

**Submission  
No 85**

**INQUIRY INTO PROVISIONS OF THE VOLUNTARY  
ASSISTED DYING BILL 2021**

**Name:** The Hon Mike Gaffney MLC

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## **Submission to the NSW Standing Committee on Law and Justice inquiry on the provisions of the Voluntary Assisted Dying Bill 2021**

I am writing in strong support of the view that the NSW Voluntary Assisted Dying Bill 2021 includes substantial effective safeguards against the feared risks of such legislation, particularly the risk that people may be able to access VAD as a result of coercion, abuse and undue pressure.

This is a brief submission and I would be happy to provide additional information as requested or to discuss it with the Committee.

**I. There is overwhelming evidence that the model of the NSW VAD Bill, which is similar to that of the Tasmanian End-of-Life Choices (Voluntary Assisted Dying) Act 2021, is a proven model to provide effective safeguards against feared risks.**

This was always a core issue for me (as the sponsoring MP) throughout the very intensive and demanding process of over two years to develop the Bill and to see it successfully through the Parliamentary process. The Tasmanian End-of-Life Choices (Voluntary Assisted Dying) Act 2021 was finally passed on 23 March 2021 and received Royal Assent on 22 April 2021.

The implementation process is proceeding and the Act is to come into operation by 23 October 2022. Some additional background information is included in attachment 1.

Before moving the Bill, I was confident that the proposed legislation provided for a VAD system that as a whole assured the voluntariness of access to VAD and the safety of individual Tasmanians who wanted to choose VAD, and for those who did not; for the medical and other health practitioners who wanted to participate in the VAD process and those who did not; and for the broader community and its trust in the process.

The successful passing of the Bill demonstrates that the vast majority of the MPs in the Tasmanian Parliament also came to be confident that was the case. This was a repeat of many Parliaments in Australia (Victoria, WA, SA and Queensland) and other western democracies based on decades of experience of legal VAD systems that has been thoroughly scrutinised and found to provide VAD systems with effective safeguards.

I have no doubt the NSW Bill also has those effective safeguards.

The process for the development and successful passing of the legislation involved rigorous information gathering, reliance on in-depth research extensive community and expert consultation and involvement, thorough information provision, community and special briefings and discussion with my Parliamentary colleagues, and then the lengthy and demanding debate in both Houses of Parliament which thoroughly tested every aspect of the proposed VAD system.

The Bill was developed on a solid foundation of in-depth research, data collection and analysis of many other pieces of VAD legislation in Australia and across the world, the associated community and parliamentary debates, and the intense scrutiny of existing legislation including every review and inquiry of the last 10 years, and the regular reports of oversight bodies.

Information was also provided to me on policy debates and statements by bodies representing medical practitioners (eg RACGP, AMA), other health practitioners and representative organisations such as Palliative Care Australia, Council on the Ageing, etc. In addition, I consulted directly with those organisations in Tasmania, with individual medical and health practitioners who were in favour and opposed to legislation for VAD choice.

The community consultation I undertook was substantial. For example, in January 2020, I took a draft Bill to present to a series of community forums in every local government area in the state - 35 forums across 29 councils. It was after the forums talking to people that I had my very first taste of how many people had a story of distressing and sad experiences of the end of the lives of their loved ones. Many, altruistically, were desperate to support the

bill. They advocated to me, 'Please get this through: we do not want anyone else to go through what our beloved brother, sister, partner, mum, dad, nan or grandpa did.'

I was greatly assisted by local Tasmanian groups such as Dying with Dignity Tasmania and the associated Your Choice Tasmania and nationally by other similar groups and individuals to ensure an extremely high level of engagement and involvement of the Tasmanian community in the debate, in the media and in representations to me and all other MPs continued throughout the year and into 2021 through numerous drafts of the Bill and the parliamentary debate in both Houses of Parliament.

After three previous attempts had failed to get enough support to progress to the Committee stage, the Bill was passed unanimously in the Legislative Council, and 16:6 in the House of Assembly (2 Members absent). Perhaps one of the most rewarding aspects of the process was that some Members who had voted against previous Bills saw the eventual Act as having appropriate safeguards and oversight – and felt comfortable in voting in the affirmative.

A parliamentary petition also indicates the level of engagement in the debate and support for VAD legislation. The petition was the largest ever presented to the Tasmanian Parliament with support from 13,082 Tasmanians (the equivalent of over 235,000 in NSW).

**2. It is the VAD process or system as a whole that ensures the effectiveness of safeguards of voluntariness, decision-making capacity and that the choice of VAD is not driven by coercion, abuse or undue pressure.**

The NSW Bill, and the Tasmanian and other State's VAD legislation which has been passed, provides for a rigorous system of multiple checks and confirmation that all the requirements for access to VAD have been met, most importantly the voluntariness of the choice of VAD and the decision-making capacity of the person seeking VAD, right to the end of the process. The multiple checks are done by highly qualified and experienced health practitioners, who have also done special approved training. The whole process is reported and subject to substantial scrutiny in an oversight, monitoring and reporting process. These components all

work together to ensure an effectively safeguarded system, as supported by the substantial, consistent evidence from many jurisdictions with decades of combined experience.

As I reported in my Second Reading speech on 15 September 2020 in the Tasmanian Legislative Council:

*“In drafting this bill and seeking feedback from stakeholder groups, the issue of coercion was discussed repeatedly and at length. It was acknowledged that many of the safeguards within the bill - that is, fines, training and mandatory reporting processes - are specifically aimed at deterring and identifying coercion and, if necessary, immediately ceasing the voluntary assisted dying process. It is also worth noting that the Victorian training package for practitioners who wish to participate in the VAD process contains a module on coercion. I anticipate that the planning for the training package here will draw on the Victorian experience and that the commissioner of voluntary assisted dying in Tasmania and experts involved will make amendments in accordance with this bill and for the Tasmanian setting.*

*Two very experienced Victorian doctors who actually work in that space, Dr Nick Carr and Dr Cameron McLaren, who provided briefings, stated that medical professionals deal with this issue regularly, both within and external to the voluntary assisted dying process, and doctors are very attuned to, 'weeding out' any signs of coercion. If there is a hint of suspicion, that doctors would, and have in the past, scheduled additional consultations and assessments to ensure the person's safety and genuine voluntariness.”*

Mike Gaffney, MLC

## **ATTACHMENT I**

### **BACKGROUND to the Tasmanian legislation**

The Tasmanian End-of-Life Choices (Voluntary Assisted Dying) Act 2021 received Governor-in-Council assent on 22 April 2021. The implementation process is proceeding and the Act is to come into operation by 23 October 2022.

The Bill was moved by myself, Mike Gaffney, as a Private Members Bill in the Legislative Council. After a lengthy debate and amendments, it was passed at the Second and Third Reading on the voices without any dissent being expressed.

With my agreement, the Bill was moved In the House of Assembly by Sarah Courtney, Liberal MP for Bass (also then Minister for Health). It was passed at the Second Reading on 4 December 2020 in a cross-Party vote of 17 - 7, including with the support of the Premier and Deputy Premier, 4 other Liberal MPs, all 9 Labor and both the 2 Greens MPs. Those who voted against the Bill included 6 Liberal MPs and 1 Independent. The Bill passed at the Third Reading on 4 March 2021 in a vote of 16 - 6.

The Bill as amended returned to the Legislative Council and was again passed without dissent on 23 March 2021.

Tasmania was the third State to pass voluntary assisted dying legislation. A copy of the End-of-Life Choices (Voluntary Assisted Dying) Act and of information about it can be found on the relevant section of the Department of Health website at <https://www.health.tas.gov.au/vad>.

The Tasmanian Act has major similarities to the legislation in Victoria and WA, which preceded it, but is closer to the WA VAD Act. It is also similar to the Queensland legislation which has also now been passed. The current NSW VAD Bill has many of those similarities.

The Tasmanian Act also includes some important differences, including:

- allowing registered nurses to be Administering Health Practitioners,
- provision for consultations by audio-visual means except at the time of the first request,
- a Voluntary Assisted Dying Commission with broader functions than VAD Boards under other legislation and
- some discretionary powers for the VAD Commission including the power to grant an exemption from the life expectancy requirement of 6 months (or 12 months for neuro-degenerative conditions).

## **Development of the Bill**

The success of the Bill, including the unanimous votes in the Legislative Council and the very strong vote in the House of Assembly, was due to:

- in-depth research that provided a sound knowledge and database and understanding of similar legislation and its outcomes in Australia and overseas
- overwhelming active community support for VAD legislation generally and for the Bill. For example, the petition
- broad consultation and input into the content of the Bill from across the Tasmanian community around the State and from those with relevant expertise and experience.
- approach by every member of the Parliament to become informed and to contribute to the process.