

# Voluntary Assisted Dying Commission

## Terms of Reference

### Background

The Voluntary Assisted Dying Commission (the Commission) is established by section 110(1) of the *End-of-Life Choices (Voluntary Assisted Dying) Act 2021* (the Act).

### Purpose

The Commission is an independent oversight and decision-making body with responsibility for performing the functions and exercising the powers conferred upon it by the Act, and other Acts.

### Role and Function

The Commission's functions are set out in section 114 of the Act. They are to:

- monitor the operation of the Act, and
- provide an appropriate level of assistance to persons who wish to access voluntary assisted dying but who are prevented from, or hampered in, accessing the process because of their personal circumstances, which may include their access to medical practitioners who are willing and able to assist them in achieving such access, and
- establish and maintain a list of:
  - medical practitioners and registered nurses who have completed approved voluntary assisted dying training, and
  - medical practitioners who are willing to be primary medical practitioners, consulting medical practitioners, or administering health practitioners, and
  - registered nurses who are willing to be administering health practitioners, and
  - pharmacists who are willing to dispense VAD substances, and
- collect statistical information in relation to the operation of the Act, and
- distribute information relating to –
  - the functions of the Commission, and
  - the operation of the Act, and
- any other functions that may be prescribed<sup>1</sup>.

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<sup>1</sup> No other functions are prescribed.

The Commission also has specific functions under other sections of the Act, including:

- investigating suspected contraventions of the Act, pursuant to sections 121 and 123 of the Act, and
- reviewing certain relevant decisions on the application of an eligible applicant, which may involve conducting a hearing or obtaining evidence, or both, pursuant to sections 94 – 105 of the Act, and
- determining:
  - that a person is exempted from the requirement for the person to have a condition that is expected to cause the death of the person within six months, or within 12 months, if the disease is neurodegenerative, pursuant to section 6 of the Act, and
  - that a person's consulting medical practitioner is to become the person's primary medical practitioner, pursuant to section 59 of the Act, and
  - that a person has a special interest in the medical treatment and care of a person who is the subject of a relevant decision (being a decision that the person meets, or does not meet, the residency requirements; or has, or does not have, decision-making capacity; or is, or is not, acting voluntarily) such that the person may apply to the Commission for a review of that decision, in accordance with the guidelines issued under section 118 of the Act, pursuant to section 95 of the Act, and
  - an application from a medical practitioner who has ceased to be a person's primary medical practitioner because the voluntary assisted process in relation to the person has ceased following a determination by the Commission that the person did not meet the residency requirements, does not have decision-making capacity or is not acting voluntarily, to accept another first request from the person, pursuant to section 107 of the Act, and
  - one or more substances to be VAD substances, pursuant to section 116 of the Act, and
- appointing a medical practitioner, or a registered nurse, to be the administering health practitioner in relation to a person, in circumstances where the person's primary medical practitioner has told the person that they do not wish to be the person's administering health practitioner, pursuant to section 62 of the Act, and
- approving:
  - the commencement, by a person who the Commission has determined is not acting voluntarily, of the voluntary assisted dying process again by making a new first request, pursuant to section 103 of the Act, and
  - a course of voluntary assisted dying for the Act, pursuant to section 117 of the Act, and
  - forms, and the form of notifications required to be made under the Act, pursuant to, and for the purposes of, sections 5, 8, 16, 20, 23, 24, 29, 30, 36, 50, 53, 58, 67, 82 – 85 and section 95 of the Act, and
- issuing, amending, and revoking a VAD substance authorisation in relation to a person, pursuant to sections 67 and 69 of the Act, and

- authorising the disclosure of information of a confidential or personal nature about a person, pursuant to section 113 of the Act<sup>2</sup>, and
- preparing and issuing guidelines for the purposes of determining whether a person has a special interest in the medical treatment and care of a person who is the subject of a relevant decision, such that the person may apply to the Commission for a review of that decision, and amending and revoking any such guidelines, pursuant to section 118 of the Act, and
- being satisfied that there are reasonable grounds why the requirements of section 15(4)(c) of the Act, which restricts when a person may make relevant communications on behalf of another person, ought not to apply, pursuant to section 15(5) of the Act, and
- advising a person's primary medical practitioner as to whether a person meets the residency requirements set out in section 11 of the Act, pursuant to section 11(3) of the Act, and
- providing a person with the name and contact details of a medical practitioner or registered nurse, pursuant to section 114 of the Act, and
- giving the Minister records or information, that are, or that is, in the Commission's possession, pursuant to section 119 of the Act, and
- keeping records of notices, requests or other documents provided to the Commission, including records that the Minister requires to be kept, pursuant to section 119 of the Act, and
- producing an initial report on the Act's operation, pursuant to section 144 of the Act, and
- producing an annual report, pursuant to section 120 of the Act.

Under section 114 of the Act, the Commission has the power to do all things necessary or convenient to be done in connection with, or incidental to or related to, the performance or exercise of the Commission's functions or powers under the Act.

Under that section, the Commission may also –

- for the purpose of monitoring compliance with the Act, review the performance and exercise by persons of functions and powers under the Act in relation to a death that has occurred as a result of the administration of a VAD substance under, or purportedly under, the Act, and
- investigate, report, and make recommendations to the Minister on any matter that the Commission thinks fit relating to the operation or administration of the Act, and
- communicate to appropriate persons or authorities any concerns that the Commission has about compliance or non-compliance with the Act.

Specifically, the Commission may investigate a suspected contravention of the Act on receipt of a notification from a person who suspects that a contravention is occurring or has occurred, or on its own motion. The Commission may also, or alternatively, refer the matter to which the suspected contravention relates to such persons as the Commission thinks fit.

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<sup>2</sup> Section 113 refers to "the Commissioner" authorising the disclosure of information of a confidential or personal nature. The Act does not define "the Commissioner".

For the purposes of investigating whether the Act is being complied with, pursuant to section 122 of the Act, the Commission may issue a notice requiring a person to attend before the Commission to answer questions or to produce any documents that are referred to in the notice. Further, the Commission may, by notice to a person, require the person to give the Commission any document or information (as specified) that is relevant to the performance or exercise of the Commission under the Act.

### **What the Commission does not do**

The Commission's functions do not extend to:

- deciding first, second or final requests from people to access voluntary assisted dying, or
- administering voluntary assisted dying substances, or
- issuing access standards, or
- appointing officers to assist the Commission in the performance of its functions, or
- causing a copy of the Commission's annual report to be tabled in Tasmanian Parliament, or
- reviewing the operation and scope of the Act, or
- drafting amendments to the Act or regulations, or
- providing medical or legal opinion or advice.

### **Delegation**

Pursuant to section 115 of the Act, the Commission may delegate any of its functions or powers under the Act, other than the power of delegation.

## **Membership**

The Commission consists of:

- a person who is to be the chairperson of the Commission and the Executive Commissioner, and
- a person who is to be the Deputy Executive Commissioner, and
- at least three other members as may be necessary for the proper functioning of the Commission.

The members of the Commission are to be appointed jointly by the Minister for Health, and the Attorney-General.

The Commission's membership is as follows:

Chairperson:	Louise Mollross, Executive Commissioner
Membership:	Dr Annette Barratt, Deputy Executive Commissioner
	Kim Barker
	Dr David Boadle
	Elizabeth McDonald
	Professor Margaret Otlowski

Members of the Commission are entitled to be paid the remuneration, and the traveling and other allowances, that are fixed from time to time by the Governor.

Some Commission members are appointed for five years while others are appointed for three. In each case, appointments commenced on 1 May 2022, with the remuneration and on the terms and conditions set out in each member's Instrument of Appointment.

The Commission is administered by the Department of Health and is supported in the performance of its functions by Department of Health employees employed for the purpose.

## **Member Roles**

Members of the Commission are responsible for:

- ensuring that they understand their functions, duties, and powers under the Act, and for acting in good faith and without negligence when exercising those functions, duties, and powers, and
- actively participating as a member of the Commission, and
- attending and actively contributing to scheduled Commission meetings, and
- considering matters out of session when necessary.

## **Deputy Executive Commissioner**

The Deputy Executive Commissioner is to act as the Executive Commissioner during any period when the Executive Commissioner is absent from duty or from the State.

## **Independence**

Except as otherwise provided for under the Act, a member of the Commission is not subject to the control and direction of the Minister for Health in the performance or exercise of a function or power of the Commission under the Act.

A person may hold the office of Commission member in conjunction with State Service employment. However, the *State Service Act 2000* does not apply to a Commission member in his or her capacity as a member.

## **Conflict of Interest**

A member of the Commission must not perform or exercise a power or function under the Act in relation to a person if the member is:

- a member of the person's family, or
- has a financial or other interest that may be affected, directly or indirectly, by the performance or exercise of the function or power.

A person is a member of the person's family if they are:

- the person's father, mother, grandfather, grandmother, brother, sister, niece, nephew, child, grandchild, husband, or wife, or
- in a significant relationship, family relationship, or caring relationship, within the meaning of the *Relationships Act 2003*, with the person.

A member of the Commission who identifies a conflict of interest in relation to a matter that is being investigated by the Commission, or that is the subject of a review, must, as soon as practicable after the member identifies the conflict, disclose the conflict and the nature of the conflict to the Executive Commissioner and to the Manager – Voluntary Assisted Dying Commission.

If the member who identifies the conflict is the Executive Commissioner, disclosure is to be to the Deputy Executive Commissioner and to the Manager – Voluntary Assisted Dying Commission.

If the member who identifies the conflict is the Executive Commissioner and the Deputy Executive Commissioner is unavailable, disclosure is to be to the Manager – Voluntary Assisted Dying Commission.

Commission members must also adhere to any VAD Commission Conflict of Interest Policy, as determined by the Department of Health, that is in place from time to time.

### **Confidentiality**

It is an offence for a member of the Commission, who obtains information of a confidential or personal nature about a person, to disclose that information except if:

- the disclosure is authorised or required by law or any court, or
- the disclosure is made for or in connection with the reporting or lawful investigation of a crime or unlawful act (whether actual or prospective), or
- the Commissioner authorises the disclosure<sup>3</sup>, or
- the person making the disclosure reasonably believes it to be necessary in connection with the administration of the Act, or
- the prescribed circumstances exist in relation to the disclosure<sup>4</sup>.

Commission members must also comply with Clause 4 of Schedule 3 of their Instruments of Appointment, concerning Intellectual Property.

### **Meeting**

Meetings of the Commission may be convened by the Executive Commissioner or by any two members of the Commission.

### **Meeting Protocols**

The Executive Commissioner is to preside at all meetings of the Commission, however, if the Executive Commissioner is not present at a meeting of the Commission, a member of the Commission elected by the members present is to preside at that meeting.

### **Quorum**

Three members of the Commission form a quorum at any duly convened meeting of the Commission.

### **Voting**

A question arising at a meeting of the Commission is to be determined by a majority of votes of the members of the Commission present and voting at the meeting.

The person presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, also a casting vote.

### **Meetings**

The procedure for the conduct of business of meetings, and for the calling of business at meetings, of the Commission, is to be determined by the Commission.

Commission members are required to attend scheduled Commission meetings in person. Proxies may not be nominated. Meetings will be rescheduled as needed to accommodate Commission member availability.

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<sup>3</sup> See footnote 2.

<sup>4</sup> No circumstances have been prescribed.

The Executive Commissioner may allow a person, who is not a Commissioner, to attend a meeting for the purpose of advising or informing it on any matter.

## **Proceedings**

The Commission is to determine the procedures to be followed in proceedings in relation to an application for review of a decision, by a person's primary medical practitioner, consulting medical practitioner, or administering health practitioner, that the person meets, or does not meet, the residency requirements; or has, or does not have, decision-making capacity; or is, or is not, acting voluntarily.

The Commission –

- is to conduct proceedings with as little formality, and as quickly, as a proper consideration of the matter before the Commission permits, and
- is not bound by the rules of evidence but may inform itself on any matter in the way that the Commission thinks fit, and
- must observe the rules of procedural fairness.

The Commission may, if the Executive Commissioner considers it appropriate to do so:

- organise its proceedings in such a way that two or more proceedings in respect of the same matter are heard together, and
- if no hearing is conducted, conduct all or any part of its proceedings entirely on the basis of documents and without the parties or their representatives participating in any part of the proceedings.

## **Hearings**

The Commission may conduct a hearing in relation to an application.

Any hearings conducted in relation to an application must be held in private.

The Commission may give directions as to the persons who may be present at a hearing in relation to an application.

## **Review of Terms of Reference**

The Terms of Reference will be reviewed and updated on an as-needed basis.

## **Endorsement of Terms of Reference**

**Endorsed** by Commission members on 4 October 2022.

**Signed** by the Executive Commissioner on 4 October 2022.



Louise Mollross  
Executive Commissioner  
Voluntary Assisted Dying Commission