

# Summary of the ACT's framework for voluntary assisted dying

This document outlines the framework for Voluntary Assisted Dying (VAD) in the ACT proposed by the Voluntary Assisted Dying Bill 2023. The Bill is subject to a Legislative Assembly committee inquiry before it is debated and passed, and this framework may be updated as a result of this process.

## Eligibility requirements

- A person is eligible for VAD if the person:
  - has been diagnosed with at least one **relevant condition** that, either on its own or in combination with one or more other diagnosed conditions, is:
    - advanced: an individual's relevant condition(s) is advanced if the individual's functioning and quality of life decline, and any treatments that are available and acceptable to the individual lose any beneficial impact, and the individual is in the last stages of their life; and
    - progressive: an individual's relevant condition(s) is progressive if their condition is deteriorating and will continue to deteriorate, and
    - expected to cause the person's death.
  - is suffering intolerably in relation to their relevant conditions. An individual is suffering intolerably in relation to their relevant conditions if persistent suffering (whether physical, mental or both) that is, in the opinion of the person, intolerable is being caused to them by—
    - one or more of: the relevant conditions; the combination of the relevant conditions and any other condition or conditions they have been diagnosed with (the other conditions); treatment they have received for the relevant conditions; the combination of treatments they have received for the relevant conditions and the other conditions; or
    - the anticipation or expectation, based on medical advice, of suffering that will or might be caused by a matter mentioned above; or
    - a medical complication that will or might result from, or be related to, a matter mentioned above.
  - has decision-making capacity in relation to VAD, meaning that at all stages of the request, assessment and substance administration process the person can (including with support):
    - understand the facts that relate to a decision about accessing VAD;
    - understand the main choices available to them in relation to the decision;
    - weigh up the consequences of the main choices;

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- understand how the consequences affect them;
  - on the basis of the above, make the decision; and
  - communicate the decision in whatever way they can.
- has lived in the ACT for at least the previous 12 months. An exemption is available for individuals with a substantial connection to the ACT, as assessed by the ACT Health Directorate on application;
- is an adult.
- A person who meets these all requirements is eligible for VAD regardless of how soon a health professional expects them to die (and provided they meet all other eligibility requirements).

## Process for VAD request and assessment

- The overall process for requesting VAD and assessment of eligibility generally reflects the Australian model, including:
  - A person makes a first request to access VAD;
  - A qualified health practitioner accepts the first request, becomes the coordinating practitioner, and undertakes the first assessment;
  - If the coordinating practitioner finds the person eligible, they refer person for a second, independent assessment by a consulting practitioner;
  - The consulting practitioner accepts the referral and undertakes the consulting assessment;
  - If the consulting practitioner finds the person eligible, the person may make a second formal request to the coordinating practitioner in writing with two independent witnesses;
  - The coordinating practitioner and consulting practitioner can refer to a third party practitioner if they are unable to assess whether the person meets the eligibility requirements;
  - The person may make a final request to the coordinating practitioner, who certifies that the person is acting voluntary and has decision-making capacity.
- Key steps in the process must be reported to the VAD board and recorded in the person's health record within two working days, with penalties for non-compliance.
- There is no requirement for a person's VAD process to take a certain minimum number of days between the first and final request, noting time is inherently built into the request and assessment process.
- If a practitioner is unable or unwilling to continue as coordinating practitioner, they may transfer their role to another qualified practitioner.

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- A person can pause or stop the VAD request and assessment process at any time.
- It is an offence to induce the making or revocation of a request to access VAD.

## Accessing the substance

- Once the request and assessment process are complete, a person can choose to proceed with self-administration or practitioner administration of an approved substance.
- There is no default mode of administration specified in the legislation, rather the person and their coordinating practitioner should discuss the best option for the individual.
- Once they have made that decision, the coordinating practitioner is authorised to prescribe an approved substance.
- Prescription, handling, storage and disposal of the approved substance is tightly regulated by the VAD Act and the ACT's existing Medicines, Poisons and Therapeutic Goods Act 2008.
- Prescription and dispensing of the VAD substance is based on the Australian model including:
  - The coordinating practitioner prescribing the VAD substance must include a statement that the substance is for VAD, that an assessment process has been conducted in accordance with legislation, the mode of administration, contact details for the person and details of the substance including the amount prescribed.
  - The coordinating practitioner must provide the prescription directly to the authorised supplier and notify the VAD board within 48 hours of providing the prescription to the supplier.
  - The authorised supplier must supply the substance to either the administering practitioner for practitioner administration, or after confirming their identity, to the person or their nominated contact person for self-administration.
- A contact person must be appointed for self-administration of an approved substance. This can be any eligible adult, including the coordinating or consulting practitioner. The contact person is authorised to handle the approved substance on the individual's behalf if the individual cannot do so.
- A person can choose to pause or stop the process, not take the substance, or change from self-administration to practitioner administration (or vice versa) at any time.
- An eligible witness is required for practitioner administration, but not self-administration.
- Returning and disposing of any unused or remaining VAD substance is based on the Australian model including:
  - The contact person must return any unused or remaining substance to an authorised disposer within 14 days after the person dies.

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- If the person changes their mind and chooses to either not take the substance, they or their contact person must return the substance to the authorised supplier for disposal.
- The Register of Births, Deaths and Marriages will record both the cause and manner of death. The cause of death will be the relevant condition, with the manner of death recorded as 'voluntary assisted dying.' The death certificate will only record the relevant condition.
- It is an offence to induce the making or revocation of a decision to proceed with administration, to administer an approved substance otherwise than in accordance with the Act, and to induce self-administration of an approved substance.
- Key steps in the process must be reported to the VAD board and recorded in the person's health record within two working days, with penalties for non-compliance.

## Role of health professionals

- The qualification and experience requirements for health professionals involved in the VAD process are outlined in the table below:

<b>Types of health professionals</b>	<b>Coordinating practitioner</b>	<b>Consulting practitioner</b>	<b>Administering practitioner</b>
A medical practitioner who holds specialist registration and has practised for at least one year	Yes	Yes	Yes
A nurse practitioner with relevant experience of at least one year post- nurse practitioner endorsement	Yes (if the consulting practitioner is a medical practitioner)	Yes (if the coordinating practitioner is a medical practitioner)	Yes
A nurse practitioner with relevant experience	No	No	Yes
A registered nurse with relevant specialist experience and qualifications (working at a minimum Australian Qualification Framework level 8-9)	No	No	Yes

- Health practitioners wishing to play a role in VAD will be required to undertake compulsory VAD training based on the final ACT legislation, including options for self-paced online and in-person delivery.

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- Medical practitioners must hold specialist registration (general practitioners hold this) and have practised for at least 1 year. Nurse Practitioners must have experience in a relevant area and have practised for at least 1 year post nurse practitioner endorsement. This will ensure only experienced practitioners are involved in VAD.
- There is no requirement for the medical practitioner to hold specialist expertise or experience in the disease, illness or condition the person seeking VAD is dying from.
- Examples of relevant and appropriate experience for Nurse Practitioners to undertake a VAD role include palliative care, terminal cancer care, neurodegenerative disease management and aged care.
- If certain health professionals want to initiate a discussion about VAD with an individual, they must comply with the following requirements that support the individual to make informed, voluntary end of life choices:
  - A medical practitioner or nurse practitioner who considers that they have the expertise to appropriately discuss treatment and palliative care options may only initiate a conversation about VAD if they ensure the individual knows:
    - the treatment options available to the person and the likely outcomes of the treatment options available to the person; and
    - the palliative care and treatment options available to the person and the likely outcomes of those care and treatment options.
  - All other registered health practitioners (including medical practitioners and nurse practitioners who do not consider that they have the expertise to appropriately discuss treatment and palliative care options), social workers and counsellors may only initiate a discussion about VAD if they ensure that the individual knows:
    - that they have palliative care and treatment options available; and
    - that the person should discuss the palliative care and treatment options with their treating doctor.
- Clinical guidelines will be developed during implementation to support health professionals to engage in considered end-of-life discussions, including providing information on palliative care and treatment options as well as VAD.
- A health practitioner or health service provider who conscientiously objects to VAD or is unable to assist with a VAD request for any reason must:
  - advise they are unable to assist as soon as practicable to ensure the patient's access to care is not impeded, and
  - provide the person requesting VAD with information directing them to the Care Navigator Service.
- The objecting health professional is not required to declare their objection, though is encouraged to inform their patient.

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- Health professionals will be protected from liability for acting in good faith, in accordance with the legislation, and without negligence, to support a voluntary assisted death.
- The Coroner will not be required to hold an inquest into a death due to substance administration in accordance with the Act.

## Role of health services and care facilities

- The ACT will implement a mixed-service delivery model for VAD within the ACT health system. VAD services will be delivered in the primary and private health sectors, and within the network of public hospitals and health services.
- The ACT Government will establish a VAD Pharmacy Service within the Canberra Hospital Pharmacy Service to perform the following functions:
  - provide information about the substance for people accessing VAD, their families and carers, and VAD practitioners, including information on collection, preparation, administration and disposal of the substance,
  - deliver the VAD substance within the ACT to people who have elected self-administration and are unable to travel, and collect any unused VAD substance, and
  - attract, recruit and retain the right pharmacists with the blend of technical and relational people skills which will be critical to success. The details of this engagement strategy, including provision of out-of-hours and weekend support as needed would be developed as part of the implementation process.
- The ACT Government will establish a VAD Care Navigator Service. The Care Navigator Service will be established and managed by CHS and staffed by appropriately skilled nursing and allied health professionals, and will provide multidisciplinary support to individuals, their families, health practitioners and health services seeking information and pathways regarding VAD.
- All care facilities<sup>1</sup> may decide their level of involvement with VAD, as long as they do not hinder access to VAD and comply with the following minimum standards.
- Where a person seeks information about VAD, or seeks to engage in the VAD request, assessment or administration process, a care facility must:
  - provide the contact details of the Care Navigator Service; and
  - if the person wishes to see a health professional (or other relevant person e.g. a witness or contact person) at a facility operated by the care facility, the care facility:

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<sup>1</sup> This includes public hospitals, private hospitals, hospices, palliative care facilities, retirement villages, residential aged care facilities, nursing homes, hostels, transition care, and residential respite care.



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- must allow access to the person at the facility by a health professional, unless not reasonably practicable; or
- if it is not reasonably practicable to provide access to the person at the facility, must facilitate reasonable transfer to and from a place where this can be done; or
- if the person wishes to see a health professional at a place other than the facility, the care facility:
  - must facilitate reasonable transfer to and from a place where this can be done;
  - if transfer would not be reasonable, must take reasonable steps to make it reasonably practicable for a health professional to access the person at the facility.
- A care facility must not hinder access to VAD by withdrawing care services on the basis that a person wishes to access to VAD, or a person may wish to access VAD in the future.
- A care facility must publish a policy outlining how it complies with the minimum standards, and how it will comply with the minimum standards, and make that information available to prospective and current patients/residents/clients and on request.
- If a care facility breaks the law by failing to comply with the minimum standards, failing to publish information about its level of involvement in VAD, failing to have a policy, or otherwise hindering access to VAD, it may be liable for a criminal offence.

## Oversight, reporting, compliance

- An independent statutory VAD board will be established, appointed and subject to direction by the Minister for Health.
- The board will have the powers to monitor the VAD Act's operation, monitor requests and applications for VAD, research, analyse and report on information given to the Board under the Act, give the Minister advice, and refer issues to relevant dispute resolution or enforcement agencies.
- The board will undertake periodic review of VAD reports submitted by health professionals. The Board will not prospectively approve an individual's VAD application as in some jurisdictions but is anticipated to frequently review applications, particularly during the early operation of VAD.
- The board will take a proactive role in enhancing compliance but will not intervene in or make decisions about a person's VAD process.

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- Membership and procedure of the board will largely be dealt with by flexible regulations, though the legislation specifies that the body to have a minimum of four, and up to seven members with relevant skills and expertise, with a quorum of three for decisions.
- The ACT Health Directorate will provide secretariat support to the board and be responsible for approving exemptions to ACT residency requirements, assessing health professional applications to become a VAD practitioner, managing board recruitment, and other functions to be determined during the implementation period.
- The ACT Civil and Administrative Tribunal has jurisdiction to review decisions by health professionals about whether a person has capacity, meets the residency requirements, or is acting voluntarily; and decisions by the ACT Health Directorate about whether to grant an exemption to ACT residency requirements.
- Offences for non-compliance generally align with those in the Australian states.
- A review of the Act will be undertaken three years after the commencement of the Act, and in five-year intervals after that, including review of age requirements, advanced care planning, and residency requirements.