

Quality Practice Series #7 (December 2023)

Message from the Voluntary Assisted Dying Board Chair

As we near the end of the year, the Voluntary Assisted Dying Board (the Board) would like to recognise all families who have been touched by voluntary assisted dying and acknowledge the festive season as this may be an especially difficult time for them. In September, the Statewide Care Navigator Service facilitated a Service of Reflection to mark the second year of voluntary assisted dying as an end-of-life choice in Western Australia and we hope this was a source of comfort to those grieving the loss of a loved one. The Board is always grateful to the patients, families, friends and practitioners who have provided personal reflections throughout the year, as this helps us to remain person-centred and understand the human element of the voluntary assisted dying process. We understand that taking the time to share this written feedback is time consuming and may be emotionally challenging and thank those who have shared their stories.

The Board delivered its 2022–23 annual report to the Minister for Health in November, which has been an opportunity to share all that was achieved in the second year of voluntary assisted dying in Western Australia. The Annual Report can be accessed at the [Department of Health website](#). Continued advocacy and oversight to ensure workforce is skilled, supported, and sustainable is a priority for the Board and we will continue to advocate for removal of barriers to the use of telehealth, remuneration of participating practitioners, greater participation of nurse practitioners and recognising the important function of the Statewide Care Navigator Service. The Board is committed to continuous improvement and has again made several recommendations to ensure this end-of-life choice is sustainable, equitable and available for all Western Australians.

Over the Christmas and New Year period the Board Secretariat Unit will be closed on weekends and public holidays and implement skeleton staffing during the Department of Health Christmas shutdown period from 27 to 29 December 2023, with staff logging into VAD-IMS at the beginning and end of each day to support practitioners through this period. The Board Secretariat Unit can be contacted via VADBoard@health.wa.gov.au during this time.

Wishing you all the best for the festive season and the coming year.

Dr Scott Blackwell
Chair - Voluntary Assisted Dying Board

Focus Area 1 – Commonwealth Criminal Code

On 30 November 2023, Federal Court handed down a ruling declaring that the term suicide as used in ss 474.29A and 474.29B of the *Criminal Code Act 1995* does apply to the ending of a person's life in accordance with, and by the means authorised by, the *Voluntary Assisted Dying Act 2017* (Vic).

Practitioners are to note the following advice from the End of Life Care Program, Department of Health:

It has always been the Department's assumption that these Criminal Code provisions do apply to voluntary assisted dying in Western Australia. The guidance provided in the WA VAD Approved Training, the WA VAD Guidelines and other VAD resources highlight the importance of not using a carriage service in specific circumstances, particularly related to the administering of a VAD substance.

For the avoidance of doubt, the WA VAD Guidelines will be updated to explicitly state that in the current legislative environment, the Administration Decision cannot be made by audiovisual technology if it includes discussion of content that is not permitted over a carriage service under the *Commonwealth Criminal Code Act 1995*.

The Department's position remains unchanged. The guidance provided should continue to be followed.

Focus Area 2 – Decision making capacity

Assessment of eligibility of persons under Guardianship Orders

Under the Act the person is eligible for access to voluntary assisted dying if the person has decision-making capacity in relation to voluntary assisted dying. Recent queries to the Board have related to patients who are under a Guardianship Order issued by the State Administrative Tribunal (SAT), and their capacity to make a voluntary assisted dying decision.

The Act specifically provides that a guardian or administrator, appointed under the *Guardianship and Administration Act 1990*, does not have the power to make voluntary assisted dying decisions.

The existence of a guardianship order that references the ability of a person to make decisions relating to their health, is evidence that practitioners should rely upon that the patient does not have decision making capacity for a voluntary assisted dying decision. A patient who is the subject of an administration order may have capacity and would need to be assessed on a case-by-case basis.

It is not expected that ineligibility based on a Guardianship Order should prevent a person from making a First Request and having a First Assessment for voluntary assisted dying if they wish to do so.

Patients may seek review of the Guardianship order from the SAT prior to the First Request or First Assessment if they wish to access voluntary assisted dying.

Focus Area 3 – Dates of signing and witnessing forms

As part of the voluntary assisted dying process, certain forms are required to be witnessed as a safeguard for those who may be vulnerable to abuse or coercion. These forms include the Written Declaration, Contact Person Appointment Form and the Practitioner Administration Form .

Practitioners can print a partially pre-filled form by downloading the form within the VAD-IMS episode but the remaining sections should be completed manually.

It is important that these forms are signed by the appropriate parties (patient, practitioner, contact person, witnesses) on the same day to avoid any concerns about compliance with the voluntary assisted dying processes.

Focus Area 4 – Medical Certificate and Cause of Death

Section 44 of the *Births, Deaths and Marriages Registration Act 1998* requires that a certificate of cause of death is completed by a doctor who was responsible for the person's medical care immediately before the death or who examined the person's deceased body. The Board acknowledges that the legislative requirement that this process is completed by a medical practitioner creates an issue for nurse practitioners who take on the role of Administering Practitioner in the voluntary assisted dying process.

If a nurse practitioner or registered nurse is present for the patient's death, they can certify life extinct, but a medical practitioner will still need to complete the Medical Certificate of Cause of Death (MCCD). Coordinating or Consulting Practitioners may be contacted by the nurse practitioner in the role of Administering Practitioner to complete the MCCD.

General Reminders

Personal reflections and feedback

The Board would like to thank all practitioners who have submitted feedback or a personal reflection. [Personal Reflection](#) forms can be accessed on the [VAD Board's website](#) (under the heading 'Submitting feedback to the Board'). We also encourage practitioners to share the Personal Reflection form with their patients.

Submitting feedback to the Board



The Voluntary Assisted Dying Board receives feedback via [Personal reflections form \(PDF 455KB\)](#) | [\(Word 391KB\)](#) from those involved in the voluntary assisted dying process including patients, their family or practitioners involved in their care. Personal reflections may be used by the Voluntary Assisted Dying Board to improve the operation of voluntary assisted dying processes and inform safety and quality improvements relating to voluntary assisted dying in Western Australia.

Completed [Personal reflections form \(PDF 455KB\)](#) | [\(Word 391KB\)](#) can be returned to the Voluntary Assisted Dying Board via:

- 1 Email to VADBoard@health.wa.gov.au
- 2 Post addressed to:
Voluntary Assisted Dying Board Secretariat Unit
PO Box 8172
Perth Business Centre
Perth WA 6849
- 3 Fax to 08 9222 0399

Review of Quality Practice Series

The Quality Practice Series is published quarterly and developed based on observation, extraction, and analysis of data from VAD-IMS. The Quality Practice Series is distributed to all practitioners who have access to VAD-IMS, the Statewide Care Navigator Service and Statewide Pharmacy Service. You can also find previous versions of the series on the [Board's website](#) (under the heading 'Practitioner Quality Practice Series')

We are currently reviewing the effectiveness of the Quality Practice Series and would appreciate your feedback by 12 January 2024, through a short survey found [here](#).

Useful Links

Submitting feedback to the Board [Voluntary Assisted Dying Board Personal Reflections Form \(health.wa.gov.au\)](#)

The Act: www.legislation.wa.gov.au Voluntary Assisted Dying Act 2019

The Act Explanatory Material (as tabled): [Parliament tabled paper 3625 \(Feb 2020\)](#)

The Board: <https://ww2.health.wa.gov.au/voluntaryassisteddyingboard>

- Board membership, functions and processes
- VAD-IMS user support materials
- Contact details

Email: VADBoard@health.wa.gov.au

Fax: 08 9222 0399

Department of Health resources:

https://ww2.health.wa.gov.au/Articles/U_Z/Voluntary-assisted-dying

This document can be made available in alternative formats on request for a person with disability.

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