

in Australia Voluntary Assisted Dying

In Australia, VAD laws have been passed in all States. VAD laws have commenced operation in Victoria, Western Australia and Tasmania. VAD will commence in Queensland on 1 January 2023, South Australia on 31 January 2023 and New South Wales on 28 November 2023.

This webpage discusses the laws on VAD both in Australia and internationally, and their intersection with palliative care and medical treatment decision-making.

What is voluntary assisted dying?

Voluntary assisted dying (VAD) refers to the assistance provided to a person by a health practitioner to end their life. It includes:

- **'self-administration'**, where the person takes the VAD medication themselves (this is sometimes called physician-assisted suicide or dying), and
- **'practitioner administration'**, where the person is given the medication by a doctor (or in some Australian States, a nurse practitioner or registered nurse) (this is sometimes called voluntary euthanasia).

'Voluntary' indicates that the practice is a voluntary choice of the person, and that they are competent (have capacity) to decide to access VAD.

The term 'voluntary assisted dying' evolved in Australia in recent years following inquiries and parliamentary debates of laws enabling a terminally ill person to seek medical assistance to die. This term is now commonly used in Australia, rather than euthanasia or physician-assisted suicide or dying. The [definition of VAD in each Australian State with VAD laws](#) is discussed below.

Different terms are used elsewhere in the world. For example, 'physician-assisted suicide' is used in Oregon and other States in the USA. 'Medical Assistance in Dying' is the term used in Canada, while 'euthanasia' is used in Belgium and The Netherlands. For further information see [Legality of euthanasia and assisted dying outside of Australia](#).

Is voluntary assisted dying legal in Australia?

Voluntary assisted dying (VAD) laws have been passed in each of Australia's six States - Victoria, Western Australia, Tasmania, South Australia, Queensland, and New South Wales. The laws in each State are discussed in detail below.

In Victoria, Western Australia and Tasmania VAD is in operation, and is available (in limited circumstances) to people who meet the eligibility criteria. VAD laws will commence in Queensland on 1 January 2023, South Australia on 31 January 2023 and New South Wales on 28 November 2023.

VAD remains illegal in the Northern Territory and the Australian Capital Territory, and in Tasmania, South Australia, Queensland and New South Wales until those States' laws commence. In those jurisdictions a person (e.g. a doctor or family member) who assists another person to die may be charged with murder, manslaughter or assisting suicide. These offences are [discussed further below](#).

Between March 1996 and March 1997, voluntary euthanasia and physician-assisted suicide were legal in the Northern Territory under the *Rights of the Terminally Ill Act* (NT) ("the NT Act"). However, in 1997 the Australian Government intervened, using the Territories power in the Australian Constitution to pass legislation overturning the NT Act. Commonwealth laws currently prevent the Northern Territory and the Australian Capital Territory from legislating on VAD.

Voluntary assisted dying in Australian States

Victoria

Voluntary assisted dying (VAD) is legal under the [Voluntary Assisted Dying Act 2017 \(Vic\)](#) ('the Act'). The Act provides for and regulates access to VAD, which is defined as 'the administration of a voluntary assisted dying substance and includes steps reasonably related to such administration'.

Further information and factsheets about VAD are available from [Victoria Health](#).

What is the eligibility criteria?

A person will be eligible to access VAD if he or she:

- is aged 18 or over;
- is an Australian citizen or permanent resident, ordinarily resident in Victoria, and, at the time of making a first request for VAD, has been resident in Victoria for at least 12 months;
- has decision-making capacity, meaning the person can:
 - understand information relevant to the decision to access VAD, and the effect of the decision,
 - retain that information to the extent necessary to make the decision,
 - use or weigh the information as part of the decision-making process, and
 - communicate the decision and the person's views and needs about the decision in some way; and
- is diagnosed with a disease, illness or medical condition that is:
 - incurable;

- advanced, progressive and will cause death;
- expected to cause death within six months (or, in the case of a person with a neurodegenerative disease, illness or condition, within 12 months); and
- causing suffering to the person that cannot be relieved in a manner that the person finds tolerable.

A person will not be eligible for VAD on the basis of having a disability or a mental illness alone. A person with disability or mental illness may be eligible if they also have a disease, illness or medical condition that is expected to cause their death within the timeframe, and meet all of the other eligibility criteria.

A person is presumed to have capacity to make a VAD decision unless it can be shown otherwise.

Right of review

A person who is considered ineligible for VAD because he or she:

- is not ordinarily resident in Victoria;
- was not a resident for at least 12 months prior to making the VAD request; or
- does not have decision-making capacity to make a request

may apply to the [Victorian Civil and Administrative Tribunal](#) for a review of the decision.

How is a person's eligibility for VAD assessed?

A person's eligibility to access VAD must be independently assessed by at least two medical practitioners - a coordinating medical practitioner and a consulting medical practitioner - who have completed mandatory training, and meet other eligibility requirements.

During the first assessment the coordinating medical practitioner will determine if the person meets the eligibility criteria, and also whether:

- the person understands what VAD involves;
- the person has made the decision to access VAD voluntarily; and
- the request for VAD is enduring.

If the person is eligible, the consulting medical practitioner must carry out a further, independent assessment. If that practitioner confirms the person is eligible and the person wishes to continue, other legislative requirements must then be followed, including the person:

- making a written declaration requesting access to VAD;
- making a final request for VAD, in person, to the coordinating medical practitioner; and
- appointing a contact person (who must return any unused or remaining VAD medication to a pharmacist at the dispensing pharmacy).

On receiving the person's final request for VAD, the coordinating medical practitioner will conduct a final review, which involves reviewing and completing forms, and certifying that the request and assessment process (and legislative requirements) have been completed.

There are timeframes that apply to each of the steps in the process. A diagram of the VAD process can be viewed in Victoria Health's [Voluntary Assisted Dying - Quick reference guide for health practitioners](#).

How and when is VAD administered?

There are two types of administration: Self-administration, and practitioner administration.

Self-administration

Once the coordinating medical practitioner certifies in a final review form that the request and assessment process is complete, he or she may apply for a VAD permit for the person (a 'self-administration permit'). The permit authorises:

- the coordinating medical practitioner to prescribe and supply the VAD medication to the person for self-administration;
- the person to obtain, possess, store, use and self-administer the medication; and
- the contact person to possess, store, carry, transport and return the unused or remaining VAD medication to the dispensing pharmacy following the person's death.

After a permit has been issued to the coordinating medical practitioner the person may access VAD.

In most cases the VAD medication will be self-administered by the person at a time and place of their choosing. Other people (e.g. family and friends) may be present if the person wishes. There is no requirement for a medical or other health practitioner, or a witness, to be present however a person may choose to have a health practitioner present. The person may change their mind at any time and choose not to take the medication.

Practitioner administration

If the person is physically incapable of self-administering or digesting the medication (e.g. those with physical disabilities that limit their ability to self-administer) the coordinating medical practitioner may apply for a practitioner administration permit authorising them to administer the medication to the person.

During practitioner administration, the VAD medication will be administered by the practitioner either intravenously, orally or through other appropriate means e.g. a PEG. It must take place in the presence of a witness, who must certify that the person appeared to have decision-making capacity at the time of making the administration request; the person appeared to be acting voluntarily, without coercion; and the person's request appeared to be enduring. The witness must also confirm the coordinating medical practitioner administered the VAD medication to the person.

Anyone the person chooses may also be present during practitioner administration.

Do health practitioners have to participate in VAD?

Health practitioners with a conscientious objection to VAD have the right to choose not to participate in VAD. They are under no obligation to:

- provide information about VAD to a person; or
- participate in any part of the VAD process, including assessing the eligibility of a person; or supplying, prescribing, administering, or being present prior to, during or following administration of a VAD medication.

Is it lawful for a health practitioner to discuss VAD with a person?

A registered health practitioner is prohibited from initiating a discussion about VAD or suggesting VAD to a person, but can provide information about VAD at a person's request.

What are the safeguards around VAD?

The Act contains a range of safeguards including:

- Health practitioners are prohibited from initiating a discussion about VAD. This is designed to ensure that the person's request for VAD is voluntarily made.
- A family member or carer cannot request VAD on somebody's behalf.
- A person must make at least three separate requests for VAD.
- The person must be provided with information about their diagnosis and prognosis, available treatment and palliative care options, and risks associated with taking the lethal medication (i.e. death). The person must also be advised that they may decide at any time not to continue the VAD process.
- VAD medication cannot be administered without a permit authorising self-administration or practitioner administration.
- Regulations governing the prescription, dispensing and disposal of VAD medications. The VAD medication must be stored in a locked box after it has been dispensed. A contact person appointed by the person accessing VAD must return any of the medication unused or remaining after the person's death.
- Mandatory reporting requirements for health practitioners and employers where they believe another practitioner's conduct breaches the Act.
- Offences (punishable by up to 5 years imprisonment) for anyone who induces another person to request VAD or take the VAD medication.

To provide VAD medical practitioners must have the necessary expertise and experience as set out in the legislation, and successfully complete the accredited training.

The Voluntary Assisted Dying Review Board is responsible for monitoring, reporting, compliance, safety and research functions.

Western Australia

Voluntary assisted dying (VAD) is legal under the *Voluntary Assisted Dying Act 2019 (WA)* (the Act), which commenced on 1 July 2021.

The Act provides for and regulates access to VAD, which is defined as 'the administration of a voluntary assisted dying substance, and includes steps reasonably related to such administration'. A 'voluntary assisted dying substance' is medication used for the purpose of causing a person's death (referred to on this website as 'VAD medication').

Further information and factsheets about VAD are available from the [Western Australian Department of Health](#).

What is the eligibility criteria?**How is a person's eligibility for VAD assessed?****How and when can VAD be administered?****Do health practitioners have to participate in VAD?****Is it lawful for a health practitioner to discuss VAD with a person?****What are the safeguards around VAD?****Tasmania**

Voluntary assisted dying (VAD) is legal under the *End-of-Life Choices (Voluntary Assisted Dying) Act 2021 (Tas)*, which commenced on 23 October 2022. The Act provides for and

regulates access to VAD, which is defined as 'the administration to a person, or the self-administration by a person, of a VAD substance'.

More information about VAD is available from [Tasmania Health](#).

What are the eligibility criteria?

How is a person's eligibility for VAD assessed?

How and when can VAD be administered?

Do health practitioners have to participate in VAD?

Is it lawful for a health practitioner to discuss VAD with a person?

What are the safeguards around VAD?

South Australia

In June 2021 the *Voluntary Assisted Dying Act 2021 (SA)* was passed by the South Australian Parliament. Voluntary assisted dying (VAD) will commence in South Australia on 31 January 2023.

The Act provides for and regulates access to VAD, which is defined as 'the administration of a voluntary assisted dying substance and includes steps reasonably related to such administration'.

What are the eligibility criteria?

How will a person's eligibility for VAD be assessed?

How and when will VAD be administered?

Will health practitioners have to participate in VAD?

Do health services and residential facilities have to provide VAD, or help a person access it?

Will it be lawful for a health practitioner to discuss VAD with a person?

What will be the safeguards around VAD?

Queensland

On 16 September 2021 the *Voluntary Assisted Dying Act 2021 (Qld)* was passed by the Queensland Parliament. Voluntary assisted dying (VAD) will commence on 1 January 2023, following an implementation period.

The new laws provide for and regulate access to VAD, which is defined as 'the administration of a voluntary assisted dying substance and includes steps reasonably related to that administration'.

More information about VAD is available from [Queensland Health](#).

What are the eligibility criteria?

How will a person's eligibility for VAD be assessed?

How and when will VAD be administered?

Will health practitioners have to participate in VAD?

Do health services and residential facilities have to provide VAD, or help a person access it?

Will it be lawful for a health practitioner to discuss VAD with a person?

What will be the safeguards around VAD?

New South Wales

On 19 May 2022 the *Voluntary Assisted Dying Act 2022 (NSW)* (the Act) was passed by the New South Wales Parliament. Voluntary assisted dying (VAD) will commence in New South Wales on 28 November 2023 after an 18 month implementation period.

The new laws provide for and regulate access to VAD, which is defined as 'the administration of a voluntary assisted dying substance and includes steps reasonably related to the administration'.

Further updates are available from [New South Wales Health](#).

What are the eligibility criteria?

How will a person's eligibility for VAD be assessed?

How and when will VAD be administered?

Will health practitioners have to participate in VAD?

Do health services and residential facilities have to provide VAD, or help a person access it?

Will it be lawful for a health practitioner to discuss VAD with a person?

What will be the safeguards around VAD?

Legality of other practices involving dying

Is suicide legal in Australia?

Yes. Suicide and attempted suicide were originally crimes, but are now legal in Australia.

Is it legal to assist a person to commit suicide?

No. Though it is not a criminal offence for a person to take their own life, assisting or encouraging (i.e. aiding, abetting, procuring, counselling, commanding or inciting) another person to commit suicide is illegal in all Australian States and Territories. This is so even where the person requested assistance to die, and regardless of whether the assistance is provided by a relative, friend or medical professional. It is also an offence to take active steps to bring about the death of another person, even where the deceased requested the action causing their death.

The intentional killing of another person, whether at their request (e.g. assisting their suicide) or not technically amounts to the crime of murder. The alternative charge (or verdict) of manslaughter is possible where an unlawful killing occurs but an intention to kill cannot be proven, or there are mitigating circumstances.

Voluntary assisted dying in Victoria and Western Australia are an exception. In those States the legislation protects authorised health practitioners who provide VAD in accordance with the Act, and also protects others (including other health practitioners, family, or carers) who assist or facilitate a request for VAD.

What if the assistance is given for merciful reasons, or the person consents to their life being ended?

A person's motives for assisting or causing another person to die, even if merciful or compassionate (such as to relieve pain) are not relevant to whether they have committed a crime. This is also the case where the person requests to die - for example, a person asks his or her doctor, or their spouse or partner, to end their life. In those situations, the person who causes the death may still be charged with and found guilty of murder or manslaughter.

However, the person's motives are relevant in cases where the prosecution decides to charge a person with a lesser offence, or not to bring charges at all (this is known as the exercise of prosecutorial discretion. See for example the 2019 *case of Police v O*). Motives are also relevant in sentencing a person who acted out of compassion, at the request of another.

Have people been prosecuted for assisting someone to die?

Yes. Numerous prosecutions have been brought against family and friends for assisting with or causing the death of a loved one. Cases have also been brought against medical practitioners. Many of these cases are prosecuted as aiding and abetting suicide, while some cases have involved charges of murder or attempted murder.

The prosecution can choose whether they prosecute for assisted suicide or for murder or manslaughter. In some cases the prosecution may exercise its discretion not to prosecute e.g. on public interest grounds (see the 2019 *case of Police v O*). Factors that may be considered in deciding which charge to bring include:

- the level of assistance provided by the accused (e.g. did they actually cause the death, or were they only involved in the preparation for the suicide);
- whether the accused pleaded guilty early on, and assisted authorities;
- the mental capacity of the deceased (if the deceased was not mentally competent, the appropriate charge is likely to be murder or manslaughter rather than assisting suicide); and
- whether there was a suicide pact between the accused and the deceased, and the accused survived.

Some Australian cases involving prosecutions for assisted suicide are [discussed below](#).

Intersection of the laws on assisted dying, medical treatment decision-making and palliative medication**Medical treatment decision-making****Is a health professional legally liable if he or she fails to provide medical treatment to a person?**

Health professionals have a legal duty to provide a person in their care with the 'necessaries of life', including medical treatment. If a health professional breaches this duty, they may be criminally liable for any consequences to the person's life, health or well being.

However, this duty will not apply where the person has capacity and refuses life-sustaining treatment either at the time the treatment is offered or in an Advance Care Directive, or where the treatment is considered by the doctor to be inappropriate in the circumstances (e.g. *futile or non-beneficial*). In these cases health professionals are under no duty to provide treatment, even though the person will likely die without it.

Is a health professional legally liable when he or she withholds or withdraws life-sustaining treatment?

No. A health professional does not unlawfully kill a person when he or she withholds or withdraws life-sustaining treatment in one of the situations outlined in the previous question. In those situations the person is considered to have died naturally from their medical condition or disease.

For more information visit our [Withholding and withdrawing life-sustaining treatment from adults webpage](#).

Refusal of food and drink**Can a person refuse ordinary food and drink even it might lead to their death?**

Yes. A person with capacity can lawfully refuse ordinary food and drink, as well as artificial nutrition and hydration (for example, given through a tube into the person's stomach).

If the person dies as a result of refusing food or drink, the person will not have committed suicide. Rather, the person will have exercised his or her lawful right to refuse food or drink.

Does a health professional or other person assist dying by allowing someone to refuse food or drink?

No. If the person has capacity to refuse food or drink it is lawful to respect their refusal.

Providing pain and symptom relief

Does a health professional assist dying when he or she provides pain and symptom relief and a patient's death follows?

No. Giving appropriate pain or symptom relief is legal so long as the health professional's intention is to reduce or relieve the person's pain and suffering, not hasten death. Health professionals are protected by the doctrine of double effect. For further information visit our [Legal protection for providing pain and symptom relief webpage](#).

What is voluntary palliated starvation? Is it legal in Australia?

Voluntary palliated starvation (VPS) occurs when person with capacity refuses to eat or drink (known as voluntary stopping eating and drinking, or VSED) and receives palliative medication to relieve any pain, suffering or symptoms she or he experiences from dying due to a lack of food and water. In some situations it has been used by terminally-ill people as an alternative to assisted dying.

It is lawful for a person with capacity to refuse to eat or drink even if it will result in their death. While the legal status of providing palliative medication during this process has not been considered directly by the Australian courts, it is likely that providing palliative care to address pain and other symptoms caused by VSED would be lawful.

VPS is discussed further on our [Legal protection for providing pain and symptom relief webpage](#).

Legality of assisted dying outside Australia

Is assisted dying legal outside Australia?

Yes. Assisted dying (generally physician-assisted suicide i.e. self-administration) is legal in a number of countries throughout the world. Different terminology is used in different countries:

- **New Zealand:** Both self-administration and practitioner administration of VAD are legal for people 18 or over who have a terminal illness that is likely to end their life within 6 months, and is causing unbearable suffering. For more information visit the [New Zealand Ministry of Health](#).
- the **United States:** Physician-assisted suicide is legal in these States only:
 - **Oregon, Washington, Vermont, California, Colorado, Hawaii, New Jersey, Maine, the District of Columbia, and New Mexico.** In these States, lethal medication can be prescribed by a doctor to a person over 18 who is suffering from a terminal illness and will die from that condition within six months.
 - **Montana:** The Montana Supreme Court confirmed in the case of *Baxter v Montana* that:
 - Neither Montana law or public policy prohibit physician-assisted suicide; and
 - Doctors who assist a person to die (i.e. by prescribing lethal medication) are protected from prosecution for homicide offences, so long as the person consented to the doctor aiding him or her to die.
- **Canada:** Medical Assistance in Dying (MAiD) is lawful if the eligibility criteria are met and safeguards are followed. Both physicians and nurse practitioners are able to provide MAiD. For more information about MAiD visit [End-of-Life Law & Policy in Canada](#).
 - In **Quebec** only physicians are able to provide MAiD. They can only administer MAiD to individuals who are at the 'end of life'.
- **Colombia:** A 1997 court decision in Colombia ruled doctors could not be prosecuted for providing VAD to terminally ill adults who consented. Government regulations were passed in 2015 to facilitate the practice of VAD. A 2017 court decision extended this right to children over the age of 6 (a psychiatric or psychological evaluation and parental consent is required for children aged 6-12). In July 2021, the Constitutional Court ruled that the right to VAD be extended to persons with incurable injury or illness who are not terminally ill.
- **The Netherlands:** Both self-administration and practitioner administration of VAD are legal where a person has lasting and unbearable suffering. The laws allow minors aged 12 and over to access VAD.
- **Belgium:** Both self-administration and practitioner administration of VAD are legal for people who suffer untreatable, constant and unbearable physical or mental suffering. The laws allow minors to access VAD.
- **Luxembourg:** Both self-administration and practitioner administration of VAD are legal for people who suffer a terminal or incurable illness. Assisted suicide is also legal.
- **Switzerland:** Practitioner administration of VAD and assisted suicide for selfish motives are illegal under Swiss criminal law. However, assisting a suicide for 'unselfish' motives is not a criminal offence, even if the person does not have a terminal illness. There is no legislation regulating the process.
- **Germany:** Euthanasia is illegal. Assisted suicide is lawful, following a decision of the German Constitutional Court in 2020. Draft legislation was introduced into the German parliament in 2021 but has not yet passed.

- **Spain:** Both practitioner administration and self-administered assisted dying are lawful. A person who is suffering intolerably from a "serious or incurable illness" or a "chronic or incapacitating" condition can request assistance to die.
- **Austria:** Self-administered assisted dying is lawful. This follows a decision of the Constitutional Court of Austria in December 2020, which declared that a criminal prohibition on assisting suicide is unconstitutional, because it allows for no exception in the case of assisted dying.

Is it legal to travel outside of Australia to seek assistance to die?

The legalisation of assisted dying in some countries has resulted in some people travelling overseas, in particular to Switzerland, to receive assistance to die. Whether or not it is lawful for Australians to accompany a person to travel overseas for this purpose has not yet been addressed in Australia.

In the United Kingdom case of *Local Authority v Z* [2004, High Court of Justice] the court considered whether a person suffering from cerebellar ataxia could travel from Britain to Switzerland to seek euthanasia. The local welfare authority sought an injunction to prevent the person from leaving Britain. The court found that the local authority had no duty to prevent the person travelling to Switzerland. The court also considered whether the person's husband, who had agreed to help her travel to Switzerland, was assisting a suicide and should be prosecuted. The court decided it was a matter for the Director of Public Prosecutions (DPP) whether to prosecute the husband.

Following this case, the [United Kingdom DPP created guidelines](#) about when they will or will not prosecute a person who accompanies another overseas to commit suicide. The guidelines state that a person commits an offence under the United Kingdom's Suicide Act 1961, punishable by up to 14 years imprisonment, if he or she encourages or assists the suicide or attempted suicide of another person. However, the consent of the DPP is required before a person can be prosecuted.

Although there are no similar guidelines in Australia, the United Kingdom's guidelines may possibly be considered if a similar legal situation arose in Australia.

Key cases

Police v O (2019)

The deceased and her husband, O, had been in a loving relationship for over 25 years. At the time of the deceased's death she was 68 years old, and O was 63 years old. They had both worked as nurses. In 2016 the deceased developed motor neurone disease, which leads to a loss of mobility, reduced respiratory function and ultimately death. In late 2018 the disease was advanced and the deceased had researched how to end her life. She attended an education evening run by an organisation which taught people suffering terminal illness how to end their life. In March 2019, O assisted her to commit suicide (by using an item that he had modified) while she was still able to physically take her own life. O was charged with aiding her suicide.

Though the evidence offered reasonable prospects of O's conviction, the ACT Director of Public Prosecutions (DPP) decided to withdraw the charge against O on the grounds it was not in the public interest to prosecute him. The reasons for this included:

- The deceased and O were in their sixties and had a long, loving and supportive relationship.
- At the time of her death the deceased had lost all independent functioning (including walking, self-care and toileting). Her death was imminent (e.g. within months).
- The deceased was of sound mind and had told a number of people over a period of time that she wished to end her life while she was still mobile and able to do so, to avoid a distressing death.
- There was no financial gain to O from aiding the deceased's suicide.
- O's assistance 'was minimal, motivated wholly by love and compassion, and designed to ensure that the deceased's death was quick and painless'.
- O encouraged the deceased to delay ending her life and tried to dissuade her again on the evening she died. It was also noted that the deceased's death caused him significant trauma.

The DPP considered the consequences of a conviction would 'be unduly harsh and oppressive in the circumstances', and exercised his discretion to withdraw the charge.

R v Dowdle [2018] NSWSC 240

Dowdle killed her 27-year-old son with a dose of sedatives combined with asphyxiation with a plastic bag. Her adult son had been severely injured in a car accident, and partially as a result of that accident had developed significant substance abuse problems. He was physically and verbally abusive to her, but Dowdle gave as the reason for killing him that she could not bear to see him continually in pain. Dowdle herself had been suffering a major depressive disorder at the time.

Dowdle was charged with murder but pleaded a defence of substantial impairment so that the charge was reduced to manslaughter. The judge took into account her extensive attempts to advocate for her son to receive appropriate treatment and facilities, albeit such facilities were not available. He sentenced her to three years' imprisonment with a non-parole period of two years. She was released immediately as she had already served the two years.

R v Klinkermann [2013] VSC 65

Mrs Klinkermann was diagnosed with severe dementia and Parkinson's disease in 2006. In 2012 her condition had deteriorated and she could not chew or swallow food or liquid easily. She was assessed as requiring full-time palliative care, but her husband would not agree to this. Mr Klinkermann adored his wife, had been totally devoted to her care (looking after her most of the time), and wanted to continue caring for her.

In August 2012 (at which time Mrs Klinkermann was 84 years old and Mr Klinkermann was aged 73) Mr Klinkermann gave her a sleeping tablet and took several himself. He attempted to kill both of them by way of carbon monoxide poisoning in their home. This was not successful, and both husband and wife were found unconscious by a visiting nurse.

Mr Klinkermann was charged with the attempted murder of his wife. He was sentenced to an 18-month community corrections order, with the conditions that he receive medical and mental health treatment, and rehabilitation.

R v Justins [2011] NSWSC 568

Justins was the long-term partner of Wylie. Jennings was their friend. Wylie suffered from Alzheimer's disease and six months prior to his death, he had attempted suicide by cutting his wrists. He stated he wanted to go to Switzerland to have assistance in committing suicide through an organization called Dignitas. However, Dignitas rejected Wylie's application on the grounds Wylie may not have the capacity to make the decision to end his own life. Wylie then attempted suicide again.

Jennings then travelled to Mexico to source the drug Nembutal (which is illegal in Australia) for the purpose of ending Wylie's life. Wylie was provided with the Nembutal, drank it voluntarily and died. Justins and Jennings then concocted alibis and denied any connection with Wylie's death. Prior to Wylie's death, and with Justins' assistance, Wylie had changed his will to provide Justins with a much greater benefit, to the exclusion of Wylie's daughters.

The jury found Justins and Jennings guilty of manslaughter. Justins received a sentence of 2.5 years imprisonment with a non-parole period of 22 months to be served by periodic detention. Justins' conviction was overturned on appeal and she pleaded guilty to the lesser offence of aiding and abetting suicide. She received no further punishment as, by that time, she had served 22 months in prison. Jennings committed suicide prior to being sentenced.

R v Cox (1992) 12 BMLR 38

Boyes, an elderly lady, was in agonising pain from rheumatoid arthritis. She had known Dr Cox for 13 years and he said she would not suffer. After many unsuccessful attempts to control her pain Boyes begged Dr Cox to kill her. Dr Cox administered a large dose of potassium chloride and Boyes died shortly after. Dr Cox was charged with attempted murder.

During the trial the jury was instructed on the doctrine of double effect: Dr Cox could only be convicted if his primary intention was to cause her death. Significantly in this case, the potassium chloride did not have any curative or pain-relieving properties and was estimated to be twice the lethal dose. Dr Cox was convicted of attempted murder as his intention was not to relieve Boyes' pain or symptoms through this medication.

R v Adams (Bodkin) (Unreported, Central Criminal Court, Devlin J, 9 April 1957)

Dr Adams was charged with the murder of an elderly female, Morrell. The Crown argued that the very large quantities of medication given to Morrell showed that Dr Adams must have intended to kill her. There was conflicting evidence about Morrell's level of pain, and whether the doses of medication given could have been medically appropriate. Dr Adams was acquitted by the jury.

Justice Devlin famously stated: 'if the first purpose of medicine – the restoration of health – could no longer be achieved, there was still much for the doctor to do, and he was entitled to do all that was proper and necessary to relieve pain and suffering even if the measures he took might incidentally shorten life by hours or perhaps even longer'.

Further resources**Publications**

- Katrine Del Villar, Ben White, Eliana Close et al, 'Voluntary Assisted Dying by Practitioner Administration Is Not Suicide: A Way Past the Commonwealth Criminal Code?' (2022) 29(1) *Journal of Law and Medicine* 29-141.
- Ben White, Lindy Willmott, Katrine Del Villar et al, 'Who is eligible for voluntary assisted dying? Nine medical conditions assessed against five legal frameworks' (2022) 45(1) *University of New South Wales Law Journal* 401-444.
- Marcus Sellars, Ben White, Patsy Yates et al, 'Medical practitioners' views and experiences of being involved in assisted dying in Victoria, Australia A qualitative interview study among participating doctors' (2022) *Social Science & Medicine* 292.
- Ben White, Eliana Close, Lindy Willmott et al, 'Comparative and critical analysis of key eligibility criteria for voluntary assisted dying under five legal frameworks' (2021) 44(4) *University of New South Wales Law Journal* 1663-1700.
- Lindy Willmott and Ben White, 'The Challenging Path to Voluntary Assisted Dying Law Reform in Australia: Victoria as a Successful Case Study' in White, Ben White & Lindy Willmott (eds), *International Perspectives on End-of-Life Law Reform: Politics, Persuasion and Persistence* (Cambridge, United Kingdom, 2021) 84-112.
- Moira O'Connor, Charlene Martin, Lindy Willmott, et al, 'Australian Health Professionals' Attitudes toward Voluntary Assisted Dying: A Cross-Sectional Survey' (2021) 10(11) *Social Sciences*.
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