

# Voluntary Assisted Dying

Witnessing a written declaration – information for Justices of the Peace

## Voluntary Assisted Dying in South Australia

Following the passing of the Voluntary Assisted Dying Act 2021 (the Act) the Voluntary Assisted Dying (VAD) Pathway was made available to eligible South Australians from 31 January 2023.

Voluntary assisted dying enables eligible people to voluntarily access and self-administer, or in some circumstances have a medical practitioner administer, a medication that will cause their death, in accordance with the steps and process set out in the *Voluntary Assisted Dying Act 2021*. The Act includes 70 safeguards making it one of the safest voluntary assisted dying pathways in the world.

Accessing voluntary assisted dying requires considerable planning and preparation and consists of 11 steps that can be further understood by visiting [www.sahealth.sa.gov.au/vad](http://www.sahealth.sa.gov.au/vad)

Step 4 of the pathway is where a person accessing voluntary assisted dying must make a written declaration requesting access to voluntary assisted dying in the presence of their coordinating medical practitioner and two eligible witnesses. Section 53 of the *Voluntary Assisted Dying Act 2021* outlines a range of criteria required to be met to ensure witnesses are eligible to take on the role without risk of coercion or influence.

## Who can be a witness?

Witnessing a written declaration does not require a person to have prior knowledge of the person accessing voluntary assisted dying or specialist



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knowledge but is based on their observation of the person making the declaration at the time of signing. A person is not eligible to witness a written declaration if the person:

- is aged 17 years or younger.
- knows or reasonably believes they may be a beneficiary under the will of the person making the declaration.
- knows or reasonably believes they may otherwise benefit from the death of the person making the declaration.
- is an owner of or is responsible for the day-to-day operation of a health facility where the person making the declaration lives or is being treated.
- is directly involved in providing health services or professional care to the person making the declaration.

## What is being witnessed?

In signing the written declaration, witnesses are independently certifying that:

- the person making the declaration, or another person acting on their behalf, signed this declaration in their presence and the presence of another witness, the person and the coordinating medical practitioner.
- the person appeared to freely and voluntarily sign the declaration or direct another person to sign it on their behalf.
- the person appeared to have decision-making capacity in relation to voluntary assisted dying.
- the person appeared to understand the nature and effect of making the declaration.

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- to the best of their knowledge, they are eligible to be a witness.

If the witness has any doubt about whether the above criteria have been met, they must not sign the written declaration.

While the process is well-defined, challenges may arise for those unable to identify suitable witnesses. This could be due to a lack of willing friends, family, or associates, or a preference for privacy in the application for VAD. In such instances, individuals can turn to independent eligible witnesses. Whilst this does not need to be a JP, JPs can witness a written declaration.

For Justices of the Peace performing the role of witness, it is expected that patient confidentiality will be maintained in accordance with the code of conduct for Justices of the Peace and Special Justices.

## Volunteer Witness Register

SA Health has now established a witness register to train and support volunteers who are able to undertake this role. If you would like to receive up to date information about VAD including becoming a participant in the next witness training program, please email [Health.voluntaryassisteddying@sa.gov.au](mailto:Health.voluntaryassisteddying@sa.gov.au).

## Voluntary Assisted Dying Review Board Annual Report

The first Voluntary Assisted Dying Review Board Annual Report was released on 16 November 2023. For more information about voluntary assisted dying in South Australia and to view the annual report visit [www.sahealth.sa.gov.au/vad](http://www.sahealth.sa.gov.au/vad)

