

VOLUNTARY ASSISTED DYING BILL 2019

EXPLANATORY MEMORANDUM

The Voluntary Assisted Dying Bill 2019 (the Bill) provides for an Act to provide for and regulate access to voluntary assisted dying in Western Australia, to establish the Voluntary Assisted Dying Board and to make consequential amendments to other Acts for the purpose of effecting the Bill.

The Bill is set out as follows:

PART 1 — PRELIMINARY

DIVISION 1 – Introductory provisions

Clause 1 Short title

The Act will be called the *Voluntary Assisted Dying Act 2019*.

Clause 2 Commencement

This clause provides for the commencement of the Act, with sections 1 to 3 coming into operation on the day on which the Act receives the Royal Assent, and the rest of the Act on the day fixed by proclamation.

Up to 18 months is required between the passage of the Bill and its commencement, in order to prepare for the implementation of the scheme, including the establishment of the Voluntary Assisted Dying Board.

Clause 3 Act binds Crown

This clause provides that this Bill binds the Crown.

DIVISION 2 – Principles

Clause 4 Principles

This clause sets out the principles that a person (including the State Administrative Tribunal) exercising a power or performing a function or duty under the Bill must have regard to.

The principles are intended to strike a balance between the importance of giving people genuine choice, while also recognising the need to protect individuals who may be subject to abuse. The principles will serve as a guide in interpreting and applying the Bill but do not create any new obligations.

DIVISION 3 – Interpretation

Clause 5 **Terms used**

This clause defines necessary terms for the purposes of the Bill.

Key definitions include:

Registered health practitioner, which means a person registered under the Health Practitioner Regulation National Law (Western Australia) to practise a health profession (other than as a student).

Prescribed substance, which means a voluntary assisted dying substance (generally) prescribed for a patient by the patient's coordinating practitioner; and in relation to a patient, the voluntary assisted dying substance (specifically) prescribed for the patient by the patient's coordinating practitioner.

Voluntary assisted dying, which means the administration of a voluntary assisted dying substance and includes steps reasonably related to such administration, including the request and assessment process. The administration may be self-administration, or administration by a practitioner.

Clause 6 **Decision-making capacity**

This clause defines *decision-making capacity* for the purposes of the Bill, and sets out how to determine whether a patient has decision-making capacity in relation to a voluntary assisted dying decision (a request for, or decision to, access voluntary assisted dying). The definition acknowledges that a person is presumed to have decision-making capacity unless there is evidence that they do not.

In deciding if a patient has decision-making capacity, the assessor must be satisfied of five things in relation to the voluntary assisted dying - that the patient has the capacity to: understand any information or advice about the decision that is required under the Act to be provided to the person; understand the matters involved in the decision; understand the effect of the decision; weigh up these factors for the purpose of making the decision; and communicate the decision in some way. For example, the patient has the capacity to understand that he or she will die if they self-administer or are administered a voluntary assisted dying substance. Further, the patient should understand that he or she does not have to access voluntary assisted dying.

A patient's decision-making capacity is assessed at several stages throughout the voluntary assisted dying process under the *Voluntary Assisted Dying Act*. The staged approach reflects that a patient's capacity to make decisions about voluntary assisted dying may fluctuate, and that in order to access voluntary assisted dying there must be enduring decision-making capacity.

Clause 7 **Voluntary assisted dying substance**

This clause defines *voluntary assisted dying substance* to mean a Schedule 4 or Schedule 8 poison, approved by the CEO under the *Voluntary Assisted Dying Act*, in order to cause a person's death.

The terms Schedule 4 poison and Schedule 8 poison are defined in section 3 of the *Medicines and Poisons Act 2014*.

Clause 8 When request and assessment process completed

This clause provides that the request and assessment process in respect of a patient has been completed if the patient's coordinating practitioner has both completed the final review form in respect of the patient and has certified in that form that the process has been completed as required under the *Voluntary Assisted Dying Act*.

DIVISION 4 – Other provisions

Clause 9 Registered health practitioner may refuse to participate in voluntary assisted dying

This clause enshrines the right of registered health practitioners to conscientiously object to participating in the steps related to the administration of voluntary assisted dying under the Bill. This includes providing a referral to another medical practitioner in any part of the process.

Persons are also able to object to participating in the voluntary assisted dying processes for reasons other than conscientious objection.

Participation in the voluntary assisted dying process is completely voluntary and a registered health practitioner has the right to determine the treatment they are prepared to provide. If a practitioner conscientiously or otherwise objects to being involved in the voluntary assisted dying process, a person may engage another practitioner.

Clause 10 Contravention of Act by registered health practitioner

This clause provides that where a registered health practitioner contravenes a provision of the Act, that contravention is capable of constituting professional misconduct or unprofessional conduct for the purposes of the *Health Practitioner Regulation National Law (Western Australia)*.

This is not dependent on whether the contravention constitutes a criminal offence (under the Voluntary Assisted Dying Act or another law). Thus a contravention that is found not to be an offence may still be found to be professional misconduct or unprofessional conduct.

Clause 11 Voluntary assisted dying not suicide

This clause provides that for the purposes of the law in Western Australia, a death that results from the administration of a prescribed substance (a voluntary assisted dying substance) is not to be considered a death that is the result of a person committing suicide.

This clause reflects the tenor of the Bill that voluntary assisted dying is not suicide. Suicide occurs when a person takes their own life in circumstances outside those which are permitted by this Bill.

Clause 12 Inherent jurisdiction of Supreme Court not affected

This clause provides that nothing in the *Voluntary Assisted Dying Act* affects the inherent jurisdiction of the Supreme Court.

This is intended to make clear that the *parens patriae* jurisdiction of the Supreme Court is not excluded.

Clause 13 Relationship with Medicines and Poisons Act 2014 and Misuse of Drugs Act 1981

This clause provides that, if there is a conflict or inconsistency between a provision of the *Voluntary Assisted Dying Act* and that of the *Medicines and Poisons Act 2014* (WA) or *Misuse of Drugs Act 1981* (WA), the provision of this Act prevails to the extent of the conflict or inconsistency.

PART 2 – REQUIREMENTS FOR ACCESS TO VOLUNTARY ASSISTED DYING

Clause 14 When person can access voluntary assisted dying

This clause lists the requirements which must be met before a person can access voluntarily assisted dying under the *Voluntary Assisted Dying Act*. Each requirement is subsequently further explained in the Bill.

Clause 15 Eligibility criteria

This clause sets out the criteria that a person must meet before they may be considered as eligible for access to voluntary assisted dying. The person must satisfy all the eligibility criteria set out in this clause.

The coordinating practitioner and consulting practitioner are medical practitioners who determine whether or not the person meets the eligibility criteria.

The eligibility criteria are divided into categories: age; citizenship and residency; disease illness and medical condition; decision making capacity; voluntariness; and enduring nature of request for access.

Subclause (1)(a) provides that a person seeking to access voluntary assisted dying must be at least 18 years old.

Subclause (1)(b) provides that the person must be an Australian citizen or permanent resident and at the time of making the request for voluntary assisted dying, have been ordinarily resident in Western Australia for a minimum of 12 months.

Subclause (1)(c) provides that the person must be diagnosed with a disease, illness or medical condition that has certain characteristics, namely that:

- i. it is advanced, progressive and will cause death;
- ii. it will, on the balance of probabilities, cause death within a period of 6 months or, where neurodegenerative, within a period of 12 months; and
- iii. it is causing suffering to the person that cannot be relieved in a manner that the person considers tolerable.

The criteria at subclauses (1)(c)(i) and (ii) will be determined by the medical practitioner, on a clinical basis. Clinical determination will be based on an individual's particular circumstances, including their condition, their comorbidities and their treatment choices.

The criteria at subclause (1)(c)(iii) is a subjective element based on the patient's consideration of their suffering.

Subclause (1)(d) provides that the person must also have decision-making capacity in relation to voluntary assisted dying. Decision-making capacity is defined in clause 6 of the Bill.

Subclause (1)(e) provides that the person must be acting voluntarily and without coercion. This reflects a fundamental concept in the Bill that participation in voluntary assisted dying must be completely voluntary in all respects.

Subclause (1)(f) provides that the person's request for access to voluntary assisted dying is enduring. This reflects that in order for the process to continue, the person's

choice to participate is paramount i.e. the patient's choice to access voluntary assisted dying must be continuing.

Subclause (2) provides that a person is not eligible for access to voluntary assisted dying only because the person has a disability or is diagnosed with a mental illness. This is apparent from an examination of the eligibility criteria. However, having a mental illness or a disability will not exclude a person from being an eligible applicant, as long as they meet all of the eligibility criteria, including having another disease, illness or medical condition that will cause death. Disability is defined pursuant to the *Disability Services Act 1993 (WA)*. Mental illness is defined pursuant to the *Mental Health Act 2014 (WA)*.

PART 3 — REQUESTING ACCESS TO VOLUNTARY ASSISTED DYING AND ASSESSMENT OF ELIGIBILITY

DIVISION 1 – Minimum requirements for medical practitioners

Clause 16 Eligibility to act as coordinating or consulting practitioner

This clause sets out the minimum requirements that a medical practitioner must meet before they may carry out the role of a coordinating or consulting practitioner under the Act.

The Act defines a medical practitioner as a person registered under the Health Practitioner Regulation National Law (Western Australia) in the medical profession (other than as a student).

Each coordinating practitioner or consulting practitioner must be a medical practitioner who holds one of the following registration types and who meets particular requirements approved by the CEO:

- Specialist Registration with the Australian Health Practitioner Regulation Agency and have practiced as a registered specialist for at least one year;
- General Registration with the Australian Health Practitioner Regulation Agency and have practiced as a generally registered medical practitioner for ten or more years; or
- Limited or Provisional Registration and is an overseas-trained specialist.

These minimum requirements help to ensure that only registered medical practitioners with considerable combined experience and relevant expertise may undertake assessments against the eligibility criteria for access to voluntary assisted dying.

DIVISION 2 – First request

Clause 17 Person may make first request to medical practitioner

This clause provides that a person may make a first request for access to voluntary assisted dying to a medical practitioner. This request must be clear and unambiguous, made by the person either in person or by means of audiovisual technology, either verbally or by gestures by other means of communication available to that person.

This clause reflects the position that a request for access to voluntary assisted dying must be distinguished from a request for information about voluntary assisted dying. That is why this provision requires the request to be clear and unambiguous.

Clause 18 No obligation to continue after making first request

This clause provides that a person who seeks to access voluntary assisted dying may, at any time, decide not to proceed with the process.

The request and assessment process ends if the person decides not to continue the process. If the request and assessment process ends in this way, the person may begin a new request and assessment process by making a new first request

This clause reflects the voluntary nature of voluntary assisted dying, and that in order for the process to continue, the person's choice to participate is paramount. This clause is reinforced by clause 8.

Clause 19 Medical practitioner to accept or refuse first request

This clause provides that a medical practitioner must either accept or refuse the first request and accordingly inform the patient making the request.

Subclause (2) sets out that the medical practitioner can refuse the first request due to a conscientious objection to voluntary assisted dying or, alternatively if they are otherwise unwilling or unable to perform the duties of a coordinating practitioner, because of unavailability or another reason.

Subclause (3) requires a medical practitioner to refuse the first request if they do not meet the minimum requirements to act as a coordinating practitioner.

Subclauses (4) and (5) set out the time limits within which a medical practitioner must inform the patient of their decision to accept or refuse the first request. If the medical practitioner is a conscientious objector, they must inform the patient of their refusal immediately upon receiving the first request. For all other reasons, the medical practitioner must advise the patient within 2 business days of the request. This provision takes into consideration that a person who conscientiously objects to voluntary assisted dying will, as a matter of course, refuse a patient's request. Thus, this medical practitioner does not require a length of time to come to that decision. However, other medical practitioners may require time to consider whether they are available to provide the service to the patient, or if they do not have the required training, to decide if they wish to undergo such training before giving their decision to the patient.

In any case (acceptance or refusal), the medical practitioner is required to provide the patient with information approved by the CEO for the purposes of this section. This information will be about the voluntary assisted dying process and will help the patient access the relevant resources and supports they need to participate in the process. That the patient's decision is well informed is fundamental to the proposed model for voluntary assisted dying in Western Australia.

This clause reflects the position that a medical practitioner is professionally obligated not to unduly delay a patient's access to voluntary assisted dying; they should make a decision and inform the patient as quickly as possible.

Clause 20 Medical practitioner to record first request and acceptance or refusal

This clause provides that the medical practitioner who receives a first request must record in the patient's medical record- the request, their decision to accept or refuse the request, and if refused, the reason for refusal. The purpose of this provision is to indicate that the formal request and assessment process has started.

Clause 21 Medical practitioner to notify Board of first request

This clause provides that the medical practitioner who accepts or refuses a first request must give the Voluntary Assisted Dying Board written notification about the request and the medical practitioner's decision. This clause sets out the reporting requirements to be included in the notification.

The intent of this provision is to ensure that the Board is notified from the outset of a person's request to participate in voluntary assisted dying, and to enable the Board to monitor that the correct process is being followed in each case. Further, the clause enables the Board to maintain complete and accurate statistics of participation in voluntary assisted dying in Western Australia.

Clause 22 Medical practitioner becomes coordinating practitioner if first request accepted

This clause provides that the medical practitioner who accepts a first request becomes the coordinating practitioner for that patient. This is tracked by recording the request and the acceptance of the request in the patient's medical record, and via notification to the Board.

The role of coordinating medical practitioner is to assess the patient's eligibility to access voluntary assisted dying and to coordinate and facilitate that patient's access, should they be assessed as eligible. Only the coordinating practitioner may prescribe the voluntary assisted dying substance and may also administer that substance to the patient in certain circumstances.

DIVISION 3 – First assessment

Clause 23 First assessment

This clause provides that the patient's coordinating practitioner must commence a first assessment, following the first request by the patient and acceptance of the role of coordinating practitioner by the medical practitioner.

The first assessment requires the coordinating medical practitioner to determine if the patient requesting access to voluntary assisted dying meets each of the eligibility criteria listed in clause 15 and understands the information required to be given to them under clause 26.

Clause 24 Coordinating practitioner to have completed approved training

This clause provides that the coordinating practitioner must have successfully completed approved training in relation to voluntary assisted dying before they can begin the first assessment.

The CEO will approve training in relation to the roles of practitioners and their obligations under the Voluntary Assisted Dying Act (as set out under clause 158).

Clause 25 Referral for determination

This clause sets out the circumstances in which a coordinating practitioner must refer the patient for a determination (opinion) on one or more of the matters set out under the eligibility criteria under clause 15(1)(c),(d) or (e).

Subclauses (1) and (2) provide that where the coordinating practitioner cannot determine whether the patient's disease, illness or medical condition meets the eligibility criteria, or whether the patient has decision-making capacity in relation to voluntary assisted dying under the eligibility criteria, the coordinating practitioner must refer the patient on to a registered health practitioner with the appropriate skills and training to make that determination.

Subclause (3) provides that where the coordinating practitioner cannot determine whether the patient is acting voluntarily and without coercion, they must refer the patient to a person with the appropriate skills and training to make that determination. This may include experienced registered health practitioners, health care workers including social workers and police officers, with the skills and training to determine if a person is acting voluntarily and without coercion.

This ability to refer is consistent with current Australian medical practice and ensures that the patient has access to the highest standard of assessment in the voluntary assisted dying process. This is yet another safeguard in the process, without placing undue strain on a specialist to undertake the role of a coordinating or consulting practitioner.

Subclause (4) provides that if a coordinating practitioner refers a patient under this provision in relation to the particular criterion, they may adopt the determination of the person to whom the referral was made.

Clause 26 Information to be provided if patient assessed as meeting eligibility criteria

This clause provides that if a coordinating medical practitioner is satisfied that a patient meets all of the eligibility criteria they must inform the patient about a number of matters related to the voluntary assisted dying process and the person's specific circumstances and options under the process. That the person's decision is well-informed is fundamental to the proposed model for voluntary assisted dying in Western Australia.

Subclause (2) requires the coordinating practitioner to take all reasonable steps to fully explain to the patient, and if the patient consents, to another person nominated by the person, all relevant clinical guidelines and a plan in respect of the administration of the voluntary assisted dying substance. This is because it is vital that the patient is supported throughout the process of voluntary assisted dying.

Subclause (3) makes it clear that nothing in the provision affects a medical practitioner's duty at common law or under any other enactment. Clause 26 is not intended to displace or limit the existing boundaries of informed consent, but is intended to operate as an extra safeguard alongside existing requirements.

Clause 27 Outcome of first assessment

This clause provides that if the coordinating practitioner is satisfied that a patient meets all of the eligibility criteria for access to voluntary assisted dying, and understands the information provided in accordance with clause 26, then the coordinating practitioner's determination must be that the patient is eligible for access to voluntary assisted dying.

Clause (2) clarifies the effect of the coordinating practitioner not being satisfied as to any of those matters- the patient is ineligible for access to voluntary assisted dying and the request and assessment process ends.

Clause 28 Recording and notification of outcome of first assessment

This clause sets out the coordinating practitioner's notification requirements following their first assessment.

Subclause (1) requires the coordinating practitioner to notify the patient of the assessment outcome as soon as practicable. Subclause (2) requires that within 2

days after completing the first assessment, the coordinating practitioner notify the Board in an approved form (the *first assessment report form*).

Subclause (3) sets out the matters that must be included in the *first assessment report form*. The intent of this provision is to ensure that the Board is notified progressively of the patient's participation in the voluntary assisted dying process, including the outcome of each assessment, to track that the correct process is being followed in each case of voluntary assisted dying, and to maintain complete and accurate statistics of participation in voluntary assisted dying in Western Australia.

It should be noted that clause 152 requires the Board to notify the medical practitioner as soon as practicable after receiving a copy of particular forms under the Bill. This means that the medical practitioner can be confident they have discharged their statutory obligations.

Clause 29 Referral for consulting assessment if patient assessed as eligible

This clause provides that if a coordinating practitioner determines that a patient is eligible for access to voluntary assisted dying, they must refer the patient to another medical practitioner for a consulting assessment.

This reflects the position that one assessment alone is not sufficient to qualify a person for access to voluntary assisted dying. A further assessment is required to be done, independently of the first assessment, against the eligibility criteria.

DIVISION 4 – Consulting assessment

Clause 30 Medical practitioner to accept or refuse referral for consulting assessment

This clause provides that a medical practitioner who receives a referral request (for a consulting assessment) from a patient's coordinating practitioner must either accept or refuse the referral and accordingly inform the patient and the coordinating practitioner.

Subclause (2) sets out that the medical practitioner can refuse the referral due to a conscientious objection to voluntary assisted dying or, alternatively, if they are unwilling or unable to perform the duties of a consulting practitioner because of unavailability or some other reason.

Subclause (3) requires a medical practitioner to refuse the referral if they do not meet the minimum requirements to act as a consulting practitioner.

Subclauses (4) and (5) set out the time limits within which a medical practitioner must inform the patient of their decision to accept or refuse the referral. If the medical practitioner is a conscientious objector, they must inform the patient of their refusal immediately upon receiving the referral request. For all other reasons, the medical practitioner must advise the patient within 2 business days of receiving the referral request. This provision takes into consideration that a person who conscientiously objects to voluntary assisted dying will, as a matter of course, refuse a person's request. Thus, this medical practitioner does not require a length of time to come to that decision. However, other medical practitioners may require time to consider whether they are available to provide the service to the person, or if they do not have the required training, to decide if they wish to undergo such training before giving their decision to the person.

In any case (acceptance or refusal), the medical practitioner is required to provide the patient with information approved by the CEO for the purposes of this section. This information will be about the voluntary assisted dying process and will help the patient access the relevant resources and supports they need to participate in the process.

This clause reflects the position that a medical practitioner is professionally obligated not to unduly delay a patient's access to voluntary assisted dying; they should make a decision and inform the patient as quickly as possible.

Clause 31 Medical practitioner to record referral and acceptance or refusal

This clause provides that the medical practitioner who receives a referral request must record in the patient's medical record- the request, their decision to accept or refuse the referral, and if refused, the reason for refusal. The purpose of this provision is to reflect the progression and enduring nature of the request and assessment process.

Clause 32 Medical practitioner to notify Board of referral

This clause provides that the medical practitioner who accepts or refuses a referral request must notify the Voluntary Assisted Dying Board about the request and the medical practitioner's decision via the *consultation referral form*. This clause sets out the reporting requirements to be included in the form.

The intent of this provision is to ensure that the Board is notified of a patient's enduring and voluntary decision to participate in voluntary assisted dying, to monitor that the correct process is being followed in each case of voluntary assisted dying, and to maintain complete and accurate statistics of participation in voluntary assisted dying in Western Australia.

Clause 33 Medical practitioner becomes consulting practitioner if referral accepted

This clause provides that the medical practitioner who accepts a referral request becomes the consulting practitioner for that person. This is tracked by recording the request and the acceptance of the request in the person's medical record, and via notification to the Board.

The role of consulting medical practitioner is to independently assess the person's eligibility to access voluntary assisted dying.

Clause 34 Consulting assessment

This clause provides that the patient's consulting practitioner must commence an assessment, following acceptance of the role of consulting practitioner by the medical practitioner.

The assessment requires the consulting medical practitioner to determine if the patient requesting access to voluntary assisted dying meets the eligibility criteria listed in clause 15 and understands the information required to be given to them under clause 37.

Clause 35 Consulting practitioner to have completed approved training

This clause provides that consulting practitioner must have successfully completed approved training in relation to voluntary assisted dying before they can begin the consulting assessment.

The CEO will approve training in relation to the roles of practitioners and their obligations under the Voluntary Assisted Dying Act (as set out under clause 158).

Clause 36 Referral for determination

This clause sets out the circumstances in which a consulting practitioner must refer the patient for an opinion on specified matters set out under the eligibility criteria under clause 15(1)(c),(d) or (e).

Subclauses (1) and (2) provides that where the consulting practitioner cannot determine whether the patient's disease, illness or medical condition meets the eligibility criteria, or whether the patient has decision-making capacity in relation to voluntary assisted dying under the eligibility criteria, the consulting practitioner must refer the person on to a registered health practitioner with the appropriate skills and training to make that determination.

Subclause (3) provides that where the consulting practitioner cannot determine whether the patient is acting voluntarily and without coercion, they must refer the patient to a person with the appropriate skills and training to make that determination. This may include experienced registered health practitioners, health care workers including social workers, and police officers, with the skills and training to determine if a person is acting voluntarily and without coercion.

This ability to refer is consistent with current Australian medical practice and ensures that the patient has access to the highest standard of assessment in the voluntary assisted dying process. This is yet another safeguard in the process, without placing undue strain on a specialist to undertake the role of a coordinating or consulting practitioner.

Subclause (4) provides that if a consulting practitioner refers a patient under this provision in relation to the particular criterion, they may adopt the determination of the person to whom the referral was made.

Clause 37 Information to be provided if patient assessed as meeting eligibility criteria

This clause provides that if a consulting practitioner is satisfied that a patient meets all of the eligibility criteria they must inform the patient about a number of matters related to the voluntary assisted dying process and the person's specific circumstances and options under the process.

Subclause (2) makes it clear that nothing in the provision affects a medical practitioner's duty at common law or under any other enactment. Clause 37 is not intended to displace or limit the existing boundaries of informed consent, but is intended to operate as an extra safeguard alongside existing requirements.

Clause 38 Outcome of consulting assessment

This clause provides that if the consulting practitioner is satisfied that a patient meets all of the eligibility criteria for access to voluntary assisted dying, and understands the information provided in accordance with clause 31, then the consulting practitioner's determination must be that the patient is eligible for access to voluntary assisted dying.

Clause (2) clarifies the effect of the consulting practitioner not being satisfied as to any of those matters- the person is ineligible for access to voluntary assisted dying.

Clause 39 Recording and notification of outcome of consulting assessment

This clause sets out the consulting practitioner's notification requirements following their assessment.

Subclause (1) requires the consulting practitioner to notify the patient of the assessment outcome as soon as practicable. Subclause (2) requires that within 2 days after completing the consulting assessment, the consulting practitioner notify the Board in an approved form (the *consulting assessment report form*).

Subclause (3) sets out the matters that must be included in the *consulting assessment report form*. The intent of this provision is to ensure that the Board is notified progressively of the patient's participation in the voluntary assisted dying process, including the outcome of each assessment, to monitor that the correct process is being followed in each case of voluntary assisted dying, and to maintain complete and accurate statistics of participation in voluntary assisted dying in Western Australia.

Subclause (4) requires the consulting practitioner to provide a copy of the *consulting assessment report form* to the coordinating practitioner as soon as practicable after completing the consulting assessment. This reflects the intent of the Bill that medical practitioners perform their duties in a timely manner, without undue delay.

It should be noted that clause 152 requires the Board to notify the medical practitioner as soon as practicable after receiving a copy of particular forms under the Bill. This means that the medical practitioner can be confident they have discharged their statutory obligations.

Clause 40 Referral for further consulting assessment if patient assessed as ineligible

This clause provides that if a consulting practitioner determines that a patient is ineligible for access to voluntary assisted dying, the coordinating practitioner may refer the patient to another medical practitioner for a consulting assessment.

Where a further consulting assessment is required to be done, it must be done independently of the first assessment and previous consulting assessment, against the eligibility criteria at clause 15.

DIVISION 5 – Written declaration

Clause 41 Patient assessed as eligible may make written declaration

This clause provides that if a patient is assessed as eligible for access to voluntary assisted dying by both their coordinating and consulting practitioners, they may progress their request by making a written declaration requesting access to voluntary assisted dying.

Subclauses (2) and (3) require the written declaration to meet very specific declaration and witnessing requirements. The purpose of the declaration is to reflect the voluntary and enduring nature of the patient's request for access to voluntary assisted dying.

Subclauses (4) and (5) provide that, subject to particular restrictions and requirements, another person may sign on behalf of the patient making the declaration, in that patient's presence and at their direction. This is to account for individuals who may not be capable of writing, due to physical, linguistic or other barriers.

Subclause (6) also provides that a patient who makes a declaration may be assisted by an interpreter. The interpreter must meet the requirements set out in clause 160 and certify that they provided a true and correct translation.

Clause 42 Witness to signing of written declaration

This clause sets out the eligibility requirements for a person who is a witness to the making of the written declaration.

Subclause (1) provides that the witness must be aged 18 years or more and must not be an ineligible witness. Subclause (2) sets out which persons are ineligible to be a witness.

This clause is a safeguard for people who may be vulnerable to abuse and coercion. The requirements are aimed at ensuring witnesses do not have a conflict of interest in witnessing the declaration.

Clause 43 Certification of witness to signing of written declaration

This clause sets out the matters that a witness to the signing of a written declaration must certify.

The purpose of the declaration is to reflect the voluntary and enduring nature of the patient's request for access to voluntary assisted dying. The purpose of the two witnesses is to provide independent verification that the written declaration was signed freely and voluntarily by the patient.

Clause 44 Coordinating practitioner to record written declaration

This clause sets out the coordinating practitioner's recording requirements following the receipt of a written declaration from a patient. The purpose of this provision is to ensure that an accurate record is kept of the patient's choice to progress in the voluntary assisted dying process.

Clause 45 Coordinating practitioner to notify Board of written declaration

This clause provides that the coordinating practitioner must give the Voluntary Assisted Dying Board a copy of the patient's written declaration.

The intent of this provision is to ensure that the Board is to enable the Board to monitor that the correct process is being followed in each case of voluntary assisted dying. Further, the clause enables the Board to maintain complete and accurate statistics of participation in voluntary assisted dying in Western Australia.

DIVISION 6 – Final request and final review

Clause 46 Patient may make final request to coordinating practitioner

This clause provides that, if the patient has made a written declaration, the patient may then make a final request to their coordinating practitioner for access to voluntary assisted dying. This request must be clear and unambiguous, made by the patient either in person or by means of audiovisual technology, either verbally or by gestures or by other means of communication available to the patient.

This clause reflects the position that a patient's decision for access to voluntary assisted dying must be enduring.

Clause 47 When final request can be made

This clause requires that the final request generally be made at least 9 days beginning from when the first request was made, and in any case, not on the day the consulting assessment was completed. This reflects the position that the process for voluntary assisted dying should generally not be rushed and that people be given time to consider all the information and contemplate the effect of their decisions.

The 9 day period may be abridged but only in two circumstances, namely: when both the coordinating practitioner and the consulting practitioner are of the opinion that the patient's death is likely to occur before the end of the 9 day period; or the patient is likely to lose decision-making capacity in relation to voluntary assisted dying before the end of the 9 day period.

Even where the 9 day period is abridged, the final request may only occur the day after the consulting assessment is completed. Furthermore, all the steps in the voluntary assisted dying process must be completed.

Clause 48 Coordinating practitioner to record final request

This clause provides that the coordinating practitioner must record the final request, in the patient's medical record, together with the reasons for which the 9 day period was abridged (if it was abridged).

The purpose of this provision is to reflect the progression and enduring nature of the request and assessment process. It is an administrative, record keeping requirement.

Clause 49 Coordinating practitioner to notify Board of final request

This clause provides that the coordinating practitioner must give the Voluntary Assisted Dying Board written notification (*final request form*) about the final request. Subclause (2) sets out the information to be included in the form.

The intent of this provision is to ensure that the Board is notified progressively of the patient's participation in the voluntary assisted dying, including the outcome of each assessment, to monitor that the correct process is being followed in each case of voluntary assisted dying, and to maintain complete and accurate statistics of participation in voluntary assisted dying in Western Australia.

Clause 50 Final review by coordinating practitioner on receipt of final request

This clause sets out the requirements for the final review that the coordinating practitioner must undertake on receipt of a patient's final request for access to voluntary assisted dying.

The purpose of the final review is for the coordinating practitioner to review all the forms completed throughout the request and assessment process, complete the final review form in respect of the patient and certify whether or not the request and assessment process has been completed in accordance with the Bill.

The coordinating practitioner must notify the Board as to the matters above, within 2 days after completing the final review form.

Clause 51 Technical error not to invalidate request and assessment process

This clause provides that the request and assessment process is not invalidated by any technical error in a first assessment report form, all consulting assessment report forms, the written declaration or final review form.

The purpose of this clause is to clarify that a technical mistake on a form, such as a spelling error in a name or an accidentally incorrect date next to the witness's signature, does not have the effect of invalidating a person's entire request and assessment process.

Clause 52 No obligation for patient to continue after completion of request and assessment process

This clause provides that a patient who seeks to access voluntary assisted dying may, at any time, decide not to proceed with the process, even after the request and assessment process has been completed.

This provision reflects the voluntary nature of voluntary assisted dying, and that in order for the process to continue, the patient's choice to participate is paramount and must be enduring. The patient is not obliged, even after the completion of the request and assessment process, to take any further action in relation to access to voluntary assisted dying.

PART 4 — ACCESSING VOLUNTARY ASSISTED DYING AND DEATH

DIVISION 1 – Eligibility requirements for administering practitioners

Clause 53 Eligibility to act as administering practitioner

This clause sets out the eligibility requirements of an administering practitioner, namely that they must be: a medical practitioner who meets the eligibility requirements of a coordinating practitioner under clause 16(2), or a nurse practitioner who has practised for at least two years post registration as a nurse practitioner and who meets the requirements approved by the CEO.

In any case, the medical practitioner and nurse practitioner must have successfully completed the approved training in relation to voluntary assisted dying before they can be an administering practitioner. The CEO will approve training in relation to the roles of practitioners and their obligations under the Voluntary Assisted Dying Act (as set out under clause 158).

Clause 5 defines an administering practitioner to mean the coordinating practitioner for the patient; or a person (medical practitioner or nurse practitioner) to whom the role of administering practitioner is transferred under clause 62(2).

DIVISION 2 – Administration of voluntary assisted dying substance

Clause 54 Application of Division

This clause provides that Division 2 applies if the request and assessment process has been completed in respect of a patient and the final review form certifies particular matters.

Clause 55 Administration decision

This clause provides that a patient may, in consultation with and on the advice of the patient's coordinating practitioner, make a decision that the administration of the voluntary assisted dying substance is to occur via self-administration or by practitioner administration.

Subclause (2) provides that practitioner administration may only occur upon advice from the patient's coordinating practitioner that self-administration is not appropriate having regard to one or more of the following reasons: the person's ability to self-administer the substance, the patient's concerns regarding self-administration and the administration method suitable for the person.

Subclauses (3) and (4) provide that the patient's administration decision must be clear and unambiguous, made by the patient either in person or by means of audiovisual technology, either verbally or by gestures by other means of communication available to the patient.

Subclause (5) requires the administration decision to be recorded on the person's medical record.

Clause 56 Revocation of administration decision

This clause provides that the patient may at any time revoke an administration decision.

Subclause (2) provides that the patient may inform the coordinating practitioner or the administering practitioner of the decision to revoke in a number of ways, namely: in writing, verbally or by gestures by other means of communication available to the patient.

Subclause (3) requires the decision to revoke to be recorded on the patient's medical record by the coordinating practitioner or administering practitioner, as the case may be. If the administering practitioner is different to the coordinating practitioner (due to the transfer of the administration role) the administering practitioner must notify the coordinating practitioner of the revocation.

The coordinating practitioner or administering practitioner, as the case may be, must within 2 days of being informed by the patient of the revocation, provide the Board with a copy of the completed revocation form, the requirements for which are set out under subclause (4).

Subclause (5) makes clear that a patient may make another administration decision following the revocation of their previous administration decision.

Clause 57 Self-administration

This clause sets out the authorisations where a self-administration decision is made and not revoked.

Subclause (2) authorises the coordinating practitioner to prescribe a voluntary assisted dying substance for the patient, in a sufficient dose to cause death.

The coordinating practitioner is prohibited from prescribing a voluntary assisted dying substance for the patient before the contact person appointment form is given to the coordinating practitioner (pursuant to subclause 65(6)).

Subclauses (4), (5), (6) and (7) authorise the following persons to carry out particular conduct required for the purposes of the Act:

- Authorised supplier- to possess, prepare and supply (to the patient or their agent) the prescribed substance
- Patient- to receive (from the authorised supplier, contact person or patient's agent), possess, prepare and self-administer the prescribed substance
- Agent of the patient- to receive, possess and supply (to the patient) the prescribed substance.

Clause 58 Practitioner administration

This clause sets out the authorisations where a practitioner administration decision is made and not revoked.

Subclause (2) authorises the coordinating practitioner to prescribe a voluntary assisted dying substance for the patient, in a sufficient dose to cause death.

Subclauses (3), (4) and (5) authorise the following persons to carry out particular conduct required for the purposes of the Act:

- Authorised supplier- to possess, prepare and supply (to the administering practitioner) the prescribed substance

- Administering practitioner - to receive, possess, prepare and administer to the patient the prescribed substance. Administration by the coordinating practitioner can only occur if the coordinating practitioner is satisfied that the patient has decision-making capacity in relation to voluntary assisted dying, is acting voluntarily and without coercion, and that their request for access to voluntary assisted dying is enduring. Administration must take place in the presence of a witness.

Clause 59 Coordinating practitioner to notify Board of administration decision and prescription of substance

This clause sets out the coordinating practitioner's notification requirements following the prescribing of the voluntary assisted dying substance.

The coordinating practitioner must, within 2 days after prescribing the substance, notify the Board of the administration decision in an approved form (the *administration decision and prescription form*). Subclauses (1) and (2) set out the matters that must be included in the form. If the patient has made a self-administration decision, a copy of the *contact person appointment form* must also be provided with the *administration decision and prescription form*.

The intent of this provision is to ensure that the Board is notified progressively of the person's participation in the voluntary assisted dying process, including the outcome of each assessment, to monitor that the correct process is being followed in each case of voluntary assisted dying, and to maintain complete and accurate statistics of participation in voluntary assisted dying in Western Australia.

Clause 60 Certification by administering practitioner following administration of prescribed substance

This clause sets out the administering practitioner's certification requirements following the administration of the prescribed substance by the administering practitioner to the patient.

A prescribed substance is defined in clause 5 of the Act to mean a voluntary assisted dying substance (generally) prescribed for a patient by the patient's coordinating practitioner; and in relation to a patient, the voluntary assisted dying substance (specifically) prescribed for the patient by the patient's coordinating practitioner.

The administering practitioner must, within 2 business days after administering the substance, notify the Board of the administration decision in an approved form (the *practitioner administration form*). Subclauses (2) and (3) set out the matters that must be included in the form, including details pertaining to the witness to the administration.

The intent of this provision is to ensure that the Board is notified progressively of the person's participation in the voluntary assisted dying process, including the outcome of each assessment, to monitor that the correct process is being followed in each case of voluntary assisted dying, and to maintain complete and accurate statistics of participation in voluntary assisted dying in Western Australia.

Clause 61 Witness to administration of prescribed substance

As outlined above in clause 58(5), the administration of the VAD substance by the administering practitioner to the patient must be made in the presence of a witness. This clause sets out the requirements relating to the witness.

A person must meet two requirements before they may act as a witness to practitioner administration- firstly the person must be at least 18 years of age; and second, the person must be independent of the coordinating medical practitioner for the patient.

The witness is also required to certify in writing (in the practitioner administration form) that at the time of the administration: the patient's decision to access voluntary assisted dying appeared enduring; and the administering practitioner administered the prescribed substance to the person.

It is not the intent of this clause to limit persons who may be present at the time of administration. Although the witness must meet the requirements as set out above, the patient is able to have other support persons (including family and friends) during the administration.

Clause 62 Transfer of administering practitioner's role

This clause provides for situations where the administering practitioner for the patient is no longer able to administer the prescribed substance to the patient, and such transfers the role of administering practitioner to another person. This may only occur where the patient has made an administration decision for practitioner administration and their coordinating practitioner has prescribed the voluntary assisted dying substance for the patient.

The person to whom the role of administering practitioner is transferred to must meet the eligibility requirements set under clause 53. Clause 5 defines an administering practitioner, in relation to a patient, to mean the coordinating practitioner for the patient; or a person (medical practitioner or nurse practitioner) to whom the role of administering practitioner is transferred under clause 62(2).

The ability to transfer the role ensures that a person is not disadvantaged due to unforeseen circumstances, such as the original administering practitioner being no longer able to perform the role due to illness or other reasons. A person who takes on the role of the administering practitioner becomes responsible for administering the prescribed substance to the patient and ensuring that all the necessary checks and balances are completed.

Subclause (3) and (4) set out notification requirements- namely to ensure that the patient is made aware of the transfer, and that the information is noted on the patient's medical record and the Board is also notified via the *administering practitioner transfer form*.

Subclause (5) authorises the following persons to carry out particular conduct required for the purposes of the Act:

- original administering practitioner- to supply the prescribed substance to the new practitioner
- new administering practitioner- to receive the prescribed substance from the original administering practitioner

Subclause (6) makes clear that the coordinating practitioner remains the coordinating practitioner unless the coordinating practitioner role is transferred under clause 155.

DIVISION 3 – Contact person

Clause 63 **Application of Division**

This clause sets out the application of Part 4 Division 3 of the Act, namely where a patient makes a self-administration decision.

Clause 64 **Contact person**

This clause sets out the requirements for appointing a contact person.

Subclause (1) provides that the patient (who is the subject of a self-administration decision) must appoint a person as their contact person.

Subclause (2) and (3) set out the requirements for a contact person- that they must be at least 18 years of age, and may be the patient's coordinating or consulting practitioner or another registered health practitioner.

Subclause (4) provides that a person is only appointed as a contact person if they provide their consent to be so appointed.

Subclauses (5) provides that a patient may revoke the appointment of a contact person. Following such a revocation, the patient must notify the person of the revocation whereupon the person ceases to be the contact person. The patient is required to nominate another contact person in accordance with the Act.

The intent of appointing a contact person is to ensure that once supplied, a voluntary assisted dying substance can be monitored and safely disposed of (if unused).

Clause 65 **Contact person appointment form**

This clause sets out the process for appointing a contact person, namely that a person must be appointed in an approved form (the *contact person appointment form*).

Subclause (1) sets out the information that must be in the form including a statement that the person consents to their appointment as contact person, that they understand their role under the Act (including to give and unused or remaining voluntary assisted dying substance to an authorised disposer. Subclause (2) provides that another person may complete the form if the patient is unable to do so.

Subclause (3) requires the patient or their contact person to give the *contact person appointment form* to the patient's coordinating practitioner.

Subclauses (4) and (5) provide that the coordinating practitioner must provide the Board with a copy of the completed *contact person appointment form* within 2 business days after receiving it, unless it is already given to the Board with the *administration decision and prescription form* (under clause 65(3)).

Subclause (6) prohibits the coordinating practitioner from prescribing a voluntary assisted dying substance for the patient before the contact person appointment form is given to the coordinating practitioner.

Clause 66 Role of contact person

This clause authorises the contact person to carry out a number of specific functions under the Act. These are: to collect, possess, supply (to the patient) and give (to the authorised disposer) the prescribed substance.

Subclause (2) provides that the contact person must notify the coordinating practitioner if the patient dies (regardless of whether death was a result of self-administering the prescribed substance or for some other cause).

Clause 67 Contact person may refuse to continue in role

This clause provides that the patient's contact person may refuse to continue to perform the role of contact person. Where such a refusal occurs, the contact person is required to notify the patient of the refusal, whereupon the person ceases to be the contact person. The patient is required to nominate another contact person in accordance with the Act.

**DIVISION 3 – Prescribing, supplying or disposing of
voluntary assisted dying substance**

Clause 68 Information to be given before prescribing substance

This clause requires the coordinating practitioner to inform the patient, in writing, of a number of matters, prior to prescribing the voluntary assisted dying substance for the patient.

Subclause (1) relates to where a self-administration decision is made. The coordinating practitioner must, prior to prescribing the voluntary assisted dying substance for the patient, inform the patient of matters including that the patient is not obliged to receive or self-administer the voluntary assisted dying substance; that the substance must be stored according to the advice of the authorised supplier; how to prepare and self-administer the voluntary assisted dying substance; and the obligations of the contact person.

Subclause (2) relates to where a practitioner administration decision is made. The coordinating practitioner must, prior to prescribing the voluntary assisted dying substance for the patient, inform the patient of matters including that the patient is not obliged to have the substance administered to them, and if a self-administration decision was made previously and then revoked, the obligations of the contact person regarding disposal of the substance.

Clause 69 Prescription for substance

This clause sets out the required matter the prescription must include where the coordinating practitioner for a patient prescribes a voluntary assisted dying substance for the patient.

Subclause (3) provides that the prescription must include a statement that clearly indicates it is for a voluntary assisted dying substance and certifies that the request and assessment process has been completed in respect of the patient in accordance with the *Voluntary Assisted Dying Act*, that the patient has made an administration decision and whether the decision is for self-administration or practitioner administration. The prescription must also include the telephone number of the patient.

Subclauses (4) and (5) place restrictions on the issuance of the prescription- it cannot be in the form of a medication chart nor provide for the prescribed substance to be supplied on more than 1 occasion.

Subclause (6) provides that the coordinating practitioner must give the prescription directly to an authorised supplier.

These requirements are in addition to any prescriptions requirements under the *Medicines and Poisons Act 2014 (WA)*, noting that where the two are inconsistent, the Voluntary Assisted Dying Act prevails.

Clause 70 Authorised supplier to authenticate prescription

This clause prohibits an authorised supplier who is given a prescription for a voluntary assisted dying substance from supplying the substance unless they have confirmed the authenticity of the prescription, the identity of the person who issued the prescription and the identity of the person to whom the substance is to be supplied.

The identity of the person to whom the substance is to be supplied is dependent on the patient's administration decision. Where administration is to occur by self-administration of the prescribed substance by the patient, the authorised supplier must confirm the identity of the recipient (the patient or their contact person or agent) before supplying the substance to them. Where administration is to occur by practitioner administration, the authorised supplier must confirm the identity of the administering practitioner.

The intent of this provision is to provide a safeguard around the supply of a voluntary assisted dying substance.

Clause 71 Information to be given when supplying prescribed substance

This clause requires the authorised supplier, when supplying a prescribed substance to a patient or an agent of the patient (the recipient) to inform them, in writing, of a number of matters.

These requirements are in addition to any information requirements under the *Medicines and Poisons Act 2014 (WA)*, noting that where the two are inconsistent, the Voluntary Assisted Dying Act prevails.

Subclause (2) requires the recipient be informed of matters including: that the patient is not under any obligation to self-administer the substance; how the patient prepares and self-administers the substance; how the substance must be stored and any obligations of the contact person. Subclause (3) provides that the authorised supplier must, when supplying the prescribed substance, advise the recipient (if not the patient) to give the information to the patient.

Clause 72 Labelling requirements for prescribed substance

This clause sets out the labelling requirements for a prescribed substance, where an authorised supplier supplies the substance.

These requirements are in addition to any labelling requirements under the *Medicines and Poisons Act 2014 (WA)*, noting that where the two are inconsistent, the Voluntary Assisted Dying Act prevails.

Clause 73 **Authorised supplier to record and notify of supply**

This clause sets out the authorised supplier's recording and notification requirements following the supply of a prescribed substance.

The authorised supplier must, within 2 days after supplying the substance, notify the Board of the supply in an approved form (the *authorised supply form*). Subclause (2) sets out the matters that must be included in the form.

The intent of this provision is to record the details relevant to the supply of the prescribed substance and to ensure that the Board is notified progressively of the person's participation in the voluntary assisted dying process, including the outcome of each assessment, to monitor that the correct process is being followed in each case of voluntary assisted dying, and to maintain complete and accurate statistics of participation in voluntary assisted dying in Western Australia.

Clause 74 **Disposal of prescribed substance by authorised disposer**

This clause sets out the requirements under the Act where a prescribed substance is given to an authorised disposer by the patient's contact person for disposal.

Subclause (2) authorises the authorised disposer to possess and dispose of any unused or remaining prescribed substance. Subclause (3) requires the disposal to occur as soon as practicable after the authorised disposer receives the substance.

These requirements are in addition to any disposal requirements under the *Medicines and Poisons Act 2014* (WA), noting that where the two are inconsistent, the Voluntary Assisted Dying Act prevails.

Clause 75 **Authorised disposer to record and notify of disposal**

This clause sets out the authorised disposer's recording and notification requirements following the disposal of a prescribed substance.

The authorised disposer must, within 2 business days after supplying the substance, notify the Board of the disposal in an approved form (the *authorised disposal form*). Subclauses (2) sets out the matters that must be included in the form.

The intent of this provision is to record the details relevant to the supply and disposal of the prescribed substance and to ensure that the Board is notified progressively of the person's participation in the voluntary assisted dying process, including the outcome of each assessment, to monitor that the correct process is being followed in each case of voluntary assisted dying, and to maintain complete and accurate statistics of participation in voluntary assisted dying in Western Australia.

Clause 76 **Disposal of prescribed substance by administering practitioner**

This clause sets out the requirements under the Act where a prescribed substance in the possession of the administering practitioner is no longer required by the patient who made a practitioner administration decision, because the patient revoked the decision or has died.

Subclauses (1) to (3) relate to the disposal of a prescribed substance where the patient who is subject to a practitioner administration decision revokes that decision. The administering practitioner is authorised to possess and dispose of any unused prescribed substance. The disposal must occur as soon as practicable after the revocation of the decision by the patient.

Subclauses (4) to (6) relate to the disposal of a prescribed substance where the patient who is subject to a practitioner administration decision dies and the prescribed substance is unused or remaining. The administering practitioner is authorised to possess and dispose of any unused or remaining prescribed substance. The disposal must occur as soon as practicable after the death of the patient.

These requirements are in addition to any disposal requirements under the *Medicines and Poisons Act 2014 (WA)*, noting that where the two are inconsistent, the Voluntary Assisted Dying Act prevails.

Clause 77 Administering practitioner to record and notify of disposal

This clause sets out the administering practitioner's recording and notification requirements following the disposal of a prescribed substance.

The administering practitioner must, within 2 business days after supplying the substance, notify the Board of the disposal in an approved form (the *practitioner disposal form*). Subclauses (2) sets out the matters that must be included in the form.

The intent of this provision is to record the details relevant to the supply and disposal of the prescribed substance and to ensure that the Board is notified progressively of the person's participation in the voluntary assisted dying process, including the outcome of each assessment, to monitor that the correct process is being followed in each case of voluntary assisted dying, and to maintain complete and accurate statistics of participation in voluntary assisted dying in Western Australia.

Division 4 — Other matters

Clause 78 Authorised suppliers and authorised disposers

This clause provides that the CEO may, in writing, authorise a registered health practitioner, or persons in a class of registered health practitioners, to supply prescribed substances and to dispose of prescribed substances for the purposes of Part 4 of the Act (Accessing voluntary assisted dying and death).

Subclause (5) provides that the CEO may, in writing, revoke the authorisation.

Subclause (6) requires the CEO to publish an up-to-date list of authorised suppliers and authorised disposers on the Department's website.

Clause 79 Certain directions as to supply or administration prohibited

This clause prohibits the coordinating practitioner from directing an authorised health professional to supply a prescribed substance to the patient or the patient's contact person or agent, unless the authorised health professional is an authorised supplier and the direction is in the form of a prescription for the prescribed substance given directly to the authorised supplier.

The coordinating practitioner or administering practitioner for a patient cannot direct an authorised health professional to administer a prescribed substance to the patient.

Authorised health professional has the meaning given in section 3 of the *Medicines and Poisons Act 2014 (WA)*.

Clause 80 Structured administration and supply arrangement not to be issued for substance

This clause prohibits a person from issuing a structured administration and supply arrangement in relation to the administration or supply of voluntary assisted dying substance.

A structured administration and supply arrangement means a document that sets out the circumstances in which a health professional specified, or of a class specified, in the document may administer or supply a medicine specified in the document.

Clause 81 Notification of death

This clause sets out the requirements for the notification to the Board of a patient's death under the Voluntary Assisted Dying Act.

Subclauses (2) and (3) require the coordinating practitioner or administering practitioner to notify the Board in writing of the patient's death in an approved form, within two working days of becoming aware of the patient's death. Notification by the administering practitioner does not need to occur if the administering practitioner has already notified the Board.

Subclauses (4) to (5) set out the obligations of a medical practitioner who is required to give a cause of death certificate for a person. This is usually the medical practitioner responsible for the person's medical care immediately before death, or who examined the person's deceased body. Where the medical practitioner reasonably believes or knows that the cause of the person's death was the administration of a voluntary assisted dying substance in accordance with this Act, they must notify the Board in writing of the patient's death in an approved form. Notification by the medical practitioner does not need to occur if the medical practitioner has already notified the Board.

The intent of this clause is to ensure that the Board is notified progressively of the person's participation in the voluntary assisted dying process, including the outcome of each assessment, to monitor that the correct process is being followed in each case of voluntary assisted dying, and to maintain complete and accurate statistics of participation in voluntary assisted dying in Western Australia.

Subclause (6) makes clear that the medical practitioner is not to include any information or make reference to voluntary assisted dying on the cause of death certificate required under section 44 of the *Births, Deaths and Marriages Registration Act 1998 (WA)* in respect of the person. This includes making any references to a self-administered or practitioner administered death.

PART 5 — REVIEW BY TRIBUNAL

In exercising its review jurisdiction the State Administrative Tribunal (the Tribunal) is required to deal with a matter in accordance with the *State Administrative Tribunal Act 2004* (WA) and the enabling Act (that is, the Voluntary Assisted Dying Act). However, the Voluntary Assisted Dying Act may modify the operation of the *State Administrative Tribunal Act 2004* (WA) in relation to a matter that comes within the Tribunal's review jurisdiction under Part 5.

Further, in the event of any inconsistency between the two Acts, the Voluntary Assisted Dying Act will prevail.

Clause 82 Terms used

This clause defines terms used in Part 5 (Review by Tribunal) of the Act.

Of note is the term eligible applicant- this refers to who may apply to the Tribunal for a review of certain decisions made by the coordinating and consulting practitioners under the Act. The patient who is the subject of the voluntary assisted dying assessment may themselves apply for a review, as may an agent acting on their behalf. A person who has a special interest in the medical treatment and care of the patient may also apply for a review to the Tribunal. Simply being a member of the person's family is not alone intended to be sufficient to constitute having a special interest for the purposes of this clause.

Clause 83 Application for review of certain decisions by Tribunal

This clause provides for an application for review by the Tribunal of certain decisions of the coordinating and consulting medical practitioners.

Subclause (1) sets out the matters that the Tribunal may review, namely whether, at the time of making the first request, the person has or has not been ordinarily resident in Western Australia for a period of at least 12 months; whether the patient has or does not have decision-making capacity in relation to voluntary assisted dying; and whether the patient is or is not acting voluntarily and without coercion.

Only an eligible applicant may apply for review of the decisions made under this Act, in relation to voluntary assisted dying. The meaning of eligible applicant is set out under clause 82.

Subclause (2) makes it clear that the patient who is the subject of a decision is a party to a proceeding for review of the decision, whether or not the patient was the applicant for the review.

Sections 36, 37 and 38 of the *State Administrative Tribunal Act 2004* (WA) will also apply in relation to parties to proceedings in the Tribunal.

Clause 84 Notice of decision and right to have it reviewed

This clause provides that the patient who is the subject of the decision is the only person who has to be given notice under section 20(1) of the *State Administrative Tribunal Act 2004* (WA) in relation to a decision referred to in clause 83.

This clause modifies the operation of section 20 of the *State Administrative Tribunal Act 2004* (WA).

Clause 85 Consequences of review application

This clause sets out the consequences arising from a review application being made to the Tribunal in regards to a patient who is the subject of the voluntary assisted dying process.

Subclause (2) provides that where the request and assessment process has not been completed, no further action may be taken (including by the patient or their registered health practitioners) in relation to accessing voluntary assisted dying. This means that the request and assessment process is suspended and must not proceed until the review application to the Tribunal is completed (determined or otherwise disposed of).

Subclause (3) provides that where the request and assessment process has been completed, no further action may be taken (including by the patient or their registered health practitioners) in relation to accessing voluntary assisted dying. For example, the voluntary assisted dying substance must not be prescribed, supplied or administered, as the case may be. The voluntary assisted dying process is suspended and must not proceed until the review application to the Tribunal is completed (determined or otherwise disposed of).

This clause modifies the operation of section 25 of the *State Administrative Tribunal Act 2004* (WA).

Clause 86 Review application taken to be withdrawn if patient dies

This clause provides that an application for review of a decision to Tribunal is taken to be withdrawn if the patient who is the subject of the decision has died.

Clause 87 Decision of Tribunal

This clause sets out the determinations the Tribunal may make in respect of applications made under clause 83, namely: whether, at the time of making the first request, the patient had or had not been ordinarily resident in Western Australia for a period of at least 12 months; whether the patient has or does not have decision-making capacity in relation to voluntary assisted dying; and whether the patient is or is not acting voluntarily and without coercion.

Clause 88 Effect of decision under s. 87(a), (c) or (e)

This clause sets out the effect of a decision by the Tribunal that a patient: at the time of making the first request, had been ordinarily resident in Western Australia for a period of at least 12 months; has decision-making capacity in relation to voluntary assisted dying, or is acting voluntarily and without coercion.

Subclause (1) provides that if a decision is made by the Tribunal as set out above, then the voluntary assisted dying process is no longer suspended and can proceed in accordance with the process under the Act.

Subclauses (2) and (3) provide that where the Tribunal has set aside the reviewed decision (the decision that was the subject of the review application), then the Tribunal's decision is substituted for the reviewed decision. Furthermore, if the outcome of the assessment (first or consulting assessment) would, but for the reviewed decision, have been that the patient was assessed as eligible for access to voluntary assisted dying, the practitioner (coordinating or consulting) is taken to have made an assessment assessing the patient as eligible for access to voluntary assisted dying. In other words, if the decision of the coordinating or consulting

practitioner (that is the subject of the review application) was the only impediment to the person being assessed as eligible for access to voluntary assisted dying, then that impediment is removed.

Subclause (4) provides that where the Tribunal has set aside the reviewed decision of the coordinating practitioner in a final review then the Tribunal's decision is substituted for the decision of the co-ordinating practitioner. Furthermore, the final review form is taken to include a statement certifying that the coordinating practitioner is satisfied that the patient has decision-making capacity in relation to voluntary assisted dying, or that the patient in requesting access to voluntary assisted dying is acting voluntarily and without coercion, as the case may require.

Clause 89 Effect of decision under s. 87(b), (d) or (f)

This clause sets out the effect of a decision by the Tribunal that a patient: at the time of making the first request, had not been ordinarily resident in Western Australia for a period of at least 12 months; does not have decision-making capacity in relation to voluntary assisted dying; or is not acting voluntarily and without coercion.

This clause provides that if a decision is made by the Tribunal as set out above, then the patient is ineligible for access to voluntary assisted dying, and the process, at whatever stage it is at, comes to an end.

Clause 90 Coordinating practitioner may refuse to continue in role

This clause allows a coordinating practitioner to refuse to continue in that role if a decision of the Tribunal is substituted for a decision of the coordinating practitioner under clause 88(2)(a) or 88(4)(a).

Subclause (2) provides that a coordinating practitioner who refuses to perform the role of coordinating practitioner must transfer it in accordance with clause 155.

Clause 91 Constitution and membership of Tribunal

This clause provides that, for the purposes of Part 5, the Tribunal when exercising its review jurisdiction under that Part must be constituted by, or so as to include, a judicial member. Further, a public sector employee may be appointed to be a non-judicial member in respect of matters in the Tribunal's review jurisdiction.

Subclause (2)(a) modifies the operation of section 11 of the *State Administrative Tribunal Act 2004* (WA).

Another effect of subclause (2)(a) is that an appeal from a decision of the Tribunal will be to the Court of Appeal in accordance with section 105 of the *State Administrative Tribunal Act 2004* (WA).

Subclause (2)(b) modifies the operation of section 117(5) of the *State Administrative Tribunal Act 2004* (WA). This will, for example, enable psychiatrists, psychologists and other persons with the relevant skills and training who are public sector employees to be appointed as sessional members to sit on a panel on a review under Part 5.

Clause 92 Hearings of Tribunal to be held in private

This clause requires hearings of the Tribunal in respect of matters under Part 5 to be held in private. The Tribunal may give directions as to who may be present at a hearing.

This clause modifies the operation of section 61 of the *State Administrative Tribunal Act 2004* (WA).

Clause 93 Notice requirements

This clause requires the Tribunal to give notice of an application for the review of a decision under Part 5, and any decision or order in respect of that application, to various persons: the coordinating and consulting practitioners for the patient if they are not parties to the proceedings; the administering practitioner for the patient (if different to the coordinating practitioner); the CEO and the Voluntary Assisted Dying Board.

This is to ensure that persons and bodies who are not parties to the proceedings, but who have an interest in the proceedings, receive appropriate notice of applications and decisions or orders of the Tribunal.

Subclause (2) makes it clear that this clause does not limit the operation of section 75 of the *State Administrative Tribunal Act 2004* (WA) which makes provision in respect of reasons for decision or any other requirements for notice under that Act.

Subclause (3) requires the Board, after receiving notice of a review application under subclause (1), to notify the parties, the coordinating practitioner for the patient (if not a party) and the administering practitioner for the patient (if different to the coordinating practitioner), of the effect of subclauses 85(2) and (3). This is to ensure that these persons are aware of the effect of an application for review on the request and assessment process and the process for accessing voluntary assisted dying.

Clause 94 Coordinating practitioner to give Tribunal relevant material

This clause requires the coordinating practitioner for a patient who is the decision-maker (of the decision subject to review application) to provide the Tribunal with a statement of the reasons for the decision and other relevant documents and material. The reasons, documents and material must be provided within 7 business days or such shorter period ordered by the Tribunal.

This clause also requires the coordinating practitioner for a patient who is not the decision maker to provide the Tribunal with relevant documents and material. The documents and material must be provided within 7 business days or such shorter period ordered by the Tribunal.

This clause is designed to provide the Tribunal with information about a review application in a timely manner.

This clause modifies the operation of sections 24 and 35 of the *State Administrative Tribunal Act 2004* (WA).

Clause 95 Tribunal to give written reasons for decision

This clause sets out the obligation of the Tribunal to provide written reasons for a decision.

Subclause (1) requires the Tribunal to give written reasons for decisions in respect of a review application under Part.

Subclause (2) requires the Tribunal to provide a copy of the written reasons to a number of persons and bodies, namely: each party to the proceedings; the coordinating and consulting practitioners for the patient if they are not parties to the proceedings; the administering practitioner for the patient (if different to the coordinating practitioner); the CEO; and the Voluntary Assisted Dying Board.

Subclause (3) makes it clear that a written transcript of the part of the proceedings in which the Tribunal's reasons for decision are given orally may constitute written reasons for the purposes of this clause.

This clause modifies the operation of sections 75, 77, 78 and 79 of the *State Administrative Tribunal Act 2004* (WA).

Clause 96 Published decision or reasons to exclude personal information

This clause provides that if the Tribunal publishes a decision, or its reasons for decision, then the Tribunal must not disclose personal information about various persons, namely: a party to the proceeding; a person who has appeared before the Tribunal; a co-ordinating or consulting practitioner who is not a party to the proceeding; and the administering practitioner for the patient (if different to the coordinating practitioner).

This clause is intended to balance the need to protect the privacy of patients and practitioners involved in the voluntary assisted dying process with the public interest in such matters.

This clause is not intended to affect the operation of clause 95.

This clause is linked to clause 106.

Clause 97 Interim orders

This clause provides that the Tribunal may make any interim order that it considers necessary.

This clause is in addition to the powers of the Tribunal under sections 73 and 90 of the *State Administrative Tribunal Act 2004* (WA).

PART 6 — OFFENCES

Clause 98 Unauthorised administration of prescribed substance

This clause makes it a criminal offence for a person to administer a prescribed substance to another person when they are not authorised by section 58(5) to do so.

The penalty for this offence is life imprisonment. This reflects the seriousness of anyone administering a voluntary assisted dying substance outside the process allowed under the Act. Administration under the Act may only occur via practitioner administration to the patient or via self-administration (by the patient to themselves).

In regards to practitioner administration, the Act authorises the administering practitioner, in the presence of a witness, to administer the prescribed substance to the patient. The administering practitioner must be satisfied of the following matters at the time of administration: that the patient has decision-making capacity in relation to voluntary assisted dying, is acting voluntarily and without coercion, and that their request for access to voluntary assisted dying is enduring.

In addition, no-one (not even the administering practitioner or the patient) may administer a prescribed substance to another person.

This clause thus has the following consequences:

- If an administering practitioner is not satisfied of the matters referred to above at the time of administration but nonetheless administers the prescribed substance to the patient, the coordinating practitioner may commit a crime under this clause.
- If an administering practitioner administers a prescribed substance to the patient, without a witness being present, the administering practitioner may commit a crime under this clause.
- If an administering practitioner administers a prescribed substance to someone other than the patient, the administering practitioner may commit a crime under this clause.
- If the patient administers a prescribed substance to someone other than themselves, the patient may commit a crime under this clause.
- If a person (other than the administering practitioner) administers a prescribed substance to the patient or another person, that person may commit a crime under this clause.

Clause 99 Inducing another person to request or access voluntary assisted dying

This clause makes it a criminal offence for a person to, by dishonesty, undue influence or coercion, induce another person to: request voluntary assisted dying (i.e. first request, a written declaration, a final request or an administration decision); or to progress in the steps required to access voluntary assisted dying.

Actual death or administration of the voluntary assisted dying substance is not a component of the Bill's offence provision.

The penalty for this offence is 7 years imprisonment. Provision is made for a summary conviction penalty of 3 years imprisonment and a fine of \$36, 000.

Clause 100 Inducing self-administration of prescribed substance

This clause makes it a criminal offence for a person to, by dishonesty, undue influence or coercion, induce another person to self-administer a prescribed substance.

Self-administration by the person must occur for this offence to apply; however actual death resulting from the self-administration does not need to occur.

The penalty for this offence is life imprisonment. This offence further protects a person's right to withdraw from the voluntary assisted dying process at any time.

Clause 101 False or misleading information

This clause makes it a criminal offence for a person to make a statement or give information under the Act that they know to be false or misleading, or to omit anything without which the statement or information is misleading.

The offence broadly relates to all information given under the Act, such as a form, declaration or other document required under the Act, or given in compliance, or purported compliance, with a requirement under the Act or for any other purpose under the Act.

The penalty for this offence is seven years imprisonment. Provision is made for a summary conviction penalty of 3 years imprisonment and a fine of \$36, 000.

Clause 102 Advertising Schedule 4 or 8 poison as voluntary assisted dying substance

This clause makes it a criminal offence for a person to advertise a Schedule 4 poison or Schedule 8 poison as a voluntary assisted dying substance.

The penalty for this offence is 3 years imprisonment and a fine of \$36 000.

Clause 103 Cancellation of document presented as prescription

This clause requires an authorised supplier to cancel a document presented as a prescription for a voluntary assisted dying substance, where the document does not meet particular requirements.

Subclause (1)(b) provides that the authorised supplier must cancel the document if satisfied that the document does not comply with the clause 69 of the Act (prescription for substance), is not issued by the coordinating practitioner or is false in a material particular.

Subclause (2)(b) requires the authorised supplier to inform the CEO that the document has been cancelled and the reasons for cancellation.

The penalty for this offence is 12 months imprisonment.

Clause 104 Contact person to give unused or remaining substance to authorised disposer

This clause makes it a criminal offence for the patient's contact person to fail to return any unused or remaining prescribed substance to an authorised disposer in particular circumstances as set out below-

- Subclause (1) the patient's contact person must return the substance within 14 days of the patient's revocation of their self-administration decision.
- Subclauses (2) and (3) must return any prescribed substance that the contact person knows is unused or remaining within 14 days of the patient's death.

This offence recognises the importance of the role of the contact person in ensuring any unused or remaining voluntary assisted dying substance that was dispensed has been safely disposed of.

The penalty for this offence is imprisonment for 12 months maximum. This penalty reflects the seriousness of a contact person failing to take steps to return any unused or remaining voluntary assisted dying substance for disposal.

Clause 105 Recording, use or disclosure of information

This clause makes it a criminal offence for a person to directly or indirectly, record, use or disclose information obtained by the person because of a function that the person has or had under the Act.

Subclause 74(2) sets out exceptions to the offence provision.

Subclause 74(3) clarifies that in order for the offence to apply, the information recorded, used or disclosed must be personal information. The definition of *personal information* is taken from the *Freedom of Information Act 1992* (WA) to mean information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead:

- whose identity is apparent or can reasonably be ascertained from the information or opinion; or
- who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample

The penalty for this offence is imprisonment for 12 months maximum. This penalty reflects the seriousness of a person disclosing information that is, by its very nature, confidential and pertaining to a person's medical condition and choices.

Clause 106 Publication of personal information concerning proceeding before Tribunal

This clause makes it an offence for a person to publish information about a proceeding before, or decision made by, the Tribunal (pursuant to Part 5 of the Act) in certain circumstances.

For the purposes of this section, publish means to disseminate to the public, or a section thereof, by any means, including in a newspaper or periodical publication, or by radio broadcast, television, a website, an on-line facility or other electronic means.

Subclause (2) provides that a person must not publish person information about a proceeding before, or a decision made by, the Tribunal under Part 5 i.e. information that identifies or could reasonably be expected to lead to the identification of a party to the proceeding, a person who has appeared before the Tribunal or a coordinating practitioner, consulting practitioner or administering practitioner who is not a party to

the proceeding. The definition of *personal information* is taken from the *Freedom of Information Act 1992 (WA)*.

This clause is intended to balance the need to protect the privacy of patients and practitioners involved in the voluntary assisted dying process with the public interest in such matters.

The penalty for this offence is imprisonment for 12 months maximum. This penalty reflects the seriousness of a person sharing information that is, by its very nature, confidential and pertaining to a person's medical condition and choices.

It is noted that the Tribunal also has power under section 62 of the *State Administrative Tribunal Act 2004 (WA)* to restrict publication of evidence, the content of documents and information.

Clause 107 Failure to give form to Board

This clause makes it an offence for a person to fail to give the Board, generally within 2 working days, a copy of particular forms required to be given to the Board under the Act.

The penalty for this offence is a fine of \$10 000.

PART 7 — ENFORCEMENT

Clause 108 Application of *Medicines and Poisons Act 2014* Part 7

This clause provides for Division 1 to 5 of Part 7 of the *Medicines and Poisons Act 2014* (WA) to apply for the purposes of the enforcement of the *Voluntary Assisted Dying Act*, subject to particular modifications.

The intent of this clause is to allow for contraventions of the *Voluntary Assisted Dying Act* to be investigated and the provisions of the Act to be enforced, following similar stringent requirements set out under the *Medicines and Poisons Act 2014* (WA).

Clause 109 Court to notify CEO of conviction of offence under Act

This clause requires a court to notify the CEO of a conviction and the penalty imposed where the court convicts a person of an offence under this Act.

Clause 110 Who may commence proceedings for simple offence

This clause makes clear that a prosecution for a simple offence under this Act can only be commenced by the CEO or by a person authorised by the CEO to do so.

This clause is consistent with section 122 of the *Medicines and Poisons Act 2014* (WA).

Clause 111 Time limit for prosecution of simple offence

This clause sets out the time limit for the prosecution of a simple offence under the *Voluntary Assisted Dying Act*. The prosecution must be commenced within 2 years after the day on which the offence was committed, or on which the evidence of the alleged offence first came to the attention of a person authorised under clause 110 to commence the prosecution (the CEO).

This clause is consistent with section 123 of the *Medicines and Poisons Act 2014* (WA).

PART 8 — PROTECTION FROM LIABILITY

Clause 112 Protection for persons assisting access to voluntary assisted dying or present when substance administered

This clause protects a person from criminal liability in two circumstances. First, where a person in good faith, assists another person to request access to, or access, voluntary assisted dying in accordance with the Voluntary Assisted Dying Act. Second, where the person is present when another person self-administers or is administered a prescribed substance in accordance with the Voluntary Assisted Dying Act.

This is because, without such a clause, a person might commit a criminal offence by assisting a person or being present when a person self-administers or is administered a prescribed substance.

Clause 113 Protection for persons acting in accordance with Act

This clause protects a person from civil, criminal and professional liability in the following two circumstances:

- Where a person, in good faith, does a thing in accordance with the Voluntary Assisted Dying Act.
- Where a person, acting in good faith, does a thing believing on reasonable grounds that the thing is done in accordance with the Voluntary Assisted Dying Act.

Clause 114 Protection for certain persons who do not administer medical treatment

This clause provides protection from civil, criminal and professional liability for protected persons (registered health practitioners, ambulance officers and other persons) who have a duty to administer life-saving or life-preserving medical treatment to another person, who are present after a patient is administered or has self-administered a voluntary assisted dying substance.

The protections apply if a protected person, in good faith, does not administer lifesaving or life-preserving medical treatment to another person in circumstances where the other person has not requested it and the protected person believes on reasonable grounds that the other person is dying after self-administering or being administered a prescribed substance in accordance with the Voluntary Assisted Dying Act. In these circumstances the person has made a voluntary, informed and enduring decision to die and the protected persons should not prevent this from occurring.

The purpose of this provision is to ensure there is no liability flowing out of a decision to not provide life sustaining medical treatment in these circumstances.

PART 9 — VOLUNTARY ASSISTED DYING BOARD

DIVISION 1 – Establishment

Clause 115 Board established

This clause establishes the Voluntary Assisted Dying Board.

Clause 116 Status

This clause provides that the Board is an agent of the Crown and has the status, immunities and privileges of the Crown.

DIVISION 2 – Functions and powers

Clause 117 Functions of Board

This clause lists the functions and powers of the Board.

The Board is established for the purpose of ensuring proper adherence to the legislation and to recommend safety and quality improvements.

The Board will have mainly advisory and monitoring functions in relation to voluntary assisted dying, including: monitoring matters related to voluntary assisted dying, collecting and maintaining data, conducting research and analysis, reporting to the Houses of the Parliament on the operation of voluntary assisted dying, and providing reports, advice and recommendations on best practice or areas needing improvement to the Minister for Health and to Parliament.

The Board will not have an investigatory or enforcement role. There are pre-existing agencies with these functions, such as the Western Australia Police, the State Administrative Tribunal, the Health and Disability Services Complaints Office and the Australian Health Practitioner Regulation Agency.

Subclause (c) specifically enables the Board to refer any matter that the Board identifies in relation to voluntary assisted dying to a number of persons or bodies. The Board may only do so if it reasonably believes the information is relevant to one or more of the functions of the relevant body. The Board may use and disclose personal information collected by it as a result of performing any of its functions or exercising a power, for the purpose of referring matters to the bodies listed in subclause (c).

One of the purposes of this provision is to enable the Board to refer suspected contraventions of the Bill to the appropriate body. The body to which referrals are made will depend on the conduct in question. The body will then be able to investigate the matter referred pursuant to its own legislation. For example, if the Board refers a matter to the Coroner on the basis that the death is or may be a reportable death because the death was not in accordance with the Voluntary Assisted Dying Act, then the Coroner is able to investigate the matter pursuant to the *Coroners Act 1996* (WA).

Clause 118 Powers of Board

This clause provides the Board with all the powers it needs to perform its functions

Clause 119 Delegation by Board

This clause enables the Board to delegate its power or duties under the Bill to a member or a committee established under the Bill. A delegated power is not further delegable.

DIVISION 3 – Staff and services

Clause 120 Staff and services

This clause requires the Director General of the Department of Health, as the chief executive officer of the Department, to ensure that the Board is provided with the staff, services and facilities, and other resources and support that are reasonably necessary to enable it to perform its functions.

Clause 121 Assistance

This clause enables the Board, with approval of the Minister, to appoint any person with special knowledge or skills to assist the Board in a particular matter. This person may attend the meetings of the Board but is not authorised to vote.

DIVISION 4 – Accountability

Clause 122 Minister may give directions

This clause provides that the Minister may give written directions to the Board in relation to the performance of its functions. The Board must abide by these directions and the text of the direction is to be included in the Board's annual report as required by clause 154(2)(c).

The Minister cannot direct the Board with respect to the performance of its functions in respect of a particular person or a particular application or proceeding.

Clause 123 Minister to have access to information

This clause makes clear that the Minister is able to request from the Board, information that is in their possession and relates to the functions of the Board. The Board must comply with any such request.

The Minister shall not have access to information in a form that discloses the identity of a person or might enable the identity of any such person to be ascertained, unless that person has consented to the disclosure.

DIVISION 5 – Membership

Clause 124 Membership of Board

This clause provides for five members of the Board, as appointed by the Minister for Health.

Clause 125 Chairperson and deputy chairperson

This clause sets out that the membership of the Board must include a chairperson and deputy chairperson, with provision for substitution if the chairperson is unable to act in that role due to illness, absence or other causes.

If the deputy chairperson is acting in the chairperson's place because the chairperson is unable to act, an act or omission of the deputy chairperson acting in the chairperson's place cannot be questioned on the ground that the occasion to act in their place had not arisen or had ceased.

Clause 126 Term of office

This clause provides for a member to be appointed for a term of up to three years, with eligibility for reappointment.

Clause 127 Casual vacancies

This clause sets out situations in which a Board member's office becomes vacant (for example, where the person dies, resigns or is removed from office, is a bankrupt or convicted of certain offences). This clause also sets out the grounds on which the Minister may remove a Board member from office. The grounds include neglect of duty, misconduct, mental or physical incapacity.

This clause is essential for good governance of the Board and is an administrative necessity as it important to ensure continuation of service.

Clause 128 Extension of term of office during vacancy

This clause ensures continuation of membership (for up to three months) if the office of a member becomes vacant because the member's term of office expires by effluxion of time. This clause is an administrative necessity as it important to ensure continuation of service.

Clause 129 Alternate members

This clause enables the Minister to appoint another person as a member (on a temporary basis) if any member other than a chairperson is unable to act on the Board. In the case of a chairperson being unable to act, the deputy chairperson will act in their stead. Where the deputy is unable to do so, an existing Board member may so act. This clause is an administrative necessity as it important to ensure the Board has sufficient members.

Clause 130 Remuneration of members

This clause sets out the entitlement of a member of the Board to be paid remuneration and allowances as decided by the Minister, upon the recommendation of the Public Sector Commissioner.

DIVISION 6 – Board meetings

Clause 131 Holding meetings

This clause sets out particular requirements for holding Board meetings- the first meeting of the Board must be convened by the chairperson, the time and place of subsequent meetings must be decided by the Board, and special Board meetings may be convened at any time by the chairperson.

Clause 132 Quorum

This clause provides that a quorum for a meeting of the Board is three members holding office. This clause is an administrative necessity.

Clause 133 Presiding member

This clause provides that the meetings of the Board must be chaired by the chairperson, or the deputy chairperson in the former's absence, or an elected member of the Board in the absence of the both the chairperson and deputy chairperson. This clause is an administrative necessity.

Clause 134 Procedure at meetings

This clause authorises the Board to decide on its own procedures in regards to meetings, other than the procedures already set out under the Bill. This clause is an administrative necessity.

Clause 135 Voting

This clause provides that each Board member has an equal vote when considering a matter before the Board, unless the member is prevented from being able to vote due to having a material personal interest in the matter. Where there is a tied vote, the member presiding has the additional casting vote. A question will be resolved by a majority of the votes. This clause is essential for good governance.

Clause 136 Holding meetings remotely

This clause provides that a person or member attending a Board meeting need not appear in-person, but may appear by way of audio or audio-visual technology. This clause is an administrative necessity.

Clause 137 Resolution without meeting

This clause clarifies that a decision made by the Board outside of a Board meeting is to be given the same effect or standing as if it had been made at a meeting. The decision must be in writing and assented to by each Board member. This clause is an administrative necessity.

Clause 138 Minutes

This clause requires the Board to keep accurate minutes of each meeting. This clause is essential for good governance.

DIVISION 7 – Disclosure of interests

Clause 139 Disclosure of material personal interest

This clause requires a member to disclose to the Board if they have a material personal interest in a matter being or to be considered by the Board. The general, everyday meaning of material personal interest is to be taken, in that the interest must be personal to the member and not public nor an interest of another person, and the interest must be material and not trivial.

The failure to disclose a material personal interest will incur a fine of \$10 000. This type of penalty is common in recent WA legislation for an offence of this type.

Clause 140 Voting by interested member

This clause prohibits a member who has a material personal interest in a matter from voting on that matter and from being present at a meeting while the matter is being considered. This prohibition extends to where the Board considers or makes a resolution (under clause 141) regarding a disclosing member's interest.

Clause 141 Section 140 may be declared inapplicable

This clause provides an exemption from the prohibition at clause 140. A disclosing member will be allowed to vote or consider a matter for which they had disclosed a material personal interest, where the Board has passed a resolution that firstly, specifies the member, the interest and the matter, and secondly, states that the voting members are satisfied that the interest is so trivial or insignificant that it is unlikely to influence the disclosing member's conduct and should not disqualify that member from considering or voting on the matter.

Clause 142 Quorum where s. 140 applies

This clause provides that, where a member is disqualified from voting on a matter due to a material personal interest, then a quorum of two members is sufficient to vote on any motion regarding that matter at the meeting. The members must be entitled to vote on that matter.

Subclause (2) provides for the Minister to deal with a matter to the extent that the Board cannot deal with it because a quorum cannot be met to vote on the matter.

Clause 143 Minister may declare s. 140 and 142 inapplicable

This clause enables the Minister to declare, in writing, that either or both clause 140 (voting by interested member) and clause 142 (quorum where section 140 applies) do not apply to a specified matter, generally or in voting on particular resolutions. The declaration must be laid before each House of Parliament within 14 sitting days after it was made.

DIVISION 8 – Committees

Clause 144 Establishment of committees

This clause provides the Board with the ability to establish a committee for the purpose of assisting it to carry out any of its functions. The Board may also discharge, alter or reconstitute a committee.

Subclause (3) enables the Board to determine the functions, membership and constitution of a committee, and appoint any members of the Board or any other person as it thinks fit to be a committee member.

Clause 145 Directions to committee

This clause enables the Board to give committee directions (regarding its functions and procedures) with which the committee must comply.

Clause 146 Committee to determine own procedures

This clause enables a committee to determine its own procedures, subject to any directions or delegations given by the Board.

Clause 147 Remuneration of committee members

This clause sets out the entitlement of a committee member to be paid remuneration and allowances as decided by the Minister, upon the recommendation of the Public Sector Commissioner.

DIVISION 9 – Information

Clause 148 Board to send information to contact person after notification of patient's death

This clause requires the Board to send the contact person specific information following the death of the person who was the subject of a self-administration decision. The information must be sent within 2 business days of the Board receiving the contact person appointment form as per clause 65(4).

The purpose of this clause is to ensure that the contact person is reminded of their requirements under the Act to return any unused or remaining voluntary assisted dying substance to an authorised disposer and to inform them of the support services available to assist them to comply with their requirements.

Clause 149 Request for information by Board

This clause provides the Board with the power to request from any person, including an appointed contact person, any information to assist the Board in carrying out its functions. A person may comply with this request despite of any enactment that prohibits or restricts the disclosure of that information.

This provision does not provide a power to compel the provision of information.

Clause 150 Disclosure of information

This clause provides the Board, when requested to do so, with the discretion to disclose information that the Board has obtained in the performance of its functions.

The information disclosed under this clause cannot be personal information. The definition of *personal information* is taken from the *Freedom of Information Act 1992* (WA) to mean information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead:

- whose identity is apparent or can reasonably be ascertained from the information or opinion; or
- who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample

Disclosure may occur to a public authority or to a person or body for the purposes of education or research.

The purpose of this provision is to enable public authorities, researchers and educational bodies in directly or indirectly improving or assisting in the provision of services these agencies provide to the Western Australian community.

Clause 151 Board to record and retain statistical information

This clause requires the Board to record and retain particular statistical information about voluntary assisted dying activities in Western Australia. The Minister is also able to direct the Board to record and maintain statistical information about a matter relating to voluntary assisted dying, which direction must then be included in the Board's annual report.

The intent of this clause is to capture a suite of information regarding voluntary assisted dying in Western Australia, and enable the Board to satisfy its reporting, advisory and research functions.

The information will include but not be limited to: the disease, illness or medical condition of a person that met the requirements of the eligibility criteria; the age of the person on the day the person died (if they died after administration of the voluntary assisted dying substance in accordance with this Bill); and statistical information required to be provided in the Board's annual report.

DIVISION 10 – Miscellaneous

Clause 152 Board to notify of receipt of certain forms

This clause requires the Board to, as soon as practicable after receiving a copy of a particular forms required to be provided to the Board under the Act, notify the person who submitted the copy such as a coordinating practitioner) that the copy has been received. This is for the relevant person's information only.

The clause also requires the Board to provide a copy of a voluntary assisted dying substance disposal form to the CEO as soon as practicable after receiving it. This is because the CEO is responsible for the enforcement of the Act.

Clause 153 Execution of documents by Board

This clause sets out the requirements for the Board to duly execute a document. Signature must occur by two Board members who are authorised to do so.

This is consistent with Western Australian practice and is essential for good governance.

Clause 154 Annual report

This clause requires the Board to report annually to the Minister (for tabling in Parliament) 6 months after the end of each financial year.

Subclause (2) sets out what the annual report must contain, including:

- any recommendations that the Board considers appropriate in relation to voluntary assisted dying;
- any information that the Board considers relevant to the performance of its functions;
- the text of any direction given to the Board under clause 122(1), being a direction with respect to the performance of the Board's functions;
- the text of any direction given to the Board under clause 151(2), being direction to record and retain statistical information about a matter relating to voluntary assisted dying);
- details of any disclosure of material personal interest under clause 139(1) that relates to a matter dealt with in the report;
- in respect of the disclosure, details of any resolution (that an interest is trivial or insignificant) under clause 141; and
- statistical information that the Board is directed under clause 151(2) to include in the report.

Subclause (3) sets out what the annual report must not contain: any personal information of a person who accessed/requested access or participated in the voluntary assisted dying process under the Act, or information that would prejudice any criminal proceeding/investigation, or civil proceeding or proceeding in the Coroner's Court. The definition of *personal information* is taken from the *Freedom of Information Act 1992 (WA)*.

These provisions are essential for good governance and ensure Parliament and the public have oversight of the Board and the voluntary assisted dying activity.

PART 10 — GENERAL

Clause 155 Transfer of coordinating practitioner role

This clause provides for a coordinating practitioner to transfer their role to the consulting practitioner, at the request of the patient or on their own initiative. The transfer may only occur if the consulting practitioner consents and has assessed the patient as eligible for access to voluntary assisted dying.

Subclauses (3) and (4) provide that the consulting practitioner must advise the coordinating practitioner of their decision to accept or refuse the role within two business days of the request being made. This clause reflects the position that a medical practitioner is professionally obligated not to unduly delay a person's access to voluntary assisted dying. The original practitioner must also inform the patient of the transfer.

The acceptance of the role of coordinating practitioner is tracked by recording the request and the acceptance of the request in the patient's medical record, and via notification to the Board in an approved form (the *practitioner transfer form*).

Subclause (6) provides that if the consulting practitioner refuses the transfer of the role, the coordinating practitioner may seek another consulting assessment from another medical practitioner, and then transfer the role of coordinating practitioner to that medical practitioner if they accept the referral for a further consulting assessment, assess the person as eligible for access to voluntary assisted dying and accept the transfer of the role.

Subclause (7) provides that where another medical practitioner accepts the referral for a further consulting assessment, the consulting assessment that previously assessed the person as eligible for access to voluntary assisted dying becomes void.

The ability to transfer the role ensures that a person is not disadvantaged due to unforeseen circumstances, such as the coordinating practitioner being no longer able to perform the role due to illness or other reasons. A consulting practitioner who takes on the role of the coordinating practitioner becomes responsible for coordinating the process and ensuring that all the necessary steps are completed.

Clause 156 Communication between patient and practitioner

This clause provides that a patient who is unable to make a first request, final request or administration decision in person may make the request or decision by means of audiovisual technology and the recipient medical practitioner is able to provide the patient with advice or information in relation to the request or decision via audio visual technology.

Subclause (3) also provides for a registered health practitioner (which includes a medical health practitioner) to provide advice or information or communicate with a person for the purposes of the Act using any method of communication.

Subclause (4) makes clear that this clause does not authorise the use of a method of communication contrary to or which is inconsistent with Commonwealth law.

Clause 157 Information about voluntary assisted dying

This clause enables the CEO to designate a person, or class thereof, to make information about voluntary assisted dying publically available. The information may be made using any method of communication (including electronic communication).

Subclause (5) makes clear that this clause does not authorise the use of a method of communication contrary to or which is inconsistent with Commonwealth law.

Clause 158 CEO may approve training

This clause allows the CEO to approve training for medical practitioners and nurse practitioners in relation to specified matters relevant to voluntary assisted dying.

The Act requires all coordinating practitioners and consulting practitioners to have undertaken this training prior to conducting any assessment related to voluntary assisted dying.

A person is not eligible to act as an administering practitioner for a patient unless, inter alia, the person has completed approved training.

Clause 159 CEO may approve forms

This clause allows the CEO to approve particular forms relevant to voluntary assisted dying. Under the Act there are a number of clauses which require approved forms to be completed and copies of the forms provided to the Board or a coordinating practitioner.

This is an administrative necessity and is essential for good governance.

Clause 160 Interpreters

This clause sets out requirements in relation to an interpreter who assists a person in relation to the request and assessment process for voluntary assisted dying, and accessing voluntary assisted dying.

The requirements are aimed at ensuring an interpreter is appropriately qualified and does not have a conflict of interest that may influence their ability to act as an independent and impartial interpreter.

Clause 161 Regulations

This clause is the regulation making power, allowing the Governor in Council to make regulations for or with respect to any matter or thing necessary or convenient to be prescribed to give effect to the Act.

Clause 162 Review of Act

This clause requires the Minister to cause a review of the operation of the Act to be conducted, as soon as practicable after the second anniversary of the day the Act became operational.

The completed review must be tabled before each House of the Parliament as soon as practicable, but no later than a year after the second anniversary.

This clause also requires subsequent reviews every five years after the first review.

PART 11 — CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

DIVISION 1 – *Constitution Acts Amendment Act 1899* amended

Clause 163 Act amended

This clause provides that Division 2 amends the *Constitution Acts Amendment Act 1899* (WA).

Clause 164 Schedule V amended

This clause amends the *Constitution Acts Amendment Act 1899* (WA) by including the Board onto the list of bodies, in that Act, of which membership must be vacated on election to the Legislature.

DIVISION 2 – *Coroners Act 1996* amended

Clause 165 Act amended

This clause provides that Division 3 amends the *Coroners Act 1996* (WA).

Clause 166 Section 3A inserted

This clause amends the *Coroners Act 1996* (WA) by inserting a new section 3A. The new clause provides that a death that has occurred in accordance with the *Voluntary Assisted Dying Act* is not a reportable death under the *Coroners Act 1996* (WA). This means that the death does not have to be reported to the Coroner.

This exemption does not apply where the person was, immediately before death, a person held in care within the meaning of the *Coroners Act 1996* (WA). This means that the death of a person who is held in care will still be a reportable death.

This clause does not prevent the Coroner from voluntarily investigating the death in line with the *Coroners Act 1996* (WA) where a contravention of the *Voluntary Assisted Dying Act* is suspected since such a death may be a reportable death. Similarly, the clause does not prevent a death being reported to a coroner if it has occurred other than in accordance with the Bill.

DIVISION 3 – *Guardianship and Administration Act 1990* (WA) amended

Clause 167 Act amended

This clause provides that Division 5 amends the *Guardianship and Administration Act 1990* (WA).

Clause 168 Section 3B inserted

This clause provides that nothing in the *Guardianship and Administration Act 1990* (WA) authorises the making of a treatment decision, whether in an advance health directive or otherwise, in relation to voluntary assisted dying.

The effect of this clause is to make it clear that voluntary assisted dying cannot be included in an advance health directive as a treatment decision in respect of a person's future treatment for the purposes of Part 9B of the *Guardianship and Administration Act 1990* (WA). Further, this clause also makes it clear that a treatment decision cannot be made under the *Guardianship and Administration Act 1990* (WA) in respect of voluntary assisted dying.

DIVISION 4 – *Health and Disability Services (Complaints) Act 1995* amended

Clause 169 Act amended

This clause provides that Division 3 amends the *Health and Disability Services (Complaints) Act 1995* (WA).

Clause 170 Section 3 amended

This clause amends the *Health and Disability Services (Complaints) Act 1995* (WA) by amending the section 3 definition of *health service* to include 'voluntary assisted dying'.

The intent of this amendment clause is to make clear that the Health and Disability Services Complaints Office is able to consider voluntary assisted dying as a health service for the purposes of receiving and assessing a complaint under that *Health and Disability Services (Complaints) Act 1995* (WA).

DIVISION 5 – *Medicines and Poisons Act 2014* amended

Clause 171 Act amended

This clause provides that Division 3 amends the *Medicines and Poisons Act 2014* (WA).

The consequential amendments are required because the *Medicines and Poisons Act 2014* (WA) regulates and controls the manufacture, supply, prescription and possession of medicines and poisons. Schedule 4 and Schedule 8 poisons are both poisons and medicines under the *Medicines and Poisons Act 2014* (WA) but may be approved by the CEO under clause 7(1) as a voluntary assisted dying substance under the *Voluntary Assisted Dying Act*.

Clause 172 Section 3 amended

This clause inserts a new definition of "voluntary assisted dying substance" into section 3 of the *Medicines and Poisons Act 2014* (WA). The definition refers to a Schedule 4 or Schedule 8 poison that is a voluntary assisted dying substance as defined in section 7(2) of the *Voluntary Assisted Dying Act*, namely for use under the *Voluntary Assisted Dying Act* for the purpose of causing a patient's death.

This clause also makes a grammatical amendment to the definition of "veterinary surgeon" in section 3 of the *Medicines and Poisons Act 2014* (WA) which is required because of the addition of the defined term "voluntary assisted dying substance" after the definition of "veterinary surgeon".

Clause 173 Section 7 amended

This clause replaces the definition of “prescriber” in section 7(1) of the *Medicines and Poisons Act 2014* (WA) with a new definition which distinguishes between prescribers in relation to a Schedule 4 or 8 poison (other than a voluntary assisted dying substance) and a voluntary assisted dying substance. This amendment is required because the co-ordinating practitioner for the patient is the only person who may prescribe a voluntary assisted dying substance under the *Voluntary Assisted Dying Act*.

The new definition of “prescriber” distinguishes between a Schedule 4 or 8 poison (other than a voluntary assisted dying substance) and a voluntary assisted dying substance. A prescriber in relation to a Schedule 4 or Schedule 8 poison (other than a voluntary assisted dying substance) is an authorised health professional who has authority to prescribe the poison. However, a prescriber in relation to a voluntary assisted dying substance is a person who is authorised under the *Voluntary Assisted Dying Act* to prescribe the substance – the co-ordinating practitioner for the patient.

This clause also replaces paragraph (a) of the definition of “prescription” in section 7(1) of the *Medicines and Poisons Act 2014* to distinguish between a prescription for a poison prescribed for therapeutic purposes and a prescription for a poison prescribed for the purposes of the *Voluntary Assisted Dying Act*. This amendment is required because a prescription for the purposes of the *Voluntary Assisted Dying Act* is for the purposes of causing death.

Further, this clause amends paragraph (c) of the definition of “prescription” to make it clear that to fall within the definition of “prescription”, if the poison is a voluntary assisted dying substance, then the prescription is to comply with any requirements under the *Voluntary Assisted Dying Act* or prescribed by the regulations made under the *Medicines and Poisons Act 2014* (WA) to the extent they are consistent with the former Act. This amendment is required because regulations made under the former Act contain specific requirements for prescriptions for voluntary assisted dying substances.

Finally, this clause amends section 7(3)(b) of the *Medicines and Poisons Act 2014* (WA) to make it clear when, for the purposes of the *Medicines and Poisons Act 2014* (WA), a person supplies a Schedule 4 or 8 poison in accordance with a prescription when the poison is supplied for the use or, or administration to, a person under the *Voluntary Assisted Dying Act*. These amendments are required because the *Medicines and Poisons Act 2014* (WA) distinguishes between a prescription for a poison prescribed for therapeutic purposes and a prescription for a poison prescribed for the purposes of the *Voluntary Assisted Dying Act*.

Clause 174 Section 14 amended

This clause amends section 14(3) and (4) of the *Medicines and Poisons Act 2014* (WA) which contains offences relating to the manufacture, supply, prescribing and possession of Schedule 4 and 8 poisons.

Clause 14 has been amended where required to make specific provision for Schedule 4 or 8 poisons which are voluntary assisted dying substances because of the different requirements applying to these poisons under the *Voluntary Assisted Dying Act*.

A person who manufactures a Schedule 4 or 8 poison (including a voluntary assisted dying substance) will commit an offence unless that person does so under and in

accordance with an appropriate licence or a professional authority and in accordance with the Medicines and Poisons Regulations 2016 (WA).

A person who supplies a Schedule 4 or 8 poison (other than a voluntary assisted dying substance for the purposes of the *Voluntary Assisted Dying Act*) will commit an offence unless that person does so under and in accordance with an appropriate licence or professional authority and in accordance with the Medicines and Poisons Regulations 2016 (WA).

A person who supplies a voluntary assisted dying substance for the purposes of the *Voluntary Assisted Dying Act* will commit an offence unless that person is authorised under the *Voluntary Assisted Dying Act* to supply the substance and the supply is in accordance with that Act.

A person who prescribes a Schedule 4 or 8 poison (other than a voluntary assisted dying substance for the purposes of the *Voluntary Assisted Dying Act*) will commit an offence unless that person is a health professional who is authorised under section 25 of the *Medicines and Poisons Act 2014* (WA) to prescribe the poison and the prescription is in accordance with the Medicines and Poisons Regulations 2016 (WA).

A person who prescribes a voluntary assisted dying substance for the purposes of the *Voluntary Assisted Dying Act* will commit an offence unless that person is authorised by the *Voluntary Assisted Dying Act* to prescribe the substance and the prescription is in accordance with that Act and the Medicines and Poisons Regulations 2016 (WA) to the extent they are consistent with that Act.

A person who is in possession of a Schedule 4 or 8 poison commits an offence unless, *inter alia*, the person is authorised under the *Voluntary Assisted Dying Act* to have possession of the poison.

Clause 175 Section 28 amended

This clause amends section 28 of the *Medicines and Poisons Act 2014* (WA) by inserting a reference to the *Voluntary Assisted Dying Act*.

The effect of the amendment is that there are grounds for taking action against an authorised health professional under Division 2, Part 3 of the *Medicines and Poisons Act 2014* (WA) if the health professional or an employee or agent of the health professional has, in connection with the person's administration, manufacture, possession, prescription, supply or use of a poison, contravened, the *Voluntary Assisted Dying Act*.

Clause 176 Section 83 amended

This clause amends section 83 of the *Medicines and Poisons Act 2014* (WA) to exclude the making of regulations under that section in relation to the supply or the prescription of a drug of addiction (a Schedule 8 poison or a Schedule 4 reportable poison) that is a voluntary assisted dying substance for the purposes of the *Voluntary Assisted Dying Act* to a person whose name is included on the drugs of addiction record as a drug dependent person.

This amendment is required because the *Voluntary Assisted Dying Act* makes separate provision for the prescription and supply of a voluntary assisted dying substance.

Clause 177 Section 115 amended

This clause amends section 115 of the *Medicines and Poisons Act 2014* (WA) by adding a reference to the *Voluntary Assisted Dying Act*.

The effect of the amendment is that the maximum penalty for an offence contrary to sections 14(1), 14(2), 14(3) and 14(4), 21 and 22 in respect of a voluntary assisted dying substance prescribed, supplied, possessed or used for the purposes of the *Voluntary Assisted Dying Act* is a fine of \$45,000 and imprisonment for 3 years. Without this amendment, the maximum penalty would only be a fine of \$45,000.

DIVISION 6 – *Misuse of Drugs Act 1981* amended

Clause 178 Act amended

This clause provides that Division 6 amends the *Misuse of Drugs Act 1981* (WA).

The consequential amendments are required to ensure that a person who is authorised to do something under the *Voluntary Assisted Dying Act* does not commit an offence under the *Misuse of Drugs Act 1981* (WA). Under clause 7 of the *Voluntary Assisted Dying Act*, a voluntary assisted dying substance is a Schedule 4 or Schedule 8 poison approved by the CEO for use under that Act for the purpose of causing death. However; all Schedule 8 poisons (drugs of addiction) and some Schedule 4 poisons (specified drugs) are prohibited drugs under the *Misuse of Drugs Act 1981* (WA).

Clause 179 Authorisation under *Voluntary Assisted Dying Act 2019*

This clause inserts section 5C into the *Misuse of Drugs Act 1981* (WA). Section 5C sets out, for the purposes of *Misuse of Drugs Act 1981* (WA), the circumstances in which a person is authorised under the *Voluntary Assisted Dying Act* to prepare, sell, supply, possess or use a prohibited drug.

This clause applies in respect of the offence provisions contained in sections 5, 6 and 7 of the *Misuse of Drugs Act 1981* (WA) so that a person who is authorised under the *Voluntary Assisted Dying Act* to prepare, supply, receive, possess or use a prohibited drug does not commit an offence contrary to sections 5, 6 or 7 of the *Misuse of Drugs Act 1981*(WA). This clause has the same purpose as clause 5B of the *Misuse of Drugs Act 1981* (WA) which applies in respect of authorisations under the *Medicines and Poisons Act 2014* (WA).

Clause 180 Section 5 amended

This clause inserts subparagraph (aa) into section 5(3) of the *Misuse of Drugs Act 1981* (WA) and amends section 5(3)(b) of the *Misuse of Drugs Act 1981* (WA).

The effect of the amendments is that a person does not commit an offence contrary to section 5(1)(a), (b) or (c) of the *Misuse of Drugs Act 1981* (WA) by reason only that premises are being used for the purpose of the manufacture, preparation, sale, supply or use of a prohibited drug if the person proves, relevantly, that:

- (a) the preparation, sale, supply or use of the drug was by a person authorised under the *Voluntary Assisted Dying Act* to prepare, sell or supply the drug; or
- (b) the use of the drug was by a person authorised under the *Voluntary Assisted Dying Act* to use the drug.

Clause 181 Section 6 amended

This clause amends section 6(3), (4) and (5) of the *Misuse of Drugs Act 1981* (WA) by adding references to the *Voluntary Assisted Dying Act*.

The effect of the amendments is that:

- (a) a person does not commit an offence contrary to section 6(1) or (2) of the *Misuse of Drugs Act 1981* (WA) by reason only of the person having in his possession a prohibited drug if the person proves, relevantly, that he or she was authorised by or under the *Voluntary Assisted Dying Act* to have possession of the drug or he or she had possession of the drug only for the purpose of delivering it to a person authorised to possess the drugs under the *Voluntary Assisted Dying Act* and took all reasonable steps to deliver the drug to the person;
- (b) a person does not commit an offence contrary to section 6(1) of the *Misuse of Drugs Act 1981* (WA) by reason only that the person manufactures, prepares, sells or supplies a prohibited drug if the person proves, relevantly, that he or she was authorised to manufacture, prepare, sell or supply the drug under the *Voluntary Assisted Dying Act*; and
- (c) a person does not commit an offence contrary to section 6(1) of the *Misuse of Drugs Act 1981* (WA) by reason only of using a prohibited drug if the person proves, relevantly, that he or she was a person authorised under the *Voluntary Assisted Dying Act*.

Clause 182 Section 7 amended

This clause amends section 7(3)(a) and (b) of the *Misuse of Drugs Act 1981* (WA) by adding references to the *Voluntary Assisted Dying Act*.

The effect of the amendments is that a person does not commit an offence contrary to section 7(1) or (2) of the *Misuse of Drugs Act 1981* (WA) by reason only of the person having in his possession a prohibited plant if the person proves, relevantly, that:

- (a) he or she was authorised by or under the *Voluntary Assisted Dying Act* to have possession of a prohibited drug obtainable from the plant; or
- (b) he or she had possession of the plant only for the purposes of delivering it to a person authorised to have possession of the drug obtainable from the plant under the *Voluntary Assisted Dying Act* and he or she took all reasonable steps to deliver the drug to the person.

Clause 183 Section 7B amended

This clause amends section 7B(7)(a) and (b)(i) of the *Misuse of Drugs Act 1981* (WA) by adding references to the *Voluntary Assisted Dying Act*.

The effect of the amendments is that it is a defence to a charge of an offence contrary to section 7B(6) of the *Misuse of Drugs Act 1981* (WA) to prove, relevantly:

- (a) the accused was authorised by or under the *Voluntary Assisted Dying Act* to possess the prohibited drug or prohibited plant; or
- (b) the accused had possession of the drug paraphernalia-
 - (i) only for the purpose of delivering it to a person authorised under the *Voluntary Assisted Dying Act* to have possession of any prohibited drug or prohibited plant in or on it; and
 - (ii) in accordance with the authority in writing of the person so authorised and that, after taking possession of the drug paraphernalia, the accused took all such steps as were reasonably open to the accused to deliver it into the possession of the person.

Clause 184 Section 27 amended

This clause amends section 27(1)(a)(ii) and (b) of the *Misuse of Drugs Act 1981* (WA) by adding references to the *Voluntary Assisted Dying Act*.

The effect of the amendments is that if a voluntary assisted dying substance is seized, acquired or detained under section 26 of the *Misuse of Drugs Act 1981* (WA), then the substance may be disposed of in accordance with section 27. If no person is to be tried with the commission of an offence in relation to the substance, then a police officer may release the substance to a person authorised by or under the *Voluntary Assisted Dying Act* to have possession of the substance. If a person is tried with the commission of an offence and the substance has not been destroyed, the court which tries the person must give a person claiming to be authorised by or under the *Voluntary Assisted Dying Act* to have possession of the substance an opportunity to show cause why the substance should be released to him or her. The Court may make an order to release, destroy or forfeit the substance.