

# Voluntary Assisted Dying Bill 2017

## Introduction Print

### EXPLANATORY MEMORANDUM

#### Clause Notes

##### Part 1—Preliminary

- Clause 1 sets out the main purposes of the Bill, being to provide for and regulate access to voluntary assisted dying, to establish the Voluntary Assisted Dying Review Board and to make consequential amendments to other Acts.
- Clause 2 is the commencement provision. The provisions of the Bill will come into effect on a day or days to be proclaimed, or on 19 June 2019 if not proclaimed earlier. 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 by establishing the Board.
- Clause 3 defines necessary terms for the purposes of the Bill.
- A key definition is *voluntary assisted dying*, which means the administration of a voluntary assisted dying substance and includes steps reasonably related to such administration. The administration may be self-administration, or administration by a practitioner if the person is subject to a practitioner administration permit.
- Another key definition is *voluntary assisted dying substance*. A *poison or controlled substance* or *drug of dependence* becomes *voluntary assisted dying substance* only upon being specified in a *voluntary assisted dying permit*, for the purpose of causing a person's death, granted in respect of a person in accordance with the Bill.

- Clause 4 defines *decision-making capacity* for the purposes of the Bill, and sets out how to determine whether a person has decision-making capacity in relation to voluntary assisted dying. The definition of *decision-making capacity* acknowledges that a person's capacity to make decisions about voluntary assisted dying may fluctuate, and that a person is assumed to have decision-making capacity unless there is evidence that they do not.
- Clause 5 sets out the principles that a person exercising a power or performing a function or duty under the Bill must have regard to. The principles recognise the importance of giving people genuine choice, while also recognising the need to protect individuals who may be subject to abuse. Clause 5(2) provides that a person exercising a power or performing a function or duty under the Bill for the purpose of these principles includes VCAT.
- Clause 6 lists the requirements or steps which must be met before a person can access voluntarily assisted dying under the Bill. Each requirement is subsequently further explained in the Bill.
- Clause 7 enshrines the right of registered health practitioners to conscientiously object to participating in or facilitating access to voluntary assisted dying under the Bill. This provision recognises the ability of a registered health practitioner to determine the treatment they are prepared to provide. If a practitioner conscientiously objects, a person may attend another practitioner. There is no obligation to refer in circumstances where a practitioner conscientiously objects.
- Clause 8 provides that a registered health practitioner cannot suggest, in substance, voluntary assisted dying to, or initiate a discussion that is in substance about it with, a person to whom they are providing health services or professional care services in the course of providing these services. This includes providing written information. Clause 8(2) allows a registered health practitioner to provide information about voluntary assisted dying to a person at the person's request. It is not intended that every single subsequent discussion be initiated by the patient. The intention of this provision is to protect individuals who may be open to suggestion

or coercion by registered health practitioners, not to discourage open discussions driven by the individual.

A contravention of this provision is to be regarded as unprofessional conduct within the meaning and for the purposes of the Health Practitioner Regulation National Law.

## **Part 2—Criteria for access to voluntary assisted dying**

Clause 9 sets out the criteria that a person must meet in order to be considered eligible for access to voluntary assisted dying. It is the role of a coordinating medical practitioner and a consulting medical practitioner for a person to determine whether the person meets the criteria. In order to be eligible a person must satisfy all the criteria set out in this clause.

This provision reflects that in order to access voluntary assisted dying, a person must be an adult and an Australian citizen or permanent resident and must ordinarily reside in Victoria. A person must also have decision-making capacity in relation to voluntary assisted dying, and must be diagnosed with a disease, illness or medical condition that has certain characteristics as set out in the provision.

While clause 9(1)(d)(iv) is a subjective element to be determined by the patient, the characteristics set out in clauses 9(1)(d)(i), (ii) and (iii) are to be determined clinically. Clinical determination of these matters should be based on an individual's own particular circumstances, including their condition and their comorbidities.

Whether a disease, illness or medical condition is "incurable" must be assessed according to whether there is a clinically indicated treatment that will cure the disease, illness or medical condition that can be provided to the person. There is a difference between managing the symptoms of a disease, illness or medical condition and curing it, which requires the complete eradication of the disease, illness or medical condition. It is further noted that the eligibility criteria require that the disease, illness or medical condition be not only incurable, but also advanced and progressive. Whether the disease, illness or medical condition will cause death and the time within which it is expected to cause death is a clinical assessment based on an individual's own particular circumstances, including their condition, their comorbidities, and the available treatments that

they are prepared to accept, noting the right to refuse medical treatment.

Clause 9(2) clarifies that a mental illness within the meaning of the **Mental Health Act 2014** is not a disease, illness or medical condition within the meaning of clause 9(1)(d).

Similarly, clause 9(3) clarifies that a disability within the meaning of the **Disability Act 2006** is not a disease, illness or medical condition within the meaning of clause 9(1)(d). A disability may be a symptom or a result of a disease, illness or medical condition under clause 9(1)(d) and in these circumstances the person may still be eligible.

A person who is otherwise eligible (due to another disease, illness or medical condition) but who also has a mental illness or a disability is not excluded only because they have the mental illness or disability.

### **Part 3—Requesting access to voluntary assisted dying and assessment of eligibility**

#### **Division 1—Minimum requirements for co-ordinating medical practitioners and consulting medical practitioners**

Clause 10 sets out the minimum requirements for co-ordinating medical practitioners and consulting medical practitioners. Each co-ordinating medical practitioner and consulting medical practitioner must hold either a fellowship with a specialist medical college, or be a vocationally registered general practitioner. To be a Fellow of a College a medical practitioner must have completed a specialist qualification after they have become a medical practitioner. Vocationally registered general practitioner has the same meaning as in the Health Insurance Act 1973 of the Commonwealth.

In addition, clause 10(2) provides that either the co-ordinating medical practitioner or each consulting medical practitioner must have practised as a medical practitioner for at least 5 years after completing a fellowship or being vocationally registered (as the case requires). Further clause 10(3) provides that either the co-ordinating medical practitioner or each consulting medical practitioner must have relevant expertise and experience in the disease, illness or medical condition expected to cause the person's death.

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 11 provides that a person may make a first request for access to voluntary assisted dying to a registered medical practitioner. This request must be clear and unambiguous, made by the person themselves and may be made verbally or by other means of communication available to that person, if that person cannot communicate verbally.

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 12 makes it clear that there is no obligation for a person to continue with their request for access to voluntary assisted dying once they have made a first request.

Clause 12(3) has the effect that if the request and assessment process has ended due to a person deciding not to continue with their request to access voluntary assisted dying, the person may make another request in future, which will commence a fresh request and assessment process, so the person must be re-assessed for eligibility in accordance with the Bill.

Clause 13 provides that a registered medical practitioner must inform the person who made a first request of their acceptance or refusal of the first request, and therefore the role of co-ordinating medical practitioner, within 7 days of receiving the request. A registered medical practitioner may refuse the request if they have a conscientious objection to voluntary assisted dying or if they believe they will not be able to perform their duties as co-ordinating medical practitioner due to unavailability.

Clause 13(2) provides that a registered medical practitioner must not accept the first request unless they hold a fellowship with a specialist medical college or are a vocationally registered general practitioner.

The purpose of this provision is to ensure that only registered medical practitioners with considerable experience may undertake assessments against the eligibility criteria for access to voluntary assisted dying. This ensures that people wishing to access voluntary assisted dying receive treatment and advice from an appropriately experienced medical practitioner.

Clause 14 provides that the registered medical practitioner who accepts a first request must record the request and their acceptance of the request in the person's medical record. The purpose of this provision is to indicate that the formal request and assessment process has started.

Clause 15 provides that the registered medical practitioner who accepts a first request becomes the co-ordinating medical practitioner for that person. This is indicated by recording the request and the acceptance of the request in the person's medical record as per clause 14.

The role of co-ordinating medical practitioner is to assess the person's eligibility to access voluntary assisted dying and to co-ordinate and facilitate that person's access, should they be assessed as eligible. In a limited amount of cases, when the person is not physically able to self-administer a voluntary assisted dying substance, this role may include administering a voluntary assisted dying substance to a person.

### **Division 3—First Assessment**

Clause 16 provides that, after becoming a person's co-ordinating medical practitioner, the co-ordinating medical practitioner must commence a first assessment. This clause requires the co-ordinating medical practitioner to determine if the person requesting access to voluntary assisted dying meets the eligibility criteria listed in clause 9.

Clause 17 provides that the co-ordinating medical practitioner must not commence a first assessment unless they have completed approved assessment training. Assessment training will be approved by the Secretary under the Bill. It is not intended that a co-ordinating medical practitioner complete approved assessment training every time they propose to conduct a first assessment. They may meet the requirement of this provision if they have completed approved assessment training some time

previously, as long as the training they have completed remains approved for the purposes of the Bill at the time they seek to undertake the first assessment in question.

Clause 18 provides that, if the co-ordinating medical practitioner cannot determine whether the person requesting access to voluntary assisted dying has decision-making capacity in relation to voluntary assisted dying, they must refer the person to a registered health practitioner who has appropriate skills and training.

If the co-ordinating medical practitioner is unable to determine whether the person's disease, illness or medical condition meets the requirements set out in clause 9(1)(d), clause 18(2) provides that they must refer the person to a specialist registered medical practitioner who has appropriate skills and training in that disease, illness or medical condition.

If a co-ordinating medical practitioner refers a person under this provision, they may adopt the determination of the practitioner to whom they referred the person in relation to the particular criterion.

Clause 19 provides that if a co-ordinating medical practitioner is satisfied that a person meets all the eligibility criteria they must inform the person about the matters listed in clause 19(1).

Clause 19(2) makes it clear that nothing in the provision affects a registered medical practitioner's duty at common law or under any other enactment. Clause 19 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 20 provides that if the co-ordinating medical practitioner is satisfied that a person meets all the eligibility criteria for access to voluntary assisted dying, understands the information provided in accordance with clause 19, is acting voluntarily and without coercion and the person's request is enduring, then the co-ordinating medical practitioner's determination must be that the person is eligible for access to voluntary assisted dying.

A person's request for voluntary assisted dying will be enduring if it is constant and unwavering. The request should not arise as an impulse response to bad news, and instead must be a well-considered decision.

Clause 20(2) clarifies the effect of the co-ordinating medical practitioner not being satisfied as to any of those matters.

Clause 21 provides that the co-ordinating medical practitioner must notify the person requesting access to voluntary assisted dying of the outcome of the first assessment. The co-ordinating medical practitioner must complete the first assessment report form and give a copy of that form to the Board within 7 days of completing the first assessment.

Clause 22 provides that if a co-ordinating medical practitioner determines that a person is eligible for access to voluntary assisted dying, the co-ordinating medical practitioner must refer the person to another registered medical practitioner for a consulting assessment.

A first assessment alone that determines that the person is eligible is not sufficient to qualify them 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 23 provides that a registered medical practitioner who receives a referral from a person's co-ordinating medical practitioner must, within 7 days of receiving the referral, inform the person and the co-ordinating medical practitioner of their acceptance or refusal of the referral. A registered medical practitioner may refuse to accept the referral if they have a conscientious objection to voluntary assisted dying or believe they will not be able to perform their duties as a consulting medical practitioner due to unavailability.

Clause 23(2) provides that the registered medical practitioner must not accept a referral unless they hold a fellowship with a specialist medical college or are a vocationally registered general practitioner.

In addition, clause 23(3) provides that the registered medical practitioner must have practised as a medical practitioner for at least 5 years after completing a fellowship with a specialist medical college or vocational registration, unless the co-ordinating medical practitioner has 5 years of experience as per clause 23(5).

Clause 23(4) provides that the registered medical practitioner must have relevant expertise and experience in the disease, illness or medical condition expected to cause the person's death, unless the co-ordinating medical practitioner has this experience as per clause 23(6).

The effect of these provisions is that, at minimum, one of either the co-ordinating medical practitioner or the consulting medical practitioner must have 5 years of post-fellowship or post-vocational registration practice experience. Further, at a minimum, one of either the co-ordinating medical practitioner or the consulting medical practitioner must have relevant experience in the disease, illness or medical condition expected to cause the person's death.

This helps to ensure that only registered medical practitioners with considerable experience and relevant expertise may undertake assessments against the eligibility criteria for access to voluntary assisted dying.

Clause 24 provides that a registered medical practitioner who accepts a referral becomes a consulting medical practitioner for the person.

Clause 25 provides that, after becoming a consulting medical practitioner for a person, the consulting medical practitioner must commence a consulting assessment. This clause requires a consulting medical practitioner to determine if the person requesting access to voluntary assisted dying meets the eligibility criteria listed in clause 9.

The consulting medical practitioner is required to assess the person against the same eligibility criteria and other requirements that the co-ordinating medical practitioner assessed the person against.

Clause 26 provides that the consulting medical practitioner must not commence a consulting assessment unless they have completed approved assessment training. Assessment training will be approved by the Secretary under the Bill. It is not intended that a consulting medical practitioner complete approved assessment training every time they propose to conduct a consulting assessment. They may meet the requirement of this provision if they have completed approved assessment training some time previously, even if they have completed it in the context of proposing to undertake a first assessment as a co-ordinating

medical practitioner. As long as the training they have completed remains approved for the purposes of the Bill at the time they seek to undertake the consulting assessment in question, they meet the requirement in this clause.

Clause 27 provides that, if the consulting medical practitioner is unable to determine whether the person requesting access to voluntary assisted dying has decision-making capacity in relation to voluntary assisted dying, they must refer the person to a registered health practitioner who has appropriate skills and training.

If the consulting medical practitioner is unable to determine whether the person's disease, illness or medical condition meets the requirements set out in clause 9(1)(d), clause 27(2) provides that they must refer the person to a specialist registered medical practitioner who has appropriate skills and training in the disease, illness or medical condition.

If a consulting medical practitioner refers a person under this provision, they may adopt the determination of the practitioner to whom they referred the person in relation to the particular criterion.

Clause 28 provides that if a consulting medical practitioner is satisfied that a person has met all the eligibility criteria they must inform the person of all the matters listed in clause 28(1).

Clause 28(2) makes it clear that nothing in the clause affects a registered medical practitioner's duty at common law or under any other enactment. Clause 28 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 29 provides that if the consulting medical practitioner is satisfied that a person meets all the eligibility criteria for access to voluntary assisted dying, understands the information provided in accordance with clause 28(1), is acting voluntarily and without coercion and their request is enduring then the consulting medical practitioner's determination must be that the person is eligible for access to voluntary assisted dying.

Clause 29(2) clarifies the effect of the consulting medical practitioner not being satisfied as to any of those matters.

- Clause 30 provides that the consulting medical practitioner must notify the person requesting access to voluntary assisted dying of the outcome of the consulting assessment. The consulting medical practitioner must also complete the consulting assessment report form and give a copy of that form to the Board and the co-ordinating medical practitioner. The copy of the form must be given to the Board within 7 days of completing the consulting assessment.
- Clause 31 provides that a co-ordinating medical practitioner can refer the person to another registered medical practitioner for a further consulting assessment if the consulting medical practitioner determined that the person was ineligible for access to voluntary assisted dying. Consistent with ordinary medical practice, this provision enables a person and their medical practitioner to seek a further opinion.
- Clause 32 provides that a co-ordinating medical practitioner for a person may transfer the role of coordinating medical practitioner either at the request of the person, or on their own initiative.
- Clause 33 sets out the process for transfer of the co-ordinating medical practitioner role to a consulting medical practitioner who has assessed the person as eligible for access to voluntary assisted dying and accepts the transfer of the role.
- Clause 33(1) requires the co-ordinating medical practitioner to first request the consulting medical practitioner to accept a transfer of the role.
- Clause 33(2) requires the consulting medical practitioner to accept or refuse the transfer within 7 days after receiving a request from the co-ordinating medical practitioner.
- Clause 33(3) provides that, if the consulting medical practitioner refuses the transfer, the co-ordinating medical practitioner may refer the person to another registered medical practitioner who may accept the role of consulting medical practitioner. That consulting medical practitioner would then be required to conduct a further consulting assessment. If that consulting medical practitioner assesses the person as eligible for access to voluntary assisted dying, the co-ordinating medical practitioner may transfer the role to them.

Clause 33(4) provides that if the consulting medical practitioner does not accept the transfer of the role of co-ordinating medical practitioner, and the co-ordinating medical practitioner refers to another registered medical practitioner as per clause 33(3), then the assessment of the original consulting medical practitioner that assessed the person as eligible becomes void upon acceptance of the referral. This is to ensure procedural clarity and avoid any doubt as to the status of the original consulting assessment.

### **Division 5—Written declaration**

Clause 34 provides that if a person is assessed as eligible for access to voluntary assisted dying by their co-ordinating medical practitioner and a consulting medical practitioner, they may progress their request by making a written declaration requesting access to voluntary assisted dying. This will in effect be the person's second request.

This clause provides very specific requirements that the written declaration must meet. The requirements are reflected in the written declaration form in Schedule 1, Form 3.

Clause 34(3) provides that, subject to restrictions, another person may sign on behalf of the person making the declaration, in that person's presence and at their direction. This is to account for individuals who may not be physically capable of writing.

Clause 34(5) also provides that a person who makes a declaration may be assisted by an interpreter. The interpreter must meet the requirements set out in clause 114 and certify that they provided a true and correct translation.

Clause 35 provides that a witness to the written declaration must be aged 18 years or more and must not be an *ineligible witness*. Clause 35(2) lists the characteristics that make a person an *ineligible 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 36 sets out the matters that a witness to the signing of a written declaration must certify.

Clause 36(3) provides that written declarations must be signed by witnesses in the presence of the co-ordinating medical practitioner.

#### **Division 6—Final request, contact person and final review by co-ordinating medical practitioner**

Clause 37 provides that a person seeking access to voluntary assisted dying may make a final request for access to voluntary assisted dying if they have made a written declaration in accordance with the Bill. This final request must be made to the co-ordinating medical practitioner by the person themselves, either verbally or by gestures or other means of communication available to the person, if the person cannot communicate verbally.

Clause 38 provides that a person's final request must be made at least 9 days after the day on which the person made the first request and at least one day after the day on which the consulting assessment that assessed the person as eligible was completed.

In accordance with section 44 of the **Interpretation of Legislation Act 1984**, the day on which the first request is made is not counted toward the 9 days. Therefore, in practice this means that a person will be able to make a final request on the tenth day after making their first request.

Clause 38(2) provides that the minimum time limit between the first and final request does not apply if the co-ordinating medical practitioner considers that the person's death is likely to occur within that minimum time period, and this is consistent with the consulting medical practitioner's prognosis. However, clause 38(1)(b) still applies, so that, even in these circumstances, the final request cannot be made on the same day as the consulting assessment. As such, the entire request and assessment process may be completed over 2 days in exceptional circumstances, but never in a single day.

Clause 39 provides that a person who makes a final request must appoint a contact person who is aged 18 years or more. The contact person must return any unused or remaining voluntary assisted dying substance dispensed for the person making the final request if the person dies without taking the substance or without taking all of it, or if the person requests that the contact person return the substance. If the person who makes the final request dies, the contact person must return any of the substance that the person knows is remaining or unused within one month after the person's death. Circumstances in which the person would request the contact person to return the substance include if the person decides not to self-administer or intends to make a request under clause 53 for their co-ordinating medical practitioner to apply for a practitioner administration permit.

Clause 39(3) provides that the Board may contact the contact person to request information. There is no requirement for a contact person to provide the information.

Requiring a contact person to be appointed helps to ensure there is monitoring and safe disposal of unused voluntary assisted dying substance by clearly identifying who will be responsible for returning a dispensed voluntary assisted dying substance to the dispensing pharmacy for safe destruction if it is not used.

Clause 40 sets out the formal requirements for appointing a contact person, including that in order to be appointed as a contact person, the person must accept the appointment.

As with the written declaration, subject to restrictions there is provision for another person to sign on behalf of the person making the appointment, in that person's presence and at their direction. This is to account for individuals who may not be physically capable of writing.

Clause 41 sets out the requirements of the final review that the co-ordinating medical practitioner must undertake on receipt of a person's final request for access to voluntary assisted dying.

The purpose of the final review is for the co-ordinating medical practitioner to check, document and notify the Board as to whether or not a person's request and assessment process has been completed in accordance with the Bill. The clause requires the co-ordinating medical practitioner to certify this on completing the final review.

This clause requires the co-ordinating medical practitioner to review the forms completed throughout the request and assessment process. The co-coordinating medical practitioner is required to complete the final review form in respect of the person and give a copy of the completed form to the Board. This must be done within 7 days after completing the final review form.

Clause 42 provides that the request and assessment process is not invalidated by any technical error in a form referred to in clause 41(a).

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 on a witness's signature, does not have the effect of invalidating a person's entire request and assessment process.

Clause 43 provides that the co-ordinating medical practitioner may apply for a voluntary assisted dying permit for the person if the co-ordinating medical practitioner has certified in a final review form that the request and assessment process has been completed as required by the Bill.

Clause 44 reaffirms that a person in respect of whom a final review has been completed and certified may decide at any time not to take any further step in relation to access to voluntary assisted dying.

#### **Part 4—Voluntary assisted dying permits**

##### **Division 1—Authorisations under a voluntary assisted dying permit**

Clause 45 sets out what is authorised by a self-administration permit.

Clause 45(a) authorises a co-ordinating medical practitioner to prescribe and supply the voluntary assisted dying substance specified in the permit to the person named in the permit for the purpose of causing their death. The provision requires that the substance be able to be self-administered, and must be of a sufficient dose to cause death. This reflects that in all cases where a person is physically capable of self-administration of the relevant voluntary assisted dying substance, only they are authorised to administer the voluntary assisted dying substance, and only to themselves. Nobody else is authorised to administer it for them in those circumstances.

Clause 45(b) authorises the person specified in the permit to obtain, possess, store, use and self-administer the voluntary assisted dying substance specified in the permit. The purpose of this provision is to specifically authorise activity that may otherwise constitute an offence under the **Drugs, Poisons and Controlled Substances Act 1981**.

Clauses 45(c) and 45(d) authorise the contact person specified in the self administration permit to possess, store, carry and transport the voluntary assisted dying substance specified in the permit in certain circumstances for the purpose of returning it to a pharmacist at the dispensing pharmacy. In the case of the death of a person specified in the permit, there is a time limit of one month for the contact person to return the substance. The purpose of these provisions is to provide for responsible and safe return of an unused voluntary assisted dying substance, and to specifically authorise activity that may otherwise constitute an offence under the **Drugs, Poisons and Controlled Substances Act 1981**.

Clause 46 sets out what activity a practitioner administration permit authorises a co-ordinating medical practitioner to undertake, and in what circumstances.

This provision reflects that the co-ordinating medical practitioner is only authorised to administer the voluntary assisted dying substance specified in the permit to the person specified if the practitioner has received that person's request for administration in the presence of a witness, if the administration is immediately after the request and also in the presence of the witness, the person has decision-making capacity in relation to voluntary assisted dying at the time of the request, they are acting voluntarily and without coercion and their request to access voluntary assisted dying is enduring. Furthermore, the co-ordinating medical practitioner is only authorised to administer the voluntary assisted dying substance to the person if the person is physically incapable of self-administering or digesting the substance.

These requirements are safeguards to ensure that the person is acting autonomously and has not only consented, but has requested to be administered the voluntary assisted dying substance. The requirement for a witness to be present is to provide a further safeguard.

Practitioner administration is provided for so that individuals who are not physically able to self-administer or digest are not discriminated against and can still access voluntary assisted dying if that is their decision.

### **Division 2—Voluntary assisted dying permits**

- Clause 47 provides that a co-coordinating medical practitioner may apply for a self-administration permit in respect of a person if the person is physically able to self-administer and digest the poison or controlled substance or the drug of dependence proposed to be specified in the permit for the purpose of causing the person's death. The practitioner must be satisfied that the person has decision-making capacity in relation to voluntary assisted dying and that their request to access voluntary assisted dying is enduring.

The application must be in the prescribed form, and must meet the other requirements outlined in this provision. Only a co-ordinating medical practitioner may make this application.

The application for a permit is to be made to the Secretary of the Department of Health and Human Services because the Secretary is jointly and severally responsible for the administration of the **Drugs, Poisons and Controlled Substances Act 1981** and already performs functions in relation to permits and authorisations under that Act.

- Clause 48 provides that, subject to clause 48(3), a co-ordinating medical practitioner may apply for a practitioner administration permit in respect of a person if the person is to be supplied and administered the poison or controlled substance or drug of dependence proposed to be specified in the permit by the co-ordinating medical practitioner for the purpose of causing the person's death. Only a co-ordinating medical practitioner may make this application.

The application must be in the prescribed form, and must meet the other requirements outlined in the provision. Notably, clause 48(2)(g) provides that a co-ordinating medical practitioner may apply for a practitioner administration permit in respect of a person who was initially the subject of a self-administration permit in certain circumstances. This is expanded upon in Division 3 of Part 4 and is included in order to account for circumstances where a person was initially able to self-administer

and ingest a voluntary assisted dying substance, but has lost that ability and still wants to access voluntary assisted dying.

Clause 48(3) applies preconditions to the application for a practitioner administration permit, setting out the matters a co-ordinating medical practitioner must satisfy themselves of before making such an application. These additional requirements acknowledge that extra safeguards are required to ensure a person subject to a practitioner administration permit is acting autonomously.

The application for a permit is to be made to the Secretary of the Department of Health and Human Services because the Secretary is jointly and severally responsible for the administration of the **Drugs, Poisons and Controlled Substances Act 1981** and already performs functions in relation to permits and authorisations under that Act.

Clause 49 sets out the Secretary's power to determine an application for a voluntary assisted dying permit, and that if granted, the voluntary assisted dying permit must be in the prescribed form.

The Secretary may issue or refuse to issue a voluntary assisted dying permit. If the Secretary refuses to issue, the Secretary must provide reasons for this.

Clause 49(3) provides that, without limiting the Secretary's decision-making power, the Secretary may refuse to issue a voluntary assisted dying permit if not satisfied that the request and assessment process has been completed as required by this Bill. The purpose of this provision is to clarify the principal ground on which the Secretary may refuse to issue a voluntary assisted dying permit.

This provision does not set out the matters that the Secretary must take into account in making the decision, but it is clear from the other provisions in this Division the circumstances that must be present on order for an application to be granted. Furthermore, principles of administrative decision making will apply.

Clause 50 provides that a voluntary assisted dying permit comes into force on the day specified in the permit.

Clause 51 provides that the Secretary may amend a voluntary assisted dying permit if it contains an administrative error or minor defect. The Secretary may do so on his or her own motion or on an application by the relevant co-ordinating medical practitioner. The Secretary must notify the relevant co-ordinating medical practitioner and the Board in writing of any amendments.

A minor defect or administrative error is intended to encompass issues such as spelling errors and typographical errors. The purpose of this provision is to ensure minor administrative errors do not render the permit invalid and can be rectified without requiring a fresh application process.

Clause 52 provides for the automatic cancellation of a self-administration permit on destruction of any unfilled prescription by a co-ordinating medical practitioner or on the giving of a voluntary assisted dying substance disposal form to the Board by a pharmacist.

The purpose of this provision is to ensure that, on either of the above occurring, a permit is cancelled. This is especially important where a co-ordinating medical practitioner applies for a practitioner administration permit in respect of a person who was previously the subject of a self-administration permit, to ensure that only one type of permit may be in existence in respect of a person at one time.

### **Division 3—Later physical incapacity of person to self-administer voluntary assisted dying substance**

Clause 53 provides that a person who is the subject of a self-administration permit may request their co-ordinating medical practitioner to apply for a practitioner administration permit if they have lost the physical ability to self-administer or digest the voluntary assisted dying substance specified in that permit. The person must make this request themselves, and may make it verbally or by other means available to the person if the person cannot communicate verbally.

This division recognises that physical ability may decline with the passage of time, and provides for this so that individuals in respect of whom a self-administration permit is issued in the first instance do not feel they have to rush to self-administer if their physical capacity to do so is declining

- Clause 54 provides for the destruction of an unfilled prescription by a co-ordinating medical practitioner who has received a request under clause 53. This results in automatic cancellation of the self-administration permit by operation of clause 52.
- Clause 55 provides that, if a voluntary assisted dying substance prescribed in accordance with a self-administration permit has been dispensed, the person named in the permit or their appointed contact person must return the substance to a pharmacist at the dispensing pharmacy before making a request under clause 53. The effect of this is that the pharmacist will be required to destroy the substance and complete a voluntary assisted dying substance disposal form, and that by providing this to the Board as required, the self-administration permit will be automatically cancelled by operation of clause 52.
- Clause 56 has the effect that a co-ordinating medical practitioner may only apply for a practitioner administration permit for the person once the self-administration permit is cancelled.

## **Part 5—Accessing voluntary assisted dying and death**

### **Division 1—Prescribing, dispensing or disposing of voluntary assisted dying substance**

- Clause 57 lists the information a co-ordinating medical practitioner must give a person on prescribing a voluntary assisted dying substance in accordance with a self-administration permit.

The purpose of this provision is to ensure individuals understand how to self-administer the voluntary assisted dying substance and that individuals are informed it is their responsibility to ensure the voluntary assisted dying substance is stored safely, including storing it inside a locked box, and that it is destroyed safely by a pharmacist if applicable or any unfilled prescription returned if a request for a practitioner administration permit is to be made. The purpose is also to ensure a co-ordinating medical practitioner has made clear to a person that they are under no obligation to obtain or to self-administer the voluntary assisted dying substance, but that if they do chose to do so, how to self-administer.

- Clause 58 lists the information a pharmacist must give a person on dispensing a prescription for a voluntary assisted dying substance. These matters are similar to those listed in clause 57, and have a similar purpose.
- Clause 59 sets out the labelling requirements in respect of a voluntary assisted dying substance. A label must be in the prescribed form, and is required to be attached to the package or container of a voluntary assisted dying substance in addition to any label required by the Poisons Code or under the **Drugs, Poisons and Controlled Substances Act 1981**.

This provision ensures that voluntary assisted dying substance packages or containers are clearly labelled with warnings as to the dangers of self-administering them, and with instructions regarding safe storage and return. The label will ensure that no one will be in any doubt that the purpose of the substance is to cause death.

- Clause 60 requires a pharmacist who dispenses a voluntary assisted dying substance to complete a voluntary assisted dying substance dispensing form and give a copy of it to the Board within 7 days. The pharmacist is required to certify that the requirements in clauses 58 and 59 were satisfied on dispensing.

The purpose of the form is to ensure that the pharmacists abide by the requirements set out in this Bill in dispensing voluntary assisted dying substances. A copy of the completed form is required to be given to the Board to enable it to perform its core function of monitoring matters associated with voluntary assisted dying.

- Clause 61 places an obligation on the person for whom a voluntary assisted dying substance has been dispensed to store the substance in a locked box meeting the prescribed specifications.

The purpose of this is to ensure that voluntary assisted dying substances are stored securely, reflecting the seriousness of the consequences of a substance being accidentally ingested. The locked box will differentiate the substance from other medications in the home and will help to protect against misadventure and misuse.

Clause 62 places an obligation on a pharmacist at the dispensing pharmacy to dispose of a returned voluntary assisted dying substance as soon as practicable after its return.

Clause 63 provides that a pharmacist at the dispensing pharmacy who disposes of a voluntary assisted dying substance must immediately record the disposal in a voluntary assisted dying substance disposal form.

A copy of the form is required to be given to the Board within 7 days of the disposal to enable it to perform its function of monitoring matters associated with voluntary assisted dying.

### **Division 2—Administration request and administration of voluntary assisted dying substance**

Clause 64 provides that a person who is the subject of a practitioner administration permit may make a request to their co-ordinating medical practitioner for the practitioner to administer to them the voluntary assisted dying substance specified in the permit.

The request must be made immediately prior to the administration and in the presence of a witness, and must be made by the person themselves, either verbally or by other means available to the person if the person is not able to communicate verbally. The person's request must be enduring.

This provision requires the co-ordinating medical practitioner to refuse the request for administration if they are not satisfied that the person making it has decision-making capacity at the time of making the request, that the request is enduring, and that the person understands administration is to be immediately after making the request. These requirements are important safeguards to ensure that the person is acting autonomously and has not only consented, but has requested to be administered the voluntary assisted dying substance. The requirement for a witness to be present is an additional safeguard.

On acceptance of an administration request, the practitioner must immediately administer the voluntary assisted dying substance as required and authorised by clause 46.

It should be noted that a co-ordinating medical practitioner's right to conscientiously object remains intact at this point.

Clause 65 establishes that the administration of a voluntary assisted dying substance must be witnessed by a person aged 18 years or more who is independent of the co-ordinating medical practitioner for the person to whom the voluntary assisted dying substance is to be administered.

This requirement for independence ensures that the witness to the request for administration and the co-ordinating medical practitioner do not have a conflict of interest.

The provision requires the witness to certify as to the matters listed in clause 65(2) on a practitioner administration form. If the witness is unable to certify to these matters, then the administration was not in accordance with the permit, which is a level 1 imprisonment offence under clause 83. This reflects the seriousness of ensuring a person is acting voluntarily and without coercion and has requested, and consented to, administration of a voluntary assisted dying substance. Even though a person is the subject of a practitioner administration permit, they must always initiate the process for actually administering the substance, and this must be a voluntary request when they have decision-making capacity in relation to voluntary assisted dying.

Clause 66 requires the co-ordinating medical practitioner for a person who has administered a voluntary assisted dying substance to that person in accordance with a practitioner administration permit to certify as to the matters listed in clause 66(1) on the same co-ordinating medical practitioner administration form completed by the witness under clause 65. This is a further check that the person has decision-making capacity and is acting voluntarily and without coercion.

The co-ordinating medical practitioner is required to give a copy of the co-ordinating medical practitioner administration form to the Board within 7 days after administering a voluntary assisted dying substance to a person under a practitioner administration permit. A copy of the form is required to be given to the Board to enable it to perform its function of monitoring matters associated with voluntary assisted dying.

### **Division 3—Notification of cause of death**

Clause 67 requires a registered medical practitioner who was responsible for the person's medical care immediately before death, or who examines the body of a deceased person after death who the practitioner reasonably believes or knows was the subject of a voluntary assisted dying permit to, when notifying the Registrar of the person's death, also notify the Registrar of the matters set out in the clause, as applicable.

This provision together with amendments made to the **Births, Deaths and Marriages Registration Act 1996** by clauses 117 and 118 ensures that the person's cause of death is listed as the disease, illness or medical condition that was the grounds for the person accessing voluntary assisted dying.

The purpose of this is to reflect that a person may only access voluntary assisted dying when they already have a disease, illness or medical condition that will cause death. Accessing voluntary assisted dying is not about choosing to die, but choosing the manner and timing of one's death. The underlying disease, illness or medical condition is what has placed the person in the position to make this decision.

The purpose of the practitioner notifying the Registrar of their belief or knowledge that the person accessed voluntary assisted dying is so the Registrar can notify the Board of these matters in accordance with new section 40A of the **Births, Deaths and Marriages Registration Act 1996** as amended by clause 118. This ensures the Board has the information it needs to perform its core function of monitoring matters associated with voluntary assisted dying without requiring the registered medical practitioner who examines the body to notify 2 separate agencies.

### **Part 6—Review by VCAT**

Clause 68 provides for an application for review by VCAT of certain decisions of the co-ordinating medical practitioners and consulting medical practitioners.

Clause 68(1) provides that an eligible applicant may apply to VCAT for review of the decisions listed, having been made under this Bill in relation to voluntary assisted dying.

Clause 68(2) sets out the meaning of *eligible applicant* for the purposes of this clause. Merely 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 clause 68(2)(c).

Clause 68(3) makes it clear that the person who is the subject of a decision is a party to a proceeding for review of the decision, whether or not the person was the applicant.

Clause 69 requires VCAT to give notice of an application for the review of a decision under this Bill, and any order or determination in respect of that application, to the co-ordinating medical practitioner for the person, the Secretary and the Board.

Clause 70 clarifies the effect of an application to VCAT on an existing request and assessment process or voluntary assisted dying permit.

If a voluntary assisted dying permit is in existence at the time the VCAT application is made, the application has the effect of suspending the permit. In the case of a self-administration permit, the permit is suspended save for the authorisations to possess and store, and to carry and transport to a pharmacist at the dispensing pharmacy, a voluntary assisted dying substance. Further, the clause has the effect that if the request and assessment process has been completed but no permit applied for yet, the co-ordinating medical practitioner may not apply for a permit while the application is on foot.

The purpose of clause 70(d) is to allow for a person named in a self-administration permit to whom a voluntary assisted dying substance has been dispensed to retain possession of the substance until VCAT makes a determination. If the effect of VCAT's determination cancels the permit, the provision allows for the person or their contact person to return the voluntary assisted dying substance to a pharmacist at the dispensing pharmacy during a period where the operation of VCAT's order is stayed.

Clause 71 provides that an application for review of a decision to VCAT is taken to be withdrawn if the person who is the subject of the decision has died.

Clause 72 sets out the determinations VCAT is empowered to make in respect of applications made under clause 68(1).

Clause 73 allows a co-ordinating medical practitioner or consulting medical practitioner to refuse to continue with the voluntary assisted dying process in relation to a person.

Clause 73(1) provides that the co-ordinating medical practitioner for a person may refuse to resume any first assessment or to continue to perform the role of co-ordinating medical practitioner if the practitioner's decision that the person did not have decision-making capacity is overturned by VCAT.

Clause 73(2) provides that the consulting medical practitioner for a person may refuse to resume any consulting assessment that was not completed before the application was made if the practitioner's decision that the person did not have decision-making capacity is overturned by VCAT.

Clause 73(3) provides that a co-ordinating medical practitioner who refuses to perform the role must transfer the role of co-ordinating medical practitioner in accordance with clause 33 of the Bill.

Clause 73(4) provides that if a consulting medical practitioner refuses to resume a consulting assessment, the person's co-ordinating medical practitioner may refer the person to another registered medical practitioner for a further consulting assessment.

Clause 74 provides that, in any application under this Bill, VCAT may make any interim orders or temporary orders that it considers necessary.

## **Part 7—Notifications and protections from liability**

### **Division 1—Notifications to Australian Health Practitioner Regulation Agency**

Clause 75 provides for a mandatory notification by registered health practitioners.

Clause 75(1) requires a registered health practitioner to notify the Australian Health Practitioner Regulation Agency as soon as practicable after forming a belief on reasonable grounds

that another registered health practitioner is acting in certain ways in relation to voluntary assisted dying in a manner not in accordance with this Bill.

Clause 75(2) states that a failure to notify the Australian Health Practitioner Regulation Agency as required is to be regarded as unprofessional conduct within the meaning and for the purposes of the Health Practitioner Regulation National Law.

Clause 76 provides for mandatory notification by employers.

Clause 76(1) requires an employer of a registered health practitioner to notify the Australian Health Practitioner Regulation Agency as soon as practicable after forming a belief on reasonable grounds that the registered health practitioner is undertaking specified actions in relation to voluntary assisted dying in a manner not in accordance with this Bill.

Clause 76(2) provides that ***employer of a registered health practitioner*** means an entity that employs a registered health practitioner under a contract of employment or contract for services, in this clause.

Clause 77 provides for voluntary notification.

Any person may notify the Australian Health Practitioner Regulation Agency of their belief on reasonable grounds that a registered health practitioner undertaking specified actions in relation to voluntary assisted dying in a manner not in accordance with this Bill.

Clause 78 provides protection from liability for persons making notification under Division 1.

Clause 78(1) provides that a person who makes a notification under this Division in good faith is not personally liable for any loss, damage or injury merely because of the making of the notification.

Clause 78(2) further provides for protection from liability in respect of professional etiquette or ethics, professional conduct and defamation.

**Division 2—Protection from liability for those who assist,  
facilitate, do not act or act in accordance with this Act**

- Clause 79 provides that a person who in good faith does something or fails to do something that assists or facilitates any other person to make a request for or to access voluntary assisted dying in accordance with this Bill that would otherwise be commission of an offence does not commit the offence.
- Clause 80 provides protection from criminal, civil and professional liability for a registered health practitioner who acts in good faith and without negligence, believing on reasonable grounds that their action is in accordance with this Bill.
- Clause 81 provides protection from criminal, civil and professional liability for registered health practitioners and ambulance paramedics who are present after a person is administered or is self-administered a voluntary assisted dying substance. This provision recognises there is no obligation on registered health practitioners and ambulance paramedics, who believe on reasonable grounds that a person is dying after being administered or self-administering a voluntary assisted dying substance in accordance with the Bill, to provide life saving or life sustaining medical treatment to that person if they have not requested it. In these circumstances the person has made a voluntary, informed and enduring decision to die and registered health practitioners should not prevent this from occurring.
- The purpose of this provision is to ensure there is no liability flowing out of a failure to provide life sustaining medical treatment in these circumstances.
- This provision does not prevent a registered health practitioner providing medical treatment to ensure a person's comfort.
- Clause 82 provides that section 463B of the **Crimes Act 1958** does not apply to a person who knows or believes on reasonable grounds that a person is accessing voluntary assisted dying in accordance with this Bill.
- Section 463B of the **Crimes Act 1958** provides that a person is justified in using such force as may reasonably be necessary to prevent the commission of suicide or of any act which the person believes on reasonable grounds would, if committed, amount to suicide. This clause dis-applies section 463B in circumstances

where a person is accessing voluntary assisted dying in accordance with the Bill.

### **Part 8—Offences**

Clause 83 makes it an offence for a co-ordinating medical practitioner not to comply with a practitioner administration permit in administering a voluntary assisted dying substance. A co-ordinating medical practitioner must not administer to a person a voluntary assisted dying substance specified in the relevant permit if the practitioner: intends to cause the person's death by administering the substance and knowingly administers the substance other than in accordance with the permit.

The penalty for breach of this provision is imprisonment for life, or such other term as is fixed by the court. This is a level 1 imprisonment offence.

Clause 46 of the Bill authorises a co-ordinating medical practitioner to cause the person's death by administering the specified voluntary assisted dying substance to the person, but only in the circumstances listed in clause 46(c). This includes that the person must be physically incapable of self-administration or digestion of the voluntary assisted dying substance, must have decision-making capacity in relation to voluntary assisted dying when requesting administration, and administration must be immediately after a request for administration.

The penalty for the offence reflects the seriousness of administering a voluntary assisted dying substance to a person if they are not subject to a practitioner administration permit and if the authorised circumstances are not present.

Clause 84 makes it an offence for a person to knowingly administer to another person a voluntary assisted dying substance dispensed in accordance with a self-administration permit.

This offence recognises that just because a voluntary assisted dying substance has been dispensed in accordance with the Bill, it cannot be administered by others. The voluntary assisted dying substance dispensed in accordance with a self-administration permit may only ever be self-administered by the person named in the permit.

The penalty for breach of this provision is imprisonment for life, or such other term as is fixed by the court. This is a level 1 imprisonment offence, reflecting the seriousness of administering a voluntary assisted dying substance to a person where there is a self-administration permit in place.

- Clause 85 makes it an offence for a person to, by dishonesty or undue influence, induce another person to request voluntary assisted dying. This applies to a first request, a written declaration, a final request or an administration request.

The penalty for breach of this provision is imprisonment up to 5 years or 600 penalty units or both in the case of a natural person, and 2400 penalty units in the case of a body corporate.

- Clause 86 makes it an offence for a person to, by dishonesty or undue influence, induce another person to self-administer a voluntary assisted dying substance dispensed in accordance with a self-administration permit.

The penalty for breach of this provision is imprisonment up to 5 years or 600 penalty units or both in the case of a natural person, and 2400 penalty units in the case of a body corporate. This is a level 5 offence. This offence further protects a person's right to withdraw from the voluntary assisted dying process at any time.

- Clause 87 makes it an offence to falsify a form or record required to be made under the Bill. **Form or record** is defined in clause 87(2).

The penalty for breach of this provision is imprisonment up to 5 years or 600 penalty units or both in the case of a natural person, and 2400 penalty units in the case of a body corporate. This is a level 6 imprisonment offence.

- Clause 88 makes it an offence to knowingly make a false or misleading statement via report or form in respect of another person who requests access to voluntary assisted dying. **Report or form** is defined in clause 88(2).

The penalty for breach of this provision is imprisonment up to 5 years or 600 penalty units or both in the case of a natural person, and 2400 penalty units in the case of a body corporate. This is a level 6 imprisonment offence.

Clause 89 makes it an offence for the contact person for a person who is the subject of a self administration permit to fail to return any unused voluntary assisted dying substance, within one month of the person's death, that the contact person knows is unused or remaining after the death, to a pharmacist at the dispensing pharmacy.

This offence recognises the importance of the role of the contact person in ensuring any unused voluntary assisted dying substance that was dispensed in accordance with a self-administration permit has been safely disposed of.

The penalty for breach of this provision is level 8 imprisonment (12 months maximum) or 120 penalty units or both. 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 90 makes it an offence to fail to give a copy of a form to the Voluntary Assisted Dying Review Board as required by the Bill. **Form** is defined in clause 90(2).

The penalty for breach of this provision is 60 penalty units.

Clause 91 provides for criminal liability of officers of a body corporate who fail to exercise due diligence.

Clause 91(1) states that if a body corporate commits an offence against a specified provision, an officer of the body corporate also commits an offence if they failed to exercise due diligence to prevent the commission of the offence by the body corporate.

Clause 91(2) sets out the specified provisions.

Clause 91(3) lists the factors a court may have regard to in determining whether an officer of a body corporate failed to exercise due diligence.

Clause 91(4) provides that an officer may rely on a defence that would be available to the body corporate if the officer were charged with the offence, and the same burden of proof applies. This clause does not limit any other defence that would be available.

Clause 91(5) provides that an officer of a body corporate may commit an offence against a specified provision whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

Clause 91(6) defines *body corporate* and *officer*, for the purposes of this clause.

## **Part 9—Voluntary Assisted Dying Review Board**

### **Division 1—Establishment**

Clause 92 establishes the Voluntary Assisted Dying Review Board.

### **Division 2—Functions and powers**

Clause 93 lists the functions and powers of the Board.

The Board is established for the purpose of monitoring voluntary assisted dying in Victoria. The Board's functions and powers include promoting compliance and continual improvement of practice, conducting analysis and research regarding voluntary assisted dying, consulting and engaging with the community and professional groups regarding voluntary assisted dying, reporting to the Houses of the Parliament on the operation of voluntary assisted dying, and providing reports or advice to the Minister or Secretary as required.

The Board will not have an investigatory, determinative or punitive role. There are pre-existing agencies with these functions, such as Victoria Police, the Victorian Civil and Administrative Tribunal and the Australian Health Practitioner Regulation Agency.

### **Division 3—Membership and procedure**

Clause 94 sets out the membership of the Board, being a Chairperson and Deputy Chairperson (if any), with provision for appointment of other members by the Minister.

Clause 95 provides the Minister with power to appoint an eligible member to the Board by order published in the Government Gazette. A member is eligible to be appointed if they have the appropriate knowledge and skills to perform the duties and functions required of the Board under this Part.

Eligibility is not limited to any particular qualification or profession. This is so that Board membership may reflect appropriately broad representation from the community and professionals.

- Clause 96 sets out the terms and conditions of appointment of a member of the Board.
- Clause 97 provides for resignation and removal from office of a member of the Board and associated procedures.
- Clause 98 provides for appointments, resignation, and removal of a member of the Board as Chairperson and another as Deputy Chairperson, and the associated procedures.
- Clause 99 authorises remuneration of a member of the Board as fixed by the Minister.
- Clause 100 establishes the ability of the Board, with approval of the Minister, to co-opt any person with special knowledge or skills to assist the Board in a particular matter. This provision provides that for the time of co-option the co-opted person is to be considered a member of the Board. This means that a co-opted person would be eligible for remuneration.
- Clause 101 sets out that the Board may regulate its own proceedings, but that meetings of the Board must be chaired by the Chairperson or the Deputy Chairperson in their absence, and that a majority of the members holding office is a quorum.
- Clause 102 provides the Board with the ability to appoint a subcommittee with the approval of the Minister for the purposes of carrying out any of its functions. The subcommittee must report to the Board, as the Board requires. The members of a subcommittee are to be members of the Board or any other person as determined by the Board.

#### **Division 4—Request for information, referral of identifying information held by the Board and notifications**

- Clause 103 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.

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

Clause 104 sets out that the Board may use and disclose identifying 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 the provision. 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 purpose 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.

Clause 105 requires the Board to, as soon as practicable after receiving a copy of a scheduled form required to be provided to the Board under the Act, notify the registered medical practitioner or the pharmacist who submitted the copy (as the case may be) that the copy has been received. This is for the relevant practitioner's information only.

The clause also requires the Board to provide a copy of a voluntary assisted dying substance disposal form to the Secretary as soon as practicable after receiving it. The purpose of this is to allow the Secretary to record that the relevant voluntary assisted dying permit is cancelled in accordance with clause 52.

### **Division 5—Reports**

Clause 106 requires the Board to make a report after the end of every financial year reporting on the operation of voluntary assisted dying during that financial year.

In addition to reporting on the operation of voluntary assisted dying, reports may make recommendations on any systemic matters identified by the Board.

Clause 106(3) provides for the first annual report to enable voluntary assisted dying to operate for a period of time after commencement of the Bill before any report is required. This is to enable the report to be based on useful data collected over a sufficient period of time.

Clause 107 sets out the tabling requirements in respect of annual reports completed under clause 106.

Clause 108 provides that the Minister or Secretary may request the Board consider any matter and report to the Secretary or Minister, as the case may be, outside of the formal annual reporting requirements.

Clause 109 provides that for the first two years of the operation of the Bill, the Board must report to Parliament every 6 months on the operation of the voluntary assisted dying scheme set out in this Bill.

Clause 110 provides that the Board may include de-identified information in any formal annual or 6-monthly report. The restriction does not apply in respect of reports provided to the Minister or the Secretary outside the formal process under clause 108.

Clause 110(2) provides the Board must not include any information in annual or 6-monthly reports that would prejudice any Court proceeding or Coroners Court proceeding or criminal investigation.

Clause 111 provides for the repeal of clause 109 on the second anniversary of its commencement and makes consequential amendments.

### **Part 10—General**

Clause 112 is the delegation power. The Secretary, by instrument, may delegate the Secretary's powers under Division 2 of Part 4 to determine an application for a voluntary assisted dying permit or amend a voluntary assisted dying permit to a person or class of persons employed under Part 3 of the **Public Administration Act 2004**.

Clause 113 allows the Secretary to approve training for medical practitioners in relation to specified matters relevant to voluntary assisted dying. All co-coordinating medical practitioners and consulting medical practitioners are required to have undertaken this training prior to conducting any assessment.

Clause 114 sets out requirements in relation to an interpreter who assists a person in relation to accessing voluntary assisted dying. The requirements are aimed at ensuring an interpreter is appropriately qualified and does not have a conflict of interest.

Clause 115 requires the Minister to cause a 5 year review of the operation of this Bill to be conducted. The review would be conducted in the fifth year of the operation of the Bill and be a review of the first

4 years of operation. The completed review must be tabled before each House of the Parliament.

Clause 116 is the regulation making power, allowing the Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Bill or necessary to be prescribed to give effect to this Bill and to the extent provided under clause 116(2).

## **Part 11—Consequential amendments**

### **Division 1—Amendment of the Births, Deaths and Marriages Registration Act 1996**

Clause 117 amends section 40 of the **Births, Deaths and Marriages Registration Act 1996**, which relates to registration of death, by inserting new section 40(1A). The effect of this amendment is that the Registrar of Births, Deaths and Marriages must register a death by making an entry recording the cause of the death as the disease, illness, or medical condition that was the grounds for a person to access voluntary assisted dying when notified in accordance with clause 67.

Clause 118 amends the **Births, Deaths and Marriages Registration Act 1996** by inserting new section 40A. The new clause requires that, if the Registrar registers a death in accordance with new section 40(1A), the Register must notify the Voluntary Assisted Dying Review Board.

This is necessary to enable the Board to carry out its functions, including monitoring the provision of voluntary assisted dying in accordance with the Act and to provide reports to the Parliament on the operation of the Act.

### **Division 2—Amendment of the Coroners Act 2008**

Clause 119 amends section 4 of the **Coroners Act 2008**, which relates to reportable death, by inserting new section 4(3). The effect of this amendment is to ensure that the death of a person which occurred in accordance with the requirements of the Bill is not a reportable death, which means that the death does not have to be reported to a coroner. This does not prevent a death being reported to a coroner if it has occurred other than in accordance with the Bill.

### **Division 3—Amendment of the Drugs, Poisons and Controlled Substances Act 1981**

- Clause 120 amends section 4(1) of the **Drugs, Poisons and Controlled Substances Act 1981** to insert definitions of *voluntary assisted dying permit* and *voluntary assisted dying substance*. These terms are defined to have the same meaning as in this Bill.
- Clause 121 inserts a reference to the Bill in section 7. The effect of this amendment is that the **Drugs, Poisons and Controlled Substances Act 1981** will be construed as being in aid of and not in derogation of this Bill.
- Clause 122 inserts new sections 13(7) and (8) into the **Drugs, Poisons and Controlled Substances Act 1981**.
- New section 13(7) has the effect of authorising the obtaining, possession, use, supply, sale or administration of a voluntary assisted dying substance by a registered medical practitioner to a person who is the subject of a voluntary assisted dying permit in accordance with this Bill, in the lawful practice of the practitioner's profession, under the purposes of the **Drugs, Poisons and Controlled Substances Act 1981**.
- New section 13(8) has the effect of authorising the obtaining, possession, sale or supply of a voluntary assisted dying substance by a pharmacist to a person who is the subject of a voluntary assisted dying permit in accordance with this Bill, in the lawful practice of the pharmacist's profession, under the purposes of the **Drugs, Poisons and Controlled Substances Act 1981**.
- Clause 123 inserts a reference to the Bill and regulations under the Bill into section 36C of the **Drugs, Poisons and Controlled Substances Act 1981**. The effect of this amendment is that nothing in Division 10A of that Act, which relates to the administration of medication in aged care services, will affect any other requirement in relation to the administration of a voluntary assisted substance.
- Clause 124 amends section 36E of the **Drugs, Poisons and Controlled Substances Act 1981**. The effect of this amendment is that the offence in respect of the administration of a drug of dependence, Schedule 9 poison, Schedule 8 poison or Schedule 4 poison in aged care services, for residents in high level residential care, does not apply to the management of the administration of any

voluntary assisted dying substance specified in a voluntary assisted dying permit to a resident who is the subject of that permit.

- Clause 125 inserts references to the Bill and regulations made under it into section 42(1) of the **Drugs, Poisons and Controlled Substances Act 1981**. The effect of this is to provide for entry on any premises for the purpose of an inspection to ascertain whether this Bill and regulations are being complied with.
- Clause 126 inserts a reference to the Bill and regulations under it into section 71(1) of the **Drugs, Poisons and Controlled Substances Act 1981**, which relates to the offence of trafficking in a drug or drugs of dependence—large commercial quantity. The effect of this amendment is that the offence will not apply to a person who is authorised to do so in respect of a voluntary assisted dying substance under the Bill or regulations.
- Clause 127 inserts a reference to the Bill and regulations under it into section 71AA of the **Drugs, Poisons and Controlled Substances Act 1981**, which relates to the offence of trafficking in a drug or drugs of dependence—commercial quantity. The effect of this amendment is that the offence will not apply to a person who is authorised to do so in respect of a voluntary assisted dying substance under the Bill or regulations.
- Clause 128 inserts references to the Bill and regulations under it into section 71AC of the **Drugs, Poisons and Controlled Substances Act 1981**, which set out offences of trafficking in a drug of dependence. The effect of this amendment is that the offences will not apply to a person who is authorised to do so in respect of a voluntary assisted dying substance under the Bill or regulations.
- Clause 129 inserts a reference to the Bill and regulations under it into section 71A(1) of the **Drugs, Poisons and Controlled Substances Act 1981**, which relates to the offence of possession of substance, material documents or equipment for trafficking in a drug of dependence. The effect of this amendment is that the offence will not apply to a person who is authorised to do so in respect of a voluntary assisted dying substance under the Bill or regulations.

- Clause 130 inserts a reference to the Bill and regulations under it into section 72D(1) of the **Drugs, Poisons and Controlled Substances Act 1981**, which relates to permitting use of premises for trafficking or cultivation of drug of dependence. The effect of this amendment is that the offence will not apply to a person who is authorised to do so in respect of a voluntary assisted dying substance under the Bill or regulations.
- Clause 131 inserts references to the Bill and regulations under it into section 73 of the **Drugs, Poisons and Controlled Substances Act 1981**, which relates possession of a drug of dependence. The effect of this amendment is that the offence will not apply to a person who is authorised to do so in respect of a voluntary assisted dying substance under the Bill or regulations.
- Clause 132 inserts references to the Bill and regulations under it into section 74 of the **Drugs, Poisons and Controlled Substances Act 1981**, which relates to introduction of a drug of dependence into the body of another person. The effect of this amendment is that the offence will not apply to a person who is authorised to do so in respect of a voluntary assisted dying substance under the Bill or regulations. A co-ordinating medical practitioner in strict accordance with a practitioner administration permit is a person who may be authorised under the Bill.
- Clause 133 inserts references to the Bill and regulations under it into section 75 of the **Drugs, Poisons and Controlled Substances Act 1981**, which relates to use of a drug of dependence. The effect of this amendment is that the offence will not apply to a person who is authorised to do so in respect of a voluntary assisted dying substance under the Bill or regulations.
- Clause 134 inserts references to the Bill and regulations under it into section 78 (a), (b) and (d) of the **Drugs, Poisons and Controlled Substances Act 1981**, which relates to obtaining drugs of dependence by false representation. The effect of this amendment is that the offence will attach to a person who obtains or attempts to obtain a drug of dependence, a prescription from a drug of dependence or administration of a drug of dependence, from or by a person who is authorised to possess, sell or supply a voluntary assisted dying substance under the Bill or regulations.

Clause 135 makes minor amendments and inserts a new subsection (3A) into section 118 of the **Drugs, Poisons and Controlled Substances Act 1981**, which relates to the requirement to keep a list of persons holding current licences, permits or warrants under the Act or the Bill. The new subsection ensures that information about voluntary assisted dying permits or any other authorisation under the Bill will not be made public.

Clause 136 inserts new section 129(1)(fa) into the **Drugs, Poisons and Controlled Substances Act 1981** which provides Governor in Council with regulation making powers relating to prescriptions or orders for a voluntary assisted dying substance.

#### **Division 4—Amendment of the Health Records Act 2001**

Clause 137 amends the definition of *health service* in section 3(1) of the **Health Records Act 2001**, to include the sale or supply of a voluntary assisted dying substance in accordance with the Bill by a pharmacist, and the supply or administration of a voluntary assisted dying substance in accordance with the Bill by a registered medical practitioner. This is consistent with the dispensing of a drug on prescription by a pharmacist.

#### **Division 5—Amendment of the Medical Treatment Planning and Decisions Act 2016**

Clause 138 inserts new section 8A into the **Medical Treatment Planning and Decisions Act 2016**, to provide that nothing in that Act authorises the making of, with respect to voluntary assisted dying, a statement in an advance care direction, or a decision by a medical treatment decision maker.

#### **Division 6—Amendment of the Pharmacy Regulation Act 2010**

Clause 139 amends the definition of *prescription* in section 3(1) of the **Pharmacy Regulation Act 2010**, to include a voluntary assisted dying permit. The effect of this is that the Act will apply to a voluntary assisted dying permit in the same way it applies to prescriptions.

Clause 140 includes a reference to the Bill into section 107(1)(c) of the **Pharmacy Regulation Act 2010**. The effect of the amendment is that the Health Secretary can receive information collected under that Act in respect of the Bill and regulations made under it.

#### **Division 7—Repeal of amending Part**

Clause 141 provides for the automatic repeal of Part 11 of this Bill on the first anniversary of the first day on which all of the provisions of the Bill are in operation. The repeal of this Part does not affect in any way the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

#### **Schedule 1**

Sets out forms required to be completed for the purposes of the Bill. These forms are included in the Bill to provide clarity as to what is required.