



End of Life Choices (Voluntary Assisted Dying)

COTA Tasmania Position Paper

Prepared by

Tasmanian Policy Council

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Proposed COTA Tasmania Position on End of Life Choices (Voluntary Assisted Dying)

The Tasmanian Policy Council propose that COTA Tasmania adopt the following formal position with respect to End of Life Choices (Voluntary Assisted Dying) in Tasmania:

1. Support end of life choices for Tasmanian residents over the age of 18, remembering that where choice relates to Voluntary Assisted Dying (VAD) it is initiated by the person facing death and not by a third party.
2. That the framework adopted in Tasmania ensures that there is no ability for a person facing death to be coerced into choosing VAD in order to protect those facing death from elder abuse.
3. Support the tabling of *End of Life Choices (Voluntary Assisted Dying) Bill 2020* which provides for choice at the end of one's life.
4. Recognise the need for appropriate resourcing if the Bill is supported by Parliament, and for those medical practitioners who become involved in providing voluntary assisted dying services be appropriately trained. This will be a particular issue in rural and regional Tasmania.
5. Ensure that the provisions of the Bill for the prescription, dispensing, administration, possession and regulatory oversight of the substances used to give effect to voluntary assisted dying are harmonious with existing legislation for the provision and handling of scheduled substances in Tasmania.
6. Seek that Government create and manage a list of medical practitioners who are able to support a person facing death on their voluntary assisted dying journey, and that objecting medical practitioners be required to advise a patient seeking voluntary assisted dying of the presence of this list. Objecting medical practitioners should not be compelled to provide a list of alternative medical practitioners.
7. Request Government to ensure effective palliative care services are available to all Tasmanians, particularly those in rural and regional Tasmania.
8. Highlight that this Bill is not seeking to introduce an alternative to palliative care, rather the provisions of the Bill provide an adjunct to palliative care for those who find palliative care is not providing the expected respite from physical and/or mental suffering.
9. Having choice at the end of one's life is particularly important where a person facing death is seeking an alternative to palliative sedation.

Voluntary Assisted Dying Definition

For its purposes the TPC has adopted the following definition of Voluntary Assisted Dying:

The self-administration by a competent person, or in the case of a person unable to self administer and still having competency, administration by a medical practitioner with the person's informed consent, of a lethal dose of medication which has the intent of relieving pain and suffering by hastening death for that person.

Introduction

In preparing this paper the Tasmanian Policy Council has considered the issue of voluntary assisted dying at length, and have actively considered the widely varying views of Council members throughout the process.

TPC has had presentations from a number of persons on this and related issues. In particular we have had presentations from Madeleine Ogilvie on Advance Care Directives, Dying With Dignity Tasmania and Mike Gaffney provided a presentation on his proposed Private members Bill.

The TPC have also considered a number of reports into voluntary assisted dying, notably those prepared by the Parliaments of:

- Victoria, which introduced voluntary assisted dying in June 2019;
- Western Australia, where both houses of Parliament passed that state's voluntary assisted dying legislation in December 2019; and
- Queensland, which in March 2020 recommended that legislation in support of voluntary assisted dying be drafted.

In each of these states support for voluntary assisted dying has been conditional on the provision of extensive safeguards, eligibility criteria and oversight to ensure protections against misuse. The framework adopted in the summary report to the Queensland Parliament on voluntary assisted dying has been used as a basis for this paper as it largely reflects the way TPC has considered its position.

Within Tasmania the issue of voluntary assisted dying has been under consideration for many years and Bills have been unsuccessfully presented to Parliament on at least two occasions. Over the last 6 to 9 months Mike Gaffney, MLC, has developed the *End of Life Choices (Voluntary Assisted Dying) Bill 2020*. It is likely this Bill will be presented to Parliament during 2020 or early in 2021.

As TPC has been considering this issue for a considerable period of time we consider it is relevant to now propose to the Board a position for COTA Tasmania to adopt in relation to this Bill given the impact it will likely have on those who COTA Tasmania seek to represent, and the wide variety of views of that cohort of Tasmanian residents.

Despite having access to palliative care or some kind of other support, people in Tasmania who have the competency to make decisions about the end of their own life, and either have a life-limiting illness or are suffering from a neurodegenerative condition and are seeking relief from prolonged suffering and discomfort, are currently restrained in the choices they have available.

Although modern medicine recognises the principle of patient autonomy, the options available to patients facing the end of their life are limited and include:

- refusal of medical treatment;
- refusal of food and/or hydration;
- palliative sedation; and
- suicide.

These options are further constrained by restrictions on what medical practitioners can legally provide to their patients.

In addition to the actions proceeding in a number of Australian jurisdictions, the New Zealand Parliament's Justice Committee reported in April 2019 on the *End of Life Choices Bill 2015*, which was introduced as a private member's Bill in October 2015. This Bill was passed by the New Zealand Parliament in November 2019. At their general election in 2020, the New Zealand people will be asked to vote in a referendum on the introduction of these voluntary assisted dying laws.

Outside of Australia and New Zealand, voluntary assisted dying, sometimes referred to as 'euthanasia' or 'medical assistance in dying', is lawful in a number of other countries including Luxembourg, the Netherlands, Belgium, Canada and in several states of the United States of America.

Issues Considered by TPC

Within the community there are a broad range of views both in support of voluntary assisted dying and against. These views are diverse and polarised. TPC has discussed these views, which are summarised below, and this discussion has framed our proposed position to COTA Tasmania.

Reviewing the recent enquires undertaken by the Parliaments mentioned earlier the most frequent views offered in support of voluntary assisted dying are:

- giving an individual choice and the right to self-determination at the end of their life can provide them with a longer and more satisfactory life;
- where pain and suffering cannot be relieved by palliative care, voluntary assisted dying provides an important alternative;
- voluntary assisted dying would provide dignity for the patient and less distress for their loved ones;
- as it is voluntary, the moral position of others should not prohibit access for those who seek to end their life voluntarily due to a terminal or debilitating illness that is not responding to other treatments;
- people are already travelling to a jurisdiction where voluntary assisted dying is supported, often travelling long distances to do so and very likely travelling whilst they are seriously ill;
- the likelihood that doctors may already be assisting a patient to die in an unregulated way and potentially without the patient's specific consent; and
- the current regulatory framework around a person's end of life is not working with many people seeking suicide in the face of an insufferable condition, often by refusing food and hydration in an effort to hasten death.

There are also strongly held views opposing Bills such as the one prepared by Mr Gaffney. These opposing views include:

- the sanctity of life should be respected at all cost and voluntary assisted dying contradicts religious beliefs;
- there is a very strong risk of coercion of vulnerable people and the safeguards in the legislation are unable to ensure all assisted deaths are voluntary;
- voluntary assisted dying would lead to a slippery slope enabling expanded eligibility or non-voluntary euthanasia;
- access to effective palliative care makes the need for voluntary assisted dying obsolete;
- introducing voluntary assisted dying poses ethical problems for health professionals who may be required to assist a person to end their life; and
- voluntary assisted dying sends the wrong message to people contemplating suicide.

TPC has been very conscious of the impact of voluntary assisted dying legislation on health practitioners. While some practitioners are in support of such legislation, others are strongly opposed. Like others in the community the views of health practitioners are polarised.

Arguments put by health practitioners in support of voluntary assisted dying which TPC has identified include:

- the limits of palliative and end-of-life care to address pain and suffering;
- the need for a more humane option at the end of life;
- the need for people to have choice and autonomy at the end of their lives;
- concerns about the legalities of palliative sedation and the under-treatment of patients which may hasten death; and
- the impact of pain and suffering experienced by the dying and terminally ill on their loved ones.

In contrast to these views other medical practitioners strongly hold views relating to:

- fundamental legal, philosophical and moral objections;
- the unrealised benefits of palliative care;
- concerns that access to voluntary assisted dying will interfere with doctor-patient relationships and may discourage patients from seeking medical treatment for life-shortening illnesses;
- risks that patients may seek to access voluntary assisted dying because of fear of dying and suffering rather than actual pain and suffering;
- the potential for the scheme to be broadened in future (the slippery slope argument);
- impacts on vulnerable people and risks of schemes being abused;
- impacts on families and loved ones, and
- conflicts with messages relating to suicide prevention.

Assessing the Issues

There is broad community support for voluntary assisted dying to become an option for those with a terminal illness or experiencing interminable suffering. This broad support is generally tempered by the need for strong safeguards to support people facing death from being coerced. The over-riding position is one of the scheme being voluntary and that the final decision is made while the dying person clearly has the competence to make such a decision.

In relation to the views against providing people facing death with the option of voluntary assisted dying TPC considers that:

- people opposing voluntary assisted dying due to religious or other beliefs have the choice to not access it as it is voluntary;
- the legislative framework can be structured to provide safeguards which address the concerns around the risks for vulnerable individuals and eligibility requirements, including a staged decision-making process when assessing a person's access to voluntary assisted dying;
- the view expressed by some faith groups about the spiritual benefits from suffering at the end-of-life are not universally accepted, even within particular denominations;
- there is a lack of evidence that legalisation for voluntary assisted dying results in an inevitable move toward the erosion of safeguards and an increase of non-voluntary euthanasia as the legislative frameworks are structured to specifically limit such erosion; and
- temporary suicidal ideation is quite distinct from an enduring, considered and rational decision to end one's life in the face of unbearable suffering.

Palliative care and voluntary assisted dying

In proposing that COTA Tasmania supports the introduction of this Bill, TPC also proposes that COTA Tasmania takes a strong stand in support of better provision and availability of palliative care in Tasmania.

Voluntary assisted dying is an option that is additional to and not a substitute or replacement for quality palliative care.

TPC is firmly of the view that palliative care is not devalued at the expense of voluntary assisted dying services. This is a position TPC proposes irrespective of the final decisions the Parliament may take in relation to voluntary assisted dying.

Safeguards

The protection of people facing death from coercion is a critical issue for the design of any voluntary assisted dying scheme and TPC considers that the proposal as outlined in the Bill being prepared for tabling in the Tasmanian Parliament offers sufficient safeguards. In addition to the eligibility criteria for accessing voluntary assisted dying, the Bill offers additional safeguards including:

- assessment of a patient's access to voluntary assisted dying at several stages through the process, including that the patient's decision-making capacity is enduring;
- strict controls on the qualifications required for participating medical practitioners;
- the requirement that two independent medical practitioners conduct assessments prior to the applicant accessing the scheme;
- prohibiting medical practitioners from initiating discussions about voluntary assisted dying with their patients;
- rigorous governance of systems for prescribing, dispensing, administering and disposing of voluntary assisted dying substances, and that these systems mesh seamlessly with existing legislation covering the prescription and handling of scheduled substances in Tasmania; and
- a transparent review mechanism and protections against liability for scheme participants.