Dying with Dignity Tasmania (Inc)

SUBMISSION TO THE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE (THE COMMITTEE) OF THE NORTHERN TERRITORY LEGISLATIVE ASSEMBLY ON VOLUNTARY ASSISTED DYING IN THE NORTHERN TERRITORY

AUGUST 2025

INTRODUCTION

The Northern Territory has the opportunity to take the best features of current Australian VAD legislation in all States and the ACT and to improve on that legislation, based on the extensive experience and evidence that is available worldwide. The evidence is very clear about the value of an effective legal VAD option which:

- is compassionate and respectful of the needs and wishes of people at the end of their lives with great suffering;
- provides effective access to VAD which is safe, timely and equal, taking into account the needs and characteristics of the whole population;
- improves on previous legislation elsewhere and builds in ways to use evidence to improve over time.

The pattern of Australian legislation has generally been to look at the evidence of what's working well and what is not, and to introduce improvements or features that meet the particular needs of the population in that jurisdiction.

Although our population demographics have significant differences, the Northern Territory and Tasmania are both small jurisdictions with particular challenges because of that. We believe that getting an accurate and more complete picture of the Tasmanian legislation, as well as what's working well and what needs to be improved, will enable consideration of some better options for the Northern Territory.

The purpose of this submission is firstly to provide accurate, additional information on some particularly relevant aspects of the Tasmanian legislation and its operation since 23 October 2022. Like all Australian VAD legislation, the Tasmanian End-of-Life Choices (Voluntary Assisted Dying) Act 2021 is lengthy and complex. Consequently, there are some inaccuracies and incomplete information about the Tasmanian Act in the "Report into Voluntary Assisted Dying in the Northern Territory – Final report, 2004" and in the Consultation Paper.

The submission also comments on areas for improvement that DWDT is researching and consulting on in preparation for the first major review of the scope and operation of the Act to commence after three years of operation on 23 October 2025.

In this submission we comment on the following issues:

1. How valuable, valued and safe the legal VAD choice has been in Tasmania.
2. Registered nurses (not just Nurse Practitioners) may be Administering Health Practitioners and this could be a good option in the NT
3. Issues related to the problems of requiring a timeframe prognosis of 6/12 months and the unique Tasmanian exemption from that requirement
4. The flexibility of choice for people about the administration of the VAD substance
5. The strong support of the Tasmanian Parliament for the use of telehealth except for the first consultation of the person with the medical practitioner who has become the Primary Medical Practitioner (PMP) (called Co-ordinating MP in other States' legislation)
6. Medical Practitioners are allowed to initiate discussion about VAD
7. Issues being considered by DWDT where there is a need for improvements in the scope or operation of the Act.

We would be happy to provide additional information or comment as required. There is also a large amount of detailed information available on the website for VAD in Tasmania at https://www.health.tas.gov.au/health-topics/voluntary-assisted-dying-1. Particularly relevant are Fact Sheets, reports of the Tasmanian Voluntary Assisted Dying Commission, including the latest available for 23 – 24, and detailed information for health professionals (eg Clinical Practice Handbook). In Attachment 1 of this submission, we include a summary of the recommendations for improvements made by the VAD Commission.

BACKGROUND

Dying with Dignity Tasmania (DWDT) has been very actively involved in the development of multiple voluntary assisted dying (VAD) Bills in Tasmania since 2009, including the Bill that was successfully passed and became the End-of-Life Choices (Voluntary Assisted Dying) Act 2021.

It was DWDT who asked Mike Gaffney, a Member of the State's Upper House, the Legislative Council, to take our draft Bill through the House. Mike Gaffney did an excellent job and put a massive amount of work into in-depth research including an overseas study trip; wide consultation across the State and with his Parliamentary colleagues and further developed the Bill. The Bill was extensively debated in both Houses of Parliament, amended and then passed with overwhelming cross-Party and Independents' support. After an 18-month implementation process, the Act came into operation on 23 October 2022. A review of the of the operation and scope of the Act after three years of operation will commence as soon as possible after 23 October this year, as provided for in Section 145 of the Act.

DWDT is currently undertaking research and consultation to prepare a submission for the review.

DWDT is respected for its work and the quality of our in-depth research and analysis of voluntary assisted dying legislation around the world. We were represented on the Voluntary Assisted Dying Stakeholder Reference Group for the implementation of the Act. We maintain good working relations and liaison with the Tasmanian Voluntary Assisted Dying Commission.

We have continued to monitor developments that have improved access to safe and effective VAD choice for people at the end of their lives with great suffering in Australia and internationally. Since 2012, we have consistently promoted the Canadian model as vastly superior to the Oregon model, for a number of reasons including:

- It does not have a timeframe prognosis requirement;
- It allows nurse practitioners as well as doctors to assess the eligibility of those requesting VAD and in providing VAD (called Medical Assistance in Dying – MAiD).

We have close links with and consult with other similar organisations and with experts in the field, and continue to be actively involved in the Tasmanian legislation and the broader Australian situation.

ISSUES

1. How valuable, valued and safe the legal VAD choice has been in Tasmania.

The evidence in Tasmania is overwhelming and consistent about how valuable and valued the legal VAD choice is in Tasmania and the legislation is working safely with no contraventions of the Act and no evidence of any risk to people who do not want VAD or who are ineligible because of issues such as inadequate decision-making capacity. The evidence is from the VAD Commission and consistent feedback to DWDT, politicians and the media.

As at 30 June 2024, there had been 87 deaths using VAD since the commencement of the Act on 23 October 2022. We expect to see a doubling of that number in the year 24 – 25 when the next report of the VAD Commission becomes available. There are many other details in the 23 – 24 report that are relevant to your consideration of VAD legislation in the NT.

We strongly recommend that an equally valuable and safe legal choice of VAD be made available for Northern Territorians.

2. Registered nurses (not just Nurse Practitioners) may be Administering Health Practitioners

We recommend that Registered Nurses and not just Nurse Practitioners could play a vital role in VAD in the NT as in Tasmania. The Tasmanian VAD legislation provides for appropriately trained registered nurses to be Administering Health Practitioners. This is not accurately reported in the NT Report or the Consultation Paper. The use of nurses enables better access for people in remote and rural parts of Tasmania. It was considered impractical to allow only Nurse Practitioners in that role because of small numbers and lack of availability in more remote and rural areas.

Primary Medical Practitioners (PMP) may choose whether or not to also be Administering Health Practitioners (AHP). Some choose not to in order to concentrate on the PMP role because of the serious shortage of medical practitioners for that role.

Details of the requirements, appointment and processes for Administering Health Practitioners are set out in the Clinical Practice Handbook issued by the Tasmanian Department of Health from page 58.

3. Issues related to the problems of requiring a timeframe prognosis and the unique Tasmanian exemption from that requirement

DWDT recommends that the NT VAD legislation follows the lead of the ACT and does not include a timeframe prognosis requirement. DWDT has consistently argued against a timeframe prognosis based on in-depth evidence and experience of VAD overseas and more recently in Tasmania. The evidence we provided was accepted by the politicians responsible for the VAD Bills in 2013 and 2017, and Mike Gaffney for the latest and ultimately successful

Bill. His initial Bill did not include a timeframe prognosis but it was added through an amendment in the Legislative Council to require a prognosis of 6 months to death or 12 months if the condition is neurodegenerative. His arguments against a timeframe prognosis and those of other MPs are included in the lengthy debate on the issue in both Houses of Parliament which we could send if required.

We have been very pleased that the most recent VAD legislation in the ACT does not include a timeframe prognosis and the reasons for this are consistent with our own arguments over many years. Those reasons are set out in the Explanatory Statement for the ACT legislation.

The Tasmanian legislation provides a unique exemption to the timeframe prognosis by giving discretionary powers to the VAD Commission to receive and decide on applications from persons seeking an exemption (see Section 6 (3) – (5) of the End-of-Life Choices (Voluntary Assisted Dying) Act 2021. To date only one application has been received and it was granted. DWDT is not convinced this exemption option is working as well as it could be and is doing more research and consultation for our submission to the review.

The VAD Commission Report for 23 – 24 states on page 21: "The reasons for the determination of a participant as not eligible to access voluntary assisted dying was most often that they were not expected to die from a medical condition within six months (or within 12 months if the condition was neurodegenerative)." The numbers are small (5 or less) but very difficult for those who meet all the other criteria including significant suffering but are unable to access their wish for VAD.

4. Flexibility of choice for people about the administration of the VAD substance

In Tasmania, we strongly support the considerable choice for people about the administration of the VAD substance, which reflects the principle of personal autonomy. We recommend that the NT legislation provides this range of choices. On page 20 of the NT Report into VAD, it is wrongly claimed that in Tasmania, as in Victoria and South Australia, "the VAD substance must be self-administered unless the person is incapable of self-administration."

The choices in Tasmania are set out in the Act including Sections 82 – 85. They are more clearly described in the Clinical Practice Handbook as follows:
"An administration decision is a decision made by a patient, in consultation with, and on the advice of, their Primary Medical Practitioner, to either:

- administer a VAD substance themselves in private (private self-administration)
- administer a VAD substance themselves while their Administering Health Practitioner is with or near the patient (AHP administration)
- have their Administering Health Practitioner assist them to administer the VAD substance (AHP administration), or
- have their Administering Health Practitioner administer the VAD substance to them (AHP administration).

When discussing or advising on an administration decision, the Primary Medical Practitioner should consider factors that are relevant for the patient, including the patient's ability to

prepare and/or self-administer the substance, the patient's preference (including any potential patient concerns or fears), and other factors that are unique to the patient or their family." (page 113)

5. The strong support of the Tasmanian Parliament for the use of telehealth except for the first consultation between the person and their Primary Medical Practitioner (PMP)

There was lengthy debate on this issue in the Legislative Council at the time of the debate on the Tasmanian Bill. Most MPs were strongly in favour of one in-person consultation between someone requesting VAD and their PMP. All other consultations could be by telehealth between the person requesting VAD and their medical practitioners and other health practitioners including pharmacists and nurses. This is important to ensure more equity of access to VAD across the State and for people with great suffering who find it very difficult to travel to a doctor. (See Sections of the Act 18 (3), 27, 34, 48 and 71)

We find it incomprehensible and unacceptable that the Australian Government still has not fixed this problem with amendment of the Commonwealth Criminal Code on the use of a carriage service. Like other DWD organisations, we continue to lobby for action on this matter. This is also the case for appropriate remuneration of medical practitioners.

6. Medical Practitioners are allowed to initiate discussion about VAD

In Tasmania, medical practitioners are allowed to initiate discussions about VAD as long as they also cover other options. (See Section 17 (2) of the Act.)

7. Issues being considered by DWDT where there is a need for improvements in the scope or operation of the Act

There is evidence of a need for improvements to the scope and operation of the Act to ensure more effective and equitable access to VAD in Tasmania. These include residency requirements, removal of the timeframe prognosis, and measures to increase the number of medical practitioners able and willing to be Primary and Consulting Medical Practitioners, including reducing the unreasonable level of qualifications to that similar to the ACT. There is also a need for changes to bureaucratic requirements which are burdensome and could be improved without any risk to the safety of the Act. Many of those improvements are supported by recommendations by the VAD Commission (see Attachment 1).

Attachment 1 - Recommendations made by the VAD Commission in their reports

Voluntary Assisted Dying Commission Annual Report 2022 – 23 – pages 29 – 32;

Voluntary Assisted Dying Commission Annual Report 2023 – 24– pages 40 – 44

A - Commonwealth Criminal Code

22 – 23 Recommendation 1: The Tasmanian State Government continue to advocate for amendments to the Commonwealth *Criminal Code* to remove the limitations on providing voluntary assisted dying information by way of a carriage service, as a matter of priority.

23 – 24 Recommendation 1: That the Commonwealth Criminal Code is amended to remove the limitations on providing voluntary assisted dying information by way of a carriage service, as a matter of priority.

B - Remunerating doctors and nurses

- **State-based remuneration for medical practitioners and registered nurses**

22 – 23 Recommendation 2: The Tasmanian State Government explore models for the equitable remuneration of medical practitioners and registered nurses who provide voluntary assisted dying services. The implementation of an appropriate scheme for remuneration will remove barriers to practitioner participation in the voluntary assisted dying processes. (Report states: "The administrative burden on medical practitioners imposed by voluntary assisted dying is unique and arises as a result of the Act's requirements which are non-negotiable." p29)

23 – 24 Recommendation 4: That the State Government implement a State-based remuneration scheme for the remuneration of privately employed medical practitioners and registered nurses who choose to act as a participant's PMP, CMP, or AHP, until such time as the MBS is reformed to establish voluntary assisted dying-specific MBS items that apply to the entirety of the voluntary assisted dying process. (Report states: "Except for New South Wales, all Australian jurisdictions (and New Zealand) where voluntary assisted dying is legal have either implemented, or are in the process of implementing, remuneration schemes to more adequately compensate voluntary assisted dying practitioners for the administrative burden imposed by the requirements of voluntary assisted dying legislation. Tasmania does not have such a scheme." p 41)

Medical Benefits Schedule Reform

22 – 23 Recommendation 4: The Tasmanian State Government support the review of the Medicare Benefits Schedule to include items which specifically cover voluntary assisted dying and administration of voluntary assisted dying substances.

23 – 24 Recommendation 2: That the MBS is reformed as it relates to voluntary assisted dying to establish voluntary assisted dying-specific MBS items that provide appropriate benefits for the entirety of the voluntary assisted dying process, including administration of the VAD Substance.

Extra fees

23 – 24 Recommendation 3: That privately employed medical practitioners note that there is nothing in the Act that precludes charging patients a private, out-of-pocket fee for the provision of services as a patient's PMP, CMP, or AHP.

C - Database and Portal

22 – 23 Recommendation 3: The Tasmanian State Government purchase or develop an online portal for use by authorised medical practitioners acting as PMPs, CMPs, or AHPs, and registered nurses acting as AHPs, and for the Commission.

23 – 24 Recommendation 8: That the Tasmanian State Government purchase or develop an online portal for use by medical practitioners acting as PMPs, CMPs, or AHPs, and registered nurses acting as AHPs, and for the Commission.

D - Legislative Amendments

22 – 23 Recommendation 5: The Tasmanian State Government progresses appropriate amendments to the Act to address the issues noted above, in consultation with the Commission. List includes a range of practical issues, eg one similar to G Couser's – "An alternative approach would be to allow a VAD Substance to be supplied directly to the person or their AHP."; 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. Also raises issues about dr qualifications - "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 or newer medical practitioners from participating as PMPs or CMPs. The length of time it takes to obtain fellowship with a specialist medical college is at least 13 years from the commencement of undergraduate medical studies."

23 – 24 Report also raises a range of issues with specific recommendations:
Recommendation 5: That the Act is amended to provide more options for dealing with circumstances in which a participant's PMP becomes unable to continue in the role.

Recommendation 6: That the Act is amended to include, and harmonise, reporting requirements relating to Final Permissions, Private Self-Administration and AHP Administration Certificates, and notification of a participant's death.

Recommendation 7: That the Act's requirements relating to the supply and return of the VAD Substance following the issue of a Private Self-Administration Certificate are reviewed to prevent an occurrence such as that which occurred in Queensland.

E Health Literacy and Voluntary Assisted Dying

23 – 24 Recommendation 9: That the Tasmanian State Government supports measures designed to improve Tasmanians' health literacy about voluntary assisted dying.