45; *Tasmanian EOLC Act* (n 1) ss 25, 32, 54; *Victorian VAD Act* (n 1) ss 18, 27; *WA VAD Act* (n 1) ss 26, 37.