

# Voluntary assisted dying

## Guidance for health practitioners



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## **Disclaimer**

This guidance is general in nature and does not restate the requirements of the legislation in full, or set out existing professional obligations (for example in relation to informed consent or confidentiality).

This guidance should be read with an appreciation of health practitioner professional obligations under respective codes of conduct, as well as their obligations under common law and other legislation.

Health practitioners should, where appropriate, seek independent legal advice.

Health practitioners should also contact their professional indemnity insurers to confirm they are covered for voluntary assisted dying under their policy of insurance.

This guidance has been prepared having regard to general circumstances, and it is the responsibility of the user to have express regard to the particular circumstances of each case, and the application of this guidance in each case.

This guidance will be reviewed from time to time, and it is the responsibility of the user to ensure they have obtained the current version.

This guidance has been prepared having regard to the information available at the time of its preparation, and the user should therefore have regard to any information, research or material which may have been published or become available subsequently.

While the Department of Health and Human Service endeavours to ensure that this guidance is as current as possible at the time of preparation, it takes no responsibility for matters arising from changed circumstances or information or material which may have become available subsequently.

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# Contents

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<b>Using this guidance</b>	<b>v</b>
Purpose of this guidance	v
The intended audience	v
Using this guidance in different settings	v
Limitations of this guidance	v
Terms used in this guidance	vi
Icon legend	viii
Key contact details	viii
Other sources of information on voluntary assisted dying	viii
<b>The Voluntary Assisted Dying Act</b>	<b>1</b>
Background to the Act	1
<b>The roles of health practitioners in voluntary assisted dying</b>	<b>4</b>
Medical practitioners	4
Other specialist medical and health practitioners	5
Pharmacists	5
Other health practitioners	6
When can a health practitioner provide information about voluntary assisted dying?	6
Voluntary assisted dying care navigators	7
Conscientious objection to providing care associated with voluntary assisted dying	7
<b>Responding to questions about voluntary assisted dying</b>	<b>11</b>
Patient-centred end-of-life care	11
Responding to patients who ask about voluntary assisted dying	13
<b>Step 1: Patient makes a request for voluntary assisted dying</b>	<b>16</b>
1.1 Respond to the patient's request for voluntary assisted dying	16
1.2 Consider medical practitioner participation	19
1.3 Voluntary assisted dying training for medical practitioners	23
1.4 Discuss the voluntary assisted dying process with the patient	23
The coordinating medical practitioner's role	26
The consulting medical practitioner's role	29
<b>Step 2: Assess the patient's eligibility to access voluntary assisted dying</b>	<b>31</b>
Medical practitioners involved in voluntary assisted dying eligibility assessments	31

Planning the eligibility assessment	31
2.1 Assess the patient's demographic eligibility	33
2.2 Assess the patient's decision-making capacity	33
2.3 Assess whether the patient meets the medical condition criteria	37
2.4 Assess whether the patient's decision is voluntary and enduring	40
2.5 Discussion with the patient	41
2.6 Complete the first assessment	42
2.7 Refer the patient for a consulting assessment	43
2.8 Complete the consulting assessment	44
<b>Step 3: Complete the request and assessment process</b>	<b>46</b>
3.1 Patient makes a written declaration	46
3.2 Patient makes a final request	48
3.3 Patient appoints a contact person	48
3.4 Complete the final review	49
<b>Step 4: Prescribe the voluntary assisted dying medication</b>	<b>51</b>
4.1 Apply for a voluntary assisted dying permit	51
4.2 Prescribe the voluntary assisted dying medication	54
4.3 Statewide pharmacy service dispenses the voluntary assisted dying medication	56
<b>Step 5: Administration of the voluntary assisted dying medication</b>	<b>59</b>
5.1 Patient self-administers the voluntary assisted dying medication	59
5.2 Coordinating medical practitioner administers the voluntary assisted dying medication	60
<b>Step 6: After the patient dies</b>	<b>63</b>
6.1 Complete the reporting requirements	63
6.2 Contact person returns any unused or remaining voluntary assisted dying medication	64
6.3 Support carers, family and friends	65
6.4 Support for health practitioners	66
<b>Additional resources</b>	<b>67</b>
Communication resources	67
Tools for assessing decision-making capacity and prognosis	70
Determining citizenship and/or residency	73
Protections from liability, notifications of breaches and offences	74
<b>Further resources on voluntary assisted dying</b>	<b>75</b>

# Using this guidance

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## Purpose of this guidance

This guidance has been developed to assist health practitioners to understand the *Voluntary Assisted Dying Act 2017* (the Act) and their roles and responsibilities in the voluntary assisted dying process. The guidance situates voluntary assisted dying within the wider context of delivering high-quality end-of-life care and is designed for:

- medical practitioners who participate in voluntary assisted dying
- other health practitioners who provide care to a patient accessing voluntary assisted dying.

The guidance is primarily concerned with the voluntary assisted dying process but includes reference to best practice in end-of-life care. It is expected that health practitioners assisting a patient to access voluntary assisted dying will draw on their existing clinical knowledge and expertise as they would in providing any other end-of-life care.

## The intended audience

This guidance will be of interest to health practitioners who provide, and are responsible for, patient care. This includes those who may take an active role in supporting patients to access voluntary assisted dying, such as medical practitioners and pharmacists, and those who may provide other care and support for patients who choose to access voluntary assisted dying, such as nurses and allied health practitioners.

This guidance should be used in conjunction with a health practitioner's own professional standards, their health service's model of care, and other best practice guidance relevant to end-of-life care.

## Using this guidance in different settings

This guidance can be used across a range of settings including hospitals, community health services, primary care health services, residential aged care services and a patient's home. A short-form quick reference guide of this guidance will also be available on the department's end of life care website <<https://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/end-of-life-care>>.

## Limitations of this guidance

This guidance is general in nature and does not restate the requirements of the legislation in full, or set out existing professional obligations (for example in relation to informed consent or confidentiality). This guidance should be read with an appreciation of health practitioner professional obligations under respective codes of conduct, as well as their obligations under common law and other legislation. Health practitioners should, where appropriate, seek independent legal advice and contact their professional indemnity insurers to confirm they are covered for voluntary assisted dying under their policy of insurance.

This guidance focuses on the voluntary assisted dying process and the role of health practitioners in assisting a patient to access voluntary assisted dying. This guidance is primarily based on expert opinion and the experience of health practitioners in other jurisdictions.

Validated tools that may help assess a patient's eligibility for voluntary assisted dying have been identified. However, it is important to note that such tools have been developed for other circumstances and should be used as a guide only in the context of voluntary assisted dying.

Guidance in jurisdictions where voluntary assisted dying is legal largely focuses on that jurisdiction's specific legislative requirements. The requirements differ among jurisdictions and guidance is therefore of limited application to the Victorian context in some key areas. However, general material that may be useful to health practitioners in Victoria has been identified.

## Terms used in this guidance

- **Administration request** – a request made by a patient to their co-ordinating medical practitioner for administration of a voluntary assisted dying medication.
- **Carers, family and friends** – carers, family, friends or other people who are important to the patient and form part of the patient's support group.
- **Consulting assessment** – an assessment of a patient who has requested access to voluntary assisted dying conducted by a consulting medical practitioner.
- **Consulting medical practitioner** – a registered medical practitioner who accepts a referral to conduct a consulting assessment of a patient who has requested voluntary assisted dying.
- **Contact person** – a person appointed by a patient who has requested access to voluntary assisted dying and who takes responsibility for returning any unused or remaining voluntary assisted dying medication to the Voluntary Assisted Dying Statewide Pharmacy Service.
- **Coordinating medical practitioner** – a registered medical practitioner who accepts a patient's first request for access to voluntary assisted dying.
- **End-of-life care** – care for patients who are likely to die in the next 12 months due to progressive, advanced or incurable illness, frailty or old age.<sup>1</sup>
- **Final request** – the final request for access to voluntary assisted dying after a patient has made a written declaration.
- **Final review** – a review conducted in respect of a patient by their coordinating medical practitioner that certifies that the voluntary assisted dying request and assessment process has been completed in accordance with the Act.
- **First assessment** – an assessment of a patient who has requested access to voluntary assisted dying conducted by their coordinating medical practitioner.

<sup>1</sup> Cited in *Victoria's end of life and palliative care framework* adapted from: National Palliative and End-of-life care Partnership 2015, *Ambitions for palliative and end-of-life care: a national framework for local action 2015–2020*, London

- **First request** – a clear and unambiguous request for access to voluntary assisted dying made personally by a patient to a registered medical practitioner.
- **Health practitioner** – includes registered and unregistered health practitioners, for example, medical practitioners, nurses, allied health practitioners, pharmacists and paramedics.
- **Health service** – includes hospitals, community health services, primary care health services, residential aged care services and other organisations that provide health care.
- **Life-limiting** – describes a disease, illness or medical condition that is expected to cause death.
- **Medical condition** – refers to a patient’s disease, illness or medical condition.
- **Mental illness** – has the same meaning as in the *Mental Health Act 2014*.
- **Patient** – a person, resident or client who requests information about or access to voluntary assisted dying.
- **Palliative care** – an approach to care that improves the quality of life of people and their families who are facing the problems associated with a progressive illness. It does this by preventing and relieving suffering through early identification and assessment, by treating pain and other physical, psychosocial and spiritual problems and by addressing practical issues.<sup>2</sup>
- **Practitioner administration permit** – means a permit issued under the Act permitting the coordinating medical practitioner to prescribe, supply and administer a voluntary assisted dying medication to the patient.
- **Registered health practitioner** – a person registered under the Health Practitioner Regulation National Law to practise a health profession (other than as a student).
- **Self-administration permit** – means a permit issued under the Act permitting the coordinating medical practitioner to prescribe and supply a voluntary assisted dying medication to the patient for self-administration.
- **Vocationally registered general practitioner** – has the same meaning as in the *Health Insurance Act 1973 (Cth)*.
- **Voluntary assisted dying permit** – refers to either a self-administration permit or a practitioner administration permit.
- **Voluntary assisted dying medication** – 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, referred to as the ‘voluntary assisted dying substance’ in the Act.
- **Voluntary assisted dying training** – mandatory training for medical practitioners before they conduct assessments of patients who request access to voluntary assisted dying, referred to as the ‘approved assessment training’ in the Act, approved by the Secretary under the Act.
- **Written declaration** – a written declaration requesting access to voluntary assisted dying, completed by a patient after they have been assessed as eligible by a coordinating medical practitioner and a consulting medical practitioner.

<sup>2</sup> Ibid.



## Icon legend

The following symbols have been used to identify key information or resources for each step in the voluntary assisted dying process.



**Key or important information**



**Administrative task**



**Tool or resource**

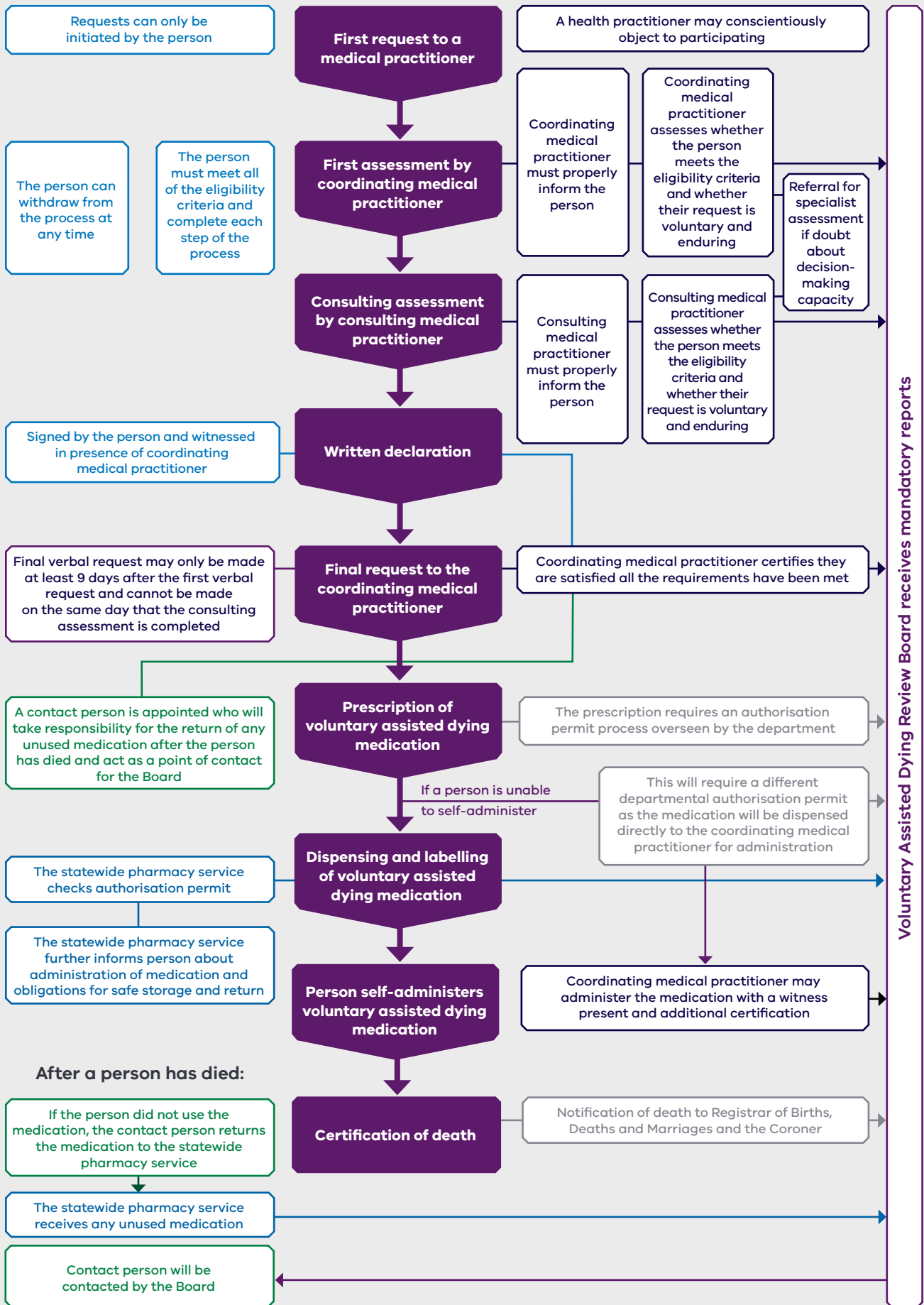
## Key contact details

- Voluntary assisted dying care navigators  
email <vadcarenavigator@petermac.org>
- Department of Health and Human Services end-of-life care team  
email <endoflifecare@dhhs.vic.gov.au>
- Voluntary Assisted Dying Statewide Pharmacy Service  
email <VolAssistDyingPharmacy@alfred.org.au>
- Voluntary Assisted Dying Review Board secretariat  
email <VADBoard@safercare.vic.gov.au>

## Other sources of information on voluntary assisted dying

More information about voluntary assisted dying, including information for the community and consumers and model of care resources for health services, may be found via the Department of Health and Human Services end-of-life care website <<https://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/end-of-life-care>>.

## The voluntary assisted dying process: an overview



# The Voluntary Assisted Dying Act

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## Background to the Act

The passage of the *Voluntary Assisted Dying Act 2017* followed more than two years of extensive public debate and consultation. This began with the cross-party Parliamentary Committee's Inquiry into End of Life Choices, which received in excess of 1,000 submissions and held more than 100 public hearings. The committee made 49 recommendations to improve end-of-life care in Victoria; one of these recommendations was that Victoria introduce voluntary assisted dying legislation. Following the committee's recommendation to introduce voluntary assisted dying legislation, a Ministerial Advisory Panel on Voluntary Assisted Dying was appointed to provide advice to the government about an appropriate legislative framework for implementation in Victoria. The panel received further submissions and conducted further consultations.

The Ministerial Advisory Panel released its final report in July 2017.<sup>3</sup> The report contained 66 recommendations, which formed the basis of the Voluntary Assisted Dying Bill. The recommendations in the panel's final report balanced giving people an additional choice at the end of their life with safeguarding individuals and the community. The Victorian Parliament passed the Voluntary Assisted Dying Bill on 29 November 2017, and the Act takes effect on 19 June 2019.

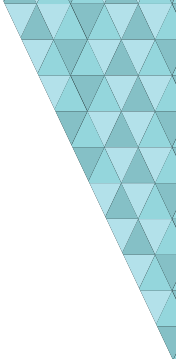
The legislation is part of broader reforms to improve quality and choice in end of life, which includes advance care planning and palliative care services. More information about these reforms can be found on the Department of Health and Human Services website.

## Voluntary assisted dying in Victoria

The Act allows a person who is already at the end of their life to take medication prescribed by a medical practitioner that will bring about their death. To access voluntary assisted dying a person must meet all of the following eligibility criteria:

- be 18 years of age or over
- be an Australian citizen or permanent resident
- be ordinarily resident in Victoria
- have been a resident in Victoria for 12 months at the time of making a first request for voluntary assisted dying
- have decision-making capacity in relation to voluntary assisted dying
- have an incurable disease, illness or medical condition that:
  - is advanced, progressive and will cause their death
  - is expected to cause their death within six months (or within 12 months for patients with a neurodegenerative medical condition)
  - is causing suffering to the person that cannot be relieved in a manner that the person considers tolerable.

3 Ministerial Advisory Panel on Voluntary Assisted Dying final report, July 2017 <<https://www2.health.vic.gov.au/about/publications/researchandreports/ministerial-advisory-panel-on-voluntary-assisted-dying-final-report>>



To access voluntary assisted dying a person will need to make a request to a medical practitioner, who may choose whether or not to participate in the process as the coordinating medical practitioner. The person will then need to complete the request and assessment process to access voluntary assisted dying.

Voluntary assisted dying can only be provided by medical practitioners who meet specific qualification and training requirements under the Act. To provide voluntary assisted dying medical practitioners must hold a fellowship with a specialist medical college or be a vocationally registered general practitioner. Medical practitioners must also undertake specific voluntary assisted dying training before conducting an eligibility assessment for voluntary assisted dying, whether before or after receiving a request.

The Act only allows medical practitioners to provide voluntary assisted dying within Victoria.

### **Medical practitioners**

Medical practitioners play an important role in the voluntary assisted dying process by:

- providing information and support to patients regarding the range of end-of-life care options
- assessing the patient's eligibility for voluntary assisted dying
- assessing whether a patient's decision is voluntary or coerced
- maintaining detailed records and completing the required forms for the Voluntary Assisted Dying Review Board.

The expectation is that a patient will self-administer the voluntary assisted dying medication. If the patient is physically incapable of self-administering or digesting the voluntary assisted dying medication then the coordinating medical practitioner may assist the patient to die by administering the medication, in accordance with a practitioner administration permit.

### **Other health practitioners**

As members of the healthcare team, other health practitioners such as nursing and allied health staff may play an important role in providing information, care and support to patients who request information about, or access to, voluntary assisted dying. They may also provide care and support to the patient's carers, family and friends. A health practitioner's understanding about the patient's situation can support the coordinating and consulting medical practitioners in undertaking their role in the voluntary assisted dying process.

## **The Voluntary Assisted Dying Review Board**

The Act establishes the Voluntary Assisted Dying Review Board which will oversee the safe operation of the Act. The Board is auspiced by Safer Care Victoria and will be responsible for:

- receiving reports from health practitioners who participate in voluntary assisted dying
- monitoring the dispensing of the voluntary assisted dying medication, and the return of any unused or remaining medication
- referring any identified issues to appropriate agencies
- reporting annually on the operation of the Act.

## **Voluntary assisted dying principles**

Those who carry out a function or duty under the Act must have regard for the following principles:

- Every human life has equal value.
- A person's autonomy should be respected.
- A person has the right to be supported in making informed decisions about the person's medical treatment, and should be given, in a manner the person understands, information about medical treatment options including comfort and palliative care.
- Every person approaching the end of life should be provided with quality care to minimise the person's suffering and maximise the person's quality of life.
- A therapeutic relationship between a person and the person's health practitioner should, wherever possible, be supported and maintained.
- Individuals should be encouraged to openly discuss death and dying and an individual's preferences and values should be encouraged and promoted.
- Individuals should be supported in conversations with the individual's health practitioners, family and carers and community about treatment and care preferences.
- Individuals are entitled to genuine choices regarding their treatment and care.
- There is a need to protect individuals who may be subject to abuse.
- All persons, including health practitioners, have the right to be shown respect for their culture, beliefs, values, and personal characteristics.

# The roles of health practitioners in voluntary assisted dying

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Many health practitioners are involved in providing care and support to people with incurable, advanced and progressive medical conditions that will cause their death, and who require end-of-life care. The Act identifies specific roles and responsibilities for medical practitioners and pharmacists, but as members of a multidisciplinary team many other health practitioners are likely to provide support and assistance.

This section outlines the responsibilities of health practitioners in caring for and supporting patients who request information about, or access to, voluntary assisted dying.

## Medical practitioners

There are two key roles for medical practitioners in assessing a patient's eligibility for voluntary assisted dying: coordinating medical practitioner and consulting medical practitioner. Both roles require the medical practitioner to either hold a fellowship with a specialist medical college or be a vocationally registered general practitioner.

The role of the coordinating medical practitioner is more substantive than that of the consulting medical practitioner.

### Coordinating medical practitioner

A medical practitioner who accepts the patient's first request for voluntary assisted dying and chooses to accept the role and its responsibilities becomes the coordinating medical practitioner. The coordinating medical practitioner has responsibility for assessing the patient's eligibility for voluntary assisted dying, coordinating the request and assessment process, and prescribing the voluntary assisted dying medication. They may also be responsible for administering a voluntary assisted dying medication under a practitioner administration permit, when a patient is physically incapable of self-administering or digesting the medication themselves.

The coordinating medical practitioner can, if necessary, transfer their role to a consulting medical practitioner (see below), provided the consulting medical practitioner has assessed the patient as eligible to access voluntary assisted dying and accepts the transfer.

### Consulting medical practitioner

A medical practitioner who accepts a referral to conduct an independent consulting assessment of the patient's eligibility for voluntary assisted dying becomes the consulting medical practitioner. The consulting medical practitioner's only role is to conduct the consulting assessment of the patient.

### Expertise and experience

Either the coordinating or the consulting medical practitioner must have:

- practised as a registered medical practitioner for at least five years after completing their fellowship or vocational registration
- relevant expertise and experience in the medical condition expected to cause the patient's death. To have expertise and experience in the patient's medical condition the medical practitioner is required to be a medical specialist in the patient's medical condition.

One of the medical practitioners may fulfil both these requirements, or they may each fulfil one.

## Training

Medical practitioners who participate in voluntary assisted dying as either the coordinating or consulting medical practitioner must complete the voluntary assisted dying training prior to assessing the patient's eligibility for voluntary assisted dying. The training can be undertaken online and takes around six hours to complete. The training is in modules, and the modules may be completed separately at times that are convenient to the medical practitioner.

## Other specialist medical and health practitioners

Specialist medical and health practitioners other than the coordinating and consulting medical practitioners may also receive a referral to assess whether or not a patient meets a particular element of the eligibility criteria. Health practitioners are not required to complete voluntary assisted dying training before undertaking these assessments.

If either the coordinating or consulting medical practitioner is unable to determine whether the patient has decision-making capacity in relation to voluntary assisted dying, they must refer the patient to a registered health practitioner with appropriate skills or training for a specialist opinion. For example, where a patient is suffering, or has suffered from, a mental illness, referral to a neuro or clinical psychologist or psychiatrist may be appropriate.

If either the coordinating or consulting medical practitioner is unable to determine whether the patient's medical condition meets the eligibility requirements, they must refer the patient to a specialist registered medical practitioner who has appropriate skills and training in that medical condition.

If the coordinating medical practitioner determines that the patient has a neurodegenerative condition that will cause death and is expected to cause death between six and 12 months, they must refer the patient to a specialist medical practitioner with appropriate skills and training in the patient's particular neurodegenerative condition.

## Pharmacists

The pharmacist's role in voluntary assisted dying relates to compounding, dispensing and disposing of voluntary assisted dying medication. In addition, the pharmacist has responsibility for providing the patient with information about the administration, storage, return and disposal of voluntary assisted dying medication.

Pharmacy services for voluntary assisted dying are provided by the Voluntary Assisted Dying Statewide Pharmacy Service. This service is responsible for dispensing every voluntary assisted dying medication and for ensuring the safe return and disposal of any unused medications.

The statewide pharmacy service is also available to assist coordinating medical practitioners and to provide advice when they are prescribing voluntary assisted dying medication.

## Other health practitioners

Nursing, allied health and other health practitioners may be asked for information about voluntary assisted dying by patients or provide care and support to patients who are considering or have requested voluntary assisted dying. Health practitioners who are asked about voluntary assisted dying can provide any information they are able to, and usual care and support, respecting the patient's choice in the same manner as patients receiving any other type of treatment. Health practitioners may also be asked to assist in the voluntary assisted dying process in other ways such as with communication if the patient has communication difficulties.

### Training for other health practitioners

Only coordinating and consulting medical practitioners are required to undertake the voluntary assisted dying training. Other health practitioners should check with their professional organisations regarding any specific guidance they may have developed in relation to voluntary assisted dying and familiarise themselves with any models of care, policies or procedures relating to voluntary assisted dying in their own healthcare facility.

Information and support can also be provided by the voluntary assisted dying care navigators (see below).

## When can a health practitioner provide information about voluntary assisted dying?

A health practitioner who is providing health or professional care services to a patient cannot initiate a discussion about voluntary assisted dying or suggest voluntary assisted dying to the patient. They can, however, respond to a patient's request for information.

This means that unless a patient specifically asks about voluntary assisted dying, the conversations that health practitioners currently have with patients about end-of-life care should not change after the Voluntary Assisted Dying Act commences.

Broad questions such as 'What are my options at the end of my life?' do not constitute requests for information about voluntary assisted dying. Requests for information must be specific and explicit.

If a health practitioner is unsure of what their patient is asking about, they may ask open-ended questions to clarify what the patient is contemplating such as, 'What do you mean by that?' The health practitioner should explore why the patient has expressed a desire to die or asked about the end of their life in the same way that they would in other circumstances. For example, they might ask why the patient wants to end their life and offer mental health or other supports and referrals if this is appropriate.

Once a patient has requested information about or access to voluntary assisted dying, treating health practitioners do not need to wait for the patient to raise voluntary assisted dying during subsequent consultations. It is not intended that every single subsequent discussion be initiated by the patient. The intention of this provision is to protect those who may be open to suggestion or coercion, not to discourage open discussions driven by the person.



## Voluntary assisted dying care navigators

A statewide voluntary assisted dying care navigator support service has been established. Voluntary assisted dying care navigators will act as a point of contact for members of the public, health practitioners and health services seeking information about or assistance with voluntary assisted dying.

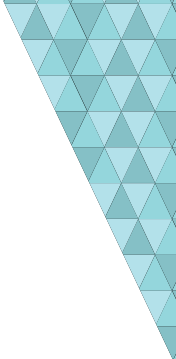
The primary role of care navigators is to assist patients who need support in obtaining information about or access to voluntary assisted dying. Many patients will be well supported through the voluntary assisted dying process by their coordinating medical practitioner, their existing healthcare team or a voluntary assisted dying liaison person or other care coordinator within the health service they attend. However, some patients may require additional support during the voluntary assisted dying process. Care navigators will work closely with patients, their carers, family and friends, medical practitioners and healthcare teams to tailor support that meets the specific needs of patients at key points throughout the voluntary assisted dying process.

For example, they may assist with identifying appropriate service referral pathways and connect people to health practitioners and services that best meet their specific needs as well as goals of care.

## Conscientious objection to providing care associated with voluntary assisted dying

Where a health practitioner's beliefs and values conflict with voluntary assisted dying they may conscientiously object to being involved. A health practitioner who has a conscientious objection to voluntary assisted dying has the right to refuse to assist or support the patient when the assistance is associated with voluntary assisted dying. For example:

- a speech pathologist who is asked to assist a patient to communicate a voluntary assisted dying request to a medical practitioner or when being assessed for voluntary assisted dying eligibility by a coordinating or consulting medical practitioner
- a nurse who is asked to provide intravenous support for a patient whose voluntary assisted dying medication is to be administered intravenously
- a health practitioner who is asked to provide information about voluntary assisted dying – some health practitioners may consider this a form of participation, while others will not. However, it is important that medical practitioners who choose to refuse to provide information do not impede or obstruct access to voluntary assisted dying.



Health practitioners who conscientiously object to voluntary assisted dying are encouraged to tell their employer/supervisor to assist the health service in understanding the views of its staff and in managing access to voluntary assisted dying for patients.

Additionally, as with any other medical intervention, a health practitioner may choose not to provide, support or assist with voluntary assisted dying because it is outside the scope of their practice or they do not have availability.

### **Respecting difference**

Every person has the right to have their beliefs and values respected. Although most health practitioners will not participate directly in voluntary assisted dying, they may provide care and support for patients who choose to access voluntary assisted dying. They are also likely to have colleagues who have beliefs and values different from their own. It is important that all health practitioners avoid judgement of patients and other health practitioners who have different views on voluntary assisted dying. Good patient care is enhanced when there is mutual respect and clear communication between all health practitioners involved in providing care and support to patients.<sup>4</sup>

Health practitioners are encouraged to take time to consider, reflect and come to a personal decision regarding their perspective on voluntary assisted dying. Health practitioners may find the *Values-based self-assessment tool for health care providers* useful in clarifying their own perspective and thereby understanding the perspectives of others.<sup>5</sup>

### **Ensuring the rights of patients**

All patients have the right to be supported to make informed decisions about their end-of-life care and treatment, and to receive compassionate and respectful care.

Health practitioners are expected to:

- demonstrate a willingness to listen carefully, empathise with, and support patients to make an informed decision about their end-of-life care and treatment
- respect their patient's beliefs, values and the choices they make about end-of-life care, even if it conflicts with their own values or religious beliefs
- respect a patient's autonomy and right to make genuine choices about their treatment and care
- provide routine and other care unrelated to a request for voluntary assisted dying.

4 Medical Board of Australia, Good medical practice: a code of conduct for doctors in Australia <<https://www.medicalboard.gov.au/Codes-Guidelines-Policies/Code-of-conduct.aspx>>

5 Alberta Health Services Ethics Service 2017, *Medical assistance in dying: Values based self-assessment tool for health care providers* <<https://www.albertahealthservices.ca/assets/info/hp/maid/if-hp-maid-self-assessment-tool.pdf>>

## **Health practitioner self-care**

A health practitioner may face moral conflicts when providing care for a patient who seeks to access voluntary assisted dying if the health practitioner's values do not align with this choice, or if the health practitioner wants to support the patient but is unsure to what extent they are willing to assist in voluntary assisted dying related care.

Regardless of what decision a health practitioner makes, self-care is important, and health practitioners should identify someone they can discuss their concerns with and/or check what supports are in place within their health service.

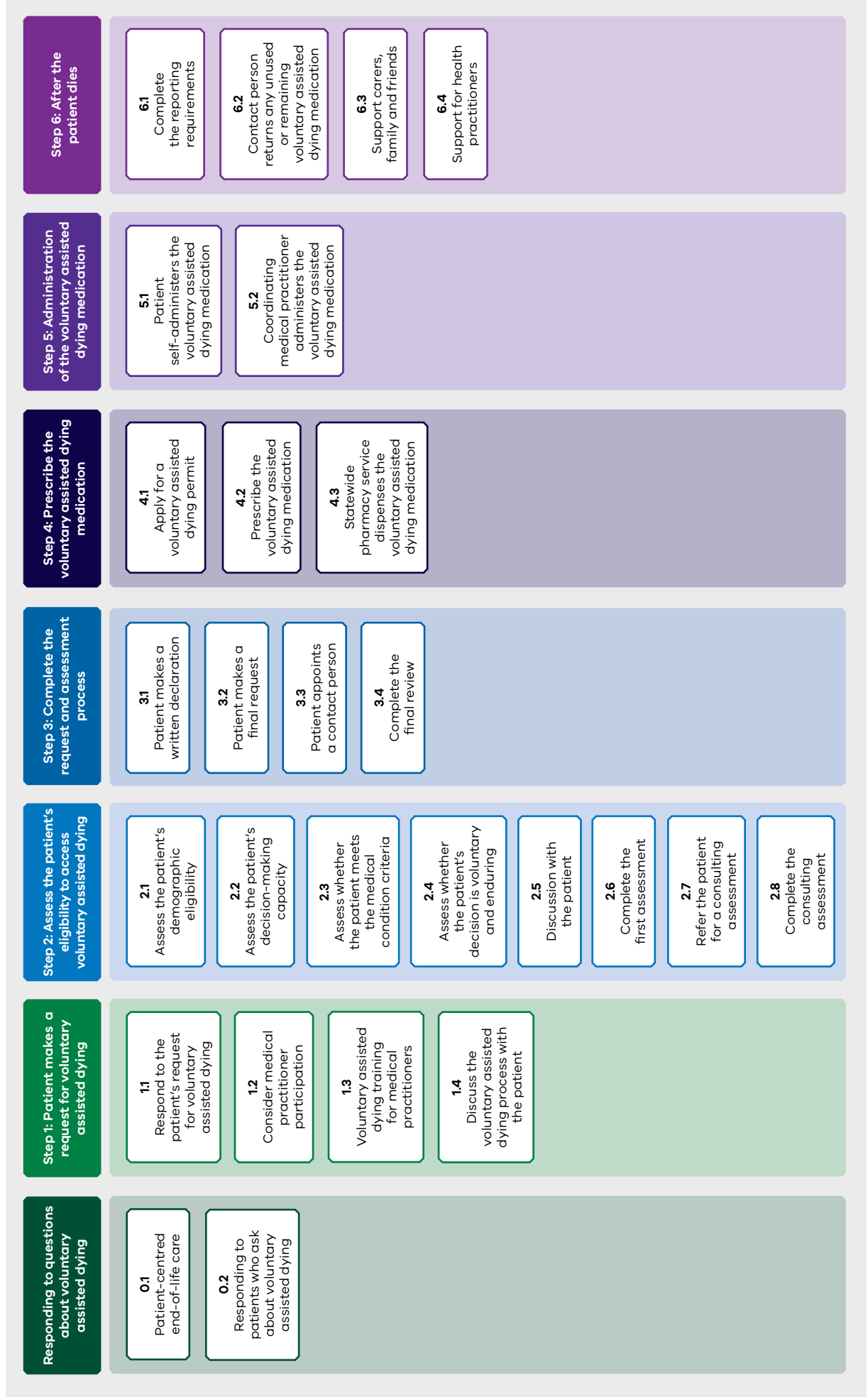
See section 6.4 for links to supports for health practitioners.

## **Health services**

Different health services will have varying levels of involvement in voluntary assisted dying. This will depend on the type of care the service normally provides, the skills and expertise available within the service and the values of the service. Health services will determine what level of involvement they will have. All health services should ensure staff are aware of voluntary assisted dying and have access to information that will support them to respond if patients raise voluntary assisted dying.

Figure 1 outlines the key process steps involved in voluntary assisted dying. This guidance document details the tasks and responsibilities involved in each step.

Figure 1: Voluntary assisted dying process steps



# Responding to questions about voluntary assisted dying

This section is relevant to all health practitioners who provide care to patients at the end of life.

In this section:

- Patient-centred end-of-life care
- Responding to a patient who asks for information about voluntary assisted dying
- Involving carers and families in end-of-life care conversations
- Supporting conversations with patients when there are barriers to communication

## Patient-centred end-of-life care

High-quality, patient-centred end-of-life care involves working with patients to identify, assess and treat their pain and other symptoms as well as psychosocial, emotional and spiritual support. It includes:

- respecting the patient's autonomy, supporting informed decision making and providing personalised care that is acceptable to the patient
- ensuring that medical treatment decisions respect the patient's values and preferences
- managing symptoms and responding to the patient's concerns
- supporting carers and family, where appropriate.<sup>6</sup>



When asked, Victorians said they want health practitioners to be knowledgeable about end-of-life care, show empathy and a level of comfort in having difficult end-of-life conversations.

*Victoria's end of life and palliative care framework, June 2016*


Essential to providing high-quality end-of-life care is the capacity of health practitioners to talk with patients about their prognosis and options for treatment and care, even when the actual timeframe for end of life is uncertain. Conversations about dying and preparing for death should not wait until the last weeks of life. Early conversations become even more pressing where future loss of decision-making capacity is anticipated, and medical practitioners need to be proactive in having them.

## Conversations about end-of-life care

While having conversations about end of life may be challenging for health practitioners, patients and families, evidence suggests that honest, informed and timely conversations that help the patient and their carers, family and friends prepare and plan for death can improve the quality of a person's dying.<sup>7</sup>

6 Royal Australasian College of Physicians 2016, *Improving care at the end of life: our roles and responsibilities* <<https://www.racp.edu.au/docs/default-source/advocacy-library/pa-pos-end-of-life-position-statement.pdf>>

7 UK Royal College of Physicians 2018, *Talking about dying: How to begin honest conversations about what lies ahead* <<https://www.rcplondon.ac.uk/projects/outputs/talking-about-dying-how-begin-honest-conversations-about-what-lies-ahead>>



Healthcare teams can provide more comprehensive care when they understand the patient's circumstances, their values and beliefs and by identifying:

- any physical symptoms
- psychosocial, existential, emotional or spiritual concerns
- preferences for care and treatment
- goals for end-of-life care.<sup>8</sup>

From a patient's perspective knowledge about their medical condition can help them to feel more empowered about care and decision making and can assist in symptom control, psychological support and practical issues. Importantly, it gives the patient time to talk with their carers, family and friends and to consider their options for end-of-life care and treatment.

Patients with a life-limiting medical condition are likely to feel vulnerable and not in control of their health and life. Health practitioners can play an important role in helping patients to understand the likely progression of their medical condition, and what treatment and care options are available. These can be complex issues for patients to navigate. Allowing patients to lead the conversation in any direction they desire, to express concerns (such as fears and symptoms), perspectives (such as values and health beliefs) and information needs can benefit both patients, and health practitioners in treating their patients.

How a patient links issues together in a free-form discussion can provide important clues as to what is driving the patient's decision making. Health practitioners can then ask questions to check their understanding of the patient's situation and help them to think through their treatment, advance care planning, palliative care and end-of-life care options. As previously mentioned, health practitioners cannot raise voluntary assisted dying as part of these discussions unless the person has requested information about voluntary assisted dying (for more, see below). Experienced health practitioners will recognise that conversations about options for end-of-life care and treatment may occur over several discussions before the patient is ready to make a decision.

For patients, being able to express their feelings and concerns can be both cathartic and empowering and assists health practitioners to offer treatment and care that meets the patient's values, needs and preferences.

Health practitioners should be aware of their own feelings and values in relation to end of life when discussing end-of-life care with patients. Health practitioners should reflect on how their own feelings and values may affect their ability to have open and supportive conversations with patients, particularly if a patient is considering withdrawing from active treatment or accessing voluntary assisted dying.

Some simple tips on good communication practice can be found in 'Additional resources' of this guidance.

<sup>8</sup> Rodriguez-Prat A, et al. 2017, 'Understanding patients' experiences of the wish to hasten death: an updated and expanded systematic review and meta-ethnography', *BMJ Open*, vol. 7, no. 9

## Involving family and carers in end-of-life care

Supporting family and carer involvement with a patient who has a life-limiting medical condition is an important part of end-of-life care. Health practitioners should encourage patients to talk to their family and carers about their situation and how it is affecting them and about their preferences for care and treatment, including voluntary assisted dying if they have made clear that they are exploring that option.

## Cultural awareness

Health practitioners should be aware of cultural and religious issues that may affect the decision making of patients and families at this time. In some situations, health practitioners may find it helpful to seek culturally appropriate assistance in talking to patients about end-of-life concerns and options for care and treatment.

The Centre for Culture, Ethnicity and Health (CEH) <<https://www.ceh.org.au>> provides specialist information, training and support on cultural diversity and wellbeing.

## Self-care for health practitioners

Discussing prognosis and end-of-life issues with patients with advanced life-limiting medical conditions is not easy. Prompting patients to discuss their emotional concerns and responding empathically can take its toll. Such discussions can leave health practitioners with feelings of failure, helplessness and frustration. It is important to acknowledge the need for support and self-care. This can include debriefing with colleagues, building strong collaborative team relationships and communication skills training.

## Responding to patients who ask about voluntary assisted dying

A registered health practitioner is not permitted to initiate a discussion that is in substance about or in substance suggests voluntary assisted dying to a patient. Doing so constitutes unprofessional conduct within the meaning of the Health Practitioner Regulation National Law. However, health practitioners can provide information about voluntary assisted dying to a patient at their request.

Patients might ask about voluntary assisted dying in a variety of ways; they may not use the exact phrase 'voluntary assisted dying'. If the health practitioner is unsure about what the patient is asking about, they should clarify with the patient and seek to elicit more information, relying on their existing clinical skills in having end-of-life care conversations, and using open-ended questions such as: 'Can you tell me more about that?', 'What do you mean by that?', 'Tell me more about what you mean' or 'What are you asking me about?'



A registered health practitioner must not – in the course of providing health or professional care services – either initiate a discussion about voluntary assisted dying or suggest voluntary assisted dying to a patient.

Some examples of what does, and does not, constitute a request for information about or access to voluntary assisted dying are provided below.

The following are examples of statements that are not sufficiently clear to enable the provision of information about voluntary assisted dying, however health practitioners may continue to use open-ended questions to explore the patient's concerns. The health practitioner should provide information about the patient's end-of-life care options, excluding voluntary assisted dying, and could refer the patient to the Department of Health and Human Services end-of-life care website for further information about end-of-life care.

“ *Can you give me all of the options?*  
*I'm tired of life and just want to die.*  
*I've had enough of this. I just want to get it over with.*  
*Isn't there something you can do to put an end to this?*  
*If animals can be put down when they're suffering, why can't I? ”*

Depending on the context, the following may constitute a request for information about voluntary assisted dying.

“ *I would like you to assist me to die.*  
*Can you help me die?*  
*How do I get that pill they say you can get to end it all that I can take when it all gets too much? ”*

If a health practitioner is clear that the patient has asked for information about voluntary assisted dying, they can provide the patient with information. The health practitioner should start by letting the patient know that information is available but that they would like to understand what has led the patient to ask about voluntary assisted dying. The health practitioner should, if qualified and competent to do so, explore and clarify the patient's situation, encourage them to talk about how they are feeling, and address any specific concerns or needs they may have. The health practitioner can talk about all the options for treatment and care.

The health practitioner should, without judgement, provide what information they can about voluntary assisted dying and/or direct the patient to additional sources of information such as their treating medical practitioner, a voluntary assisted dying care navigator or the Department of Health and Human Services end-of-life care resources <<https://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/end-of-life-care>>.

The health practitioner should also let the patient know that if they wish to make a request for voluntary assisted dying they must ask a medical practitioner. The health practitioner should suggest that the patient begin with their treating medical practitioner.



If the patient gives consent the health practitioner should:

- tell the treating medical practitioner or care team that the patient has expressed a wish to discuss their end-of-life situation and decisions for care and treatment, including a request to discuss voluntary assisted dying
- organise for additional support such as palliative care, a review by specialists for symptom management and/or psychosocial or spiritual care as appropriate
- consider if a family meeting (with the patient's consent) is appropriate.

It is important that all conversations with the patient are clearly documented in their medical record, including details of the exact nature of the patient's request.

### **Requests for information from carers, family or friends**

If a patient's carer, family member or friend asks a health practitioner for information about voluntary assisted dying they may direct them where to find information and, where appropriate, make them aware they cannot make a request on another person's behalf.

If a patient's carer, family member or friend asks for information about or access to voluntary assisted dying on the patient's behalf in front of the patient, the health practitioner should explain that they would need to talk to the patient directly before having any conversation with the carer, family member or friend about voluntary assisted dying.

Only a person choosing to access voluntary assisted dying can request it. A medical treatment decision-maker cannot request voluntary assisted dying on another person's behalf. This is an important part of making sure a patient's request is voluntary.

### **Supporting conversations where there are barriers to communication**

Patients with disabilities or medical conditions that make communication difficult may require practical support to enable them to participate more fully in a conversation about their end-of-life care and treatment options, and to communicate their preferences.

A speech pathologist certified by Speech Pathology Australia can assist patients with augmentative and alternative communication where patients use these means to communicate. Further communication resources are available in 'Additional resources'.

Auslan is the sign language of the Australian Deaf community. Due to a range of factors, deaf people may not be fluent in written English and proficiency should not be assumed.

Further information about supporting a patient who has difficulty communicating is available in 'Additional resources'.

### **Patients from culturally diverse backgrounds**

Patients from culturally diverse backgrounds may ask for or require an interpreter to be present to interpret any discussions about voluntary assisted dying. A language interpreter who is independent of the family and who is accredited through the National Accreditation Authority for Translators and Interpreters (NAATI) must be used (see Step 3.1 for more information about requirements for interpreters).

## Step 1: Patient makes a request for voluntary assisted dying

This section is primarily for medical practitioners responding to a patient's first request.

In this section:

- Responding to a patient's request to access voluntary assisted dying
- Considering medical practitioner participation in voluntary assisted dying, including conscientious objection considerations
- Completing the voluntary assisted dying training
- Discussing the voluntary assisted dying process with a patient
- Understanding the coordinating and consulting medical practitioner roles

### 1.1 Respond to the patient's request for voluntary assisted dying

If asked by a patient directly, all health practitioners can provide information about voluntary assisted dying and/or direct the patient to other sources of information. Only a registered medical practitioner can accept and act on a patient's specific request to access voluntary assisted dying.

In circumstances where a medical practitioner is informed of a patient's enquiry by another health practitioner, the medical practitioner does not need to wait for the patient to raise voluntary assisted dying in a subsequent consultation. It is not intended that every single subsequent discussion about voluntary assisted dying be initiated by the patient. The intention of the prohibition against initiating a discussion with a patient that is in substance about voluntary assisted dying is to protect individuals who may be open to suggestion or coercion, not to discourage open discussions driven by the individual.

As discussed in the previous section, patients may raise voluntary assisted dying in different ways and may not use the phrase 'voluntary assisted dying', which is not required. To constitute a request for voluntary assisted dying, the patient must make a clear and unambiguous request for assistance to deliberately end their life. If the health practitioner is unsure about what the patient is asking them they should take time to talk with the patient, asking open-ended questions to allow the patient to explain more clearly and completely what they want.

For example, it is not sufficient to say, 'I wish it was over. Can you help me?' The medical practitioner needs to clarify what the patient means, having regard to the context in which the statement was made.

If the medical practitioner is clear that the patient is requesting access to voluntary assisted dying, they should:

- listen to the patient without judgement
- check that the patient understands their prognosis and all their options for treatment and care
- explore with the patient their current circumstances, preferences for care and treatment and motivations for the request.<sup>9</sup>

Undertaking these steps may help clarify the reasons for the request and confirm that it is a first request to access voluntary assisted dying. Once the patient has clearly and unambiguously requested access to voluntary assisted dying, health practitioners can initiate subsequent discussions about voluntary assisted dying with the patient.

### **Comprehensive treatment and care at end of life**

Research indicates that the primary reason a patient with advanced disease wishes to hasten their death is to end suffering. This can encompass a complex mix of physical, social, psychological/emotional and/or spiritual suffering.<sup>10</sup> A comprehensive review of the effectiveness of the patient's current care should be undertaken and, where possible, additional support provided.

Symptoms such as nausea, delirium, fatigue and dyspnoea are experienced by a significant number of patients with advanced cancer and other diagnoses such as severe chronic obstructive pulmonary disease, advanced congestive heart failure, pulmonary hypertension and end-stage renal disease. Neurodegenerative diseases (such as motor neurone disease or Huntington's disease) also have a heavy symptom burden.

Factors that contribute to effective coping and peace for patients facing the end of their lives include:

- good communication and trust between the patient, family and healthcare team
- opportunities for the patient to share fears and concerns
- careful attention to physical symptoms and psychological and spiritual concerns.

9 Clayton JM, et al. 2007, 'Clinical practice guidelines for communicating prognosis and end-of-life issues with adults in the advanced stages of a life-limiting illness, and their caregivers', *Medical Journal of Australia*, no. 186 (12 Suppl): S77

10 Rodríguez-Prat A, et al. 2017, 'Understanding patients' experiences of the wish to hasten death: an updated and expanded systematic review and meta-ethnography', *BMJ Open*, vol. 7, no. 9



Often one of the most valuable roles palliative care specialists play is supporting other healthcare teams and professionals through consultation, advice and support to provide end-of-life care for their patients.

## **Palliative care and multidisciplinary approaches to end-of-life care**

Palliative care specialists, pain management teams and others are skilled in addressing both physical symptoms and psychosocial distress. Palliative care specialists are especially helpful when treating complex pain and non-pain symptoms, managing complex communication interactions with patients and families, and responding to complicated, multifaceted psychosocial and/or spiritual distress. Such challenging clinical tasks benefit from specific training along with dedicated time and space to focus on such concerns.

## **Community healthcare services**

In addition to the care provided by the patient's treating healthcare team, end-of-life care can also be provided by the patient's general practitioner, their residential aged care or disability service, district nursing, community health services and centres, or a specialist palliative care service.

## **Involving family and carers in end-of-life care**

Supporting family and carer involvement with a patient who has a life-limiting medical condition is an important part of end-of-life care. Medical practitioners will often interact with members of a patient's family or their carers while providing care or services. Medical practitioners should be aware of cultural and religious factors that may influence the decision making of the patient and the likely response of their families at this time.

If the patient gives permission the medical practitioner should:

- arrange a meeting with the patient and their family to discuss the patient's prognosis, end-of-life care options and preferences
- encourage the patient to talk to their carers, family and friends about their situation and how it is affecting them.

## **Providing family and carer support**

Caring for a family member with a life-limiting medical condition can be tiring physically and emotionally. If possible, the medical practitioner should offer families and carers support so they can continue to provide the care that the patient desires. This may be practical advice on how to procure special equipment, information about specific medical care to be provided or simply listening to their concerns and talking through the treatment options.

Respite care can also be arranged so that families and carers can take a break from providing care and take time to restore their own health and wellbeing.



### Useful resources for palliative care

There are a number of websites that offer information and practical guidance for health practitioners, families and carers in relation to palliative care:

- Victorian Department of Health and Human Services <<https://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/end-of-life-care>>
- Better Health Channel <<https://www.betterhealth.vic.gov.au/health/servicesandsupport/end-of-life-and-palliative-care-explained>>
- Palliative Care Victoria <<https://www.pallcarevic.asn.au/>>
- Palliative Care Australia <<https://palliativecare.org.au/>>.
- CareSearch Palliative Care Knowledge Network <<https://www.caresearch.com.au/Caresearch/Default.aspx>>

## 1.2 Consider medical practitioner participation

### Deciding whether to accept a patient's request for voluntary assisted dying

If the medical practitioner is satisfied that the patient has made a clear and unambiguous request for voluntary assisted dying they must decide if they are prepared and qualified to accept the request and participate in voluntary assisted dying as the patient's coordinating medical practitioner.

Some medical practitioners will have already decided about whether to participate in voluntary assisted dying or not and will be able to respond to the patient at the time of the request. Medical practitioners who have not reached a decision about their own participation in voluntary assisted dying may require some time for reflection.

The Voluntary Assisted Dying Act allows up to seven days from the date of receiving the first request for the medical practitioner to make their decision about whether to participate before they must inform the patient of their decision. While it is important that the medical practitioner considers their decision carefully this should be balanced with the needs of the patient and the suffering they are experiencing.

In deciding whether to participate in voluntary assisted dying as the coordinating medical practitioner, the medical practitioner should take time to reflect and ensure they understand:

- that only medical practitioners who hold a fellowship with a specialist medical college or are a vocationally registered general practitioner can provide voluntary assisted dying
- the position of the health service in which they are employed in relation to voluntary assisted dying (whether it supports voluntary assisted dying) and any relevant organisational policies if the patient is in a health or residential aged care facility
- their role in the assessment, prescription and administration processes, including the requirement to undertake the voluntary assisted dying training online prior to assessing the patient's eligibility

## STEP 1

- as the patient's coordinating medical practitioner, they will be:
  - accepting the patient's request
  - undertaking the first eligibility assessment (first assessment) and referring the patient to a second medical practitioner for a consulting assessment, as well as other potential assessments if required
  - supporting the patient, their family and carers throughout the voluntary assisted dying process (in conjunction with the patient's healthcare team)
  - applying to the Department of Health and Human Services for a permit to prescribe the voluntary assisted dying medication
  - potentially asked by the patient to be present when the patient self-administers the voluntary assisted dying medication
  - if necessary, administering the voluntary assisted dying medication if the patient is incapable of self-administration or digestion of the voluntary assisted dying medication. Some medical practitioners might be comfortable with prescribing voluntary assisted dying medication for self-administration but not want to engage in practitioner administration. If a medical practitioner does not want to participate in practitioner administration, they should advise the patient at the time of accepting the first request that if they later become physically incapable of self-administering or digesting the voluntary assisted dying medication, the medical practitioner would need to transfer the role of coordinating medical practitioner to another medical practitioner (transfer is addressed below under 'The coordinating medical practitioner's role')
  - completing and submitting the required forms to the Voluntary Assisted Dying Review Board to meet reporting requirements throughout the voluntary assisted dying process
- the likely time period required to complete the voluntary assisted dying eligibility assessment, prescribing process and reporting requirements (timing of the administration of the voluntary assisted dying medication is decided by the patient, who may choose not to continue at any time), the medical practitioner's availability to support the entire process through to the administration phase, and the impact on the patient if the medical practitioner withdraws for any reason
- their own personal and professional values regarding end-of-life care and the extent to which they are able to assist the patient to access voluntary assisted dying. This may vary depending on circumstances such as the therapeutic relationship with the patient, the likelihood of having to administer the voluntary assisted dying medication, workload and personal circumstances.

**More detailed information about the role and responsibilities of medical practitioners involved in voluntary assisted dying (coordinating and consulting medical practitioners) is contained at the end of this step.**

## Conscientious objection

Medical and other health practitioners can conscientiously object to participating in voluntary assisted dying. A medical practitioner who has a conscientious objection to voluntary assisted dying can refuse to:

- provide information about voluntary assisted dying
- participate in the request and assessment process
- apply for a voluntary assisted dying permit
- supply, prescribe or administer voluntary assisted dying medication
- be present at the time of administration of voluntary assisted dying medication

If a medical practitioner chooses not to participate in voluntary assisted dying they should:

- respectfully inform the patient at the earliest opportunity that they have a conscientious objection, preserving to the extent possible the therapeutic relationship and continuity of care with the broader healthcare team
- continue to provide ongoing care to the patient (unless the patient requests otherwise) irrespective of the patient's decision to explore voluntary assisted dying as an option with another non-objecting medical practitioner or health service
- be aware of their professional obligation not to impede a patient's access to care and treatment of their choice
- where possible, inform the voluntary assisted dying contact within the organisation of the patient's request for information about voluntary assisted dying so they can assist. (This will depend on the organisation's position and policies on voluntary assisted dying.)

Medical practitioners may also choose to refer patients to another medical practitioner to whom the patient can make a request. The referral must be made in a timely manner to ensure the patient does not experience unnecessary delays or adverse clinical outcomes (such as a decline in decision-making capacity). If the medical practitioner is not comfortable referring the patient they can inform the patient about where they can get further information on voluntary assisted dying, such as from the Department of Health and Human Services end-of-life care website or from a voluntary assisted dying care navigator.

## **Informing the patient of the medical practitioner's decision to refuse the request**

The medical practitioner must inform the patient of their decision to refuse their request for voluntary assisted dying within seven days and provide the reason for their decision. The Act identifies three reasons a medical practitioner may refuse to accept a patient's request for voluntary assisted dying:

- having a conscientious objection to voluntary assisted dying
- the practitioner will not be available to perform the duties of coordinating medical practitioner
- not being qualified under the Act to participate in voluntary assisted dying.

This discussion needs to be managed sensitively and with respect for the patient's choice.

## **Medical practitioner responsibilities after accepting the first request**

If a medical practitioner accepts a patient's first request they become the patient's coordinating medical practitioner.

After accepting the coordinating medical practitioner role, the medical practitioner should:

- record in the patient's medical record, the patient's first request (including how and in what form the request was made, e.g. the words the patient used in requesting it, how the request was communicated, the context in which the request was made, what further questions were asked of the patient to understand their request, whether anyone else is present at the time of the request), and their own acceptance of the role of coordinating medical practitioner
- inform the patient that the request will be recorded in their medical record and ensure they understand they can withdraw from the voluntary assisted dying process at any time
- confirm with the patient that they will need to make two further requests, including the second request (written declaration), which must be in writing, witnessed and signed, and that these take place after the patient has been assessed as eligible by both the coordinating and consulting medical practitioners
- explain to the patient that the next step in the process for the coordinating medical practitioner is to assess the patient's eligibility for voluntary assisted dying
- discuss with the patient their ongoing care and encourage them to communicate their decision about wanting to access voluntary assisted dying with their healthcare team and their family (if this has not already occurred)
- undertake the voluntary assisted dying training if they have not already done so; both the coordinating and consulting medical practitioners must have completed the training before beginning an assessment of the patient's eligibility for voluntary assisted dying.



### 1.3 Voluntary assisted dying training for medical practitioners

A medical practitioner can undertake the voluntary assisted dying training before receiving a request for voluntary assisted dying or after they have agreed to act as the coordinating medical practitioner or accepted a referral to act as the consulting medical practitioner. The training must be completed before beginning an assessment of the patient's eligibility for voluntary assisted dying.

The voluntary assisted dying training will provide medical practitioners with the core knowledge and competencies needed to provide voluntary assisted dying within the requirements of the Act. The training will be complemented by this guidance, model of care pathways and health service organisational policies.

The training is an eight-module online program that can be completed in about six hours and includes core and recommended readings to be read outside the estimated completion time. Case studies, exercises and reflections are used throughout the training to reinforce knowledge.

More information on the voluntary assisted dying training can be found at the Department of Health and Human Services end-of-life care website <<https://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/end-of-life-care>>.

### 1.4 Discuss the voluntary assisted dying process with the patient

If the coordinating medical practitioner has not already done so, they should provide the patient with information about the voluntary assisted process including the eligibility criteria, the steps and the outcome of voluntary assisted dying. This information could be provided either:

- as part of the first discussion about voluntary assisted dying
- at the point of accepting the patient's first request
- before beginning the first assessment of the patient's eligibility.

The eligibility criteria and voluntary assisted dying process are summarised below. The coordinating medical practitioner may also provide the patient with a copy of or link to the *Voluntary assisted dying information for people considering voluntary assisted dying* <<https://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/end-of-life-care/voluntary-assisted-dying/community-and-consumers>>.

For further guidance on the eligibility assessment process see Step 2.

#### Eligibility criteria

To be eligible to access voluntary assisted dying, the patient must meet the eligibility criteria prescribed in the Act including the following criteria.

#### Demographic criteria

The patient must be aged 18 years or older, be an Australian citizen or permanent resident and have been a Victorian resident for 12 months or more at the time of making their request for voluntary assisted dying.

## **Decision-making capacity criteria**

The medical practitioner should explain to the patient that assessing decision-making capacity is an important safeguard to ensure their request to access voluntary assisted dying is their own decision. In order to make their own decision to access voluntary assisted dying, it is important that people fully understand the information provided about voluntary assisted dying and its outcome and that they are able to use this information to make a decision about what is in their interests. To have decision-making capacity, a person must be able to:

- understand the information relevant to the decision relating to access to voluntary assisted dying and the effect of the decision
- retain that information to the extent necessary to make the decision
- use or weigh that information as part of the process of making the decision
- communicate the decision and the person's views and needs as to the decision in some way, including by speech, gestures or other means.

In assessing decision-making capacity the medical practitioner is not being asked to consider whether they agree with the patient's decision or whether they think it is a good decision. The purpose of the assessment is to determine whether the patient has the capacity to make their own decision in relation to voluntary assisted dying.

## **Medical condition criteria**

Voluntary assisted dying is only available to people who are already at the end of their lives because of a medical condition. The medical practitioner should explain to the patient that to access voluntary assisted dying they must be diagnosed with a medical condition that is:

- incurable
- advanced, progressive and will cause death
- expected to cause death within weeks or months, not exceeding six months, unless it is a neurodegenerative condition that is expected to cause death within weeks or months, not exceeding 12 months.

Additionally, the medical condition must be causing suffering to the patient that cannot be relieved in a manner that the patient considers tolerable.

## **Voluntariness**

As a further safeguard, 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 voluntary assisted dying.

## **Enduring request**

The medical practitioner must be satisfied that the patient's request is enduring, ensuring that the patient is aware that they can withdraw from the process at any time. As part of ongoing care, the coordinating medical practitioner should have ongoing conversations with the patient about their end-of-life preferences and their decision to access voluntary assisted dying.

## Summary of the voluntary assisted dying process

The coordinating medical practitioner should provide the patient with information about the voluntary assisted dying process. The following is intended as an overview and does not include all the actions to be taken by the coordinating medical practitioner or the consulting medical practitioner.

The coordinating medical practitioner should explain to the patient that:

- their initial verbal request for voluntary assisted dying triggers the voluntary assisted dying process
- they can withdraw from the voluntary assisted dying process at any time
- the medical practitioner receiving their request for voluntary assisted dying may need a few days to consider the request (The medical practitioner has seven days to notify the patient of their decision. A medical practitioner who has already reached a position on their level of participation in voluntary assisted dying can inform the patient at the time of their request and should not cause undue delay for the patient.)
- the patient will be assessed by at least two medical practitioners: the first assessment is with the coordinating medical practitioner and, if assessed as eligible, the patient is then referred for an independent assessment with the consulting medical practitioner
- if the patient is deemed eligible for voluntary assisted dying by the consulting medical practitioner the patient must show the enduring nature of their request by making two further requests to access voluntary assisted dying – one written and witnessed (by two people, neither of whom know or believe that they will benefit from the patient's death or provide direct health or professional care to the patient), and a final verbal request
- the patient must appoint a contact person who is over 18 years of age and agrees to the role (The contact person is responsible for returning any unused or remaining voluntary assisted dying medication to the dispensing pharmacy and acts as a contact point for the Voluntary Assisted Dying Review Board.)
- the patient should develop a plan for where they wish to die and who they want present
- once a permit has been approved and a prescription written the coordinating medical practitioner and pharmacist will provide the patient with information on how to self-administer the voluntary assisted dying medication
- if the patient is or becomes incapable of self-administering or digesting the voluntary assisted dying medication there is a process for administration by the coordinating medical practitioner.



The patient may withdraw their request for access to voluntary assisted dying at any time.

**More detailed information about the roles of the coordinating and consulting medical practitioners follows directly below to help medical practitioners understand the responsibilities of each role and make a decision about participating in voluntary assisted dying.**

## The coordinating medical practitioner's role

The coordinating medical practitioner must understand:

- the voluntary assisted dying process steps so they can prepare and act in a timely manner
- the responsibilities and tasks of others involved in the voluntary assisted dying process so they can explain or provide information and direction as required.  
This includes:
  - the consulting medical practitioner
  - other specialist medical practitioners
  - the patient and their family (if the patient consents)
  - the patient's appointed contact person
  - the pharmacist.

In addition, with the patient's permission, the coordinating medical practitioner may talk with other members of the patient's healthcare team about the patient's request for voluntary assisted dying and how the process is progressing.

Table 1 summarises the key tasks and actions required of the coordinating medical practitioner for the voluntary assisted dying process. The role carries considerable clinical and administrative responsibilities. If taking on the role the medical practitioner should identify what assistance may be available within the organisation to assist with these administrative tasks.

**Table 1: Summary of voluntary assisted dying coordinating medical practitioner key tasks and actions**

Voluntary assisted dying process step	Tasks and actions
First request	<ul style="list-style-type: none"> <li>• Clarifies that the patient has made a clear and unambiguous request for access to voluntary assisted dying. This initiates the voluntary assisted dying process.</li> <li>• Responds to request by: listening to the patient’s concerns, discussing with the patient their diagnosis, prognosis, end-of-life care options and preferences and the voluntary assisted dying process.</li> <li>• Decides whether to accept or refuse the patient’s request and informs patient within seven days.</li> </ul>
Agrees to act as coordinating medical practitioner	<ul style="list-style-type: none"> <li>• Records patient’s request and decision to accept the role of coordinating medical practitioner in the patient’s medical record.</li> </ul>
Completes mandatory voluntary assisted dying training	<ul style="list-style-type: none"> <li>• Undertakes voluntary assisted dying training if not already completed.</li> </ul>
Conducts first voluntary assisted dying eligibility assessment	<ul style="list-style-type: none"> <li>• Conducts first voluntary assisted dying eligibility assessment of the patient’s age, residency, decision-making capacity and medical condition diagnosis and prognosis.</li> <li>• If unable to determine the patient’s decision-making capacity, or whether their medical condition meets the eligibility criteria, makes referral to appropriate specialists.</li> <li>• If the patient has a neurodegenerative medical condition that is expected to cause death between six and 12 months, refers the patient for an opinion from a specialist medical practitioner in the patient’s particular neurodegenerative condition.</li> <li>• If the patient meets the eligibility criteria for voluntary assisted dying, provides information to the patient as outlined in Step 2.5.</li> <li>• Assesses the patient as eligible for access to voluntary assisted dying if satisfied that the patient meets all of the eligibility criteria, understands the information outlined in Step 2.5 and is acting voluntarily and without coercion, and that their request for access to voluntary assisted dying is enduring.</li> <li>• Informs the patient of the outcome of the first assessment.</li> <li>• Completes Form 1 <i>First assessment report form</i> and submits to the Voluntary Assisted Dying Review Board within seven days.</li> </ul>
Coordinates consulting assessment	<ul style="list-style-type: none"> <li>• Refers to medical practitioner for independent consulting assessment.</li> <li>• Consulting medical practitioner accepts, undertakes assessment and informs patient of the outcome.</li> <li>• Consulting medical practitioner completes Form 2 <i>Consulting assessment report form</i>, sends copy to coordinating medical practitioner, and submits to the Voluntary Assisted Dying Review Board within seven days.</li> </ul>

...continued

# STEP 1

Voluntary assisted dying process step	Tasks and actions
Patient's second request (written declaration)	<ul style="list-style-type: none"> <li>• Patient makes written declaration and completes Form 3 <i>Written declaration</i> in the presence of the coordinating medical practitioner and two witnesses.</li> <li>• Patient appoints a contact person and completes Form 4 <i>Contact person appointment form</i> and provides a copy to the coordinating medical practitioner.</li> </ul>
Patient's final request Undertakes final review	<ul style="list-style-type: none"> <li>• Coordinating medical practitioner is present for the patient's final request.</li> <li>• Ensuring each step in the voluntary assisted dying request and assessment process has been followed, submits Form 5 <i>Final review form</i> and all relevant attachments.</li> <li>• Determines if the patient is able to self-administer the voluntary assisted dying medication.</li> <li>• Applies for a permit to prescribe the voluntary assisted dying medication, either a self-administration or practitioner administration permit using the online voluntary assisted dying portal.</li> </ul>
Prescribing	<ul style="list-style-type: none"> <li>• If the patient is to self-administer the voluntary assisted dying medication the coordinating medical practitioner applies for the self-administration permit and gives the patient the required information before prescribing the medications.</li> <li>• If the coordinating medical practitioner is to administer the voluntary assisted dying medication, they apply for a practitioner permit to administer the voluntary assisted dying medication.</li> </ul>
Administering	<ul style="list-style-type: none"> <li>• If the patient is subject to a practitioner administration permit, administer the medication at the time agreed between the patient and the coordinating practitioner.</li> </ul>
After the patient dies	<ul style="list-style-type: none"> <li>• The medical certificate cause of death (MCCD) must be completed after the patient's death by the medical practitioner who is responsible for the patient's care immediately prior to death, or by the medical practitioner who attends after death.</li> <li>• If the medical practitioner who certifies the patient's death knows, or reasonably believes that the patient had a voluntary assisted dying permit they must indicate on the MCCD: <ul style="list-style-type: none"> <li>– that the person was the subject of a voluntary assisted dying permit</li> <li>– the medical condition relevant to the permit</li> <li>– if the patient self-administered the voluntary assisted dying medication</li> <li>– if the medication was administered in accordance with a practitioner administration permit.</li> </ul> </li> <li>• The certifying medical practitioner must notify the Coroner of the death.</li> </ul>

## Transfer of the role of coordinating medical practitioner to the consulting medical practitioner

Transfer of the role of the coordinating medical practitioner can be initiated by the coordinating medical practitioner themselves, or by the patient. This may occur where the coordinating medical practitioner becomes unavailable to further support the patient in the voluntary assisted dying process. The role can only be transferred to a consulting medical practitioner who has assessed the patient as being eligible for voluntary assisted dying and agrees to the transfer of the role.

If the consulting medical practitioner refuses to accept the role transfer, the coordinating medical practitioner can refer the patient to another medical practitioner to undertake a consulting assessment. If the second consulting medical practitioner assesses the patient as eligible for voluntary assisted dying and accepts the role of coordinating medical practitioner, then the transfer can occur.

## The consulting medical practitioner's role

The consulting medical practitioner is responsible for undertaking an independent assessment (consulting assessment) of the patient's eligibility for voluntary assisted dying. If the medical practitioner to whom the referral for a consulting assessment is made accepts the referral from the coordinating medical practitioner, they become the consulting medical practitioner.

The consulting medical practitioner must:

- hold a fellowship with a specialist medical college or be a vocationally registered general practitioner
- have completed voluntary assisted dying training before undertaking the assessment.

The consulting medical practitioner must also meet the following criteria, if the coordinating medical practitioner does not:

- have practised for at least five years after completing their fellowship or vocational registration
- have relevant expertise and experience as a medical specialist in the medical condition expected to cause the patient's death.

The consulting medical practitioner must also complete the voluntary assisted dying training before beginning an assessment of the patient's eligibility for voluntary assisted dying.

The medical practitioner to whom the referral is made must notify the coordinating medical practitioner and the patient of their decision to either accept or refuse the role of consulting medical practitioner within seven days.

In a consulting assessment, the consulting medical practitioner assesses the patient against the same voluntary assisted dying eligibility criteria as the coordinating medical practitioner.

If the patient meets all of the eligibility criteria, the consulting medical practitioner must assess the patient as eligible for voluntary assisted dying and notify the patient of the outcome of the consulting assessment. The consulting medical practitioner must also complete the consulting assessment report form and give a copy of it to the patient's coordinating medical practitioner and the Board (the latter must occur within seven days after completing the consulting assessment).

**Table 2: Summary of voluntary assisted dying consulting medical practitioner key tasks and actions**

Voluntary assisted dying process step	Tasks and actions
Conducts consulting assessment	<ul style="list-style-type: none"> <li>• Conducts consulting assessment of the patient’s age, residency, decision-making capacity and medical condition diagnosis and prognosis.</li> <li>• If unable to determine the patient’s decision-making capacity, diagnosis or prognosis, makes referral to appropriate specialists.</li> <li>• If the patient meets the eligibility criteria for voluntary assisted dying, provides information to the patient as outlined in Step 2.5.</li> <li>• Assesses the patient as eligible for access to voluntary assisted dying if satisfied the patient meets all of the eligibility criteria, understands the information outlined in Step 2.5 and is acting voluntarily and without coercion, and that their request for access to voluntary assisted dying is enduring.</li> <li>• Informs the patient of the outcome of the consulting assessment.</li> <li>• Completes Form 2 <i>Consulting assessment report form</i>, sends copy to the coordinating medical practitioner, and submits to the Voluntary Assisted Dying Review Board within seven days.</li> </ul>



## Step 2: Assess the patient's eligibility to access voluntary assisted dying

This section is primarily for medical practitioners who are assessing a patient's eligibility to access voluntary assisted dying.

In this section:

- Planning and undertaking eligibility assessments
- Discussing the assessments with the patient

### Medical practitioners involved in voluntary assisted dying eligibility assessments

Two medical practitioners (who have completed the voluntary assisted dying training) must assess the patient's eligibility to access voluntary assisted dying:

- The coordinating medical practitioner (see Step 1.4 for role description) undertakes the first assessment, and if they assess the patient as eligible for voluntary assisted dying, refers the patient for a consulting assessment.
- The consulting medical practitioner (see Step 1.5 for role description) undertakes the consulting assessment if they accept the referral and agree to participate in the voluntary assisted dying process.

If, in undertaking their assessments, either the coordinating or the consulting medical practitioner is unable to determine whether the patient has decision-making capacity in relation to voluntary assisted dying, they must refer the patient to a health practitioner who has appropriate skills and training (for example, a psychiatrist or neuropsychologist in the case of past or current mental illness). If they are unable to determine if the patient's medical condition meets the eligibility criteria (for example, diagnosis or prognosis) they must refer the patient to a specialist medical practitioner who has appropriate skills and training in that medical condition.

If the patient has a neurodegenerative condition and the coordinating medical practitioner determines that it is likely that the patient will die *between* six and 12 months, then in addition to the consulting assessment, a third assessment is required from a specialist medical practitioner with appropriate skills and training in the patient's neurodegenerative condition. The additional assessment is required due to the increased difficulty in determining a patient's prognosis when it may be beyond six months. Only the coordinating medical practitioner is required to make this referral in this circumstance; the consulting medical practitioner is not required to do so.

### Planning the eligibility assessment

In line with a patient-centred care approach, the medical practitioners should ensure the patient's eligibility assessments and any ongoing discussions are completed in a timely manner, and in an environment that considers the patient's wishes and privacy, their medical condition and any suffering they are experiencing.

Interpreters or other health practitioners, such as speech pathologists, may need to be booked to assist the medical practitioner and the patient to communicate effectively. Friends, family members or anyone other than qualified interpreters should never be used to facilitate communication with the patient in respect of voluntary assisted dying. The use (and identity) of an interpreter or other health practitioner such as a speech pathologist should always be documented.

Though this guidance discusses components of the eligibility criteria separately, in practice these assessments will usually be undertaken during the same session.

If the patient does not have the support of family or friends, and with the patient's consent, the voluntary assisted dying care navigator can be contacted, if they are not already involved, to provide advice and support to the patient.

### **Patient suffering and timeliness of the assessment process**

In recognition of the patient's suffering and potentially imminent death, medical practitioners are urged to undertake their assessments as quickly and efficiently as possible, and to expedite referral for additional assessments if required, so that the patient's burden is minimised. However, in doing so it is critical that the processes and assessments are carried out thoroughly, professionally, and with care and completeness.

### **Patient eligibility criteria**

Both the coordinating medical practitioner and the consulting medical practitioner must complete an assessment of the patient's eligibility for voluntary assisted dying, even within an existing therapeutic relationship and familiarity with the patient and their medical condition.

To be eligible to access voluntary assisted dying the patient must meet all of the following eligibility criteria:

- be aged 18 years or older
- be an Australian citizen or permanent resident
- be ordinarily resident in Victoria and have been ordinarily resident in Victoria for at least 12 months at the time of making the request (Step 2.1)
- have decision-making capacity in relation to voluntary assisted dying (Step 2.2)
- be diagnosed with a disease, illness or medical condition that is:



A patient is not eligible for voluntary assisted dying if they have *only* a mental illness or disability.

- incurable
- advanced, progressive and will cause their death
- expected to cause their death within weeks or months, not exceeding six months (or 12 months if the medical condition is neurodegenerative)
- causing them suffering that cannot be relieved in a manner that the patient considers tolerable (Step 2.3).

## 2.1 Assess the patient's demographic eligibility

The medical practitioner must be satisfied the patient meets the age and residency requirements. Table 3 provides a list of some of the documents that can be used as evidence of the patient's eligibility. (See 'Additional resources' for more details on documentary evidence.) The medical practitioner may ask to see a combination of the suggested documents for each criterion in Table 3 to be satisfied the patient meets the demographic criteria.

**Table 3: Possible documentary evidence for proof of demographic eligibility for accessing voluntary assisted dying**

Demographic criteria	Possible documentary evidence
Aged 18 years or older	<ul style="list-style-type: none"><li>• Medical records</li><li>• Birth certificate</li><li>• Victorian driver's licence</li></ul>
An Australian citizen or permanent resident	<ul style="list-style-type: none"><li>• Australian birth certificate for people born before 20 August 1986 (for people born after see 'Additional resources' for additional information)</li><li>• Passport establishing Australian citizenship</li><li>• Permanent resident visa</li><li>• Permanent resident Visa Grant Number (for more information on Visa Grant Numbers see 'Additional resources')</li></ul>
A Victorian resident for 12 months or more	<ul style="list-style-type: none"><li>• Victorian driver's licence or vehicle registration</li><li>• Registration on the Victorian electoral roll</li><li>• Patient's medical record (showing their Victorian residential address)</li><li>• Lease document and utility bills</li></ul>

### Cross-border patients

Medical practitioners should be aware that while patients who live in other states and territories may access healthcare services in Victoria they do not meet the residency requirements and are therefore not eligible to access voluntary assisted dying.

Once the patient's age and residency are confirmed, the medical practitioner can assess the patient's eligibility in relation to decision-making capacity, diagnosis and prognosis.

## 2.2 Assess the patient's decision-making capacity

Medical practitioners frequently assess their patients' understanding of treatment options as part of normal clinical practice. However, when the patient requests voluntary assisted dying, the medical practitioner must specifically assess the patient's capacity to make decisions about voluntary assisted dying, according to the legal test set out in the Act (see test below).

When undertaking this assessment, the medical practitioner should choose a time when the patient's symptom control is optimal, they are not overly tired or medicated, and they have the appropriate support (such as assistance from interpreters or speech pathologists, as required) to demonstrate their decision-making capacity.

All patients, including those with a mental illness, are presumed to have decision-making capacity, including in relation to voluntary assisted dying, unless there is evidence otherwise.

The presence of depression in patients who are at the end of life and experiencing a loss of hope and suffering is not uncommon or unexpected. The fact that a patient has depression does not necessarily mean they do not have decision-making capacity in relation to voluntary assisted dying. If the medical practitioner believes the patient is depressed, they should carefully explore with the patient how this is affecting the patient as part of the medical practitioner's decision-making capacity assessment. If, after discussion with the patient, there are unresolved doubts the medical practitioner must make a referral for a specialist opinion.

### Assessing decision-making capacity

To ascertain a patient's decision-making capacity specific to voluntary assisted dying the medical practitioner should use their clinical expertise and experience to provide the patient with information about their diagnosis, prognosis, treatment options and about voluntary assisted dying. Then the medical practitioner must check the patient's capacity to:

1. **understand** the information relevant to the decision relating to access to voluntary assisted dying, and the effect of their decision
2. **retain** that information to the extent necessary to make the decision
3. **use or weigh** that information as part of the process of making the decision
4. **communicate** the decision and their views and needs as to the decision in some way (includes communicating by speech, gestures or other means).



The medical practitioner may find it useful to use a capacity and consent tool to guide the discussion. While there are no validated tools specific to assessing decision-making capacity in relation to voluntary assisted dying, Table 4 may be helpful in framing the assessment discussion. The tool designed by Appelbaum<sup>11</sup> has been adapted for the Victorian voluntary assisted dying context.

11 Appelbaum PS 2007, 'Assessment of patients' competence to consent to treatment', *New England Journal of Medicine*, no. 357, pp. 1834–1840.

**Table 4: Assessing decision-making capacity in relation to voluntary assisted dying, possible approaches and red flags<sup>12</sup>**

Criterion	Patient's task	Medical practitioner's assessment approach	Questions for clinical assessment	Red flags
Understand the relevant information about voluntary assisted dying	Grasp the fundamental nature of voluntary assisted dying and that it would lead to the patient's death	Encourage the patient to paraphrase what the medical practitioner has said about the patient's medical condition, prognosis, treatment options and what is involved with voluntary assisted dying	<p>Please tell me in your own words what I told you about:</p> <ul style="list-style-type: none"> <li>the problem with your health now</li> <li>the treatment options and voluntary assisted dying</li> <li>the possible benefits and risks (or discomforts) of the treatment or voluntary assisted dying</li> <li>any alternative treatments and their risks and benefits</li> <li>the risks and benefits of no treatment</li> </ul>	<p>Patient fails to understand their medical condition or prognosis or to recount the possible treatment options and their consequences (including no treatment) and their benefits and risks</p> <p>Patient does not accept their condition (for example, those who lack insight because of delusions or denial)</p>
Retain the information in order to make a decision about voluntary assisted dying	Remember the information provided about treatment options (including voluntary assisted dying) and their consequences	Ask the patient to describe their thoughts about their medical condition, prognosis, possible treatment options and outcomes, and about voluntary assisted dying	<p>How do you feel about your health now?</p> <p>What is treatment or voluntary assisted dying likely to do for you?</p> <p>What makes you believe it will have that effect?</p> <p>What do you believe will happen if you are not treated?</p>	<p>Patient cannot remember or is unclear about their medical condition, prognosis, possible treatment options and voluntary assisted dying</p> <p>Patient cannot remember their prior choices or express them in a consistent way</p>

<sup>12</sup> Table adapted from original article by Appelbaum PS 2007, 'Assessment of patients' competence to consent to treatment', *New England Journal of Medicine*, no. 357, pp. 1834–1840 and Willmott L, White B 2018, *Voluntary Assisted Dying Act 2017 Assessment Training Module 4*, for the Department of Health and Human Services, Melbourne.

## STEP 2

Criterion	Patient's task	Medical practitioner's assessment approach	Questions for clinical assessment	Red flags
Use or weigh the information to make a decision	Reason about treatment options and voluntary assisted dying using the relevant information provided by the medical practitioner	Ask the patient to compare treatment options and outcomes, including voluntary assisted dying, and provide reasons for the chosen option	How did you decide to accept or reject the other treatment options? What makes [the chosen option] better than [the alternative option]?	People are able to make decisions that medical practitioners might think are unwise. The focus here should be on the process and whether it leads logically to the outcome. A red flag would be a decision-making process that appears unusually brief or does not appear to be grounded in the patient's personal beliefs or values Frequent reversals of choice because of psychiatric or neurological conditions may indicate lack of capacity
Communicate the decision	Clearly state their request to access voluntary assisted dying	Listen to the patient's request and seek clarification if it is not clear	Have you decided which treatment option to follow? Can you tell me what that decision is? [If no decision] What's making it hard for you to decide?	A patient who appears to respond inconsistently to questions



See 'Additional resources' for other tools that may assist with assessing decision-making capacity.

### **When to refer for a specialist opinion on decision-making capacity**

If the medical practitioner is unable to determine whether the patient has decision-making capacity in relation to voluntary assisted dying (for example, due to a past or current mental illness), they must refer the patient to a registered health practitioner with appropriate skills and training for a second opinion. This referral is in addition to the consulting assessment and can be made by either or both the coordinating or consulting medical practitioner. Depending on the patient's medical condition and/or any comorbid mental illness, suitable health practitioners may include a psychologist, neuro-psychologist, geriatrician or psychiatrist.

In line with normal practice, the medical practitioner should explain the reason for the referral to the patient.

### **Relying on the referral opinion for decision-making capacity**

Once the medical practitioner has received the referral report, they may adopt the specialist medical practitioner's opinion, or they may choose to rely on their own determination. If the medical practitioner decides not to adopt the specialist opinion they should have clear and robust reasons for their decision and document these. Medical practitioners should understand that not relying on the specialist medical practitioner's opinion may expose them to liability. It is important that medical practitioners are able to recognise and act only within their scope of experience and expertise.

## **2.3 Assess whether the patient meets the medical condition criteria**

The medical practitioner must assess the patient's diagnosis and prognosis, as well as explore the patient's perception of the suffering they are experiencing as a result of their medical condition and options to alleviate their suffering.

### **Diagnosis**

The medical practitioner must determine if the patient has an incurable, advanced and progressive medical condition that will cause death. Use of the term 'incurable' is understood to mean a medical condition that cannot be cured. This includes medical conditions that can be managed but cannot be cured.

A patient can choose to withdraw from active medical treatment for medical conditions that are being managed but are incurable (such as an incurable cancer that may be managed through chemotherapy). In some cases this may be expected to lead to the patient's death within six months. Under these circumstances the patient may become eligible to access voluntary assisted dying.

'Advanced' refers to a point in the trajectory of the patient's medical condition, and 'progressive' indicates that the patient is experiencing an active deterioration such that they will continue to decline and not recover.

## Prognosis

The medical practitioner is expected to use their clinical expertise and experience to determine if the patient's medical condition is expected to cause death within six months. If the patient's medical condition is neurodegenerative, the medical practitioner must determine if the patient's medical condition is expected to cause death within 12 months.

During the final 12 months of their life, a patient with a life-limiting medical condition may experience rapid and severe changes and fluctuations in their condition. While *Victoria's end of life and palliative care framework* notes that 'being able to recognise that a person may be dying is an essential requirement for clinicians',<sup>13</sup> it also acknowledges that predicting when the person is entering the final months of their life can be difficult to determine. It is important that in making any such determination, a medical practitioner acts within his or her scope of expertise or experience and should always consider seeking specialist opinion where appropriate.



Most prognostication tools have been developed to assist in identifying patients' needs and to plan care and support, not for determining a timescale for death for voluntary assisted dying. However, the 'Additional resources' section contains a list of tools and resources that may be helpful in assessing whether the patient's medical condition is expected to cause death within six or 12 months.

## When to refer for a second opinion on diagnosis or prognosis

If the medical practitioner is unable to determine the patient's diagnosis or prognosis, they must refer the patient to a specialist medical practitioner who has appropriate skills and training in the patient's medical condition. This referral is in addition to the consulting assessment and can be made by either or both the coordinating or consulting medical practitioner.

If the patient has a neurodegenerative disease and the coordinating medical practitioner determines that it is likely that the patient will die *between* six and 12 months, then in addition to the consulting assessment undertaken by the consulting medical practitioner, a third assessment is required from a specialist medical practitioner who has appropriate skills and training in the patient's particular neurodegenerative medical condition. The additional assessment is required due to the increased difficulty in determining the patient's prognosis when it may be beyond six months.

The specialist medical practitioner referred to must confirm whether the patient's neurodegenerative condition is expected to cause death *between* six and 12 months and provide a clinical report setting out their determination to the coordinating medical practitioner. The coordinating medical practitioner must adopt the specialist medical practitioner's determination in respect of the matter in relation to which the referral was made.

<sup>13</sup> Department of Health and Human Services 2016, *Victoria's end of life and palliative care framework: a guide for high-quality end-of-life care for all Victorians* <<https://www2.health.vic.gov.au/palliative-care>>.



## Relying on the specialist opinion for prognosis

As with any referral for a specialist opinion, the coordinating and consulting medical practitioners can decide whether to take these specialist referral reports into consideration when making their own determination.

However, medical practitioners should be aware that not relying on specialist referral reports may expose them to liability and any deviation from specialist recommendations ought to be clinically justified and documented, on the basis of the medical practitioner's assessment of the patient, acting within their scope of expertise or experience.

A specialist medical practitioner referral report on the prognosis of a patient with a neurodegenerative condition likely to die between 6 and 12 months *must* be adopted by the coordinating medical practitioner.

## Suffering

A further criterion for accessing voluntary assisted dying is that the patient's incurable, advanced, progressive medical condition that will cause death is causing suffering that cannot be relieved in manner that the patient considers tolerable.

Suffering can be defined as a state of distress associated with events that threaten the intactness of the individual. While it often occurs in the presence of pain, shortness of breath or other bodily symptoms, suffering extends beyond the physical.<sup>14</sup>

A patient's request for voluntary assisted dying is 'usually motivated by multiple, interactive factors in relation to progressive, serious illness, including both physical and psychological suffering, a desire to control the circumstances of one's death and to relieve distress over the loss of autonomy'.<sup>15</sup> Suffering is a subjective experience of the individual and the medical practitioner must allow the patient to assess whether they are experiencing suffering they cannot tolerate. If the suffering is linked to the medical condition, then this eligibility criterion is met.

14 Cassell EJ 1991, *The nature of suffering and the goals of medicine*, Oxford University Press, New York, p. 31

15 Department of Health and Human Services 2016, *Victoria's end of life and palliative care framework: a guide for high-quality end-of-life care for all Victorians* <<https://www2.health.vic.gov.au/palliative-care>>.

## 2.4 Assess whether the patient's decision is voluntary and enduring

The coordinating medical practitioner must be satisfied throughout the voluntary assisted dying process that the patient is acting voluntarily and without coercion and that their request for access to voluntary assisted dying is enduring. In completing the relevant assessment forms, the coordinating and consulting medical practitioners must declare that they are satisfied that the patient is acting voluntarily and without coercion and that their request is enduring.

Sufficient time should always be taken to discuss and understand the reasons why a patient is requesting voluntary assisted dying. These discussions will provide insight into the patient's concerns and why they think accessing voluntary assisted dying will address these concerns. The medical practitioner can ask the patient how they reached their decision, including what, or who, may have influenced them. If a patient requests access to voluntary assisted dying because they are concerned that they are a burden on their carers or family the medical practitioner should explore their situation. This may include exploring other options for supported care or respite care. The medical practitioner should also explore why the patient has raised this concern and what they mean by it. Some people may say they feel like they are a burden because their family are struggling, while others may use this as a way to start a conversation about their struggles with their current situation. However, such comments should also raise a 'red flag' to the medical practitioner to explore whether there may be any element of coercion underlying the patient's request for voluntary assisted dying.

The assessment should firstly include talking with the patient on their own and, if appropriate and only with the patient's consent, discussion with the family about how they feel about the patient's decision, along with observation and assessment of the family dynamics. Discussion with members of the treating team about observations and discussion that they may have had with the patient or their carers, family or friends may also provide useful insights into the motivation behind the patient's decision.

Indicators of possible coercion (often detected during a consultation with family or a carer present) could include:

- excessive deferment by the patient to carers, family or friends for answers, reassurance or explanation
- carers, family or friends talking over the patient and answering on their behalf
- inconsistencies in the patient's answers to questions from the doctor about their suffering, medical condition experience and voluntary assisted dying in general.

For these reasons, it might be helpful to talk with the patient away from their family or carers to see if there is potential coercion.

Questions the medical practitioner could include in their discussion with the patient include:

- Are you feeling any pressure from others to request voluntary assisted dying?
- Do you have, or are there any, significant financial concerns?
- Do you have any concerns about your family after you die?
- Is there anything we need to know that you don't want your family to know?
- What about your family/friends (may include partners, spouse, children, parents, siblings)?
- Are they aware of your request for voluntary assisted dying?
- How do they feel about it?
- Do they support your decision?
- Is your GP aware of your request for voluntary assisted dying?
- Does your GP support it?<sup>16</sup>

If the medical practitioner is not satisfied that the patient's decision is voluntary and enduring they must assess the patient as ineligible.

## 2.5 Discussion with the patient

If satisfied that the patient meets all the eligibility criteria, both the coordinating and consulting medical practitioners must provide specific information to the patient. The medical practitioners should follow their normal practice for discussing treatment options and must inform the patient about:

- their diagnosis and prognosis
- the treatment options available to them, their risks, and the likely outcomes of that treatment
- palliative care options available to them, their risks, and the likely outcomes of that care
- the effects, potential risks (for example, unintended effects) and likely outcome of taking the voluntary assisted dying medication if they decide to take it (including how long it will take to achieve this outcome) – noting that it will lead to their death
- their ability to withdraw from the voluntary assisted dying process at any time
- the benefits of informing any other medical practitioner that they are currently receiving care from about their decision to access to voluntary assisted dying.

The coordinating medical practitioner's discussion with the patient may also cover:

- the next steps in the voluntary assisted dying process, including future actions for both the patient and the coordinating medical practitioner
- offers of additional support and/or referral for other end-of-life concerns
- a suggestion that the patient's family and carers be informed of their decision to access voluntary assisted dying.

<sup>16</sup> Questions adapted from Wiess E, Downar J (eds) 2018, *Ontario MAID provider handbook* <[https://ocfp.on.ca/docs/default-source/cmn/maid-handbook-0-2---2018-august-2.pdf?sfvrsn=7d26fb89\\_0](https://ocfp.on.ca/docs/default-source/cmn/maid-handbook-0-2---2018-august-2.pdf?sfvrsn=7d26fb89_0)>

### **Discussion with the patient's carers, family and friends**

The coordinating medical practitioner should encourage the patient to discuss their plan to access voluntary assisted dying with their carers, family and friends. Informing carers, family and friends of their decision and plan for dying can give them the opportunity to support the patient during the voluntary assisted dying process.

With the patient's consent, the coordinating medical practitioner can assist in this discussion and explain all the points discussed with the patient, as well as covering a plan for supporting the patient to self-administer the voluntary assisted dying medication, if applicable.

The plan should consider the patient's preferences for:

- where they want to die, such as in a health service or at home
- when they are considering accessing voluntary assisted dying
- who they want to have present with them when the voluntary assisted dying medication is administered by themselves or the coordinating medical practitioner.

Where the patient is physically incapable of self-administration or digestion of the voluntary assisted dying medication, the availability of the coordinating medical practitioner to administer the voluntary assisted dying medication will also need to be considered. If the patient wants to die at home, arrangements for the coordinating medical practitioner and other health practitioners to be present would need to be made on an individual basis if requested by the patient.

## **2.6 Complete the first assessment**

The coordinating medical practitioner must assess the patient as eligible if the patient:

- meets all the eligibility criteria for access to voluntary assisted dying
- understands the information provided to them during the discussion about the first assessment outcome (see Step 2.5)
- is acting voluntarily and without coercion
- has an enduring request to access voluntary assisted dying.

### **If the patient is assessed as ineligible by the coordinating medical practitioner**

If the coordinating medical practitioner is not satisfied that the patient is eligible because, for example, they do not meet all of the eligibility criteria, or they are not acting voluntarily and without coercion, they must assess the patient as ineligible, and document their assessment.

The patient can ask another medical practitioner to assist them to access voluntary assisted dying and start the process again if they choose.

## Reporting requirements relating to the first assessment



The coordinating medical practitioner must record their assessment, details of any relevant referrals and their final determination of the patient's eligibility on voluntary assisted dying Form 1 *First assessment report form*. They must submit the form to the Voluntary Assisted Dying Review Board within seven days of completing the first assessment, along with any relevant referrals or clinical reports associated with the assessment.

### Support for a patient assessed as ineligible for voluntary assisted dying

It may be difficult for a patient to accept that they are not eligible for voluntary assisted dying. The medical practitioner should listen compassionately to the patient and, if possible, talk with the patient about how their treating healthcare team may alleviate any physical symptoms or psychosocial and spiritual distress they may be experiencing. Based on the discussion with the patient, appropriate referrals should be made and the patient's care plan updated.

If the patient agrees, it may be helpful to discuss their situation with their treating healthcare team and family. Additional support from a specialist palliative care team may benefit the patient if they are not already involved in the patient's care.

The patient's confidentiality and privacy is to be respected if they do not wish others to be informed of their request for voluntary assisted dying.

The medical practitioner should explain to the patient why they are ineligible and, if relevant, that this may change if the patient's circumstances change (for example, if the patient's prognosis changes).

## 2.7 Refer the patient for a consulting assessment

If the coordinating medical practitioner has assessed the patient as eligible for voluntary assisted dying, they must refer the patient to another medical practitioner for a consulting assessment.

The consulting medical practitioner must:

- hold a fellowship with a specialist medical college or be a vocationally registered general practitioner
- have completed voluntary assisted dying training before undertaking the assessment.

The consulting medical practitioner must also meet the following criteria, if the coordinating medical practitioner does not:

- have practised for at least five years after completing their fellowship or vocational registration
- have relevant expertise and experience as a medical specialist in the medical condition expected to cause the patient's death.

If the medical practitioner to whom the referral is made accepts the referral, they become the patient's consulting medical practitioner and undertake the consulting assessment.

## 2.8 Complete the consulting assessment

The consulting medical practitioner must undertake an independent consulting assessment of the patient's eligibility for voluntary assisted dying using the same criteria as the coordinating medical practitioner. The consulting medical practitioner may have access to clinical and other records connected with the first assessment but must undertake their own assessment of the patient's eligibility for access to voluntary assisted dying.

If the consulting medical practitioner is unable to determine whether the patient has decision-making capacity in relation to voluntary assisted dying, or whether the patient's diagnosis or prognosis meets the requirements of the eligibility criteria, they must make appropriate referrals (See Steps 2.2 and 2.3).

If the patient meets the eligibility criteria for voluntary assisted dying, the consulting medical practitioner must provide information to the patient as outlined in Step 2.5.

The consulting medical practitioner must assess the patient as eligible for access to voluntary assisted dying if satisfied that:

- the patient meets all of the eligibility criteria
- the patient understands the information outlined in Step 2.5
- the patient is acting voluntarily and without coercion
- the patient's request for access to voluntary assisted dying is enduring.

### Reporting requirements relating to the consulting assessment



On completing the consulting assessment, the consulting medical practitioner must complete *Form 2 Consulting assessment report form* and submit it to the Voluntary Assisted Dying Review Board within seven days of completing the assessment, along with any relevant referrals or clinical reports associated with the assessment. They must also provide the coordinating medical practitioner with a copy of their assessment and the completed *Form 2*.

### If the consulting medical practitioner assesses the patient as ineligible

Each medical practitioner is required to note the reasons for their assessment in the relevant form – either *Form 1 First assessment report form* or *Form 2 Consulting assessment report form* – and to inform the patient of the outcome of their determination. After discussion with the patient about a determination of ineligibility by a consulting medical practitioner, the coordinating medical practitioner may refer the patient to another medical practitioner for another consulting assessment if they believe this is appropriate and it is what the patient wants.

## Administrative check-in

The administrative actions required for this step:



- Following the first assessment, the coordinating medical practitioner completes Form 1 *First assessment report form* and submits it, along with any relevant clinical reports, to the Voluntary Assisted Dying Review Board.
- Following the consulting assessment, the consulting medical practitioner completes Form 2 *Consulting assessment report form*, provides a copy to the coordinating medical practitioner and submits the form, along with any relevant clinical reports, to the Voluntary Assisted Dying Review Board.

# Step 3: Complete the request and assessment process

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This section is for coordinating medical practitioners who have assessed a patient as eligible for access to voluntary assisted dying.

In this section:

- Completing a written declaration
- Making a final request
- Appointing a contact person
- Undertaking the final review

## 3.1 Patient makes a written declaration

After both the coordinating and the consulting medical practitioners have completed their voluntary assisted dying eligibility assessments and are satisfied that the patient is eligible to access voluntary assisted dying, the patient may make their second request for access via a written declaration.

The patient must make this second request to access voluntary assisted dying on Form 3 *Written declaration*. The written declaration requires two witnesses and the coordinating medical practitioner to be present, and as such will require some planning.

The written declaration can immediately follow the consulting medical practitioner's determination that the patient is eligible for voluntary assisted dying. The patient does not have to wait until the assessment report forms have been sent to the Voluntary Assisted Dying Review Board to take this step.

Form 3 *Written declaration* must be signed by:

- the patient
- the coordinating medical practitioner
- two witnesses.

If the patient is unable to sign for themselves they may have another person sign on their behalf. This person must be aged 18 years or older and not one of the two witnesses to the written declaration and must sign at the patient's direction and in the patient's presence.

Not more than one of the two witnesses to the written declaration can be a family member of the patient (defined in the Act as the patient's spouse or domestic partner, parent, sibling, child or grandchild).

The two witnesses must:

- be at least 18 years old
- not know or believe that they are a beneficiary under a will or otherwise going to receive a material benefit from the patient's death
- not be an owner or day-to-day manager of the health facility in which the patient is being treated or where they live
- not be directly involved in providing health services or professional care services to the patient.



Witnessing a patient's written declaration does not require prior knowledge of the patient or specialist knowledge but is based on the witness's observation of the patient at the time. Someone in an administrative role or other role who is not directly involved in the patient's care could be a witness.

In the presence of the witnesses, the coordinating medical practitioner should take the patient through a conversation about their decision, their understanding of the implications of their request to access voluntary assisted dying, and the potential risks and likely outcome of taking the voluntary assisted dying medication – noting that it will lead to their death.

Each witness must sign the form, in the coordinating medical practitioner's presence, signifying that:

- in the presence of the witness, the patient appeared to freely and voluntarily sign the declaration (or request someone nominated to sign it for them at the patient's request)
- that, at the time the patient signed the declaration, they appeared to have decision-making capacity in relation to voluntary assisted dying
- that, at the time the patient signed the declaration, they appeared to understand the nature and effect of making the declaration.

Each witness must also state that they are not knowingly an ineligible witness (as described above).

The patient might also require the assistance of an interpreter or speech pathologist to complete and sign the declaration. To assist a person in relation to requesting access to or accessing voluntary assisted dying, an interpreter must be accredited by NAATI and the speech pathologist must be certified by Speech Pathology Australia. Interpreters and speech pathologists who help patients to complete written declarations must not:

- be a family member of the patient
- know or believe that they are a beneficiary under a will or otherwise going to receive a material benefit from the patient's death
- be an owner or day-to-day manager of the health facility in which the patient is being treated or where they live
- be directly involved in providing health or professional care services to the patient.

The interpreter or speech pathologist must also sign the written declaration and certify that they provided a true and correct translation of any material or communication the patient may have made.



If the patient meets the eligibility criteria and wants to continue with the voluntary assisted dying process, the coordinating medical practitioner facilitates the completion of Form 3 *Written declaration* and submits it to the Voluntary Assisted Dying Review Board with the Form 5 *Final review form*.

### 3.2 Patient makes a final request

The patient can make their third and final request to access voluntary assisted dying as soon as the written declaration is made, signed and witnessed, providing it is at least nine days after their first request and at least one day after the consulting assessment was completed. This may occur at the same appointment at which the patient completes their written declaration, if it is at least nine days after their first request.

The patient's final request:

- must be made to the coordinating medical practitioner
- must be made personally by the patient
- may be made verbally or by gestures or other means of communication available to the patient. (The patient may require a NAATI-accredited interpreter or certified speech pathologist to make their final request.)

The coordinating medical practitioner should take into consideration the patient's ongoing decision-making capacity in relation to voluntary assisted dying and whether the patient's request for access to voluntary assisted dying is enduring as they must not apply for a permit unless satisfied of these matters.

#### Exception to nine-day waiting period

The nine-day waiting period between the first and final requests does not apply if the coordinating medical practitioner believes that the patient is likely to die before the nine-day period elapses and this is consistent with the prognosis from the consulting assessment.

### 3.3 Patient appoints a contact person

After making a final request, the patient must appoint a contact person who is responsible for returning any unused or remaining voluntary assisted dying medication to the dispensing pharmacist for disposal within 15 days after the date of the patient's death, using Form 4 *Contact person appointment form*. This can be done at the same appointment at which the final request is made.

The patient must appoint a contact person regardless of whether the patient chooses to self-administer the voluntary assisted dying medication or requires the coordinating medical practitioner to administer the medication. The Voluntary Assisted Dying Review Board will contact the contact person within seven days of being notified of the patient's death to remind them of their obligations to return any unused medication and outline support services available to assist them to do so.

The contact person must:

- be 18 years of age or older
- accept the appointment.

If the patient does not have anyone to appoint as their contact person, the voluntary assisted dying care navigator should be contacted, if they are not already involved, to assist with advice and support for the patient.

Where the patient is unable to sign the form themselves, the patient may have another person sign on their behalf. This person must be 18 years of age or older and not the appointed contact person or a witness to the signing of the form. The person signing on behalf of the patient must sign at the patient's direction and in the patient's presence.

The patient might also require a NAATI-accredited interpreter or certified speech pathologist to complete and sign the appointment form. If an interpreter or speech pathologist helped to complete the contact person appointment form, the interpreter or speech pathologist must also sign the form and certify that the interpreter or speech pathologist provided a true and correct translation of any material or communication the patient may have made.

The coordinating medical practitioner is not required to witness the signing or be present when Form 4 *Contact person appointment form* is signed.



The patient and their appointed contact person sign a completed Form 4 *Contact person appointment form* and provide a copy to the coordinating medical practitioner. The coordinating medical practitioner submits the form to the Voluntary Assisted Dying Review Board along with Form 5 *Final review form*.

### 3.4 Complete the final review

After the patient completes their appointment of the contact person, the coordinating medical practitioner must undertake a final review and complete Form 5 *Final review form*.

The final review requires the coordinating medical practitioner to review all of the following forms for completeness:

- Form 1 *First assessment report form*
- Form 2 *Consulting assessment report form(s)*
- Form 3 *Written declaration*
- Form 4 *Contact person appointment form*
- complete Form 5 *Final review form* in respect of the person
- certify whether the request and assessment process has been completed as required by the Act.

The coordinating medical practitioner must inform the patient of the next step in the process, which is to apply for the voluntary assisted dying permit to prescribe the voluntary assisted dying medication. The coordinating medical practitioner should discuss the:

- anticipated time for the permit application to be processed
- process for dispensing of the voluntary assisted dying medication through the Voluntary Assisted Dying Statewide Pharmacy Service
- self-administration, or if the patient is physically incapable of self-administering or digesting the voluntary assisted dying medication, coordinating medical practitioner administration of the voluntary assisted dying medication, including the patient's preferences for when and where they want the administration to take place.

## STEP 3

With the patient's permission, the discussion should ensure there is a plan in place to support their end-of-life needs and that, if – or when – the patient chooses to self-administer the voluntary assisted dying medication, the patient, their family and carers have chosen a safe environment and are provided any social and pastoral support they may need.

Some patients may be hospitalised or in a health service at the end of their life and may request the presence of the coordinating medical practitioner or other members of their healthcare team at the time of self-administration of the voluntary assisted dying medication. The patient may be at home or elsewhere in the community and ask members of their healthcare team to attend. Requests need to be made to and considered by the individual health practitioners. See Step 5 for more information for health practitioners being present during the administration of the voluntary assisted dying medication.



Once all eligibility requirements have been met and Forms 1–4 with their accompanying documents reviewed, the coordinating medical practitioner completes Form 5 *Final review form* and submits it to the Voluntary Assisted Dying Review Board within seven days of completing the final review, along with copies of all relevant reports.

### Administrative check-in

The administrative actions required for this step:



- If the patient meets the eligibility criteria and wishes to continue the request, the coordinating medical practitioner coordinates the completion of Form 3 *Written declaration* in their presence and submits it to the Voluntary Assisted Dying Review Board with their final review.
- Following the third and final request the patient appoints a contact person. The patient and the contact person complete Form 4 *Contact person appointment form* and provide the coordinating medical practitioner with a copy.
- Once all requirements have been met, the coordinating medical practitioner completes Form 5 *Final review form* and submits it, along with copies of Forms 1–4 to the Voluntary Assisted Dying Review Board. A copy of each form is submitted to the Department of Health and Human Services when the coordinating medical practitioner applies for a voluntary assisted dying permit (either a self-administration permit or a practitioner administration permit). The relevant forms will be automatically attached for submission when the medical practitioners submit their forms via the online voluntary assisted dying portal.

## Step 4: Prescribe the voluntary assisted dying medication

This section is for medical practitioners who are prescribing the voluntary assisted dying medication.

In this section:

- Applying for a voluntary assisted dying permit
- Discussing self-administration of the voluntary assisted dying medication
- Discussing practitioner administration of the voluntary assisted dying medication
- Dispensing the voluntary assisted dying medication

This step outlines the permit application process and prescribing and dispensing of the voluntary assisted dying medication. A detailed medication protocol is available to medical practitioners who have completed the voluntary assisted dying training.

The Department of Health and Human Services has established a Voluntary Assisted Dying Statewide Pharmacy Service that will be the only service to dispense voluntary assisted dying medication in Victoria. The statewide pharmacy service will provide ongoing support, patient information, toolkits and checklists for preparing to administer the voluntary assisted dying medication, either by self-administration or practitioner administration.

### 4.1 Apply for a voluntary assisted dying permit

Before prescribing the voluntary assisted dying medication the coordinating medical practitioner must apply for a permit from the department. Only the patient's coordinating medical practitioner can apply for a permit. There are two types of permit:

- **self-administration permit** for patients who can self-administer and digest the voluntary assisted dying medication
- **practitioner administration permit** for patients who are physically incapable of self-administering or digesting the voluntary assisted dying medication and require the coordinating medical practitioner to administer the voluntary assisted dying medication.

The coordinating medical practitioner may only apply for a practitioner administration permit if the patient is physically incapable of self-administering or digesting the voluntary assisted dying medication. To self-administer the voluntary assisted dying medication the patient will need to be able to consume 100 mL of liquid within four minutes and be able to digest this liquid.

To apply for either permit the coordinating medical practitioner will need to specify the medication they want to prescribe. To ensure the prescription is consistent with best practice, the medication must be one identified in the medication protocol. Medical practitioners will receive a copy of the medication protocol once they have completed the voluntary assisted dying training.

Application for either permit requires that the completed documentation from the request and assessment process be attached and submitted with the permit request, along with a statement that the coordinating medical practitioner is satisfied that the patient has decision-making capacity in relation to voluntary assisted dying and that their request is enduring. These documents will be attached automatically to the application through the online voluntary assisted dying portal.

### Self-administration permit



The patient may withdraw their request for access to voluntary assisted dying at any time.

A self-administration permit authorises the coordinating medical practitioner to prescribe and supply voluntary assisted dying medication to the patient. The patient may self-administer the voluntary assisted dying medication at a time of their choosing.

The permit also authorises the patient's contact person to possess, store, carry and transport any unused or remaining voluntary assisted dying medication to the Voluntary Assisted Dying Statewide Pharmacy Service.

The permit application will require the coordinating medical practitioner to:

- identify the patient
- specify the voluntary assisted dying medication – permits will only be granted if the medication is in accordance with the medication protocol
- specify the contact person's details
- provide a completed copy of forms 1, 2, 3, 4 and 5
- provide a statement that as the coordinating medical practitioner, they are satisfied that at the time of making the request:
  - the patient has decision-making capacity in relation to voluntary assisted dying
  - the patient's request for access to voluntary assisted dying is enduring.

### Practitioner administration permit

When a patient is physically incapable of self-administering or digesting the voluntary assisted dying medication, they may ask their coordinating medical practitioner to administer the voluntary assisted dying medication for them. The request for practitioner administration must be made by the patient and can be made verbally or by gestures or other means of communication.

The practitioner administration permit application will require the coordinating medical practitioner to:

- identify the patient
- specify the voluntary assisted dying medication – permits will only be granted if the medication is in accordance with the medication protocol
- specify the contact person's details
- provide a copy of the completed forms 1, 2, 3, 4 and 5

- certify that, as the coordinating medical practitioner, they are satisfied that at the time of making the request:
  - the patient is physically incapable of the self-administration or digestion of the voluntary assisted dying medication
  - the patient has decision-making capacity in relation to voluntary assisted dying
  - the patient's request for access to voluntary assisted dying is enduring.

### **If the patient had a self-administration permit but becomes physically incapable of self-administration or digestion**

If a patient who has a self-administration permit later loses the physical capacity to self-administer or digest the voluntary assisted dying medication, they can ask their coordinating medical practitioner to apply for a practitioner administration permit on their behalf. It is unlawful for anyone other than the patient to administer voluntary assisted dying medication that has been dispensed for self-administration.

The self-administration permit must be cancelled before the coordinating medical practitioner can apply for the practitioner administration permit. This can be done by the coordinating medical practitioner destroying any unfilled prescription or a pharmacist giving the Board a copy of a completed voluntary assisted dying substance disposal form.

When applying for the practitioner administration permit in these circumstances, the coordinating medical practitioner must declare that the self-administration permit and prescription have been destroyed and any dispensed voluntary assisted dying medication has been returned to the statewide pharmacy service for disposal by the patient or their contact person.

The coordinating medical practitioner is required to state on the permit application that they are satisfied the patient cannot self-administer or digest the voluntary assisted dying medication and the reason why.

### **Timeline for permit approval**

The department will process applications for both types of permit as soon as possible and must do so within three business days.

Once the permit is issued there is no expiry date, so the medical practitioner can prescribe the voluntary assisted dying medication when, and if, the patient chooses to use it.

### **If the application for a voluntary assisted dying permit application is refused**

If an application for a permit is refused, the department must notify the coordinating medical practitioner and provide reasons for the decision. An application for a permit may be refused if the department is not satisfied the request and assessment process has been completed as required, or for another reason.

## 4.2 Prescribe the voluntary assisted dying medication

### Information for the coordinating medical practitioner

The Voluntary Assisted Dying Statewide Pharmacy Service provides a single point of support and advice for medical practitioners about voluntary assisted dying medication.



The medication protocol is made available to medical practitioners who have completed the voluntary assisted dying training.

The voluntary assisted dying medication protocol requires that the coordinating medical practitioner contacts the statewide pharmacy service to discuss the prescription and provide information about the prescription and administration.

The protocol includes:

- medical practitioner checklists
- details on the voluntary assisted dying medication
- details on the pre-dosing medications (anti-nausea and anxiolytic medications)

### Information for the patient

In line with standard practice, the coordinating medical practitioner should inform the patient about what the medication is, its storage, how it should be administered, potential drug interactions, intended effects and potential unintended effects before they prescribe the medication.

The coordinating medical practitioner must inform the patient:

- how to administer the medications (additional information about this is available in the medication protocol)
- that the voluntary assisted dying medication must be stored and transported in the locked box provided by the statewide pharmacy service
- that any unfilled prescription must be returned to the coordinating medical practitioner if the patient becomes physically incapable of the self-administration or digestion of the voluntary assisted dying medication and asks for practitioner administration
- that the patient or their contact person must return to the statewide pharmacy service for disposal any unused voluntary assisted dying medication that the patient does not self-administer, whether because they decide not to, they make a subsequent request for practitioner administration or they die before administering
- they are under no obligation to:
  - obtain the voluntary assisted dying medication, and they may return the unfilled prescription to the coordinating medical practitioner at any time, or
  - administer the voluntary assisted dying medication.

Patient education material for both self and practitioner administration is also available through the statewide pharmacy service.



The coordinating medical practitioner should go through the patient education material with the patient and may share, for example, experience from other countries about side effects.

In addition to discussing the voluntary assisted dying medication, the coordinating medical practitioner should spend some time with the patient discussing the patient's plans for their death. With the patient's consent, a plan for approaching their end of life should be made with the patient, their carers, family and friends. If a patient does not choose to involve carers, family or friends, the coordinating medical practitioner may contact the voluntary assisted dying care navigators for help to support the patient through this time, provided the patient consents. The coordinating medical practitioner may suggest to the patient that, if they wish, additional support may be sought from a person affiliated with the patient's religious or cultural background, or through their palliative care or other healthcare team.

Many patients approaching the end of life may have difficulty managing challenging conversations about dying due to suffering, frailty or physical disabilities. The coordinating medical practitioner and, if useful or required, another member of the healthcare team such as a palliative care nurse or social worker can help facilitate these conversations.

During these conversations, the coordinating medical practitioner should:

- confirm that the patient's preference for where they want to take the voluntary assisted dying medication remains the same or whether any adjustments are required; ideally this should be a safe, private environment where they feel comfortable (patients should be advised that they and their families won't be protected by the Act if they self-administer the medications outside of Victoria)
- confirm that the patient has considered who they want to have present when they take the voluntary assisted dying medication; they may choose carers, family and friends and/or a health practitioner (if carers, family and friends cannot be present, the coordinating medical practitioner may ask the voluntary assisted dying care navigators for assistance with arranging a support person, if the patient wants one; patients should be advised against self-administering the voluntary assisted dying medication with no one else present)
- request that the patient asks a carer, family member or friend to notify the coordinating medical practitioner of the person's death.

### 4.3 Statewide pharmacy service dispenses the voluntary assisted dying medication

Voluntary assisted dying medication will only be dispensed by the Voluntary Assisted Dying Statewide Pharmacy Service.

#### Dispensing pharmacist role

Pharmacists from the statewide pharmacy service will:

- maintain the medication protocol for prescribing and administering the voluntary assisted dying medication
- provide a single point of support and advice for medical practitioners, patients and their families
- ensure there is clear accountability for the voluntary assisted dying medication.

If the medication is to be self-administered, the pharmacist must dispense the voluntary assisted dying medication directly to the patient. In circumstances where the patient is unable to travel, the pharmacist will deliver the voluntary assisted dying medication to the patient.

When the statewide pharmacy service dispenses the voluntary assisted dying medication to the patient, they will provide them with a detailed explanation about all the medications they are prescribed for the voluntary assisted dying process and a demonstration of how to self-administer them.

#### Contacting the statewide pharmacy service

Before prescribing voluntary assisted dying medication, the coordinating medical practitioner should contact the statewide pharmacy service to discuss the prescription. Once they have prescribed all medications, they may provide the prescription directly to the statewide pharmacy service.

In the case of self-administration, the patient should then be provided with the contact details for the statewide pharmacy service and they may arrange to have the medications dispensed to them at a convenient time.

In the case of practitioner administration, the coordinating medical practitioner may contact the statewide pharmacy service to arrange to have the medications dispensed to them at a convenient time. The statewide pharmacy service will provide the coordinating medical practitioner with information and a demonstration of how to administer the medications.

See 'Useful resources' below for contact details.

## Information for the pharmacist to give the patient

In line with standard practice, the statewide pharmacy service will inform the patient about medication storage, administration, other drug interactions and intended effects. Patient education material about voluntary assisted dying has been developed, and the pharmacist will provide this information to the patient and their contact person. In addition to the general instructions, the pharmacist must also remind the patient that they are under no obligation to self-administer the voluntary assisted dying medication and that they can withdraw from the process at any time, even after the voluntary assisted dying medication has been dispensed.

The pharmacist must instruct the patient:

- about how to self-administer the voluntary assisted dying medication
- that the voluntary assisted dying medication must be stored and transported in the locked box provided by the statewide pharmacy service
- that the patient or their contact person must return any dispensed and unused voluntary assisted dying medication to the statewide pharmacy service for disposal if:
  - the patient decides not to use the medication
  - the patient becomes unable to self-administer and asks their coordinating medical practitioner to apply for a practitioner administration permit
  - the patient dies having not self-administered the voluntary assisted dying medication.

## Labelling

In addition to any labelling requirements of the Poisons Code or under the *Drugs, Poisons and Controlled Substances Act 1981*, the statewide pharmacy service will attach a labelling statement in writing to the locked box in which the medications are dispensed that:

- warns of the purpose of the dose of the voluntary assisted dying medication
- states the dangers of self-administering the voluntary assisted dying medication
- states that the voluntary assisted dying medication must be stored and transported in the locked box provided by the statewide pharmacy service
- states that any unused or remaining voluntary assisted dying medication must be returned to a pharmacist at the statewide pharmacy service by the patient or their contact person.

The labelling statement requirements are detailed in the Voluntary Assisted Dying Regulations 2018 (Vic) <<http://www.legislation.vic.gov.au/>>.

## STEP 4

### **Locked boxes, collecting and transporting the voluntary assisted dying medication**

The statewide pharmacy service will provide the patient with the voluntary assisted dying medication in an approved locked box. The voluntary assisted dying medication must always be stored in the locked box.

### **Administrative check-in**

The administrative actions required for this step:



The pharmacist completes Form 6 *Voluntary assisted dying substance dispensing form* and submits it to the Voluntary Assisted Dying Review Board within seven days of dispensing the voluntary assisted dying medication.



### **Useful resources**

The Voluntary Assisted Dying Statewide Pharmacy Service is available at email <VolAssistDyingPharmacy@alfred.org.au>

## Step 5: Administration of the voluntary assisted dying medication

This section is for coordinating medical practitioners and other health practitioners who may be caring for a patient accessing voluntary assisted dying.

In this section:

- Self-administering voluntary assisted dying medication
- Practitioner administration of the voluntary assisted dying medication
- Witnessing administration of voluntary assisted dying medication
- Unexpected events

### 5.1 Patient self-administers the voluntary assisted dying medication

Once the voluntary assisted dying medication has been dispensed, the patient may self-administer it at a time and place of their own choosing, but should do so in Victoria.

The patient may also choose not to use the voluntary assisted dying medication for any number of reasons, such as being either comforted by the knowledge that the time and manner of their death is in their control, or never reaching the point of deterioration they feared.



The patient may withdraw from the voluntary assisted dying process at any time.

#### The self-administration process


Detailed information and instructions about the self-administration process including pre-medications are contained in the medication protocol made available to medical practitioners after they complete the voluntary assisted dying training.

The statewide pharmacy service will provide the patient with a locked box, and a pharmacist at the service will explain the contents of the box and how to administer the medications. The locked box will contain a series of medications and instructions. The patient will first take a medication to help them relax and a medication to prevent them regurgitating the voluntary assisted dying medication. The voluntary assisted dying medication will be in a powder form. This powder will need to be mixed with 50 mL of Ora-Plus and 50 mL of Ora-Sweet syrup. The patient will be required to consume this formulation themselves, and the whole formulation will need to be swallowed or ingested within four minutes.

After the patient ingests the voluntary assisted dying medication they may experience some drowsiness. They will generally fall unconscious within 10 minutes and die within one to two hours.

#### Carers, family and friends' involvement

The coordinating medical practitioner should encourage the patient to speak with their carers, family and friends about their end-of-life choices. The coordinating medical practitioner should assure the patient that they also have the ongoing support of their healthcare team, who can assist them with these conversations.



The patient may have carers, family and friends present when they self-administer the voluntary assisted dying medication. Carers, family and friends may assist the patient to prepare for self-administration. This may include mixing the medication into the liquid. However, the patient must self-administer the voluntary assisted dying medication. This means the patient must hold the cup containing the voluntary assisted dying medication and pour this into their mouth, PEG or nasogastric (NG) tube.

The carers, family and friends of a patient suffering from a medical condition that is incurable, advanced, progressive and expected to cause death within six or 12 months may be experiencing anxiety and stress themselves. Members of the healthcare team can provide support to carers, family and friends as part of the patient's care, including palliative care, where this is being received.

#### **Other health practitioner involvement**

The patient may request that a health practitioner is with them during their self-administration of the voluntary assisted dying medication. Often patients nearing the end of their life are in a health service and the attendance of a health practitioner may be easily arranged. The choice to attend or not is a decision for the individual health practitioner, whether the patient is self-administering the voluntary assisted dying medication in their own home or within a health service.

Health practitioners may assist the patient to prepare for self-administration. This may include mixing the medication into the liquid. However, the patient must self-administer the voluntary assisted dying medication. This means the patient must hold the cup containing the voluntary assisted dying medication and pour this into their mouth, PEG or NG tube.

If there are complications or the voluntary assisted dying medication takes longer than expected to cause death, health practitioners present may provide treatment to ensure the patient is comfortable but cannot intentionally hasten the patient's death.

## **5.2 Coordinating medical practitioner administers the voluntary assisted dying medication**

The coordinating medical practitioner should confirm the patient's preferences for the time and place of administering the voluntary assisted dying medication. It is essential to agree a time with the patient when the coordinating medical practitioner can attend and at least one witness can be present at the administration.

As discussed in Step 4.3, the coordinating medical practitioner will need to arrange with the statewide pharmacy service to have the voluntary assisted dying medication dispensed. Any delay this may cause should be considered in planning a date and time for administering the voluntary assisted dying medication.

Once the coordinating medical practitioner and witness are present, the patient must request the coordinating medical practitioner to administer the voluntary assisted dying medication. The patient's request for the coordinating medical practitioner to administer the voluntary assisted dying medication:

- must be made by the patient
- can be made verbally or by gestures or other means of communication
- must be made to the coordinating medical practitioner in the presence of a witness.

The coordinating medical practitioner must be satisfied that, at the time of the request, the patient is the person stipulated on the voluntary assisted dying practitioner administration permit and that the patient:

- has decision-making capacity in relation to voluntary assisted dying
- has an enduring request to access voluntary assisted dying
- understands the voluntary assisted dying medication will be administered after they make the administration request.

### **Witnessing the administration request and practitioner administration**

There must be an independent witness to the practitioner administration request and the administration itself. The patient may have selected several people to be with them at the end of their life, and one of these people may act as a witness to the administration request and practitioner administration of the voluntary assisted dying medication. This witness must be:

- 18 years of age or older
- independent of the coordinating medical practitioner (not an employee at the same health service as the medical practitioner). The witness may be a family member, friend or carer of the patient.

This witness must certify in writing that, at the time of making the administration request, the patient appeared to:

- have decision-making capacity in relation to voluntary assisted dying
- be acting voluntarily and without coercion
- have made an enduring request.

The witness must also state that the coordinating medical practitioner administered the voluntary assisted dying medication to the patient after the administration request was made.

When planning the practitioner administration, the coordinating medical practitioner should discuss the requirement for a witness to be present for the administration. It is important that the witness is a person the patient is comfortable with and that the witness is also prepared to undertake the role.

## STEP 5

### The practitioner administration process

Detailed information and instructions about the practitioner administration process are available from the statewide pharmacy service and will be provided to the coordinating medical practitioner when the voluntary assisted dying medication is dispensed.

Depending on the condition of the patient, practitioner administration may either occur intravenously or via a PEG or NG tube. If administration is intravenous, the coordinating medical practitioner will be required to administer a series of syringes over a 10-minute period. This will normally cause unconsciousness and death within minutes. If the administration is via PEG or NG tube, the medical practitioner will pour a series of pre-dosing medications into the PEG or NG tube. This will take approximately one hour. After the voluntary assisted medication is administered the patient will generally fall unconscious within 10 minutes and death will occur within two hours.

In accordance with good medical practice, the coordinating medical practitioner who administers the voluntary assisted dying medication should remain with the patient until the patient dies.

### Other health practitioner involvement

As with any other medical treatment, other health practitioners may assist the coordinating medical practitioner. Other health practitioners may determine whether or not they are willing to be present and assist the coordinating medical practitioner with the administration of the voluntary assisted dying medication.



At the completion of the practitioner administration of the voluntary assisted dying medication, the coordinating medical practitioner and the witness complete Form 8 *Coordinating medical practitioner administration form*. The coordinating medical practitioner submits the form to the Voluntary Assisted Dying Review Board within seven days.

### Unexpected events

If the patient is in a health service or a health practitioner is present for either self-administration or practitioner administration of voluntary assisted dying medication, the patient's health practitioners can respond to any unexpected event. Health practitioners should provide the patient with treatment to ensure they are comfortable but cannot intentionally hasten the person's death. Health practitioners are also under no obligation to attempt life-sustaining measures unless the patient requests this.

Where the patient is self-administering with no health practitioner present, instructions in comfort care can be provided to carers, family and friends.

If an unexpected event does occur, paramedics can also provide comfort care if called to attend a patient accessing voluntary assisted dying.



## Step 6: After the patient dies

This section is for medical practitioners.

In this section:

- Reporting requirements
- Returning unused medications
- Support for the patient's carers, families and friends
- Support for health practitioners

While it is expected that in most cases the family or friends of the patient will notify the deceased patient's medical practitioner of the patient's death, whether they have taken the voluntary assisted dying medication or not, it is important for the coordinating medical practitioner to encourage the patient's family or friends to do this.



The medical practitioner must notify the Registrar of Births, Deaths and Marriages if they are aware that the patient was the subject of a voluntary assisted dying permit.

### 6.1 Complete the reporting requirements

#### Notifying the Registrar of Births, Deaths and Marriages, and the Coroner

All deaths in Victoria must be notified to the Registrar of Births, Death and Marriages within 48 hours of a person dying by the medical practitioner who has responsibility for a person's care immediately before death, or who examines the body of the deceased person after death. A medical practitioner other than the coordinating medical practitioner may be responsible for notifying the Registrar of the death and so will be responsible for notifying the person was the subject of a voluntary assisted dying permit if they are aware of this.

The death of a patient who has a voluntary assisted dying permit must be notified to the Coroner, regardless of whether the voluntary assisted dying medication was administered. In most cases, the Coroner will not need to investigate the death.

#### Completing the cause of death form

Generally, the registered medical practitioner who is responsible for the patient's medical care immediately prior to the patient's death, or the medical practitioner who examines the body of the patient to certify their death, will complete the *Medical certificate cause of death* form (MCCD).

For all patients who are the subject of a voluntary assisted dying permit, the medical practitioner attending the death must notify both the Registrar of Births, Deaths and Marriages and the Coroner of:

- their reasonable belief or knowledge that the patient was the subject of a voluntary assisted dying permit and:
  - did not self-administer the voluntary assisted dying medication or have it administered to them, or
  - self-administered the voluntary assisted dying medication, or
  - had the voluntary assisted dying medication administered to them by the coordinating medical practitioner in accordance with a practitioner administration permit, and
  - the medical condition that was the grounds for the patient to access voluntary assisted dying.

A reasonable belief may be based on, for example:

- evidence that the medications have been used – for example, no medications in the bottle or locked box and/or a used cup
- the patient had notified the medical practitioner of the day and time they had decided to take the medication.



### Administrative tasks

- Contact Births, Deaths and Marriages Victoria  
<<https://www.bdm.vic.gov.au/deaths>>
- Contact the Coroners Court of Victoria: **1300 309 519**
  - Call Coronial Admissions and Enquiries to notify the Coroner that a person has died and was the subject of a voluntary assisted dying permit.

## 6.2 Contact person returns any unused or remaining voluntary assisted dying medication

### Responsibilities of the contact person

If the patient dies without using the voluntary assisted dying medication, their appointed contact person is required to keep the voluntary assisted dying medication safe until they return it to the statewide pharmacy service. The medication must be returned within 15 days of the patient's death and should be returned as soon as possible.

If the contact person is unable to transport the unused voluntary assisted dying medication, the statewide pharmacy service can collect it.

Once notified of the patient's death by the Registrar of Births, Deaths and Marriages, the Voluntary Assisted Dying Review Board has seven days within which to follow up with the contact person to remind them of their obligations to return any unused medication and outline support services available to assist them to do so. The Voluntary Assisted Dying Review Board will get in touch with the contact person to discuss the process, even if the voluntary assisted dying medication was administered by the coordinating medical practitioner rather than self-administered.

## Pharmacist responsibilities



If any unused voluntary assisted dying medication is returned to the dispensing pharmacy, the pharmacist destroys the voluntary assisted dying medication as soon as practicable after its return and completes *Form 7 Voluntary assisted dying substance disposal form*, and then submits the form to the Voluntary Assisted Dying Review Board within seven days.

## 6.3 Support carers, family and friends

Medical practitioners and other health practitioners should provide bereavement support to a patient's carers, family and friends in the same way that they usually would, whether directly or via their health service's existing bereavement support services. Where palliative care services have been involved in the care of the patient, they will generally also be able to offer bereavement support.

The following links and resources may also be useful in supporting the patient's carers, family, friends and contact person as part of bereavement support.



### **Australian Centre for Grief and Bereavement**

The Australian Centre for Grief and Bereavement can help carers, family and friends deal with the death of a loved one and put them in touch with appropriate support groups.

Telephone: **1800 642 066**, Monday to Friday (9.00 am to 5.00 pm)  
or access the website <<https://www.grief.org.au>>.

### **Council on the Ageing Victoria**

Council on the Ageing Victoria has developed a booklet to help guide people about processes to follow after the death of a partner or loved one called *Death of a partner: a guide for families* <<https://cotavic.org.au/wp-content/uploads/2018/05/Death-of-a-Partner-V3pdf.pdf>>.

### **Palliative Care Victoria**

Palliative Care Victoria has information on bereavement pathways <<https://www.pallcarevic.asn.au/library-media/bereavement-support-standards-for-specialist-palliative-care/>>.

### **Department of Health and Human Services**

The department has a document on *Bereavement support standards for specialist palliative care services*, developed by the Australian Centre for Grief and Bereavement and the Centre for Palliative Care <<https://www2.health.vic.gov.au/about/publications/ResearchAndReports/Bereavement%20support%20standards>>

### **Local councils**

Local councils can also assist carers, family and friends to find local counsellors and support programs.

## 6.4 Support for health practitioners

The voluntary assisted dying process may be an overwhelming and emotional experience for medical practitioners, health practitioners and health service staff who provide care and support for the patient. Health practitioners should be encouraged to access support programs through their health services or professional associations. The voluntary assisted dying care navigators may also assist health practitioners with accessing these services.



Victorian medical practitioners have access to:

- the Australian Medical Association (AMA) Victoria Peer Support Service, which provides anonymous and confidential support for all doctors (not just AMA members)
  - phone **1300 853 338**
- Victorian Doctors Health Program <<http://www.vdhp.org.au/website/home.html>>
  - phone (03) **9280 8712** or email <[vdhp@vdhp.org.au](mailto:vdhp@vdhp.org.au)>.

Information on both programs is available from the AMA website <<https://www.amavic.com.au/assistance-for-doctors/Support-Programs>>.

Nurses have access to the Nursing and Midwifery Health Program Victoria, a free and confidential statewide support service. Information on this program is available on the NMHP website <<http://www.nmhp.org.au/>>.

## Additional resources

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In this section:

- Communication resources
- Capacity and prognosis assessment tools
- Determining citizenship and/or residency
- Notifications of breaches and protections from liability

### Communication resources

#### Tips for communicating effectively with patients, carers, family and friends

Good communication is integral to quality end-of-life care. It enables the healthcare team to develop an understanding of the patient's values, preferences and cultural beliefs, and supports the provision of individualised care and treatment that reflects the patient's values and choices.

Good communication with patients, carers, family and friends happens when:

- it is at their level of understanding
- it is not patronising
- it is free of jargon
- health practitioners know the patient and carers well, and actively listen.<sup>17</sup>

Good basic communication skills involve:

- using eye contact (if culturally appropriate)
- sitting close to the patient
- having an open posture
- active listening such as nodding or making sounds of encouragement to indicate understanding
- reflecting empathically
- showing compassion by using a warm, caring and respectful manner.

An empathic, patient-centred style also involves using open-ended questions with emotional content. This approach has been shown to elicit greater expression of feelings compared with using closed questions.<sup>18</sup>



The article 'Clinical practice guidelines for communicating prognosis and end-of-life issues with adults in the advanced stages of a life-limiting illness, and their caregivers' provides further guidance.<sup>19</sup>

17 SIGN 2008, *Control of pain in adults with cancer: A national clinical guideline*  
<<https://www.sign.ac.uk/assets/sign106.pdf>>

18 Clayton MJ, et al. 2007, 'Clinical practice guidelines for communicating prognosis and end-of-life issues with adults in the advanced stages of a life-limiting illness, and their caregivers', *Medical Journal of Australia*, no. 186 (12 Suppl): S77.

19 Ibid.

## Supporting access for people with communication difficulties

Ensuring the patient is able to communicate to their full potential is vital to ensuring their needs, wishes and questions are fully addressed and that they have fully understood all information provided to them. Patients with communication difficulties may wish to access voluntary assisted dying. Alternative communication methods and aids may need to be used during the voluntary assisted dying process, if these are what are typically used by the individual to communicate or judged to assist communication. A current speech pathology assessment with communication strategy recommendations is recommended for people with communication difficulties seeking to access voluntary assisted dying.

A skilled communication intermediary may need to be present to facilitate communication during the voluntary assisted dying request, assessment and administration process. If there are complex needs, it may be helpful if it is the speech pathologist providing the assessment and communication recommendations.

Communication difficulties can be temporary or ongoing and include:

- speech difficulties such as speech that is difficult to understand
- word-finding difficulties or difficulties composing sentences
- difficulties with memory and staying on topic
- difficulties following or understanding what other people say, particularly longer or more complex verbal information
- difficulties understanding written information (reading comprehension)
- difficulties with writing.

Patients with more complex communication needs (for example, little or no speech, or speech that others find difficult to understand) may not rely on speech alone to convey their message and therefore may use other forms of communication (such as an electronic communication device, communication board, signing and gestures). They need skilled communication partners who are aware of their communication methods to be able to communicate to their full potential.

Patients with complex communication needs may have a variety of diagnoses. Some individuals seeking to access voluntary assisted dying may present with impaired communication skills due to:

- neurodegenerative conditions such as motor neurone disease or multiple sclerosis
- neurological conditions such as a brain tumour
- pre-existing conditions such as aphasia due to a past stroke or developmental disability.

Patients with more subtle communication difficulties, such as word-finding difficulties or mild comprehension difficulties, also need to be supported appropriately during the voluntary assisted dying process to absolutely and unequivocally ensure that their decision is fully informed and that all underlying questions are addressed.



## **Considerations for access to voluntary assisted dying for someone with communication difficulties**

Detailed information about a person's communication skills and what facilitates successful transfer of information is vital in the context of engaging in discussions about voluntary assisted dying. The following section discusses factors to be considered, and how to best support the process for someone with communication difficulties. Best practice in these circumstances can include the health practitioner considering four questions:

### **1. How does this person communicate and what best facilitates their participation in discussion?**

Understanding a person's communication skill level is vital. Relevant considerations include:

- How does this person communicate their needs and wants? Are there other supports such as an electronic voice output communication device or a simple picture communication pointing board that can assist?
- How does this person communicate 'yes' or 'no'? This may not be possible through a head nod but may be possible through some other such as a thumb wriggle. Alternatively, some people can say 'yes' and 'no', but their verbal response is not reliable due to decreased comprehension.
- What strategies can you use to aid comprehension? These might include minimising the length of verbal information provided and writing down key points.
- How are the person's reading and writing skills? Can they reliably understand the written information provided?

### **2. How will I know if the person with complex communication needs has the capacity to make their own decisions in relation to voluntary assisted dying?**

Understanding how someone with complex communication needs is best supported to communicate must be the first step in being able to assess their capacity. Consider whether employing these communication methods and strategies will enable you to conduct your usual capacity assessment, or whether specialised input will further assist with making this determination. Further specialist input may include, for example, a specialist neurologist or speech pathologist consultation.

### **3. How will I know how to use the specialised communication aids or strategies used by the person with complex communication needs?**

There are times when people with complex communication needs may use an unfamiliar communication method. This may include a communication book or display, a speech-generating communication device or software program, or other methods such as signing. The specificity required and the nature of conversations about voluntary assisted dying warrants careful consideration of additional support with these conversations. In addition to the communication methods, consideration of a 'communication friendly' environment is also important.

#### 4. How will I access support from a speech pathologist if the person doesn't already see one?

People within health or aged care services may already have access to a treating speech pathologist who can provide more detailed support for this process. People living at home in the community without recent speech pathology intervention may be able to access some services through their local community health service, local hospital, rehabilitation centre, outpatients department or speech pathologists working in private practice.



Speech Pathology Australia has a 'Find a speech pathologist' search function <<https://www.speechpathologyaustralia.org.au>> (under 'Resources for the public') that allows health practitioners to search for certified practising speech pathologists by location.

Specific alternative and augmentative communication aids may need to be developed for conversations about voluntary assisted dying. Even though an individual may have a current communication aid, this may not have the appropriate vocabulary on it to enable the conversation and questions necessary for this process. Even when there is the possibility of someone using an alternate method for yes/no responses, there should always be the possibility offered to give an alternate response (for example, 'I'm not sure', 'I don't know', 'I need more information' or 'I need more time to think') – these conversations don't always need just a 'yes' or 'no' response.

### Tools for assessing decision-making capacity and prognosis

The tools referred to in Table 5 are for guidance only – they have not been developed specifically for voluntary assisted dying and are not intended to replace individual clinical judgement.

The tools and resources for assessing capacity were developed to guide the determination of capacity for making medical decisions. The prognostic tools were developed with the purpose of identifying people who are nearing the end of their life and require additional support.



**Table 5: Tools for assisting with assessing decision-making capacity and prognostication**

Tool/resource/paper	Contains	Additional information
<b>Assessing decision-making capacity</b>		
NICE Capacity and Consent Tool < <a href="http://www.nicenet.ca/files/NICE_Capacity_and_Consent_tool.pdf">http://www.nicenet.ca/files/NICE_Capacity_and_Consent_tool.pdf</a> >	Two parts: consent to treatment and decisional mental capacity and capacity assessment	Provides guidance on criteria to use when assessing decisional mental capacity
Aid to Capacity Evaluation (ACE) < <a href="http://www.jcb.utoronto.ca/tools/documents/ace.pdf">http://www.jcb.utoronto.ca/tools/documents/ace.pdf</a> >	Seven domains of guidance and sample questions	The purpose of the ACE is to help clinicians systematically evaluate capacity when a patient is facing a medical decision
Appelbaum PS 2007, 'Assessment of patients' competence to consent to treatment' <i>N Engl J Med</i> 357:1834-40 < <a href="https://www.nejm.org/doi/full/10.1056/NEJMcp074045">https://www.nejm.org/doi/full/10.1056/NEJMcp074045</a> >	The four fundamental requirements for determining capacity for consent to treatment	Table 4 in Step 2.2 (Appelbaum's model) has been adapted with specific statements/guidance about voluntary assisted dying
<b>Assessing prognosis</b>		
The Gold Standards Framework (GSF) Prognostic Indicator Guidance < <a href="http://www.goldstandardsframework.org.uk/cd-content/uploads/files/General%20Files/Prognostic%20Indicator%20Guidance%20October%202011.pdf">http://www.goldstandardsframework.org.uk/cd-content/uploads/files/General%20Files/Prognostic%20Indicator%20Guidance%20October%202011.pdf</a> >	Guidance to help health practitioners with earlier identification of adult patients who are nearing the end of their life and may need additional support	Relatively succinct tool with information and specifics about individual medical conditions
Murray SA, et al. 2005, 'Illness trajectories and palliative care' <i>BMJ</i> Apr 30; 330 (7498): 1007-1011 < <a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC557152/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC557152/</a> >	This journal publication describes three typical illness trajectories for patients with progressive and life-threatening conditions	
Mississauga Halton Regional Hospice Palliative Care: Early Identification & Prognostic Indicator Guide < <a href="http://www.mhwcancer.ca/Providers/PalliativeToolbox/Documents/Early%20Identification%20and%20Prognostic%20Indicator%20Guide%20developed%20by%20Mississauga%20Halton%20LHIN.pdf">http://www.mhwcancer.ca/Providers/PalliativeToolbox/Documents/Early%20Identification%20and%20Prognostic%20Indicator%20Guide%20developed%20by%20Mississauga%20Halton%20LHIN.pdf</a> >	Guidance for clinicians to support earlier identification of patients nearing the end of life and who could benefit from a hospice palliative care approach	This guide had been adapted from the UK's GSF Prognostic Indicator Guidance

...continued

Tool/resource/paper	Contains	Additional information
<p>Abernethy AP, et al. 2005, 'The Australia-modified Karnofsky Performance Status (AKPS) Scale: a revised scale for contemporary palliative care clinical practice' <i>BMJ Palliat Care</i> Nov 12; 4:7  <a href="https://www.ncbi.nlm.nih.gov/pubmed/16283937">https://www.ncbi.nlm.nih.gov/pubmed/16283937</a></p>	<p>The AKPS is a measure of the patient's overall performance status or ability to perform their activities of daily living</p>	<p>Mainly used by palliative care clinicians as a flag for the likelihood of need for services, timing of interventions and as outcome measurement for clinical programs and research</p>
<p>Glare P, et al. 2008, 'Predicting survival in patients with advanced disease' <i>Eur J Cancer</i> May 44(8):1146-56. <a href="https://www.ncbi.nlm.nih.gov/pubmed/18394880">https://www.ncbi.nlm.nih.gov/pubmed/18394880</a></p>	<p>This article discusses the skill of formulating a prognosis and the importance of communication</p>	<p>Discusses malignancies only, noting functional status (measured with the Karnofsky factor in prognostication)</p>
<p>Supportive and Palliative Care Indicators Tool (SPICTM)  <a href="https://www.spict.org.uk/">https://www.spict.org.uk/</a></p>	<p>SPICT™ helps identify people at risk of deteriorating health and dying. Identifies general indicators of poor and deteriorating health and also clinical indicators for cancer, heart/vascular disease, kidney disease, dementia/frailty, respiratory disease, liver disease and neurological disease but doesn't narrow this down to a prognosis of six months or less</p>	<p>May be useful as a generic guide, but is not definitive</p>

## Determining citizenship and/or residency

### Clarifying citizenship and/or residency requirements

The citizenship and residency requirements within the Act are designed to prevent people travelling to Victoria to access voluntary assisted dying.

#### Australian citizen or permanent resident

The patient must be an Australian resident or permanent resident to access voluntary assisted dying. A person who is here on a temporary work or holiday visa does not qualify.

Documents proving citizenship or permanent residency include:

- an Australian birth certificate for people born before 20 August 1986 (generally, people born after that date need to show at least one of their parents was an Australian citizen or permanent resident at the time of their birth – for example, with their parent’s birth certificate, passport or citizenship certificate)
- an Australian citizenship certificate
- a passport establishing Australian citizenship
- a permanent resident visa, or
- a permanent resident Visa Grant Number.

Many permanent resident visas are electronic and can be checked and printed or emailed by going to the Australian Government, Department of Home Affairs Visa Entitlement Verification Online (VEVO) website <<https://immi.homeaffairs.gov.au/visas/already-have-a-visa/check-visa-details-and-conditions/check-conditions-online>>. A patient with a non-Australian passport can use the VEVO website to check their visa details and print or email the results. You should always view the patient’s original passport or identity document to ensure that it matches the details on the VEVO print out.

Alternatively, organisations can register for VEVO, which means that, with the patient’s permission, a medical practitioner could enter their passport details into the VEVO system to check their permanent residency status.

#### Ordinarily resident in Victoria

Patients must be ordinarily resident in Victoria to access voluntary assisted dying. This means that Victoria is their usual place of residence. Proof of residency can be assessed by documentary evidence in original form such as:

- a Victorian driver’s licence or vehicle registration
- a letter confirming registration on the Victorian electoral roll
- medical records, or
- a residential lease.

### **Ordinarily resident in Victoria for at least 12 months**

The documents that a patient provides to prove residency might also establish that they have been ordinarily resident in Victoria for the required 12 months – for example, a lease. However, depending on the circumstances, you might need to ask for further evidence such as utility bills.

## **Protections from liability, notifications of breaches and offences**

### **Protections from liability**

Health practitioners and others who act in accordance with the Voluntary Assisted Dying Act in good faith are generally protected from liability under the Act.

A person does not commit an offence if, in good faith, they do or fail to do something that assists or facilitates a person who they believe on reasonable grounds is requesting access to or is accessing voluntary assisted dying in accordance with the Act and which would otherwise constitute an offence.

A registered health practitioner who, in good faith and without negligence, acts on a belief on reasonable grounds that they are acting in accordance with the Act, is not: guilty of an offence; liable for unprofessional conduct or professional misconduct; liable in any civil proceeding or, liable for contravention of any code of conduct.

A registered health practitioner or ambulance paramedic is not guilty of an offence, liable for unprofessional conduct or professional misconduct, liable in any civil proceedings, or liable for contravention of any code of conduct if, in good faith, they do not administer life-saving or sustaining medical treatment to a patient who has not requested it and who they believe is dying after being administered or self-administering voluntary assisted dying medication in accordance with the Act.

The Act does not prevent a registered health practitioner or ambulance paramedic who is present when a patient is dying from administering voluntary assisted dying medication from providing care to ensure the patient's comfort.

### **Reporting possible breaches of the Act**

The Act mandates that registered health practitioners and employers of registered health practitioners notify the Australian Health Practitioner Regulation Agency (AHPRA) as soon as practicable after forming a reasonable belief that another registered health practitioner is in breach of the Act (in the manner specified below). A failure by a registered health practitioner to notify AHPRA of such a belief constitutes unprofessional conduct.

The Act also allows any other person to make a voluntary notification to AHPRA about any registered health practitioner who they believe is in breach of the Act (in the manner specified below).

Both mandatory and voluntary notifications must be made with a belief based on reasonable grounds that a health practitioner who:

- provides health or professional care services to a person is
  - in the course of providing those services to the person, initiating a discussion or attempting to initiate a discussion with that person about voluntary assisted dying that is not, or would not be, in accordance with the Act
  - suggesting or attempting to suggest voluntary assisted dying to the person that is not, or would not be, in accordance with the Act
- is offering to provide or attempting to provide access to voluntary assisted dying in a manner that is not, or would not be, in accordance with the Act.

Any person who, in good faith, makes a notification about a suspected breach is not personally liable for any loss, damage or any injury suffered by another person merely because of the making of the notification.

### **Offences under the Act**

The Act contains several offences that incur significant penalties:

- noncompliance with a practitioner administration permit by a coordinating medical practitioner
- knowingly administering voluntary assisted dying medication to a patient who is the subject of a self-administration permit
- inducing a person to request access to voluntary assisted dying by dishonesty or undue influence
- inducing a patient to self-administer voluntary assisted dying medication by dishonesty or undue influence
- falsifying a form or record required to be made under the Act
- knowingly making a false or misleading statement in a material particular, in a report or form in respect of the patient who requests access to voluntary assisted dying
- a contact person knowingly failing to return unused or remaining voluntary assisted dying medication to the dispensing pharmacy within 15 days after the death of a person who is the subject of a self-administration permit
- failure to give a copy of a form required to be given to the Voluntary Assisted Dying Review Board in accordance with the Act.

### **Further resources on voluntary assisted dying**

More information about voluntary assisted dying, including information for the community and consumers and model of care resources for health services, may be found via the Department of Health and Human Services end-of-life care website <<https://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/end-of-life-care>>.

