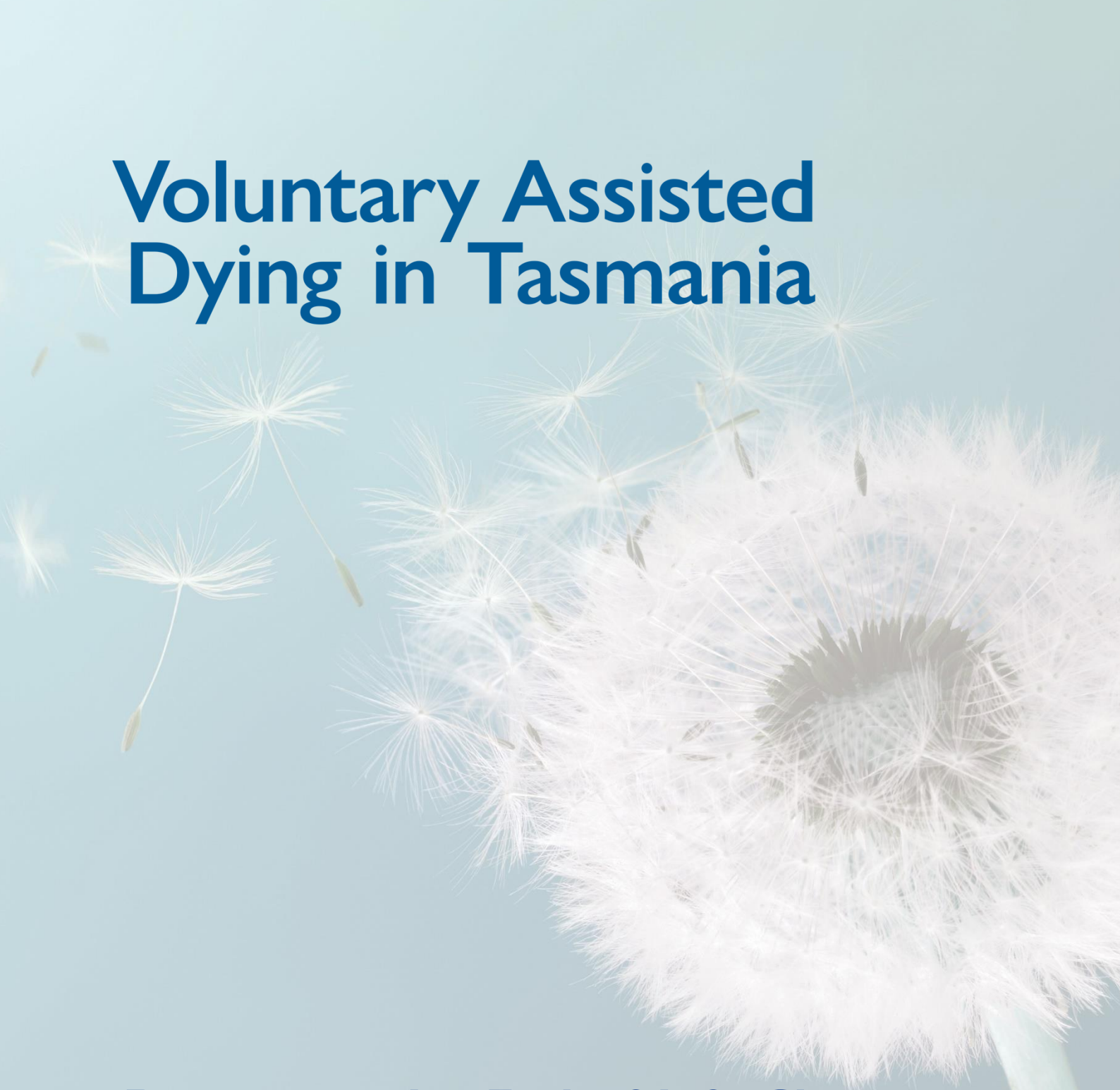
Voluntary Assisted Dying in Tasmania



Report on the *End-of-Life Choices (Voluntary Assisted Dying) Act 2021*'s operation in its first six months

Department of Health

Tasmanian Government

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Foreword

The *End-of-Life Choices (Voluntary Assisted Dying) Act 2021* (Tas) (the Act) is an Act to provide for, and regulate access to, voluntary assisted dying, to establish the Voluntary Assisted Dying Commission (the Commission), and for related purposes. It was introduced to Tasmania's Legislative Council as a private members Bill, was deliberated on by members of Tasmanian Parliament in their private member capacities and was subject to a conscience vote. It followed years of debate and discussion in each of the States and Territories around access to voluntary assisted dying.

The Act includes, at section 144, a requirement that the Commission provides the Minister for Health with a report on the Act's operation in its first six months. I am pleased, as the Commission's Executive Commissioner, to present this Report on the Act's initial operation.

The Act builds upon similar legislation in Victoria and Western Australia. At commencement Tasmania became the third state in Australia to legalise voluntary assisted dying.

This Report describes the work undertaken to implement the Act, including to establish the Commission, the Voluntary Assisted Dying Navigation Service, and the Voluntary Assisted Dying Pharmacy Service, and the work undertaken by the Commission and others to implement the legislation. In addition, this Report also provides a statistical and operational summary of activity in the Act's first six months of operation. Lastly, it notes significant achievements and challenges and suggests matters for future consideration by the Tasmanian Government.

Since 23 October 2022, the Commission has had the privilege of observing the legislation being utilised to allow people who are suffering from terminal illnesses to legally access a substance to end their life. On behalf of my fellow Commissioners, I extend my sincere condolences to the family, friends and loved ones of those who have died.

It is apparent from the information presented in this report that the Act is operating effectively. This has largely been possible due to the incredible support and assistance provided to patients across the state by a small group of medical practitioners and registered nurses. The Commission acknowledges the dedication, time, and commitment to supporting voluntary assisted dying for those who are eligible that has been displayed consistently by those participating practitioners. Thanks also go to members of the Voluntary Assisted Dying Navigation Service and Voluntary Assisted Dying Pharmacy Service who have provided exemplary and tireless support and assistance to practitioners, patients, and their families since the Act's commencement.

Lastly, I would like to personally thank those people who have contributed to this Report, including my fellow Commissioners and the hardworking staff within the Office of the Commission without whom the Commission would be unable to operate.

Louise Mollross
Executive Commissioner
Voluntary Assisted Dying Commission

What is Voluntary Assisted Dying?

Voluntary assisted dying is a process that enables a person who is suffering from a terminal illness to legally access a substance to end their life, with support and assistance from registered health practitioners.

Voluntary assisted dying in Tasmania is regulated by the Tasmanian *End-of-Life Choices (Voluntary Assisted Dying) Act 2021* (the Act). The Act identifies when a person in Tasmania is eligible to access voluntary assisted dying and sets out the steps in the voluntary assisted dying process. It also establishes the Voluntary Assisted Dying Commission (the Commission).

A person is eligible to access voluntary assisted dying in Tasmania if they meet all the eligibility criteria. These relate to illness, age, residency, voluntariness, and decision-making capacity. The criteria are strict, and not everyone with a terminal illness will be eligible.

The voluntary assisted dying process has several formal steps, with medical practitioners determining eligibility at each point. These are to ensure that the person is eligible and is making the decision to access voluntary assisted dying freely and without coercion. At any of the formal steps, the person will become ineligible if they lose decision-making capacity, or if the medical practitioner believes they are not acting voluntarily.

To be actively involved in the voluntary assisted dying process, a person's medical practitioner or registered nurse must be suitably qualified and experienced. They must also complete the Tasmanian Voluntary Assisted Dying Training.

About the Act and its operation

The Act was introduced to the Tasmanian Parliament Legislative Council by Mr Michael Gaffney MLC and was read for a first time in August 2020. Following amendments in both the Legislative Council and Tasmanian Parliament House of Assembly it received the Royal Assent on 22 April 2021.The legislation commenced on 23 October 2022 following an 18-month implementation period.

Responsibility for the Act's administration rests with the Minister for Health and the Department of Health.

The Department of Health hosts the Commission, and the Commission is supported in the performance of its functions by a small group of Department of Health employees located in the Office of the Commission.

The Department of Health also hosts a Voluntary Assisted Dying Navigation Service, a Voluntary Assisted Dying Pharmacy Service, and a Statewide Voluntary Assisted Dying Clinical Service. Each of the Services is a part of the Tasmanian Health Service (THS) and operates Statewide.

Voluntary Assisted Dying Commission

The Commission is established by section 110(1) of the Act. It 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.

The Commission consists of:

- a person who is to be the chairperson 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 function of the Commission.

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

As of 23 April 2023, the Commission's membership is as follows:

Executive Commissioner:	Louise Mollross
Deputy Executive Commissioner:	Dr Annette Barratt
Commissioners:	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.

The Commission's Terms of Reference, which detail the Commission's functions under the Act, are extracted at Annexure 1.

Voluntary Assisted Dying Pharmacy Service

After consultation with internal and external pharmacy and community stakeholders, a centralised THS pharmacy service, dedicated to the voluntary assisted dying process, was approved by the THS Clinical Executive in December 2021.

The approved pharmacy service – the Voluntary Assisted Dying Pharmacy Service (the Pharmacy Service) – commenced in August 2022.

The Pharmacy Service consists of a Manager and a small team of pharmacists employed by the Statewide Hospital Pharmacy who have an interest and willingness to participate in the voluntary assisted dying process.

The Pharmacy Service is the only pharmacy in Tasmania that can supply a VAD Substance, and members of the Pharmacy Service are the only pharmacists in Tasmania who can perform the functions assigned to pharmacists by the Act. This includes:

- supplying a person's Primary Medical Practitioner (PMP) with a VAD Substance,
- discussing the person's illness with them to ensure a VAD Substance supplied is suitable for their use, and
- accepting the return of, and destroying, any VAD Substance that is no longer required and is returned to the pharmacist by a person's PMP, or by their Administering Health Practitioner (AHP).

The Pharmacy Service also has a key role in educating medical practitioners and others about VAD Substances and their prescription, supply, storage, and administration.

Voluntary Assisted Dying Navigation Service

The Voluntary Assisted Dying Navigation Service (the Navigation Service) was established in April 2022 and commenced operation in June 2022.

The Navigation Service provides a central point of contact for information and support about voluntary assisted dying to patients, families and carers, and health professionals.

The Navigation Service comprises a Team Leader and two additional Navigators.

On 6 September 2022, the Commission delegated the following of its functions to members of the Navigation Service:

- providing 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,
- establishing and maintaining a list of:
    - medical practitioners and nurses who have completed approved voluntary assisted dying training,
    - medical practitioners who are willing to be PMPs, Consulting Medical Practitioners (CMPs), or AHPs,
    - registered nurses who are willing to be AHPs, and
    - pharmacists who are willing to dispense VAD Substances,
- distributing information relating to the operation of the Act, and
- providing to a person the name and contact details of a medical practitioner or registered nurse, with that practitioner or nurse's permission.

Voluntary Assisted Dying Clinical Service

The Statewide Voluntary Assisted Dying Clinical Service (Clinical Service) was established in October 2022.

The Clinical Service provides specialist advice and support to THS hospitals on voluntary assisted dying, including planning and governance requirements.

About this report

The Commission is required, pursuant to section 144 of the Act, to provide the Minister for Health with a report on the operation of the Act in its first six months. The Act requires the report to include prescribed information[1] and any other information that the Commission thinks fit.

This report provides a summary of the Act's operation during the period 23 October 2022 – 23 April 2023. It provides a snapshot of information provided to the Office of the Commission in that period, noting that some requests and voluntary assisted dying processes resulting from those requests were ongoing at the end of the reporting period.

The report also includes information about actions undertaken in preparation for the Act's commencement, records achievements and challenges in the Act's first six months, and notes matters for future consideration.

[1] No information is prescribed.

Preparing for the Act's commencement

Prior to the commencement of the Act, the Commission undertook the following actions to facilitate the Act's operation:

- On 19 July 2022, pursuant to section 116 of the Act, the Commission determined one or more substances to be VAD Substances.
- On 16 August 2022, pursuant to section 8 of the Act, the Commission approved the form of the Relevant Facts in Relation to Accessing Voluntary Assisted Dying.
- On 20 September 2022, pursuant to section 117 of the Act, the Commission approved a course of voluntary assisted dying training for the purposes of the Act.
- On 11 October 2022, pursuant to section 118 of the Act, the Commission issued Guidelines for Determination of Persons with a Special Interest.
- On 18 October 2022, pursuant to sections 5 and 114(5) of the Act, the Commission approved forms for the purposes of sections 20, 23 – 24, 29 - 30, 36, 50, 53, 58, 67, 82 – 85, 16(4), 16(5), and 95 of the Act.

The Commission met a total of 12 times prior to the Act's commencement to undertake these actions.

In addition, the Executive Commissioner met weekly with Department of Health employees in preparation for the commencement of voluntary assisted dying in Tasmania.

VAD Substances

On 19 July 2022, the Commission determined the substances to be VAD Substances, with effect from 23 October 2022.

Relevant Facts in Relation to Accessing Voluntary Assisted Dying

On 16 August 2022, the Commission approved the form of the Relevant Facts in Relation to Accessing Voluntary Assisted Dying document (the Relevant Facts). The version approved was in the English language.

The Relevant Facts in the English language was printed in hard copy for distribution to medical practitioners, institutions, and individuals, as required.

The Relevant Facts was subsequently produced in Nepali, Chinese (for Mandarin and Cantonese speakers), in an Easy Read format, and as an audio recording.

Each version of the Relevant Facts is available on the Department of Health's website www.health.tas.gov.au/vad

Voluntary Assisted Dying Training

Pursuant to section 117(1) of the Act, the Commission may approve for the purposes of the Act a course of voluntary assisted dying training. In accordance with section 117(2) of the Act, the course of training approved must consist of training in relation to:

- the functions of, and requirements under the Act in relation to CMPs, PMPs and AHPs,
- assessing whether or not a person is eligible to access voluntary assisted dying, and
- identifying and assessing whether a person may be subject to abuse or coercion in making a decision under the Act.

Pursuant to section 117(3), the Commission may only approve a course of voluntary assisted dying training if the Commission has consulted with:

- a body which represents medical practitioners, and
- a body which represents registered nurses, and
- a person nominated by the Public Guardian within the meaning of the *Guardianship and Administration Act 1995*, and
- a person nominated by the Chief Civil Psychiatrist within the meaning of the *Mental Health Act 2013*, and
- a psychiatrist or psychologist,

as to the suitability of the course of voluntary assisted dying for the purposes of the Act.

Broad consultation with stakeholders was undertaken throughout the development of the training. A reference group was also established to ensure that key stakeholder organisations had their views incorporated throughout the training's development. These organisations were also involved in the user testing of the training product. Stakeholders represented included:

- The Australian Medical Association Tasmania.
- The Royal Australian College of General Practitioners Tasmania (RACGP).
- The Australian College of Rural and Remote Medicine (ACRRM).
- The Australian College of Nursing.
- The Australian College of Nurse Practitioners.
- The Australian Nursing and Midwifery Federation.
- The Public Guardian.
- Tasmania's Chief Psychiatrist.

The training was also reviewed by legal academic experts, Health Consumers Tasmania, a medical practitioner, and Palliative Care Tasmania.

The reviewed and tested training package, as approved by the Commission, takes users about six hours to complete. It comprises a course overview, eight content modules, an assessment module, and a conclusion module and survey/evaluation.

Following consultation in accordance with section 117(3) of the Act, the Commission approved the training on 20 September 2022.

The training had originally been developed to be delivered online, however, given the constraints of the Commonwealth *Criminal Code 1995* (noted below), the training is offered as an offline package only. The online version of the training has been retained and could be delivered online in the future if the requirements of the *Criminal Code* were to be amended to allow the delivery of the information by way of carriage service.

The Tasmanian Voluntary Assisted Dying Training is accredited by the ACRRM and the RACGP.

Guidelines for Determination of Persons with a Special Interest

Pursuant to section 95 of the Act, an eligible applicant may apply to the Commission for a review of a decision by a person's PMP, CMP, or AHP that the person:

- meets, or does not meet, the residency requirements,
- has, or does not have, decision-making capacity, or
- is, or is not, acting voluntarily.

For the purposes of this document, the decisions that may be reviewed are called reviewable decisions.

An eligible applicant is:

- a person who is the subject of a reviewable decision, or the person's agent, or
- a person that the Commission is satisfied, after having considered guidelines issued under section 118 of the Act, has a special interest in the medical treatment and care of a person who is the subject of a reviewable decision.

Pursuant to section 118 of the Act, the Commission must prepare and issue guidelines for the determination of persons with a special interest. Prior to issuing the guidelines, the Commission must invite members of the community to make submissions in relation to the proposal to do so.

Proposed Guidelines for Determination of Persons with a Special Interest were prepared by the Commission, and during September 2022 notices were placed in The Mercury, The Examiner, and The Advocate newspapers specifying that the Commission was proposing to issue Guidelines and inviting members of the public to make submissions in relation to the proposal.

Four submissions were received from members of the public. Each of the submissions was considered by the Commission, and, as a result, the Proposed Guidelines were amended.

The finalised Guidelines for Determination of a Person with a Special Interest were issued by the Commission on 11 October 2022. Notices were placed in The Mercury, The Examiner, and The Advocate giving notice of the issuing of the Guidelines as required by the Act.

The Guidelines are available for viewing at the Office of the Commission and on the Department of Health website www.health.tas.gov.au/vad.

Approved Forms

The Act requires certain documentation to be in an approved form, being a form approved by the Commission. The Act also requires certain processes and notifications to be made or documented by an instrument in writing, or simply in writing.

On 18 October 2022, the Commission approved forms for the purposes of sections 20, 23 – 24, 29 - 30, 36, 50, 53, 58, 67, 82 – 85, 16(4), 16(5), and 95 of the Act.

The Commission also noted certain other proforma documents, prepared by the Department, for use by medical practitioners and others when documenting certain processes.

Forms developed and approved include those which allow:

- a person to request that they be assessed as eligible to access voluntary assisted dying at each assessment stage,
- a PMP, CMP, or AHP to accept, or refuse to accept, a request from a person to access voluntary assisted dying, and to determine a person as eligible or ineligible to access voluntary assisted dying, and
- recording and transmission of other requests, decisions, and information to be provided to the Commission, or to other medical practitioners, as required under the Act.

A form that can be used by a person who wishes to make a First Request to a medical practitioner in writing (that is, to formally request the medical practitioner to determine whether the person is eligible to access voluntary assisted dying) is available for download from the Department of Health's website.

The remaining forms are provided to PMPs, CMPs, and AHPs by the Office of the Commission on an "as needed" basis.

Considering the Commonwealth *Criminal Code Act 1995*

Sections 474.29A and 474.29B of the Commonwealth *Criminal Code Act 1995* (the *Criminal Code*) effectively prohibit the use of a carriage service for dealings in material that counsels or incites another person to commit suicide. This extends to dealings in material that relate to voluntary assisted dying in relevant circumstances.

Registered health practitioners who choose to become involved as PMPs, CMPs and/or AHPs are made aware of the *Criminal Code* and its impacts when undertaking the voluntary assisted dying training.

The Commission understands that the interaction between voluntary assisted dying laws and the *Criminal Code* has been the subject of discussion between Attorneys General since at least August 2022; and that the Premier has raised this issue with his Australian Government counterparts.

The need for certain communication around voluntary assisted dying to be conducted in person so as to avoid the potential consequences under the *Criminal Code* has significant practical consequences for registered health practitioners, people wishing to access voluntary assisted dying, and their families, Department of Health and THS staff, as well as for members of the Commission and staff in the Office of the Commission.

The Commission urges amendments to the *Criminal Code* to expressly exclude participation in voluntary assisted dying in accordance with state legislation from the scope of sections 474.29A and 474.29B of the *Criminal Code* and encourages the Tasmanian Government to continue to advocate strongly on this issue.

Report of the Act's Operation in its First Six Months: Statistical and Operational Summary

Enquiring about voluntary assisted dying generally

In the six months since the Act commenced, and based on information of which the Commission is aware:

- 90 people contacted the Navigation Service enquiring about voluntary assisted dying for themselves or another person.
- Of the people relevant to these 90 enquiries:
    - approximately three-quarters (74 per cent) were receiving palliative care services under the direction of Specialist Palliative Care Services in Tasmania (which was similar to figures publicly reported for Victoria, Western Australia and New Zealand),
    - 65 per cent had a primary diagnosis of cancer and 12 per cent had a primary diagnosis of neurodegenerative disease (which was again similar to figures publicly reported for Western Australia and New Zealand), and
    - approximately half (51 per cent) resided in the Southern region, approximately one third (33 per cent) resided in the North-Western region, and 15 per cent resided in the Northern region.

Accessing voluntary assisted dying

In the six months since the Act commenced, and based on information of which the Commission is aware:

- 47 First Requests to access voluntary assisted dying were received from 47 people – Table 1.
- Of the people who made a First Request, the median age was 73 years, with ages ranging from 42 to 90 years.
- Approximately half (53 per cent or 25) of the people who made First Requests resided in the Southern region, approximately one fifth (21 per cent or 10) resided in the North-Western region, and approximately one quarter (26 per cent or 12) resided in the Northern region.
- Twice as many males as females made a First Request (28 compared with 14)[2] – in both Victoria and Western Australia more males than females apply to access voluntary assisted dying.
- 44 First Requests have been accepted by an authorised medical practitioner.
- Of the people whose First Request was accepted by an authorised medical practitioner, 86 per cent (38) were determined to be eligible to access voluntary assisted dying.
- 31 Second Requests to access voluntary assisted dying have been made. Of the people who made a Second Request, 100 per cent (all 31) were determined to be eligible to access voluntary assisted dying.
- 28 Second Opinion referrals were accepted. Of the Second Opinion referrals that were accepted, 100 per cent (all 28) of people in respect of whom the referral was made were determined eligible to access voluntary assisted dying.
- 28 Final Requests to access voluntary assisted dying were made. Of the people who made a Final Request, 100 per cent (all 28) were determined to be eligible to access voluntary assisted dying.

[2] It should be noted that five people did not disclose their gender.

- 27 VAD Substance Authorisations were issued, including one VAD Substance Authorisation which was revoked.
- 16 people died following administration of the VAD Substance.
- The average time from a person's First Request to their Final Request was 14 days.
- The average time from a person's Final Request to the Commission determining a request for a VAD Substance Authorisation was three days.

Table 1: Access to voluntary assisted dying statistical summary

Access to Voluntary Assisted Dying	Number	Proportion
First Request made	**47**	
Age		
Median (years)	73	
Range (years)	42 to 90	
Gender[a]		
Male	28	67%
Female	14	33%
Other	0	0%
Region		
North	12	26%
North West	10	21%
South	25	53%
First Request accepted[b]	44	
First Request determined eligible	38	
First Request determined not eligible	<5	
First Request not determined[c]	<5	
Second Request made	31	
Second Request determined eligible	31	
Second Opinion accepted	28	
Second Opinion determined eligible	28	
Final Request received	28	
Final Request determined eligible	28	
Private Self-Administration Certificate issued	<5	
VAD Substance Authorisations issued[d][e]	27	
VAD deaths[f]	16	
Average time from First Request to Final Request (days)	14	
Average time from Final Request to VAD Substance Authorisation issued (days)	3	
Average time between First Request made and VAD death (days)	34	

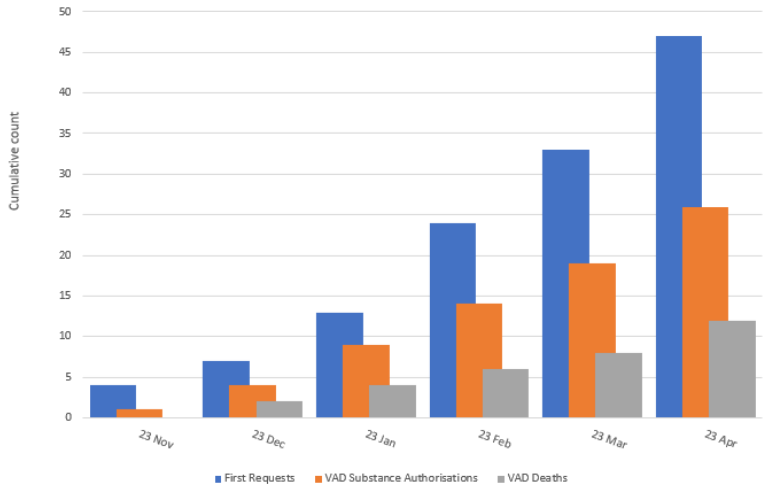
(a) Five people did not respond to this question.
(b) Requests were either refused by a medical practitioner, or invalid because medical practitioners were not authorised to accept the requests.
(c) These were not determined as eligible or ineligible because the participants died prior to the determination.
(d) Given the time lag between a First Request accepted and the issuing of a VAD Substance Authorisation not all people who had their First Requests accepted were at that stage where a VAD Substance Authorisation could be issued.
(e) This includes one VAD Substance Authorisation which was revoked.
(f) Although the AHP is required to report a VAD death to the Commission, there is no time restriction. This figure excludes non-VAD deaths.

Not all people who made a First Request died following administration of the VAD Substance. Those who did not progress either:

- died before they could access the VAD Substance,
- withdrew from the process, or
- were found to be ineligible to access voluntary assisted dying.

Figure 1 below outlines the number of First Requests, VAD Substance Authorisations and VAD deaths of which the Commission is aware during the Act's first six months of operation:

Figure 1: Cumulative count of First Requests, VAD Substance Authorisations, VAD deaths



In the six months since the Act commenced, and based on information of which the Commission is aware, the Pharmacy Service:

- received 27 prescriptions for a VAD Substance – Table 3,
- conducted 23 patient assessments,
- dispensed 23 VAD Substances, and disposed of five VAD Substances.

The median time for the Pharmacy Service to supply the VAD substance upon receipt of the VAD Substance prescription was two days.

Training summary

As at six months following the Act's commencement:

- 319 people had been provided the approved voluntary assisted dying training – Table 2.
- 63 people had successfully completed the training, including 43 in the Southern region, 12 in the Northern region and six in the North-Western region.
- 30 medical practitioners, 23 registered nurses, and 10 pharmacists had successfully completed the training.
- 55 health practitioners had agreed to be on the list of people who have completed voluntary assisted dying training. Of these 55:
    - 19 medical practitioners had indicated their willingness to act as a PMP.
    - 23 medical practitioners had indicated their willingness to act as a CMP.
    - 13 medical practitioners and 16 registered nurses had indicated their willingness to act as an AHP.

Table 2: Voluntary Assisted Dying Training statistical summary

VAD Training	Number
Training provided	**319**
North	94
North West	43
South	175
Training completed	**63**
North[a]	12
North West	6
South	43
Medical practitioner	30
Registered nurse	23
Pharmacist	10
Agreed to be on VAD Commission list	**55**
North[b]	8
North West	5
South	41
Willing to be PMP	19
Willing to be CMP	23
Willing to be AHP	29

(a) Note that the regional breakdown does not equal the total number of training completed as one person was interstate and another had no address recorded.

(b) Note that the regional breakdown does not equal the total number on the VAD Commission list as one person recorded an interstate address.

Commission operational summary

Monitoring and compliance functions

Under sections 67 and 68 of the Act, the Commission is prevented from issuing a VAD Substance Authorisation if:

- the Commission has not received all notices, and information, in relation to the person that the PMP is required to give to the Commission under the Act, or
- the Commission suspects that the requirements of the Act have not meet met in relation to the person.

Before considering a request for a VAD Substance Authorisation, the Commission checks that all notices and information in relation to the person that the PMP is required to give to the Commission under the Act has been received within required timeframes. This includes:

- checking that the medical practitioner to whom the person made their First Request notified the Commission of the acceptance of the Request within seven days of accepting it, and
- checking that the person's PMP has provided the Commission with a copy of the CMP's determination in relation to the person within seven days of being given the determination.

The Commission also checks that the requirements of the Act have been met in relation to a person requesting access to voluntary assisted dying. This includes checking that:

- the determinations made by a person's PMP, CMP, and AHP accord with all the requirements of the Act, and
- all timeframes have been met under the Act. This includes checking that the time period between a person's First Request and their Second Request, and between their Second Request and their Final Request is more than 48 hours (as required by the Act in cases other than expedited cases).

Given that voluntary assisted dying is a sequential process, with stages requiring multiple requests and determinations, and involving people who, given their circumstances, require decisions and actions to be made quickly, it is imperative that compliance is monitored, and non-compliance rectified, as early in the process as possible. For this reason, as soon as the Commission receives formal notification of relevant events as required under the Act, the Office of the Commission undertakes a compliance check. For example, upon receiving notification that a medical practitioner has accepted or refused to accept a person's First Request, the Office of the Commission checks that the date and time of the acceptance or refusal is within 48 hours of the person making the request, and that the Commission has been notified within seven days of the decision.

When information submitted to the Commission is assessed by the Office of the Commission as being non-compliant, the following actions are undertaken, as appropriate:

- The relevant health practitioner is contacted and provided with an opportunity to provide further information or to clarify the information provided.
- The relevant health practitioner is advised that the actions of the practitioner or the information provided to the Commission does not meet the requirements of the Act and that the relevant stage needs to be re-done.

The degree to which documentation and processes are compliant with the Act is documented in a series of checklist documents that are provided to the Commission to support the Commission in its decision-making. Any non-compliance and the steps taken to address any non-compliance are closely considered by the Commission when deciding whether to issue a VAD Substance Authorisation.

The time required by the Office of the Commission to review all documentation received, to take action in response to any non-compliance, and to prepare documentation necessary to support the Commission in its decision-making, is approximately seven hours per participant. This is in addition to the significant time that it takes Commissioners to review and consider the documentation prior to making a decision.

Pursuant to section 114 of the Act, the Commission's functions include monitoring the operation of the Act. To do this, the Commission may review the performance and exercise of functions and powers by persons in relation to a death that has occurred as a result of the administration of a VAD Substance under, or purportedly under, the Act.

In practice, this function is discharged through consideration of a post-death review document prepared by the Office of the Commission. The document provides an overview of both the events leading to the issue of a VAD Substance Authorisation by the Commission for the person, and of all notices and information in relation to a person of which the Commission is aware following the issue by the Commission of the VAD Substance Authorisation. The document provides a summary of the timeframes involved in the person's voluntary assisted dying process. The document also records observations about issues or aspects of the process that were unusual or problematic and suggestions for improvements that could be made to subsequent processes.

Review, investigation, and decision-making functions

Under the Act, the Commission's functions include:

- Receiving and determining applications from eligible applicants for review of a decision, by a person's PMP, CMP or AHP, that the person meets (or does not meet) the Act's residency requirements, that the person has (or does not have) decision-making capacity, or that the person is (or is not) acting voluntarily (Part 15).
- Receiving notifications of suspected contraventions of the Act and investigating the matter to which the suspected contravention relates (sections 121 – 132).
- Considering whether there are reasonable grounds why the requirements of section 15(4)(c) relating to communication assistance ought not to apply.
- Advising a person's PMP that a person does, or does not, meet the Act's residency requirements (section 11).
- Determining that a person is exempt from the requirement that the person's illness is expected to cause the person's death within six months, or within 12 months if the disease is neurodegenerative (section 6).

Statistical summary

In the six months following the Act's commencement:

- The Commission met 29 times.
- The Commission issued 27 VAD Substance Authorisations.
- For the purposes of monitoring compliance with the Act, the Commission reviewed the performance and exercise by persons of functions and powers under the Act in relation to nine deaths that occurred as a result of the administration of a VAD Substance under the Act.
- No applications for the review of a decision, by a person's PMP, CMP or AHP, that the person meets (or does not meet) the residency requirements, that the person has (or does not have) decision-making capacity, or that the person is (or is not) acting voluntarily, were received.
- No notifications of suspected contraventions of the Act were received.

- No requests for the Commission to consider whether the requirements of section 15(4)(c) of the Act, relating to communication assistance ought not to apply were received.
- No requests for the Commission to advise a person's PMP as to whether the person meets the Act's residency requirements were received.
- One application, pursuant to section 6 of the Act, to determine that whether a person ought to be exempted from the requirement that their illness be expected to cause their death within six months (that is, to determine an exemption from the Act's life expectancy requirement) was received.

Progress and Challenges

Progress

The safeguards applied through the legislation are effective. The Commission continues to act diligently, responsively, and with agility to enable eligible people to access voluntary assisted dying in Tasmania.

The monthly count of people in Tasmania accessing voluntary assisted dying is steadily increasing. The number of First Requests at six months is within the upper bounds of what was expected, as estimated prior to the Act's commencement in Tasmania, and it is possible that the estimated number will be exceeded once the Act has been in operation for 12 months.

The number of practitioners who have successfully completed the Tasmanian Voluntary Assisted Dying Training exceeds the number estimated to be likely to have completed it at six months, when compared with the experience of other jurisdictions, and the interest from practitioners in accessing the training continues to be steady. The number of practitioners wishing to access the training to support their own patients is growing.

On the ground, voluntary assisted dying practitioners appear to be developing geographical and speciality-based partnerships with other practitioners. These relationships facilitate the timeliness of referrals and promote effective collaboration. Moreover, several involved practitioners are assessing people already known to them or to their practice or clinical service, which assists with the clinical assessment stages of the voluntary assisted dying process, thereby easing the anxiety of the participant and their families. This is to be commended.

Challenges

Under the Act, PMPs, CMPs and AHPs are required to complete numerous forms and notifications for submission to the Commission and to other medical practitioners.

Practitioners have expressed ongoing and significant frustration with the Act's documentation and notification requirements, with some practitioners suggesting that the non-patient facing work component associated with voluntary assisted dying is in the order of six- to eight hours per patient. Practitioners have, in particular, expressed frustration with the amount of duplication across forms while others have experienced difficulty complying with the Act's documentation requirements without error. Instances of non-compliance and the work required to address them are challenging and time consuming for practitioners and patients alike.

The proposed database and portal initiative referred to below will be of tremendous assistance in reducing administrative burden and increasing compliance. In the interim, work continues to streamline approved forms to remove duplication, to enable increased electronic completion, and to remove the potential for error in completion.

Future Considerations

Database and Portal

As noted above, in Tasmania, forms that are required to be completed by a person's PMP, CMP or AHP are provided to the relevant practitioner on an "as needed" basis, following the person's First Request. Forms are completed by practitioners by hand or on the screen, saved, and then emailed to the Office of the Commission. Once received, the forms are reviewed, with information from the forms entered to a bespoke Excel-based database.

In other jurisdictions (Victoria, Western Australia, Queensland, and South Australia) forms are transmitted between medical practitioners and the respective voluntary assisted dying oversight body through a dedicated "on-line portal". On-line portals have been designed and developed either in-house (as in Victoria), or under contract with a commercial developer (as in Western Australia and South Australia).

A voluntary assisted dying portal was not designed and implemented prior to the Act's commencement in Tasmania. The current requirements of the *Criminal Code* restrict electronic communication of certain voluntary assisted dying information resulting in a further barrier. The Commission acknowledges that Tasmania has a relatively small population, which means that the cost per capita of a voluntary assisted dying database management system and portal (for the transmission of forms) is potentially much higher than in other jurisdictions which offer voluntary assisted dying.

To explore the most suitable and cost-effective options for the Department of Health, the Office of the Commission is undertaking a 'discovery phase' analysis to assess the viability of a voluntary assisted dying database management system and portal. The portal would be used by authorised medical practitioners acting as either a PMP, CMP, or AHP, and medical practitioners and registered nurses acting as AHPs.

Funding

Voluntary assisted dying is a lawful service available to a very small group of people at the end of their life. It may only be accessed via a strictly controlled and highly regulated process involving multiple assessments. Each of the steps is resource intensive, requiring sometimes lengthy appointments and extensive review by the medical practitioner of a participant's medical records. For the participant's First Request to be valid, the participant and medical practitioner must have met in person. While some practitioners may be willing to determine the Second Request, Second Opinion and Final Request by telehealth, many prefer to do this face to face, often in the participant's home; and there are circumstances, due to the limitations imposed by the *Criminal Code*, in which this cannot occur.

The administrative burden imposed by voluntary assisted dying is unique and arises as a result of the Act's requirements, which are strict.

There are no voluntary assisted dying-specific Medicare Benefits Schedule (MBS) item numbers – instead, practitioners must claim under an alternative item number which best suits the circumstances. Benefits paid are low and do not overtly cover the non-patient facing administrative burden required to be discharged by medical practitioners who choose to become involved in the voluntary assisted dying process for their patients. In all cases, administration of a VAD Substance is excluded from the scope of the MBS and no benefits are payable for this aspect of the process.

Under the Act, a medical practitioner may receive "reasonable fees" for the provision of services as a participant's PMP, CMP or AHP without offending the Act's provisions, and it is understood that some private practitioners in Tasmania have elected to charge patients an hourly rate to cover their costs. This may be in addition to the MBS rebate-able amount, or in substitution for it in cases where no MBS benefit is payable. Charging a fee in these circumstances takes away from the altruistic nature of participation in the

voluntary assisted dying process and can reportedly be difficult to implement in relation to patients with limited means.

The Commission supports the equitable remuneration of medical practitioners and registered nurses who provide voluntary assisted dying services to remove barriers to practitioner participation in the voluntary assisted dying processes and to ensure that regional residents have same level of access to voluntary assisted dying as metropolitan residents.

Legislative Amendments

In the past six months, the Commission has noted several legislative ambiguities that would benefit from amendment. The main concerns noted to date are set out below:

- There is no clear mechanism in the Act to address the possible loss by a person of decision-making capacity following the issue of a Private Self-Administration Certificate and supply to the person of the VAD Substance. This makes it possible for a person to access the VAD Substance after the point that they have lost decision-making capacity.
- The Act currently requires a medical practitioner to have practiced as a medical practitioner for at least five years after vocational registration as a general practitioner or after having completed a fellowship with a specialist medical college to be able to act as a patient's PMP or CMP. This presents two issues:
    - While it is straightforward for a medical practitioner to provide confirmation of the date on which they completed a fellowship, for vocationally registered general practitioners the process is significantly more complicated and time consuming, requiring contact with Medicare and an extensive wait time. This creates uncertainty and acts as a barrier to practitioner participation.
    - The requirement for a medical practitioner to have practiced as a medical practitioner for at least five years after having competed a fellowship with a specialist medical college precludes younger medical practitioners from participating as PMPs or CMPs. This is because of the length of time it takes to obtain fellowship with a specialist medical college (being at least 13 years from the commencement of undergraduate medical studies).
- The Act defines an authorised medical practitioner as a medical practitioner who has completed the Tasmanian Voluntary Assisted Dying Training within the five-year period immediately before a person *makes* their First Request to the practitioner. This requires a practitioner who may be willing to complete the training so that they can accept the person's First Request but who has not yet done so to refuse the Request. A better approach may be to define an authorised medical practitioner as a medical practitioner who has completed the Tasmanian Voluntary Assisted Dying Training within the five-year period immediately before the practitioner *accepts* the person's First Request.
- Provisions for the prescription, supply and administration of a VAD Substance are inflexible and do not clearly accommodate circumstances in which an alternative supply pathway is required. Circumstances in which this may be necessary include, for example, circumstances in which a person's PMP is unable to supply the person's AHP with a VAD Substance so as to facilitate AHP administration due to unplanned leave or illness. An alternative approach may be to allow a VAD Substance to be supplied directly to the person or their AHP.

- The Act provides only limited options for dealing with circumstances in which a person's PMP or AHP becomes unable to continue in the role, due to illness or change of circumstance. In some cases, the only option available to the person wishing to access voluntary assisted dying may be to commence the process again. An alternative approach may be to allow the Commission to appoint a new PMP or AHP in extenuating circumstances. This would provide flexibility while strengthening oversight insofar as it would see a third trained practitioner involved in a person's voluntary assisted dying journey.
- The Act currently requires both a person's CMP and their PMP to provide the Commission with a copy of the CMP's Second Opinion determination and statement of reasons. This imposes an unnecessary administrative burden.
- While the Act requires a person's AHP to notify the Commission of the person's death following administration or self-administration of the VAD Substance, there is no requirement for the notification to occur in any set timeframe. This compromises the Commission's ability to review the performance and exercise by persons of functions and powers under the Act in relation to deaths that have occurred as a result of the administration of a VAD Substance under the Act in a timely manner and contemporaneous to the death.

The Commission supports appropriate amendments to the Act to address these issues and welcomes the opportunity to be consulted on any amendments that are progressed.

Annexure 1 – Voluntary Assisted Dying Commission Terms of Reference

Tasmanian Government

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 administrating 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[1].

[1] 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[2], 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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[2] 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[3], 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[4].

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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[3] See footnote 2.

[4] 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

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