

Queensland Law Reform Commission:

A legal framework for voluntary assisted dying

Review update

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A LEGAL FRAMEWORK FOR VOLUNTARY ASSISTED DYING IN QUEENSLAND

The Queensland Law Reform Commission (QLRC) has completed its report: *A legal framework for voluntary assisted dying in Queensland*.

Our task was to recommend 'the **best legal framework** for people who are **suffering and dying to choose the manner and timing of their death** in Queensland' should voluntary assisted dying become law in this State.

We were **not** asked to consider the desirability of introducing voluntary assisted dying legislation. Our job was to recommend the contents of an appropriate voluntary assisted dying scheme and draft a Bill based on those recommendations.

We have done so.

Over the weekend the Commission's staff completed the final proofing of a very substantial report. A draft Bill was finalised in consultation with the Office of Queensland Parliamentary Counsel (OQPC) after a thorough drafting process over recent months.

Those documents have just been provided to the Office of the Attorney-General. The report is comprehensive and therefore lengthy. The draft Bill is 113 pages long and has 175 sections: a comparable number to voluntary assisted dying legislation in other states. It includes many provisions that the Commission considers to be improvements on those laws.

We expect that the Attorney-General will consider the report and the draft Bill, seek advice about their contents and then table them in Parliament. This is the process contemplated by the law.

The process in the *Law Reform Commission Act* is for reports by the QLRC to be tabled within 14 sitting days of delivery. This allows consideration of a report by the Attorney-General and the State Government before tabling, rather than having the Commission release reports to the public once they are complete.

In accordance with this established process, the Commission will not release the Report, the Report Summary or the draft Bill on its website until they are tabled in Parliament.

In the meantime, this statement explains to the Queensland public and to the media:

- what a voluntary assisted dying law is;
- what the Commission's task was;
- how we went about our work; and
- the people who we must thank.

What is a voluntary assisted dying law?

A voluntary assisted dying law gives individuals who are suffering and dying an additional end of life choice.

It allows eligible people who are dying to choose the timing and circumstances of their death.

It gives an option that can limit suffering at the end of life. It is not a way to end life for those who are not dying.

'Voluntary assisted dying' refers to the self-administration of a prescribed substance or its administration by a health practitioner with the purpose of bringing about the person's death. It is based on the person's voluntary request. The process of request, assessment and administration must comply with the legislation's requirements.

Our terms of reference make it clear that the proposed legislative scheme is for individuals who are 'suffering and dying'. It is not intended to apply to individuals who wish to die because they are tired of life or in decline, but who are not dying.

This fact may disappoint those individuals and supporters of a broad-based scheme for voluntary euthanasia or medically assisted suicide. It also may allay the fears of others that a voluntary assisted dying scheme would be generally accessible for those who do not wish to go on living.

'Voluntary assisted dying' is the term used in legislation in other states. It is the term used by the Parliamentary Committee which, by majority, recommended such a law for Queensland. It is the term used in our terms of reference. We use it because it is a fitting description.

Three words describe such a law.

VOLUNTARY: decisions to request access and to continue with the process must be made **voluntarily and without coercion**.

ASSISTED by doctors and nurses. If a person is eligible and chooses to go to the final stage, they either **self-administer** a substance **prescribed by a doctor** or have an **experienced doctor or nurse** (who meets the law's qualification and training rules) administer the substance so as to hasten, at the person's request, their death.

DYING: to be eligible the person must be **suffering and dying**.

The legislative schemes in Australian and some overseas jurisdictions, such as New Zealand and Canada, have a similar basic architecture. In simple terms they provide:

- **eligibility criteria** for access to voluntary assisted dying, such as age, residency, a condition that will cause death and causes suffering that cannot be relieved in a way that the person considers tolerable. There usually are criteria about decision-making capacity and acting voluntarily.
- **a process for independent assessment** of eligibility by two suitably qualified and experienced health practitioners.
- **administration of a substance**, prescribed by a doctor, either by self-administration (possibly but not necessarily in the presence of a health practitioner) or administration by a health practitioner at the person's request.
- **conscientious objection** by health practitioners who do not wish to participate in the scheme.
- **accountability** by oversight provisions that include reporting

The scheme in Victoria includes a **Statewide Care Navigator Service**. It gives information and assistance to people and helps patients, their families and friends, and health practitioners navigate the process.

The process is inherently complex because the laws contain **numerous safeguards** to ensure that a person seeking to access the scheme is:

- **eligible;**

- has **decision-making capacity** for voluntary assisted dying; and
- makes decisions that are **voluntary and made without coercion**.

The process of request and assessment in these laws involves **separate requests** that are clear and documented. The process has a **waiting period** between the first and final request. These processes seek to ensure that a request to access the scheme is enduring.

We were asked to recommend ‘the best legal framework for **people who are suffering and dying to choose the manner and timing of their death in Queensland**’ should voluntary assisted dying become law in this State.

Our report details the principles on which the draft Bill is based, VAD laws in other places, and how they work in practice in Victoria. While three states have passed VAD laws, Victoria is the only state in which one operates.

We have carefully analysed the strengths and weaknesses in those laws so as to inform the democratic process in Queensland.

Our aim has been to develop a draft law **for Queensland** that is **compassionate, safe and practical**.

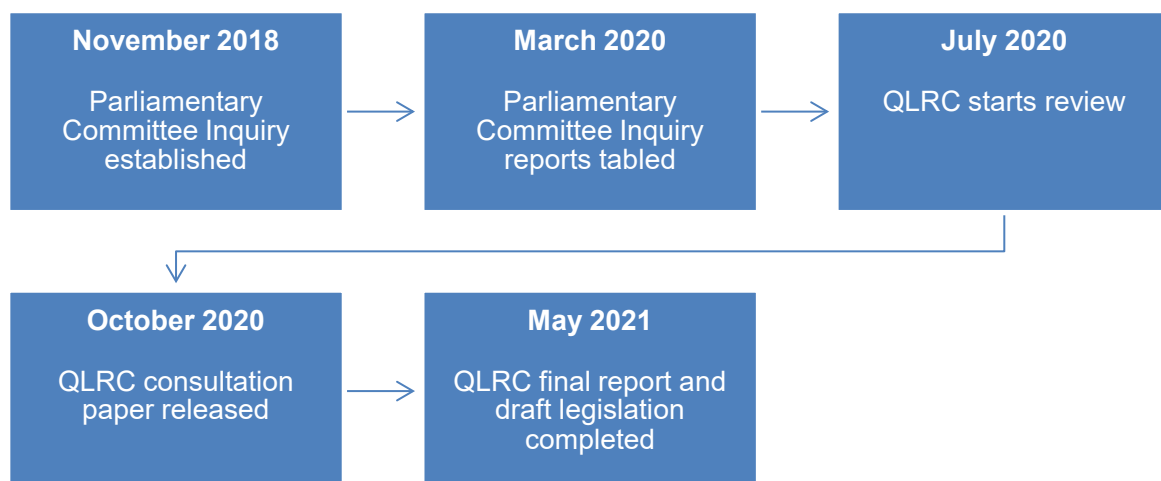
The Commission and its work

The QLRC is an independent statutory body that undertakes law reform reviews referred to it by the Attorney-General. The reviews raise complex legal or social issues, or both. They require detailed research, analysis, consultation, and consideration.

The Commission consists of part-time members and is supported by a small Secretariat.

Our review started on 1 July 2020 with an original reporting date of 1 March 2021. Due to the size and complexity of the task, the reporting date was extended to 10 May 2021. The process leading to our final report is outlined below.

Timeline of Queensland’s consideration of voluntary assisted dying legislation



The Parliamentary Committee Inquiry

In November 2018, the Queensland Parliament referred an inquiry into aged care, end-of-life and palliative care and voluntary assisted dying to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee.¹

After extensive consultation and research on the various matters covered by its inquiry, the Parliamentary Committee tabled in March 2020 separate reports on aged care, end-of-life and palliative care,² and voluntary assisted dying.³

In its report on voluntary assisted dying, the Parliamentary Committee noted that ‘the final stages of life can involve a range of pain and other symptoms and, for around five per cent of people, this suffering can be severely distressing’. It also noted that ‘even with access to the best quality palliative care ... sometimes not all suffering can be palliated’.

After considering the evidence given to the inquiry, and the experiences of governments and individuals in other jurisdictions with operating voluntary assisted dying schemes, the Committee found that, ‘on balance, the Queensland community and health practitioners are supportive of voluntary assisted dying and for it to be legislated in Queensland’.

The Parliamentary Committee, by majority, made many recommendations about a scheme for voluntary assisted dying.

The Queensland Law Reform Commission’s consultation process

The Parliamentary Committee did not draft a Bill. The State Government gave that task to this Commission.

To use an analogy, a Parliamentary Committee and the Government have said they would like to build a bridge. We have been asked to design it, in accordance with our terms of reference.

The process of consultation is a vital part of the Commission’s work on any review.

We consulted the public, stakeholders, experts and people who practise in end of life care, and sought information about many issues. These issues are listed in our February 2020 Review update. Public consultation was mainly through a 176-page Consultation Paper that posed 50 important questions. On 16 October 2020, our Consultation Paper invited submissions on the key issues outlined in it. Submissions closed on Friday 27 November 2020.

The respondents included researchers with a detailed knowledge of this complex topic (who supplemented their submissions with articles), professional bodies representing a range of health practitioners and disciplines, organisations that support or oppose voluntary assisted dying, religious bodies, unions, members of the public who have experienced suffering themselves or witnessed it in members of their family, health practitioners, including practitioners in the field of palliative care, disability advocates, lawyers’ groups, public authorities, ethicists, and members of the public.

Analysis of submissions and consideration of issues

The analysis of submissions was time-consuming and extended into early 2021.

1 Qld Parliamentary Committee Report No 34 (2020) 1.

2 Qld Parliamentary Committee Report No 33 (2020).

3 Qld Parliamentary Committee Report No 34 (2020).

The Commission consists of part-time members⁴ who usually meet monthly. Because of our reporting date, it has had to meet more frequently than normal in order to complete the review. Between meetings, each member independently considered substantial written materials and the issues that were identified for consideration. They also sought further information from the Commission's staff. At fortnightly meetings the members discussed each issue on its merits and considered how the various parts of any piece of legislation might interact. Provisional views were reached on issues. As materials and analysis developed, issues were revisited. Some provisional views changed. Proposals were reviewed and refined.

People we must thank

The Commission's staff and the Office of Queensland Parliamentary Counsel

The Secretariat and the legal officers seconded to the Commission displayed a high level of experience in legal research and analysis and policy development.

The leader of this review has been the Commission's Assistant Director, Mrs Cathy Green, who has worked tirelessly on it since July 2020. She maintained a high standard of work and productivity, coordinated staff, facilitated the flow of information into the Commission, and continued consultations with many people in Queensland and in other jurisdictions. The members of the Commission wish to especially acknowledge Mrs Green's work and the work of those who benefitted from her example and direction.

Our Director, Mr David Groth, also worked tirelessly. He and other Commission staff have worked incredibly long hours, and on every day in recent weekends to complete the review by May 10. This includes the recent public holiday when Queenslanders were celebrating the introduction of the 40-hour, 5 day working week in 1948. Mr Groth and Mrs Green have consistently worked more than double those hours each week for months.

In recent months I joined the Commission as a full-time member and had the privilege to work with a fine group of dedicated public servants, whose attention to detail and work ethic has resulted in a major report.

The lawyers from the OQPC who drafted and refined the Bill on our instructions, and with whom we discussed technical legal issues, also completed a complex and challenging task with great skill, on time, working long hours. We thank them.

The people who went to the trouble to make written submissions

The Commission's members also wish to express our sincere appreciation for the time and effort taken by so many people and organisations whose submissions addressed the many questions posed in the Consultation Paper and often raised new issues.

There was a compressed time for people to respond to our comprehensive Consultation Paper. The date for submissions was dictated by the need to analyse and consider submissions in time to report a few months later.

Every submission was carefully analysed. One reason the report is so substantial is we discuss the submissions we received on each major issue and quote from many of them.

4 I was appointed as a Full Time Member after 1 February 2021 to help enable the review to be completed.

The people we consulted in person

We also informed ourselves by meeting with experts and other individuals whose views were based on experience. This involved video-conferences with health practitioners in Victoria and Western Australia, with people who had served on expert panels in those States, and with public servants who had been involved in the implementation of legislation. We also consulted with the Voluntary Assisted Dying Review Board and with the Voluntary Assisted Dying Care Navigator Service in Victoria.

We are grateful to each of those individuals and organisations for the trouble and time they took to help us. We spoke to busy palliative care specialists, oncologists, physicians, general practitioners, and other health-care professionals, who had different views about voluntary assisted dying. Some work in tertiary hospitals that do not provide access to voluntary assisted dying; others work in aged care facilities or in the suburbs. Their time is valuable. We are fortunate that they generously gave their time to speak to us and to inform our thinking.

The democratic dimension

Throughout this review, we have emphasised that our task is not to consider the desirability or otherwise of introducing voluntary assisted dying legislation in Queensland.

That is a decision for a democratically elected Parliament.

The Parliament will have access to reports by its Committee that considered palliative care and voluntary assisted dying, the report of this Commission, reports from other bodies that have considered the issue in other states and overseas, research by scholars, and the views of individuals and organisations. Our report has summarised many submissions. This has resulted in a lengthy report that we hope is a helpful one for citizens and legislators as a source of reference. The size of the report is also a function of the number of issues that had to be addressed. We trust that the report is a convenient repository of existing provisions, the recommendations of the Parliamentary Committee, and developments that have occurred since the Committee reported.

The size of the report may seem daunting, but this is because we intend it to be a reference source. This will save busy people the trouble of seeking out the details of laws in other places, how they came about, reports and independent research on their operation, and the points of view of stakeholders such as medical organisations, health practitioners and entities that operate public and private facilities in which people who are dying are cared for.

We have prepared a much shorter, but still comprehensive, **Report Summary**. In addition, we have written a very simple document, only a few pages in length, with a few diagrams, that gives busy people **The Report's Essence**.

These documents will be available to the public from the Commission after the report is tabled.

The report uses terms like 'the draft Bill', 'the proposed legislation' or 'the legislation'. This is intended to refer to the legislation that we have been required to draft.

We do not presume that legislation in that form will be introduced into Parliament by the government, let alone passed in that form. Those are decisions for the government and representatives of the people.

We hope, however, that those who read this report will appreciate that the draft Bill seeks to balance competing interests and should be viewed as a whole.

The fact that the draft Bill does not contain a clause in identical terms to one in, say, Victoria, but has a provision that resembles one in Western Australia, or contains provisions that do not currently exist in either of those States, should be no surprise.

We have aimed to adopt what is good in principle and workable in practice from laws in other states and countries like New Zealand. We have not felt compelled to adopt provisions that seem wrong in principle or purely the result of political compromise. We have developed some provisions that were thought about in other places but consigned to the ‘too hard basket’ or, due to pressure of time, left to be worked out in regulations and policy guidelines.

In terms of democratic process, our work builds on the Parliamentary Committee’s investigations, consultations, reflections, and report.

There is another democratic dimension that applies in a federation like ours. It is the notion that the states are ‘laboratories of democracy’⁵ in which different policies can be enacted and tested in a state, as in a scientific experiment. If the policy is a failure, it does not affect any other state. If, however, the policy is a success, it might be expanded to another state. If improvements are made in that next state, they might be adopted in another.

The result is not necessarily uniform legislation across the states that adopt the policy. A state can identify the strengths and weaknesses of laws that were enacted in another.

The Commission, as required by our terms of reference, has considered legislation in other Australian states. The report identifies certain strengths and weaknesses in those laws to inform the democratic process in Queensland.

The Hon Justice Peter Applegarth AM
Chair
Queensland Law Reform Commission

10 May 2021

⁵ The phrase is attributed to Justice Louis Brandeis in *New State Ice Co v Liebmann*, 285 US 262 (1932); see J Rosen, *Louis D Brandeis: American Prophet* (Yale University Press, 2016) 109.

