

Legislative Council

Hansard

Tuesday 11 March 2025

The President, Mr Farrell, took the Chair at 11 a.m., acknowledged the Traditional People and read Prayers.

[excerpt...]

Motion

Tasmanian Voluntary Assisted Dying Commission – Annual Report 2023-24 – Consideration and Noting

[12.33 p.m.]

Ms WEBB (Nelson) - Mr President, I am pleased to rise to make a contribution on the Tasmanian Voluntary Assisted Dying Commission Annual Report 2023-24. It is the second such report from the commission, but the first to span a full year's assessment of the operation of the act since its commencement in October 2022. Thank you to the honourable member for Mersey for providing the opportunity to do so via this motion today. Thank you for such an exceptional contribution on your motion. I particularly appreciated the time and care you took to include the voices of people who have been involved in all aspects of the operation of our VAD laws here, and to share that with us so sensitively as part of your contribution. It was really moving and important to hear that.

I also take this opportunity to express my sincere appreciation to the medical practitioners and registered nurses who have demonstrated incredible support and professionalism across the state to ensure access to voluntary assisted dying is possible to those who are eligible. As we know, the commission is an independent oversight and decision-making body which was established under the End-of-Life Choices (Voluntary Assisted Dying) Act 2021 to facilitate access to voluntary assisted dying for people who are nearing the end of their life or at risk of losing their decision-making capacity.

Tasmania, while not the first Australian jurisdiction to introduce this compassionate reform, was amongst the earliest to do so, which makes this information provided by its independent oversight body, via this report, so important. Insights presented in this report are invaluable to our community, as well as to interstate jurisdictions and possibly even internationally, given the interest garnered by our current state legislation. The commission's 2023-24 annual report provides a range of detailed datasets. These fulfil reporting back on checks that the regulatory system is working as intended, particularly to protect the vulnerable while also ensuring that the needs of eligible participants are met as smoothly as possible.

I will not repeat the detail of the contribution of the honourable member for Mersey, who has discussed many of these points already, however there were a few examples that I did want to take time to mention in my contribution. The report found that the demographic characteristics of those who chose to access voluntary assisted dying in Tasmania in 2023-24 were reflective of those reported in 2022-23, as well as in other Australian states and territories that offer voluntary assisted dying. This is of interest because during the debate during the bill, concerns were raised about the potential increased vulnerability of certain sectors of our community. The datasets tell us that of those eligible participants, 64 per cent making their first

request most likely had a cancer-related primary diagnosis, followed by a neurodegenerative disease at 15 per cent and a respiratory disease at 12 per cent.

Another interesting dataset was the higher education attainment of participants: 42 per cent of participants had completed tertiary education, with the next largest group being 38 per cent who completed high school, compared to 20 per cent of those who did not complete high school. The data does not necessarily tell us how to interpret it, but in this particular case, it does indicate that first request participants should be capable and have the necessary literacy tools to be making informed decisions regarding their end-of-life options. This is significant, as concerns had been raised during the debate on the bill that potentially those with limited formal education or reduced learning capabilities may somehow be more vulnerable to making uninformed applications to VAD, or even be influenced or coerced in some manner.

Further, the annual report tells us the commission received only one application for a review of a decision over concerns over decision-making capability of the participant, but that this applicant was subsequently withdrawn after the commission had commenced the hearing process. This is heartening confirmation that practitioners are attuned to the need to be vigilant regarding this possibility and will notify the commission accordingly. During debate on the bill during 2021, another area of tension was the quest to achieve the best possible legislation at the outset, balanced with recognition that future improvements and reforms will in all likelihood also be necessary. It is in this context that I note with great interest the commission's nine recommendations made in the report. The commission has reiterated a point it made earlier in its initial 2022-23 annual report. I quote 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.

As the commission emphasises, the need for certain communication around what is a lawful process - to be conducted in person, so as to avoid potential consequences under the Commonwealth Criminal Code - has significant practical consequences for people wishing to access voluntary assisted dying and their families, registered health practitioners, Tasmanian Department of Health and THA staff, and members of the commission.

Further, the commission points out that consequences for all those groups can be of serious significance for Tasmanians, particularly living in regional areas and/or who are unable to travel. Clearly, this obstacle is not within the remit of this parliament to address, however I would like to hear from government as to the efforts made to liaise with our federal counterparts and negotiate the necessary amendment to facilitate the full effect and intent of Tasmania's law in this instance.

The commission has focused on a very interesting point, which is their identified need for reform of Medicare Benefits Schedule. This highlights feedback from private practitioners since the commencement of the act, that while providing support to patients accessing voluntary assisted dying is rewarding, they are not finding it economically practicable. Despite approximately 50 per cent of participating medical practitioners being private practitioners who are reliant on the Medicare Benefits Scheme, the MBS benefits and private billing, there are no voluntary assisted dying specific MBS item numbers. I am not going to repeat the commission's analysis of this practitioner-driven feedback and ramifications here, but do recommend to interested members to have a look at this section beginning on page 40 of the annual report.

The commission considers this to be of suitable significance to the sustainability of our regulated voluntary assisted dying framework - that it has three specific recommendations dedicated to this particular matter. Those are recommendations two, three, and four. According to the commission, Tasmania and New South Wales are the only Australian jurisdictions with voluntary assisted dying schemes where there are currently no remuneration schemes to more adequately compensate practitioners for the administrative burden imposed by the requirements of the voluntary assisted dying legislation.

Unfortunately, Tasmania is not a leader in this particular area of voluntary assisted dying laws. In fact, the commission is quite strong in its assessment of the situation when it states in the annual report on page 40, and I will just quote that section:

Lack of an appropriate state-based remuneration scheme for the remuneration of privately employed practitioners sends a negative message to existing participating practitioners and to those considering performing functions as a patient's PMP, CMP or AHP, about the state government's level of support for voluntary assisted dying in Tasmania and is a significant barrier to achieving a sustainable medical workforce in this dimension of health care.

The state government must invest in the delivery of a safe and sustainable support voluntary framework for those Tasmanians who need this option. It is critical Tasmania secures a sustainable workforce in this area of health care. I hope we hear from the government today on how it intends to respond to this point raised by the practitioners essential to the delivery of our regulated VAD scheme and which has been so emphatically highlighted by the commission in its latest report.

I note the annual report contains three recommendations - five, six and seven - which pertain to the proposed amendments to the act following the identification of potential legislative ambiguities.

These ambiguities include inconsistencies with the act's certificate and notification processes, as well as how it deals with or fails to deal with primary medical practitioners who find themselves unable to continue in that role for participants for whatever reason. The member for Mersey touched on these elements, so I will not take up the Chamber's time in discussing them in detail, but did note them as I was contemplating the report.

It is worthwhile to highlight the positive contribution made by having such regular and independent, expert-driven and also evidence-based impact assessments of the implementation of this legislation. As demonstrated by the commission's work here, procedural inconsistencies and unintended ramifications for practitioners, to cite just a couple of examples, are being brought to the parliament's attention in a concise and timely manner via these reports. This particular legislation was one which the member consulted widely on. It was subject to many community and stakeholder submissions and very detailed debate when going through this parliament. While the Tasmanian act is widely acknowledged as a leading example of an accessible and safe, regulated voluntary assisted dying framework, there are clearly opportunities for refinements to make it even more effective and robust, for both those seeking to access the service and those working on the ground to deliver those required services. This annual report demonstrates the importance of building into our legislation, where appropriate, capacity for independent and expert-driven regular legislative reviews.

I will touch on the final two recommendations, number eight and nine. Recommendation eight highlights another area where Tasmania is perhaps lagging, being the only Australian jurisdiction requiring those medical practitioners in their roles as PMPs, CMPs

and AHPs to submit their forms to the commission manually, rather than via an electronic online portal. Unsurprisingly, both participants and practitioners have found the sole analogue form submission option quite frustrating. It should be a relatively simple and straightforward action to provide for the development of a suitable, secure online portal, as identified by the commission.

The last recommendation, nine also has a technological context. The commission has identified the need to improve more broadly Tasmanian's health literacy about voluntary assisted dying. However, a drawback they have specifically cited is the current reliance on the Department of Health's website to provide a range of voluntary assisted dying information, given the fact a significant number of Tasmanians, particularly aged 70 years and over, are digitally disengaged.

We need a range of communication modes that meets the literacy and digital literacy needs across our whole community. It is quite ironic that these last two recommendations deal with online connectivity as on the one hand it appears the government expects all Tasmanians to be comfortable and confident in accessing digital only information regarding voluntary assisted dying options, but on the other hand, the state requires medical practitioners actually providing that service to submit their forms and notifications to the commission manually rather than via digital portal mechanism.

To conclude, I reiterate my appreciation to the member for bringing on debate of this motion, noting the commission's latest annual report. Many of us who were here in 2021 to debate the passage of the End-of-Life Choices (Voluntary Assisted Dying) Act, as well as those who campaigned for the reform and other stakeholders, would attest, a key focus of the debate was achieving the right balance between mandatory checks and balances and the necessary legislative flexibility to serve the interests of those seeking access to voluntary assisted dying. It is worthwhile to emphasise in the light of those concerns raised many times when the various bills were been debated in this place in the lead-up to and including the successfully passed current legislation in 2021, it is incumbent upon all of us here in parliament to pay close attention to the VAD commission's annual reports.

These are the mechanisms by which actual evidence-based data is provided and from which any trends can be identified and mapped as well as provide the invaluable on-the-ground feedback of participants and practitioners. This is an invaluable feedback loop directly to the community and the parliament. Hence, it is incumbent on us all to pay attention to that feedback and also for the government to detail in a timely manner how it intends to act upon any recommendations made.

Lastly, I express my deep appreciation for the diligent work undertaken by the commission, to Executive Commissioner Louise Mollross, Deputy Executive Commissioner, Dr Annette Barrett and Commissioners Kim Barker, Dr David Bodle, Elizabeth McDonald and Professor Margaret Otlowski and their support staff. Thank you for all your professionalism and efforts which continue to ensure Tasmania remains a leader in this important area of health care.