

A decorative background of watercolor leaves in various shades of green and blue, scattered across the page. A light blue rectangular box is overlaid on the center, containing the title text.

NSW Voluntary Assisted Dying Private Entity Guidance

NSW Ministry of Health
1 Reserve Road
St Leonards NSW 2065
Tel. (02) 9391 9000

www.health.nsw.gov.au

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Purpose

This guidance supports executives, managers and staff at private entities who are responsible for ensuring systems and processes are in place to comply with obligations under the [Voluntary Assisted Dying Act 2022](#) (the Act) to support a person's legal right to access voluntary assisted dying.

Acknowledgement Statement

With permission, this guidance is adapted from resources created by the Voluntary Assisted Dying Unit, Queensland Health. We acknowledge the contribution from Western Australia Department of Health and Victoria Health upon which the Queensland guidance was created.

Other resources

This guidance is designed to be read alongside other NSW Health voluntary assisted dying resources, including:

- [Voluntary Assisted Dying Act 2022](#)
- [NSW Voluntary Assisted Dying Clinical Practice Handbook](#)
- [NSW Health Voluntary Assisted Dying website](#)

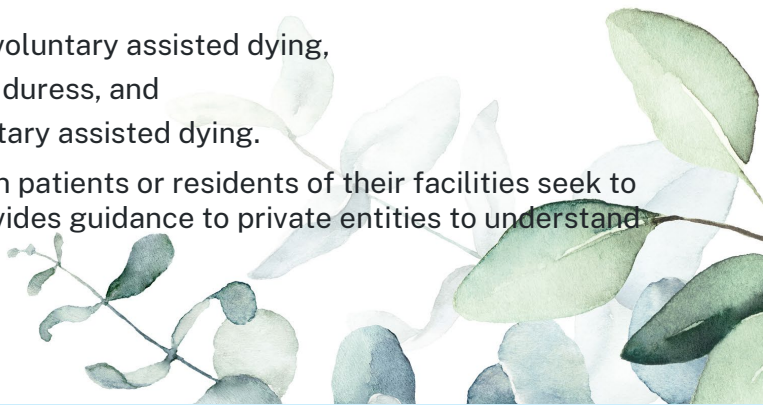
Background

The NSW Parliament passed the Act on 19 May 2022, allowing eligible people the choice to access voluntary assisted dying from 28 November 2023.

To be eligible to access voluntary assisted dying, a person must:

- be an adult, who is an Australian citizen or a permanent resident of Australia or who has been a resident in Australia for at least three continuous years,
- have been ordinarily resident in NSW for at least 12 months (residency exemptions may be considered on compassionate grounds for a person with a substantial connection to NSW),
- have at least one disease, illness or medical condition that:
 - a) is advanced and progressive, and
 - b) will, on the balance of probabilities, cause their death within six months (or within 12 months for neurodegenerative diseases like motor neurone disease), and
 - c) is causing the person suffering that cannot be relieved in a way the person considers tolerable,
- have decision-making capacity in relation to voluntary assisted dying,
- be acting voluntarily and without pressure or duress, and
- have an enduring request for access to voluntary assisted dying.

The Act sets out obligations for private entities when patients or residents of their facilities seek to access voluntary assisted dying. This document provides guidance to private entities to understand those obligations.



Voluntary assisted dying in the context of end of life care

Voluntary assisted dying is a choice available to an eligible person who is approaching the end of their life. This is in addition to other choices that people may make about their end of life care, including palliative care.

A fundamental part of the legislative framework is that voluntary assisted dying should complement a person's right to access high-quality end of life care. A person's decision to seek information about, or access to, voluntary assisted dying must not impact their access to high-quality palliative care as part of best practice patient-centred care.

Private entities

For the purposes of this guidance a **private entity** is:

- a **residential facility** within the meaning of the Voluntary Assisted Dying Act 2022:
 - a) a nursing home, hostel, or other facility at which accommodation, nursing or personal care is provided to persons on a residential basis who, because of infirmity, illness, disease, incapacity or disability, have a need for nursing or personal care. (It does not include a place where a person is receiving care in a private residence.)
 - b) a residential aged care facility.
- a **healthcare establishment**, being either a **licensed private health facility** within the meaning of the Private Health Facilities Act 2007 or an affiliated health organisation, within the meaning of the Health Services Act 1997.

NSW Health facilities and public residential facilities are not private entities. NSW Health entities should comply with relevant NSW Health guidelines, for example in the NSW Voluntary Assisted Dying Policy Directive.

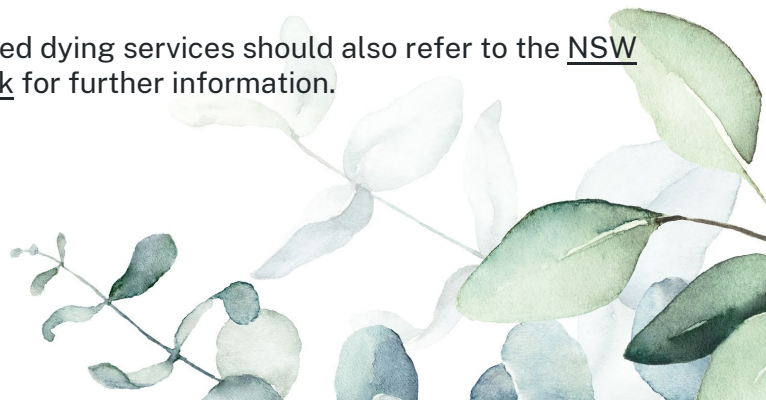
Private entity participation

Private entities may choose not to participate in the provision of voluntary assisted dying services; however, they must not hinder access to information about voluntary assisted dying.

This guidance should be used by private entities which do not offer voluntary assisted dying as there are specific obligations on those entities to not hinder a patient's access to voluntary assisted dying.

Additional obligations of private entities differ depending on the stage of the voluntary assisted dying process, as well as the setting and circumstances in which a person seeks access to voluntary assisted dying.

Private entities that choose to offer voluntary assisted dying services should also refer to the NSW Voluntary Assisted Dying Clinical Practice Handbook for further information.



Obligations of private entities in relation to voluntary assisted dying

The table below provides an overview of the minimum obligations of private entities which do not provide voluntary assisted dying services under the Act.

Table 1: Entity participation obligations

	Entity obligations		
	Residential facility		Healthcare establishment
	Permanent resident	Non-permanent resident	
Information about non-availability of voluntary assisted dying services	<ul style="list-style-type: none"> • Publish information stating that some or all voluntary assisted dying services are not provided at the facility. • The information must be published in a way that is likely to inform people who receive the entity's services, or who may receive the entity's services in the future, for example, in a printed brochure, on the entity's website, or displayed on signs at a facility. <p>Refer to section 98(2-3) and 107(2-3) of the Act</p>		
Request for information and access to information	<ul style="list-style-type: none"> • Not hinder access at the facility to information about voluntary assisted dying. • Allow reasonable access by a registered health practitioner, care navigator or other person. <p>Refer to section 90(2) of the Act</p>	<ul style="list-style-type: none"> • Not hinder access at the facility to information about voluntary assisted dying. • Allow reasonable access by a care navigator. <p>Refer to section 99(2) of the Act</p>	
Requests (first and final)	<ul style="list-style-type: none"> • Allow reasonable access by a medical practitioner who can receive the request. • If the practitioner is unable to attend, take reasonable steps to facilitate transfer of the person to and from a place the request can be made. <p>Refer to section 92(2-3) of the Act</p>		
		<ul style="list-style-type: none"> • Take reasonable steps to facilitate transfer of the person to and from a place the request can be made. <p>Refer to section 101(2) of the Act</p>	

<p>Assessments (first, consulting, referrals)</p>	<ul style="list-style-type: none"> • Allow reasonable access by the coordinating practitioner, consulting practitioner, or another registered health practitioner or person to whom a referral has been made. • If the practitioner is unable to attend, take reasonable steps to facilitate transfer of the person to and from a place where the assessment may be carried out. <p>Refer to section 93(2) and 94(2) of the Act</p>	<ul style="list-style-type: none"> • Take reasonable steps to facilitate transfer of the person to and from a place where the assessment may be carried out. • If the person’s coordinating or nominated medical practitioner determines that it is not reasonable for the person to be transferred, allow reasonable access by the coordinating practitioner, consulting practitioner, or another registered health practitioner or person to whom a referral has been made.* <p>Refer to section 93(3) and 94(3) of the Act</p>	<ul style="list-style-type: none"> • Take reasonable steps to facilitate transfer of the person to and from a place where the assessment may be carried out.* <p>Refer to section 102(2) and 103(2) of the Act</p>
<p>Written declaration</p>	<ul style="list-style-type: none"> • Allow reasonable access by the coordinating practitioner, two witnesses and any other person lawfully participating in the person’s request for access to voluntary assisted dying. • If the practitioner is unable to attend, take reasonable steps to facilitate transfer of the person to and from a place the written declaration can be made. <p>Refer to section 95(2) of the Act</p>	<ul style="list-style-type: none"> • Take reasonable steps to facilitate transfer of the person to and from a place the written declaration can be made. • If the person’s coordinating or nominated medical practitioner determines that it is not reasonable for the person to be transferred, allow reasonable access by the coordinating practitioner, two witnesses and any other person lawfully participating in the person’s request for access to voluntary assisted dying.* <p>Refer to section 95(3) of the Act</p>	<ul style="list-style-type: none"> • Take reasonable steps to facilitate transfer of the person to and from a place the written declaration can be made.* <p>Refer to section 104(2) of the Act</p>

Administration decision	<ul style="list-style-type: none"> • Allow reasonable access by the coordinating practitioner. • If the practitioner is unable to attend, take reasonable steps to facilitate transfer of the person to and from a place the administration decision can be made. Refer to section 96(2) of the Act 	<ul style="list-style-type: none"> • Take reasonable steps to facilitate transfer of the person to and from a place the administration decision can be made. • If the person’s coordinating or nominated medical practitioner determines that it is not reasonable for the person to be transferred, allow reasonable access by the coordinating practitioner.* Refer to section 96(3) of the Act 	<ul style="list-style-type: none"> • Take reasonable steps to facilitate transfer of the person to and from a place the administration decision can be made.* Refer to section 105(2) of the Act
Self-administration of voluntary assisted dying substance	<ul style="list-style-type: none"> • Allow reasonable access by a person lawfully delivering a voluntary assisted dying substance and any other person lawfully participating in the process. • Not hinder access by the person to the voluntary assisted dying substance. Refer to section 97(2)(b) of the Act 	<ul style="list-style-type: none"> • Take reasonable steps to facilitate transfer of the person to a place the person can self-administer the voluntary assisted dying substance. • If the person’s coordinating or nominated medical practitioner determines that it is not reasonable for the person to be transferred, allow reasonable access by a person lawfully delivering a voluntary assisted dying substance or participating in the process and not hinder access by the person to the substance.* Refer to section 97(3) of the Act 	<ul style="list-style-type: none"> • Take reasonable steps to facilitate transfer of the person to a place the person can self-administer the voluntary assisted dying substance.* Refer to section 106(2) of the Act
Practitioner-administration of voluntary assisted dying substance	<ul style="list-style-type: none"> • Allow reasonable access by the administering practitioner and any other person lawfully participating in the process, for example an eligible witness. 	<ul style="list-style-type: none"> • Take reasonable steps to facilitate transfer of the person to a place the person can be administered the voluntary assisted dying substance. 	<ul style="list-style-type: none"> • Take reasonable steps to facilitate transfer of the person to a place the person can be administered the

	Refer to section 97(2)(a) of the Act	<ul style="list-style-type: none"> • If the person’s coordinating or nominated medical practitioner determines that it is not reasonable for the person to be transferred, allow reasonable access by the administering practitioner or any other person lawfully participating in the process, including an eligible witness.* Refer to section 97(3) of the Act 	<p>voluntary assisted dying substance.* Refer to section 106(2) of the Act</p>
<p>* When making decisions about transferring a patient to access voluntary assisted dying services, the practitioner/entity must have regard to the matters outlined in section <u>Determining whether transfer is reasonable</u>. Refer to section 93(4), 94(4), 95(4), 96(4), 97(4), 102(3), 103(3), 104(3), 105(3), 106(3) of the Act</p>			

Policies and procedures relating to voluntary assisted dying

Private entities, including entities that choose not to participate in voluntary assisted dying, should consider putting in place organisational policies and procedures that reflect their obligations in relation to voluntary assisted dying. The principles underpinning the Act (**Appendix 1**) may support this process.

Policies and procedures may include:

- documenting pathways and connections with authorised voluntary assisted dying practitioners and local health districts
- processes for responding to requests for information about and access to voluntary assisted dying within their facilities, including where a registered health practitioner exercises their right to conscientious objection
- management of the voluntary assisted dying substance within their facilities in accordance with the Poisons and Therapeutic Goods Amendment (Voluntary Assisted Dying Substances) Regulation 2023
- processes for facilitating a person's transfer
- access to the facility by the care navigator service or an external practitioner as required.

Considerations when transferring patients or residents

Determining whether transfer is reasonable

Private entities may be required to take reasonable steps to facilitate transfer of a person to and from a place where voluntary assisted dying services can be provided.

Transferring someone away from a facility to access voluntary assisted dying may impact the person physically, emotionally, and financially. For example, a person may be so unwell that the transfer process would be traumatic or painful, or the medications required for transfer, including analgesia, could affect the person's decision-making capacity and make them ineligible for voluntary assisted dying.

All decisions to transfer a person must be based on an appropriate clinical risk assessment:

- in a residential facility – by the person's coordinating practitioner, or another medical practitioner nominated by the person if the coordinating practitioner is not available
- in a private health facility – by the person's treating clinician on behalf of the entity that owns or operates the private health facility. This should be done in consultation with the person's coordinating, consulting or administering practitioner.



When making decisions about transferring a patient to access voluntary assisted dying services, the practitioner/entity must have regard to the following matters:

- whether the transfer would be likely to cause serious harm to the person
- whether the transfer would be likely to adversely affect the person's access to voluntary assisted dying
- whether the transfer would cause undue delay and prolonged suffering in accessing voluntary assisted dying
- whether the place to which the person is proposed to be transferred is available to receive the person
- whether the person would incur financial costs due to the transfer.

Clinical teams should apply their usual frameworks in assessing relevant clinical considerations in the context of transfer with reference to the voluntary assisted dying process and make decisions accordingly. This may include, for example:

- the person's physical condition including their age, frailty, function and mobility, severity and complexity of their condition, pain and discomfort, effects of medication, delirium risk
- the person's physical, psychological, and emotional suffering and whether this will be worsened by the transfer process
- the person's wishes and preferences
- whether the place to which the person is proposed to be transferred will be able to meet the person's health, cultural, and linguistic needs
- timeliness of transfer – logistical delays hindering transfer may unnecessarily prolong a person's suffering or prevent access to voluntary assisted dying if it contributes to loss of decision-making capacity.

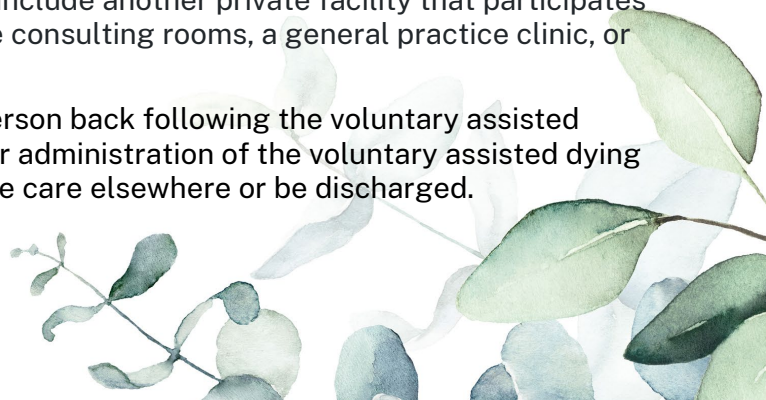
It is good clinical practice for the practitioner or the entity to consult with the person's treating team and other relevant practitioners involved in the person's care (for example, general practitioner, palliative care, physiotherapy) to discuss how the transfer may affect the person. With the person's consent, the practitioner or the entity may also wish to include the person's family or carer in this process if appropriate.

Transfer arrangements

If transfer is deemed reasonable, usual organisational policies and procedures relating to patient/resident transfer and clinical handover should be followed. It should be made clear to the accepting facility that the purpose of the transfer is for provision of voluntary assisted dying services. Appropriate escorts should be arranged by the transferring facility as clinically indicated.

There are a variety of settings in which steps in the voluntary assisted dying process could be undertaken if clinically appropriate. Settings might include another private facility that participates in voluntary assisted dying, a public hospital, private consulting rooms, a general practice clinic, or the person or a family member's private residence.

The transferring facility is required to receive the person back following the voluntary assisted dying consultation. Exceptions exist for transfers for administration of the voluntary assisted dying substance or where the person has chosen to receive care elsewhere or be discharged.



External practitioners entering private facilities

In some circumstances (refer to [Table 1: Entity participation obligations](#)) external practitioners who are not employed by or do not normally provide contracted services to a facility may enter a facility for the purpose of providing voluntary assisted dying services. This may include:

- authorised voluntary assisted dying practitioners (which includes medical practitioners who are acting as a coordinating, consulting, or administering practitioner and nurse practitioners who are acting as administering practitioners)
- pharmacists from the NSW Voluntary Assisted Dying Pharmacy Service
- care navigators supporting care from the NSW Voluntary Assisted Dying Care Navigator Service
- other persons lawfully participating in the process, such as witnesses and interpreters
- other support persons, such as other practitioners involved in the person's care.

Residential facilities should maintain a procedure outlining local processes for entry of external practitioners for the purpose of providing voluntary assisted dying services.

Authorised practitioners will have documentation issued by the NSW Ministry of Health confirming that the Ministry has verified they meet the registration requirements in the Act and they have successfully completed the approved voluntary assisted dying training and have access to the NSW Voluntary Assisted Dying Portal. Private entities may request authorised practitioners to show evidence of this documentation (eg their 'outcome' letter) or contact the NSW Voluntary Assisted Dying Care Navigator Service if further information is required. Detailed information about the practitioner authorisation process is available in the NSW Voluntary Assisted Dying Practitioner Authorisation Guidance (*to be published*).

Importantly, private entities must not hinder access at the facility to information about voluntary assisted dying, and must allow reasonable access to authorised practitioners or other persons in accordance with [Table 1: Entity participation obligations](#).

Documentation

When practitioners provide voluntary assisted dying services in a facility, clinical documentation in the facility medical record is required by the Act, and may help to support continuity of care and communication with other health practitioners.

External practitioners may seek the support of the person's treating team within the facility to enter documentation into the facility medical record. Alternatively, the external practitioner may provide the facility with a clinical progress note documenting their visit for upload into the facility medical record.

NSW Voluntary Assisted Dying Support Services

Northern Sydney Local Health District hosts the NSW Voluntary Assisted Dying Support Services that support voluntary assisted dying activity across NSW and respond to enquiries about voluntary assisted dying from the wider community. The Support Services comprise three inter-linked operational services:

- NSW Voluntary Assisted Dying Care Navigator Service
- NSW Voluntary Assisted Dying Access Service, providing outreach medical support
- NSW Voluntary Assisted Dying Pharmacy Service

NSW Voluntary Assisted Dying Care Navigator Service

The NSW Voluntary Assisted Dying Care Navigator Service provides a service to assist people considering voluntary assisted dying, their family, friends and carers.

This service can also support health practitioners and health service providers to navigate the voluntary assisted dying pathway.

The Care Navigator Service:

- provides information and support to patients and other community members with questions about or wishing to seek access to voluntary assisted dying
- supports queries from practitioners and coordinate ongoing training and support for coordinating, consulting and administering practitioners
- may advise patients how to raise voluntary assisted dying with their clinical care team and, in some circumstances, connect them with coordinating, consulting, and administering practitioners.

You can contact the NSW Voluntary Assisted Dying Care Navigator Service Monday to Friday (excluding public holidays) between 8:30am – 4:30pm.

Phone: 1300 802 133

Email: NSLHD-VADCareNavigator@health.nsw.gov.au

NSW Voluntary Assisted Dying Access Service

The NSW Voluntary Assisted Dying Access Service employs a pool of authorised practitioners that provides medical outreach support and will be available to support equity of access across NSW, particularly in regional and rural locations.

The Access Service is in addition to eligible practitioners who can apply to become authorised practitioners as part of their role within the public system or in the community.

NSW Voluntary Assisted Dying Pharmacy Service

The NSW Voluntary Assisted Dying Pharmacy Service is responsible for coordinating the safe procurement, supply and disposal of the voluntary assisted dying substance across NSW.

