

Tasmanian Government Agency Advice on the End of Life Choices (Voluntary Assisted Dying) Bill 2020

February 2021

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The Tasmanian Government Department of Communities Tasmania, Department of Health, Department of Justice and Department of Police, Fire and Emergency Management have reviewed the End of Life Choices (Voluntary Assisted Dying) Bill 2020 (the Bill).

As advised on previous iterations of the Bill, the Tasmanian Government does not have a policy position on whether voluntary assisted dying (VAD) should be legalised in Tasmania and has not consulted stakeholders in respect of the Bill. While every opportunity has been taken to include all implementation issues in this paper, there is the possibility that further amendments to the End of Life Choices (Voluntary Assisted Dying) Bill 2020 or other Acts will be required during implementation, should Parliament pass the Bill.

Costs

	2020-21	2021-22	2022-23	2023-24 (ongoing)
Implementation team	\$270,186	\$720,558	\$120,093	
VAD Commission		\$658,000	\$1,507,940	\$1,337,940
Ongoing costs to the administering agency			\$808,930	\$778,930
Total	\$270,186	\$1,378,558	\$2,436,963	\$2,116,870
Contingency	\$30,000	\$200,000	\$300,000	\$300,000
Total Estimate	\$300,186	\$1,578,558	\$2,736,964	\$2,400,000

These costs are a best endeavours estimate only, noting that the Bill will need to be finalised and implementation issues worked through before final costs can be known. Policy decisions to be made during implementation could impact these estimates, as could any amendments to the Bill. These costs are informed by similar Commissions already established. An estimated contingency has been included for unforeseen costs. Should the Bill become law, agencies will update their costs through the budget process.

Other anticipated resource implications would be absorbed within routine operational costs. These include police response to allegations of misuse of the VAD substance, and changes to training and procedures to guide officers on attending the scene of a death of a person.

Interaction with other Acts

Commonwealth criminal laws

At various points, the Bill refers to a person's decision-making capacity being determined by a medical practitioner via audio-visual link. There is uncertainty about whether using telehealth for the purposes of VAD conflicts with Commonwealth law on telecommunications - specifically Sections 474.29A and 474.29B of the *Criminal Code Act 1995 (Cth)* - which prohibit using a carriage service (emails, texts, calls, social media communications) to access, transmit, make available, publish or otherwise distribute material that directly or indirectly counsels or incites committing or attempting to commit suicide.

It is considered unlikely that clauses 137 and 138 of the Bill will correct this risk.

It is noted that the Victorian Assisted Dying Review Board has determined that telehealth is not an option for people wishing to access VAD in that jurisdiction due to this conflict. The Victorian Board has requested the Commonwealth review its legislation to enable people to have conversations about voluntary assisted dying via telehealth.

Poisons Act 1971

The interaction between the provisions of the Bill and the provisions of the *Poisons Act 1971* remains an area of concern. While clause 139 gives the Bill supremacy over the Poisons Act, the Bill does not cover the field and implementation is made significantly more complex for the Department of Health as the administering agency and for practitioners. The operation of dual systems will have significant impacts on the Department's capacity to appropriately and confidently regulate scheduled substances.

Judicial Review Act 2000

Decisions by medical practitioners and others made under the Bill are potentially decisions to which the *Judicial Review Act 2000* applies. If that is the case, a person who is aggrieved by a decision may apply to the Supreme Court for an order of review relating to the decision. The application may be made on grounds including that a breach of the rules of natural justice relating to the making of the decision occurred or because there was no evidence or other material to justify the making of the decision. Application may also be made on the basis that there has been an unreasonable delay in making a decision.

A person who is entitled to make an application to the Court relating to a decision may ask the person who has made the decision to provide a written statement relating to the decision and the decision-maker must, in most cases, comply with such a request.

The Bill does not require medical practitioners and other decision-makers to give reasons for decisions and it is unclear how a medical practitioner or other decision-maker would be required to respond if asked to do so under authority of the Judicial Review Act.

Coroners Act 1995 and Clause 93 of the Bill

There are some legal and operational difficulties associated with the current drafting of clause 93 of the Bill and the *Coroners Act 1995* (the Coroners Act) that would undermine implementation of the apparent intent of the clause. This could lead to the Coroner lacking necessary jurisdiction, and duplicated processes and record keeping.

Clarifying deaths under the Bill are 'reportable', rather than simply 'notifiable', would lead to consistent Coronial processes in relation to deaths and records of deaths. For example:

- The reporting of such deaths to the Coroner would be followed by a limited investigation to satisfy the Coroner the death was in accordance with the Bill, appropriate records of the cause of death would then be made, and no inquest would be needed.
- 'Reportable deaths' provide that the rights of families of persons dying under the Bill reflect the rights of families of persons dying in other cases. For example, if a coroner decides not to hold an inquest into a death, section 26 gives the senior next of kin a right to apply to the Supreme Court for an order that an inquest be held.

Decision-making threshold

It appears open for health practitioners to form subjective judgements about matters such as whether a person is an eligible person. That is, on the current drafting, it may not be required that medical practitioners meet the objective test of being 'reasonably' satisfied that the person is an eligible person.

Protection from liability

There are various provisions in the Bill relating to the interaction of legislation, and when criminal liability does or does not apply. Some of these appear to be modelled on other jurisdictions, and some are new provisions. This is a complex area, where the definition of the elements need to be carefully developed to ensure the desired conduct is protected from liability, that conduct that should remain criminal is still subject to sanction, and the interaction of laws is clear and understood.

Offences

The offence provisions are contained in Part 18 of the Bill. It is noted that Victorian penalty levels for similar offences typically have higher financial penalties (600 penalty units), and the Victorian false statement offences have a 5 year maximum penalty.

Clause	Offence	Penalty
123	Inducements and dishonest or undue influence	- 5 years imprisonment; -fine not exceeding 200 penalty units; or -both
124	False representation of being authorised to communicate on behalf of person	- 5 years imprisonment; -fine not exceeding 200 penalty units; or -both
125	Person's communicator must communicate faithfully	- 2 years imprisonment; -fine not exceeding 200 penalty points; or -both
126	Falsification of record, &c.	-2 years imprisonment; -fine not exceeding 200 penalty units; or -both
127	False statements	-2 years imprisonment; -fine not exceeding 200 penalty units; or -both
128	Dishonest inducement to use VAD substance	- 5 years imprisonment; -fine not exceeding 200 penalty units; or -both
129	Offence to fail to provide notice to the Commissioner when required	Fine not exceeding 50 penalty units
130	Offences by contact persons	Fine not exceeding 100 penalty units
131	Offences in relation to review	Fine not exceeding 50 penalty units

In accordance with section 38(2)(c) of the *Acts Interpretation Act 1931*, any offence in the Bill which is punishable by imprisonment for a term exceeding 3 years shall be by indictment in accordance with the provisions of the Criminal Code; and other offences will be proceeded against summarily in the Magistrates Court.

Offences with the lower 2 year imprisonment penalties would be considered summary in nature, which for some of the offences may be considered at odds with their seriousness (such as false statements).

In Victoria, the *Voluntary Assisted Dying Act 2017* contains two specific provisions which attract a penalty of life imprisonment. These specific offences relate to non-compliance with a practitioner administration permit, and where a person administers a VAD substance to another person where the person is supposed to administer it themselves.

Attachment I – Implementation issues and proposed solutions

Clause Number	Clause Title	Issue	Agency comment
3	Objectives and principles	The objectives and principles provisions appears to exclude some matters that are key objectives of the legislation, such as the establishment of a Commission, and conversely purport to achieve outcomes that the legislation itself may not achieve.	<p>The objects component of the objectives and principles provision as drafted exclude some matters that are key objects of the legislation, such as the establishment of a Commission, while simultaneously purporting to achieve outcomes that are of an aspirational rather than necessarily factual nature.</p> <p>The principles use terms that are not defined in the Bill, including “medical treatment”, “palliative care”, “family”, “carers”, “regional resident”, “metropolitan area”, “abuse”, “coercion”. Lack of clarity in these matters may make the Act’s interpretation and application difficult.</p> <p>The principles are expansive and include matters such as a person who is a regional resident being given the same level of access to VAD as a person who lives in a metropolitan area. It is unclear what the impact of the principles as drafted will have on the State’s obligation to provide access to health care and VAD in a manner that is consistent with the Principles.</p> <p>The objectives refer to ‘legal protection’ for ‘registered health practitioners’, but the Bill’s provisions provide certain legal protections for both practitioners and other persons.</p>
5	Interpretation	Clause 5 defines “approved” to mean approved by the Commission.	It is unclear whether this would require each member of the Commission to approve a matter or whether approval by the Commissioner would be sufficient.
		Clause 5 defines medical practitioner as a person who is registered under the Health Practitioner Regulation National Law (Tasmania) in the medical profession (other than a student) and who is not a psychiatrist.	<p>The term “medical practitioner” is defined in the <i>Acts Interpretation Act 1931</i>. This makes it unnecessary to provide a separate definition for the term in the Bill.</p> <p>It is unclear why the definition of medical practitioner provided in the Bill excludes a medical practitioner who is also a psychiatrist.</p>

6	Relevant medical condition	Subclause 6(5) enables the Commission to request advice from a medical practitioner and seek relevant medical records.	In subclause 6(5), the reference to subsection (3) appears to be a typographical error and should refer to subsection (2).
7	Relevant information about eligibility	There is a lack of clarity about how multiple concurrent medical conditions are managed – while 7(f) and (g) reference the possibility of multiple conditions, other provisions require the “relevant medical condition” for operation (not a combination of conditions).	It may not always be possible to attribute suffering and likely death to a single condition in the presence of multiple conditions. It is unclear whether this would impact a person’s ability to access VAD if they have multiple conditions, or whether this is the intent.
9	Authorised medical practitioners	Part (a) of the clause provides that a person is an authorised medical practitioner in relation to a person if the person is registered under the Health Practitioner Regulation National Law (Tasmania) in the medical profession (other than as a student).	The term “medical practitioner” is defined in the Acts Interpretation Act 1931 and in the interpretation clause of this Bill. It is unclear why the phrase “medical practitioner” is not used. Given a psychiatrist is excluded from the definition of “medical practitioner” but not from the definition in part (a), it would help to clarify that a psychiatrist cannot be an authorised medical practitioner (if that is the intention).
		Part (c) requires “relevant experience”	
10	When person is eligible to access voluntary assisted dying	Under subclause 10(2), a person is not eligible to access voluntary assisted dying by reason only that the person has a disability, within the meaning of the <i>Disability Services Act 2011</i> .	It is unclear whether a person with an injury which otherwise meets the meaning of a relevant medical condition and that also constitutes a disability under the Disability Services Act would be eligible to access voluntary assisted dying.
12	When person has decision-making capacity	Subclause 12(1) provides that a person has decision-making capacity in relation to a decision if the criteria set out in the subclause are met.	While subclause 12(2) suggests a presumption in favour of capacity the terms of subclause 12(1) still imply that a person may only be taken to have decision-making capacity if the criteria set out in the section are met. This reverses the presumption in favour of decision-making capacity which is taken to apply generally to adults at common law.

		Subclause 12(2) provides that for the purposes of subclause 12(1), a person is taken to have decision-making capacity in relation to a decision unless there is evidence to the contrary.	
13	When person is acting voluntarily	Clause 13 provides that a person is acting voluntarily if the person is not acting under duress, coercion or because of a threat or punishment or unfavourable treatment.	Clause 13 does not refer to a person acting under the influence of a medication.
20	Refusal to accept first request	Under subclause 20(3), a medical practitioner must note that a person had made a first request and that this has been refused, in the medical practitioner's medical records. There is no requirement for the medical practitioner to notify the Commissioner of the refusal.	It may be useful for the Commissioner to know whether a particular medical practitioner has refused to accept a first request for conscientious reasons – as this will assist the Commissioner to fulfil the requirements of clause 112 of the legislation, which request the Commissioner to establish and maintain a list of medical practitioners who are willing to be PMPs, CMPs or AHPs.
21	Medical practitioner not required to give reasons for accepting or refusing request	Under clause 21, a medical practitioner to whom a first request is made is not required to provide the person with reasons for the refusal.	A decision by a medical practitioner to refuse to accept a first request is potentially subject to review under the <i>Judicial Review Act 2000</i> . If this is the case, and an application is made to the Court for review of the decision, the medical practitioner may be required to provide a written statement relating to the decision.
25	PMP may refer person, request information, &c.	Part (c) of the clause enables a PMP to request a medical practitioner to provide the PMP with copies of medical records so that the PMP can determine the person's first request.	Clause 25 does not refer to medical records that may be held by an organisation that employs medical practitioners such as the THS.

			While clause 25 enables a PMP to require another medical practitioner to provide particular information there does not appear to be any requirement for the medical practitioner who is asked for the information to provide it.
26	PMP to determine first request	There does not appear to be a time limit for the PMP to determine the first request	
27	Requirements in relation to determination of first request	<p>Subclause 27(1) refers to the PMP having met the person by way of audio visual link and requires the PMP to have been able to determine that the person has decision-making capacity or adopts the decision of another person in relation to the decision-making capacity of the person.</p> <p>Sections 474.29A and 474.29B of the Criminal Code Act 1995 (Cth) prohibits using a carriage service (emails, texts, calls, social media communications) to access, transmit, make available, publish or otherwise distribute material that directly or indirectly counsels or incites committing or attempting to commit suicide.</p>	<p>The Cth provisions would appear to prohibit medical practitioners from discussing VAD with patients by audio-visual link.</p> <p>While clause 137 of the Bill appears to be intended to address potential issues with interaction with the Criminal Code Act – it is likely to be ineffectual.</p>
		Subclause 27(4) requires a PMP to take “all reasonable steps to explain to a member of the family of the person, the plan for the person to access VAD, including the arrangements to be made in relation to the body of the person if the person is intending to obtain a	It is unclear that the PMP would have such information about the body of the person or their full intentions at the stage of determining the first request, which appears to be about determining eligibility.

		private self-administration certificate..."	
28	Determination of first request to be in writing	<p>Clause 28 requires a determination from a person's PM that the person is, or is not, eligible to access VAD to be in writing and to contain relevant information about eligibility.</p> <p>There is however no requirement for reasons to be given for the determination.</p>	A decision by a medical practitioner relating to a first request is potentially subject to review under the <i>Judicial Review Act 2000</i> . If this is the case, and an application is made to the Court for review of the decision, the medical practitioner may be required to provide a written statement relating to the decision.
30	Person may make second request	Under subclause 30(2), a person may make a second request if the PMP is of the opinion that the person is either likely to die within 7 days or likely to cease to have decision-making capacity within 48 hours.	<p>It is not clear whether the PMP needs to be satisfied that the person is likely to permanently cease to have decision-making capacity.</p> <p>Decision-making capacity may be fluctuating; and this subclause may allow a person who has fluctuating capacity to be assessed as able to make a second request within a short period of time when this may not be intended.</p>
32	PMP may refer person, request further information, &c.	Part (c) of the clause enables a PMP to request a medical practitioner to provide the PMP with copies of medical records so that the PMP can determine the person's second request.	Clause 32 does not refer to medical records that may be held by an organisation that employs medical practitioners such as the THS.
34	Requirements in relation to determination of second request	Subclause 34(1)(a) refers to the PMP having met the person by way of audio visual link and requires the PMP to have been able to determine that the person has decision-making capacity or adopts the decision of another person in relation to the decision-making capacity of the person.	<p>The Cth provisions would appear to prohibit medical practitioners from discussing VAD with patients by audio-visual link.</p> <p>While clause 137 of the Bill appears to be intended to address potential issues with interaction with the Criminal Code Act – it is likely to be ineffectual.</p>

		Sections 474.29A and 474.29B of the Criminal Code Act 1995 (Cth) prohibits using a carriage service (emails, texts, calls, social media communications) to access, transmit, make available, publish or otherwise distribute material that directly or indirectly counsels or incites committing or attempting to commit suicide.	
35	Determination of second request to be in writing and contain relevant information about eligibility	Clause 35 requires a determination from a person's PMP that the person is, or is not, eligible to access VAD to be in writing and to contain relevant information about eligibility. There is however no requirement for reasons to be given for the determination.	A decision by a medical practitioner relating to a second request is potentially subject to review under the <i>Judicial Review Act 2000</i> . If this is the case, and an application is made to the Court for review of the decision, the medical practitioner may be required to provide a written statement relating to the decision.
37	PMP who determines person eligible must refer person to medical practitioner for second opinion	Clause 37 requires a person's PMP to refer a person from whom a second request has been accepted by another medical practitioner for that medical practitioner to determine whether or not the person is eligible to access VAD.	There is no requirement for the other medical practitioner to have any particular expertise or to even know the person or their condition.
41	Medical practitioner not required to give reasons for decision as to whether to accept referral	This clause confirms that a medical practitioner to whom a person has been referred may, but is not required to, give reasons for accepting, or refusing to accept, the referral.	A decision by a medical practitioner about accepting a referral is potentially subject to review under the <i>Judicial Review Act 2000</i> . If this is the case, and an application is made to the Court for review of the decision, the medical practitioner may be required to provide a written statement relating to the decision.

43	PMP to provide reports and information to CMP	Clause 43 requires the person's PMP to give the CMP copies of all medical reports and other information.	
45	CMP may seek further information, &c, from PMP	The CMP can request the information but there appears to be no obligation on the PMP to provide the information, thus meaning the CMP may be unable to determine a request	
48	Requirements in relation to determination by CMP	<p>Subclause 48(1) refers to the CMP having met the person by way of audio visual link and requires the CMP to have been able to determine that the person has decision-making capacity or adopts the decision of another person in relation to the decision-making capacity of the person.</p> <p>Sections 474.29A and 474.29B of the Criminal Code Act 1995 (Cth) prohibits using a carriage service (emails, texts, calls, social media communications) to access, transmit, make available, publish or otherwise distribute material that directly or indirectly counsels or incites committing or attempting to commit suicide.</p>	<p>The Cth provisions would appear to prohibit medical practitioners from discussing VAD with patients by audio-visual link.</p> <p>While clause 137 of the Bill appears to be intended to address potential issues with interaction with the Criminal Code Act – it is likely to be ineffectual.</p>

49	Determination of CMP to be in writing and contain relevant information about eligibility	Clause 49 requires a determination under clause 47 to be in writing and to contain information about eligibility in relation to the person.	A determination by a CMP under this clause is potentially subject to review under the <i>Judicial Review Act 2000</i> . If this is the case, and an application is made to the Court for review of the decision, the medical practitioner may be required to provide a written statement relating to the decision.
53	Person may make final request to PMP	Under subclause 53(2), a person may make a final request to a person's PMP within 48 hours of the person having made a second request if the PMP is of the opinion that the person is either likely to die within 7 days or likely to cease to have decision-making capacity within 48 hours.	It is not clear whether the PMP needs to be satisfied that the person is likely to permanently cease to have decision-making capacity. Decision-making capacity may be fluctuating; and this subclause may allow a person who has fluctuating capacity to be assessed as able to make a final request within a short period of time when this may not be intended.
		Under subclause 53(3), a final request is to be made in writing signed by the person or an adult designated by the person but does not have to be witnessed by two adults – unlike the requirement in 30(3) in relation to the second request.	It is unclear why only the second request needs to be witnessed.
54	PMP may refer person to another health practitioner, &c.	Part (c) of the clause enables a PMP to request a medical practitioner to provide the PMP with copies of medical records so that the PMP can determine the person's final request.	Clause 54 does not refer to medical records that may be held by an organisation that employs medical practitioners such as the THS.
56	Requirements in relation to determination of final request	Subclause 56(1) refers to the PMP having met the person by way of audio visual link and requires the PMP to have been able to determine that the person has decision-making capacity or adopts the decision	The Cth provisions would appear to prohibit medical practitioners from discussing VAD with patients by audio-visual link. While clause 137 of the Bill appears to be intended to address potential issues with interaction with the Criminal Code Act – it is likely to be ineffectual.

		<p>of another person in relation to the decision-making capacity of the person.</p> <p>Sections 474.29A and 474.29B of the Criminal Code Act 1995 (Cth) prohibits using a carriage service (emails, texts, calls, social media communications) to access, transmit, make available, publish or otherwise distribute material that directly or indirectly counsels or incites committing or attempting to commit suicide.</p> <p>Section 138 clarifies that death under the Act are not suicides but for the purposes of the law of Tasmania only</p>	
57	Determination of final request to be in writing and contain relevant information about eligibility	Clause 57 requires a determination made under clause 53 to be in writing and to contain relevant information about eligibility in relation to the person.	A decision by a medical practitioner in relation to a final request is potentially subject to review under the <i>Judicial Review Act 2000</i> . If this is the case, and an application is made to the Court for review of the decision, the medical practitioner may be required to provide a written statement relating to the decision.
59	Change of PMP after final request made	<p>This clause refers throughout to the person's CMP applying to become "the person's PMP for the purposes of section 16".</p> <p>Section 16 relates to a person's withdrawal from the VAD process.</p>	It is presumed these references to "section 16" are intended to refer to "Part 16".
69	Amendment or revocation of	Under subclause 69, the Commissioner may amend to revoke a VAD substance	It is not clear what would prompt an own motion decision by the Commissioner to amend or revoke a VAD substance authorisation or what

	VAD substance authorisation	authorisation either on own motion or on request of the person's PMP.	criteria the Commissioner would use to amend or revoke an authorisation on his or her own motion.
71	What pharmacist may do on receiving VAD substance prescription	<p>Under subclause 71(2), a pharmacist who intends to supply a VAD substance is to discuss the person's medical condition to ensure that the VAD substance is suitable for use in relation to the person in person or by way of audio-visual link.</p> <p>Sections 474.29A and 474.29B of the Criminal Code Act 1995 (Cth) prohibits using a carriage service (emails, texts, calls, social media communications) to access, transmit, make available, publish or otherwise distribute material that directly or indirectly counsels or incites committing or attempting to commit suicide.</p>	<p>The Cth provisions would appear to prohibit medical practitioners from discussing VAD with patients by audio-visual link.</p> <p>While clause 137 of the Bill appears to be intended to address potential issues with interaction with the Criminal Code Act – it is likely to be ineffectual.</p>
		Under subclause 71(3), a pharmacist may refuse to supply a VAD substance to a PMP for any reason, including that the pharmacist has a conscientious objection to providing assistance to the person to die.	<p>It is not clear what criteria the pharmacist would apply in refusing to supply a VAD substance.</p> <p>A decision by a pharmacist to refuse to supply a VAD substance is potentially subject to review under the <i>Judicial Review Act 2000</i>.</p> <p>Given this, it may be useful for the Bill to be clear on the circumstances in which a pharmacist may refuse to supply a VAD substance.</p>
81	Advice to be given to person where AHP determines	Clause 81 requires an AHP to advise a person who has been assessed has having decision-making capacity and to be	The Cth provisions would appear to prohibit an AHP from discussing VAD with patients by audio-visual link.

	person has decision-making capacity and is acting voluntarily	<p>acting voluntarily of certain matters.</p> <p>The clause does not specify how the AHP is to advise the person of the matters required by the clause to be advised.</p> <p>Sections 474.29A and 474.29B of the Criminal Code Act 1995 (Cth) prohibits using a carriage service (emails, texts, calls, social media communications) to access, transmit, make available, publish or otherwise distribute material that directly or indirectly counsels or incites committing or attempting to commit suicide.</p>	While clause 137 of the Bill appears to be intended to address potential issues with interaction with the Criminal Code Act – it is likely to be ineffectual.
82	Person may give final permission	Under clause 82, a person who has received advice that they are entitled to receive assistance to die may give the person's AHP a final permission in writing. The permission may be completed and signed by the person or by a designated person.	There is no requirement for the final permission to be witnessed (unlike in other parts of the Bill).
83	Private self-administration request	Under clause 83, a person may ask for permission to self-administer a VAD substance. The request is to be completed and signed by the person or a designated person.	There is no requirement for the final permission to be witnessed (unlike in other parts of the Bill).
84	Private self-administration certificate	Under subclause 84(1)(b), the person's AHP must be satisfied that the person will be able to	It is not clear whether the requirement is for the AHP to be satisfied that the person can self-administer at the relevant time, or that the person will be able to self-administer at a future point in time.

		self-administer a VAD substance.	
85	Appointment of contact person	Clause 85 requires a person who has been issued with a private self-administration certificate to appoint a person who is an adult to be the contact person in relation to the person.	The clause allows a designated person to make the appointment. There is no requirement for the appointment of a contact person to be witnessed (unlike in other parts of the Bill).
86	AHP may supply &c VAD substance to persons	Subclause 85(5) sets out matters to be considered by a person's AHP when issuing an AHP administration certificate where it is inappropriate for the person to self-administer a VAD substance.	Subclause 86(5) appears to cover situations where an AHP would administer a VAD substance to the person (authorised by 86(1)(c)) and where an AHP would assist the person to self-administer (authorised by 86(1)(b)). However, in so far as it applies to s86(1)(a) it is circular - the AHP would have to be satisfied that self-administration is inappropriate in order to issue a certificate allowing self-administration. ¹
87	Duties of AHP if VAD substance not to be privately self-administered	Subclause 87(2) requires the person's AHP to stay in the room or in a room or place from which the person can be heard until the person has died or is removed from the room or place to receive medical treatment.	How will the AHP know whether the person has died if they are not in the room with the person? How does this interact with clause 88 in relation to unexpected complications if the AHP is in another room?
91	Private self-administration of VAD substance	Subclause 91(3) refers to a person being able to self-administer a VAD substance within six or 12 months of a self-administration certificate having been issued.	The Bill does not seem to provide guidance on what a person should do if a certificate to self-administer a VAD substance is more than six or 12 months old; nor does it clarify whether a person's death resulting from a certificate that is expired is "authorised" by the legislation. There is no offence or enforcement if a person fails to return the VAD substance after the time.
92	Duties of contact person where VAD	Subclause 92(2) requires the contact person in relation to the person to notify the	Subclause 92(2) of the Bill seems to have an unclear intention. If a person chooses to self-administer in their place of residence, police may not be called. However, if they choose to self-administer in another location (as

	substance to be, or is, privately self-administered	person's AHP of the death of the person and, if the person has not died at the person's usual place of residence, must, as soon as practicable, notify the police as to the location of the person's body.	<p>contemplated by 91(1)(b)(ii)), police are notified of the location of the dead body. The purpose of this distinction, and police notification, is unclear. For example, police would be required to be notified of the location of the dead person if the person chooses to die at a friend's house, but not if the person chooses to die in their own house. The effect is that the practical response requirements of police on receiving a clause 92(2) notification are unknown.</p> <p>Without clarity, police will attend the deceased person's location. This may result in police taking possession of the body and it being conveyed to the mortuary, rather than the body being collected by a funeral home, as is usual with a natural causes death.</p>
93	Coroner		Refer to discussion above.
94	Interpretation of Part 15	Subclause 94 defines eligible applicant – part (c) of the meaning refers to any other person that the Commission is satisfied has a “special interest in the medical treatment and care of a person”.	<p>It is unclear whether a family member or friend of the person, or another health professional involved with the VAD process, would be considered to be a person with a special interest of the kind described.</p> <p>The intention of the provision is unclear and what would amount to a “special interest” is unknown. There is potential for the provision to either allow application from an extremely broad group, or alternatively for it to struggle to operate at all.</p>
101	Evidence	Clause 101 requires documents to be produced, including those in respect of which legal professional and other privileges may be claimed and to which public interest immunity might apply.	Privileges are commonly said to attach to documents. However, they do not attach to the document itself. They attach to the information contained in the document. Evidence may not be contained in a document.
101 (2)	Evidence	Subclause 101(1) enables the Commissioner to require a party to lodge a copy of documents with the Commissioner.	It is not clear whether clause 101 would have effect to override provisions of other Acts that require information to be kept confidential – for example, section 134 of the <i>Mental Health Act 2013</i> .

		Subclause 101(2) clarifies that subclause 101(1) applies despite the <i>Personal Information Protection Act 2004</i> and “any rule of law relating to privilege or the public interest in relation to the production of documents”.	Overriding potentially all confidentiality provisions arising in all circumstances as this provision purports to do may be inappropriately broad.
102	Self-incrimination	Subclause 102(2) provides that if a person claims, before answering a question or producing a document, that the answer or document might tend to incriminate the person, the answer or document is not admissible in criminal proceedings in relation to an offence alleged to have been committed by a person.	There is no provision requiring a person to answer questions that may be protected by privileges or immunities not amounting to self-incrimination.
104	Reasons for decision	Subclause 104(2) provides that a written transcript of the part of the proceedings in which the Commissioner gives the Commission’s reasons for a determination is sufficient to constitute written reasons for the purposes of the clause. Under clause 100(5), hearings in relation to an application must be held in private.	There does not however appear to be any provision enabling the Commission to provide de-personalised reasons nor is there any requirement for people who have been involved with a VAD process to keep information obtained by the person in the course of their performance of functions under the Bill to keep the information confidential. It is not clear whether there is any obligation on the Commission to ensure that a written transcript or statement of reasons is prepared to maintain confidentiality.
		Subclause 106(2) refers to a PMP being able to notify a person in writing that the medical practitioner is to cease to be the person’s PMP.	There is no apparent requirement for the PMP to give reasons for the decision to cease to be the person’s PMP. A decision by a PMP to cease to be the person’s PMP is potentially subject to review under the <i>Judicial Review Act 2000</i> . If this is the case, and an application is made to the Court for review of the decision, the medical

			practitioner may be required to provide a written statement relating to the decision.
107	Former PMP may apply to Commissioner to become PMP again	<p>Clause 107 applies to a medical practitioner who has ceased to be the person's PMP under subclause 106(1)(g).</p> <p>Subclause 106(1)(g) refers to in turn to the VAD process ceasing in relation to the person under subclause 103(3).</p> <p>Subclause 103(3) applies if the Commission determines that a person does not meet residency requirements etc following a review.</p>	<p>Subclause 51(1) prevents a medical practitioner who was the person's PMP from accepting another first request from the person within 12 months after two CMPs have found the person to be ineligible to access VAD.</p> <p>While subclause 52(2) refers to a decision made under clause 107 it is not clear that clause 107 extends to circumstances other than those which see the Commission making a decision following a review.</p>
		<p>Subclause 108(2) refers to a CMP being able to notify a person in writing that the medical practitioner is to cease to be the person's CMP.</p>	<p>There is no apparent requirement for the CMP to give reasons for the decision to cease to be the person's CMP.</p> <p>A decision by a CMP to cease to be the person's CMP is potentially subject to review under the <i>Judicial Review Act 2000</i>. If this is the case, and an application is made to the Court for review of the decision, the CMP may be required to provide a written statement relating to the decision.</p>
112	Officers of Commission	<p>Subclause 112 provides for the appointment, by the Minister, of officers to assist the Commission in the performance of the Commission's functions.</p>	<p>It is not clear whether staff so appointed will be subject to the direction of the Commission.</p>
113	Functions and powers of Commission	<p>The clause sets out the functions and the powers of the Commission.</p>	<p>Subclause 113(3) contains an error - "contacts details" should be "contact details".</p>

117	Commission may request authorisation of nurse practitioners to possess and supply VAD substances	Subclause 117(2) enables the Commission to request the Secretary to authorise nurse practitioners under section 25B of the Poisons Act, to possess and supply a VAD substance. This could create a direct conflict between the two Acts as a S25B nurse practitioner authorisation may not include a VAD substance.	The Minister may, under section 25A of the Poisons Act, authorise any registered nurse to be in possession of and to supply restricted substances or narcotic substances. An authorisation under section 25A would apply to all registered nurses. Section 25B applies to nurse practitioners only – although this section does extend to the supply of medicinal poisons or potent substances.
119	Annual report	This provision is difficult to interpret. If the Bill commences in early June 2022, would this provision require the first Annual Report in October 2022?	It is unlikely there would be much benefit to an Annual Report covering the first 3 weeks of the operation of the Act, and other review provisions are sufficient to cover this initial period (eg s142 in relation to the first 6 months of operation).
123	Inducements and dishonest or undue influence	Subclause 123(1)(b) refers to a person exercising 'dishonest or undue influence' on a person to make a request under the Act.	'Dishonest influence' is unclear and not used elsewhere in Tasmanian law.
124	False representation of being authorised to communicate on behalf of person	This section states 'a person must not falsely or in bad faith'	While 'bad faith' is used elsewhere in Tasmanian law, 'falsely' may be sufficient and clearer in this context.
127	False statements		This clause would probably cover many of the same acts as clause 126 (Falsification of record, &c), and seems repetitive.
128	Dishonest inducement to use VAD substance	The clause refers to 'dishonest influence'.	'Dishonest influence' is unclear and not used elsewhere in Tasmanian law.
130	Offences by contact persons		
132	Protection for persons assisting		

	access to voluntary assisted dying process		
134	Protection for persons acting in good faith	<p>This section refers to an officer of the ambulance service and provides that an officer who does not administer life sustaining treatment and who believes on reasonable grounds that the person is dying after being administered or having self-administered a VAD substance is not guilty of an offence etc.</p> <p><i>Officer of the ambulance service</i> is defined in clause 5 to have the same meaning as in the <i>Ambulance Service Act 1982</i>.</p> <p>Under the <i>Ambulance Service Act 1982</i>, an officer of the ambulance service is a person appointed by the Commissioner to provide ambulance services in accordance with that Act (that is, an Ambulance Tasmania officer).</p>	The protection in this clause does not extend to private paramedics or NEPT providers.
135	Contravention of Act by practitioners	Clause 135 refers to actions taken in bad faith by medical practitioners or registered nurses.	The clause does not refer to actions taken in bad faith by psychiatrists or psychologists or other health practitioners.
137	Electronic communications	This clause provides that nothing in the Act is to be taken to authorise the use of a	Presumably, this clause is intended to address potential conflict with the Criminal Code Act 1995 of the Cth and prohibitions on using a carriage service to incite suicide.

		method of communication if, or to the extent that, the use is contrary to or consistent with a law of the Commonwealth.	It is likely to be ineffectual.
138	Deaths not suicide for purposes of law of State	This clause provides that, for the laws of Tasmania, a person who dies by VAD is not taken to die by suicide.	<p>This clause will have no effect on the construction of the Commonwealth Criminal Code provisions. If a person's conduct for the purposes of the Bill amounts to an offence under the Commonwealth Criminal Code provisions, a risk of prosecution will arise.</p> <p>In relation to Tasmanian law, the only provision of the Tasmanian Criminal Code relating to suicide is s 163, which prohibits a person from aiding or instigating suicide. However, this does not address the possibility that a person who is a party to a death, purportedly carried out in accordance with the Bill may amount to homicide and, if so, whether it is culpable or not culpable.</p>
139	Conflict of Acts	Clause 139 provides that if there is an inconsistency between a provision of the <i>Poisons Act 1971</i> or <i>Misuse of Drugs Act 2001</i> , the provisions of the VAD Act apply to the extent of the inconsistency.	<p>Clause 139 proposes that the VAD Act prevails to the extent of the inconsistency with the Poisons Act, despite the purpose of the Poisons Act being established to make provision with respect to the regulation, control, and prohibition of the importation, making, refining, preparation, sale, supply, use, possession, and prescription of certain substances and plants and matters incidental thereto, and to repeal certain enactments. The principal purpose of the Poisons Act is to effectively regulate access to substances.</p> <p>The Bill does not "cover the field" with respect to the regulation of scheduled substances; and it is unclear whether and if so, how parts of the Poisons Act and Regulations will continue to apply.</p> <p>This lack of certainty will have significant impacts on the Department of Health's capacity to appropriately and confidently regulate scheduled substances which will certainly include any VAD substance.</p>