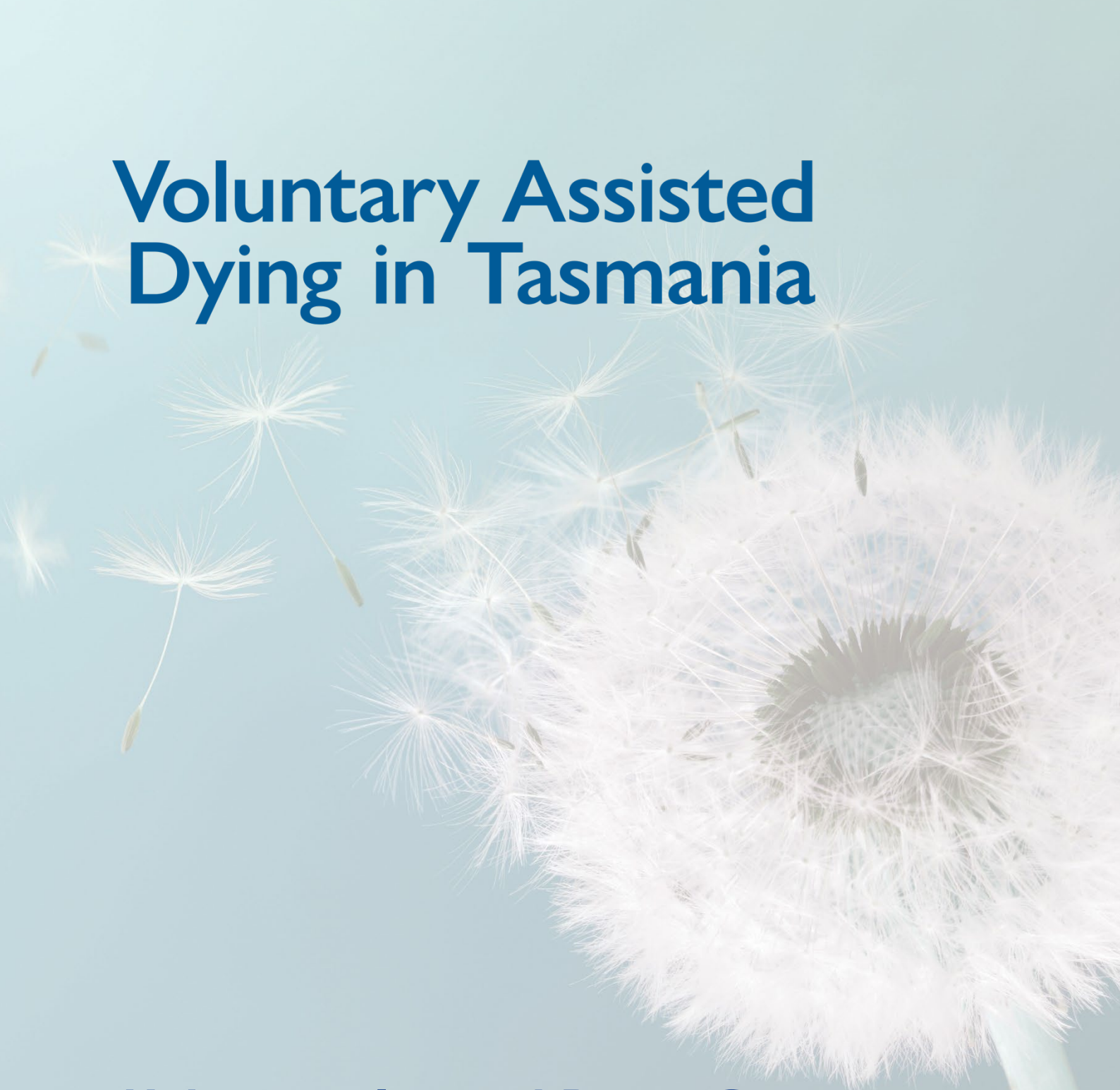
Voluntary Assisted Dying in Tasmania



Voluntary Assisted Dying Commission Annual Report 2022-23

Department of Health

Tasmanian Government

For more information, to give feedback on this report, or to share your experience with the Commission, please contact:

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Statement of Compliance

The Hon Jeremy Rockliff MP, Premier, Minister for Mental Health and Wellbeing, Minister for Tourism and Hospitality, and Minister for State Development, Trade and the Antarctic.

Dear Premier

Pursuant to section 120 of the *End-of-Life Choices (Voluntary Assisted Dying) Act 2021*, I give to you, for presentation to each House of Parliament, the Voluntary Assisted Dying Commission Annual Report for 2022-23.

Louise Mollross
Executive Commissioner
Voluntary Assisted Dying Commission

Contents

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 associated purposes. It commenced on 23 October 2022.

Under section 120 of the Act, the Commission is required to provide the Minister for Mental Health and Wellbeing a report setting out details of the administration and operation of the Act during the preceding financial year. I am pleased, as the Commission's Executive Commissioner, to present this Report on the Act's administration and operation for the financial year ending 30 June 2023.

This Report describes the voluntary assisted dying process and provides a statistical and operational summary of activity associated with voluntary assisted dying in Tasmania, for the period 23 October 2022 to 30 June 2023. The Report provides an overview of the Act's operation in that period, notes challenges encountered and milestones reached, and makes recommendations for consideration by the Tasmanian Government.

As this report shows, the number of people in Tasmania accessing voluntary assisted dying, and the number of practitioners willing to support those who are eligible is steadily increasing. As of 30 June 2023, both the number of First Requests determined and the number of practitioners who have successfully completed the Tasmanian Approved Voluntary Assisted Dying Training, exceeds the number estimated prior to the Act's commencement. The interest from practitioners in accessing the training continues to be steady while the number of practitioners wishing to support their own patients through the voluntary assisted dying process is increasing.

A significant challenge is the intersection of voluntary assisted dying legislation with the Commonwealth *Criminal Code Act 1995* (the Commonwealth *Criminal Code*). Sections 474.29A and 474.29B of the Commonwealth *Criminal Code* effectively prohibit the use of a carriage service for dealings in material that counsels or incites another person to suicide. Due to differing interpretations of the term "suicide" this may extend to dealings in material that relate to voluntary assisted dying in relevant circumstances.

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

Despite these challenges, the Commission has had the unique 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.

The effective operation of the Act 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.

The Commission acknowledges those who have accessed voluntary assisted dying together with their families, friends, and supporters who have chosen to share their stories publicly. The Commission also recognises the importance of public conversation on voluntary assisted dying as a vital means of breaking

down barriers and increasing understanding of voluntary assisted dying as an end-of-life choice for those who are eligible.

Lastly, I would like to thank everyone who has contributed to this Report, including people who have accessed voluntary assisted dying, the families, friends, and practitioners who have shared their stories and experiences, my fellow Commissioners, and the staff within the Office of the Commission without whom the Commission would be unable to operate.

Louise Mollross
Executive Commissioner
Voluntary Assisted Dying Commission

Reflections

"The VAD process was completely voluntary and had the appropriate safeguards. And taking the medications was peaceful, dignified, civilised and respectful." (friend of participant)

"… my partner's friend managed to get his wishes today. After a vast amount of organising on my partner's part, and a lot of help from the VAD Commission themselves, our friend finally managed to end his life in a dignified way. The last few months were very hard, the last few weeks were very difficult for him. The Navigator from the Voluntary Assisted Dying Navigation Service was extremely caring and helpful. He helped our friend in many ways, and managed to get doctors organised even when things looked hopeless. The doctor who administered the drugs to our friend was very lovely, soft and gentle." (friend of a participant)

"She [friend of participant] was very positive about the program as a whole and hopes to see the service grow and develop. She was very complimentary of everyone involved in the process and the assistance they gave [the participant] and the entire family." (Navigation Service, as contacted by participant's friend)

"It has been a privilege to be invited to act as a medical practitioner to support people at the end of their lives who are suffering from various terminal conditions." (practitioner)

"My partner's death was a great outcome for him and a very calm and peaceful process." (partner of participant)

"My husband was able to access VAD this year after 17 months of unsuccessful treatment and management of cancer. He died peacefully and with dignity on his own terms, and he was and I remain grateful for having access to this service. All the staff involved in the process were professional and caring and respectful." (partner of participant)

"I would like to personally thank the lead navigator and the team at VAD for all the sensitivity and courtesy they have shown me during the VAD process I have embarked on. I regard myself to be totally blessed to have the opportunity to end my life this way. I have been allowed to end it in a dignified and quality way and a greater gift could never be bestowed upon me." (participant)

"As a family physician it is my role to support people from birth to death. The VAD process has been incredibly professionally rewarding helping very brave people at the end of their lives." (practitioner)

Snapshot – 23 October 2022 to 30 June 2023

Tasmanian population (18 years and over) 2021[1]		453, 026
First Requests received		72
Age range:	42 to 95 years	
Median age:	72 years	
Male:	59 per cent	
Female:	41 per cent	
Cancer-related diagnosis:	66 per cent	
Second Requests received		55
Final Requests received		44
VAD Substance Authorisations issued		42
Voluntary assisted dying deaths		25
Deaths (total) in Tasmania 2021[2]	4,769	
VAD deaths as a proportion of all deaths (estimated)	0.5 per cent	
Voluntary assisted dying training provided		330
Voluntary assisted dying training completed		67
Medical practitioner:	49 per cent	
Registered nurse:	34 per cent	

1 Australian Bureau of Statistics, National, state and territory population, September 2022.
2 Australian Bureau of Statistics, Causes of Death, Tasmania, 2021, 3303.0

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.

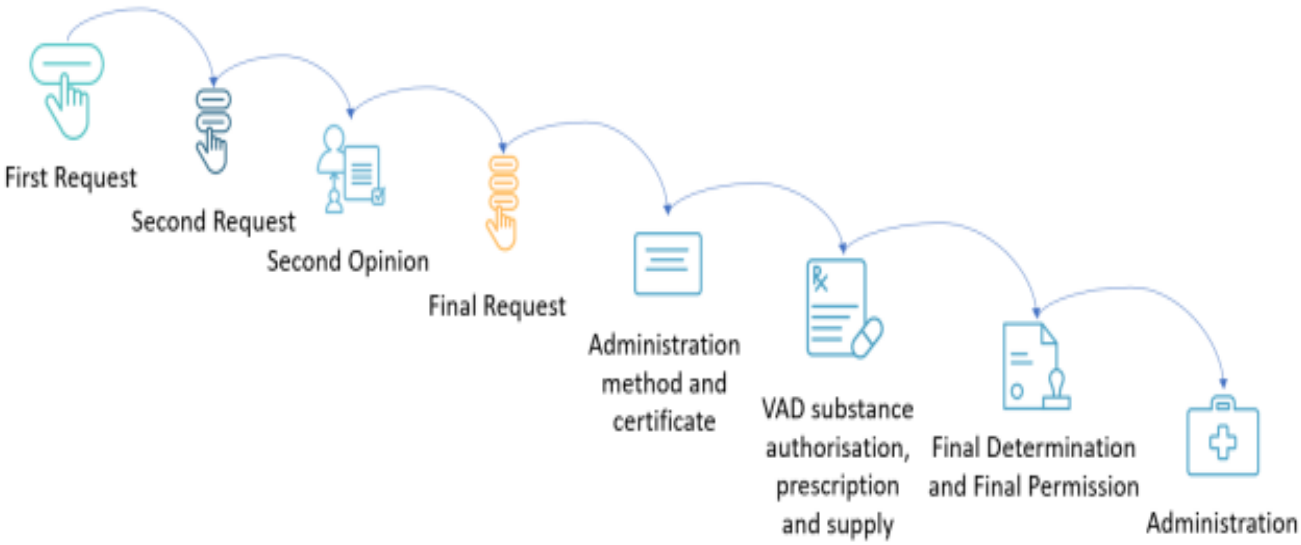
Voluntary assisted dying in Tasmania is regulated by the Tasmanian *End-of-Life Choices (Voluntary Assisted Dying) Act 2021* (the Act). The Act identifies when a person in Tasmania is eligible to access voluntary assisted dying and sets out the steps in the voluntary assisted dying process. It also establishes 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, life expectancy, age, residency, voluntariness, and decision-making capacity. The criteria are strict, and not everyone with a terminal illness will be eligible.

Steps in the Voluntary Assisted Dying Process

The voluntary assisted dying process has several formal steps, with medical practitioners determining eligibility at each point – Figure 1. 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 capacity to make the decision, or if the medical practitioner believes they are not acting voluntarily.

Figure 1: Formal steps in the voluntary assisted dying process



Health Practitioner Involvement in Voluntary Assisted Dying

To be actively involved in the voluntary assisted dying process, and to act as a Primary Medical Practitioner (PMP), Consulting Medical Practitioner (CMP) or Administering Health Practitioner (AHP), a medical practitioner or registered nurse (in the case of an AHP), must be suitably qualified and experienced. They must also complete the Tasmanian Voluntary Assisted Dying Training.

In 2022-23:

- 330 people were provided the training.
- 67 people successfully completed the training. Of these,
    - 33 (or about 49 per cent) were medical practitioners.
    - 23 (or about 34 per cent) were registered nurses.

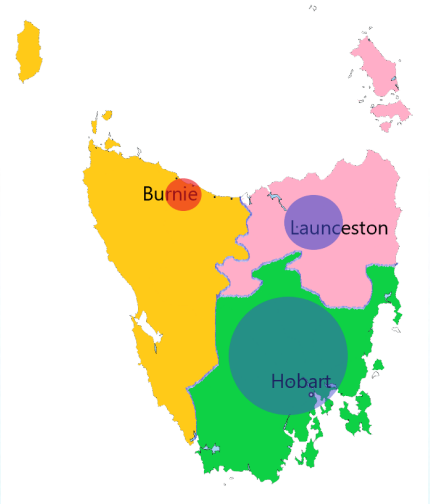
Over three-quarters of medical practitioners who had successfully completed the training resided in the Southern region of Tasmania, with around 20 per cent in the Northern region, and the remaining in the North-Western region – Table 1 and Figure 2.

Table 1: Number of trained medical practitioners by region in 2022-23

Region of practice	Number of practitioners	Proportion
South	23	72%
North	7	22%
North-West	2	6%
Total	32	100%

Note: One medical practitioner recorded an address outside of Tasmania.

Figure 2: Relative proportion of trained medical practitioners by region



Base map source: https://d-maps.com/carte.php?num_car=64392&lang=en

Of the 33 medical practitioners who successfully completed the training:

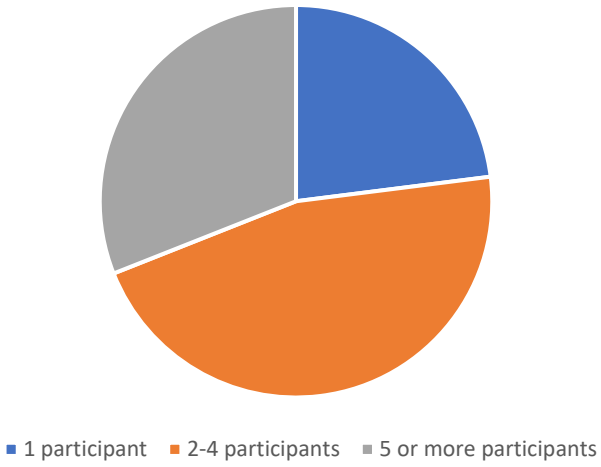
- 13 acted as a PMP.
- 15 acted as a CMP.
- 10 acted as an AHP.

Most medical practitioners participating in the voluntary assisted dying process acted as a PMP for between two to four participants (46 per cent), with approximately 31 per cent involved with five or more participants, and 23 per cent with one participant only – Table 2 and Figure 3.

Table 2. Number of participants by PMP in 2022-23

Number of participants per PMP	Number of PMPs	Proportion
1 participant	3	23%
2-4 participants	6	46%
5 or more participants	4	31%
Total	13	100%

Figure 3: Proportion of PMPs by number of participants



Feedback from practitioners involved in the voluntary assisted dying process has been overwhelmingly positive, with practitioners commenting on the peaceful death of participants and the gratitude of their family and friends.

Of all medical practitioners who received a request from a person to access voluntary assisted dying, the majority (81 per cent) specialised in general practice, the remaining practitioners' specialties included emergency medicine and palliative medicine – Table 3.

Table 3. Speciality of medical practitioners participating in voluntary assisted dying in 2022-23

Specialty	Number of practitioners	Proportion
General Practice	13	81%
Other(1)	3	19%
Total	16	100%

(1) This included the specialities of emergency medicine and palliative medicine.

The Voluntary Assisted Dying Process

First Request

A First Request is a person's first formal request to a medical practitioner to determine whether they are eligible to access voluntary assisted dying. For the First Request to be valid, the person must have received a copy of the Relevant Facts document from the medical practitioner in person before they make their First Request. A First Request can be made verbally, or in writing.

The medical practitioner will decide whether to accept or refuse to accept the person's First Request. A medical practitioner must refuse the request if they are not an authorised medical practitioner (as defined under the Act). A medical practitioner who decides to accept a person's First Request becomes the person's PMP for the process.

During 2022-23:

- 72 First Requests were received by a medical practitioner from people requesting access to voluntary assisted dying.
- Two people made more than one First Request, meaning that 70 people made 72 First Requests.

Of the 72 First Requests made:

- The median age of people was 72 years, with ages ranging from 42 to 95 years – Table 4.
- There were more males than females (59 per cent compared with 41 per cent) – Table 4 and Figure 4.
- The majority of people had completed tertiary education (55 per cent) – Table 4 and Figure 5.

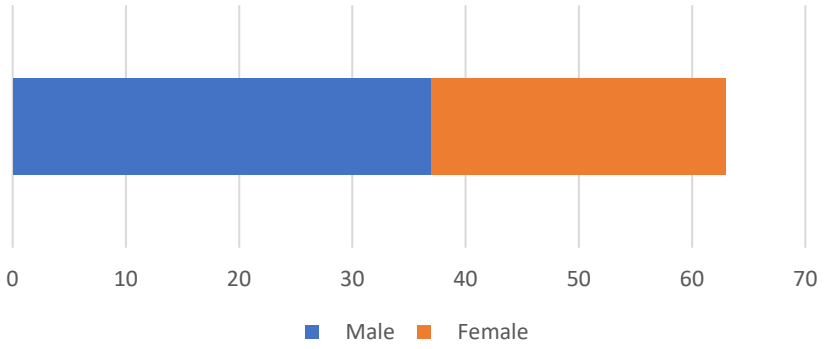
Sixty-eight First Requests were accepted, two requests were not accepted, and a further two requests were invalid, because they were accepted by medical practitioners not authorised to act as the patient's PMP.

Table 4: Demographic characteristics of persons making a First Request in 2022-23

Demographics	Number	Proportion
Age		
Median (years)	72	
Range (years)	42 to 95	
Education[1]		
Did not complete high school	5	12%
Completed high school	14	33%
Completed tertiary education	23	55%
Gender[2]		
Male	37	59%
Female	26	41%
Non-binary, other, different term	0	0%

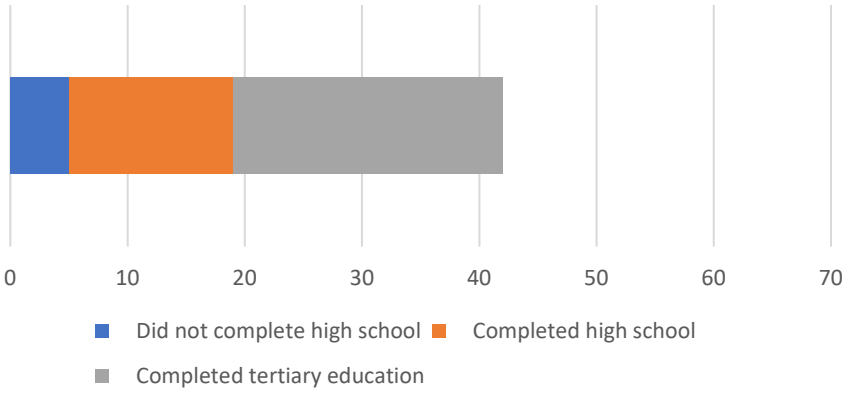
(1) Responses on this item were not recorded for 30 applicants.
(2) Responses on this item were not recorded for nine applicants.

Figure 4: Number of people (First Request made) by gender



Note: nine applicants had no response recorded for this item

Figure 5: Number of people (First Request made) by education attained



Note: 30 applicants had no response recorded for this item

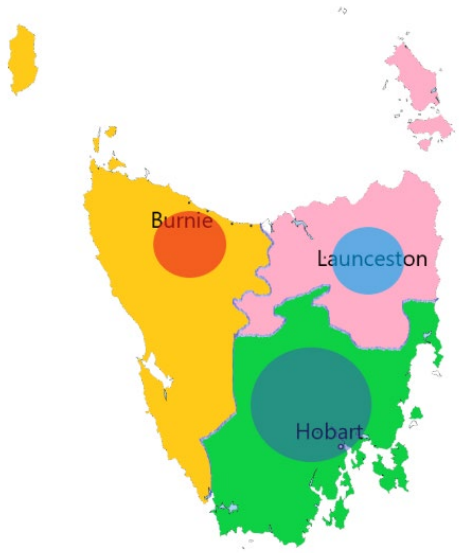
The majority of First Requests were made by people residing in the Southern region (49 per cent), with around 27 per cent made by people residing in the North-Western region, and 24 per cent made by people in the Northern region – Table 5 and Figure 6.

Table 5: Number of First Requests (valid and invalid) by region in 2022-23

Region of practice	Number of First Requests	Proportion
South	35	49%
North	17	24%
North-West	20	27%
Total(1)	72	100%

(1) Two requests were invalid because the medical practitioners accepted the requests but did not satisfy the criteria to act as a PMP.

Figure 6: Relative proportion of First Requests by region



Base map source: https://d-maps.com/carte.php?num_car=64392&lang=en

Determination of First Request

After accepting a person's First Request, the PMP is required to give the person information about their condition and treatment, their prognosis, and information about palliative care and treatment options.

The PMP will then determine whether the person is eligible, or ineligible, to access voluntary assisted dying.

The PMP must determine the person's First Request as soon as is reasonably practicable after the PMP has sufficient information to make the determination. A person is determined as eligible to access voluntary assisted dying if the person:

1. is an adult (aged 18 years or over),
2. is an Australian citizen (or permanent resident) residing in Tasmania for at least 12 months,
3. has an advanced, incurable, and irreversible condition that is not treatable in a way which the person finds acceptable, and that is expected to cause death within six months, or 12 months if the condition is neurodegenerative,
4. is acting voluntarily, and
5. has decision-making capacity.

If the PMP determines, on the person's First Request, that the person is ineligible to access voluntary assisted dying, then the voluntary assisted dying process ends for the person.

During 2022-23:

- 62 people (94 per cent) were determined as eligible to access voluntary assisted dying, upon a First Request.
- Four people (six per cent) were determined as not eligible to access voluntary assisted dying – Table 6.

The reasons for the determination of a person as not eligible to access voluntary assisted dying was most often that that the person was not expected to die from a medical condition within six months (or within 12 months if the condition was neurodegenerative).

Table 6: Determination of First Requests in 2022-23

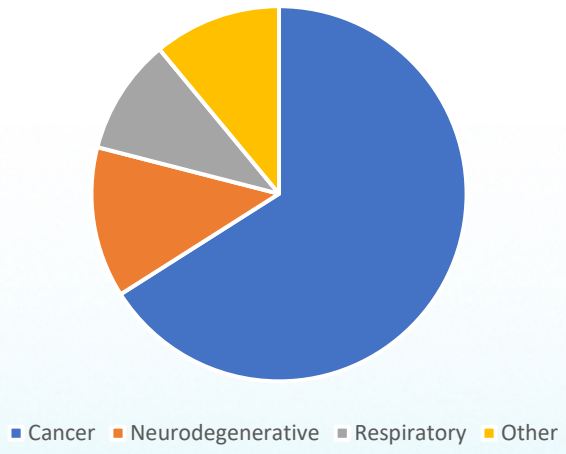
Determination	Number	Proportion
Determinations made	66	
Eligible	62	94%
Not Eligible	4	6%

Those found eligible to access voluntary assisted dying were most likely to have a cancer-related primary diagnosis (66 per cent), with the next most common diagnosis being neurodegenerative (13 per cent) and respiratory (10 per cent). See Table 7 and Figure 7.

Table 7: Primary diagnosis group in 2022-23

Diagnostic group	Number	Proportion
Cancer	40	66%
Neurodegenerative	8	13%
Respiratory	6	10%
Other	8	11%
Total	62	100%

Figure 7: Proportion of people (First Request accepted) by primary diagnosis



Second Request and Determination

If a person's PMP determines that the person is eligible to access voluntary assisted dying on the First Request, the person may make a Second Request. The Second Request must be made at least 48 hours after the First Request, unless the person's PMP is of the opinion that the person is likely to die within seven days, or likely to lose decision-making capacity within 48 hours.

The Second Request must be in writing, and it must be witnessed.

During 2022-23:

- 55 people made a Second Request to access voluntary assisted dying.
- 54 people who made a Second Request were determined eligible to access voluntary assisted dying. No people were determined as not eligible[1].

Second Opinion and Determination

If the PMP determines that the person is eligible to access voluntary assisted dying on the Second Request, then the PMP must refer the person to another medical practitioner for a Second Opinion. The medical practitioner to whom the patient is referred must decide whether to accept or refuse the referral. The medical practitioner must refuse the request if they are not an authorised medical practitioner (as defined under the Act).

A medical practitioner who accepts a referral becomes the person's CMP for the process. The CMP will consider the person's medical history and any other relevant information before determining whether the person is eligible, or ineligible, to access voluntary assisted dying.

During 2022-23:

- 50 people were referred by a PMP to a medical practitioner, and 50 medical practitioners accepted the referral, becoming the person's CMP.
- 48 people (equating to 98 per cent of all people referred) were determined eligible to access voluntary assisted dying by the CMP. One person was determined as not eligible – Table 8[2].

[1] *One person who made a Second Request was determined as eligible after the reporting period (i.e., after 30 June 2023), and so is not included in the statistics presented here.*
[2] *One person who was accepted on referral was determined as eligible after the reporting period (i.e., after 30 June 2023), and so is not included in the statistics presented here.*

Table 8: Second Opinions in 2022-23

Determination	Number	Proportion
Referred	50	
Accepted	50	
Determinations made	49	
Eligible	48	98%
Not Eligible	1	2%

Final Request and Determination

If the CMP determines the person is eligible to access voluntary assisted dying (or if a second CMP determines the person is eligible following a determination of ineligibility by the first CMP) then the person may make a Final Request to their PMP.

A Final Request must be in writing.

On receipt of a person's Final Request, the PMP will determine whether the person is eligible, or ineligible, to access voluntary assisted dying.

During 2022-23:

- 44 people made a Final Request to the PMP.
- 43 people were determined eligible to access voluntary assisted dying by the PMP. No people were determined as not eligible – Table 9[3].

Table 9: Final Request and Determination in 2022-23

Determination	Number	Proportion
Final Request made to PMP	44	
Determinations made	43	
Eligible	43	100%

[3] *Note that one person who made a Final Request was determined as eligible after the reporting period (i.e., after 30 June 2023), and so is not included in the statistics presented here.*

VAD Substance Authorisation and Supply

If the PMP determines that the person is eligible to access voluntary assisted dying on the person's Final Request, the PMP must request the Commission to issue a VAD Substance Authorisation.

The Commission will either issue, or refuse to issue, a VAD Substance Authorisation to the person's PMP. The Commission can only issue a VAD Substance Authorisation if it has received all the required information from the PMP and is satisfied that all of the Act's requirements have been met.

A person can decide to either privately self-administer the VAD Substance (take it on their own), or have the VAD Substance administered to them by, or with the assistance of, their AHP. The VAD Substance Authorisation details will be different depending on the method of administration that is chosen. This means that the person will need to have decided how they would like the substance to be administered before the VAD Substance Authorisation is requested and issued.

The VAD Substance Authorisation authorises the PMP to issue a VAD Substance Prescription for the person.

The PMP then gives the VAD Substance Prescription to a specialist pharmacist who will discuss the person's condition and the most appropriate method of administration with them before supplying the VAD Substance to the person's PMP.

The person's PMP will store the VAD Substance securely until it is needed.

During 2022-23:

- 42 VAD Substance Authorisations were issued by the Commission to a PMP (including one VAD Substance Authorisation which was revoked by the Commission because of a change in administration method).
- The VAD Statewide Pharmacy Service dispensed 37 VAD Substance kits to PMPs upon receipt of a VAD Substance Prescription and VAD Substance Authorisation.

Administering Health Practitioner (AHP)

If the PMP determines a person is eligible to access voluntary assisted dying on the Final Request, the PMP must advise the person, with 48 hours, as to whether the PMP is to be the person's AHP, or, alternatively, whether the PMP intends to request the Commission to appoint another medical practitioner, or a registered nurse, to be the person's AHP.

A person's AHP is responsible for determining whether the person still has decision-making capacity and is acting voluntarily before the person receives assistance to die. This determination is called the Final Determination.

The person's AHP is also responsible for issuing either an AHP Administration Certificate or a Private Self-Administration Certificate to the person (depending on the method of administration chosen), for receiving the person's Final Permission, and for supplying or administering the VAD Substance to the person.

The Act requires the AHP to notify the Commission if the AHP determines that the person does not have decision-making capacity and/or is not acting voluntarily. The Act does not require the AHP to notify the Commission when a person gives a Final Permission.

During 2022-23, on Final Determination, no people were determined by the AHP to be no longer eligible to access voluntary assisted dying.

Voluntary Assisted Dying Deaths

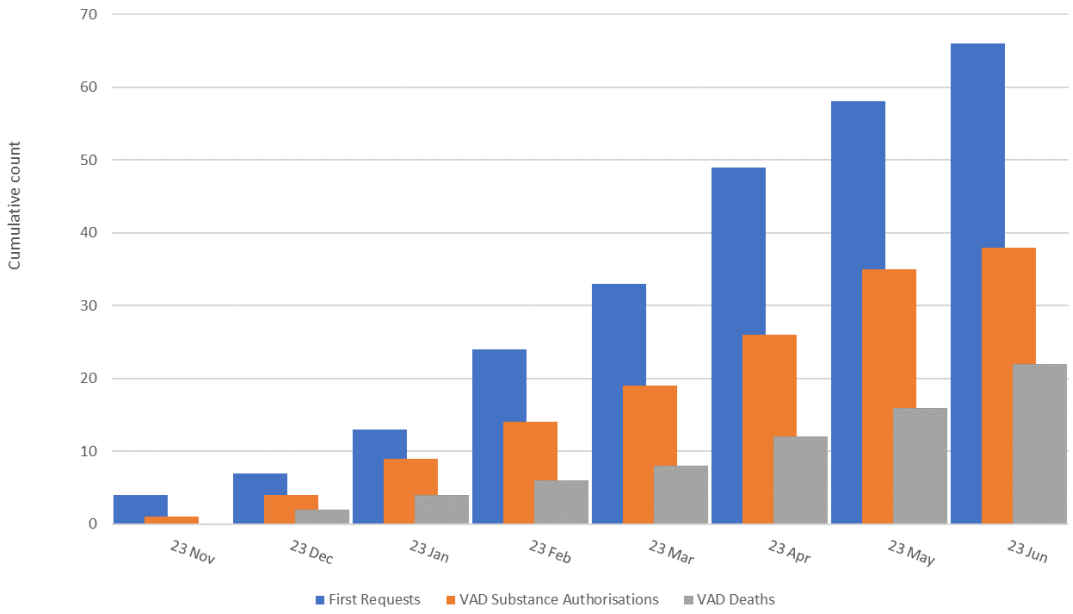
A person who decides to take the VAD Substance on their own and who is issued a Private Self-Administration Certificate must appoint a Contact Person. Amongst other things, the Contact Person is responsible for notifying the person's AHP of the person's death and for storing any unused or unwanted VAD Substance that has been issued to the person.

The person's AHP is, in turn, required to notify the Commission of the person's death.

During 2022-23:

- The Commission was notified of 25 deaths by administration of the VAD Substance.
- Seven people, or 11 per cent of those determined eligible at First Request, died before being issued a VAD Substance Authorisation.
- Voluntary assisted dying deaths (by administration of the VAD Substance) were, by estimated proportion, about 0.5 per cent of all deaths in Tasmania.

Figure 8: Cumulative monthly total of First Requests, VAD Substance Authorisations and deaths by administration of the VAD Substance.



Forms and Notifications to the Voluntary Assisted Dying Commission

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.

The Commission has approved forms which allow:

- a person to request that they be determined by a PMP or CMP to be eligible to access voluntary assisted dying at each request stage, and
- 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.

A range of other proforma documentation has been produced for use by medical practitioners and others when documenting relevant processes. Forms, along with the supporting documentation, are reviewed and updated by the Commission on a regular basis following feedback from medical practitioners and other participants in the voluntary assisted dying process.

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.

PMPs, CMPs and AHPs are, in turn, required to notify the Commission of certain matters relevant to a person's voluntary assisted dying process. In most cases, the requirement is to notify the Commission of relevant matters as soon as practicable and within no more than seven (7) days.

During 2022-23, the Commission received:

- 884 forms in total (see Table 10 for a listing of (major) forms received).
- An average of about 105 forms per month.

Table 10: Number of forms received by the Commission, 2022-23

Form	Number
First Request Forms	
First Request (can also be made verbally)	5
Accept or Refuse	70
Relevant Information notification	64
Determination	65
Statement of Reasons	64
Second Request Forms	

Second Request	55
Determination	55
Statement of Reasons	55
Second Opinion Forms	
Referral	50
Determination	48
Statement of Reasons	48
Final Request Forms	
Final Request	43
Determination	43
Statement of Reasons	43
AHP Appointment Forms	
Request to appoint AHP	5
Agreement to be appointed	5
VAD Substance Authorisation Forms	
Request to issue VAD Substance Authorisation	44
Final Permission Forms	
Final Permission	20
Final Determination (notification person does not have decision-making capacity or is not acting voluntarily)	0
Private Self-Administration Certificate	4
Contact Person appointment	8
Supply Forms	
Notification VAD Substance supplied	37
Notification VAD Substance returned	8
Total Forms received	**884**(1)

Note: Listed in Table 10 are the forms most frequently received by the Commission. The Commission receives other forms and notifications not listed here.

(1) This is a count of all forms officially received by the Commission.

Supporting Voluntary Assisted Dying in Tasmania

The 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 30 June 2023, the Commission's membership was 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.

More information about each of the Commissioners is provided at Annexure 1.

Functions

The Act sets out the following functions for the Commission:

- 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.[4]

As noted below, some of these functions have been delegated to the Voluntary Assisted Dying Navigation Service. More information about the Commission's functions is provided in the Commission's Terms of Reference which are provided at Annexure 2.

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 been 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 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).

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, therefore, 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

[4] *No functions are prescribed.*

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 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.

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

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

For the period from the Act's commencement to 30 June 2023:

- The Commission met 53 times.
- The Commission issued 39 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 14 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 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. This was granted.

The Voluntary Assisted Dying Navigation Service

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

Members of the Navigation Service also perform the following functions as delegates of the Commission:

- 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, 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.

During 2022-23:

- 134 people contacted the Navigation Service enquiring about voluntary assisted dying for themselves or another person.
- Of the people relevant to these 134 enquiries:
    - Approximately 71 per cent (75 people) were receiving palliative care services under the direction of Specialist Palliative Care Services in Tasmania (note that this item was missing 28 responses).
    - 58 per cent (64 people) had a primary diagnosis of cancer, 13 per cent (14 people) had a primary diagnosis of neurodegenerative disease, eight per cent (9 people) had a primary diagnosis of cardiac disease, and seven per cent (8 people) had a primary diagnosis of respiratory disease. Ten per cent of people had an 'other' diagnosis.
    - Approximately 47 per cent resided in the Southern region, approximately 35 per cent resided in the North-Western region, and 18 per cent resided in the Northern region – Table 11.

Table 11: Navigation Service, 2022-23

Navigation Service	Number	Proportion
Total new person enquiries	134	
Receiving palliative care	75	71%
Primary diagnosis		
Cancer	64	58%
Neurodegenerative	14	13%
Cardiac	9	8%
Respiratory	8	7%
Other	11	10%
Region		
South	55	47%
North West	40	35%
North	21	18%

The Voluntary Assisted Dying Pharmacy Service

The Voluntary Assisted Dying Pharmacy Service (VAD Pharmacy Service) was established and commenced operation in August 2022. Prior to the commencement of the Act, the VAD Pharmacy Service undertook activities in preparation for the delivery of voluntary assisted dying in Tasmania.

The VAD Pharmacy Service is the only pharmacy in Tasmania that can supply the VAD Substance, and trained and accredited 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 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 AHP.

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

During 2022-23, the VAD Pharmacy Service:

- Received 42 prescriptions for a VAD Substance.
- Conducted 36 patient assessments.
- Dispensed 35 VAD Substances.
- Disposed of 12 VAD Substances – Table 12.

Table 12: VAD Pharmacy Service, 2022-23

Pharmacy Service	Number	Proportion
Prescriptions received	42	
Patient assessments conducted	36	
North	8	22%
North West	7	20%
South	21	58%
VAD Substances dispensed	35	
VAD Substances disposed	12	
Median time between prescription receipt and supply of VAD Substance (days)	2	

Challenges and Recommendations

Commonwealth *Criminal Code Act 1995* (Commonwealth *Criminal Code*)

The Commission understands that the interaction between voluntary assisted dying laws and the Commonwealth *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 Commission urges amendments to the Commonwealth *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 Commonwealth *Criminal Code*.

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.

Remunerating medical practitioners and registered nurses

Voluntary assisted dying is a lawful service available to a small group of eligible 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. 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.

The Act allows a medical practitioner to receive "reasonable fees" for the provision of services as a participant's PMP, CMP or AHP, and it is understood that some private practitioners in Tasmania have elected to charge patients a set 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 can reportedly be difficult to implement in relation to patients with limited means or who die without the practitioner's bill being paid.

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.

Database and Portal

The Act requires PMPs, CMPs and AHPs to complete numerous forms and notifications for submission to the Commission and to other medical practitioners.

Practitioners have expressed significant frustration with the Act's documentation and notification requirements. Practitioners have 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 frustrating and time consuming for practitioners and patients alike and add significantly to the workload of Commission staff.

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 Commonwealth *Criminal Code* restrict electronic communication of certain voluntary assisted dying information which was considered to be a barrier. 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. Nonetheless, this is an important issue that needs to be addressed for the efficient operation of the Act.

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.

Medicare Benefits Schedule

There are no voluntary assisted dying-specific item numbers of the Medicare Benefits Schedule (MBS) – instead, practitioners must claim under an alternative item number which best suits the circumstances. Benefits paid are low and do not properly 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 expressly excluded from the scope of the MBS and no benefits are payable for this aspect of the process. The issue is common to all jurisdictions.

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.

Legislative Amendments

The Commission notes several legislative ambiguities that could benefit from amendment. The main issues 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, often requiring contact with Medicare. 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 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.

- 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 *make*s 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, when 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 would 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 would be to allow the Commission to appoint a new PMP or AHP in extenuating circumstances. This would provide flexibility while also strengthening safeguards/oversight insofar as it would see an additional medical practitioner involved in a person's voluntary assisted dying process.
- 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 of functions and powers by persons 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.

Recommendation 5:

The Tasmanian State Government progresses appropriate amendments to the Act to address the issues noted above, in consultation with the Commission.

Public Interest Disclosure

Public Interest Disclosures 2022-23	Number
Total number of disclosures made to the public body during the year that relate to improper conduct	0
Number of disclosures made to the public body during the year that relate to detrimental action	0
Number of disclosures determined to be a public interest disclosure	0
Number of disclosures determined by the public body to be public interest disclosures that were investigated during the year	0
Number and types of disclosed matters referred to the public body by the Ombudsman for investigation	0
Number and types of disclosures referred by the public body to the Ombudsman for investigation	0
Number and types of investigations taken over from the public body by the Ombudsman	0
Number and types of disclosed matters that the public body has declined to investigate	0
Number and types of disclosed matters that were substantiated upon investigation and action taken on completion of the investigation	0
Any recommendations made by the Ombudsman that relate to the public body	0

Annexure 1

Commission Membership

The Commission consists of six members appointed jointly by the Minister of Health and the Attorney-General.

Louise Mollross (Executive Commissioner): Ms Mollross has been a Legal Practitioner in private practice for over 35 years. She is a Doyles Guide Preeminent Tasmanian family lawyer and Director of Ogilvie Jennings Lawyers. Louise also practices in the area of estate planning, estate administration, property law and commercial law. She regularly participates in mediations on behalf of clients.

Dr Annette Barratt (Deputy Executive Commissioner): Dr Barratt is a medical practitioner with more than 30 years' experience in general practice. Dr Barratt holds membership and/or positions with the Australian Medical Association, the Royal Australian College of General Practitioners, the Tasmanian Civil and Administrative Tribunal, the Australian Health Practitioner Regulation Agency panel of approved doctors and is a Deputy Director of the Professional Services Review.

Kim Barker: Ms Barker served as Tasmania's Public Guardian for over five years, and has vast experience in various high-level health, social justice and human rights roles as a member of a range of boards and tribunals. This experience includes work with the Guardianship and Administration Board, the Mental Health Tribunal, the Tasmanian Board of the Medical Board of Australia, the Health Practitioners Performance and Standards Panel, and the Social Security Appeals Tribunal.

Dr David Boadle: Dr Boadle's forty-year career in health care was principally as a Consultant Physician specialising in Medical Oncology and Palliative Care. Returning to clinical practice as a Senior Staff Specialist in Medical Oncology at the Royal Hobart Hospital, David became Head of Department for Medical Oncology, and the Strategic Director of Cancer and Blood Services at the Royal Hobart Hospital ten years later.

Elizabeth McDonald: Ms McDonald is the Director of Allied Health Services for the North West Region of the Tasmanian Health Service. Elizabeth's professional background is as a social worker, holding an undergraduate and a research master's degree in Social Work in addition to an Executive Master of Business.

Professor Margaret Otlowski: A Professor of Law at the University of Tasmania's Faculty of Law, Professor Otlowski has a professional reputation as a Law Scholar, recognised by her appointment in 2015 as a Fellow of the Australian Academy of Law. With an early academic career focussed on the legal aspects of end-of-life, stemming from her PhD research, Professor Otlowski had her work published by Oxford University Press Voluntary Euthanasia and the Common Law, in 1997.

Annexure 2

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.

[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

Key Contacts

Voluntary Assisted Dying Commission

The Commission operates Monday – Friday, from 9.00 am to 5.00 pm.

Postal details	Voluntary Assisted Dying Commission Department of Health GPO Box 125 HOBART TAS 7001
Telephone	1800 568 956 (toll-free)
Email	vad@health.tas.gov.au
Web	www.health.tas.gov.au/vad/commission

Voluntary Assisted Dying Pharmacy Service

The Pharmacy Service operates Monday – Friday, from 9.00 am to 5.00 pm

Postal details	Voluntary Assisted Dying Pharmacy Service Tasmanian Health Service GPO Box 125 HOBART TAS 7001
Telephone	1800 568 956 (toll-free)
Email	vad@health.tas.gov.au
Web	www.health.tas.gov.au/vad

Voluntary Assisted Dying Navigation Service

The Navigation Service operates Monday – Friday, from 9.00 am to 5.00 pm

Postal details	Voluntary Assisted Dying Navigation Service Tasmanian Health Service GPO Box 125 HOBART TAS 7001
Telephone	1800 568 956 (toll-free)
Email	vad@health.tas.gov.au
Web	www.health.tas.gov.au/vad

Palliative Care, Treatment, and Pain Relief

The Tasmanian Department of Health provides palliative care, information on end-of-life planning, and support for people throughout Tasmania. The Department's website and contact details for the Department's Specialist Palliative Care Service are as follows:

Web	www.health.tas.gov.au/palliativecare
North-West	6477 7760, Monday to Friday, 8.30 am – 4.00 pm
North	6777 4544, Monday to Friday, 8.30 am – 4.30 pm
South	6166 2820, Monday to Friday, 8.00 am – 4.30 pm

Palliative Care Tasmania is an independent organisation that can also provide information and support to Tasmanians with a life-limiting illness and their families, and information about palliative care services across Tasmania. Their contact details are as follows:

Web	www.pallcaretas.org.au
Email	admin@pct.org.au
State-wide	6231 2799

The *CareSearch* palliative care knowledge network provides online resources and information on palliative care for health professionals, people needing palliative care and their families, and the general community. Their contact details are as follows:

Web	www.caresearch.com.au

General Supports

Beyond Blue can provide support for mental health and wellbeing, especially if you are experiencing anxiety or depression. Their contact details are as follows:

Web	www.beyondblue.org.au
Phone	1300 224 636 (any time of the day or night)

Lifeline can provide crisis support if you need immediate help to deal with emotional distress. Their contact details are as follows:

Web	www.lifeline.org.au
Phone	13 11 14 (any time of the day or night)

A Tasmanian Lifeline is a Tasmanian-based telephone support service if you need one-off or ongoing support. Their contact details are as follows:

Web	www.atasmanianlifeline.org.au
Phone	1800 984 434 for support (8.00 am to 8.00 pm, 7 days a week)

Department of Health
GPO Box 125,
Hobart 7001 Tasmania
www.health.tas.gov.au