

Guidance for practitioners - Discussions about voluntary assisted dying over carriage service

Summary

- A **carriage service** means any electronic form of communication, such as telephone, videoconference or email.
- With the increasing use of telehealth technology for medical consultations, practitioners may wish to use telehealth and other electronic forms of communication in the voluntary assisted dying process, where clinically appropriate.
- Some steps in the voluntary assisted dying process, including the administration decision, provision of instructions on how to administer, and prescribing the substance (see page 6 for more information), must be conducted in person and cannot occur via a carriage service because of Commonwealth restrictions on discussing suicide. Where the use of a carriage service is possible, care should still be taken.

Purpose of this resource

- This resource:
 - sets out Queensland Health’s understanding of the scope of the Commonwealth Criminal Code provisions relating to use of a carriage service to discuss suicide and the interaction with the *Voluntary Assisted Dying Act 2021* (the VAD Act)
 - provides guidance to practitioners and others involved in providing voluntary assisted dying services about what communication may and may not occur via a carriage service.
- This document is intended as a general guide only. Healthcare workers may choose to seek their own legal advice.

Legal context

- On 30 November 2022, the Federal Court determined that the lawful ending of a person’s life in accordance with Victoria’s *Voluntary Assisted Dying Act 2017* falls within the meaning of suicide for the purposes of the Criminal Code offences.

The Criminal Code offences

- Sections 474.29A and 474.29B of the Commonwealth *Criminal Code* contained in the *Criminal Code Act 1995* (Cth) (Criminal Code) provide that it is an offence to:
 - use a carriage service for suicide related material,
 - possess, control, produce, supply or obtain suicide related material for use through a carriage service.
- A **carriage service** includes any electronic form of communication, such as telephone, videoconference or email.
- **Suicide related material** is material that:

- counsels or incites suicide or attempted suicide, or
- promotes or provides instructions on a particular method of committing suicide.

- While Queensland’s VAD Act authorises or requires the provision of information in certain circumstances, the provision of that information cannot occur via a carriage service if it would infringe the Criminal Code offences. This is because Queensland’s VAD Act cannot override Commonwealth legislation.¹
- Giving assistance to a person in accordance with the provisions of Queensland’s VAD Act will not infringe the Criminal Code offences if a mode of communication other than a carriage service is used.
- A decision about whether to prosecute an offence is a matter for the Commonwealth authorities.

The voluntary assisted dying process

- Some steps in the voluntary assisted dying process cannot occur via a carriage service because it would be a potential breach of the Criminal Code. This includes steps taken with the person considering accessing VAD and steps involving practitioners, interpreters or other people who may be involved in the process.
- Practitioners should consider whether the use of electronic communication is clinically appropriate in each circumstance. For example, although conducting an assessment against the voluntary assisted dying eligibility criteria by videoconference is allowable, a medical practitioner should consider on a case-by-case basis whether it would be more clinically appropriate to conduct the assessment in person.

Limitations

Where the use of a carriage service is possible, care should still be taken to ensure the practitioner does not:

- **urge or advise** the person to participate in VAD,
- **encourage** the administration or self-administration of a VAD substance, or
- **provide instructions** about how a VAD substance is prepared, administered or self-administered.

¹ Section 109 of the *Commonwealth Constitution*

Step	Description	Conditions	Example statements
Steps that may occur via a carriage service			
<p>Providing general information about voluntary assisted dying</p>	<ul style="list-style-type: none"> At the person's request, a medical practitioner, nurse practitioner, registered nurse or other healthcare worker provides information on VAD process or refers the person to QVAD-Support. A medical practitioner or nurse practitioner initiates a discussion about VAD, if it is in the context of discussion about treatment options and other end-of-life care. 	<ul style="list-style-type: none"> This step may be conducted via carriage service providing the 'Limitations' on page 2 are complied with. 	<p>Example statement that may be used over carriage service, as part of a broader discussion about the person's diagnosis and prognosis, end-of-life options, and care and treatment, which should align with best practice end-of-life discussions:</p> <ul style="list-style-type: none"> <i>"This a terminal illness. Together, we need to consider choices that are open to you for your care at the end of your life. This includes measures to keep you as comfortable as possible, referral to palliative care, emotional support for you and your family, voluntary assisted dying, or more than one of these. I can provide you with more information."</i>
<p>First request</p>	<ul style="list-style-type: none"> The person makes a first request for access to voluntary assisted dying to a medical practitioner. If the medical practitioner accepts the first request, the practitioner becomes the coordinating practitioner and must, at the time of informing the person of the practitioner's decision, give the person the approved information. 	<ul style="list-style-type: none"> A medical practitioner may accept a first request via carriage service, providing the 'Limitations' on page 2 are complied with. The <i>First Request Accepted</i> information must be provided to the person if the practitioner accepts their first request. The approved information may be provided electronically, providing the 'Limitations' on page 2 are complied with. 	

Step	Description	Conditions	Example statements
First assessment	<p>Coordinating practitioner conducts first assessment to:</p> <ul style="list-style-type: none"> • assess a person against the eligibility criteria, • communicate the outcome of the assessment to the person and provide them with a copy of the assessment, • provide <i>Information for people who are assessed as eligible</i> if person assessed as eligible, including about the potential risks of administering a voluntary assisted dying substance and the possible method of administration. 	<ul style="list-style-type: none"> • This step may be conducted via carriage service, where clinically appropriate and the ‘Limitations’ on page 2 are complied with. • The information that must be provided to a person assessed as eligible includes information on the possible method of administration. This discussion: <ul style="list-style-type: none"> ○ Must be limited to informing the person about the possible method of administration (i.e., self-administration or practitioner administration) and may include a general description about how the substance may be administered/self-administered; and ○ must not include specific instructions about how to prepare or take the substance. If the person wishes to discuss administration in more detail, this should be done face-to-face. 	<p>Example statements that may be used over carriage service to address the possible method of administration:</p> <ul style="list-style-type: none"> • <i>“There are two options for the administration of a substance for voluntary assisted dying – self-administration and practitioner administration. If you are found eligible, we can make an appointment for another day to discuss your administration decision.”</i> • <i>“Most people choose to take the substance themselves, by swallowing it. If a person cannot swallow or cannot otherwise physically take the substance themselves, they can ask their practitioner to administer the substance.”</i>
Second request	<ul style="list-style-type: none"> • The person makes a second request to access voluntary assisted dying, which must be in writing and witnessed. • The person provides the completed request to their coordinating practitioner. • Coordinating practitioner must provide a copy of the <i>Second Request Form</i> to the Review Board. 	<ul style="list-style-type: none"> • The person must sign the second request in the presence of two eligible witnesses. This must be done in person. • A coordinating practitioner may accept the second request via a carriage service, providing the ‘Limitations’ on page 2 are complied with. • For example, the person could email the coordinating practitioner a scanned copy of the second request form. 	
Consulting assessment	<p>Consulting practitioner conducts a consulting assessment to:</p>	<ul style="list-style-type: none"> • This step may be conducted via carriage service, where clinically appropriate and the ‘Limitations’ on page 2 are complied with. 	<p>For example, the practitioner could address the possible</p>

Step	Description	Conditions	Example statements
	<ul style="list-style-type: none"> • assess a person against the eligibility criteria, • communicate the outcome of the assessment to the person and provide them with a copy of the assessment, • provide <i>Information for people who are assessed as eligible</i> if person assessed as eligible, including about the potential risks of administering a voluntary assisted dying substance and the possible method of administration. 	<ul style="list-style-type: none"> • The information that must be provided to a person assessed as eligible will include information on the possible method of administration. This information: <ul style="list-style-type: none"> ○ must be limited to informing the person about the possible method of administration (i.e., self-administration or practitioner administration) and may include a general description about how the substance may be administered/self-administered; and ○ must not include specific instructions about how to prepare or take the substance. If the person wishes to discuss administration in more detail, this should be done face-to-face. 	<p>method of administration over a carriage service by stating:</p> <ul style="list-style-type: none"> • <i>“Most people who decide to proceed with voluntary assisted dying will use the default option of self-administration. Self-administration allows you to take a voluntary assisted dying substance orally by yourself. The other option is practitioner administration, where the practitioner administers the substance. This is most commonly through IV (intravenous) administration. The administration options will be discussed further when you make an administration decision.”</i>
Final request	<ul style="list-style-type: none"> • The person makes a final request for access to voluntary assisted dying to the coordinating practitioner. 	<ul style="list-style-type: none"> • Coordinating practitioner may accept the final request via carriage service, providing the ‘Limitations’ on page 2 are complied with. 	
Final review	<ul style="list-style-type: none"> • Coordinating practitioner undertakes a final review, including reviewing relevant forms and confirming the person has decision-making capacity and is acting voluntary and without coercion. 	<ul style="list-style-type: none"> • This step may not require any communication with the person. • If communication is required, for example to confirm the person retains capacity, this may occur via carriage service, providing the ‘Limitations’ on page 2 are complied with. 	

Step	Description	Conditions	Example statements
Transfer of coordinating practitioner's role	<ul style="list-style-type: none"> Coordinating practitioner may transfer their role to the person's consulting practitioner in certain circumstances. If the consulting practitioner refuses the transfer of the role, the original practitioner may refer the person to another medical practitioner for a further consulting assessment. 	<ul style="list-style-type: none"> The transfer is likely to involve discussion between the original coordinating practitioner and consulting practitioner or another medical practitioner. These discussions may occur via carriage service providing the practitioners observe the 'Limitations' on page 2, including not discussing specific instructions about how the substance is to be administered. 	
Contact person appointment	<ul style="list-style-type: none"> The person must appoint a contact person. The person and contact person must sign the <i>contact person appointment form</i>. The person or contact person must give the <i>contact person appointment form</i> to the coordinating practitioner. 	<ul style="list-style-type: none"> A coordinating practitioner may accept the contact person appointment form via carriage service, providing the 'Limitations' on page 2 are complied with. For example, the person could email the coordinating practitioner a scanned copy of the form. If the contact person is appointed at the same time as the administration decision is discussed, this must occur face to face. 	
Revocation of administration decision	<ul style="list-style-type: none"> The person may revoke their administration decision at any time by informing the coordinating practitioner or administering practitioner that the person has decided not to proceed with administration of the substance. The person may revoke their decision in writing, verbally or by gestures or other means of communication available to the person. The revocation of an administration decision does not prevent the person from making a further administration decision. 	<ul style="list-style-type: none"> The circumstances for revoking an administration decision will differ depending on the person. For example, a person may no longer be able to self-administer and need to revoke their self-administration decision to make a new practitioner administration decision. In this instance, where a person revokes their administration decision and makes a new administration decision concurrently, the revocation must be done in person, as making the new administration decision will involve a detailed discussion about the administration options, the method of administration, instructions on how the substance is administered and the person's ability and concerns about administration. Any new administration decision must occur in person in accordance with the conditions outlined in the 'Administration decision' section below. 	

Step	Description	Conditions	Example statements
		<ul style="list-style-type: none"> If the person is revoking their administration decision because they do not wish to proceed with the voluntary assisted dying process, this may occur over a carriage service providing the 'Limitations' on page 2 are complied with. 	
Transfer of administering practitioner's role	<ul style="list-style-type: none"> Administering practitioner may transfer their role to a new administering practitioner in certain circumstances. If the practitioner refuses the transfer of the role, the original administering practitioner may refer the person to another administering practitioner. 	<ul style="list-style-type: none"> The transfer is likely to involve discussion between the original administering practitioner and the new administering practitioner. These discussions may occur via carriage service providing the practitioners observe the 'Limitations' on page 2. However, if detailed discussion is required between the practitioners about the person's administration decision and clinical needs, for example discussion of how the substance is to be administered, this must occur face-to-face. 	
Steps that <u>must</u> occur face-to-face			
Administration decision	<ul style="list-style-type: none"> The person makes an administration decision in consultation with and on the advice of the coordinating practitioner. 	<ul style="list-style-type: none"> This step is likely to involve a detailed discussion about the person's administration options, the method of administration, instructions on how the substance is administered and the person's ability and concerns about administration. This discussion must occur face-to-face. 	
Providing written information before the substance is prescribed	<ul style="list-style-type: none"> Coordinating practitioner must provide information in writing to the person before prescribing a voluntary assisted dying substance for a self-administration or practitioner administration decision. 	<ul style="list-style-type: none"> For a person who has made a self-administration decision, the coordinating practitioner must provide written information, including on how to prepare and self-administer the substance. This written information, or any discussion about its contents, should not be provided or communicated via a carriage service. For a person who has made a practitioner administration decision, the coordinating practitioner must provide written information, including on the 	

Step	Description	Conditions	Example statements
		<p>method by which the substance will be administered. This may occur over a carriage service providing the 'Limitations' on page 2 are complied with.</p> <ul style="list-style-type: none"> • The Queensland Voluntary Assisted Dying Pharmacy Service (QVAD-Pharmacy) will be able to provide guidance on the prescribing and administration process, including providing the person with this written information. • Note: information provided by QVAD-Pharmacy pharmacists at the time of supply will also be face-to-face. 	
Prescribing	<ul style="list-style-type: none"> • Coordinating practitioner may prescribe a voluntary assisted dying substance for the person that is of sufficient dose to cause death. • The prescription must include details required by the Act and Regulation. The prescription must: <ul style="list-style-type: none"> ○ state the prescription is for a voluntary assisted dying substance; ○ include a statement certifying that the assessment process has been completed and if a self-administration or practitioner administration decision has been made; ○ details of the substance and maximum amount of the substance; ○ the person's name and telephone number; ○ any details prescribed by Regulation. ○ only provide for supply on one occasion; ○ be given directly to an authorised supplier at QVAD-Pharmacy. 	<ul style="list-style-type: none"> • Coordinating practitioner: <ul style="list-style-type: none"> ○ must provide the prescription directly to the QVAD-Pharmacy either in person, by post or courier. ○ must NOT provide the prescription electronically to the authorised supplier; and ○ must NOT provide the prescription to another person that may send the prescription electronically. • The Queensland Voluntary Assisted Dying Pharmacy Service (QVAD-Pharmacy) will be able to provide guidance on the prescribing and administration process. 	

Submitting approved forms to the Review Board

- The Act requires practitioners to submit approved forms to the Voluntary Assisted Dying Review Board (Review Board) throughout the process. This can be done through the Queensland Voluntary Assisted Dying Review Board Information Management System (QVAD Review Board IMS).
- Submitting approved forms via the QVAD Review Board IMS is permitted and does not constitute an offence against the Criminal Code provisions. The process for completing and submitting an approved form occurs after a step in the voluntary assisted dying process has been completed to document what has occurred. Submitting the approved forms is not affected by the carriage service requirements as it does not urge or advise participation in voluntary assisted dying, encourage administration or self-administration, or provide instructions for administration of the substance.
- For example, for practitioner administration of the substance the administering practitioner must complete and submit the *Practitioner Administration Form* through the QVAD Review Board IMS following administration of the substance to the person. This occurs after the administration process has been completed and therefore does not urge or advise participation in voluntary assisted dying, encourage administration or self-administration, or provide instructions for administration of the substance.

Guidance for other healthcare workers and interpreters

- The guidance and requirements outlined above extend to any other healthcare workers and interpreters who are involved in any of the steps outlined in this document. This includes other healthcare workers providing general information about voluntary assisted dying and the process, and interpreters providing interpretation services during consultations with the practitioner.
- If a practitioner or healthcare worker is required to conduct an activity face to face and an interpreter is required, the interpreter should also be in the same location.
- The conditions outlined above also apply to briefings between a practitioner and an interpreter about what they will say to the person during the meeting with the person. If conducted via carriage service, the pre-brief must be limited to practical and technical discussions and must not discuss any information that cannot be discussed with the person.

Support Available

- **Advice:** The Queensland Voluntary Assisted Dying Support Service (QVAD-Support) can assist with navigating the voluntary assisted dying process and providing general information. Email: QVADSupport@health.qld.gov.au or Phone: 1800 431 371. Monday to Friday: 8.30am-4pm. Phone available from 1 January 2023.
- **Travel Support:** QVAD-Access, managed by QVAD-Support, can provide travel assistance to enable consultations to be conducted face to face in some circumstances. Contact QVAD-Support for further information about QVAD-Access.
- **Pharmacy Service:** The Queensland Voluntary Assisted Dying Pharmacy Service (QVAD-Pharmacy) manages the supply and disposal of the voluntary assisted dying substance. QVAD-Pharmacy can support coordinating practitioners through the prescription process and assist with written instructions on how to prepare and self-administer the substance. QVAD-Pharmacy can be contacted on QVADPharmacy@health.qld.gov.au or Phone: 1800 431 371. Monday to Friday: 8.30am-4pm. Phone available from 1 January 2023.

Version control

Revision date	Version No.	Author	Description of change
08/12/2022	1.0	Voluntary Assisted Dying Unit	Initial version
20/12/2023	2.0	Voluntary Assisted Dying Unit	<p>Guidance reviewed to confirm continued relevance following the decision in <i>Carr v Attorney-General (Cth)</i> [2023] FCA 1500.</p> <p>Minor amendments to make the conditions and examples clearer for voluntary assisted dying information that may be communicated via a carriage service and instructions that must not be communicated via a carriage service.</p>