



Queensland  
Mental Health  
Commission

# **Queensland Law Reform Commission Consultation paper WP 79 – A legal framework for voluntary assisted dying**

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Submission by the Queensland Mental Health Commission

November 2020

## The Queensland Mental Health Commission

The Queensland Mental Health Commission (the Commission) is an independent statutory agency established under the *Queensland Mental Health Commission Act 2013* (the Act).

It was established to drive ongoing reform towards a more integrated, evidence-based and recovery-oriented mental health and substance misuse system. Under the Act, the Commission must focus on systemic mental health and substance misuse issues.<sup>1</sup>

In exercising its functions under the Act, the Commission takes account of issues affecting people who are vulnerable to, or otherwise at significant risk of, developing mental health issues, as well as recognising the importance of custom and culture when providing treatment, care and support to Aboriginal and Torres Strait Islander peoples.

The Commission works in four main ways:

- developing a whole-of-government strategic plan for improving mental health and limiting the harm associated with problematic alcohol and other drug use
- undertaking reviews and research to inform decision-making, build the evidence base, support innovation and identify good practice
- facilitating and promoting mental health awareness, prevention and early intervention
- establishing and supporting statewide mechanisms that are collaborative, representative, transparent and accountable.

The Commission promotes policies and practices that are aligned to the vision of the *Shifting minds Queensland Mental Health, Alcohol and Other Drugs Strategic Plan 2018-2023* for a fair and inclusive Queensland, where all people can achieve positive mental health and wellbeing and live their lives with meaning and purpose.

This submission incorporates feedback from the Queensland Mental Health and Drug Advisory Council. The Council's role is to provide advice to the Commission on mental health and problematic substance use issues.

## Submission

The Commission welcomes the opportunity to make a brief submission to the consultation paper "A legal framework for voluntary assisted dying".

The Commission supports the development of compassionate, safe and practical legislation to provide people with an incurable medical condition that is causing intolerable suffering to seek medical assistance to end their life in dignity.

The Commission's understanding is that voluntary assisted dying will only be considered in extreme and limited end-of-life situations and priority will be given to providing appropriate, high-quality, patient-centred palliative and mental health care.

In addition to physical suffering, people in end-of-life situations may also experience depression, anxiety, psychological distress and suicidal ideations. This warrants a focus on appropriate high-quality mental health care and treatment for patients irrespective of voluntary assisted dying considerations.

The Commission agrees that only people with decision-making capacity should be able to seek voluntary assisted dying. Given the fact that mental illness adds significant complexity to the matter of assessing a person's capacity, this is a challenging issue. Decision-making ability should be

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<sup>1</sup> Section 11(2)(a) of the *Queensland Mental Health Commission Act 2013*

determined by considering the person's thought processes and emotional factors affecting their capacity. Draft legislation needs to provide appropriate safeguards around this issue.

With regard to Chapter 4 (eligibility criteria) Question 6(b), the Commission supports the position of the Queensland Parliamentary Committee (as referred to on pages 44/45 of the consultation paper) that "people should not be automatically excluded from voluntary assisted dying simply because they have been diagnosed as having a mental illness. Similarly, people with a mental illness diagnosis should not automatically be considered eligible for voluntary assisted dying because of their illness. Their eligibility to access voluntary assisted dying needs to be considered on the same basis as anyone else seeking to access voluntary assisted dying."

The Commission further agrees that "any voluntary assisted dying scheme in Queensland should provide that a person who is otherwise eligible to access the scheme not be rendered ineligible only because the person has a mental health condition, provided that the person has decision-making capacity."