

Written evidence submitted by Michael Gaffney (ADY0042)

Introduction

I offer this submission to the *Health and Social Care Select Committee Inquiry* to assist in the voluntary assisted dying journey in the UK. I wish all members of the Committee the very best with their deliberations. I will use a dot point format and perhaps my submission best addresses **question 2 of the Inquiry** but at times may touch on some other questions of the Inquiry.

Background: Tasmania is the smallest of the 6 Australian States; population 570,000 (approx.) 68,401 sq. km and has 29 Local Government Areas (Councils).

Wales in comparison; population 3,267,500 (approx.) 20,779 sq. km and (as of 2021) had 22 County borough councils.

I am the Independent Member of the Legislative Council who successfully introduced and carried the Tasmanian End-of-Life Choices (Voluntary Assisted Dying) Act 2021. The Act received Royal Assent on the 22nd April 2021 and came into being on the 23 October 2022 (18 months implementation period)

The Tasmanian political process is based on the Westminster system; 25 members in the House of Assembly (Lower House) and 15 Members of the Legislative Council (Upper House). Currently the Upper House has 4 Labor Members, 4 Liberal Members and 7 Independents. Very few Bills originate in Tasmania's Upper House - perhaps 10 in the last 12 years and only 4 of those have passed.

Tasmanian Journey

2009 Dying with Dignity Bill introduced by Greens Leader Nick McKim in the HA, the Bill (19 pages) was sent to a select inquiry, Bill was found wanting and not supported in the Lower House.

2013 Voluntary Assisted Dying Bill introduced by Premier Lara Giddings and Nick McKim in the HA; was defeated 13-12 in the Lower House and did not proceed to the Committee Stage.

2016 Voluntary Assisted Dying Bill introduced by Lara Giddings (Labor) and Cassy O'Connor (Greens Leader) in the HA and was defeated 16-8 and did not proceed to the Committee Stage.

2020 End-of-Life Choices (Voluntary Assisted Dying) Bill was introduced in the Upper House by Mike Gaffney (MLC) was passed 15-0 and progressed to the Committee Stage, was then sent to the Lower House and was passed 19-6. (190 pages)

I believe that Tasmania is the only Parliament in the world to have one of its Chambers of Parliament unanimously pass a VAD/Euthanasia Bill

Australian Journey

In Australia, each State has responsibility for the Voluntary Assisted Dying process, unlike Canada and New Zealand (albeit it different with only 2 tiers) which have been primarily generated by their Federal/National Government.

Tasmania was the 3rd state to have passed VAD laws and currently the Territories (Australian Capital and the Northern) are pursuing the right to make their own laws as territories are constitutionally constrained.

Whilst Victoria is to be congratulated on being the first to pass laws in Australia it is also recognised that State Acts to follow the Victorian legislation tried to improve on that Act.

However, it also should be recognised that each state has had its own journey: for instance, South Australia's Act only passed into the Committee stage on its 17th attempt.

Reflections for the Committee to Consider:

For me **Suicide** is the choice between life and death whilst **Voluntary Assisted Dying (VAD)** is the choice between two deaths.

I believe this whole process is about an individual's right of "choice"

- (1) the eligible person the right to choose the time and place and manner in which they relive their suffering
and
- (2) the health practitioner's right to choose if they wish to be involved (or not) with (a) the VAD process (need to undertake the training) and (b) each individual case that presents.

It is always the individual who was the primary focus of this legislation and the Act is so written to assist with the persons rights to progress if so desired.

Medical and Health Practitioners whilst making a determination regarding the persons eligibility do not make the decision. The decision to proceed (or not) with the VAD pathway is made by the person.

There is no requirement for anyone to be involved with the VAD event; it will however allow persons who satisfy the following criteria the right to choose:

- ◆ 18 years old
- ◆ A Tasmanian resident
- ◆ Capable of making decisions
- ◆ Acting voluntarily
- ◆ Suffering intolerably from a Relevant Medical Condition and has a 6-month prognosis (12 months for Neurodegenerative disorders)

Doctors trained in Tasmania are supportive of the Geneva Declaration, which includes the following:

- The health and well-being of my patient will be my first consideration
- I will respect the autonomy and dignity of my patient
- I will share my medical knowledge for the benefit of the patient and the advancement of healthcare.

The Tasmanian EOLC (VAD) Act articulates if a medical practitioner (or any other person), acts in accordance with the bill or believes on reasonable grounds that they are doing so,

- ◆ They will not incur any civil or criminal liability for their actions
- ◆ The action will not be regarded as a breach of professional ethic or standards, or any other principles of conduct to their employment

Part 20 Miscellaneous - Clause 140

*For the purpose of the law of this State, a person who dies as a result of the administration to the person, in accordance with this Act, of a VAD substance or a substance under section 88, or the self-administration by the person, in accordance with this Act, of a VAD substance **does not die by suicide.***

The Process

- ✚ *Whilst each of the criteria are addressed clearly in each Act it should be recognised that each state's laws are slightly different.*
- ✚ The Victorian 2017 Act (commenced in 2019) and Western Australian 2019 Act commenced in 2021. Both Acts were introduced by the State's Government of the Day and involved inquiries, commissions and boards etc to introduce the legislation and oversee the process.
- ✚ *In 2016 the 3rd attempt in Tasmania to introduce the Voluntary Assisted Dying Bill into the Lower House (was defeated 16-8) and although each HA member was allowed a conscious vote only 1 member of the Government voted in support of the Bill.*
- ✚ In 2017 I was approached by Tasmania's Dying with Dignity (DwDTas) President to see **if** the Bill was re-introduced into the Lower House and if it was passed would I carry the Bill in the Upper House. I said I would however in carrying such an important Bill (if it were to pass) I needed to be more familiar with the issues, challenges and material.
- ✚ *I then embarked on an international tour – 17 days, 11 flights, 5 countries (Netherlands, Belgium Switzerland, Canada and the USA), countless meetings with very learned individuals, was an invaluable experience and actually afforded me an international body of experts I could call on for opinion and advice. I also made podcasts available to all Members of Parliament of those meetings.*
- ✚ On my return to Tasmania one of the "8" members in support of the 2016 Bill resigned and his place was taken by an MP who had made it known that she was not supportive of VAD. I approached DwDTas and suggested they consider that I introduce a Private Members Bill in the Upper House as it seemed certain that introducing the Bill downstairs would definitely fail (again).
- ✚ *DwDTas were pleased that I would do that however in my mind there was a distinct difference between introducing a Bill (My BILL) to carrying a Bill which may have been passed from the other place.*
- ✚ I wrote to the Premier and requested that I have access to OPC (Office of Parliamentary Counsel) for such a significant piece of legislation. The Premier agreed however I received the distinct impression (reinforced by Anti-VAD Ministers) that the attempt would fail again (same Bill /same defeat scenario)
- ✚ *I then decided a different course of action to previous attempts where legislation seemed to arrive on the parliamentary table with very little input or involvement from the community.*
- ✚ In late January 2020 I released a 122-page draft Bill for Community discussion, involvement and debate.
- ✚ *In February 2020 I presented 35 (90 minute) forums to interested individuals in all of the 29 Local Councils including both Flinders and King Islands. This action immediately created a widespread community conversation.*
- ✚ Coordinated 240,000 pamphlets to be letter dropped by volunteers, tabled a petition of 13,000+ Tasmanian names, over 500 large corflute posters across the state, received, tabled and presented to each of the 40 politicians 108 stories of lived experiences sent to me by Tasmanians, drip fed information to all politicians as the journey unfolded.

- ✚ *I was not precious about the Bill and although it was markedly different to the 2012 & 2016 Bill (to the chagrin of DwDTas) it was responsive to the needs and desires of the Tasmanian People. The eventual Act was close to 190 pages.*
- ✚ *It contained very different clauses to previous legislative attempts from Tasmania, and even those successful acts in Victoria and Western Australia.*
- ✚ *National Bodies (Go Gentle Australia, Christians for Voluntary Assisted Dying, Palliative Care Tasmania) and notable Australians (Andrew Denton, Marshall Perron, Dr Rod Syme) were very supportive although I can remember Andrew contacting me in March 2020 and saying “Michael good on you for trying but with a Liberal Government with similar representation to other years we don’t give you much of a chance to succeed but we will help.” Go Gentle were an enormous help!*
- ✚ *It should be noted that there were opposing voices as there are (and should be) for sensitive social issues. A number of religious organisations, the AMA (Australian Medical Association) including the Tasmanian Branch, Catholic Women’s League for example were very much against the Legislation. However, I always welcomed their involvement although at times needed to correct publicly some of the assumptions and assertions they made about the Bill.*
- ✚ *I made myself accessible to media at all times and was constantly being asked to provide updates and information. I often was contacted by every day Tasmanians did find myself listening to some very sad personal situations and circumstances and often those conversations were quite lengthy.*
- ✚ *I ended up completing 115 forums to the Tasmanian Community, as mentioned previously all Local Councils (before the Bill was passed and I went back to many of those same communities once the Bill had passed) – I presented 25 forums to the year 11 & 12 Colleges across the state, Conferences including Nurses, Doctors, Lawyers, Local Government even an environmental land-care conference.*

In closing, I offer this submission in the hope that it highlights that Tasmania used a different process than the other Australian states and perhaps there are some lessons to be considered about the value of authentic community consultation.

I have one full time office assistant. So, to introduce a 190-page Bill regarding such a sensitive issue, (supported by the Senior Drafter of OPC) and I also engaged a part time helper when the Bill proceeded to Parliament as there was just so much happening, is I believe reinforcing that there needs to be a very transparent and open process where people feel as though they are included in the conversation and each opinion is important. Obviously, with this issue there will never be consensus but I believe all Tasmanian’s felt they could be involved.

I’m not certain if I have added anything much of value to your Inquiry and I wish the Committee the very best. I am happy to assist if further information is required and what I have enclosed is best described as a snapshot of the Tasmanian journey.

The Tasmanian End-of-Life Choices (Voluntary Assisted Dying) Act 2021 and process commenced in on October 23, 2022.

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